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FOOD SOVEREIGNTY AND TRADITIONAL KNOWLEDGE

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Introduction

This paper has been prepared by the International Indian Treaty Council¹ (“IITC”) for the Permanent Forum on Indigenous Issues workshop on Traditional Knowledge. The intention of this paper is to give a brief review of the concerns of indigenous peoples in relation to indigenous traditional knowledge and, to look at how that knowledge is used and protected (if at all) in international law and in practice as between international agencies and indigenous peoples.

The range of activities carried out by international agencies that touch upon this subject could form the basis of several papers. This paper is limited in the examples that it can draw upon given the word limit. However, if further examples are required, footnotes will provide ample examples and further links.

For indigenous peoples food sovereignty and traditional knowledge are profoundly linked with mother earth. Indigenous peoples consider these two concepts as critical to the relationship between indigenous peoples and their lands², territories and resources and, their cultural and spiritual survival.

The definition of food sovereignty varies as between different sectors such as farmers, the private sector and non governmental organizations. It is appropriate for indigenous peoples to use the definition sourced from the Atitlán Declaration as a point of reference for the purpose of this paper. The Atitlán Declaration on food sovereignty states:

Food sovereignty is the right of Peoples to define their own policies and strategies for the sustainable production, distribution, and consumption of food, with respect for their own cultures and their own systems of managing natural resources and rural areas, and is considered to be a precondition for Food Security³.

1 The International Indian Treaty Council is a non governmental organisation of Indigenous Peoples from North, Central, South America and the Pacific. It has ECOSOC status allowing it to participate in United Nations fora on matters pertaining to indigenous peoples.

2 The reference to “their lands, territories and resources” refers to those currently still held in indigenous ownership and those that were traditionally held in indigenous ownership. See article 25 of the United Nations Draft Declaration on the Rights of Indigenous Peoples UN document E/CN.4/Sub.2/1994/56. The declaration is annexed to resolution number 45.

3 For the complete text see the International Indian Treaty Council web page: www.treatycouncil.org

Traditional knowledge is a concept that encompasses tangible and intangible creations, cultural manifestations, technologies, sciences, agricultural knowledge, designs, literatures, and, visual and performance arts derived from oral and written traditions. Traditional knowledge is also connected to indigenous traditional territories, lands, natural and genetic resources and, is transmitted from generation to generation.

National and international policies, programmes and free trade agreements are having a negative effect on indigenous peoples' right to food and food sovereignty. The current legal regimes allow governments and the private sector to continue exploiting indigenous peoples' lands, territories and resources while creating little if any benefit for indigenous peoples.

The Relationship between Indigenous Peoples and their Environment

Indigenous peoples and their lands, territories, resources and the environment are inextricably linked both spiritually and culturally. The environment is an essential part of their culture and spirituality. The environment brings together all the elements of indigenous peoples' cultural and spiritual references. Indigenous peoples have for centuries maintained a very unique relationship with their environment including the protection of the environment which is essential for their food sovereignty and food security.

In 2004, IITC conducted a survey amongst indigenous peoples to ascertain cultural indicators for sustainable agricultural rural development. The survey showed the importance of the production of traditional foods to indigenous people's cultures and identities. What clearly came through was the impact of development schemes in indigenous communities. Many who were surveyed referred to development schemes that were imposed upon their communities, most without consultation, agreement or participation by the community. Such developments weakened the indigenous people's ability to maintain food production, which led to indigenous peoples substituting foreign or alien foods, including genetically modified food. The substitution of traditional food not only led to a loss of production of traditional and culturally appropriate food, but in the loss of traditional knowledge related to food production. It also created disease, poor physical and mental health among community members. Those surveyed also noted the environmental degradation and loss of habitat caused by these development schemes and their negative effects on the community's well-being and ability to reproduce itself for future generations.⁴

⁴ See final report on an Indigenous peoples Initiative to Establish Cultural Indicators for SARD: questionnaire on Indigenous peoples' Traditional Food and Cultures, 2004. Available at www.treatycouncil.org

The survey also served to underline the importance of food production and food security to the well being and maintenance of culture and spirituality. The responses emphasized the relationship between the production of traditional subsistence foods and the practice of language and traditional cultural activities, stories of creation, ceremonies, dance and song. For indigenous peoples living in the natural world, the practice of culture, language and religion is tied to the production of traditional foods. Indigenous cultural practices and traditional knowledge are meant to insure the subsistence and survival of the community and maintain the balance between the natural world, the environment, and people. The loss of their traditional knowledge and their ability to provide for their own traditional means of subsistence is the loss of their world view and purpose, a profound spiritual loss, a loss of identity as self and as peoples⁵.

The significance of the land and environment in indigenous peoples' culture and spirituality is based on a holistic vision where all living creatures and plants obtain particular meaning, including a respect for mother earth which is a fundamental value for the continuity of the life. The passing on of traditional knowledge binds these cultural practices together into a cohesive and tangible form. It is imperative that indigenous peoples' rights to food, food security and the protection of traditional knowledge are recognized and upheld so that cultural practices are continued and protected.

Article 27 of the International Covenant on Civil and Political Rights establishes the right to language, culture and religion. The Human Rights Committee, the treaty monitoring body of the covenant, has determined that:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.⁶

Trade Negotiations, Processes and Programmes

Trade Related Aspects of Intellectual Property Rights

⁵ See note 2 above.

⁶ See CCPR General Comment 23, Fiftieth Session, 1994 UN document HRI/GEN/1/REV.1/ at 38

The World Trade Organization's agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPs") and other related agreements seek to standardize intellectual property rights. Intellectual property rights seek to promote individual rights to create legal monopolies through the commercial exploitation of that intellectual property for a specific period of time.

The application of this regime to indigenous people's intellectual property which is often referred to as traditional knowledge has caused problems. The western concept of intellectual property creates a monopoly for the benefit of the individual "creator" of this knowledge, which is antithetical to the Indigenous vision of traditional knowledge as collective and shared within the community. Further, conflicts arise when TRIPs allow genetic material or traditional knowledge to be used in an inventive process or incorporated into an invention without the deliberation and consideration by those indigenous peoples whose traditional knowledge is being co-opted⁷.

Another aspect that has caused uncertainty for some United Nations agencies is the application of intellectual property rights to goods and services under existing domestic law. Whilst some countries have been establishing laws in order to protect traditional knowledge, there are still many countries that allow the patenting of all living creatures and plants.

It is therefore essential to develop and design a "*sui generis*" system to protect indigenous peoples' traditional knowledge. Such a system must be with based on indigenous peoples' rights system. Indigenous peoples consider it important to create a unique system which could respond to the needs of their communities. It is appropriate to introduce the term "collective rights" and "sources/origin rights" as the basis of such a system.

Food and Agriculture Organization (FAO) and International Treaty on Plant for Food and Agriculture

Part III of the International Treaty on Plant for Food and Agriculture recognizes the contribution of local, indigenous communities and farmers of all regions of the world, to the *conservation and development* of plant genetic resources⁸. However, the treaty does not refer specifically to indigenous peoples rights.

⁷ See Genetic Resources, Traditional Knowledge, Intellectual Property Rights: Promoting Synergies for Sustainable Development. Available in www.ciel.org

⁸ For complete text. Available at www.law.unimelb.edu.au

The treaty also establishes multilateral systems of access and benefit sharing that guarantee member states the right to “facilitate access” to sixty-four food crops accounting for 85% of the world's human nutrition⁹. The Treaty also allows intellectual property rights over material derived from genetic resources under its multilateral systems. Indigenous peoples’ traditional knowledge of seeds and genetic resources are not protected. Even their ability to use, exchange and cultivate their own traditional seeds and crops or, whether indigenous peoples rights would be protected by national legislation are called into question.

The lack of effective and full participation of indigenous peoples in the processes relating to the right to food and food sovereignty reduces food security for all indigenous peoples and contributes to sure disaster in the delivery of food. Further, trade negotiations, processes, and programmes are also unhelpful as they do not provide for the effective and full participation of indigenous peoples in these international nor any protection to their food related traditional knowledge.

Not only do indigenous peoples find these international processes at odds with the protection of their rights but those who have worked within the international systems also have unflattering opinions of the current system. Legrain a former employee of the World Trade organization makes the following statement:

The European Union subsidizes pesticide use, which is bad for taxpayers and bad for our rivers. But that’s not all. Rich-country governments also dole out other subsidies and impose trade barriers which together push up the price of food and land. That gives farmers a further incentive to overproduce, and overuse agro-chemicals¹⁰.

The use of pesticides in agriculture contributes negatively to climate change. The pesticide and chemical fertilizers used by farmers continue to destroy lands, lakes and rivers where indigenous peoples live, and their traditional seeds, plants and wildlife, all part of traditional food sources and knowledge. The farmers have been encouraged by governments and free trade agreements to over fish, over farm and use an excessive amount of chemicals in order to over produce goods.

Convention on Biological Diversity

⁹ See note 7 above.

¹⁰ Legrain, Philippe. Open World: The Truth About Globalisation. 2002

The Convention on Biological Diversity (“CBD”), establishes the development of an international regime for access and benefit sharing and, ensures the facilitation of access to, and the commercialization of, traditional knowledge and genetic resources¹¹. Indigenous peoples’ organizations have reiterated through the CBD meetings, the Conference of Parties (“COP”) and Working Group on Access and Benefits sharing (“ABS”) that the parties must respect and protect the rights of indigenous peoples to control their lands, territories and protect their knowledge and resources from exploitation. Further, they have indicated “the proposed international regime must be consistent with international human rights laws and standards”¹².

One of the major issues for indigenous peoples is what is colloquially known as ‘terminator seeds’ and the processes that create such products – Genetic Use Restriction Technologies (“GURT”). These seeds are unable to reproduce themselves. For indigenous peoples who rely on agriculture, these seeds represent a unequal relationship between those who grow and those who own the right as to what seeds are available for production.

Obstacles for Food Sovereignty and Traditional Knowledge

Indigenous Peoples identified some of the main obstacles regarding the implementation of food sovereignty and food security in their territories and lands, and related traditional knowledge. The Atitlán Declaration exposed the following obstacles:

1. The implementation and domination of globalization and free trade, which acts without limits nor morality in the theft of our lands, territories, and other resources necessary for our Food Security and Food sovereignty;
2. The imposition of industrial models by the governments, particularly in the form of industrialized mono-agriculture, that causes an erosion of genetic diversity and the resulting loss of our seeds, species and breeds of animals. This only impoverishes our lands, generating a growing emigration of members of our communities to urban areas in search of employment that does not exist. In addition, the adoption of alien market systems imposes foods on us that

11 See CBD’s International Regime: Indigenous Activist Organizations Call for No Access Zones to Genetic Resources and Indigenous Knowledge. Available at www.ipcb.org

12 Opening statement of the International Indigenous Forum on Biodiversity to the Working Group on Access and Benefit Sharing -3 February 2005

do not nourish, but instead cause diseases and problems of all sorts for our health and problems in the physical development of our children;

3. The extension of intellectual property rights in favor of multinational corporations that has increased bio-piracy and the illicit appropriation of our biological diversity and traditional knowledge; and the introduction of genetically altered food, which is causing the loss of our traditional foods, of our health, of our relationship with mother earth, of our traditional plants and medicines, and of our very cultures;

4. The growing imposition of the use of pesticides and chemical fertilizers that poison mother earth, the communities that work the earth, and the food resources on which indigenous peoples depend worldwide, affecting food production and hence nutrition and health, and increasing morbidity and mortality rates, in particular for our women and children;

5. The imposition of unsustainable projects by governments and private companies in our territories without consultation or prior informed consent, and without taking into account the rights and values of the indigenous peoples affected;

6. The policies and demands of international financial institutions such as the International Monetary Fund (IMF), the World Bank, the Inter-American Development Bank (IDB), and their structural adjustment programs;

7. Militarization and repression in indigenous territories, in particular Plan Colombia and the fumigation of indigenous crops that is now expanding as policy into other countries of the region;

8. National policies that impose inadequate and exclusionary models and practices, which in turn result in the loss of our lands, territories and collective indigenous identity, generating increased food insecurity.

Recommendations

The International Indian Treaty Council call upon the Permanent Forum on Indigenous Issues to adopt the following recommendations for the benefit of the United Nations Agencies:

- A. Recommend to the Working Group on Article 8 j that they advise the Conference of the Parties 8 that Genetic Use Restriction Technologies

(GURTs) are dangerous technology that threatens biodiversity, indigenous knowledge systems, small holder farmers and global food security;

- B. Recommend to the Parties at the Eighth meeting of Conference of the Parties of the Convention on Biological Diversity (COP8) to fully consider the Ad Hoc Technical Expert Group (AHTEG) Report on GURTS, and approve the Report's recommendation that governments develop national regulations to prohibit commercialization of GURTS;
- C. Advise the CBD that the sovereignty of states is limited by the Charter of the United Nations and by other principles of international law, therefore, human rights treaties limit state sovereignty, and obligate State Parties to the CBD to achieve consistency between international human rights law and any legislation on access and benefit sharing; both in terms of a proposed international regime and in national legislation
- D. Advise the Parties to affirm that their existing human rights obligations are clearly reflected in the nature, scope, and elements of any proposed international regime.
- E. Urge the Permanent Forum members to participate actively in future discussions, assessments and collaborative efforts within the United Nations System and, in particular with the United Nations Food and Agriculture Organization, to move forward in identifying specific priorities, criteria and methodologies that can be used as "indicators" to inform future technical programs and policy initiatives within FAO and other bodies.
- F. Recommend that the FAO establish an open-ended working group so that Indigenous peoples may consult with states in the development and implementation of policies that affect Food Security and Food sovereignty of Indigenous peoples.¹³

Conclusions

¹³ Note: See the IITC Annual Conference 2005 resolutions. Available in www.treatycouncil.org

Indigenous peoples around the world have survived the damage caused by destructive industrialized agriculture. In many cases, we have found contamination in our rivers and degradation of our environments. This in turn has led to a negative impact on our food safety. Indigenous peoples would benefit from free trade agreements that have as their basis human right international norms. If trade agreements were based on human rights, the environment would be protected and food safety would be maintained.

The Food and Agriculture Organization considers that two thirds of the world's fish stocks are over fished. Indigenous peoples' territories and resources do not escape that phenomenon. It is imperative that indigenous peoples' territories and resources be protected in order to maintain food sovereignty and food safety and related traditional knowledge. The indigenous peoples full and effective participation along with other sectors is mandatory. Such participation will assist in solving environmental issues by creating an agreement of global environment standards.

The United Nations draft declaration on the right of Indigenous peoples actively seeks to protect the rights of indigenous peoples and recognizes indigenous peoples' collective rights over their lands, territories and natural resources. Further, the principle of free and informed consent as included in the Declaration is an important norm that will help to protect the environment. The United Nations agencies should adopt the declaration in order to contribute to the protection of the environment.

The denial of one human right such as the right to food and means of subsistence, particularly for indigenous peoples, is the denial of all human rights including the rights to culture, development, identity and survival - the collective right to life as peoples. Our traditional knowledge is critical to that identity and survival.