

## **20% of the negotiating time down....**

.....what mechanisms can we come up with to waste the remaining 80%?

Most of yesterday merged into one blurred litany of self-congratulation and reports of reports....(it is rather interesting to note that with so very many studies being produced, an ethno-biologist who has been searching for a positive example of benefit sharing for the last six months has yet to find one), and as one or two agencies outdid themselves in their attempts to send us to sleep, you may well, like myself, have missed the few salient points raised by speakers yesterday in the general stupor. I thank my diligent and tireless colleagues for having brought them to my attention.

It has been much remarked upon that one of the strongest statements from the 'mainstream' actually came from the pen of the executive director of UNEP, Dr Klaus Töpfer. While some countries may try to dominate the discussions this week with the notion that we can consider the CBD and TRIPS to be legally consistent, he, like so many indigenous peoples and civil society groups before him, flagged up the glaring contradictions between them that will damage not only the CBD's ability to adhere to its mandate but in very real terms erode the fundamental rights of indigenous peoples and other community custodians of genetic resources and traditional knowledge. So many contributors who maintain and re-invigorate the cornucopia of biodiversity that is used by human beings are still marginalized and unheard in these discussions, notably women...yet, there is precedent in international laws which clearly outline legal obligation to uphold their human rights...

## **In their own words...**

This is edited from the opening statement from the International Indigenous Forum on Biodiversity.

Indigenous peoples remain deeply concerned about the proposed international regime on access and benefit sharing. Indigenous peoples are rights holders with inherent, proprietary, and inalienable rights to our Indigenous knowledge and biological resources. Genetic resources and traditional knowledge are inextricably linked. We have consistently stated that we are not participating in these discussions to facilitate access to our traditional knowledge nor the genetic resources in our territories. Rather, we participate to ensure our rights are recognized and respected by the Parties in the development of the proposed regime. Further, the proposed international regime must be consistent with international human rights law and standards.

The CBD and its member states under Article 103 of the UN Charter read in conjunction with Article 1(3) are obliged to respect human rights. We note that COPVII decided to have this Working Group take into account their international human rights obligations in the elaboration of the proposed international regime on access to genetic resources and benefit sharing, in particular the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic Social and Cultural Rights.

.....we are extremely concerned about the misinterpretation of this body of law as contained in Document ABS/3/2, para. 49-58. We consider the analysis is inadequate as there is a direct and fundamental human rights dimension to access and benefit sharing.

In particular, we note the right of self-determination and the corresponding right of permanent sovereignty over natural resources is the fundamental premise upon which Indigenous peoples have asserted our proprietary,

inherent, and inalienable rights over our traditional knowledge and natural resources, including genetic resources. ...State sovereignty does not amount to absolute political or legal freedom. Sovereignty of states is limited by the Charter of the United Nations and by other principles of international law, such as human rights treaties. States must recognize that trade agreements, such as the TRIPs agreement and WIPO treaties, must be interpreted and applied consistently with human rights obligations.

We encourage the Parties to affirm that their existing human rights obligations are clearly reflected in the nature, scope, and elements of any proposed international regime. We further encourage that the Executive Secretary seek the expert advice within the UN human rights system to more thoroughly evaluate the linkages between human rights law and ABS. The CBD should remain mindful of and act consistently with existing and evolving human rights standards regarding Indigenous peoples.

Finally, we note previous COP decisions that recognize the unique role of Indigenous women as traditional knowledge holders and we call for their full and effective participation in the decision-making processes on ABS.

**With all the side events taking place,  
it's difficult to choose how to spend  
your lunch time...our top tip for a  
stimulating and informative hour is the  
TWN event in room g, level one  
'Intellectual property issues in a benefit  
sharing regime'**

**Definitely food for thought.**



"Patents on life? Which part of 'no' do you not understand?"

生物多样性，绝无专利，  
岂能独占，不容买卖。

Steve Newcomb, Native American Legal Historian:

"There isn't The Law. There's our law and their law. We have to articulate what our law is as far as protection of our genetic materials, and make that case, and resist their system and their law with every fiber of our being."

Indigenous peoples are calling for free prior informed consent, among other rights. The notion of "free" refers to a prohibition on coercive tactics. There are very specific concerns about the Inter-American Development Banks' policy that is poised for passage, which would place the right to consent on behalf of non-consenting Indigenous peoples in the power of the Bank's board.