

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 their 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.

In October 2013, the Convention on Biological Diversity (CBD) held two meetings in Montreal (Canada): the 8th session of the Working Group on Article 8j and related provisions (WG8J-8) and the 17th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-17).²

Working Group on Article 8(j)

The meeting of the WG8J³ in 2013 (WG8J-8) was co-chaired by an indigenous representative proposed by the International Indigenous Forum on Biodiversity (IIFB). A proposal for a group of Indigenous Friends of the Bureau, with regional representation, was also accepted. The agenda contained some substantive items, including consideration of the pending tasks of the Program of Work (PoW) on Article 8(j). The WG8J-8 decided on activities to move forward on task 15 (repatriation of traditional knowledge) and tasks 7, 10 and 12.⁴ It also adopted a draft plan of action on customary sustainable use, and held an in-depth dialogue on “connecting traditional knowledge systems and science, such as under the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) including gender dimensions”.⁵ The WG8J also considered the issue of *sui generis* systems and the recommendations made by the Permanent Forum on Indigenous Issues (UNPFII), including on the use of the term “indigenous peoples and local communities” instead of “indigenous and local communities”. The WG8J-8 adopted six recommendations.

Plan of action on customary sustainable practices

As mentioned in *The Indigenous World 2012*, at its seventh meeting, the WG8J had previously discussed developing a plan of action for Article 10, as a new component to the PoW on Article 8(j) and related provisions, with a focus on paragraph (c), which calls on Parties to “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”. The proposed plan of action was submitted to the Eleventh Meeting of the Conference of the Parties (COP11), held in October 2012 in Hyderabad (India) (see *The Indigenous World 2013*). COP 11 gave some guidance to the WG8J with regard to developing the work on this issue further.

WG8J-8 agreed on the first phase of the plan of action to promote and support customary sustainable practices relevant to the conservation and sustainable use of biodiversity. This first phase includes the following three tasks:

To incorporate customary sustainable use practices or policies, with the full and effective participation of indigenous and local communities, into national biodiversity strategies and action plans, as a way of maintaining biocultural values and achieving human well-being, and to feed back on this in national reports.

To promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c) and enhance the customary sustainable use of biodiversity, and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c).

To identify best practices to:

- Promote the full and effective participation of indigenous and local communities and also their prior and informed consent for or approval of, and involvement in, the establishment, expansion, governance and management of protected areas that may affect them
- Encourage the application of traditional knowledge and customary sustainable use in protected areas
- Promote the use of community protocols in assisting indigenous and local communities to affirm and promote the customary sustainable use of biodiversity in protected areas, in accordance with traditional cultural practices and national legislation

The proposed decision also suggests some specific activities for implementing these tasks.⁶

Fight over terminology

As mentioned before, the WG8J dealt with a terminology issue that has been a contentious issue for indigenous peoples' organizations and representatives for many years. Indigenous representatives have consistently requested the use of the term "indigenous peoples and local communities" instead of the language of the Convention text "indigenous and local communities", given that indigenous peoples were recognized as such, with the same rights for all peoples, with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly in September 2007.

In order to take a decision in this regard, the Secretariat of the CBD requested Parties, indigenous peoples and other interested parties to submit their views.⁷

Based both on the UNDRIP and on the outcome document of the Rio+20 Conference (*The Future We Want*), which consistently uses the term indigenous peoples, a vast majority of the Parties affirmed their support for the change in terminology, on the understanding that it could be used in future COP decisions without changing the text of either the Convention or its Protocols.⁸ A small group of countries expressed some reservations, however, and an informal discussion group, chaired by the United Kingdom and Argentina, was established to reach an agreement. Considerations expressed by Canada, Japan, Indonesia, the UK and Sudan, among others, led to a disappointing compromise solution. The WG could not agree on a recommendation proposing the adoption of the new terminology but proposed that the COP commission a study on the legal and practical implications of the use of the term “peoples” in the Convention. COP12, to be held in Pyeongchang, Republic of Korea, in October 2014, would then make a decision based on the findings of the study. Both indigenous participants and many Parties expressed their disappointment at this result.⁹

Indigenous models for community-based monitoring

In spite of this drawback, the meeting of the WG8J showed once again the potential for indigenous peoples’ participation in international processes. Parties expressed their appreciation of many of the proposals submitted by the IIFB and the work it is doing on issues such as community-based monitoring and information systems (CBMIS).¹⁰ This work is aimed at complementing the information provided by other actors, incorporating indigenous knowledge with the aim of assessing and contributing to the solution of global problems, such as the loss of biodiversity or climate change impacts. The proposals of the Working Group on Indicators of the IIFB have also been recognized and incorporated into the common work to develop adequate indicators to measure progress in the Aichi Targets.

Parties called for a continuation of the WG8J, proposed that the topic for the next in-depth dialogue be either “CEPA: harmonizing traditional knowledge, biodiversity, cultural diversity and well-being (living well in harmony with Mother Earth)” or “Protecting shared traditional knowledge across borders: challenges and opportunities for regional cooperation and the revitalization of traditional knowledge”, and proposed further work on *sui generis* systems.

17th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-17)

SBSTTA-17 considered the following issues: scientific and technical needs related to the implementation of the Biodiversity Strategic Plan 2011-2020 and its Aichi Targets; ways of enhancing its role in assessing the effectiveness of measures taken in accordance with CBD provisions; contributions to the intersessional process of IPBES; and progress reports by the CBD Secretariat on the preparation of the fourth Global Biodiversity Outlook (GBO-4), description of ecologically or biologically significant marine areas (EBSAs) and ecosystem restoration. SBSTTA-17 identified key scientific and technical needs related to the implementation of the Strategic Plan and adopted three recommendations on: scientific and technical needs for implementing the Strategic Plan, new and emerging issues, and the IPBES.

New format impedes full and effective participation

For the SBSTTA-17, the CBD Secretariat experimented with a new format, composed of panel discussions during the first three days, in a plenary setting, without the elaboration of any draft recommendations. These were developed at a later stage in “friends of the chair” evening meetings. The final, general recommendations were discussed during the last two days. Because of this unusual set-up, indigenous peoples’ representatives and local community participants had problems in fully participating in the discussions and providing meaningful input. In its closing statement, the International Indigenous Forum on Biodiversity (IIFB) pointed out that the new format did not allow for its timely, full and effective participation. It reminded the Parties of the importance of such participation to achieve the Aichi Biodiversity Targets and, therefore, the need to improve this new format.¹¹ ○

Notes and references

- 1 <http://www.cbd.int/decisions/cop/?m=cop-10> and <http://www.cbd.int/abs/>
- 2 A summary of both meetings can be found at <http://www.iisd.ca/vol09/enb09611e.html>. Information on the main results and indigenous participation from FPP E-Newsletter, December 2013 (available at forestpeoples.org)

- 3 All the documents for the meeting can be found at <http://www.cbd.int/doc/?meeting=WG8J-08>. Final report of the meeting (UNEP/CBD/COP/12/5) at <http://www.cbd.int/doc/meetings/cop/cop-12/official/cop-12-05-en.pdf>. SBSTTA-17 documents can be found at <http://www.cbd.int/doc/?meeting=SBSTTA-17>, including the final report and outcomes.
- 4 An expert study on the implementation of the these tasks requested by the Secretariat can be found at <http://www.cbd.int/doc/meetings/tk/wg8j-08/information/wg8j-08-inf-05-en.pdf>. Task 12 calls for the WG8J to develop guidelines to assist Parties and Governments in the development of legislation and other mechanisms (such as national actions plans) to implement Article 8(j) and related provisions, stating that these mechanisms could include *sui generis* systems. Task 7 calls on the WG8J to develop guidelines for appropriate initiatives, such as legislation, to ensure (1) indigenous and local communities equitably share in benefits arising from the use of their traditional knowledge; and (2) that institutions interested in such knowledge obtain the “prior informed approval” of indigenous and local communities. Task 10 directs the WG8J to develop standards for reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.
- 5 The final report contains a full summary of the contents of the discussion in Annex II.
- 6 See recommendation 8/2 in the Final report of the meeting. Actors, timeframes and indicators for the implementation of these tasks are also suggested.
- 7 See the submission signed by several organizations and coordinated by FPP at <http://www.forestpeoples.org/sites/fpp/files/publication/2013/05/wg8j-submissionapril-2013english.pdf>
- 8 GRULAC, Togo, Grenada, Benin, Guinea, Gabon , Senegal, Finland, Australia, Spain, Thailand, Norway, Denmark, Brazil and Sweden.
- 9 In the final report, the WG8J
(...) *Affirms* that there is no intention to reopen or change the text of the Convention or its Protocols, while noting that many Parties expressed a willingness to use the terminology “indigenous peoples and local communities” in future decisions and secondary documents under the Convention and some Parties needed further information and analysis on the legal implications of the use of the term “indigenous peoples and local communities” for the Convention and its Protocols in order to take a decision;
4. *Requests* the Executive Secretary to prepare an independent analysis, as referred to in paragraph 3 above, including by obtaining advice from the United Nations Office of Legal Affairs, and to make it available to the Conference of the Parties at least 90 days before its twelfth meeting with the view to facilitating further consideration of the matter;
5. *Recommends* to the Conference of the Parties to:
 - a) Note the recommendations arising from the eleventh and twelfth sessions of the UNPFII and *request* the Executive Secretary to continue to inform the UNPFII on developments of mutual interest; and
 - b) Decide, at its twelfth meeting, based on the results of the analysis and advice, on the appropriate terminology to use in future decisions and secondary documents under the Convention.
- 10 Recommendation 8/1 welcomes “the work carried out under the IIFB Working Group on indicators and particularly community-based monitoring and information systems (CBMIS) approach”
- 11 The closing statement of the IIFB can be found at: <http://www.forestpeoples.org/sites/fpp/files/private/news/2013/11/IIFB-SBSTTA17-Closing-Final.pdf>

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