



Convention on Biological Diversity

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WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE CONVENTION
ON BIOLOGICAL DIVERSITY

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Item 6 of the provisional agenda*

**ADDITIONAL INFORMATION FOR THE IN-DEPTH DIALOGUE ON THEMATIC AREAS
AND OTHER CROSS-CUTTING ISSUES: “CHALLENGES AND OPPORTUNITIES FOR
INTERNATIONAL AND REGIONAL COOPERATION IN THE PROTECTION OF
SHARED TRADITIONAL KNOWLEDGE ACROSS BORDERS FOR THE
STRENGTHENING OF TRADITIONAL KNOWLEDGE AND THE
FULFILMENT OF THREE OBJECTIVES OF THE CONVENTION,
IN HARMONY WITH NATURE/MOTHER EARTH”**

Note by the Executive Secretary

I. OVERVIEW OF RELEVANT INTERNATIONAL INSTRUMENTS

Convention on Biological Diversity

1. The Convention on Biological Diversity recognizes the importance of international and regional cooperation in the achievements of the objectives of the Convention in its preamble as follows:

“Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,”

2. In its preamble, the Convention also recognizes the contribution of traditional knowledge to the conservation and sustainable use of biodiversity as follows:

“Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,”

3. Additionally, and of relevance to the discussions, Article 8(j) recognizes “traditional lifestyles”. Related articles 10(c), 17.2 and 18 also refer to traditional knowledge. Of specific relevance, paragraph 4

* UNEP/CBD/WG8J/9/1.

of Article 18, on technical and scientific cooperation, refers specifically to “cooperation for the development and use of technologies, including indigenous and traditional technologies¹ and calls for the following:

“The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.”

4. In the preamble to decision VII/16 H on Article 8(j) and related provisions, the Conference of the Parties recognized the transboundary distribution of some biological and genetic resources and associated traditional knowledge.

5. In paragraph 6 (b) of the same decision, the Conference of the Parties identified extra-territorial protections as potential elements to be considered in the development of *sui generis* systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities.

6. In paragraph 3 of decision VIII/5 E on Article 8(j) and related provisions, the Conference of the Parties invited Parties and Governments with transboundary distribution of some biological and genetic resources and associated traditional knowledge to consider the establishment of regional *sui generis* frameworks for the protection of traditional knowledge, innovations and practices, as appropriate, with the full and effective participation of indigenous and local communities.

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization

7. 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 also addresses transboundary traditional knowledge.

8. Article 11, on transboundary cooperation provides that:

“1. In instances where the **same genetic resources are found in situ within** the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.”

9. Article 10, on global multilateral benefit-sharing mechanism, provides that:

“Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in **transboundary situations** or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.”

10. Article 12, on traditional knowledge associated with genetic resources, provides that:

¹ Article 8(j) refers to “knowledge, innovations and practices” to that extend “traditional technologies” may be considered within this context as “innovations”.

“1. Parties shall in accordance with domestic law take into consideration indigenous and local communities’ customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources... Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge; [...]

4. Parties in the implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic materials and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.”

11. The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol continues to explore community protocols (see, in particular, decision NP-1/5).

Convention No. 169: Convention concerning Indigenous and Tribal Peoples in Independent Countries

12. Convention No. 169 of the International Labour Organization, in its Article 32, addresses **contacts and cooperation across borders** in the following terms: “Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.”

United Nations Declaration on the Rights of Indigenous Peoples

13. United Nations Declaration on the Rights of Indigenous Peoples, in its Article 32, addresses this issue in the following terms:

“1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.”

II. OVERVIEW OF RELEVANT WORK OF THE REGIONAL ORGANIZATIONS

14. Some regional intergovernmental organizations have developed some regional legislation or initiatives relevant for the protection of shared traditional knowledge across borders.

Andean Community

15. The Andean Community (CAN), a regional intergovernmental organization for the Andean region, comprises Bolivia, Colombia, Ecuador and Peru.² CAN adopted regional legislation related to traditional knowledge, particularly decisions 391 (1996) and 486 (2000). Decision 391 establishes, in its Article 7, on the recognition of knowledge, innovations and traditional practices, that member countries will develop legislation complementary to the decision which “recognizes and values the rights and the power to decide of indigenous, Afro-descendent and local communities over their knowledge, innovations and practices associated to genetic resources and their derivatives.” The decision also mentions the importance of subregional cooperation (Article 10). In order to ensure national and subregional legislation in fulfilment of the decision, CAN created the Andean Committee on Genetic Resources, whose members

² See <http://www.comunidadandina.org/Seccion.aspx?id=189&tipo=QU&title=somos-comunidad-andina>.

are the directors of the competent national authorities on matters of access to genetic resources or their representatives (Article 51).

16. Decision 486 on common provisions on industrial property, in its general provisions on biological and genetic heritage and traditional knowledge, obliges member countries to ensure that the protection conferred on the various forms of industrial property shall be granted in such a way as to safeguard and respect their biological heritage and also the traditional knowledge of their indigenous, Afro-descendent or local communities (Title I.3).

Amazon Cooperation Treaty Organization

17. The Amazon Cooperation Treaty Organization (ACTO) is a regional intergovernmental organization for the Amazonian region of the following countries: Bolivia; Brazil; Colombia; Ecuador; Guyana; Peru; Suriname; and Venezuela. Among the strategic objectives of ACTO is to promote the coordination of plans and programmes of member countries for the development of Amazonian populations, paying particular attention to vulnerable populations, indigenous peoples, and other tribal communities, including the protection of the traditional knowledge of indigenous peoples and other tribal communities.³

Central American Integration System

18. The Central American Integration System (SICA) is a regional intergovernmental organization comprising the following countries: Belize; Costa Rica; El Salvador; Honduras; Nicaragua; Panama; and Dominican Republic.⁴ Its Comisión Centroamericana de Ambiente y Desarrollo (CCAD) has discussed a regional regulation on access to genetic resources, bio-chemicals and associated traditional knowledge. The **draft Central American agreement on access to genetic resources and bio-chemicals and related traditional knowledge**⁵ has as an objective the regulation of access to genetic resource, bio-chemicals and knowledge, innovations and existing practices in any of the member States (Article 1). In addition, it establishes the creation of a Central American group on access that would be composed of representatives of the national authorities of each member State. This group would, among other things, (a) issue recommendations at the regional level to fulfil the agreement and (b) promote joint actions for capacity-building (Article 39).

Caribbean Community

19. The Caribbean Community (CARICOM) is an organization comprising Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The organization's associate members are Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands and the Turks and Caicos Islands.⁶ The ABS Initiative is collaborating with CARICOM to support its member States in developing policies and legal frameworks to implement the Nagoya Protocol; this also extends to Cuba and the Dominican Republic.⁷

Association of Southeast Asian Nations

20. The Association of Southeast Asian Nations (ASEAN)⁸ is an intergovernmental organization formed by Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia,

³ For more information, see <http://otca.info/portal/coordenacao-interna.php?p=otca&coord=3>.

⁴ For more information, see <http://www.sica.int/miembros/miembros.aspx>.

⁵ For more information, see <https://www.cbd.int/abs/measures/measure.shtml?id=8165>.

⁶ See http://www.caricom.org/jsp/community/member_states.jsp?menu=community.

⁷ See <http://www.abs-initiative.info/countries-and-regions/caribbean/>.

⁸ For more information, see <http://www.asean.org/>.

Myanmar, the Philippines, Singapore, Thailand and Viet Nam.⁹ The organization formulated the draft ASEAN Framework Agreement on Access to Biological and Genetic Resources¹⁰ in February 2000. This draft framework establishes in its preamble that its Member States acknowledge “the need to ensure the uniformity and consistency of access regulations in the ASEAN region by setting minimum requirements for national implementation and maximize opportunities for the conservation and sustainable use of biological and genetic resources.” One of its objectives is “to accord recognition and protection to traditional knowledge of indigenous peoples and local communities, and to facilitate fair and equitable sharing of benefits with the said communities where traditional knowledge is utilized” (Article 2 (b)).

African Union

21. The African Union is an intergovernmental organization with 54 member countries: Algeria; Angola; Benin; Botswana; Burkina Faso; Burundi; Cabo Verde; Cameroon; Central African Republic; Chad; Comoros; Congo; Côte d’Ivoire; Democratic Republic of the Congo; Djibouti; Egypt; Equatorial Guinea; Eritrea; Ethiopia; Gabon; Gambia; Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Liberia; Libya; Madagascar; Malawi; Mali; Mauritania; Mauritius; Mozambique; Namibia; Niger; Nigeria; Rwanda; Sahrawi Arab Democratic Republic; Sao Tome and Principe; Senegal; Seychelles; Sierra Leone; Somalia; South Africa; South Sudan; Sudan; Swaziland; United Republic of Tanzania; Togo; Tunisia; Uganda; Zambia; and Zimbabwe.¹¹ The African Convention on the Conservation of Nature and Natural Resources highlights the importance of cooperation between signatories and other States on issues related to natural resources or a transboundary ecosystem (Article XXII).¹²

22. The African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources¹³ provided guidelines that would enable African Countries to meet numerous challenges and commitments regarding the protection of indigenous knowledge or community knowledge.

African Regional Intellectual Property Organization

23. The African Regional Intellectual Property Organization (ARIPO) is an intergovernmental organization for cooperation among African States in patent and other intellectual property matters. There are currently 19 States: Botswana; Gambia; Ghana; Kenya; Lesotho; Malawi; Mozambique; Namibia; Sierra Leone; Liberia; Rwanda; São Tomé and Príncipe; Somalia; Sudan; Swaziland; United Republic of Tanzania; Uganda; Zambia; and Zimbabwe.¹⁴ ARIPO adopted the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore¹⁵ in 2010, and it came into force in 2012.

24. In Section 14, on administration and enforcement of protection of traditional knowledge, the Swakopmund Protocol establishes:

“14.3. Where two or more communities in different countries share the same traditional knowledge, the ARIPO Office shall be responsible for raising awareness, education, guidance, monitoring, dispute resolution and other activities relating to the protection of traditional knowledge of those communities.”¹⁶

⁹ See <http://www.asean.org/asean/asean-member-states>.

¹⁰ See <http://www.tebtebba.org/index.php/all-resources/category/100-supporting-documents?download=583:the-asean-framework-agreement-on-access-to-biological-and-genetic-resources>.

¹¹ See http://www.au.int/en/member_states/countryprofiles.

¹² See http://www.au.int/en/sites/default/files/AFRICAN_CONVENTION_CONSERVATION_NATURE_AND_NATURAL_RESOURCES.pdf.

¹³ See <http://www.wipo.int/edocs/lexdocs/laws/en/oau/oau001en.pdf>.

¹⁴ See <http://www.aripo.org/about-aripo/membership-member-states>.

¹⁵ See <http://www.aripo.org/resources/laws-protocols>.

¹⁶ See <http://www.aripo.org/resources/laws-protocols>.

25. In Section 24, on regional protection, it establishes:

“24.1. Eligible foreign holders of traditional knowledge and expressions of folklore shall enjoy benefits of protection to the same level as holders of traditional knowledge and expressions of folklore who are nationals of the country of protection, taking into account as far as possible the customary laws and protocols applicable to the traditional knowledge or expressions of folklore concerned.

24.2. Measures should be established by the national competent authority and ARIPO Office to facilitate as far as possible the acquisition, management and enforcement of such protection for the benefit of the holders of traditional knowledge and expressions of folklore from foreign countries.

24.3. ARIPO may be entrusted with the task of settling cases of concurrent claims from communities of different countries with regard to traditional knowledge or expressions of folklore; to this end, ARIPO shall make use of customary law, local information sources, alternative dispute resolution mechanisms, and any other practical mechanism of this kind, which might prove necessary.”

European Union

26. The European Parliament and Council adopted EU Regulation No. 511/2014 on compliance measures for the Nagoya Protocol which includes traditional knowledge associated with genetic resources and underlines the importance of cooperation between competent authorities (article 12).

Pacific Regional Environment Programme

27. The Secretariat of the Pacific Regional Environment Programme (SPREP) is an intergovernmental agency that provides assistance and technical advisory services to Pacific Island countries, territories and administrations in the protection and management of their environment to ensure they achieve sustainable development for present and future generations. SPREP membership comprises 21 Pacific island countries and territories and 5 developed countries (Australia, New Zealand, France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America).¹⁷

28. The ninth Pacific Islands Conference on Nature Conservation and Protected Areas, held in December 2013, produced and adopted a new Framework for Nature Conservation and Protected Areas in the Pacific Islands Region 2014-2020.¹⁸ The new Framework reinforces the role of governments, local communities and traditional knowledge, development partners and all key stakeholders play in improving the status of conservation and ecosystem management, which are also critical for livelihood and heritage.¹⁹

The Pacific Islands Forum

29. The Pacific Islands Forum is a political grouping of 16 independent States and self-governing territories. Members include Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.²⁰ In 2002, it adopted a Model Law for the Protection of Traditional Knowledge and Expressions of Culture²¹ that provides a basis for Pacific island countries wishing to enact legislation for

¹⁷ For more information, see <http://www.sprep.org/about-us>.

¹⁸ See https://www.sprep.org/attachments/Publications/BEM/Framework_Nature_Cons_Prot_Areas_PIR_2014_2020.pdf.

¹⁹ See <https://www.sprep.org/pirt/framework>.

²⁰ For more information, see <http://www.forumsec.org/pages.cfm/about-us/>.

²¹ See <http://www.forumsec.org/resources/uploads/attachments/documents/PacificModelLaw.ProtectionofTKandExprsnsofCulture20021.pdf>.

the protection of traditional knowledge and expression of culture. Each individual country can adapt the provision according to their national needs.

III. OTHER RELEVANT INITIATIVES

Draft Saami convention

30. In the preamble of the draft Sami convention, the Governments of Finland, Norway and Sweden affirm “that the Saami is the indigenous peoples of the three countries, that the Saami is one people residing across national borders, and that the three States have a national as well as an international responsibility to provide adequate conditions for the Saami culture and society.”

31. Article 31, on Traditional Knowledge and Cultural Expressions, establishes the following:

“The States shall respect the right of the Saami people to manage its traditional knowledge and its traditional cultural expressions while striving to ensure that the Saami are able to preserve, develop and pass these on to future generations. When Saami culture is applied commercially by persons other than Saami persons, the State/s shall make efforts to ensure that the Saami people gains influence over such activities and a reasonable share of the financial revenues. The Saami culture shall be protected against the use of cultural expressions that in a misleading manner gives the impression of having a Saami origin. The States/s shall make efforts to ensure that regard is paid to Saami traditional knowledge in decisions concerning Saami matters.”

Draft indigenous regional protocol on access to genetic resources and traditional knowledge

32. Some indigenous organizations from Central America under the leadership of the Consejo Indígena Mesoamericano and the Fundación para la Promoción del Conocimiento Indígena are developing an indigenous regional protocol on access to genetic resources and traditional knowledge. The objective of this protocol is to help indigenous peoples from Central America to develop their own community protocols based on this regional standard.
