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AD HOC TECHNICAL EXPERT GROUP ON THE NEW
PROGRAMME OF WORK AND INSTITUTIONAL
ARRANGEMENTS ON ARTICLE 8(J) AND OTHER
PROVISIONS OF THE CONVENTION RELATED
TO INDIGENOUS PEOPLES AND LOCAL
COMMUNITIES

Manaus, Brazil, 11–13 July 2023

**Analysis of the proposed programme of work and institutional arrangements on Article 8(j) and
other provisions of the Convention related to indigenous peoples and local communities**

Introduction

1. In its [decision 14/17](#), the Conference of Parties to the Convention on Biological Diversity requested the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the Convention to develop, at its eleventh meeting, proposals for possible future work, including proposals for a second phase of work on the plan of action on customary sustainable use of biological diversity, as well as institutional arrangements and their modus operandi, to inform the development of a fully integrated programme of work as part of the post-2020 biodiversity framework. As a result, the Working Group prepared recommendation 11/2, which was considered by the Conference of the Parties at its fifteenth meeting.

2. By its [decision 15/10](#), the Conference of the Parties decided to develop a new programme of work and institutional arrangements on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities aligned with the Kunming-Montreal Global Biodiversity Framework, with the full and effective participation of indigenous peoples and local communities. To advance work in this regard, the Conference of the Parties requested the Executive Secretary, in paragraph 7 of the same decision, to convene an ad hoc technical expert group, the Ad Hoc Technical Expert Group on the New Programme of Work and Institutional Arrangements on Article 8(j) and Other Provisions of the Convention Related to Indigenous Peoples and Local Communities. In annex III of the decision, it directed the Expert Group to undertake the following tasks:

(a) Further elaborate possible elements, tasks and actors of a new programme of work based on annexes I and II to [decision 15/10](#), as well as the results of the peer review referred to in [recommendation 11/2](#) of the Working Group, ensuring alignment with the Framework;

(b) Elaborate options for institutional arrangements and their modus operandi that would allow for the full and effective participation of indigenous peoples and local communities in the work of the Convention, taking into consideration the options contained in paragraph 9 of decision 14/17; information on the legal, organizational and financial implications of each option; and the rules of procedure for meetings of bodies established under the Convention.

3. The present document has been prepared to assist the work of the Expert Group by, primarily, providing a synthesis of the results of the [peer review](#) referred to in [recommendation 11/2](#) of the Working Group, including cross-cutting issues, and a synthesis of submissions on the possible elements of the new

programme of work. Submissions were received from 20 Parties, eight representatives of indigenous peoples and local communities and 15 observers.¹

4. In keeping with the guidance provided in decision 15/10, section I of the present document provides a synthesis of views received through the peer review on the draft objective, general principles, elements and suggested activities of the new programme of work; and section II provides a summary of the options for institutional arrangements and associated *modus operandi*.

I. Synthesis of views on the new programme of work on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities

5. At its eleventh meeting, the Working Group discussed the potential objective and general principles of the new programme of work. It concluded that the objective of the current programme of work on Article 8(j) and related provisions of the Convention, which was adopted by the Conference of the Parties at its fifth meeting, remained valid for the new programme of work, with minor adjustments. In addition, the Working Group introduced a sixth general principle, on the monitoring of the new programme of work, based on four indicators for assessing the status and trends in traditional knowledge that had been originally adopted to assess progress towards the Strategic Plan for Biodiversity 2011–2020 and Aichi Biodiversity Target 18. The Working Group submitted a draft of the objective and general principles for consideration at the fifteenth meeting of the Conference of the Parties, and the Conference of the Parties decided to include it in decision 15/10, as annex I.

A. Synthesis of views received on the draft objective and principles of the new programme of work

6. Although the peer review did not call for the submission of views on the draft objective and general principles of the new programme of work, several submissions received contained general views on those sections.

7. With regard to the objective of the new programme of work, most submitters agreed with the idea that the objective of the current programme of work remained valid, with some minor adjustments and improvements. Several submitters highlighted the importance of recognizing the contribution of indigenous peoples and local communities to the implementation of the Convention. To that end, many submitters welcomed the proposed change in the title of the new programme of work from “related provisions” to “other provisions”, to better reflect the growing recognition of that contribution.

8. With regard to the principles of the new programme of work, several submitters highlighted several cross-cutting issues, as summarized below, that might be considered in the formulation of general principles:

(a) Most submitters called for a close alignment of the new programme of work with the Framework. In addition, several submitters emphasized that the level of ambition set by the Framework should be regarded as the minimum standard for the new programme of work, pointing specifically to various sections of the Framework, such as paragraph 7 (a) of section C, on the contribution and rights of indigenous peoples and local communities, Goal C, on access and benefit sharing, and Targets 1, 3, 5, 9, 13, 19, 21, 22 and 23. Furthermore, a number of submitters stressed the need for the new programme of work to be designed and developed in a manner that best supported the monitoring framework through the development of operational traditional knowledge related-indicators;

(b) Several submitters emphasized the inextricable link of traditional knowledge and customary sustainable use practices with biodiversity conservation and sustainable use, as well as the corresponding importance for the new programme of work to include principles relating to safeguarding the rights of indigenous peoples and local communities. A few submitters noted the importance of upholding the rights of indigenous peoples and local communities, including the recognition of indigenous and traditional territories in relation to area-based conservation, as reflected in Target 3 of the Framework. Several submitters emphasized the importance of applying a human rights-based approach in the new programme of work and, in this regard, made specific references to the implementation of the United Nations Declaration

¹ The submissions of the peer review can be found at: www.cbd.int/notifications/2022-070.

on the Rights of Indigenous Peoples and other international human rights laws, including safeguard mechanisms, such as free, prior and informed consent; rights of self-determination and self-government; and rights over land, territories and resources. In addition, one submitter proposed to align the new programme of work with section C of the Framework, incorporating the provision in the Framework that nothing therein might be construed as diminishing or extinguishing the rights that indigenous peoples currently had or might acquire in the future;

(c) A few submitters referred to strengthening the integration of a gender dimension throughout the new programme of work, specifically to address the rights, needs and interests of women and girls from indigenous peoples and local communities. The underlying view was that a gender-responsive approach, aligned with the Gender Plan of Action and Targets 22 and 23 of the Framework, would enhance the effectiveness of the new programme of work in promoting customary sustainable use, conservation, restoration and the preservation of traditional knowledge. Lastly, one submitter underlined the importance of distinguishing the terms “gender” and “women,” noting that they had distinct meanings and that using them indifferently might lead to different interpretations and implications when it came to implementation.

B. Synthesis of views on the elements of the new programme of work

9. As regards the elements and suggested activities listed in annex II to decision 15/10, several submitters referred to three cross-cutting issues, namely:

(a) *Nomenclature used for the activities of the new programme of work.* To foster the implementation of the new programme of work, multiple submitters suggested using an action-oriented language aligned with the action-oriented targets of the Framework. In this regard, it was noted that this could be achieved by replacing “suggested activities” with “tasks”, to convey a stronger sense of commitment and alignment with the language used in the current programme of work and in the Framework;

(b) *Voluntary nature of the guidelines.* Several submitters raised concerns about the use of the term “voluntary” in the proposed guidelines and proposed its deletion, noting that this would have no legal implication, because guidelines themselves were not legally binding. In relation to this, it was noted that the term “voluntary” might undermine the importance of implementing any duly developed guideline. Against that background, the suggestion was made that the guidelines developed within the ambit of the new programme of work be aligned with international obligations and commitments. One submitter further pointed out that the development of guidelines should not be the focus and that the priority should rather be on defining action-oriented activities for the new programme of work;

(c) *Terminology relating to indigenous peoples and local communities.* It was noted in several submissions that the term “indigenous peoples and local communities” did not adequately capture the idea of recognizing the inherent collective rights of indigenous peoples. Those concerns were based on a recommendation put forward during the twenty-first session of the Permanent Forum on Indigenous Issues. Other submitters, however, opposed splitting the term, emphasizing the need to address the issue in the context of national circumstances. In addition, certain submitters capitalized the term “Indigenous Peoples”, in line with the capitalization adopted in General Assembly resolution 77/203. A few submitters highlighted the importance of clarifying the term “traditional knowledge” throughout the new programme of work and the need to make a distinction between the terms “traditional knowledge”, “indigenous knowledge” and “local knowledge”.

10. In addition to those crosscutting issues, the submissions included a wide range of views on the specific elements and suggested activities of the new programme of work, as summarized below.

1. Element 1: sustainable use

11. The majority of submitters noted the importance of promoting the implementation of Article 10(c) of the Convention, with a particular focus on Targets 5 and 9 of the Framework. Some submitters voiced concern over the limited progress made in implementing the plan of action on customary sustainable use of biological diversity and recommended integrating it into the new programme of work, specifically as part of element 1. One submitter proposed a new suggested activity to review and renew the plan of action.

12. In addition, there were divergent views on the scope of element 1. Some emphasized the need to broaden its focus to include biodiversity in general, while others stressed the importance of focusing specifically on the customary sustainable use of wild species, to ensure alignment with Targets 5 and 9. Moreover, the submitters brought forth various suggestions on including and describing traditional food systems in more details. A converging view among submitters was the need to incorporate customary sustainable use in national biodiversity strategies and action plans, as reflected in suggested activity 1.1.

13. Some submitters proposed exploring other options, such as developing, updating or including the recognition of customary sustainable use in domestic laws and policies.

14. Regarding suggested activity 1.6, on registries, several submitters expressed the view that secret, sacred and sensitive practices should not be registered, owing to the nature of the information involved and that this suggested activity should, as a result, be deleted. They argued that registering such practices might not yield benefits for indigenous peoples and local communities and could disrupt traditional methods of knowledge transmission. An alternative solution was to formulate the suggested activity in such a way that it would clearly reflect the notion that recording customary sustainable use practices should be based on trust and reciprocity. Some submitters suggested incorporating safeguards, such as the principle of free, prior and informed consent, in line with Target 21 of the Framework. In this regard, it was proposed to include customary law and community protocols in the suggested activity as a way of ensuring the active role of indigenous peoples and local communities in managing and administering the proposed registries. A few submitters proposed the inclusion of new elements, such as other international registries and registries controlled directly by indigenous peoples and local communities.

2. Element 2: conservation and restoration

15. To ensure alignment with Targets 1 and 3 of the Framework, several submitters emphasized the importance of incorporating the term “indigenous and traditional territories” from Target 3 in element 2 of the new programme of work. The rationale provided was that the alignment would strengthen the recognition and protection of such territories through conservation and restoration efforts.

16. Furthermore, several submitters suggested that it would add value in the context of the new programme of work to: (a) develop guidance and promote activities related to the recognition of indigenous and traditional territories (suggested activity 2.1); (b) implement safeguards when establishing protected areas or other effective area-based conservation measures in indigenous and traditional territories (suggested activity 2.2); and (c) address land use and land tenure of indigenous peoples and local communities in area-based conservation (suggested activity 2.3). However, there were diverging views as to whether activity 2.3 should also include a reference to local governance systems.

17. Some submitters raised specific concern about the reference to “without formal access” in suggested activity 2.4, because of the lack of clarity in its meaning and potential implications, and it was suggested that further clarification and alignment with the Framework were needed. In this regard, some submitters proposed removing the reference altogether.

18. Regarding monitoring and indicators, many submitters welcomed the inclusion of the traditional knowledge indicator on land tenure to support the monitoring framework. However, some argued that including the four traditional knowledge indicators would provide greater benefits.

3. Element 3: sharing the benefits from genetic resources

19. Several submitters emphasized that element 3 of the new programme of work should align with Goal C and Targets 9 and 13 of the Framework. However, some proposed new components for the element, including making reference to biological resources, knowledge, innovations and practices of indigenous peoples and local communities, as well as digital sequence information.

20. In addition, concerns were raised regarding the establishment of databases in suggested activity 3.3. Some submitters noted the need for further clarification regarding the establishment of safeguards and ensuring control by indigenous peoples and local communities over the information in those databases. Some submitters suggested that support should be limited to databases developed and controlled by indigenous

peoples and local communities. One submitter proposed the commissioning of a study, with the participation of indigenous peoples and local communities, to assess the effectiveness of the databases.

21. Suggested activity 3.4, which is focused on ethical collaboration between users and indigenous peoples and local communities, received general support. However, some submitters introduced additional safeguards to protect the rights and interests of indigenous peoples and local communities. There were diverging views as to whether the capacity-building programmes should be exclusively for indigenous peoples and local communities or should also include users of traditional knowledge associated with genetic resources.

22. Some submitters noted that there were overlaps and duplications between suggested activities 3.5 and 3.6, and they therefore proposed their consolidation.

4. Element 4: knowledge and culture

23. Several submitters proposed an alignment of the new programme of work with Target 21 and section C of the Framework. In this regard, emphasis was put on the need to refer to the intergenerational transmission of traditional knowledge rather than just to its general transmission. It was highlighted that the participation of indigenous peoples and local communities was crucial, because traditional knowledge transmission required trust.

24. In relation to suggested activity 4.1, submitters acknowledged the importance of fostering the use of traditional knowledge but also cautioned that such use should not be contextualized to suit the interests of non-indigenous peoples.

5. Element 5: protection of indigenous peoples and local communities and traditional knowledge innovations and practices, including through the application of guidelines and standards, and further advancement of Article 8(j) and related provisions

25. Several submitters pointed to an overall support for element 5, noting its importance for promoting a human rights-based approach.

26. In relation to suggested activity 5.3, there was overall support for incorporating language from Targets 3, 22 and 23 of the Framework to ensure proper alignment of the new programme of work on issues related to traditional and secure land tenure of indigenous peoples and local communities.

27. In relation to suggested activity 5.4, a submitter proposed to remove the term “human” from the phrase “human rights-based approach”. This suggestion was based on the recognition made in section C of the Framework that some countries had recognized the rights of nature and of Mother Earth as being integral parts of the successful implementation of the Framework.

6. Element 6: full and effective participation of indigenous peoples and local communities

28. One submitter proposed including a subheading including language that specifically called for the full and effective participation of indigenous peoples and local communities in decision-making related to biodiversity and the implementation of the Framework.

29. Several submitters recommended updating suggested activity 6.1 to align it with Targets 21 to 23 of the Framework.

30. In relation to suggested activity 6.3, several submitters further clarified the purpose of collaboration, which could involve facilitating and promoting a coherent implementation of the Framework.

31. Suggested activity 6.4 received general support from most submitters, except for one who suggested deleting the activity for being too specific in its current form.

32. Some submitters also proposed that suggested activities 6.5 and 6.6 be aligned with the resource mobilization process under the Framework, including its reporting mechanism. In addition, new suggested activities were proposed for consideration, including conducting a study on access to land by women and girls, promoting the participation of women and young people from indigenous peoples and local

communities, supporting community-based monitoring and information systems and further exploring the inclusion of indigenous peoples and local communities in resource mobilization efforts.

7. Proposed additional elements

33. Suggestions were made to include two new elements, on a human rights-based approach and direct access to funding for biodiversity conservation by indigenous peoples and local communities, together with a related set of suggested activities.

II. Options for institutional arrangements and associated *modus operandi*

34. In its decision 14/17, the Conference of the Parties invited Parties, Governments and indigenous peoples and local communities to submit views to the Executive Secretary on possible institutional arrangements and their *modus operandi* for the implementation of Article 8(j) and related provisions, such as:

(a) Establishing a 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, the Conference of the Parties serving as the meeting of the Parties to the respective Protocols, on matters that were relevant to indigenous peoples and local communities and within the scope of the Convention;

(b) Continuing the Working Group with a revised mandate within the post-2020 biodiversity framework;

(c) Applying the enhanced participation mechanisms used by the Working Group 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.

35. Most submitters supported the establishment of a permanent subsidiary body on Article 8(j) and related provisions. In one submission, it was noted that, while the establishment of such a body was the preferred option, that of continuing the Working Group could be acceptable provided that conditions were put in place to allow for the full and timely engagement of indigenous peoples and local communities in all processes of the Convention. In the same perspective, another submitter noted that establishing a subsidiary body was the best option but that it could also be combined with option c above to facilitate mainstreaming the views and inputs of indigenous peoples and local communities across all areas of work of the Convention.

36. The following are some of the justifications and rationale provided in the submissions in support of the establishment of a subsidiary body:

(a) A permanent body would provide the best forum for indigenous peoples and local communities to better engage and provide their unique perspectives and insights into the various processes of the Convention;

(b) The formalization of a subsidiary body would be the best option to ensure the full and effective participation of indigenous peoples and local communities in the implementation of the Convention and the Framework;

(c) A subsidiary body would be the most adequate forum to take on the important mandate of providing advice on the implementation of the new programme of work, once adopted.

37. In terms of other issues to consider on the matter, it was suggested in one submission that, should a permanent subsidiary body be established, measures be put in place to ensure that discussions on knowledge, innovation and the practices of indigenous peoples and local communities are not only considered by the subsidiary body but also brought forth for consideration by all relevant Convention bodies and processes. One submitter also noted the need to ensure that the choice of institutional arrangements does not have significant budget implications and that any option retained is cost-effective.

III. Conclusion and recommendation

38. The Expert Group is invited to take the information contained in the present document into consideration for elaborating possible elements, tasks, actors and suggested activities of a new programme of work, for consideration by the Working Group at its twelfth meeting, scheduled to be held in Geneva from 12 to 16 November 2023.
