

Report Card, Part II: Walking the Talk, No Playing Safe or Sitting on the Fence!

For this report card, Indigenous Peoples from developing countries were asked to rate their country on its support of Indigenous Peoples' Rights in Access and Benefit Sharing. Interviews were conducted with Indigenous Peoples' who are currently in Geneva following the negotiations on ABS, and compiled by Malia Talakai.

ABS REPORT CARD

| PARTY(IES) | GRADE | | PARTY(IES) | GRADE |
|-----------------|-------|--|------------|-------|
| Brazil | C | | Zimbabwe | B- |
| Philippines | B | | Kenya | C |
| Whole of Africa | B- | | Haiti | B |
| Mali | C- | | Pacific | D+ |

Brazil C: According to our Indigenous reviewer, Brazil should be given a C because it has laws that support Indigenous Peoples' Rights and is currently working on a national ABS legislation. Although Brazil is praised for its initiatives on ABS legislation, our Indigenous reviewer noted that the Brazilian government has failed to endorse fully the participation of its Indigenous Peoples.

Philippines B: The Philippine was graded by our Indigenous reviewer with a B, mainly because of its numerous open support of proposals and positions of the IIFB not only here in Geneva but in other forums too. Our Indigenous reviewer brought my attention to Tuesday January 2008, where the delegation of the Philippines supported the proposal tabled by the IIFB following the advice of the co-chairs that every text can only be supported by a party. An Access and Benefit Sharing Regime in the Philippine "is still in the pipeline but it is yet to be determined on how it will be supportive of Indigenous Peoples' Rights". **YOU ROCK!**

Whole of Africa B-: The whole of Africa is given the grade B- for its effort to now include Indigenous Peoples in the consultative process. Our reviewer noted that this is something all African governments should enhance. In particular, our African insider made note of the GTZ/Dutch African ABS Initiative, which consists of Indigenous Peoples and Local Communities.

Haiti B: Haiti is deserving of a B for its support of the IIFB input into the text during the contact group on the Objectives of the International Regime of ABS. **YOU ROCK!!**

Mali (Africa) C-: In the view of our Indigenous informant from Mali, "all African countries now have the position close to those of Indigenous Peoples' position in relation to ABS. Mali in this case also is part of the African group...[however] Mali does not recognize it has indigenous peoples and thinks indigenous peoples and local communities are the same".

Zimbabwe B-: Zimbabwe receives a B-, reflecting its national attempt to formulate ABS initiatives. According to our Indigenous reviewer, "there is some ABS legislation which is sectorial and relates to wildlife, plant breeders rights and the Environmental Management Act...Zimbabwe is currently continuing to work on more elaborate policy and guidelines which is still under consideration...[this policy is supposed to] address community rights, farmers rights and traditional knowledge... and local indigenous communities have been involved in the elaboration of this policy".

Kenya C: Kenya has been graded a C to reflect their effort, which is described by our Indigenous insider as being more theoretical rather than practical because "they say they will do something and yet they don't".

Pacific D+: The Pacific Islands are graded a D+ for its far and few between attempts to support Indigenous Peoples' and for always playing safe around New Zealand and Australia. We can only look to the number of Pacific countries abstaining from voting in favor of the United Nations Declaration on the Rights of Indigenous Peoples. Shockingly, nearly all Pacific Island countries abstained from voting. Also alarming is the tendency for Pacific countries' to play it safe around New Zealand and Australia.

Today's ECO

1. Report Card time!
2. Indigenous Women speak
3. Progress? / Gender and the CBD
4. ABS in Russia / ABS Crossword!

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Red de mujeres indígenas sobre biodiversidad

Indigenous Women's Biodiversity Network

Las mujeres indígenas sobre biodiversidad que tiene por objetivo: Promover y asegurar la participación activa de las mujeres indígenas en todos los procesos internacionales pertinente al medio ambiente, puesto que las mujeres indígenas somos las guardianas, protectoras, trasmisoras de los conocimientos tradicionales de los pueblos indígenas de generación en generación. Buscamos promover el rol fundamental en la conservación y uso sostenible de la diversidad biológica.

La RMIB se ha reunido el día viernes 18 del presente con todas las regiones para analizar el avance de las mujeres indígenas en el proceso del CBD.

Durante este periodo de reuniones la RMIB, esta teniendo una participación activa dentro de las discusiones en este grupo de trabajo especial de composición abierta sobre acceso y beneficios de la convención de diversidad biológica (CDB) y algunas de sus intervenciones han señalado :

La red de mujeres indígenas sobre biodiversidad, en su intervención, sobre la elaboración del Régimen Internacional ha planteado que el principal objetivo del mismo debe ser:

Proteger los conocimientos tradicionales y recursos genéticos asociados de los pueblos indígenas incluyendo sus productos y derivados para evitar su apropiación indebida.

Para proteger se deberá crear mecanismos y condiciones dentro del mismo régimen que garantice los derechos de los pueblos indígenas como PIC culturalmente apropiados.

De esta manera consideramos se estará avanzando en el cumplimiento de los objetivos del CDB y de los objetivos de Art. 8j.

En cuanto a creación de capacidades solicitaron que se incluya dentro de las propuestas a ser adoptadas lo siguiente:

Las partes apoyaran iniciativas de mujeres indígenas para la creación de capacidades y el intercambio de experiencias sobre el 3 er objetivo del CDB y otros temas relacionados.

Esto lo solicitamos en base a que debido a que si no hay creación de capacidades es difícil que se pueda negociar acceso a recursos genéticos y conocimientos tradicionales en el reparto equitativo y justo de la utilización de los mismos.

Además pronunciaron su preocupación debido a que algunas Partes han expresado que el régimen incluiría a "**todos los recursos genéticos**" y por lo que expresa el documento UNEP- CDB-WG'-ABS'5'2 Ítems ámbito punto 6

"El régimen internacional no se aplica a los recursos genéticos humanos"

Enfatizaron que el régimen internacional no se debe aplicar bajo ningún punto de vista a los recursos genéticos humanos, pues esto atentaría contra la vida.

La RMIB, seguirá atenta y participando activamente en este proceso de discusión. *Ginebra Suiza 22 de Enero del 2008*

The Indigenous Women's Biodiversity Network has one objective: To promote and ensure the active participation of Indigenous women in all international processes related to the environment as Indigenous women are the guardians, protectors and transmitters of Indigenous Peoples' traditional knowledge from generation to generation. We seek to promote their vital role in the conservation and sustainable use of biological diversity.

The IWBN met on Friday Jan 18th with all the regions present to assess the advances of Indigenous women within the CBD process.

The IWBN has actively participated in the discussions of this Ad Hoc open-ended Working Group on access and benefit sharing of the Convention on Biological Diversity (CBD) and has made the following statements:

The Indigenous Women Biodiversity Network, in its statement on the elaboration of the International Regime, stated that its main objective should be:

Protect Indigenous People' traditional knowledge and associated genetic resources including its derivatives and products, to prevent misappropriation.

To ensure protection, the Regime should contain mechanisms and conditions to guarantee the rights of Indigenous Peoples such as culturally appropriate PIC.

In this way, we consider that both the objectives of the CBD and the objectives of article 8(j) will be advanced.

Regarding capacity building, the IWBN requested to have the following included among the proposals:

Parties will support Indigenous women's initiatives for capacity building and experience exchange on the third objective of the CBD and related issues.

We are calling for this because without capacity building it is difficult for Indigenous Women to negotiate access to genetic resources and traditional knowledge and the fair and equitable sharing arising from their utilization.

The IWBN also stated their concern related to statements made by some Parties that the Regime should include "**all genetic resources**" and, as reflected in document UNEP/CDB/WGABS/5/2 scope, item 6

"The international regime will not apply to human genetic resources"

They emphasized that the International Regime should in no way apply to human genetic resources, as that would be a threat to life.

The IWBN will continue following closely and actively participating in these discussions. *Geneva, Switzerland, 22nd January 2008*

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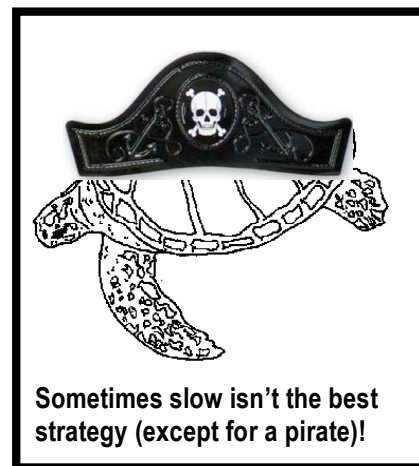
Progress? A little bit, but

*Lim Li Lin - Third World Network / François Meienberg - Berne Declaration /
Hartmut Meyer - German NGO Forum on Environment and Development*

At least the statements made by a majority of Parties during these last days show that there is a willingness to negotiate a legally-binding regime. Yet there are still others: Australia wishes to *discuss* (they are still not negotiating!) some voluntary guidelines, and Japan believes almost exclusively in contracts governed by private international law as the solution. The good thing for both of them is that they may not need to attend future ABS meetings as their preferred solutions already exist. Voluntary guidelines were adopted in 2002 (we call them the Bonn Guidelines – maybe somebody could provide Australia with a copy?) and private international law governing contracts is already in place (and is obviously not able to combat biopiracy).

The long monologue from the EU on Wednesday afternoon, showed that they are serious about real negotiations and moving things forward (although we should not forget that most of the developing country Parties already showed their willingness in Granada and Montreal). But better late than never. The confusing thing about the EU position is that they have very clear views and demands on what provider countries should implement (including standards for access), but they did not mention equivalent standards and measures for user countries (e.g. minimum standards to stop and prohibit the use of misappropriated genetic resources and associated traditional knowledge in user countries). We should not forget that this lack of user country measures remains one of the main gaps that allows biopiracy to occur.

Looking forward we are ever more doubtful whether the Parties are taking the 2010 deadline seriously. If they continue at the same pace as they have this week, 2050 may be more realistic. This does not mean that we should change the 2010 target, but rather speed up the pace significantly, and hold more Working Group meetings supplemented by technical expert group meetings (especially on TK).



Yin and Yang Implementation of CBD

Maurice Malanes

As with nature, the Convention on Biological Diversity, the Millennium Development Goals, and advocates within the UN now realize that we all must operate according to the yin and yang principle and not in isolation.

The January 2008 draft CBD Gender Plan of Action states that "The Millennium Development Goals cannot be achieved in isolation." Furthermore, this draft Plan of Action also emphasizes that "It is not possible to achieve environmental sustainability (goal 7) while poverty (goal 1) and inequities between men and women (goal 3) continue to exist."

This realization prompted the CBD Secretariat and the IUCN to convene a series of workshops on *The Convention on Biological Diversity Gender Plan of Action Draft*. The latest was a 16-18 January 2008 workshop in Geneva during which indigenous women from some regions collaborated with staff of the CBD

Secretariat, resource persons from UNEP, the Global Environmental Facility Small Grants Programme and the United Nations Development Program to further enrich the draft Gender Action Plan.

Indigenous women who participated in the Geneva workshop were happy to help contribute in the draft Plan's "constituency sphere," says Ruth Batani, who coordinates the gender programme of Tebtebba, a global indigenous organization based in the Philippines.

Under the constituency sphere, Batani and other indigenous women participants of the recent workshop, proposed mechanisms, which could help build partnerships and establish networks to help integrate gender in policy-making towards the implementation of the CBD.

The indigenous women participants also helped put forward, among others, the need to train and enable indigenous women so they could fully and effectively

participate in the negotiations of international policies related to the CBD.

"This requires capacity-building and information-sharing so indigenous women won't get lost in the maze of the various processes of negotiations and decision-making in the UN," says Batani.

The result of the workshop was presented in a side-event on 22 January during which IUCN senior gender advisor Lorena Aguilar and CBD gender focal point Marie Aminata Khan stressed the importance of mainsteaming gender in CBD policy-making and implementation.

"The CBD is about life, and both men and women must benefit from life on earth," CBD Executive Secretary Ahmed Djoglaf told participants of the side-event, as he expects governments to act on the Gender Plan of Action draft when they meet for the ninth meeting of the Conference of Parties (COP9) in Bonn, Germany in May.

Answers to crossword puzzle on p. 4: (1) Sale (2) Indigenous (3) Knowledge (4) And (5) Genes (6) Are (7) For (8) Not (9) Peoples

Three Difficult: ABS and Indigenous Rights in Russia

Erjen Khamaganova - Baikal Buryat Center for Indigenous Cultures, Russia

There is a very interesting form of aphorisms in the oral tradition of my people, the Buryat-Mongols. This form is called the triads of the universe. The triad provides a vivid illustration of a subject by enlisting three most distinct attributes or various phenomena and events associated with this subject. These triads served as educational tools giving to little children the first understanding of life, nature and basic values. For example:

Three riches of the universe:

Rich is the earth with her herbs,
Rich is the ocean with his waters,
Rich is the sky with his stars.

The following triad is focused on issues of impermanence of life and material possessions.

Three true of the universe:

True is death after birth,
True is impoverishment after accumulation,
True is separation after matching.

The three difficult of the universe:

For grass to grow on a stone is difficult
For fire to be kindled on water is difficult
For snow to remain on a cow's horn is difficult.

When thinking of the difficulties of the current negotiations on international ABS regime for indigenous peoples I came up with an alternative set of the "three difficult":

For people who see the world as a whole, separation of its parts is difficult,

For people who see the earth as alive, selling of her parts is difficult,

For the world of money, to understand these people is difficult.

It often seems that all debates over access and benefit sharing arrangements occur in parallel spheres; various groups of people talk and discuss urgent issues in languages that are mutually impenetrable. The same words are used, the same ideas are discussed, but the conclusions and recommendations are often mutually exclusive.

In my country the situation is even more difficult, since the issues of sustainable use of genetic resources and associated traditional knowledge, benefit sharing arrangements arising from their utilization are on the deep periphery of public awareness. The National Report of the Russian Federation on Access and Benefit Sharing (2005) openly states that Russia is lagging in implementing her obligations in the context of ABS, and that "we can only hope that Russia shall join the main international processes [developing of ABS arrangements] within the 5-10 years timeframe" (p.18). To catch up a number of measures on the national level is proposed (8 activities); none of them mention the rights of indigenous peoples on genetic resources and associated traditional knowledge, nothing is recommended in terms of enabling effective and full participation of indigenous peoples and local communities in the national or international processes of designing an international regime on ABS, or national policies and laws. Local communities and protected territories are mentioned only once, and this is in the context of the need for demonstration projects!

The Report also states that the issues of traditional knowledge about genetic resources "could be compared with real property rights on new technology and therefore could be regulated on the basis of the same approaches" (p.4) Nothing is said about the indigenous people's perspectives or about existing norms and cultural practices, existing systems of customary law and other regulating traditional institutions. Moreover, the document states "in the situation with the access to genetic resources there are plenty of standard situations, which are already regulated by existing [national] legislative and normative documents". (p.4) It is implied that one measure could address multiple cases since they are all "typical", and there is no need to work on *sui generis* systems, since everything is covered by national laws.

There is no such a thing as a "standard" or typical situation, each case is specific from an indigenous view. One step to reach a shared understanding of the ABS negotiating position of indigenous people is to strive for acceptance and respect of traditional customary laws and practices of indigenous peoples by the states and other stakeholders. As a system of locally devised rules, norms, taboos and regulations, as the means to keep social order and maintain continuity over time in consistence with the values of a society, customary law is itself a key qualifier of traditional knowledge and needs to be properly understood. One cannot disregard the underlying philosophical principles of customary law.

Indigenous people are not for hiding the knowledge and genetic resources from others; in many cases the benefit of their proper use is so obvious. But the fundamental requirement must be met—the requirement of recognition and guarantees of the rights of indigenous peoples, the continuation of traditional principles of norms, customary law and the pedagogical methods of access to and transfer of traditional knowledge.

CBD's International Regime on A*BS
(to genetic resources and traditional knowledge)

Across

3. associated traditional _____
5. genetic resources, also known as _____
6. Where _____ you going?
7. food _____ thought
9. collective populations

Down

1. a price mark down
2. original inhabitants of the land are _____ peoples
4. Thelma _____ Louise
8. to be or _____ to be

Answers on p. 3, bottom