



## Convention on Biological Diversity

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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

Eighth meeting

Montreal, 7-11 October 2013

Item 5 of the provisional agenda\*

### RECOMMENDATIONS ARISING FROM THE ELEVENTH AND TWELFTH SESSIONS<sup>1</sup> OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

*Note by the Executive Secretary*

#### INTRODUCTION

1. Recommendations arising from the ninth and tenth sessions of the United Nations Permanent Forum on Indigenous Issues (UNPFII) were considered by the seventh meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions (October 2011) and the eleventh meeting of the Conference of the Parties (October 2012).

2. At its eleventh meeting, the Conference of the Parties (COP) noted the recommendations arising from the ninth and tenth sessions of the United Nations Permanent Forum on Indigenous Issues and *requested* in decision XI/14 G, that the Executive Secretary continue to inform the United Nations Permanent Forum on Indigenous Issues about developments of mutual interest.<sup>2</sup>

3. In paragraph 2, of the same decision, the Conference of the Parties noted the recommendations contained in paragraphs 26 and 27 of the report of the tenth session of the United Nations Permanent

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\* UNEP/CBD/WG8J/8/1.

<sup>1</sup> The United Nations Economic and Social Council (ECOSOC) has deferred consideration of the report of the twelfth session of the UNPFII until October 2013, therefore the recommendations have not yet been considered by the ECOSOC and are provided on a preliminary basis only.

<sup>2</sup> Including the revised programme of work on Article 8(j) and, in particular, work on customary sustainable use (Article 10(c)), the implementation of the Nagoya Protocol and related capacity-building efforts, the joint programme of work on biological and cultural diversity, the Tkarihwaí:ri Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity and the Akwé: Kon<sup>2</sup> Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or Which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities

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Forum on Indigenous Issues (E/2011/43-E/C.19/2011/14) regarding, among other matters, the use of the term “indigenous peoples and local communities” and *requested* the eighth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, taking into account submissions by Parties, other Governments, relevant stakeholders and indigenous and local communities, to consider this matter, and all its implications for the Convention on Biological Diversity and its Parties, at its next meeting, for further consideration by the Conference of the Parties at its twelfth meeting. A compilation of submissions is presented in UNEP/CBD/WG8J/8/INF/10 and UNEP/CBD/WG8J/8/INF/10/Add.1. In addition, to further assist the Working Group in its discussions, the Secretariat has conducted a survey of the use of the term “indigenous peoples” by agencies participating in the United Nations Inter-Agency Support Group on Indigenous Peoples’ Issues (IASG). Sixteen agencies have responded and the table of results is included in UNEP/CBD/WG8J/8/INF/10/Add.1.

4. In addition to further consideration of recommendations 26 and 27 from the tenth session of the UNPFII, the eighth meeting of the Working Group on Article 8(j) and Related Provisions will also consider recommendations arising from the eleventh and twelfth sessions of the UNPFII. It is important to note, however, that draft decisions and recommendations arising from the twelfth session of the UNPFII have been deferred by the United Nations Economic and Social Council (ECOSOC) for possible consideration at the next session of ECOSOC in October 2013. Therefore at the present time, the recommendations arising from the twelfth session of the UNPFII have no status and are provided to the Working Group on a preliminary basis only.

5. Section I of the present document deals with recommendations 26 and 27 of the report of the tenth session of the UNPFII, including a brief overview of submissions received. Section II draws attention to new recommendations arising from the eleventh and twelfth sessions of the UNPFII, and provides some initial guidance. Section III provides possible draft recommendations for the consideration of the Working Group.

## **I. RECOMMENDATIONS ARISING FROM TENTH SESSION OF THE UNPFII FOR CONSIDERATION BY THE WORKING GROUP**

6. The following recommendations were submitted by the UNPFII to the seventh meeting of the Working Group on Article 8(j) and Related Provisions. Relevant complementary information is provided, as appropriate, where the work has been ongoing and/or builds on previous recommendations.

### *Tenth session UNPFII 2011<sup>3</sup>*

Recommendation 27. The Permanent Forum reiterates to the parties to the Convention on Biological Diversity, and especially to the parties to the Nagoya Protocol, the importance of respecting and protecting indigenous peoples’ rights to genetic resources consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Consistent with the objective of “fair and equitable” benefit sharing in the Convention and Protocol, all rights based on customary use must be safeguarded and not only “established” rights. The Committee on the Elimination of Racial Discrimination has concluded that such kinds of distinctions would be discriminatory<sup>2</sup>.

7. Recommendation 27 was included in a revision of recommendations arising from UNPFII, at the request of the International Indigenous Forum on Biodiversity, for the consideration of Parties at the eleventh meeting of the Conference of the Parties.

8. Regarding the Nagoya Protocol, Parties, in adopting the Protocol, have included seven preambular paragraphs of specific interest to indigenous and local communities, and which aid in the interpretation of the proceeding articles, including a final preambular paragraph, “Affirming that nothing

<sup>3</sup> Extracts taken from E/2011/43-E/C.19/2011/14.

in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities”.

9. Article 12 concerning traditional knowledge associated with genetic resources, addresses customary use in paragraph 4, by stating that: “Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.”

10. Concerning the issue of equitable sharing of benefits arising from genetic resources, Article 5 of the Nagoya Protocol requires, in paragraph 2, that each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

11. The Nagoya Protocol also requires (Article 7, Access to Traditional Knowledge Associated with Genetic Resources) that access to traditional knowledge is based on the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established, in order to ensure the equitable sharing of benefits.

Recommendation 26. Affirmation of the status of indigenous peoples as “peoples” is important in fully respecting and protecting their human rights. Consistent with its 2010 report (E/2010/43 and E/C.19/2010/15), the Permanent Forum calls upon the parties to the Convention on Biological Diversity, and especially including the Nagoya Protocol, to adopt the terminology “indigenous peoples and local communities” as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago.

12. This matter on the use of the term “indigenous peoples and local communities”, is a repeat of the recommendation made by UNPFII at its ninth meeting and was taken up by the Conference of the Parties at its eleventh meeting,<sup>4</sup> at the request of the International Indigenous Forum on Biodiversity, resulting in the Conference of the Parties requesting the eighth meeting of the Working Group on Article 8(j) and related provisions to consider this matter, and all its implications for the Convention on Biological Diversity and its Parties, to enable further consideration by the Conference of the Parties at its twelfth meeting.

13. To assist the Working Group in its discussions, a compilation of submissions is made available as UNEP/CBD/WG8J/8/INF/10 and Add.1. The compilation includes submissions from Australia, Bolivia, Brazil, Finland, as well as the following indigenous and non-governmental organizations: Red Indígena de Turismo de México A.C; Consejo Regional Otomí del Alto Lerma de México; Red de Mujeres Indígenas y Biodiversidad de Guatemala; Asociación IXACAVAA de Desarrollo e Información Indígena de Costa Rica; INBRAPI de Brasil; Plataforma Dominicana de Afrodescendientes y EcoHaina de Republica Dominicana; Forest Peoples Programme and Natural Justice supported by another 72 organizations and networks;<sup>5</sup> Center for Social Sustainable Systems- Fundación Andes Chinchasyo;

<sup>4</sup> Recommendations arising from the Ninth and Tenth Sessions of the United Nations Permanent Forum on Indigenous Issues to the Convention on Biological Diversity (UNEP/CBD/WG8J/7/7/Rev.1).

<sup>5</sup> 1. ADeD-ONG, Benin; 2. Adivasi Socio Educational and Cultural Association (ASECA), Rairangpur, Odisha, India; 3. African Biodiversity Network, Kenya; 4. Alliance for Democratizing Agricultural Research in South Asia (ADARSA), India; 5. Alliance for Food Sovereignty in South Asia (AFSSA), Hyderabad, Andhra Pradesh, India; 6. Andhra Pradesh Social Service Society (APSSS), Hyderabad, Andhra Pradesh, India; 7. Asia Indigenous Peoples Pact, Thailand; 8. Association des Femmes Peuples Autochtones du Tchad (AFPAT), Chad; 9. Asociacion ANDES, Cusco, Peru; 10. Asociacion Ixacavaa De Desarrollo E

Assembly of First Nations (AFN); and a Joint Submission of Grand Council of the Crees (Eeyou Istchee).<sup>6</sup> To assist the Working Group in its consideration of this issue, a table summarizing the use of the term “indigenous peoples” within the United Nations system is also included in UNEP/CBD/WG8J/8/INF/10/Add.1.

#### *An overview of submissions*

14. Submissions were received from four Parties and in excess of one hundred indigenous or non-governmental organizations. A majority of submissions focused on recommendation 26, concerning the use of the term “indigenous peoples and local communities”.

#### *Views of Parties*

15. Australia and Bolivia consider the term “indigenous peoples and local communities” appropriate for use in multilateral discussions, including those concerning ‘traditional knowledge’. Bolivia links the use of this preferred term to the adoption of the United Nations Declaration on the rights of indigenous peoples by the General Assembly (13 September 2007) and also notes its use with the Ramsar Convention on Wetlands of International Importance, as well as in the outcomes of the United Nations

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Informacion Indigena, Costa Rica; 11. Autochtones and Locales Communities of Hlanzoun Forest of Benin, Benin; 12.Baiga Mahasabha, Dindori, Madhya Pradesh, India; 13.Baikal Buryat Center for Indigenous Cultures, Russian Federation; 14.Bharat Munda Samaj, Baripada, Odisha, India; 15.Center for Research and Rural Economic Development (CRED), Burundi; 16.Centre for Sustainable Development (CENESTA), Iran; 17.Centro de Estudios Multidisciplinarios Aymara (CEM-Aymara), Bolivia; 18.Chibememe Earth Healing Association (CHIEHA), Zimbabwe; 19.Community Media Trust (CMT), Andhra Pradesh, India; 20. Including Confédération des Associations Amazighes du Maroc, Morocco; 21.Consejo Regional Otomi del Alto Lerma, México; 22.Conservation International, USA; 23.Deccan Development Society (DDS), Andhra Pradesh, India; 24.Dulal, Baripada, Odisha, India; 25.Forest Peoples Programme, United Kingdom; 26.Forum Biodiversité du Bénin, Benin; 27.Fondación para la Promoción del Conocimiento Indígena (FPCI), Panama; 28.Fuerza de Mujeres Wayuu, Colombia; 29.Gram Swaraj-Baripada, Odisha, India; 30.ICCA Consortium, Switzerland; 31.Innbrapi, Brazil; 32.Indigenous Knowledge and Peoples Foundation (IKAP), Thailand ; 33.Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT), Thailand; 34. Indigenous Information Network, Kenya; 35.Jana Vikas, Kandhamal, Odisha, India; 36.Keonjhar Integrated Rural Development and Training Institute (KIRDTI), Odisha, India; 37.Kibale Association for Rural and Environmental Development (KAFRED), Uganda; 38.Organisation of Kaliña and Lokono in Marowijne (KLIM), Suriname; 39.Ligue Nationale des associations Autochtones Pygmées du Congo (LINAPYCO), Congo; 40.LIVING FARMS, Bhubaneswar, Odisha; 41.Living Oceans Society, Canada; 42.Madhya Pradesh Samaj Seva Sanstha (MPSSS), Madhya Pradesh, India; 43.MELCA-Ethiopia, Ethiopia; 44.Millet Network of India (MINI), Hyderabad, Andhra Pradesh, India; 45.Naga Peoples movement For Human rights (NPMHR), Nagaland; 46>Nama Traditional Leaders Association, Namibia; 47.National Indigenous Women's Federation, Nepal ; 48.Natural Justice: Lawyers for Communities and the Environment, South Africa; 49.NIRMAN-Sijhara, Madhya Pradesh, India; 50.Nirmanee development Foundation, Hettimulla, Sri Lanka; 51.Ogiek Peoples Development Program (OPDP), Kenya; 52.ORRISSA, Bhubaneswar, Odisha, India; 53.Pacari Network - Local Communities of the Savannas, Central Brazil; 54.Plenty Canada, Canada; 55.Programme d'Intégration et de développement du peuple Pygmée au Kivu (PIDP SHIRIKA LA BAMBUTI), Democratic Republic Congo; 56.Red de Mujeres Indígenas sobre Biodiversidad de America Latina y el Caribe (RMBIB-LAC); 57.Red de Mujeres Indígenas y Biodiversidad de Guatemala, Guatemala; 58.Red Indígena de Turismo de México (RITA), Mexico; 59.Regional Centre for Development Cooperation (RCDC), Bhubaneswar, Odisha, India; 60.Saami Council, Finland; 61.Sahjeevan, India; 62.Samoa Umbrella for Non-Governmental Organisation Inc. (SUNGO), Samoa; 63.Shade: Local Communities for Biodiversity and Livelihood Improvements, Ethiopia; 64.Society for New Initiatives and Activities (SONIA), Italy; 65.Southern Action on Genetic Engineering (SAGE), South India; 66.Strong Roots Congo, Democratic Republic of Congo; 67.Sudhagad Pali Taluka (SOBTI), Rayghar, Maharastra, India; 68.Tebtebba Foundation, Philippines; 69.Tewa Women United, USA; 70.Tulalip Tribes, USA; 71.Union of Indigenous Camel Herders of Iran (UNICAMEL), Iran; 72.Union of Indigenous Nomadic Tribes of Iran (UNINOMAD), Iran; 73.Unissons-nous pour la Promotion des Batwa (UNIPROBA), Burundi; 74.United Organisation for Batwa Development in Uganda (UOBDU), Uganda.

<sup>6</sup> Including Na Koa Ikaika KaLahui Hawaii; Union of British Columbia Indian Chiefs; Continental Network of Indigenous Women of the Americas-ECMIA; First Nations Summit; International Indian Treaty Council; BC Assembly of First Nations; Ogiek Welfare Council (Kenya); Assembly of First Nations of Québec and Labrador/Assemblée des Premières Nations du Québec et du Labrador; Chirapaq, Centre of Indigenous Cultures of Perú; Federation of Saskatchewan Indian Nations; Canadian Friends Service Committee (Quakers); Robert A. Williams, Jr., E. Thomas Sullivan Professor of Law and Professor of American Indian Studies, Indigenous Peoples Law and Policy Program, University of Arizona Rogers College of Law; Innu Council of Nitassinan; Haudenosaunee of Kanehsatà:ke; National Association of Friendship Centres; Indigenous World Association; Plenty Canada; First Peoples Human Rights Coalition; Netherlands Centre for Indigenous Peoples; Assembly of First Nations; Chiefs of Ontario; Metis National Council

Conference on Sustainable Development (UNCSD, Rio+20). Brazil notes that it has no objection with regard to the use of the term “indigenous peoples and local communities” since it is already used in the current Brazilian national legislation. Finland accepts proposals for using the wording “indigenous peoples and local communities” in future decisions, but believes that these proposals do not lay out a sufficient foundation for amending the Convention and the Nagoya and Cartagena Protocols. Finland is not willing to open the Convention or the Protocols for renegotiations.

#### *Views of ILCs and NGOs*

16. In extensive views submitted by organizations representing both indigenous peoples and local communities and other non-governmental organizations (NGOs), the submission from ILC organizations in the Latin American and Caribbean region emphasize that use of the preferred term “indigenous peoples and local communities” is linked to the right of identity of indigenous individuals, in accordance with the traditions and customs of each people. The terminology “indigenous peoples” invokes a series of rights that arise from their recognition as distinct peoples with different political, legal, economic, social and cultural institutions. By their status as indigenous peoples, they have the right to self-determination and to traditional territories and resources. Thus the right to self-determination and rights to traditional territories (lands and waters) and resources to indigenous peoples are operationalized through the right to grant the prior and informed consent for access to traditional knowledge or genetic resources. In respect to legal interpretations that consider that the right of indigenous peoples to self-determination is in conflict with the sovereignty of States, they point out that experience shows that the sovereignty of the States can coexist harmoniously with the self-determination of indigenous peoples.

17. In the submission from the Forest Peoples Programme (FPP) and 72 organizations and networks, FPP recalls the history of the issue at the seventh meeting of the Working Group on Article 8(j) and the eleventh meeting of the Conference of the Parties (in respect of which it cited reportage provided by the Earth Negotiations Bulletin<sup>7</sup>), where, with reference to the Rio+20 outcome document, United Nations General Assembly resolutions, and the Ramsar Convention, Norway, supported by Guatemala and the International Indigenous Forum on Biodiversity (IIFB), recommended to use “indigenous peoples and local communities” in decisions under the Convention (from that point forward), rather than “indigenous and local communities”. FPP noted that various others Parties expressed support for use of “indigenous peoples and local communities”, including but not limited to the African Group, Argentina, Brazil, Colombia, Denmark (on behalf of Greenland), Ecuador, Norway, Peru, Philippines, and Switzerland. The full submission by FPP referencing consideration of the issue at the eleventh meeting of the Conference of the Parties is provided in an information document (UNEP/CBD/WG8J/8/INF/10).

18. The submission from FPP also notes that IIFB stressed that the term is already included in a range of international agreements, including Agenda 21, the Rio+20 Outcome Document, and the United Nations Declaration on the Rights of Indigenous Peoples,<sup>8</sup> and that the Convention on Biological Diversity emerged from the Rio Earth Summit in 1992, along with the Framework Convention on Climate Change and the Convention to Combat Desertification. Its implementation is guided by Agenda 21, which was also adopted at the Rio Summit and uses the term “indigenous peoples” in its section 15 (Conservation of Biological Diversity) and section 26 (Recognizing and strengthening the role of indigenous peoples and local communities).

19. The FPP also notes that there is a wide range of other international instruments and standards that reference indigenous peoples, the vast majority of which were adopted by environmental organizations

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<sup>7</sup> Earth Negotiations Bulletin, 2012. *CBD COP11 Highlights: Wednesday 10 October 2012*. IISD Reporting Services, Vol. 9, No. 588. Available at: [www.iisd.ca/vol09/enb09588e.html](http://www.iisd.ca/vol09/enb09588e.html).

<sup>8</sup> Earth Negotiations Bulletin, 2012. *CBD COP11 Highlights: Wednesday 17 October 2012*. IISD Reporting Services, Vol. 9, No. 593. Available at: [www.iisd.ca/vol09/enb09593e.html](http://www.iisd.ca/vol09/enb09593e.html).

and underscore the linkages between recognition of indigenous peoples' rights and the conservation and sustainable management of ecosystems and natural resources.

20. The FPP also notes that “local communities” are developing a distinct identity under international law as evidenced by the Report of the Expert Group Meeting of Local Community Representatives within the Context of Article 8(j) and Related Provisions of the Convention on Biological Diversity (UNEP/CBD/WG8J/7/8/Add.1), which among other things, identifies common characteristics (in annex I) of local communities (as distinct to indigenous peoples). A concept note on local communities as provided to the expert group meeting, along with annex I of the report of the expert group meeting of local community representatives, which identified common characteristics, is made available for ease of reference as UNEP/CBD/WG8J/8/INF/10/Add1.<sup>9</sup>

21. The submission from *Center for Social Sustainable Systems- Fundacion Andes Chinchasuyo*, emphasises that the use of the term indigenous peoples recognizes indigenous peoples as possessing specific collective rights, including the right of self-determination, whereas the term indigenous communities is restrictive and exclusionary. It does not include indigenous peoples as a clearly protected group and is insufficient to encompass the broader array of issues captured by the use of the term indigenous peoples. They suggest that “indigenous peoples” should be used in the decisions under the Convention and its subsidiary Protocols in place of “indigenous communities”.

22. The *Center for Social Sustainable Systems- Fundacion Andes Chinchasuyo* also provides advice concerning the issue of a “definition of indigenous peoples”, referring to a note by the secretariat of UNPFII (which for ease of reference is made available in an information note UNEP/CBD/WG8J/8/INF/10/Add.1), emphasizing that nobody within the United Nations system has adopted a definition of indigenous peoples. It further points out that, in adopting the Declaration on the Rights of Indigenous Peoples on 13 September 2007, the United Nations General Assembly stated that indigenous peoples have a collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

23. The *Center for Social Sustainable Systems- Fundacion Andes Chinchasuyo* also provides an overview of the use of the term indigenous peoples and local communities in other instruments such as the Ramsar Convention and the International Labour Organization (ILO). Finally the *Center for Social Sustainable Systems- Fundacion Andes Chinchasuyo* recommends that the Convention should use the term indigenous peoples and local communities to reflect the emerging customary international law norm on this issue.

24. The *Assembly of First Nations (AFN)* notes that there is a major distinction between indigenous peoples and local communities and in this respect reference the outcomes of the 1992 United Nations Conference on Environment and Development and of Rio+20.<sup>10</sup> In Canada, the term “Peoples” recognizes the unique relationship that exists between indigenous peoples and their lands, territories and resources, as well as biological diversity. First Nations and Canada take an approach founded on rights to take joint action on conservation. According to international law, the term “Peoples” has a particular legal status and all “Peoples” have the right of self-determination.

25. AFN notes that Indigenous Peoples have strived for decades to be recognized as “Peoples” under international law. With the historic adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007, the AFN considered the issue of “Peoples” resolved. It notes that today, the term “Indigenous Peoples” is used consistently by the General Assembly, Office of

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<sup>9</sup> UNEP/CBD/AHEG/LCR/INF/1.

<sup>10</sup> See *Rio Declaration on Environment and Development*. (1992) Principle 22; and *Agenda Item 21* (1992). Also see United Nations Conference on Sustainable Development, Rio+20, Outcome Document, *The Future We Want* (2012) paras 43, 49, 58(j), 109, 131, 175, 197, 211, 229, and 238.

the High Commissioner for Human Rights, Human Rights Council, Treaty monitoring bodies, specialized agencies, special rapporteurs and other mechanisms within the international system. AFN notes that section 35 of Canada's *Constitution Act* recognizes indigenous peoples in Aboriginal Treaty rights, and legally protects Aboriginal and treaty rights that were in existence in 1982 (Section 35 of the *Constitution Act, 1982*).

26. The AFN notes that in the decades since the Convention came into force, the rights of indigenous peoples as Peoples have received international recognition in many domestic courts, international courts, human rights treaties and have been articulated in UNDRIP.

27. The AFN strongly supports developing a coordinated international approach to implementing UNDRIP and considers that proper implementation of UNDRIP is also a matter of international environmental law. The AFN also recognize that the Convention on Biological Diversity as a convention relevant to the proper implementation of UNDRIP, in particular of Articles 29, 31, 24-26, 37, 11, and 4. AFN considers that the Convention on Biological Diversity also provides a best example of the full and effective participation of indigenous peoples, as well as local communities, among the core environmental conventions. While the practice under the Convention on Biological Diversity could be strengthened in this regard, AFN considers the actions of the Parties to be relevant to the continued articulation of Article 42 of UNDRIP:

*"The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration".*

28. A *Joint Submission of Grand Council of the Crees (Eeyou Istchee) and Associates* (hereafter referred to as the joint submission) addresses the implications of paragraphs 26 and 27, as requested by decision XI/14. Since each of these paragraphs makes reference to the Convention on Biological Diversity and the Nagoya Protocol, both instruments are included in the analysis.

29. The joint submission highlights that according to international law, the term "peoples" has a particular legal status and all "peoples" have the right of self-determination. This same legal status and right are not recognized in regard to "minorities" or "communities" *per se*. As Special Rapporteur on the rights of indigenous peoples, James Anaya, affirms:

*The right of self-determination is a foundational right, without which indigenous peoples' human rights, both collective and individual, cannot be fully enjoyed.*

30. The broad and comprehensive joint submission also addresses: Target 18 (traditional knowledge) of the Aichi Biodiversity Targets; the Nagoya Protocol including issues of customary sustainable use of biological diversity, genetic resources, and fair and equitable sharing of benefits; CBD rules of procedure; as well as issues of a more general nature, including use of a human rights based approach, and the interrelatedness of human rights and environment.

31. The joint submission makes the following recommendations regarding the Convention on Biological Diversity:

(a) Adopting for all purposes the terminology "indigenous peoples and local communities" (not "indigenous and local communities");

(b) Respecting and protecting Indigenous Peoples' rights to genetic resources, consistent with the United Nations Declaration on the Rights of Indigenous Peoples;

(c) Safeguarding all rights based on customary use – not only "established" rights;

(d) Indigenous peoples are natural allies in the quest to conserve biodiversity and ensure sustainable use of its components and the fair and equitable sharing of benefits arising from the use of genetic resources.

32. The joint submission emphasizes that key recommendations of the Permanent Forum are crucial to achieving the principal objectives of the Convention and its Protocols, consistent with international human rights standards, democracy, rule of law and good governance, and that to this end it is imperative that such recommendations be accorded full and fair consideration by the Convention on Biological Diversity – and be implemented in a timely and effective manner.

*Eleventh session UNPFII 2012<sup>11</sup>*

*General recommendations*

40. The Permanent Forum recommends that the full, effective and direct representation and participation of indigenous peoples, including their indigenous governments, councils, parliaments and other political institutions, should be ensured at all United Nations forums and multilateral and bilateral negotiations, and in the drafting processes of the corresponding emerging instruments, for example, those under discussion at the World Bank, the World Intellectual Property Organization (WIPO), the secretariat of the Convention on Biological Diversity. Such instruments must be harmonized with the Declaration, which is regarded as a reflection of the minimum human rights standards necessary for the promotion and protection of indigenous peoples, nations and communities. Such instruments should be consistent with or exceed those minimum standards.

33. Along with the United Nations system, the Secretariat of the Convention takes a human rights based approach to service delivery for indigenous and local communities, including in facilitating the participation of indigenous and local community representatives in the work of the Convention, including in meetings held under the Convention. Mechanisms for the full and effective participation of indigenous and local communities in meetings held under the Convention, and in particular the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, have been established within the framework of the Convention since its inception. Such mechanisms include financial support to enable indigenous and local communities to attend the meetings (particularly through the Voluntary Fund for indigenous and local community representatives), logistical support, assuring participation in formal and informal groups (such as contact groups and Friends of the Chair groups), and capacity-building efforts. The work of the Secretariat to engage ILCs in these respects is seen as a good practice model for the rest of the United Nations system.

*Twelfth session of the UNPFII 2013<sup>12</sup>*

*General recommendations*

**Draft decision IV. Change of name of the Permanent Forum on Indigenous Issues**  
The Economic and Social Council decides to change the name of the Permanent Forum on Indigenous Issues to the Permanent Forum on the Rights of Indigenous Peoples.

34. At its twelfth session, the UNPFII recommended to the Economic and Social Council (ECOSOC) a draft decision to change the name of the Permanent Forum on Indigenous Issues to the Permanent

<sup>11</sup> Report of the eleventh session of the United Nations Permanent Forum on Indigenous Issues E/2012/43 - E/C.19/2012/13

<sup>12</sup> Report of the twelfth session of the United Nations Permanent Forum on Indigenous Issues E/2013/43- E/C.19/2013/25.



Forum on the Rights of Indigenous Peoples. The draft decision is a repeat of recommendation 17,<sup>13</sup> contained in the report of the eleventh session of the UNPFII<sup>14</sup> and has relevance to discussion by the Working Group on Article 8(j) on the use of the term “indigenous peoples and local communities”.

35. At its Substantive Session in Geneva on 25 July 2013, the ECOSOC deferred consideration of the report of the twelfth session of the UNPFII until October 2013, therefore this draft decision and the following recommendations have not yet been considered by the ECOSOC and are provided on a preliminary basis only.

20. The Permanent Forum recommends that States, in collaboration with indigenous peoples and United Nations agencies, including UNICEF and UNESCO, prepare a comprehensive report on the number of indigenous languages spoken in each State. It is important to identify the current numbers and ages of fluent speakers of each indigenous language, in addition to measures, including constitutional, legislative, regulatory and policy measures, as well as financial support, whether ongoing or project-based, by States, United Nations agencies and indigenous peoples, to ensure that indigenous languages continue to be used, survive and thrive and do not become extinct.

36. In paragraph 14 of decision X/43, the Conference of the Parties adopted two additional indicators for traditional knowledge: status and trends in land-use change and land tenure in the traditional territories of indigenous and local communities; status and trends in the practice of traditional occupations, to complement the previously adopted indicator on status and trends of linguistic diversity and numbers of speakers of indigenous languages;

37. Advancing the work regarding the operationalizing of the indicator on indigenous languages would go a long way to fulfilling the request in recommendation 20, concerning a possible report on indigenous languages.

38. The Secretariat of the Convention on Biological Diversity has engaged the United Nations Educational, Scientific and Cultural Organization (UNESCO) as a possible agency focal point for the collection of data regarding indigenous languages. UNESCO has advanced a framework to collect reliable, comparable statistics based on national censuses, however to date neither the Secretariat nor UNESCO has secured additional funds to operationalize this work.<sup>15</sup>

33. The Permanent Forum invites the agencies of the United Nations system, including UNDP, the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), in cooperation with the secretariats of the Convention on Biological Diversity, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, and the United Nations Framework Convention on Climate Change, as well as other relevant stakeholders, to convene a workshop on African pastoralism, indigenous peoples' rights and climate adaptation.

39. The Secretariat of the Convention could work with lead agencies including FAO, IFAD and UNFCCC to realize such a workshop, pending the availability of resources. Thanks to the generosity of

<sup>13</sup> Recommendation 17. Bearing in mind that the Permanent Forum on Indigenous Issues was named at a time when the United Nations Declaration on the Rights of Indigenous Peoples had not yet been adopted, and considering that the title of the Special Rapporteur on the rights of indigenous peoples was changed, two years ago, from its previous title of “Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people”, we strongly urge the Economic and Social Council to recommend that the name of the Forum be changed to “Permanent Forum on the Rights of Indigenous Peoples”.

<sup>14</sup> E/2012/43 - E/C.19/2012/13 Report on the eleventh session of the UNPFII.

<sup>15</sup> It is the understanding of the Secretariat that the proposals, objectives, recommendations and areas of possible future action to be carried out by the United Nations, as set out below, will be implemented to the extent that resources from the regular budget and extra-budgetary resources are available. UNPFII Report at its twelfth session E/2012/43 – E/C.19/2012/13, Section B, paragraph 3.

the Government of Japan, the Secretariat is already planning to facilitate a capacity-building workshop for indigenous and local communities in preparation for the twelfth meeting of the Conference of the Parties (October, 2014) for the African region. Therefore, the Secretariat will explore, with the other agencies, possible synergies in delivering workshops for the African region during 2014.

*Specific recommendations*

25. The Permanent Forum recommends that UNESCO, the United Nations Development Programme (UNDP), the Convention on Biological Diversity and the World Intellectual Property Organization (WIPO) work closely with indigenous peoples to develop an instrument to protect traditional knowledge and culture-based economic opportunities and activities as a potential way of strengthening the identities of indigenous peoples in order to contribute to gross domestic product growth, environmental protection and mutual appreciation of cultures.

40. The Convention on Biological Diversity has considerably advanced the implementation of the programme of work on Article 8(j) and Related Provisions, whose objective is to promote within the framework of the Convention, a just implementation of Article 8(j) and related provisions,<sup>16</sup> at local, national, regional and international levels and to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation.

41. Recent advances include: the revised programme of work on Article 8(j) and, in particular, a major component of work on customary sustainable use (Article 10(c)); advances in tasks 7, 10, 12 and 15;<sup>17</sup> which may assist in the further implementation of the Convention and the Nagoya Protocol and related capacity-building efforts, including on Nagoya Protocol articles concerning associated traditional knowledge; adoption of the Tkarihwaí:ri Code of Ethical Conduct in Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity and the Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or Which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.

<sup>16</sup> Concerning knowledge innovations and practices of indigenous and local communities, as well as customary sustainable use of biological diversity.

<sup>17</sup> **Task 7.** To develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure: (i) that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices; (ii) that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities; (iii) advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices and the associated genetic resources are used. Element 5. Exchange and dissemination of information

**Task 12.** To develop guidelines that will assist Parties and Governments in the development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and its related provisions (which could include sui generis systems), and definitions of relevant key terms and concepts in Article 8(j) and related provisions at international, regional and national levels, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention.

**Task 10.** To develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.

**Task 15.** To develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity in order to facilitate the recovery of traditional knowledge of biological diversity.

42. Concerning the issue of “culture-based economic opportunities and activities”, recent work on Article 10(c) (customary sustainable use) is most relevant. A plan of action for customary sustainable use<sup>18</sup> will be considered at the eighth meeting of the Working Group on Article 8(j) and the twelfth meeting of the Conference of the Parties.

### III POSSIBLE DRAFT RECOMMENDATIONS FOR THE CONSIDERATION OF THE WORKING GROUP

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions may wish to recommend that the Conference of the Parties, at its twelfth meeting, adopt a decision along the following lines:

#### *The Conference of the Parties*

*Notes* the recommendations arising from the eleventh and twelfth sessions of the UNPFII and *requests* the Secretariat to continue to inform the UNPFII on developments of mutual interest.

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<sup>18</sup> In its decision XI/14 F, the Conference of the Parties agreed on the development of a plan of action on customary sustainable use, as a new major component of the revised programme of work on Article 8(j) and related provisions. In paragraph 10 of the same decision, the COP also agreed on three priority tasks, those being: (a) **To incorporate customary sustainable use practices or policy**, as appropriate, with the full and effective participation of indigenous and local communities, **into national biodiversity strategies and action plans**, as a strategic way to maintain biocultural values and achieve human well-being, and to report on this in national reports; (b) **To promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c)** and enhance customary sustainable use; and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c); (c) To identify **best practices** (e.g. case studies, mechanisms, legislation and other appropriate initiatives) to: (i) Promote, in accordance with national legislation and applicable international obligations, the full and effective participation of indigenous and local communities, and also **their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas**, including marine protected areas, that may affect indigenous and local communities; (ii) **Encourage the application of traditional knowledge and customary sustainable use in protected areas**, including marine protected areas, as appropriate; (iii) **Promote the use of community protocols** in assisting indigenous and local communities to affirm and promote customary sustainable use in protected areas, including marine protected areas, in accordance with traditional cultural practices;