



# Indigenous Issues

[The occasional briefing papers of the Asian Indigenous and Tribal Peoples Network (AITPN)]  
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## Permanent Forum: Manufacturing recommendations

[Excerpts from preliminary evaluation of PFII by AITPN]

### I. Introduction

With 922 recommendations to various United Nations bodies and governments in the first five years (2002-2006) with two weeks sitting in each annual session, the Permanent Forum on Indigenous Issues (PFII) should be in the Guinness Book of World Record among the UN agencies. The voluminous recommendations which are insane even by the UN standards should ideally be the yardsticks for its effectiveness but in reality something is rotten out there. The Forum members and the Secretariat contributed to its ineffectiveness.

The sixth session of the PFII held in New York from 14 to 25 May 2007 was an exposure to consistent and systematic erosion of standards. There are a few who managed to sing after the so-called successful sixth session - obviously the yardsticks for measuring success are different. After all, at the 6th session, majority of the representatives of the decision makers in the United Nations i.e. representatives of the governments were rarely sighted while junior representatives of the UN agencies whose Country Representatives get cold when the Foreign Offices sneeze in the capitals thronged the Permanent Forum.

The Permanent Forum at its sixth year faces the same problems the Working Group on Indigenous Populations (WGIP) of the Sub-Commission on Human Rights faced in its twilight years before it was shut down with the burial of the Commission on Human Rights. There is a need for some soul searching when an institution like Permanent Forum faces the same problems at the very tender age.

### II. Observations on the ineffectiveness of the PFII

The ECOSOC resolution called for “an evaluation of the functioning of the Permanent Forum, including the method for selection of its members, shall be carried out by the Council in the light of the experience gained” five years after the establishment of the Permanent Forum.

AITPN shares some preliminary observations of its own evaluation for provoking thoughts.

### **A. Governments attend only serious meetings**

United Nations bodies dealing with indigenous issues often suffer from prejudices. Whether WGIP or the Permanent Forum, many consider them as forum for “cultural expositions” rather than forums for serious discussions on rights. The annual meetings of these bodies are most likely to be mis-construed as “ritualistic” even though all UN bodies meet regularly. Indigenous peoples often add to the prejudices with prolong public expression of religious identities – even sometimes with hymns of Buddhism being read out and representatives of the Burmese junta sitting right across - during the opening sessions.

No government wants to be condemned or exposed for human rights violations. Therefore, attendance of the governmental representatives can be considered as the yardstick for measuring effectiveness of a UN body. If anyone requires a historical precedent, in the old days of the United Nations Commission on Human Rights, junior diplomats in Geneva were made to sit through the late evening sessions (9 pm to 12 pm) to listen to the interventions of the NGOs criticizing the governments.

The opening session of the Permanent Forum in 2002 was attended only by 29 governments. As there could not have been any serious discussion in the absence of agenda and rule of procedures, majority diplomats just wanted to attend the celebration party at the inaugural session.

The second session in May 2003 saw increased participation of 57 governments followed by 71 governments in the third session - the highest number of governments ever attended the UN Permanent Forum. Since then number of diplomats have been decreasing with 66 governments at the 4th session and 52 governments at the 5th session. There were less number of government representatives at the 6th sessions. Asian diplomats were as rare as the Pandas at the 6th session. In addition, there is a difference between registration for participation and actual participation in the proceedings.

The question also remains how many governments intervened? The lack of interest on the Permanent Forum could not have been conspicuous.

## **B. Governments do reply to serious charges**

Aren't the indigenous issues the thorniest in the United Nations? The definition of indigenous peoples, the right of self-determination, ownership of land and resources, third party rights etc are issues one can discuss till the cows come home and yet find no solution. That these issues are the thorniest is reflected from the ongoing attempts at the General Assembly to re-open the text of the Draft Declaration on the Rights of Indigenous Peoples adopted by the Human Rights Council.

Yet, as stated above, more governments are increasingly not attending the Forum and many of those registered only come for a look. In the six sessions, only two governments exercised the right to reply. Chile exercised the rights of reply in the first session in 2002 while Indonesia exercised its right of reply in the second session in 2003.

Does that mean reduction of human rights violations against indigenous peoples or increased understanding between the indigenous peoples and governments? Unfortunately, neither is the case.

## **C. Activists turned diplomats have weakened the Forum**

The United Nations Economic and Social Council Resolution 2000/22 on the establishment of the Permanent Forum on Indigenous Issues provided for appointment of eight indigenous experts by “the President of the Council following formal consultation with the Bureau and the regional groups through their coordinators, on the basis of broad consultations with indigenous organizations, taking into account the diversity and geographical distribution of the indigenous people of the world as well as the principles of transparency, representativity and equal opportunity for all indigenous people, including internal processes, when appropriate, and local indigenous consultation processes”. This has been a unique experience with members appointed by the governments and indigenous peoples exercising the same powers and functions.

Indigenous peoples' nominated membership has been touted as the most effective mechanism for giving voices to the indigenous peoples – the voiceless of the earth.

Yet, over the years, the performance of the indigenous experts has been, frankly speaking, less than satisfactory. In a setting where consensus is the rule for

decision making, indigenous experts do have to take government appointed experts into account for decision making and vice-versa. Therefore, it requires making compromises in the processes of decision making. But it does not foreclose the right to freedom of expression – the discretion as an expert to speak the truth during interventions on the relevant agenda items.

Unfortunately, indigenous activists who have been appointed as “experts” of the Forum have turned into “diplomats”. They are more at ease with diplomatese or maintaining social niceties with government or UN officials rather than raising critical indigenous issues. The fact that not a single government exercised the right of reply against any “indigenous expert” in the last six sessions is a record of sort in the history of the United Nations.

Out of two rights of reply exercised, Indonesia exercised its right of reply against AITPN while Chile responded to a statement from an indigenous organisation. That speaks for indigenous experts who have become the engines of manufacturing recommendations.

#### **D. Following the tradition of oral history at our own perils**

The importance of oral history to indigenous peoples across the world cannot be undermined. In fact, as for the indigenous Chakmas in South Asia, its history is only found in Ghenghuli – the Chakma folksong. In the Mabo judgement in Australia, oral history has been recognised for determining land rights of the indigenous peoples.

However, the history of the United Nations is all about the use of millions of reams of paper. It is about putting on record.

But, most Permanent Forum members have been defying history at the UN. While government experts of the Forum with the exception of a few often maintain studied silence, indigenous experts have been following the distorted oral tradition. They make ex-tempo interventions even on the agenda items of the annual session which have been known since its establishment. This is despite the fact that irrespective of however brilliant one might be, it is not always possible to deliver ex-tempo speeches with the same clear, concise, accurate and incisive contents or with sufficient illumination, context, insight and analysis. Not surprisingly, even, discussion on the human rights issues which should evoke sharp reactions from the governments has become quite boring at the Forum!

When oral interventions from written text are seldom made on the agenda items, one cannot expect the written statements on the Interactive Dialogue with the UN agencies. The interactive dialogue – which is often highlighted by the Permanent Forum as one of its effectiveness - is indeed a useless exercise that institutionalises the oral tradition in the UN to the detriment of the indigenous peoples. The sessional reports of the Forum make little or no reference to the Interactive Dialogue.

The Annual Reports of the Permanent Forum are repetitive of sentences like “*At the same meeting, statements were made by the observers for the following States and organizations.....*”. “*At the 4th meeting, on 14 May, statements were made by the representatives of the United Nations Human Settlements Programme and the World Bank. In the interactive discussion that followed, statements were made by the following members of the Forum: Ida Nicolaisen, Zinaida Strogalschikova, Ayitegau Kouevi, Yuji Iwasawa, Antonio Jacanamijoy, Willie Littlechild, Parshuram Tamang, Mililani Trask and Njuma Ekundanayo. Statements in that connection were also made by the representatives of UNITAR, UNDP, ILO and the World Bank.*”

The Secretariat of the Permanent Forum is brilliant at noting the list of speakers without recording the essence of the interventions made. There is nothing to be happy about unless somebody wants to go back to the community, show that an intervention has been made at the United Nations in New York and feel proud. That might be a historical record for newcomers, but it is an absolute non-sense when the names of the speakers are repeated in each and every agenda item followed by once again the list of participants!

The statements such as the one reported by the Working Group on Indigenous Populations in its last session (E/CN.4/Sub.2/2005/26) reproduced below are more useful than reading the names of the speakers again and again as practiced by the Permanent Forum:

*“A number of indigenous participants raised the issue of militarization of ancestral lands as a cause of conflict, sometimes in connection with the exploitation of natural resources on these lands, as in the case of the Chittagong Hill Tracts of Bangladesh. Additionally conflicts might arise over the issue of multinational companies’ direct exploitation of natural*

*resources on traditional lands, as in the case of foreign mining companies in the Philippines and other countries.*

*A positive development reported in India was in regard to the Adivasi peoples of Assam. The Government of India had invited the United Liberation Front of Assam (ULFA) to discuss solutions to the conflict, including the core issue of the sovereignty of Assam.”*

One does not have to be a fan of the WGIP. But it is clear that 34 page report of the 23rd session of the WGIP was more informative than 45 page report of the 4th session of the Permanent Forum. The report of the 4th session of the Permanent Forum contained from page 8 to 22 recommendations made by the Permanent Forum to the ECOSOC and from page 23 to page 41 the order of the speakers and from page 42 to page 44 the list of speakers. To be more precise, the recommendations are repetitive each year.

The Secretariat of the PFII has failed to learn the basics of the writing the reports or capturing the essence of the statements made like the Secretariat of the WGIP! The “UN God” has been quite stingy with the Secretariat of the Permanent Forum.

### **E. Visit the Statue of Liberty: Gift from the Forum members**

Despite repeated interventions from organisations like Asian Indigenous and Tribal Peoples Network, the Permanent Forum suffers from gross inefficiencies with regard to time management, dealing with speakers list and endless closed door meetings of the members of the Forum for negotiation. Sometimes there were six closed door sessions – implying three days of forced holidaying in New York. Participants are forced to go for window shopping in the Manhattan, visiting Metropolitan Museum of Art, hang around the corridors of the UN endlessly or visit The Statue of Liberty. Each year, dozens of speakers are simply denied the right to speak and the Chair happily moves on to the next item. Since the Forum follows the tradition of oral history, possibly interventions do not matter.

The members of the Forum have failed to learn from the best practices of the Commission on Human Rights on time management. The Chairs and the Secretariat often sought to manage time by giving preference to joint statements while the representatives of the UN agencies and guest speakers continue to enjoy the *largesse*. Lack of rule of procedures to deal with those addressing High Level Segments or subsuming individual cases under the joint statements have been the

hallmark of the Permanent Forum. More sadly, each year the Permanent Forum members mostly negotiate on the same resolutions.

Permanent Forum has become equally, if not more, ineffective like the WGIP. It is not because the Forum is overshadowed by the high profile bodies at the UN headquarters in New York like the United Nations Security Council and the Office of the Secretary General. There has been plain dearth of leadership and innovation or simply the lack of realization as to what is the mandate of each member.

At the end of the day, the effectiveness of the Forum could be measured by the willingness of the stakeholders to relate to the Forum. It has become a Forum of the experts, for the experts and by the experts. Many so-called experts of the Forum are committed activists and well-known leaders within their own communities or within their own nation but the knowledge of many on indigenous issues remain limited and it had direct bearings on the deliberations. Many experts are simply caught in the UN semantics; they are more diplomatic than the diplomats to the point that even the World Bank might appear to have been reformed as a member of the Inter-Agency Task Force of the PFII. As for the Secretariat, the lack of experiences and resources has become the excuse for perpetuation of inefficiency. Sadly, it had to happen to indigenous peoples who always have to be better than the rest to be equal.

There are still some ways out. While AITPN will be making concrete recommendations later on, it makes one particular particular recommendation in the meanwhile for consideration by the members of the Permanent Forum:

### **III. Reorganize recommendations as “Standing Recommendations”**

It is shameful that the Permanent Forum is shown having adopted 922 recommendations some of which are basically repetition of the same recommendations except some additions or deletions like “is, was, are, were, and, or etc”.

The recommendations adopted in the last six years on a specific thematic issue should be collated and redrafted into Standing Recommendations of the Permanent Forum. These Standing Recommendations can be revised by the Forum if issues or circumstances so demand. The United Nations Treaty Bodies also revise their General Comments.

As Permanent Forum negotiates on the same recommendation each year, there is no need to re- negotiate virtually on the same texts. There is no need to refer the same recommendations each year and collating them in the form of Standing Recommendations instead of mentioning them in annual report shall provide tremendous scope for inclusion of the essence of the statements made in the report to the ECOSOC.