

United Nations Permanent Forum on Indigenous Issues
Sixth Session, May 14-25, 2007
New York, New York

Agenda Item 3: Special theme “Territories, lands and natural resources”

Collective Statement on an International Regime on Access and Benefit Sharing

Agreeing Organizations:

1. Indigenous Peoples Council on Biocolonialism (IPCB)
2. Call of the Earth Llamado de la Tierra (COE)
3. South Asia Indigenous Women’s Forum
4. Indigenous Information Network (IIN)
5. African Indigenous Women’s Organizations (AIWO)
6. Indigenous Environmental Network (IEN)
7. International Indian Treaty Council (IITC)
8. Western Shoshone Defense Project (WSDP)
9. Carribean Antilles Indigenous Peoples Caucus (CAIPCD)
10. Native Women’s Advocacy Center (NWAC)
11. International Indigenous Peoples Think Tank (IIPTT)
12. Indigenous People (Bethechilokono) of Saint Lucia Governing Council (BGC)
13. Native Women’s Association of Canada (NWAC)
14. Andes Chinchasuyo
15. Guaman Poma Ayala
16. Luz Yuida
17. Seventh Generation Fund (SGF)
18. Indigenous Network on Economies and Trade (INET)
19. Red de Mujeres Indigenas Sobre Biodiversidad/Indigenous Women’s Biodiversity Network
20. Fundacion Para la Promocion del Conocimiento Indigena (FPCI)
21. Asociación de Comunidades Indigenas (ACOIN)
22. Indigenous Women’s Caucus
23. Juventud Indigena Argentine

Recommendations:

1. The Permanent Forum should prepare a legal analysis on States, peoples and sovereignty and their relationship, scope and application, to assist the parties to the Convention in understanding sovereignty in the context of the Convention and the role of sovereignty in developing an international regime on ABS.
2. The UNPFII should recommend to the CBD that, consistent with international human rights law, states have an obligation to recognize and protect the rights of Indigenous peoples to control access to the genetic resources that originate in their lands and waters, and associated traditional knowledge. Such recognition must be a key element of the proposed international regime on ABS.

Madame Chair, we thank you for this opportunity to present this collective statement on behalf of several Indigenous peoples' organizations. We welcome this special theme on territories, lands and natural resources and the Permanent Forum's interest and concern regarding the international regime on access and benefit sharing (ABS) currently being elaborated and negotiated under the auspices of the Convention on Biological Diversity (CBD). This proposed regime will establish the international rules by which states and corporations will commercialize genetic resources and traditional knowledge. Indigenous peoples know that means that our traditional medicines and our foods are at risk of theft and exploitation. While States claim national sovereignty over natural resources, they have been unwilling to recognize our rights to the genetic resources that originate within our territories, lands and waters in their negotiations thus far.

At this point, it is unclear, whether any future ABS regime will be binding or non-binding. Of course, developing countries are strongly pushing for a binding regime, while developed countries are resisting commitment to any binding regime. To date, Indigenous peoples' nations and organizations participating in the CBD processes, through the International Indigenous Forum on Biodiversity (IIFB), have reserved commitment to support either a binding or non-binding regime because it is premature given the unclear status of recognition and protection of our rights within the proposed regime. Parties to the CBD need to recognize our rights to genetic resources and Indigenous knowledge based on the minimum standards set forth in the Declaration on the Rights of Indigenous Peoples.

Indigenous peoples have consistently advocated for the protection of our human rights within the proposed regime. The IIFB has previously stated:

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.

Unfortunately, our calls for recognition and protection of our rights have largely fell on deaf ears. Therefore, we welcome the following important conclusions of the UNPFII's International Expert Group Meeting that:

- 1) international human rights law affirms indigenous peoples' human rights, including cultural rights and rights to lands, waters, territories and natural resources, genetic resources and traditional knowledge (E/C.19/2007/8, para 38);
- 2) any international regime on ABS must not be in violation of those rights and that parties are obliged to guarantee that they will recognize and respect those rights (E/C.19/2007/8, para 38); and

- 3) peoples hold sovereign rights to natural resources within their territories, and the parties to the CBD are bound to respect those rights. (E/C.19/2007/8, para 39).

In order to further these most critical conclusions and to bring expert human rights analysis to the CBD, we support the recommendation that the Permanent Forum prepare a legal analysis on States, peoples and sovereignty and their relationship, scope and application, to assist the parties to the Convention in understanding sovereignty in the context of the Convention and the role of sovereignty in developing an international regime on ABS. (E/C.19/2007/8, para (o)).

In such a legal analysis, it must be made clear that Indigenous peoples' rights with regards to an international regime on ABS are not limited to Indigenous knowledge. Rather our rights include rights over genetic resources, both those that are associated with our Indigenous knowledge, and more broadly to all genetic resources that originate in our territories, lands and waters whether or not associated directly with Indigenous knowledge.

This legal analysis must also make clear that Indigenous peoples' rights in this context are not just economic in nature or limited to benefit sharing. Indeed, without recognition of Indigenous peoples' rights to control access to both their genetic resources and Indigenous knowledge, no benefit sharing process will be fair and equitable.

For Indigenous peoples, who are often the most marginalized and impoverished peoples of the world, the promises of benefit sharing agreements may be alluring. By virtue of their right of self-determination, it is of course, the prerogative of Indigenous peoples to make their own decisions about benefit sharing agreements. Before entering into a benefit sharing agreement, Indigenous peoples must understand that by entering such an agreement, they are submitting to a legal jurisdiction entirely foreign to their own systems of management and protection of natural resources and knowledge. Those who agree to benefit sharing must accept that patent laws will govern the ownership of the products derived from their genetic resources. A patent is a necessary step in securing commercial control over a product derived from a genetic resource.

At the "Workshop on Biodiversity, Traditional Knowledge and Rights of Indigenous Peoples" held in Geneva in July 2003, the Indigenous experts concluded that, "patenting and commodification of life is against our fundamental values and beliefs regarding the sacredness of life and life processes and the reciprocal relationship which we maintain with all creation." Those words remembered, it becomes important for Indigenous peoples to evaluate whether the patenting of life, which will necessarily occur in a benefit sharing arrangement concerning genetic resources, is consistent with our fundamental Indigenous cultural values, principles, and laws.