

# **Indigenous Peoples and the Convention on Biological Diversity**

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## **I. Brief description/overview of the Convention**

The Convention on Biological Diversity (CBD) is a framework agreement adopted during the Rio Earth Summit in 1992 that entered into force on December 29, 1993. With 196 Parties as of August 2020, the CBD is a legally binding instrument that aims to promote the conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. It has two supplementary agreements - the Cartagena Protocol on Biosafety and Nagoya Protocol on Access to Benefit-Sharing.

## **Relevance to indigenous peoples and key issues and concerns of IPs**

Many areas of high biodiversity overlap with areas of high cultural diversity - particularly with areas inhabited by indigenous peoples. The CBD recognizes the interdependence/mutuality of indigenous peoples and local communities (IPLCs) with biological diversity and their unique role in conserving life on Earth. Several articles of the Convention, notably Article 8(j) on traditional knowledge, innovations and practices, Article 10(c) on customary sustainable use, Article 15 (access to genetic resources), Article 16 (access to and transfer of technology), Article 17.2 (exchange of information), Article 18.4 (technical and scientific cooperation), and Article 19 (handling of biotechnology and distribution of its benefits) relate specifically to indigenous peoples. As such, in 1998, a Working Group on Article 8(j) and Related Provisions was established as a mechanism to address traditional knowledge and provisions related to IPLCs, and as an avenue for voicing indigenous perspectives on the work of the Convention and its Protocols. In 2000, a programme of work was adopted to implement these commitments and to enhance the role and involvement of IPLCs in the achievement of the objectives of the Convention.

## **Key elements, and scope and structure of the Convention**

The scope of the Convention includes all aspects of biological diversity, including *in-situ* and *ex-situ* conservation of wild and domesticated species, sustainable use of biological resources, access to genetic resources and to relevant technology (including biotechnology), access to benefits derived from such technology, safety of activities related to living modified organisms and provision of new and additional financial support.

The CBD initially established three institutions: The Conference of the Parties (COP) as the main governing body; the Secretariat to facilitate the different processes; and the Subsidiary Body on Scientific Technical and Technological Advice (SBSTTA) to provide the COP with 'timely' advice relating to the implementation of the Convention. In 2014, the Subsidiary Body on Implementation (SBI) was established to review progress in implementation, adopt

strategic actions to enhance implementation, strengthen means of implementation, and streamline operations of the Convention and its Protocols. The COP can also establish Ad Hoc bodies, such as working groups, expert groups, and committees, if necessary. The COP, as of date, has established seven thematic programmes of work relating to critical ecosystems, as well as initiated work on cross-cutting issues.

In order to translate the CBD provisions into policy and practice, the Parties have developed Strategic Plans in order to enhance the effectiveness and implementation of the Convention. The most recent plan is the Strategic Plan for Biodiversity 2011-2020, which contains a long-term vision for 2050, a medium-term mission statement for 2020, and is structured into five Strategic Goals with 20 Aichi Biodiversity Targets. In order to monitor measures taken to implement the Convention at the national level, each Party is obliged to adopt a National Biodiversity Strategy and Action Plan (NBSAP) and submit National Reports on a periodic basis.

## **II. Indigenous Peoples Engagement in CBD Meetings**

Indigenous peoples' organizations and movements have been active since 1994 in advocating for their rights in the CBD process. This is primarily carried out through the International Indigenous Forum on Biodiversity (IIFB), a mechanism by which indigenous representatives are able to participate fully and effectively in CBD meetings. A decision of COP 5 in 2000 recognized the IIFB as an advisory body to the COP on Article 8(j) and provisions related to IPLCs<sup>1</sup>.

### **International Indigenous Forum on Biodiversity (IIFB)**

The IIFB acts as the caucus of indigenous participants during CBD meetings and is an overarching body to support united strategizing and coordination. Co-chairs are selected to convene the forum and facilitate discussions. A Coordinating Committee, composed of regional focal points, is constituted primarily to coordinate and support indigenous participation from the regions. Regional caucuses of the IIFB meet to share information and coordinate actions of indigenous participants from each of the 7 socio-cultural regions, as recognized by the UN Permanent Forum on Indigenous Issues – Africa; the Arctic; Asia; Central and South America and the Caribbean; Eastern Europe, Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific.

IIFB preparatory meetings are organized by the Coordinating Committee, with support from the CBD Secretariat through the Voluntary Fund<sup>2</sup>, and take place over a period of one or two days prior to formal CBD meetings. The IIFB provides a venue to orient new participants, discuss relevant agenda items of the formal meeting, coordinate interventions and strategies, discuss specific concerns, and allocate tasks. During the formal CBD meeting, the IIFB also

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<sup>1</sup> Decision V/16

<sup>2</sup> decision VII/16 G, paragraph 10, on Participatory mechanism for indigenous and local communities

meets in the morning to share information, discuss updates, and review priorities and strategies. Among the enhanced participation modalities evolved by the Working Group on Article 8(j) are Indigenous Co-Chairs of the formal CBD meeting and its working groups, and the designation of seven “Friends of the Bureau” to participate in Bureau meetings and to act as co-chairs of possible contact groups and friends of the chair groups. In some cases, members of the IIFB or the Friends of the Bureau may have bilateral or small group breakfast meetings with colleagues from other delegations or with the CBD Bureau members to discuss and potentially resolve procedural and substantive issues arising during the meeting.

Prior to and at the meetings, some members of the IIFB would have already reached out and started building relationships with their government delegation and other relevant groups/actors to generate support for their positions and proposals. Informal discussions before the meeting and during breaks are important venues to discuss IIFB proposals. Working or social meals with other delegations can also be a means to improve rapport and build understand generally and on specific issues.

### **IIFB participation in negotiations**

The negotiations within CBD meetings are organized in Plenaries and Working Groups. The Plenary is the main meeting format where Parties and observers report on progress and approve decisions or recommendations. Most of the agenda items will be addressed within one of the two working groups. It is during Working Group sessions that Parties present their positions, negotiate, and eventually reach a consensus on how to proceed with each agenda item. Indigenous peoples, through the IIFB, are also allowed to intervene after all the Parties have spoken. When a consensus is reached and the Parties have agreed on the text, this text is presented for approval by the plenary. In instances where certain issues significantly impact indigenous peoples (i.e. access and benefit-sharing), the IIFB is given space to speak in contact groups, friends of the chair group, or informal consultations and their proposals may be reflected in the text and subjected to negotiations when at least one Party supports the proposal.

### **Enhanced participation modalities in the Working Group on Article 8(j)**

A fundamental principle of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions, which is the main instrument to achieve commitments in Article 8(j) and provisions related to IPLCs, as well as Aichi Target 18<sup>3</sup>, is the full and effective participation of IPLCs. Thus, the Working Group on Article 8(j) has adopted practices to ensure this, such as: the nomination of an indigenous co-chair to assist the Chairperson of the meeting, the designation of seven “Friends of the Bureau” to participate in Bureau meetings and to act as

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<sup>3</sup> Target 18: 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.

co-chairs of possible contact groups, and enhanced opportunities to intervene on all agenda items. Additionally, the Secretariat maintains specific web-pages and web-based tools related to Article 8(j), such as the Traditional Knowledge Information Portal, facilitates regular capacity development workshops, and manages a voluntary fund to support IPLC participation in CBD meetings. In general, the work of the CBD Secretariat to engage IPLCs is regarded as a good practice model for the rest of the United Nations system.

### **Engagement at the national level**

Party delegations usually attend CBD meetings and processes prepared, and the positions they negotiate are already agreed prior to their attendance. As such, where opportunities for national consultation on certain issues arise, it is important that IIFB members are able to engage in these spaces. For some countries where indigenous peoples are recognized, environment ministries invite stakeholders to input into the process of crafting national positions for a CBD meeting. There are instances where indigenous peoples are part of the Party delegations (such as the Philippines, Finland, Norway, Sweden, and Canada). There is also the possibility of designating a national traditional knowledge focal point<sup>4</sup>, ideally, but not in all cases, an indigenous person.

### **III. Key achievements/advances, challenges/gaps in relation to IP rights, wellbeing and aspirations**

#### *Achievements*

#### **1. Programme of Work on Article 8(j) and related provisions**

There is a significant advance in awareness within the CBD of the situation of indigenous peoples, where the role of traditional knowledge in biodiversity health is recognized. To date the programme of work on Article 8(j) and related provisions has produced, *inter alia*, the composite report on the status and trends of traditional knowledge, four voluntary guidelines in relation to traditional knowledge, a code of ethical conduct, a glossary of relevant key terms, a plan of action on customary sustainable use, and recognition of community-based monitoring information and systems as an effective approach for the development, collection and analysis of data.

#### **2. Indicators on traditional knowledge**

The IIFB Working Group on indicators composed of indigenous organizations from different regions developed indicators relevant to indigenous peoples under the CBD Strategic Plan 2002 - 2010, the 2010 Biodiversity Target and the Millennium Development Goals. The indicators were adopted by COP10, and include: - Trends of linguistic diversity and numbers of speakers of indigenous languages (decision VII/30 and VIII/15);

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<sup>4</sup> National Focal Point for Article 8(j) and related provisions (Traditional knowledge and Customary Sustainable Use)

- Trends in land-use change and land tenure in the traditional territories of indigenous and local communities (decision X/43);
- Trends in the practice of traditional occupations (decision X/43);
- Trends in degree to which traditional knowledge and practices are respected through: full integration, participation and safeguards in national implementation of the Strategic Plan (decision X/43).

### **3. Local Biodiversity Outlooks**

The Secretariat regularly publishes a global report on biodiversity trends, based on the national reports of the Parties and monitoring of indicators linked to biodiversity targets. This is known as the Global Biodiversity Outlook (GBO). Unfortunately, Parties have had difficulties in monitoring the contribution of IPLCs for biodiversity actions, particularly through the adopted indicators. To address this gap, the Local Biodiversity Outlooks (LBO) was initiated by the IIFB, and coordinated the Forest Peoples Programme, to showcase local collective actions on biodiversity and to complement the GBO-4. This year, the GBO-5 will be launched alongside the second edition of the LBO and LBO Online. The two (2) editions of the LBO are structured based on the Aichi Biodiversity Targets. In Decision XII/3, Parties welcomed the publication of the Local Biodiversity Outlooks as a snapshot of the on-the-ground initiatives led by IPLCs.

### **4. Socioeconomic considerations under the Cartagena Protocol**

A key outcome of the Strategic Plan for the Cartagena Protocol on Biosafety 2011-2020 is the adoption of the Guidance on the Assessment of Socio-economic Considerations in the context of Article 26 of the Cartagena Protocol on Biosafety that provides guidance on the process for assessing socio-economic considerations arising from the impact of living modified organisms (LMOs) on the conservation and sustainable use of biological diversity, especially with regard to the values of biological diversity to indigenous peoples and local communities. Parties to the Protocol are expected to implement and monitor Article 26 in accordance with the Guidance.

### **5. Recognition of community protocols and Indigenous Peoples' authority over genetic resources**

The Nagoya Protocol embeds a community-led instrument articulating local values and rules, promoting recognition of and support for ways of life based on customary sustainable use of biodiversity, in accordance with standards and procedures set out in customary, national, and international laws and policies. Where previously, the CBD only recognized authority of IPLCs over their traditional knowledge, the Nagoya Protocol recognizes the authority of IPLCs to grant access to genetic resources over which they have an established right to do so.

### **6. Recognition of indigenous peoples and community conserved territories and areas**

Protected areas are regarded as the cornerstone of biodiversity conservation and considered the main mechanism for achieving the first objective of the Convention. However, “fortress conservation,” which excludes humans from wilderness areas and “natural ecosystems”, has resulted in grave violations of IPLC rights. Recognition of indigenous peoples and community conserved territories and areas seeks to address this by allowing IPLCs to govern their territories in accordance with their time immemorial governance systems.

### *Challenges and gaps*

#### **1. Traditional knowledge as a cross-cutting theme**

Parties have not mainstreamed traditional knowledge in biodiversity planning, despite traditional knowledge being a cross-cutting theme under the CBD. Aichi Target 18 focuses on traditional knowledge and customary sustainable use but, as an enabling target, it is also relevant across all other Aichi Targets in the 2011-2020 Strategic Plan, such as Target 1 on Communication, Education and Public-Awareness (CEPA) and Target 11 on Protected Areas. Siloed treatment of traditional knowledge and a sharp distinction between biological diversity and cultural diversity persists in the implementation of the CBD.

#### **2. Lack of reporting on IPLC related indicators in national reports**

Out of the four (4) adopted indicators related to IPLCs, only the indicator on trends of linguistic diversity, regarded as a proxy indicator for traditional knowledge, is operationalized. The Parties have had difficulty in using these indicators to monitor progress, which is reflected by the fact that National Reports under the current Strategic Plan provide minimal information on indigenous peoples and how their actions contribute to national implementation. Furthermore, these indicators do not fully reflect the range of actions taken by indigenous peoples on the different targets, such as the contribution of self-governance and collective ownership of lands to biodiversity conservation, adapted uses of invasive alien species, and the role of indigenous food systems in sustainable use of biodiversity.

#### **3. Subjecting CBD decisions to national legislation or circumstances**

Target 18 itself subjects respect for traditional knowledge and customary use of biological resources by indigenous peoples to national legislation and international obligations. This has led to a recurring problem where Parties continue to insist on inserting ‘subject to national legislation’ or ‘in accordance with national circumstances’, in recommendations or decisions on IPLCs. This is a serious problem for indigenous peoples in countries that do not have legislation recognizing their rights.

#### **4. State sovereignty and control over resources**

States consistently reaffirm their sovereign rights over natural resources, effectively denying internationally guaranteed rights of indigenous peoples to their lands,

territories and resources.

## **5. Indigenous peoples and protected areas**

Safeguards, such as free, prior and informed consent, are generally not in place or unimplemented when protected areas are declared over indigenous peoples' territories, resulting in massive evictions and displacement of indigenous peoples from their governance rights. The classical concept of protected areas, which excludes all humans from wilderness, must be drastically reformed to ensure that land and territorial rights of indigenous peoples are not violated. In setting targets for protected area coverage, the evidence dictates that indigenous lands and territories be accepted as a separate category that results in effective conservation and sustainable use.

## **6. Financial mechanisms**

The financial mechanism of the Convention remains inaccessible for indigenous peoples, who are generally forced to rely on intermediary organizations to facilitate access to financing. While reforms are under way, much remains to be done to ensure direct access to the Global Environment Facility (GEF) by indigenous peoples, who have proven to be the most effective guardians of nature.

### ***Advocacy targets***

1. CBD Parties
2. Chairs and the Bureau of the Conference of the Parties (COP) and Subsidiary Bodies
3. Big conservation organizations
4. UN Agencies and other intergovernmental organizations
5. Civil society organizations
6. Academe
7. Scientists

### ***Demands***

1. Indigenous peoples territories be recognized as a separate land category that results in effective conservation and sustainable use;
2. Acknowledge indigenous knowledge, innovations and practices and technologies as knowledge systems equal to science, while ensuring the right of indigenous peoples to maintain control, protect, and develop these systems;
3. Recognition and respect for customary sustainable use, including recognition and support for community-based initiatives, indigenous food systems, and collective actions;
4. Broader consideration of benefit-sharing beyond the benefits generated from the utilization of genetic resources;
5. Free, prior and informed consent (FPIC) in the documentation of indigenous knowledge, innovations and practices and technologies, biosafety decisions, and access to traditional knowledge related to genetic resources, among others;
6. Incorporation of indigenous and local knowledge in risk assessment and risk management of living modified organisms (LMOs);

7. Integration of diverse biodiversity and cultural values into national and local sustainable development and poverty reduction strategies and planning processes and incorporation into national accounting and reporting systems;
8. Full and effective participation of indigenous peoples in all levels of policy-and decision-making;
9. Protection for environmental defenders;
10. Establishment of a permanent institutional body to ensure implementation of Article 8(j) and provisions of the Convention and Protocols related to indigenous peoples.
11. Implementation of the work plan on nature-culture interlinkages, which should have a central role in the Post-2020 Global Biodiversity Framework; and
11. Inclusion of an indigenous person/persons in Party delegations and designation of indigenous persons as national focal points for Article 8(j) and related provisions.

#### **IV. Allies and networks**

##### ***Friends amongst States***

These are the states that have generally have been supportive of IIFB interventions, and often have legal recognition of some, if not all, indigenous peoples' rights:

1. Australia – IIFB members from the Pacific region maintain a good relationship with the Australian delegation. Australia legally recognizes Indigenous Protected Areas (IPA), areas of land and sea managed by Indigenous peoples as protected areas for biodiversity conservation through voluntary agreements with the Australian Government.
2. Philippines - The Philippine delegation usually includes representatives from the National Commission on Indigenous Peoples (NCIP), the government agency mandated to implementation of the Indigenous Peoples' Rights Act (IPRA), and indigenous representatives from civil society. The Philippines legally recognizes indigenous lands as Ancestral Domains (AD).
3. Canada – Representatives of the Assembly of First Nations (AFN) and Inuit Circumpolar Council (ICC) are sometimes included in the Canadian delegation. Canada legally recognizes Indigenous Protected and Conserved Areas (IPCA), which are areas managed by the indigenous peoples on whose traditional territory the protected areas are established, in ways that are culturally appropriate and sustainable.
4. Finland, Norway and Sweden - Representatives of the Saami Parliament, the representative body for people of Sámi heritage in these 3 Nordic countries, are invited to prepare their country positions ahead of the meeting on issues related to indigenous peoples and are included in the government delegations.
5. Mexico and other Latin American countries (i.e. Colombia, Costa Rica, Guatemala) often have complementary positions with IIFB in relation to access and benefit sharing, customary sustainable use, and traditional knowledge.

##### ***Other partners/allies***

1. CBD Alliance is a network of 400 civil society organizations that have a common interest in the Convention on Biological Diversity. They are the main front for CSO interventions in the CBD. Active members of the CBD Alliance are Natural Justice, Global Youth Biodiversity Network and Indigenous and Community Conserved Areas Consortium, among others.
2. Indigenous Women's Biodiversity Network (IWBN) is a network of indigenous women that could share their unique experiences and perspectives on the environment and biodiversity, particularly in relation to traditional knowledge and their roles in the use and conservation of biological diversity.
3. Global Youth Biodiversity Network (GYBN) is an international network of youth organizations and individuals from all over the world and is the main organization representing youth in the CBD.
4. Indigenous Peoples' and Community Conserved Areas (ICCA) Consortium is an international association dedicated to promoting the appropriate recognition and support of ICCAs in the national, regional, and global arena.

## **V. Lessons learned**

Some of the key lessons learned among the IIFB is that a good communications strategy is needed to support lobbying and advocacy efforts. This could be a way to make the key demands of indigenous peoples easier to understand and accessible for Parties, conservation NGOs and their constituencies, and can help lobbying and advocacy efforts in the national and local level. An effective technical team needs to be in place, with the mandate to develop technical papers, briefings and submissions for the IIFB during inter-sessional periods. Advocacy teams that begin the work locally and in-country, leading to intensive advocacy work during actual CBD meetings is also crucial to ensuring that indigenous proposals are taken on board in recommendations and decisions of the CBD. Another lesson is the need to train second-liners to continue and build upon the achievements already done by IIFB, as well as to be able to maximize different skills to be able to effectively engage in the CBD in different ways and in the different issues where indigenous peoples are particularly concerned.

There is also a need to review the structure of the IIFB to ensure that indigenous peoples are actively engaged even outside of the formal CBD meetings especially at this time of COVID-19 where face-to-face gatherings are restricted.

## **V. List of useful materials**

1. Education Resource Book on Indigenous Peoples and the Convention on Biological Diversity
2. CBD in a Nutshell
3. IIFB submission for the integration of enhanced participation (July 2018)
4. IIFB submission on post2020 Global Biodiversity Framework (December 2019)