

UN WORKING GROUP ON INDIGENOUS POPULATIONS  
24<sup>th</sup> Session, July 31.-4 August

Statement on Agenda Item 5(a) - Future Priorities for Standard-setting

STATEMENT BY TEBTEBBA FOUNDATION

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**1. Review of the Draft principles and guidelines on the Heritage of Indigenous Peoples**

I wish to congratulate Mr. Yokota and the Saami Council for the Working Paper on the Draft Guidelines on the Protection of the Cultural Heritage of Indigenous Peoples. These guidelines are being discussed at a very important time.

The Conference of Parties to the Convention on Biological Diversity (CBD) decided at its recent meeting in Curitiba, Brazil to begin negotiations on an International Regime on Access to Genetic Resources and Associated Traditional Knowledge and the Fair and Equitable Sharing of Benefits arising from such access. After the UN Declaration on the Rights of Indigenous Peoples, the proposed regime on Access and Benefit-sharing could be the most important inter-governmental negotiations affecting the rights of indigenous peoples.

The CBD is organizing a Technical Expert Seminar this December on "Certificates of Origin and Legal Provenance" related to access of genetic resources and associated traditional knowledge, and will proceed with negotiations of an international regime within the next 2 years.

Therefore, the underlying criteria, objectives and principles contained in the Draft Guidelines on the Protection of the Cultural Heritage of Indigenous Peoples are very timely and could very usefully inform all interested parties in these discussions - State Parties, indigenous peoples, research institutions and the private sector.

## 2. Free, Prior Informed Consent

The same can be said of the working paper on Free, Prior and Informed Consent. To date, the CBD has accepted that the prior, informed consent of indigenous peoples is required in the access of traditional knowledge associated with genetic resources. A central part of the negotiations in next two coming years will focus on the implementation of PIC consent for access to genetic resources and associated traditional knowledge.

The Draft Working Paper and Legal Commentary on Free, Prior Informed Consent, which was considered by the UNWGIP at the 23<sup>d</sup> session last year, could provide all the relevant parties with indepth information on the legal principles and existing jurisprudence on Prior Informed Consent as applied to Indigenous Peoples in the international, regional and national jurisdictions.

But beyond the legal commentary, there has been a strongly expressed need by governments, indigenous peoples, International Financial Institutions and the private sector for guidelines on the implementation of free, prior, informed consent.

The UN Working Group on Indigenous Populations is an appropriate body to elaborate guidelines or a Code of practice for the implementation of this right, drawing on the legal commentary prepared by the UN Expert in collaboration with the Tebtebba

Foundation and the wealth of national experiences in the application of this right.

For example, the right to Free, Prior and Informed Consent has been the subject of debate by international financial organizations in relation to recently adopted safeguard policies' by the World Bank, the International Finance Corporation and the Inter-American Development Bank, with each institution using different terminology and guidance on its implementation. Recently, the Equator Banks, bringing together more than 40 of the largest private commercial banks, have accepted to apply Performance Standards of the IFC, including Performance Standard 7 on Indigenous peoples, which requires good faith negotiations leading to broad community support, when projects take place on traditional lands under use. The IFC has published Guidance Notes on the application of its policy, following a "developmentalist" rather than a human rights framework.

In the light of these contemporary developments, I would like to make the following recommendations:

1. There is urgency to disseminate more widely, these working papers, in the light of the ongoing negotiations on these issues in many international fora.
2. Moreover, these papers, could usefully be the subjects of Technical Expert Seminars which could focus on the finer details presented in the papers, in order to refine the implementation guidelines.
3. These papers could be published by the Office of the UN High Commissioner on Human Rights, for wider dissemination.

<sup>1</sup> WB, IFC, TDB, JBIC