

CONVENTION ON BIOLOGICAL DIVERSITY

The Convention on Biological Diversity (CBD) is an international treaty under the United Nations. The CBD has three objectives: to conserve biodiversity, to promote its sustainable use and to ensure the equitable sharing of the benefits arising from its utilization.

The Convention has developed programs of work on thematic issues (such as marine, agricultural or forest biodiversity) and cross-cutting issues (such as traditional knowledge, access to genetic resources or protected areas). All these programs of work have a direct impact on indigenous peoples' rights and territories. The CBD recognizes the importance of indigenous knowledge and customary sustainable use for the achievement of its objectives (articles 8(j) and 10(c)) and emphasises their vital role in biodiversity. In 2010, COP10 adopted the *Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Utilization*, the Aichi Targets and a new multi-year program of work.¹

The International Indigenous Forum on Biodiversity (IIFB) was established in 1996, during COP3, as the indigenous caucus in the CBD negotiations. Since then, it has worked as a coordination mechanism to facilitate indigenous participation in, and advocacy on, the work of the Convention through preparatory meetings, capacity-building activities and other initiatives. The IIFB has managed to get many of the CBD programs of work to consider traditional knowledge, customary use or the effective participation of indigenous peoples, and has been active in the negotiations regarding access to genetic resources in order to defend the fundamental rights of indigenous peoples that should be included therein.

The eleventh Conference of the Parties (COP11) of the CBD took place in October 2012, in Hyderabad, India. Thirty-three (33) decisions were adopted at this Conference (several of them of relevance to indigenous rights, including those relating to Article 8(j) and related provisions of the CBD), on the basis of the

results of the seventh meeting of the Working Group on this issue (WG8J)² held in Montreal in 2011 (see *The Indigenous World 2012*).

In terms of the Nagoya Protocol, as of December 2012, 92 signatures and 11 ratifications had been recorded.³ Activity in this regard is focusing on national and regional capacity building in preparation for the entering into force of the Protocol. A number of countries are putting the necessary legislative reviews in place, some with the participatory involvement of the indigenous organisations, as in the case of Colombia, for example. The second meeting of the Intergovernmental Committee for the Nagoya Protocol was held from 2 to 6 July 2012, at which issues were considered in relation to: budget, financial mechanisms and resource mobilisation for the implementation of the Protocol; rules of procedure for future meetings of the Parties to the Protocol; and the global multilateral benefit-sharing mechanism (Article 10), in addition to other issues already considered at its first meeting.⁴

Biological diversity was also considered in the negotiations of the World Summit on Sustainable Development, Rio+20. At the 20th anniversary of the CBD, the Secretariats of the three Rio Conventions organised an information pavilion in which activities and panels were held on the implementation of the Conventions, with the involvement of indigenous representatives.⁵ The Río outcome document⁶ recognises the importance of the three Conventions and urges the Parties to implement their commitments under the UNFCCC (paragraph 17); reiterates the urgency of adopting measures for the conservation and sustainable use of biodiversity (paragraph 61), including in the context of green agriculture (paragraph 111) and sustainable tourism (paragraph 130); and refers to the importance of marine conservation and the establishment of protected marine and coastal areas, in accordance with decision X/2 of the COP10. It also devotes a brief specific section to biodiversity (paragraphs 197 to 204) in which it urges States to implement the Strategic Plan for Biodiversity 2011-2020, to achieve the Aichi Targets and to ratify the Nagoya Protocol, and emphasises the need to incorporate the costs and benefits of biodiversity conservation into national legislation through priorities and incentives to support this. It also notes the important role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and of the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES)⁷ in this context. The document contains a number of references to the importance of traditional knowledge for achieving sustainable development.⁸

The Eleventh Conference of the Parties (COP11) and Article 10(c)

In the context of the negotiations on the implementation of Article 8(j) and related provisions of the Convention, the Working Group on Article 8(j) (WG8J) adopted a number of recommendations at its seventh meeting in 2011 (see *The Indigenous World 2012*) for consideration at the COP11. Among the main issues were the implementation of outstanding tasks from the programme of work for Article 8(j); the work on *sui generis* systems for the protection of traditional knowledge; the work on indicators of traditional knowledge and sustainable use; and, particularly, the development of a new programme of work for the implementation of Article 10(c) on customary sustainable use. The WG8J called on interested parties to submit their contributions on this latter point for consideration at the COP.⁹

Participation and pending tasks of the program of work on Article 8(j)

The COP11 adopted decision XI/14 on Article 8(j) and related provisions.¹⁰ The decision contains proposed measures on several issues. In relation to progress in the implementation of Article 8(j) and its incorporation into all the programmes of work under the Convention, the Parties were urged to send updated information in this regard and were called on to include Aichi Target 18¹¹ in their biodiversity strategies and action plans and to report on the action taken. A further meeting of the WG8J was called.¹² The theme for the in-depth dialogue at this meeting would be “linking traditional knowledge systems and science, such as under the IPBES, including gender dimensions”.¹³

With regard to participation, the COP called the Parties to support indigenous participation; to cooperate with existing indigenous initiatives; to support capacity building, especially where conducted community to community; and to translate the webpage on traditional knowledge into other languages,¹⁴ among other initiatives. The decision also referred to the report on the participation of local communities representatives (as distinct from indigenous participation) and called on the Secretariat to ensure that these representatives have equitable access to the Voluntary Fund and other support measures.

As proposed by the WG8J, the COP agreed to commence work on the implementation of Tasks 7, 10 and 12 of the revised programme of work on Article 8(j).

Task 7 relates to the development of guidelines to develop mechanisms, laws and other initiatives to ensure a fair and equitable share of the benefits arising from the utilization and application of traditional knowledge. Task 10 is the development of standards and guidelines for the reporting and prevention of misappropriation of traditional knowledge and related genetic resources. Task 12 consists of developing guidelines to establish appropriate mechanisms for recognising, safeguarding and fully guaranteeing the rights of indigenous and local communities over their traditional knowledge.

This work will begin with the commissioning of three studies, one on each of the tasks, in order to consider how these could be implemented, bearing in mind the relevant work of, among others, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, the UN Permanent Forum on Indigenous Issues and UNESCO. Interested Parties were also invited to contribute their views. The studies will be presented at the eighth meeting of the WG8J. The WG8J was asked to report on the development of these initiatives to the Intergovernmental Committee for the Nagoya Protocol.

With regard to Task 15, also discussed within the WG8J in 2011, and which consists of developing guidelines to facilitate the repatriation of information, including cultural property, in order to facilitate the recovery of traditional knowledge on biological diversity, the COP adopted terms of reference for the implementation of this task. The Executive Secretary was asked to request and collate information from all interested parties, to cooperate with UNESCO in its analysis and to prepare draft guidelines of good practices in the repatriation of indigenous and traditional knowledge relevant to the conservation and sustainable use of biodiversity, for consideration by the WG8J at its next meeting and then, subsequently, by the COP12.

***Sui generis* systems**

The issue of *sui generis* systems for the protection of traditional knowledge has been an item on the agenda of the WG8J for several years. In order to develop possible elements of these *sui generis* systems, the COP asked all interested parties to send their contributions so that the Executive Secretary (ES) could compile them and present them to the next meeting of the WG8J. It further re-

requested the ES to organize an electronic discussion on the issue; to facilitate capacity building activities for indigenous and local communities; to support the exchange of experiences and the monitoring and assessment of the pros and cons of documenting traditional knowledge; and to keep the . WIPO Intergovernmental Committee informed on developments. It was also decided that a meeting of a technical experts group would be held to prepare a report, as part of the CBD's Technical Series. This document could be a practical contribution on the different options for *sui generis* systems that are being debated and implemented over the last few years.

Adoption of article 10 work programme

The most substantive issue considered at the COP11 was probably the adoption of a new programme of work¹⁵ on Article 10, particularly paragraph (c), on the customary sustainable use of biodiversity. *The Indigenous World 2012* summarised the disappointing discussions on this programme of work at the seventh WG8J meeting. In its decision, the COP11:

- agree to the development of an action plan on customary sustainable use;
- invited all interested parties to send information on the development of the action plan, focusing on the selected priority tasks;
- called on the Executive Secretary, on the basis of the information received, to produce a draft action plan that includes a timeframe for implementation;
- called on the WG8J to consider this draft and provide guidance for its implementation at its next meeting;
- also called on the Executive Secretary to include customary sustainable use in the programme of work on protected areas;
- invited the Parties to include policies on customary sustainable use in their national strategies and action plans; and
- requested the WG8J to provide advice to the SBSTTA on issues of traditional knowledge and customary sustainable use so that they can be mainstreamed within the Convention's thematic programmes, beginning with the program of work on protected areas.

The decision indicates that the initial tasks for the first phase of the programme will be:

- to include practices or policies on customary sustainable use within national biodiversity strategies and action plans, with the full participation of indigenous peoples;
- to promote and strengthen community initiatives for the implementation of Article 10(c) and to cooperate with indigenous and local communities on the joint implementation activities;
- to identify good practices in relation to: the promotion of the participation of indigenous peoples in protected areas, and their prior informed consent (or approval); the promotion of the application of traditional knowledge and customary sustainable use in protected areas; and the promotion of community protocols for the protection of customary sustainable use in protected areas.

The decision also includes a list of indicative tasks that could be included in the programme of work, and calls on the WG8J to consider them once it has reviewed the implementation of the first phase. This list of indicative tasks includes various proposals from the indigenous organisations, although many are pending future discussion and negotiation.

Recommendations of the UNPFII

Lastly, the COP11 decision takes note of the recommendations from the ninth and tenth sessions of the UN Permanent Forum on Indigenous Issues. It refers specifically to recommendations regarding the adoption of the term “indigenous peoples and local communities” in place of the current “indigenous and local communities” within the CBD.¹⁶ This issue was hotly debated within the COP.¹⁷ The International Indigenous Forum on Biodiversity (IIFB) called for a change of terminology to be adopted, given the recent use of these terms in the outcome document of the Rio Summit and the development of international law in this regard. However, India and Canada’s opposition prevented an agreement, and, in the end, the COP decided that the issue will be considered at the next meeting of the WG8J, which will consider contributions from all interested parties, and sub-

mit recommendations to the next COP12. Coordinated action on this issue among the indigenous organisations, sympathetic countries and support organisations would help to achieve a longstanding demand of the indigenous organisations within the CBD negotiations. This, in turn, could have positive consequences for other environmental instruments and negotiations, thus improving their rights-based approach. ○

Notes and references

- 1 <http://www.cbd.int/decisions/cop/?m=cop-10> and <http://www.cbd.int/abs/>
- 2 Ad-hoc Open-ended Working Group on Article 8j and related provisions.
- 3 <http://www.cbd.int/abs/nagoya-protocol/signatories/> The Protocol will come into force 90 days following the deposit of the 50th ratification instrument.
- 4 Meeting documents and final report at <http://www.cbd.int/icnp2/documents/>
- 5 The Rio+20 Summit took place in Rio de Janeiro (Brazil) from 13 to 22 June 2012. On the Pavilion activities see www.riopavilion.org.
- 6 *The Future We Want*. UN Doc: A/CONF.216/L.1, 19 June 2012.
- 7 On the Intergovernmental Platform on Biodiversity and Ecosystem Services, see <http://www.ipbes.net>. The Platform aims to be an advisory body on these issues and has considered the issue of knowledge systems, including indigenous. On this theme, closely related to the CBD, see *Conocimientos indígenas, tradicionales y científicos. Conectando los diversos sistemas de conocimientos*, available at <http://www.stockholmresilience.org/21/research/research-programmes/swedbio-programme.html> in English and Spanish. Information on the process at <http://www.cbd.int/tk/>.
- 8 See commentary on the outcomes in relation to this issue in Information Note VIII produced by Almaciga and available at http://www.almaciga.org/index.php?option=com_k2&view=item&id=77:cd-pueblos-indigenas-y-desarrollo-sostenible-rio+20&Itemid=54&lang=es
- 9 In August 2012, the Executive Secretary of the Convention was sent a joint contribution from various indigenous organisations and local communities on the main elements that the programme of work should contain. Available in English, French and Spanish at <http://www.forest-peoples.org/topics/convention-biological-diversity-cbd/news/2012/10/cop11-should-develop-strong-work-plan-suppor>.
- 10 All COP11 decisions can be found at <http://www.cbd.int/doc/decisions/cop-11/full/cop-11-dec-en.pdf>
- 11 Target 18 states: *By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels*. See: <http://www.cbd.int/doc/strategic-plan/2011-2020/aichi-targets-en.pdf>
- 12 The meeting will be held from 7 to 11 October 2013 in Montreal.
- 13 On IPBES, see note 7.
- 14 <http://www.cbd.int/tk/>

- 15 More specifically a 'new major component of work' on Article 10, with special focus on paragraph (c), in the programme of work for Article 8 (j) and related provisions.
- 16 Permanent Forum on Indigenous Issues. Report on the Tenth Session. Doc. UN E/2011/43 E/C.19/2011/19):
- 26 *Affirmation of the status of indigenous peoples as "peoples" is important in fully respecting and protecting their human rights. Consistent with its 2010 report (E/2010/43-E/C.19/2010/15), the permanent Forum calls upon the parties to the Convention on Biological Diversity, and especially including the Nagoya Protocol, to adopt the terminology "indigenous peoples and local communities" as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago.*
- 27 *The Permanent Forum reiterates to the parties to the Convention on Biological Diversity, and especially to the parties to the Nagoya Protocol, the importance of respecting and protecting indigenous peoples' rights to genetic resources consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Consistent with the objective of "fair and equitable" benefit sharing in the Convention and Protocol, all rights based on customary use must be safeguarded and not only "established" rights. The Committee on the Elimination of Racial Discrimination has concluded that such kinds of distinctions would be discriminatory.*
- 17 See <http://www.forestpeoples.org/topics/convention-biological-diversity-cbd/news/2012/12/parties-biodiversity-convention-not-ready-ac>

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