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AD HOC OPEN-ENDED INTER-SESSIONAL
WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE CONVENTION
ON BIOLOGICAL DIVERSITY

Eleventh meeting

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Item 5 of the provisional agenda*

**POSSIBLE INSTITUTIONAL ARRANGEMENTS, INCLUDING GOVERNANCE
IMPLICATIONS, AND LESSONS LEARNED AND PROS AND CONS OF CURRENT
ARRANGEMENTS**

Note by the Executive Secretary

INTRODUCTION

1. In paragraph 12 of decision [14/17](#), the Conference of the Parties requested the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions to develop, at its eleventh meeting, proposals for possible future work, including institutional arrangements and their modus operandi, governance implications, for consideration by the Subsidiary Body on Implementation at its third meeting in order to inform the development of a fully integrated programme of work as part of the post-2020 global biodiversity framework.

2. In paragraph 6 of the same decision, the Conference of the Parties requested the Executive Secretary to facilitate an online forum for an exchange of views, inviting Parties, Governments and indigenous peoples and local communities to submit views, on possible institutional arrangements, lessons learned and pros and cons of current arrangements and their modus operandi, including governance implications, for the implementation of Article 8(j) and related provisions, such as, but not limited to, the following:

(a) Establishing a permanent subsidiary body on Article 8(j) and related provisions with a mandate to provide advice to the Conference of the Parties, other subsidiary bodies, and, subject to their approval, to the Conference of the Parties serving as the meeting of the Parties to the respective Protocols, on matters that are relevant to indigenous peoples and local communities and are within the scope of the Convention;

(b) Continuing the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions with a revised mandate within the framework of the post-2020 global biodiversity framework;

(c) Applying the enhanced participation mechanisms used by the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions for the participation of representatives of indigenous peoples and local communities, as appropriate, when addressing matters of direct relevance to indigenous peoples and local communities in the subsidiary bodies, in order to ensure their effective participation and to fully integrate them into the work of the Convention.

*CBD/WG8J/11/1.

3. To assist the Working Group in its task, the present document on possible institutional arrangements including their modus operandi and governance implications contains an overview of the current institutional arrangements, governance, lessons learned and pros and cons of current arrangements (section I), institutional arrangements within the United Nations system related to traditional knowledge, indigenous peoples and local communities (section II), an analysis of views on possible institutional arrangements and governance implications (section III), and conclusions (section IV).

4. The present document draws upon the following sources:

- (a) Relevant decisions of the Conference of the Parties, including [14/17](#) on integration;
- (b) The report of the Online Forum on the Integration of Article 8(j) and Provisions Related to Indigenous Peoples and Local Communities in the Work of the Convention and its Protocols (CBD/A8J/OM/2019/1/3). This online forum was held during February and March 2019, and included a webinar (held on 19 February 2019 in three languages, English, French and Spanish,) as well as a survey;¹
- (c) A compilation of views on possible elements of a future programme of work on Article 8(j) and related provisions as part of the post-2020 biodiversity framework as well as possible institutional arrangements and their modus operandi, prepared for the eleventh meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions (CBD/WG8J/11/INF/1);²
- (d) A compilation of views on possible elements of a future programme of work on Article 8(j) and related provisions as part of the post-2020 biodiversity framework as well as possible institutional arrangements and their modus operandi, prepared for the fourteenth meeting of the Conference of the Parties ([CBD/COP/14/INF/5/Rev.1](#)).³

5. This document contains further information on institutional arrangements to supplement document CBD/WG8J/11/4, on the development of a fully integrated programme of work on Article 8(j) within the post-2020 global biodiversity framework. Document CBD/WG8J/11/4 includes a draft recommendation, which contains options for institutional arrangements and, in its annex, combines objectives and general principles together with possible elements of work into a new programme of work, for the consideration of the Working Group. The draft recommendations emerging from the Working Group on Article 8(j) and Related Provisions will be considered by the Ad hoc Open-ended Working Group on the Post-2020 Global Biodiversity Framework at its second meeting, by the Subsidiary Body on Implementation at its third meeting and, in due course, by the Conference of the Parties at its fifteenth meeting.

6. The present document is complementary to the following documents:

- (a) Possible objectives and general principles to be considered to achieve the integration of Article 8(j) and related provisions in the work of the subsidiary bodies on matters of direct relevance to indigenous peoples and local communities, and to enable the full and effective participation of indigenous peoples and local communities in the work of the Convention (CBD/WG8J/11/INF/9);
- (b) Possible elements of work of the new programme of work on Article 8(j) and related provisions as part of the post-2020 biodiversity framework (CBD/WG8J/11/INF/10);
- (c) Budget estimates for possible options concerning institutional arrangements for the effective participation of indigenous peoples and local communities in the work of the Convention beyond 2020 (CBD/WG8J/11/INF/12).

¹ The survey was answered by 119 respondents (54 in English, 19 in French and 46 in Spanish). The participants were 31% indigenous peoples; 4% local communities; 30% government representatives; 14% non-governmental organizations, 9% education sector; 6% international organization; 0% private sector, and 6% other which included consultant working with indigenous peoples and local communities.

² As requested in [decision 14/17](#), paragraph 8, and solicited through notification [SCBD/SSSF/AS/JS/MLS/87830](#).

³ As requested by the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and related provisions in recommendation 10/3, paragraph 2, and solicited through notification [SCBD/SPS/AS/JS/VF/87320](#).

I. OVERVIEW OF THE CURRENT INSTITUTIONAL ARRANGEMENTS, LESSONS LEARNED AND PROS AND CONS OF CURRENT ARRANGEMENTS

7. This section provides an overview of the current institutional arrangements, including governance, lessons learned and pros and cons of current arrangements under the Convention and its Protocols. The current institutional arrangement is the result of the historical process concerning the implementation of Article 8(j) and related provisions and includes the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions, the International Indigenous Forum on Biodiversity (IIFB), the Secretariat of the Convention on Biological Diversity, national focal points on traditional knowledge, and other institutional arrangements under the Convention and its protocols.

8. The Conference of the Parties at its third meeting (Buenos Aires, 1996) considered the implementation of Article 8(j) and decided through [decision III/14](#) that an intersessional process should be established to advance work on the implementation of Article 8(j) and related provisions, with a view to producing a report for consideration by the Conference of the Parties at its fourth meeting. The process included representation by Governments, indigenous peoples and local communities, and other relevant bodies. In the same decision, the Conference of the Parties requested the Executive Secretary to organize an expert workshop, in order to consider, among other matters:

(a) The need to establish an open-ended intersessional working group or a subsidiary body to address the role of traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity;

(b) Providing advice to the Conference of the Parties on the possibility of developing a workplan on Article 8(j) and related provisions, including the modalities for such a workplan.

9. Acting on this request, the Secretariat organized an expert Workshop on Traditional Knowledge and Biological Diversity⁴ and submitted its report to the Conference of the Parties at its fourth meeting. The main outcomes were recommendations related to the establishment of an open-ended intersessional working group and for the development of a programme of work on Article 8(j).

A. Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions

10. The Conference of the Parties at its fourth meeting (1998) decided by [decision IV/9](#), to establish the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions⁵ to address the implementation of Article 8(j) and related provisions. It is the principal institutional arrangement under the Convention on Biological Diversity to address the implementation of Article 8(j) and related provisions. Its mandate is:

(a) To provide to the Conference of the Parties advice relating to the implementation of Article 8(j) and related provisions ([decision IV/9](#), para. 1);

(b) To provide advice to the Conference of the Parties on measures to strengthen cooperation at the international level among indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and to make proposals for the strengthening of mechanisms that support such cooperation;

⁴ The workshop was held in Madrid from 24 to 28 November 1997. See <https://www.cbd.int/doc/meetings/tk/wstkbd-01/official/wstkbd-01-03-en.pdf>

⁵ The term “ad hoc” means that it was created for a unique and specific purpose or task, which in this case was to work on the implementation of the current programme of work on Article 8(j). It is important to note that “Working Groups” within the United Nations context, are by their nature temporary. The term “open-ended” means that it should be composed of Parties and observers, including, in particular, representation from indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity, with participation to the widest possible extent in its deliberations in accordance with the rules of procedure ([decision IV/9](#), para. 2).

(c) To review progress in the implementation of the priority tasks of the programme of work on Article 8(j) and related provisions ([decision V/16](#), para. 9).

11. Concerning governance, the Conference of the Parties decided that the Working Group should have indigenous peoples and local communities' participation to the widest possible extent in its deliberations, in accordance with the rules of procedure. Enhanced participation practices (governance) in the Working Group developed and practices over the years, include measures such as:

(a) The nomination of an indigenous Co-chair to assist the Chairperson of the meeting, as well as indigenous peoples and local communities co-chairs for sub-working groups and contact groups;

(b) The nomination of seven representatives of indigenous peoples and local communities as an indigenous peoples and local communities' Bureau to work as friends of the Government Bureau (of the meeting);

(c) Enhanced opportunities to make interventions on all agenda items.

12. Additionally, to further enable the effective participation of indigenous peoples and local communities in the work of the Convention, the Conference of the Parties adopted the following mechanisms:

(a) A voluntary funding mechanism to facilitate the participation of indigenous peoples and local communities in meetings under the Convention ([decision VII/16 G](#), para. 10);

(b) A Traditional Knowledge Portal, which includes specific web pages and web-based tools;

(c) A Capacity-building Development Programme.⁶

13. The Working Group on Article 8(j) and Related Provisions has met eleven times since its establishment in 1998 and has had some notable achievements, including the creation of guidelines and principles covering a broad spectrum of measures related to traditional knowledge and customary sustainable use of biodiversity.

14. The Conference of the Parties also decided that the Working Group shall report directly to the Conference of the Parties and that it may provide advice to the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) on issues relevant to its agenda ([decision IV/9](#), para. 7). This mandate to make contributions to the work of other bodies was reinforced through the Conference of the Parties' request for the Working Group to make contributions to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing ([decision IX/13](#), para. 12)⁷ and to the Subsidiary Body on Implementation ([decision XIII/20](#), para. 21).⁸ The mandate to interact with other subsidiary bodies and to report directly to the Conference of the Parties are governance implications which should be considered in the institutional arrangements for indigenous peoples and local communities in the post 2020 global biodiversity framework. These arrangements have been instrumental in ensuring that indigenous peoples and local communities are integrated into the work of the Convention, to date.

15. The participation of indigenous peoples and local communities in other subsidiary bodies under the Convention, as compared to the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions is summarized in the table below:

⁶ See activities of the Short-term Action Plan (2017-2020) to Enhance and Support Capacity-building for the Implementation of the Convention and its Protocols, in the annex to [decision XIII/23](#).

⁷ The Conference of the Parties requested the Ad Hoc Open-ended Working Group on Article 8(j) to continue to collaborate and contribute to the fulfilment of the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing by providing views on the elaboration and negotiation of the international regime on access and benefit-sharing relevant to traditional knowledge, innovations and practices associated with genetic resources and to the fair and equitable sharing of benefits arising from their utilization.

⁸ The Conference of the Parties requested the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions to consider matters related to collective action of indigenous peoples and local communities for the consideration of the Subsidiary Body on Implementation.

Body	Co-chair of official meeting	Co-chair of contact group	Intervention in agenda item	Financial support*	Accreditation as indigenous peoples and local communities
WG8(J)	✓	✓	✓	✓	✓
SBSTTA	-	-	✓	✓	✓
SBI	-	-	✓	✓	✓
COP	-	-	✓	✓	✓

*Subject to available of funds in the Voluntary Fund for the participation of indigenous peoples and local communities in the work of the Convention.

16. The enhanced participation mechanisms enjoyed by representatives of indigenous peoples and local communities at this time apply principally to the Working Group on Article 8(j), however, several Parties and indigenous peoples and local communities have argued that the effective participation mechanisms under the Working Group on Article 8(j) should flow on to other subsidiary bodies under the Convention and to the Conference of the Parties, in order to achieve integration and promote the effective participation of indigenous peoples and local communities across the Convention. Therefore, in considering models for full integration, including their governance implications, the Parties may need to decide whether these enhanced participation mechanisms should flow on to other subsidiary bodies and to the Conference of the Parties and its Protocols, in order to ensure the full integration of indigenous peoples and local communities across the Convention, by guaranteeing their effective participation in all matters of direct relevance to them.

B. The International Indigenous Forum on Biodiversity

17. The International Indigenous Forum on Biodiversity (IIFB)⁹ is an indigenous-led caucus related to the Convention and its Protocols, which also includes representatives of local communities. The IIFB plays a key role in the current institutional arrangements within the Working Group, including by: designating an indigenous co-chairperson of the Working Group; designating an indigenous Bureau to work with the governmental Bureau in managing the meeting, and in preparing joint statements. IIFB also plays a key role as a partner in the implementation of the Convention's capacity-building programmes at the regional, subregional, national and local levels.

18. The Conference of the Parties, in [decision V/16](#), paragraph 11, recognizes the role of IIFB and invites Parties and Governments to support the participation of the International Indigenous Forum on Biodiversity, as well as relevant organizations representing indigenous and local communities, in advising the Conference of the Parties on the implementation of Article 8(j) and related provisions.

⁹ The International Indigenous Forum on Biodiversity (IIFB) was established during the third meeting of the Conference of the Parties to the Convention on Biological Diversity (COP III) in Buenos Aires, Argentina, in November 1996. IIFB meets before and during meetings of the Convention on Biological Diversity. At meetings under the Convention, IIFB jointly: (a) discusses documents, including draft decisions, and decides on common positions; selects their representatives for the role of co-chair for the meetings; delivers statements in plenary/working groups; has interactions/collaboration with the Secretariat of the Convention, non-governmental organizations and Parties. More information is available at <https://iifb-fiib.org/>

C. Secretariat of the Convention on Biological Diversity

19. The Secretariat of the Convention on Biological Diversity has designated three full-time dedicated staff members¹⁰ to assist and provide support to the Working Group on Article 8(j) and Related Provisions and the programme of work on Article 8(j) and related provisions, including the implementation of capacity development programmes and management of the voluntary fund for the participation of indigenous peoples and local communities in meetings held under the Convention. The senior programme officer for the Peoples and Biodiversity Unit is the focal point for indigenous peoples and local communities and for traditional knowledge, and coordinates issues related to traditional knowledge, customary sustainable use and indigenous peoples and local communities, inside the Secretariat. The senior programme officer also coordinates with other international agencies regarding matters related to traditional knowledge and indigenous peoples and local communities, through the United Nations Inter-Agency Support Group on Indigenous People's Issues (IASG).¹¹ The Executive Secretary reports on progress made on relevant matters within the mandate of the Convention annually to the Secretary General's System Wide Action Plan for a coherent Implementation of the United Nations Declaration on the Rights of Indigenous Peoples, as well as to the annual sessions of the United Nations Permanent Forum on Indigenous Issues.

D. National focal point on traditional knowledge

20. The Conference of the Parties, in its [decision X/40](#) B, paragraph 7, invited Parties to consider designating national focal points for Article 8(j) and related provisions, along with other national focal points, to facilitate communications with indigenous peoples and local communities and to promote the effective development and implementation of the programme of work on Article 8(j) and related provisions. As of 30 June 2019, 38 countries have designated national focal points on traditional knowledge.¹²

21. The national focal points on traditional knowledge can potentially play a key role, at national level, in institutional arrangements for the effective participation of indigenous peoples and local communities in the work of the Convention. National focal points for traditional knowledge could coordinate and channel the contributions made by indigenous peoples and local communities towards the reporting mechanisms of the Convention, in particular towards the national reports, and promote capacity-building for indigenous peoples and local communities at the national and local levels on issues related to the Convention.

E. Other institutional arrangements under the Convention

22. Traditional knowledge is considered a cross-cutting issue under the Convention and relevant for the implementation of other programmes of work. Thus, the Conference of the Parties decided to include the participation of indigenous peoples and local communities in other mechanisms under the Convention, such as:

- (a) The Informal Advisory Group on Mainstreaming of Biodiversity ([decision 14/3](#), annex II, para 1);
- (b) The Ad Hoc Technical Expert Group on Synthetic Biology ([decision 14/19](#), annex).

F. Other institutional arrangements under the protocols

23. Consideration of the institutional arrangements for the effective participation of indigenous peoples and local communities in the work of the Convention (which include the enhanced participation

¹⁰ The staff comprises a senior programme Officer, an associate programme officer and an administrative assistant. The Conference of the Parties at its third meeting (1996) recommended that the indigenous knowledge post in the Secretariat be filled as soon as possible ([decision III/14](#), para. 6) and that the Conference of Parties should reaffirm the importance of such dedicated staff.

¹¹ The Inter-Agency Support Group on Indigenous Issues was established to support and promote the mandate of the Permanent Forum on Indigenous Issues within the United Nations system. See more information at <https://www.un.org/development/desa/indigenouspeoples/about-us/inter-agency-support-group.html>.

¹² See <https://www.cbd.int/doc/lists/nfp-cbd-tk.pdf>.

mechanisms for indigenous peoples and local communities) are also applicable to the work of the Protocols.

24. The Cartagena Protocol,¹³ in its Article 26, refers to socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities.

25. At its eighth meeting (in 2016), the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety decided (in [decision VIII/19](#)) to use the term “indigenous peoples and local communities” and, at its ninth meeting, decided (in [decision CP- 9/14](#), para. 5) to extend the mandate of the Ad Hoc Technical Expert Group on Socio-economic considerations, which includes the participation of indigenous peoples and local communities, as observers.

26. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity is a legal instrument that contains several articles related to the traditional knowledge associated with genetic resources.¹⁴ The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing decided to establish the following institutional arrangements, which are inclusive of indigenous peoples and local communities:

(a) The Informal Advisory Committee on Capacity-building for the implementation of the Nagoya Protocol, in which indigenous peoples and local communities participate ([decision NP-3/5](#));

(b) The Compliance Committee, which includes indigenous peoples and local communities as observers, according to its rules of procedure ([NP-2/3](#)).

27. These developments concerning the participation of indigenous peoples and local communities and the valuing of their traditional knowledge demonstrate the impact that the Working Group on Article 8(j) has had more broadly on the work of the Convention and its Protocols.

G. Lessons learned

28. The Working Group on Article 8(j) has contributed to a constructive dialogue on the implementation of Article 8(j) and related provisions. In particular, the Working Group has raised the profile of issues related to indigenous peoples and local communities throughout the Convention and its Protocols. It has successfully developed and monitored the implementation of the programme of work on Article 8(j) and related provisions and has delivered several principles and guidelines.¹⁵

29. At the same time, funding the effective participation through the Voluntary Fund, which supports the participation of indigenous peoples and local communities in meetings under the Convention, remains an ongoing challenge. Subject to the availability of resources, the Secretariat focuses its efforts on funding a geographically and gender-balanced group of indigenous peoples and local community representatives of the seven regions recognised by UNPFII to participate in the relevant meetings held under the Convention.

¹³ The Cartagena Protocol on Biosafety to the Convention on Biological Diversity, also known as the Biosafety Protocol, was adopted in January 2000. The Biosafety Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It is an international agreement which aims to ensure the safe handling, transport and use of living modified organisms (LMOs) that may have adverse effects on biological diversity, also taking into account risks to human health. The protocol entered into force on 11 September 2003.

¹⁴ The Nagoya Protocol decided (in decision [NP-2/7](#)) to use the term indigenous peoples and local communities in line with the Convention

¹⁵ For more information, see: <https://www.cbd.int/traditional/outcomes.shtml>

II. INSTITUTIONAL ARRANGEMENTS WITHIN THE UNITED NATIONS SYSTEM RELATED TO TRADITIONAL KNOWLEDGE, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

A. United Nations

30. Recognizing the urgent need to promote and to protect the human rights and fundamental freedoms of indigenous populations, the Economic and Social Council of the United Nations decided to establish (in [resolution 1982/34](#)) the Working Group on Indigenous Populations (1982-2006), as a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights. The Working Group was comprised of five members of the Sub-Commission, who were independent experts on human rights. The Working Group on Indigenous Populations commenced the initial drafting of a declaration on the rights of indigenous peoples.¹⁶

30. To take the draft declaration forward, the United Nations decided in 1995 to establish an Open-ended Intersessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples, with the sole purpose of elaborating a draft declaration,¹⁷ and invited the broad participation of indigenous peoples and local communities. The Working Group on the Draft Declaration had a temporary duration, from 1995 to 2006. Finally, on 13 September 2007, the General Assembly adopted, through [resolution 61/295](#), the [United Nations Declaration on the Rights of Indigenous Peoples](#), Article 31 of which is related to traditional knowledge.

31. Noting that working groups are temporary structures and recognizing the need for ongoing dialogue, the United Nations decided to establish three new bodies with specific mandates to deal with indigenous peoples' issues:

(a) The United Nations Permanent Forum on Indigenous Issues ([UNPFII](#)), which is a high-level advisory body to the Economic and Social Council. The Forum was established on 28 July 2000 by [resolution 2000/22](#) with a mandate to deal with indigenous issues related to economic and social development, culture, the environment, education, health and human rights. UNPFII consists of 16 members who serve in their personal capacity as independent experts on indigenous issues. Eight are nominated by Governments and elected by the Council, and the other eight are appointed by the President of the Council on the basis of selection processes undertaken by indigenous peoples in the seven indigenous-identified social and cultural regions of the world, in order to ensure broad representation of the world's indigenous peoples. UNPFII holds annual sessions which are open to indigenous peoples. At its last session (22 April-3 May 2019), the theme "traditional knowledge: generation, transmission and protection"¹⁸ was considered;

(b) The [Expert Mechanism on the Rights of Indigenous Peoples \(EMRIP\)](#) was established by the Human Rights Council, in 2007, under [resolution 6/36](#), as a subsidiary body of the Council. The [EMRIP](#) is composed of seven independent experts on the rights of indigenous peoples. The experts are appointed by the Human Rights Council, which is to give due regard to recognized competence and experience regarding the rights of indigenous peoples, to experts of indigenous origin, and to gender balance. The [EMRIP](#) holds an annual session, in which representatives from states, indigenous peoples, indigenous peoples' organisations, civil society, intergovernmental organizations and academia take part. The [EMRIP](#) provides the Human Rights Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples, and assists Member States, upon request, in achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples;

¹⁶ More information, see: <https://www.ohchr.org/EN/Issues/IPeoples/Pages/WGIP.aspx>

¹⁷ Using the draft declaration previously prepared by the Working Group on Indigenous Populations as a basis of work.

¹⁸ For more information, see: <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/18-2.html>

(c) The [Special Rapporteur on the Rights of Indigenous Peoples](#) has a mandate to report on the overall human rights situations of indigenous peoples in selected countries and to address specific cases of alleged violations of the rights of indigenous peoples through communications with Governments and other relevant stakeholders.

32. The United Nations also promotes a rights-based approach to service delivery and to the integration of matters related to indigenous peoples into other bodies and mechanisms that are not specific to indigenous issues, in view of a coherent implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

33. The United Nations has also established the [Voluntary Fund for Indigenous Peoples](#), which is managed by the Office of the High Commissioner for Human Rights, to support the participation of indigenous peoples in the meetings of the above-mentioned bodies.

34. Each of the bodies mentioned, has a specific mandate to work on indigenous people's issues, however none of these entities have a mandate to develop and adopt guidelines and principles on traditional knowledge.

35. In 2014, the General Assembly organized the World Conference on Indigenous Peoples¹⁹ and one of the issued recommendations was the development of a system-wide action plan for a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples. This system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples²⁰ (UN SWAP) was adopted in 2016 and contains concrete actions to support the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, particularly at the national level. The Convention on Biological Diversity reports on matters within its mandate, of relevance to indigenous peoples and local communities, and with a focus on traditional knowledge, customary sustainable use and the effective participation of indigenous peoples and local communities in all matters of direct relevance to them.

36. Moreover, in 2017, the General Assembly adopted resolution [71/321](#) on enhancing the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, whereby it encouraged further efforts to facilitate the participation of indigenous peoples' representatives and institutions in relevant conferences, summits and other meetings convened by relevant United Nations bodies on issues affecting them, in accordance with the respective rules and procedures and with the relevant decisions established by the appropriate body or organization responsible for those meetings.

B. World Intellectual Property Organization/Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

37. The World Intellectual Property Organization (WIPO) decided to work on issues related to the intellectual property of traditional knowledge through the establishment of a specific institutional arrangement, namely the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC),²¹ which negotiates international legal instrument(s) on Intellectual Property (IP) and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions. This institutional arrangement includes the [WIPO voluntary fund](#) to support the participation of indigenous peoples and local communities. The work of the intergovernmental committee is ongoing at this time.

¹⁹ For more information, see: <https://www.un.org/en/ga/69/meetings/indigenous/#&panel1-1>

²⁰ For more information, see: https://www.un.org/en/ga/search/view_doc.asp?symbol=E/C.19/2016/5

²¹ For more information, see: <https://www.wipo.int/tk/en/igc/>

C. United Nations Framework Convention on Climate Change - Facilitative Working Group of the Local Communities and Indigenous Peoples Platform

38. The Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) has recognized the need to strengthen the knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change. In this context, the Local Communities and Indigenous Peoples Platform (LCIPP) was established, for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner.²² To operationalize the LCIPP, a Facilitative Working Group of the Local Communities and Indigenous Peoples Platform²³ was created and is now functional.

D. Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services- Indigenous and Local Knowledge Task Force

39. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)²⁴ is the intergovernmental body which assesses the state of biodiversity and the ecosystem services it provides to society. To address matters regarding indigenous and local knowledge, IPBES has established the Indigenous and Local Knowledge Task Force, which has as a mandate to facilitate the linkages between indigenous and local communities and scientists, and to strengthen the quality of indigenous peoples' participation in the development of the deliverables of the Platform.²⁵

F. International Treaty on Plant Genetic Resources for Food and Agriculture/Ad Hoc Technical Expert Group on Farmer's Rights

40. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) recognizes, in its Article 9, the enormous contribution that the local and indigenous communities and small farmers of all regions of the world, particularly those in the centres of origin of crop diversity, have made, and will continue to make, for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world. The Governing Body of the Treaty decided to rights be establishing an Ad Hoc Technical Expert Group (AHTEG) on Farmers' Rights to elaborate on the rights of small farmers (or family farmers).²⁶ The tasks of the AHTEG are:

(a) To produce an inventory of national measures that may be adopted, and of best practices and lessons learned from the realization of farmers' rights, as set out in Article 9 of ITPGRFA;

(b) To develop options, on the basis of the inventory, for encouraging, guiding and promoting the realization of farmers' rights as set out in Article 9 of ITPGRFA.

G. International Fund for Agricultural Development/Indigenous Peoples Forum

41. The [International Fund for Agriculture Development](https://www.ifad.org/en/indigenous-peoples-forum) (IFAD), based on its policy of engagement with indigenous peoples, established the Indigenous Peoples Forum,²⁷ as a process aiming at institutionalizing consultations and dialogues with representatives of indigenous peoples' institutions, convening every other year in conjunction with the IFAD Governing Council. In addition, IFAD established a mechanism for funding support, namely the Indigenous Peoples Assistance Facility.²⁸

²² For more information, see: <https://unfccc.int/10475>

²³ For more information, see: <https://unfccc.int/node/194669>

²⁴ For more information, see: <https://www.ipbes.net/>

²⁵ For more information, see: <https://www.ipbes.net/deliverables/lc-ilk>

²⁶ For more information, see: <http://www.fao.org/plant-treaty/areas-of-work/farmers-rights/expert-group/en/>

²⁷ For more information, see: <https://www.ifad.org/en/indigenous-peoples-forum>

²⁸ For more information, see: <https://www.ifad.org/en/ipaf>

H. United Nations Educational, Scientific and Cultural Organization/International Indigenous Peoples' Forum on World Heritage

42. The World Heritage Convention (1972)²⁹ does not mention indigenous peoples. Recently, however, in 2017, the World Heritage Committee noted the establishment of the International Indigenous Forum for World Heritage³⁰ “as an important reflection platform on the involvement of Indigenous Peoples in the identification, conservation and management of World Heritage properties” ([Decision 41 COM 7](#)).

I. Open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas

43. The Human Rights Council at its twenty-first session, on 11 October 2012, adopted resolution 21/19, in which decides to establish an open-ended intergovernmental working group with a mandate to negotiate, finalize and submit a draft United Nations declaration on the rights of peasants and other people working in rural areas.³¹ The Human Rights Council eventually adopted resolution [39/12](#), and subsequently, the General Assembly adopted (through [resolution 73/165](#), in 2018) the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. This Declaration contains articles related to traditional knowledge and is pertinent to the emerging rights framework for local communities.

III. ANALYSIS OF VIEWS ON POSSIBLE INSTITUTIONAL ARRANGEMENTS

44. This section provides an analysis of the information received in submissions (reproduced in CBD/WG8J/11/INF/1 and CBD/COP/14/INF/5/Rev.1), the online forum and the survey on possible institutional arrangements. It includes a summary of the views of survey participants in the Online Forum on possible principles concerning institutional arrangements, as well as views on the main characteristics or governance implications of potential institutional arrangements.

A. Principles concerning possible institutional arrangements

45. The principle most strongly espoused by the participants in the Online Forum is the respect and recognition of the diversity of indigenous peoples and local communities. This is followed by the need for adequate Secretariat funding, including voluntary contributions, to ensure the full, equitable and effective participation of indigenous peoples and local communities in meetings held under the Convention, including, as appropriate, in leadership roles. Participants also emphasized that the participation of indigenous peoples and local communities should be in accordance with their own structures and procedures. Finally, participants noted that the future institutional arrangements should be reflective of ethical best practices and in support of the objectives of a “learning” platform.³²

B. Possible institutional arrangements

46. Most of the survey participants in the Online Forum strongly agreed to apply the enhanced participatory mechanism practices under the Working Group on Article 8(j) in the work of other subsidiary bodies and of the Conference of the Parties. Should the Parties decide that the enhanced participation mechanisms practiced within the Working Group on Article 8(j), flow on to other bodies, the governance implications are that a sufficient and balanced group of indigenous peoples and local communities are funded to participate and are then afforded, at the discretion of the Chairperson, opportunities to speak. The participants in the survey also expressed a preference for the establishment of a subsidiary body on Article 8(j) and related provisions.³³

²⁹ For more information, see: <https://whc.unesco.org/en/conventiontext/>

³⁰ For more information, see: <http://iipfwh.org/>

³¹ For more information, see: <https://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/WGRuralAreasIndex.aspx>

³² As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

³³ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

C. Full integration of the Working Group and indigenous peoples and local communities into the work of the other Bodies of the Convention

47. Some views considered that the full integration of indigenous peoples and local communities could lead to considerable benefits for the Convention and for indigenous peoples and local communities themselves. Full integration could see a standing agenda item on the agenda of the subsidiary bodies and of the Conference of the Parties regarding Article 8(j) and related provisions, allowing for enhanced efficiency in the clustering of similar issues under the same agenda item, such as customary sustainable use, wildlife management and bushmeat, and sustainable use, which would lead to better overall coherence and efficiencies.

48. Some views mentioned that the development of a future revised programme of work, as well as of new institutional arrangements, should build upon work, experiences and progress already achieved and should consider tools developed by and synergies between other processes and bodies within and outside the Convention.³⁴

49. Others pointed out that the strategic focus of the Working Group could be diluted in the broad agenda of the Convention, that the impacts might be difficult to evaluate, and that the agendas might not be clearly delineated in a fully integrated model.³⁵

50. In the submissions received, there were no models proposed for full integration, which may therefore warrant further investigation, as to the forms that an ethical integration could take, before making a final decision concerning future institutional arrangements for indigenous peoples and local communities in the post-2020 global biodiversity framework. Consideration of models for full integration should be guided by the objectives, general principles and possible elements of work as proposed in the elaboration of the new integrated programme of work.

51. Another view mentioned that the new institutional arrangements should focus on a strong mandate for implementation mechanisms in terms of reporting, reviewing and accountability.³⁶ They should also evaluate existing national and international instruments that may have an impact on the protection of the knowledge, innovations and practices of indigenous and local communities.³⁷

D. Pros and cons of a permanent body on indigenous peoples and local communities

52. Some views mentioned their preference was call for the establishment a permanent subsidiary body. The reasoning behind this is that the consultations and involvement of indigenous peoples and local communities would be better secured, having an ongoing well-defined structure in place. The same submissions also noted that many matters under the Convention and its Protocols are relevant to indigenous peoples and local communities, and that traditional knowledge remains a cross-cutting issue for the Convention. Furthermore, a permanent subsidiary body would also allow for continuity in the programme of work on Article 8(j), taking into account existing institutional arrangements with other subsidiary bodies, as well as allowing for increased focus on implementation in achieving the 2050 vision of living in harmony with nature.

53. Additionally, a permanent subsidiary Body could also be integrated physically, into the other subsidiary bodies, in a seamless manner allowing for better coherence, savings and efficiencies. Some submissions highlighted that a permanent subsidiary body would be more efficient, as formal recognition would be given to the relevance and pertinence of indigenous issues without being affected by the temporary nature of a working group. Finally, it could improve processes regarding the drafting of recommendations and in developing advice for the Conference of the Parties, other bodies, and even other

³⁴ As proposed by the Sami Parliament in CBD/WG8J/11/INF/1.

³⁵ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

³⁶ As proposed by the Sami Parliament in CBD/WG8J/11/INF/1.

³⁷ As proposed by Mexico in CBD/WG8J/11/INF/1.

Conventions that address issues related to biodiversity, traditional knowledge and participation of indigenous peoples.³⁸

54. Some views highlighted two main roles for a permanent subsidiary body:

(a) To advise Parties and other organizations, through the Conference of the Parties, on ways to implement Article 8(j) and related provisions more effectively, including by providing guidance to the Parties, by identifying policies and implementation gaps, and by reviewing existing processes and initiatives;

(b) To advise Parties on the perspectives of indigenous peoples and local communities on relevant draft decisions prepared by the Subsidiary Body on Scientific, Technical and Technological Advice, the Subsidiary Body on Implementation, and other specialized organizations of the United Nations.

55. Also mentioned was that the new body should have an advisory, rather than a decision-making or negotiating mandate, and could function with a similar structure to the existing subsidiary bodies.³⁹

56. Another view added that the new body would provide the Conference of the Parties with advice, analysis, policy recommendations, and lessons learned on relevant issues, including on activities conducted by other actors in relevant sectors.⁴⁰

57. An additional view mentioned that a permanent body could be supported by an informal advisory group composed of the equal participation of delegates from Parties and from indigenous peoples and local communities. This informal advisory group would work in a similar way to other groups of informal advisors and would advise the permanent body within the scope of its competencies.⁴¹

58. On another hand, some submissions expressed negative opinions regarding the establishment of a permanent subsidiary body. They considered that the creation of such a body would not facilitate building on the experience acquired during the life of the Working Group, and could possibly generate duplication of work as well as isolate the traditional knowledge of indigenous peoples and local communities from the rest of the issues addressed under the Convention.⁴²

59. Other views also questioned the necessity of establishing a permanent body and raised concerns in terms of administrative efficiency.

60. One view indicated that it would be preferable to avoid the proliferation of working groups or the creation of a subsidiary body, as it opens the possibility for the creation of a working group for each of the articles and clauses of the Convention.⁴³

E. Continuation of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions with a revised mandate

61. One view indicated that the continuity of the Working Group on Article 8(j) is important because the Working Group's outputs are measurable and that future work could focus on specific results with visible impacts, through the adoption of a series of action plans with concrete products, as well as be flexible and adaptive to the needs and main issues of relevance, not only within the framework of the Convention but also within broader processes, such as the 2030 Agenda and the Paris Agreement.⁴⁴

³⁸ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

³⁹ As proposed by Canada in the Online Forum (CBD/A8J/OM/2019/1/3).

⁴⁰ As proposed by IIFB in CBD/COP/14/INF/5/Rev.1.

⁴¹ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

⁴² As proposed by Argentina in CBD/WG8J/11/INF/1.

⁴³ As proposed by Argentina in CBD/WG8J/11/INF/1.

⁴⁴ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

62. Another view indicated that the mandate of the Working Group should be revised so that it would operate within a time limit to address a particular set of issues requiring special attention, and only once the practice and expertise are acquired could future work be fully integrated into the work of the Convention.⁴⁵

63. Some views noted that more time to fully consider the institutional arrangements for indigenous peoples and local communities within the post-2020 global biodiversity framework, along with further information on budgetary considerations and proposed elements of work, would greatly assist in a thoughtful outcome.⁴⁶

64. The submissions further proposed that the kind of institutional arrangement that is required would depend on the elements of work agreed upon in the new programme of work, thus arguing that “form” should follow “substance”.

65. Building on this line of thought, it was suggested that the Conference of the Parties, at its fifteenth meeting, could adopt the new programme of work and then decide on an appropriate institutional arrangement and its *modus operandi* at its sixteenth meeting, having benefited in the meantime from an expert meeting on institutional arrangements that could be held in 2021, which would in turn be considered by a twelfth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions.⁴⁷ The expert meeting and the twelfth meeting of the Working Group on Article 8(j) would benefit from having the agreed post-2020 programme of work on Article 8(j) and related provision. This proposal would require, at the very least, a temporary extension of the Working Group, with the view that, at its sixteenth meeting, the Conference of the Parties would be in a position to make a decision concerning institutional arrangements in the light of the advice of both the expert meeting and the twelfth meeting of the Working Group on Article 8(j) and taking into account the elements of the new programme of work on Article 8(j) and related provisions. As such, this proposal would need to be considered at the eleventh meeting of the Working Group on Article 8(j) and a draft recommendation submitted to the relevant subsidiary bodies, the Open-ended Working Group on the Post-2020 Global Biodiversity Framework, and the Conference of the Parties.

F. Participation of indigenous peoples and local communities in meetings held under the Convention

66. A common view is that a critical component of any future institutional arrangement must be the full and effective participation of indigenous peoples and local communities. To achieve this across the Convention, the Conference of the Parties would need to consider whether the enhanced participation mechanisms enjoyed by indigenous peoples and local communities under the Working Group on Article 8(j) effectively flow on to the work of the subsidiary bodies and of the Conference of the Parties regarding all matters of direct relevance to indigenous peoples and local communities.⁴⁸

67. In addition, one view suggested that if the new permanent body is advisory in nature, a mechanism should be put in place to ensure a certain number of seats for representatives of indigenous peoples and local communities, who would have the responsibility of representing the views of the broader indigenous peoples and local communities and have the ability to propose language to be considered in the development of the new body's advice. The Conference of the Parties would, however, retain its role as the ultimate decision-making body at the Convention on Biological Diversity.⁴⁹

⁴⁵ As proposed by Argentina in CBD/WG8J/11/INF/1.

⁴⁶ As proposed by the European Union, Australia and Colombia in CBD/COP/14/INF/5/Rev.1.

⁴⁷ As proposed by Japan in CBD/WG8J/11/INF/1.

⁴⁸ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

⁴⁹ As proposed by Canada in CBD/WG8J/11/INF/1.

68. Some views highlighted that they would not support an arrangement based on episodic participation. Accordingly, they do not support the creation of an “expert body” that would limit participation to selected indigenous experts.⁵⁰

69. Another view indicated that future institutional arrangements should not limit the participation of indigenous peoples and local communities to an observer status. Instead, they should include a process to channel the perspectives of indigenous peoples and local communities on an equal footing with Parties.⁵¹ Some views pointed out that more stable resources are needed in order to ensure the full and effective participation of indigenous peoples and local communities and the functioning of any new institutional arrangement. They insisted that the institutional arrangements should not rely on fluctuating donor supports and/or on the collaboration with other institutions, and that more stable and predictable funding is required.⁵² Another view indicated that any further arrangements should be cost-efficient, without significant budget implications compared to the current arrangement.⁵³

G. Participation of indigenous peoples and local communities at the national level

70. A view suggested that Parties should nominate representatives of indigenous peoples and local communities as the national focal points for Article 8(j) and related provisions, within respective countries. This would allow for the concerns of indigenous peoples and local communities to be addressed in the formulation of national positions and to advocate for the rights of indigenous peoples and local communities at the international level from the standpoint of national delegations. It would also improve communications between States and indigenous peoples and local communities at the national level, as well as ensure the proper integration of indigenous peoples and local communities’ concerns into national policies for sustainable development.⁵⁴ It was also suggested that Parties should take measures to ensure that interactions between Governments and indigenous peoples and local communities are efficient and transparent, and take advantage of the ecosystem approach and governance models that build on synergies between customary sustainable use and biodiversity conservation.⁵⁵

H. Collaboration, capacity-building development and further consideration

71. Some views suggested the addition of a virtual platform to the permanent subsidiary body, in order to promote interactive learning and the exchange of experiences on issues such as intellectual property and local and indigenous knowledge. Such a platform could host discussion forums on topics such as prior informed consent, the Nagoya Protocol, the sustainable use of biodiversity, and other priority topics. In summary, some submissions highlighted the need to have a forum to address indigenous peoples and local communities-specific issues and to channel their perspectives into the work of the Convention.⁵⁶

72. Another view suggested bringing more attention to indigenous peoples and local communities living in urban areas and/or developed countries as well, notably by ensuring their participation through a funding mechanism.⁵⁷

IV. CONCLUSION

73. In conclusion, since its establishment in 2000, the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions has recommended seven principles and guidelines to support Parties in the implementation of Article 8(j) and related provisions, which have been adopted or endorsed by the Conference of the Parties. In addition, through the Working Group, the participation of indigenous

⁵⁰ As proposed by the European Union in CBD/COP/14/INF/5/Rev.1.

⁵¹ As proposed by The Local Community Groups of Antigua and Barbuda in CBD/COP/14/INF/5/Rev.1.

⁵² As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

⁵³ As proposed by the European Union in CBD/WG8J/11/INF/1.

⁵⁴ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

⁵⁵ As proposed by the European Union in CBD/WG8J/11/INF/1.

⁵⁶ As proposed in the Online Forum (CBD/A8J/OM/2019/1/3).

⁵⁷ As proposed by the IIFB in CBD/COP/14/INF/5/Rev.1.

peoples and local communities has been enhanced throughout the work of the Convention and its Protocols. Submissions in general have recognized the success of the Working Group and its products, noting, however, that implementation of the adopted guidelines and standards at the national level, and national reporting, remain a challenge.

74. Overall submissions expressed a strong desire for a new form of institutional arrangements that would allow for knowledge exchange and problem solving as well as the full integration of Article 8(j) and related provisions across the work of the Convention.

75. Many submissions noted that new institutional arrangements for indigenous peoples and local communities should be considered in the light of post-2020 arrangements, proposed elements of work, and the need to find better ways and means to provide advice regarding all matters of direct relevance to indigenous peoples and local communities under the Convention as cross-cutting issues.

76. Many proposals envisaged a new institutional arrangement that could facilitate intercultural dialogue and the sharing of experiences and success, particularly between organizations of indigenous peoples and local communities, Parties, non-governmental organizations, policymakers, scientists/academia and others, and where collaboration can take place in an effective manner.

77. Many submissions also noted that there remains a strong need to raise awareness about the added value of customary sustainable use to the goals of the Convention and its relationship with traditional knowledge. In the coming years, Parties could more proactively invest in the effective implementation of the Plan of Action on Customary Sustainable Use and other tools emanating from the Working Group and adopted by the Conference of the Parties. This would require that any future institutional arrangement maintain a mandate to review the implementation and progress of the use and application of the principles and guidelines developed under its auspices.

78. Overall, the views received tend to lean towards the establishment of a permanent subsidiary body. However, many submissions also noted the importance of considering any future institutional arrangements in the light of the elements of work being proposed, to ensure a fully integrated programme of work that is supportive of the goals and vision of the Convention. The Working Group may wish to revisit this issue of institutional arrangements and decide on the next steps forward, once having considered the proposals for the new programme of work, which include objectives, general principles and possible elements of work. A draft recommendation has been prepared to assist the Working Group in this matter and is available in CBD/WG8J/11/4.
