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Permanent Forum on Indigenous Issues
Ninth Session
8th Meeting (AM)

ACCESS, BENEFIT SHARING FROM GENETIC RESOURCES, PROTECTING TRADITIONAL

KNOWLEDGE FOCUS OF UNITED NATIONS INDIGENOUS FORUM DIALOGUE

Hears Reports by Biological Diversity Convention Secretariat, UN Human Settlements Official on Behalf of Inter-Agency Support Group

The Permanent Forum on Indigenous Issues today held an in-depth dialogue with representatives of two United Nations entities working to better integrate the concerns of indigenous peoples and enhance their participation in the Organization's work in two vital areas: access and benefit sharing from genetic resources; and protecting the practices and innovations of indigenous and local communities.

The discussion, featuring presentations from John Scott, Focal point for non-governmental organizations of the Secretariat of the Convention on Biological Diversity, and Yamina Djacta, Deputy Director of the United Nations Human Settlements Programme (UN-Habitat), on behalf of the Inter-Agency Support Group on Indigenous Issues, aimed to help Permanent Forum members, representatives of indigenous peoples' groups and Governments take stock of the challenges and opportunities United Nations entities faced in discharging their mandates related to the rights of indigenous peoples.

Mr. Scott discussed the most recent report of the work undertaken, or in the planning stages by the Secretariat of the Biodiversity Convention regarding indigenous peoples' issues in relation to that treaty. He said that 2010 marked the International Year of Biodiversity and that the Convention's three main goals were: conservation of biological diversity; sustainable use of the components of biological diversity; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

Among others, areas of the Convention that are of particular importance to indigenous peoples include article 8(j) on traditional knowledge of indigenous and local communities, article 10(c) on customary sustainable use, and article 15 on access and sharing of the benefits arising out of the utilization of genetic resources, he said.

One issue that cut across all those areas was traditional knowledge. Indeed, it affected many aspects of biodiversity, he explained, noting that, seven years ago, the Permanent Forum had recommended developing a code of ethics to protect traditional knowledge. That code would be adopted this year at the Convention's tenth Conference of Parties, to be held in Nagoya, Japan, from 18 to 29 October 2010.

Responding to question posed by Forum members and representatives of indigenous groups on the negotiations relating to the new Protocol on Access and Benefit Sharing in the run-up to the Nagoya meeting, Mr. Scott said that, while parties seemed to agree on free, prior and informed consent, there had not been universal consensus on approval. That issue had yet to be resolved. "You can imagine how difficult it is to get 193 Governments to agree on anything," he said.

On a related point, he said that indigenous peoples participated in Government delegations and parties remained open to indigenous positions on traditional knowledge. Most disagreement had arisen over the many ways Governments approached traditional knowledge,

and access and benefit sharing issues. Some had expressed concerns that indigenous groups lacked the skill to negotiate effectively on their own behalf, he said, adding that the talks had been very complex.

With that in mind, he highlighted a recent indigenous negotiators meeting to provide training for the access and benefit sharing negotiations. He said there was some funding left that could be used to enable other indigenous groups to participate. He called for States to contribute to the Voluntary Fund, so more indigenous people from the developing world could participate and make the process more inclusive.

The final Protocol on Access and Benefit Sharing must be adopted by consensus, he said. Indigenous peoples and their customary laws were extremely diverse and a way forward that accommodated that diversity had yet to be found. Under human rights law, resources were owned by peoples; national sovereignty could fit with that, depending how it was interpreted. "I don't think people should be overly pessimistic," he said, noting that Governments had moved to the position of wanting to adopt a legally binding protocol. "We are in a very difficult negotiation," he added. "The game is not over yet".

For her part, Ms. Djacta presented the annual report of the Inter-Agency Support Group on Indigenous issues, which had been co-Chaired by United Nations Human Settlements Programme and the United Nations Environment Programme (UNEP). The meeting, held in Nairobi from 28 to 30 September 2009, had focused on the challenges facing indigenous peoples and communities in Africa.

She said that the participants felt it was time to move beyond the mainstreaming of indigenous issues to a programme dedicated to indigenous peoples that would bring together the various agencies working on their behalf. They had also stressed that the United Nations was well placed to help indigenous peoples engage constructively with their Governments. In addition, speakers had insisted on the need for scaled-up investment in capacity-building for indigenous peoples to ensure they understood their rights and received adequate, alternative livelihoods options.

It was proposed that the Inter-Agency Support Group should draw up a list of recommendations on how to identify indigenous peoples' issues in Africa and implement policies related to them, based on more country-level data, and consultations with indigenous communities. Highlighting other discussions at that meeting, she said matters regarding constitutional and legislative protection of the rights of indigenous peoples had been raised, and case studies on indigenous people in the context of climate change, pastoralism, security and mobility had been presented by Kenya-based indigenous peoples' organizations.

In other business today, the Permanent Forum briefly heard statements from representatives of indigenous groups and Governments on implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Speaking in that discussion were the representatives of "Chotanagpur Rising" Association Indian Social Institute, the Organization of National Indigenous People of Columbia, Inter-Ethnic Organization on the Development of the Amazon Forest, Aliansi Masyarakat Adat Nusantara of Indonesia, and the West Papua Interest Association. Also participating were the representatives of Mexico and Guatemala.

Participating in the dialogue with United Nations agencies were Forum members from the Philippines, Uganda and Bolivia, as well as an adviser in the Ministry of Natural and Cultural Heritage of Ecuador.

A representative of the Observer of the International Union for Conservation of Nature and Natural Resources (IUCN) also spoke, as did a representative of Women's Indigenous Network on Biodiversity for Latin America. Also taking part were the following indigenous peoples' groups organizations: Russian Caucus; Pacific Caucus; Caribbean Caucus; Asia Caucus; and Global Caucus

The Permanent Forum on Indigenous Issues will reconvene at 10 a.m. Monday, 26 April, to take up matters related to its future work and to hear presentations of a number of reports on economic and social issues affecting the rights of indigenous peoples.

Background

The Permanent Forum on Indigenous Issues met today to begin a comprehensive dialogue with six United Nations agencies and funds. Speaking today was the Secretariat of the Convention on Biological Diversity. The Forum was also to take up the report of the annual session of the Inter-Agency Support Group on Indigenous Issues.

Introduction of Report and Dialogue on Biodiversity

JOHN SCOTT, Focal point for non-governmental organizations of the Secretariat of the Convention on Biological Diversity, said the three goals of the Convention were: conservation of biological diversity; sustainable use of the components of biological diversity; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. One of the cross-cutting issues was traditional knowledge.

The global community had recognized the close dependence of many indigenous communities on biological resources, he explained. The Conference of Parties had established a working group to address the implementation of article 8(j) and related provisions of the Convention, regarding respect for and promotion of traditional knowledge. The Ad Hoc Open-ended Working Group on that article was open to all parties, and included enhanced participation mechanisms for indigenous and local communities. Indigenous peoples enjoyed opportunities to make interventions on all agenda items. Its most recent meeting was held last November in Montreal, Canada.

Indeed, traditional knowledge was a cross-cutting issue affecting many aspects of biodiversity, he explained, noting that, seven years ago, the Forum had recommended developing a code of ethics to protect traditional knowledge. That code would be adopted this year at the Convention's tenth Conference of Parties.

Questions and Comments

Launching the discussion, VICTORIA TAULI-CORPUZ, Forum member from the Philippines, citing the Convention's report (document E/C.19/2010/3), voiced concern at the little progress that had been made in negotiations for access and benefit sharing. Page 15 of the report mentioned that the Secretariat, along with Germany, was pursuing access and capacity-building for the benefit sharing process in Africa. She wondered why progress had not been made in those negotiations. She was worried about that, because it would be dangerous if a protocol did not explicitly recognize that indigenous peoples rights to free, prior and informed consent had been obtained.

She also wondered about capacity-building activities in Africa, pointing out that parties were still insisting that national sovereignty over genetic resources be the dominant rule.

Related to that were interventions by indigenous peoples in the Working Group on access and benefit sharing.

MARGARET LOKAWUA, Forum member from Uganda, noting that attendance at the Convention's meetings was a challenge for indigenous peoples, wondered how his department could ensure that people from different regions attended. Also, it would be important to know about the effectiveness of capacity-building in Africa.

Responding, Mr. SCOTT said the Convention had been able to pursue capacity-building in Latin America, for example, because Spain had been a patron for such work. The Convention relied on voluntary donations to do its work and, thus, needed donors. On access to genetic resources and equitable benefit sharing of them, he said the Convention had held the ninth meeting of a Working Group on that issue in Colombia. Negotiations had been proceeding well, but, in the final three days, it became apparent that not everyone at the table was willing to negotiate.

On the negotiations relating to article 8(j), he said that, while parties seemed to agree on free, prior and informed consent, there had not been universal consensus on approval. That issue had yet to be resolved. "You can imagine how difficult it is to get 193 Governments to agree on anything," he said.

On a related point, he said indigenous peoples participated in Government delegations and parties remained open to indigenous positions on traditional knowledge. There were also alliances between regional groups of Governments and indigenous peoples. Free, prior and informed consent was strongly supported by the African region at this time. Most disagreement had arisen over the many ways Governments approached traditional knowledge, and access and benefit sharing issues. Some had concerns that indigenous peoples might not have the capacity to negotiate. Some developed-world countries took a different view to access and benefit sharing, and generally felt it was not appropriate to get involved in negotiations between users and holders of traditional knowledge.

The final Protocol on Access and Benefit Sharing must be adopted by consensus, he said. Indigenous peoples and their customary laws were extremely diverse and a way forward that accommodated that diversity had yet to be found. Under human rights law, resources were owned by peoples; national sovereignty could fit with that, depending on how it was interpreted. "I don't think people should be overly pessimistic", he said, noting that Governments had moved to the position of wanting to adopt a legally binding protocol. "We are in a very difficult negotiation," he added. "The game is not over yet".

A problem was that people had moved away from general positions and were now negotiating pieces of text, he explained. Indigenous peoples wondered whether to fight to maintain a phrase or to advocate for the inclusion of a reference to the Declaration on the Rights for Indigenous Peoples in the preamble. As the first piece of international law since the 2007 adoption of the Declaration, the Protocol would show whether the Declaration was being taken into account in international law.

On capacity-building in Africa, he said undertaking strategies often depended on finding a patron. The access and benefit sharing initiative on capacity-building in Africa was a multi-donor initiative which had organized workshops over the years, among which was the fourth Pan-African Workshop of the access and benefit sharing initiative.

When indigenous groups took the floor, ALBERT DETERVILLE, Caribbean Caucus, was among those providing snapshots of their efforts to protect traditional knowledge and expression and local genetic resources. He said that his region was elaborating a law to that end, and he asked Mr. Scott how such legislation would correlate with relevant provisions of the Biodiversity Convention.

FLORINA LOPEZ, of Panama, Indigenous Representative to the Biodiversity Secretariat, said the Women's Indigenous Network on Biodiversity for Latin America had been working to implement an agreement reached last year, with the support of the Government of Spain, aimed at enabling indigenous peoples' and local communities to participate in the very complicated negotiations. A special focus had been placed on raising awareness of the Convention among indigenous women, who were often left out of such negotiations or were taken advantage of when decisions were taken and implemented. "But our way of living is at stake and we need to be clear about our positions and what impact they will have," she said, adding that the Secretariat was hosting several capacity-building seminars on the Latin American and Caribbean region to bolster women's participation and support.

Mr. SCOTT added that the Secretariat was interested in launching similar programmes in other regions. Such initiatives would integrate training workshops, because the issues being discussed were extremely difficult and the negotiations had been under way for several years. He highlighted a recent indigenous negotiators meeting to prepare for the access and benefit sharing negotiations. He said there was some funding left that could be used to enable other indigenous groups to participate. He called for States to contribute to the Voluntary Fund, so more indigenous people from the developing world could participate and make the process more inclusive.

Responding to some of the questions, he recalled that political decisions were made by the Conference of Parties to the Convention. Working groups could make draft recommendations for consideration by those parties: the Secretariat was not a political process. It was not an implementation body for the Convention, as the treaty was implemented at the country level. The Secretariat was charged with providing technical support, and that extended to crafting recommendations. To that end, he said the Permanent Forum could provide more finely-tuned suggestions so the Secretariat could direct them to specific working groups of

States parties. Decisions regarding the recognition of indigenous peoples' rights were up to the Conference of Parties, not the Secretariat.

KAIA BOE, International Union for Conservation of Nature and Natural Resources (IUCN), said her agency was supporting all the Biodiversity Secretariat's efforts to ensure indigenous people's participation in the Convention negotiations. She said IUCN's "red list" of endangered species was the most comprehensive survey of at-risk plant and animal species. Many of the world's threatened species remained vital not only for ecosystems, but also for human livelihoods, particularly those of indigenous peoples who relied so greatly on land and natural resources. The IUCN had recently included a new module in its species technical assessment system focusing on the livelihood and cultural values of species for indigenous peoples and local communities, so the agency could alert them about the risk of species decline.

She said the IUCN was involved in many local projects aimed at ensuring just and sustainable natural resource protection strategies and programmes. Protected areas were one of the most important tools for biodiversity protection under the Convention. Governance rights and participation were generally weak aspects of protected area management. The IUCN would, therefore, continue to work to ensure due recognition of the rights of indigenous peoples in existing protected areas, and that protected areas which might affect indigenous lands, territories, natural and cultural resources were not established without indigenous peoples' free prior and informed consent.

Speakers also wondered what steps had been taken to strengthen recommendations for indigenous peoples' right to free, prior and informed consent over genetic resources. The Protocol must recognize indigenous right to resources and ensure that traditional governance systems endured. Some speakers urged parties to end support for genetically modified organisms.

Others reminded parties to the Convention that States were obliged to protect indigenous peoples' rights to control genetic resources that existed on their lands and in their waters. Echoing calls of many, one speaker urged parties to use the words "indigenous peoples and local communities" and include an explicit reference to the Declaration in the Protocol. Otherwise, it risked being rejected by indigenous groups, on the basis that it did not sufficiently protect their rights.

Also, she said the international regime had created conflicts among various sovereignties. States had been unwilling to recognize that, which could risk further exploitation and theft of plant genetic resources. State sovereignty could not be used in a way that sidestepped recognition of indigenous rights.

Next, YAMINA DJACTA, Deputy Director of the United Nations Human Settlements Programme (UN-Habitat), presented the annual report of the Inter-Agency Support Group on Indigenous issues (document E/C.19/2010/8), saying that her agency was currently the Group's co-Chair, along with the United Nations Environment Programme (UNEP), and the annual meeting had taken place in Nairobi, from 28 to 30 September 2009.

Having decided to give that meeting an "Africa focus", she said the panel discussion on the opening day had tackled the situation of indigenous peoples' rights in Africa. Presenters from the African Commission on Human and Peoples' Rights had highlighted the challenge of defining indigenous issue on the continent. The Kenyan National Commission on Human Rights had also been invited to speak about best practices, challenges, experiences and lessons learned regarding implementation of indigenous rights in Africa. In addition, Hassan Id Balkassam, Permanent Forum member from Morocco, made a presentation on progress made in recognizing indigenous rights in Africa.

She said that the participants felt it was time to move beyond the mainstreaming of indigenous issues to a programme dedicated to indigenous peoples that would bring together the various agencies working on their behalf. They had also stressed that the United Nations was well placed to help indigenous peoples engage constructively with their Governments. In addition, the participants insisted on the need for significant investment in capacity-building for indigenous peoples to ensure they understood their rights and received adequate, alternative livelihoods options.

During that discussion, indigenous representatives had raised a number of issues, in

particular on land use, noting the increased commercial pressure on land and resultant evictions. Responding to such comments, the panellists had agreed that the African Commission on Human and Peoples' Rights should consider the issue of land development, she said, adding that others had endorsed the difficulties faced when dealing with indigenous issues, such as identifying projects involving such peoples when they were not recognized as such by national Governments.

It was proposed that the Inter-Agency Support Group should draw up a list of recommendations on how to identify indigenous peoples' issues in Africa and implement policies related to them, based on more country-level data, and consultations with indigenous communities. Highlighting other discussions at that meeting, she said matters regarding constitutional and legislative protection of the rights of indigenous peoples had been raised, and case studies on indigenous people in the context of climate change, pastoralism, security and mobility had been presented by Kenya-based indigenous peoples' organizations.

Among other recommendations that emerged from the meeting, she said the Inter-Agency Support Group had been asked to consider setting up a platform to consider more effective methods of communication, information-sharing and coordination among the members of the Support Group. It was also recommended that entry points be identified, along with potential synergies and opportunities to mainstream indigenous peoples' issues into country programming.

Statements on Implementation of Declaration

JOSEPH MARIANUS KUJUR, Chotanagpur Rising Association, described the situation of the Oraon tribe in India, saying that many indigenous groups were not recognized as such in their own countries. In India, there were irregularities in the national census. The most outraging part of such a situation stemmed from the social, cultural and other types of humiliation indigenous people felt as a result of being excluded. He urged the Forum to press Governments to recognize such groups.

DORA TAUERA, Organizacion Nacional Indigena de Colombia, was concerned at the situation of indigenous peoples in South America. Concessions had been made for megaprojects to exploit oil resources and, in the process, indigenous peoples' rights. Though they supported the Declaration, municipalities and local communities were not aware of its provisions and were at risk of being exploited by extractive activities. In 2009, 114 indigenous peoples in Colombia were murdered, a more than 60 per cent increase over 2008. Transnational corporations were exploiting oil, wood and water without the free, prior and informed consent of indigenous peoples. Public policies were imposed "from above" without regard for their rights.

SOLOMON AWANACH, Inter-ethnic organization on the development of the Amazonian Forest, said the Peruvian Government had not complied with International Labour Organization (ILO) Convention 169 or the Declaration. Development of the Peruvian Amazon had been characterized by a trend of making concessions. Indeed, 70 per cent of the Amazon had been cut down for the oil industry, which violated indigenous peoples' rights. The right to consultation, along with the rights to development and self-determination, were in a "negotiating phase", and his organization's needs had to be considered by Congress. He urged Forum Members to visit the Peruvian Amazon, as they had done in Paraguay and Bolivia.

GABRIELA BARDUÑO (Mexico) said her Government was committed to promoting the Declaration in peoples' daily lives and sought to create conditions for the full exercise of indigenous rights. The 2008-2012 national programme outlined steps to promote the exercise of indigenous rights, including by enhancing compliance with international instruments that enshrined such rights and preventing discrimination in the labour and education sectors. The Declaration had been translated into 18 indigenous languages, with the help of United Nations Development Programme (UNDP), among others. Rights contained in the Declaration guided States in harmonizing their legal frameworks and designing policies that led to complete implementation. Mexico would continue to work towards that objective.

CONNIE TARACENA (Guatemala) reiterated that it was essential to eliminate discrimination. She urged promoting civility and tolerance. Guatemala was aware of the value and cultural diversity that indigenous peoples contributed to human heritage and their participation was fundamental to consolidating stability in the States where they resided. Her

Government promoted indigenous peoples' culture and identity through 14 actions. She highlighted the promotion of social investment programmes with ethnic and cultural relevance; strengthening of mechanisms for participation, contained in the law of decentralization; promotion of indigenous traditions; strengthening of bilingual education; and incorporation of medicinal practices into State health services. She also discussed a policy geared towards eliminating racism.

ARFIN SALEH, Aliansi Masyarakat Adat Nusantara, said the food industry was planning to bring many thousands of workers to West Papua. With a population of only 174,000 in Merauke, such a decision would disrupt indigenous peoples in that area, possibly leading to their extinction. That was "systematic genocide" and unacceptable. He asked the Forum to urge the Indonesian Government to not relocate indigenous people in favour of business interests, conduct an independent study on indigenous peoples of the area and ask the Special Rapporteur to study the impacts of employment on culture. Indonesia should invite the Special Rapporteur to visit and report on people in Merauke and, more generally, in West Papua.

RONALD WAROMI, West Papua Interest Association, said people in his area continued to suffer human rights abuses, which included relocation, and destruction of land, language, and way of life. Since 1963, human rights and fundamental freedoms had never been fully granted. Law 21 (2001), on special autonomy for Papua, did not protect the rights of those in West Papua. Though special autonomy was granted to improve indigenous peoples' lives, health problems, among others, persisted. The indigenous people of West Papua had no freedom of expression. In December 2009, the leader of the "Free Papua" movement was killed. Given all that, he demanded peace and justice and called on the United Nations to realize provisions contained in article 3 of the Declaration, on the right to self-determination, which would help end human rights violations in West Papua.

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