

INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB)

Ad-Hoc Open-ended Working Group
on Access and Benefit Sharing
Fourth Meeting
Granada, Spain, January 30 – February 3, 2006

Opening Statement

Madame Chair, we congratulate you on your election. Madame Chair, distinguished delegates, the IIFB wishes to express its gratitude to the Government of Spain, the Executive Secretary, for holding this meeting and facilitating our participation.

Madame Chair, Indigenous peoples and local communities are rights holders. We have inherent and inalienable rights and we are owners of traditional knowledge and biological resources. There is no doubt that the proposed international regime will have a profound impact on our traditional knowledge and genetic resources originating from our territories. To date, the Parties' proposals fail to recognize our collective human rights.

We reiterate the intrinsic interrelationship between traditional knowledge and genetic resources. The inextricable relationship between our traditional knowledge and genetic resources is the basis for the mandate for collaboration between the Working Group on Article 8(j) and this Working Group on ABS.

We reiterate that state sovereignty does not amount to absolute political or legal freedom under international law and is limited by other principles, such as human rights. Sovereignty of states is limited by the Charter of the United Nations and other legal mechanisms. Other constructive arrangements between Indigenous peoples and states also exist that should be respected. The CBD should act consistent with existing and evolving human rights standards regarding Indigenous peoples. Therefore, any international regime must recognize the following principles, among others:

1. The right of self-determination and the corresponding right of permanent sovereignty over natural resources are the fundamental principles upon which Indigenous Peoples have asserted our proprietary, collective, inherent, inalienable and imprescriptible rights over our traditional knowledge, biodiversity and genetic resources.
2. Indigenous peoples have the right to free prior informed consent, which includes the right to say no, and the right to deny access to our knowledge and resources. Furthermore, we have the right to have our own legal systems recognized and enforced. Customary laws should prevail where there are conflicts with domestic law. Land rights, our territorial security and integrity are indispensable for the existence and perpetuation of our traditional knowledge.

3. We have identified significant gaps in the proposed international regime. First, it fails to address effective measures to repatriate traditional knowledge and biogenetic resources held in ex-situ collections. Our knowledge and biogenetic resources pirated over centuries are now held by ethnobotanical gardens, gene banks and research institutions where they remain vulnerable to exploitation. We demand the return of this knowledge and resources to the rightful owners.
4. We have also identified that the proposed international regime does not sufficiently address the complexities of transboundary traditional knowledge and genetic resources, nor does it protect the rights of transboundary Indigenous peoples who have shared knowledge and resources across nation-state boundaries.
5. Madame Chair, WTO treaties, WIPO treaties, and regional free trade agreements do not recognize the rights of Indigenous peoples, nor do they protect our traditional knowledge. Furthermore, they promote the interests of the market above collective rights. For this reason, we believe that any international regime should include international human rights as a fundamental element. Any proposed international regime must be interpreted and implemented consistent with human rights obligations, especially with regards to our specific rights, as well as those rights stipulated in Article 8(j). Intellectual property rights should not be granted on lifeforms.
6. Indigenous peoples and local communities reaffirm the relevance of our active role based on capacity building for full and effective participation in all processes related to ABS. For this reason, we urge Parties and the Secretariat to support the organization of workshops.
7. With regards to participatory mechanisms for achieving the full and effective participation of Indigenous peoples and local communities, we request that our participation be strengthened by measures such as those proposed by the IIFB in Bangkok at the third meeting of ABS (UNEP/CBD/WG-ABS/3/7, paragraph 152-164).

Madame Chair, we look forward to the opportunity to present more specific recommendations throughout the course of the week.

Thank you.

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International Regime on Access and Benefit-Sharing

Closing Statement

3 February 2006

Madame Chair, we thank you for your efforts and the efforts of the Secretariat. But, Madame Chair, the International Indigenous Forum on Biodiversity must continue to reiterate that our rights, consistent with international human rights obligations, must be recognized. The document on the proposed international regime fails to include many of our most critical concerns. In part, this is due to our exclusion from full and effective participation in the Friends of the Chair, which prepared the document. This situation highlights the need for tangible outcomes for participatory mechanisms for the full and effective participation of indigenous peoples and local communities.

Madame Chair, Indigenous peoples have been present throughout this meeting, ready and willing to participate and provide constructive inputs in this process, despite the extremely limited space provided us. We regret that our efforts have not been fully acknowledged. As long as we are excluded from Friends of the Chair, contact groups and other committees we will continue to go unrecognized. Therefore, we would like to make the following comments on the proposed international regime.

Objectives

We have significant concern about the objectives relating to traditional knowledge. If the Parties do not have an objective to “[protect] the [rights]” of indigenous peoples and local communities to our traditional knowledge, then Parties will fail to meet their obligations under the Convention to “respect, preserve and maintain traditional knowledge.” This is to say, without recognizing and protecting the rights of indigenous peoples and local communities, there can be no respect, preservation or maintenance of traditional knowledge. This understanding seems to be a major gap in the Parties’ analysis.

Scope

We note that the FAO treaty on plant genetic resources for food and agriculture and the WIPO IGC are recognized and may impact the scope of the proposed international regime. There are also other processes and considerations, including,

- The International Regime shall not be prejudicial to international human rights obligations and relevant processes outside the CBD.

In this regard, we note, in particular, the progression of the United Nations draft Declaration on the Rights of Indigenous Peoples, which is occurring as we speak in Geneva. Articles 3, 26 and 29 have significant relevance to your discussions on ABS.

(See

Art. 3 - Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Art. 26 - Indigenous peoples have the right to own, develop, control and use the lands and territories . . . which they have traditionally owned or otherwise occupied or used.

Art. 29 - Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.)

The International Regime shall not affect the customary access, exchange or use of any object among indigenous peoples and local communities.

Elements

Access to genetic resources

With regards to sovereignty over genetic resources, we continue to be concerned that states are misinterpreting their rights over natural resources. State sovereignty and Indigenous peoples' sovereignty, rights and ownership over our resources do not have to be mutually exclusive. We can see that state sovereignty vis-à-vis other states is exclusive. But within the national context, state sovereignty and ownership over resources is not exclusive. Indigenous peoples retain rights. Certainly a state like Canada could support this because they do in fact recognize the sovereignty of hundreds of First Nations.

We respectfully request that the Executive Secretary consult with appropriate UN human rights bodies and experts to provide accurate information about the rights of Indigenous peoples over our natural resources, including genetic resources. Just as the CBD seeks expert advice from WIPO on intellectual property issues, the CBD should seek expert advice from the Commission of the CERD, the UN Permanent Forum on Indigenous Issues, the Sub-Commission on Human Rights, and relevant Human Rights Special Rapporteurs. There already exist reports on the following subjects:

1. Cultural Heritage of Indigenous Peoples;
2. Treaty Study;
3. Indigenous Peoples Relationship to Land;
4. Indigenous Peoples Permanent Sovereignty Over Natural Resources; and
5. Report of the Workshop on Free Prior Informed Consent from the UN Permanent Forum on Indigenous Issues

We would like to inform Parties of the 1997 General Recommendation XXIII, the UN Committee on the Elimination of Racial Discrimination elaborated upon this calling on states-parties to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.

We would also like to remind Parties of the 2004 Report of the Special Rapporteur on Human Rights related to Indigenous Peoples’ Permanent Sovereignty over Natural Resources contained in (E/CN.4/Sub.2/2004/30):

“The developments during the past decades in international law and human rights norms in particular demonstrate that there now exists a developed legal principle that indigenous peoples have a collective right to the lands and territories they traditionally use and occupy and that this right includes the right to use, own, manage and control the natural resources found within their lands and territories.”¹

Genetic resources are among the natural resources belonging to Indigenous peoples.²

“It is a collective right by virtue of which States are obligated to respect, protect, and promote the governmental and property interests of indigenous peoples (as collectivities) in their natural resources.”³

Recognition and protection of genetic resources and associated traditional knowledge

We continue to see that this international regime seeks to separate our traditional knowledge from our genetic resources. Our knowledge is inextricable from our resources. Therefore, our rights to our genetic resources must be recognized and

¹ Indigenous Peoples’ Permanent Sovereignty Over Natural Resources, Final Report of the Special Rapporteur, Erica-Irene A. Daes, E/CN.4/Sub.2/2004/30, para. 39, July 13, 2004.

² *Id.* at para. 42.

³ *Id.* at para 40.

protected. Further, these provisions should not just be consistent with Article 8(j), but there are other considerations that these elements must be consistent with, such as human rights obligations.

Furthermore, how do you recognize and protect traditional knowledge without recognizing and protecting indigenous peoples and local communities rights to our own traditional knowledge? So we see that we have rights to benefit-sharing, but there is nothing to recognize the rest of our rights to our traditional knowledge. There is an inherent conflict when our rights are subjected to national legislation, especially where the broad majority of states do not have any national legislation to recognize and protect our rights. Even where there is national legislation, there remains little to no implementation or enforcement of our rights.

Benefit Sharing

Regarding benefit sharing, “Mutually Agreed Terms” can only be arrived at subject to the prior informed consent of the indigenous and local communities concerned and their customary laws.

Furthermore, any benefit sharing arrangement must address the benefits derived from utilization of traditional and genetic resources where they originate from Indigenous peoples’ land, waters and territories traditionally used and occupied.

In closing, Madame Chair, we thank the people of Granada for their kind hospitality. We agree with your observation this morning about the magic of Granada because we have observed the disappearing acts of many phrases relating to our rights. Nevertheless, Indigenous peoples will be bringing our magic to COP8. In this regard, we know that our brothers and sisters, the magnificently diverse Indigenous peoples of Brazil, including the shamans, will lend their spirituality to COP8. Finally, we are sure that the Government of Brazil will openly welcome our positive magic and facilitate our full and effective participation throughout COP8.