



CBD



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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Twelfth meeting
Pyeongchang, Republic of Korea, 6-17 October 2014
Item 19 of the provisional agenda*

ARTICLE 8(j) AND RELATED PROVISIONS

Terminology “indigenous peoples and local communities”

Draft decision submitted by the Chair of Working Group II

The Conference of the Parties,

Recalling paragraph 2 of decision XI/14 G, in which it requested the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions to consider the recommendations of the United Nations Permanent Forum on Indigenous Issues concerning the use of the terminology “indigenous peoples and local communities” and all its implications for the Convention,

Noting recommendation 8/6 of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions,

Emphasizing that the subject matter of Article 8(j) is traditional knowledge, which is subject to national legislation, and related provisions, including Article 10(c), which is customary sustainable use, within the scope of the Convention, and that each Contracting Party is expected to implement these provisions as far as possible, as appropriate,

Recognizing the advice of the United Nations Office of Legal Affairs,¹ which was given on an informal basis that “... in order for the Parties to ensure that the use of different terminology in a decision would not be construed as a “subsequent agreement”, they should make clear in their decision that the use of different terminology was on an exceptional basis and without prejudice to the terminology used in the Convention and should not be taken into account for purposes of interpreting or applying the Convention”,

Affirming that this decision to use the terminology “indigenous peoples and local communities” in future decisions and secondary documents is made on an exceptional basis acknowledging that the terminology used in the Convention is “indigenous and local communities”,

Also affirming that any change to the legal meaning of the terminology “indigenous and local communities” should be done only using the amendment procedure set out in Article 29 of the Convention on Biological Diversity,

* UNEP/CBD/COP/12/1/Rev.1.

¹ See UNEP/CBD/COP/12/5/Add.1, para. 16.

1. *Decides* to use the terminology “indigenous peoples and local communities” in future decisions and secondary documents under the Convention, as appropriate;
2. Also decides:
 - (a) That the use of the terminology “indigenous peoples and local communities” in any future decisions and secondary documents shall not affect in any way the legal meaning of Article 8(j) and related provisions of the Convention;
 - (b) The use of the terminology “indigenous peoples and local communities” may not be interpreted as implying for any Party a change in rights or obligations under the Convention;
 - (c) The use of the terminology “indigenous peoples and local communities” in future decisions and secondary documents shall not constitute a context for the purpose of interpretation of the Convention on Biological Diversity as provided for in article 31, paragraph 2, of the Vienna Convention on the Law of Treaties² or a subsequent agreement or subsequent practice among Parties to the Convention on Biological Diversity as provided for in article 31, paragraph 3 (a) and (b) or special meaning as provided for in article 31, paragraph 4, of the Vienna Convention the Law of Treaties. This is without prejudice to the interpretation or application of the Convention in accordance with Article 31, paragraph 3(c) of the Vienna Convention on the Law of Treaties;
3. *Notes* the recommendations arising from the eleventh³ and twelfth⁴ sessions of the Permanent Forum on Indigenous Issues, and *requests* the Executive Secretary to continue to inform the United Nations Permanent Forum on Indigenous Issues on developments of mutual interest.

² United Nations, *Treaty Series*, vol. 1155.

³ See *Official Records of the Economic and Social Council, 2012, Supplement No. 23* (E/2012/43-E/C.19/2012/13).

⁴ See *ibid.*, 2013, *Supplement No. 23* (E/2013/43-E/C.19/2013/25).