



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

Ninth meeting

Item 7 of the provisional agenda*

Montreal, Canada, 4-7 November 2015

COMPILATION OF VIEWS ON THE IN-DEPTH DIALOGUE ON THEMATIC AREAS AND OTHER CROSS-CUTTING ISSUES

Note by the Executive Secretary

INTRODUCTION

1. As requested by the Conference of the Parties in paragraph 16 of decision XII/12 A, the Executive Secretary is circulating herewith, for the consideration of participants in the ninth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, a compilation of views and comments submitted to the Secretariat regarding 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*”.

2. Submissions were received from: Australia, Bolivia, Brazil, Canada, Ecuador, Finland, Honduras, New Zealand, Peru, Sweden, the Inuit Circumpolar council, Rede Pacari de Plantas Mediciniais, Redcam and the Sami Parliament. Submissions have been reproduced in the form and languages in which they were provided to the Secretariat.

* UNEP/CBD/WG8J/9/1.

SUBMISSIONS

A. *Submission from Parties*

Australia

SUBMISSION

Australia is supportive of this in-depth dialogue and is supportive of initiatives for cooperation and sharing of traditional knowledge across borders. Although Australia has internal borders, as an island nation with unique Indigenous peoples and culture, the possibility of cross-border programs for the flow and sharing of traditional knowledge can be limited.

World Indigenous Network

Australia launched the World Indigenous Network (WIN) in 2012 and hosted the inaugural International Conference in May 2013 in Darwin. Approximately 1200 delegates attended the conference. The WIN was created in order to facilitate the exchange of knowledge and practices in managing ecosystems, protecting the environment and supporting sustainable livelihoods. As a result, a number of exchanges occurred prior to and following the 2013 conference, between Australia and other nations, including New Zealand, Canada, Mexico, Africa and the Solomon Islands. The WIN framework provided opportunities for further exchanges between interested Parties; however, it is now managed by the United Nations Ecuador Initiative. The WIN- Equator Initiative will continue to maximise opportunities for Indigenous peoples and local communities around the world to address the challenges of land degradation, biodiversity conservation and livelihood improvements in a socially equitable manner.

Domestic Networks

Indigenous land and sea management conferences and workshops have already been replicated on a smaller scale within Australia. The Queensland Government and Australian Government co-host an annual Indigenous Ranger Conference. Indigenous rangers throughout Queensland come together to share ideas and knowledge based on their experiences. Ongoing exchanges between ranger groups often occur as a result of the annual Conferences.

The Australian Environment Minister has announced the establishment of an Indigenous National Land and Sea Managers Network and the ongoing development of this network.

Bolivia

SUBMISSION

En relación con el tercer ciclo de diálogos, en el contexto de la novena reunión del Grupo de Trabajo del 8 j), para el Estado Plurinacional de Bolivia, el establecer medidas de protección de los conocimientos tradicionales y de aquellos conocimientos compartidos mas allá de las fronteras en el marco de la armonía y equilibrio con la Naturaleza/Madre Tierra, es que estos deban estar desarrollados a fin de que dichos conocimientos no estén sujetos a una posible mercantilización.

En este sentido, los desafíos y oportunidades para la cooperación internacional y regional relativa a la protección de los conocimientos tradicionales compartidos más allá de las fronteras para el fortalecimiento de los conocimientos tradicionales, debe estar asociado a la transferencia de financiamiento, tecnología y desarrollo de capacidades a los Estados y pueblos a fin de que contribuyan a la revalorización de dichos conocimientos, y que coadyuven a la solución de problemas básicos prioritarios como la salud y alimentación, entre otros.

Así también, estos procesos de cooperación internacional y regional relativa a la protección de los conocimientos tradicionales compartidos más allá de las fronteras, debe contar con principios de justicia

social, creación de vínculos edificantes y el respeto de los derechos de la Naturaleza/Madre Tierra, enmarcados en el cumplimiento de los tres objetivos del Convenio.

La cooperación internacional y regional para la protección y revalorización de los conocimientos tradicionales, debe tomar en cuenta el dialogo e integración entre Estados sujetos a acuerdos específicos que tomen en cuenta los derechos de la Madre Tierra/Naturaleza.

La cooperación para la protección de los conocimientos tradicionales compartidos más allá de las fronteras y su fortalecimiento, debe estar enmarcado en acuerdos claros y transparentes, respetando la soberanía de los Estados sobre sus conocimientos, permitiendo generar y fortalecer las capacidades técnicas de las entidades estratégicas de los Estados, la cooperación para los mismos que sean de beneficio para los pueblos, en el marco de criterios de carácter preventivo y precautorio, sobre dichos conocimientos tradicionales.

Brazil

SUBMISSION

As decided by Parties the topic of the third in-depth dialogue shall be “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”.

Considering that regional and transboundary cooperation is an important element to the dialogue, Brazil considers that existing mechanisms for regional cooperation should be involved and that regional specificities should be considered in any international process. It is also important to assure the participation of different stakeholders, including from indigenous peoples and local communities. In the Latin-American context, existing regional organizations should play a central role in this process, such as Mercosur; the Community of Latin-American and Caribbean States (CELAC); and the Amazon Cooperation Treaty Organization (ACTO).

Canada

SUBMISSION

Through decision XII/12, A, paragraph 16, the Conference of Parties also decided that the topic for the in-depth dialogue on thematic areas and other cross-cutting issues, at the ninth meeting of the Working Group on Article 8(j) and related provisions, shall be: “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.” This issue is of considerable significance to Aboriginal Peoples of Canada and the national Aboriginal organizations.

Ecuador

SUBMISSION

Para el país resulta relevante iniciar un proceso formal de levantamiento de la información sobre sus conocimientos tradicionales y recursos genéticos en el campo, con la finalidad de poseer de herramientas que permitan regular el acceso correcto de estos recursos. Desde el punto de vista de la Propiedad intelectual específicamente Patentes, esta actividad nos ayudará a verificar el uso correcto de estos recursos genéticos y su futuro seguimiento. En ese sentido, en el IEPI se constituiría el punto de control sobre la movilización de los recursos genéticos. Otro desafío para el Ecuador será contar con una Ley de Conocimientos Tradicionales que logre regular el acceso a estos conocimientos y que se opere a través de

un Reglamento que contenga temas específicos abordados de forma general en la normativa desarrollada para el efecto.

Finland

SUBMISSION

During the preparatory process of the ratification of the Nagoya Protocol in Finland it was realized that even though the Sámi traditional knowledge and the associated genetic resources are issues that should be resolved and decided by the Sámi as a people regardless the state boundaries, there are very little possibilities to do so. Instead, each country processes and implements international conventions and agreements (i.e. the ratification of the Nagoya Protocol), in their own way and according to their own timetables.

The purpose of the Nordic Sámi convention is “to confirm and strengthen such rights for the Sámi people as to allow the Sámi people to safeguard and develop their language, culture, livelihoods and way of life with the least possible interference by national borders” (article 1). In practice the Nordic Sámi convention could resolve above mentioned kind of issues that are concerning the Sámi people but the resolving of which is difficult due to the state boundaries. However, the process of achieving the agreement has been very slow and there is no common view between the parties on the contents of the agreement.

Honduras

SUBMISSION

- a) *Sobre los desafíos y oportunidades para la cooperación internacional y regional relativa a la protección de los conocimientos tradicionales compartidos, El Director de Pueblos Indígenas y Afro hondureños, Maylo Wood, expone que:*

“Se debe Fomentar la investigación y sistematización de todo este conocimiento intelectual, que se ve reflejado en una ley de protección Intelectual que fortalezca los pueblos; que los conocimientos tradicionales

- b) *Sobre los desafíos y oportunidades para la cooperación internacional y regional relativa a la protección de los conocimientos tradicionales compartidos, el Departamento de Áreas Protegidas de ICF, 2015, expone lo siguiente*

“Se debe de valorar la propiedad intelectual e inscribir las mismas, debido a la importancia este proceso debe ser realizado a la brevedad posible iniciando con una socialización en las comunidades y pueblos indígenas para lo cual debe de involucrarse los entes del estado que estén directa o indirectamente involucrados.”

- c) *Sobre los desafíos y oportunidades para la cooperación internacional y regional relativa a la protección de los conocimientos tradicionales compartidos, la Dirección de Biodiversidad de MIAMBIENTE, 2015, expone:*

Muchos de los conocimientos en nuestra región centroamericana y/o Mesoamericana son compartidos entre los países, una herramienta regional orientaría y definiría las prácticas y conocimientos propios de los países y de las regiones. Aunque actualmente existe un “*Acuerdo Centroamericano De Acceso A Los Recursos Genéticos Y Bioquímicos Y Al Conocimiento Tradicional Asociado*”, no está legalmente establecido llegando hasta la firma de algunos países miembros del SICA.

New Zealand**SUBMISSION**

1. New Zealand notes that sharing of traditional knowledge does not only happen across land borders, but also across ‘ocean borders’. The Pacific region is an excellent example where traditional knowledge is shared among different island communities and cultures. Relevant information about the Pacific (and other examples of shared traditional knowledge across ‘ocean borders’) should be included in the in-depth dialogue and the accompanying documentation.
2. Relevant ongoing work in the Pacific region may be relevant to the discussion and documentation. In terms of ‘opportunities for international and regional cooperation’, there is a Pacific Traditional Knowledge Action Plan that has emerged from the 2014 UN Conference on Small Island Developing States. This is a joint initiative between the World Intellectual Property Organisation and the Pacific Islands Forum Secretariat (see <http://www.sids2014.org/index.php?page=view&type=1006&nr=2572&menu=1507>).
3. Another useful Pacific example in this regard is the use of shared traditional knowledge to better understand current and emerging issues related to conservation and sustainable use of biodiversity. For example, the Secretariat of the Pacific Community (SPC) has observed links between the existence of traditional knowledge and the state of coastal fisheries (see for example the press release from this workshop - <http://www.spc.int/en/media-releases/2014-future-of-coastal-fisheries-lies-between-science-pacific-tradition-and-a-song.html>).

Peru**SUBMISSION**

En el caso del Perú, se están dando iniciativas orientadas a fortalecer la institucionalidad que dé soporte a la protección de los conocimientos tradicionales, tanto a nivel de las instancias públicas como de las organizaciones de pueblos indígenas.

En tal sentido, el Ministerio de Cultura ha creado el Grupo de Trabajo de naturaleza permanente encargado de coordinar, proponer y dar seguimiento a las políticas públicas que involucren a los pueblos indígenas o requieren un enfoque de interculturalidad, de manera participativa, entre representantes del Viceministerio de Interculturalidad y los pueblos indígenas (GTPI), mediante Resolución Ministerial N° 403-2014-MC.

El GTPI está conformado, además del Viceministerio de Interculturalidad, por las siete organizaciones nacionales de pueblos indígenas, los cuáles han establecido cinco ejes de trabajo sobre los cuáles realizar la priorización de políticas. El primer de esos ejes está relacionado a la identidad y lenguas de los pueblos indígenas, lo que incluye el manejo y protección de sus saberes tradicionales.

En ese sentido, corresponde al GTPI realizar el seguimiento o evaluación de la propuesta de política sobre conocimientos tradicionales, o realizar una propuesta de reforma de la política.

Sweden**SUBMISSION**

Sweden and Norway are situated on a peninsula in Northern Europe with a long border have much in common in their culture and history, reflected in the indigenous peoples, the Sami, as well as the local communities in the areas close to the national border. Sápmi, the land of the Sami people, covers a large

part of the territories within Sápmi - Sweden, Norway and Finland as well as the Kola Peninsula in Russia. Consequently, the Sami culture in the Nordic countries has much in common and more collaboration, when it comes to the Sami-related activities within the implementation of the CBD, would be valuable.

In most of the border region, reindeer husbandry among the Sami people is the base for the traditional governance and management of biological resources. Reindeer is an important factor for the biodiversity in the mountain region and the forest covered land adjacent to the mountains is critical for the winter grazing of lichens. The reindeer will walk in its landscape independent on national borders.

The borders between Norway and Sweden were set in 1751. At the time it was observed that the setting of borders between the countries actualised a need to define the rights of the Sami and their reindeer to cross the border.

Special notice was given to the need of grazing rights during wintertime in Sweden and in Norway during summertime. Hence the so called Lappkodicill was established as an annex to the treaty between Norway and Sweden. The codicil mainly codified the Sami customs'. Apart from regulating grazing rights it guarantees the Sami free transit across the border and that they are treated as citizens in the country they visit.

The Lappkodicill has later been supplemented in terms of conventions and legislation, the latest dates from 1972. The agreement from 1972 was in force until 2005 and for the time being the Lappkodicill is still valid.

Sweden, Norway and Finland are also negotiating a Nordic Sami Convention. The aim of the draft Convention is to confirm and strengthen the rights of the Sami people so that it can keep and develop its own language, its culture, its livelihood and its social life with the least possible amount of hindrance from national borders. The Convention covers the whole range of rights.

One of the advantages with the draft Convention is that it, unlike UN-Conventions, is adapted to the particular situation of the Sami people. An important and special aspect of the Convention is that it seeks to deal with the rights of a people, the Sami people, across State borders.

The landscape perspective is consistent with the traditional Sami land use in the area, where large areas of land and waters contribute with plant and animal resources traditionally used within the Sami culture; gathering, fishing and hunting has always been an essential part of the Sami reindeer herding culture. As an indigenous people, the Sami values the collaboration with other, non-neighbouring indigenous people and their experiences.

The southern part of the mountainous ridge in the boreal or alpine zone between Norway and Sweden also holds local communities, which have developed an economy based on the grazing of outlying lands on both sides of the border. Much of the traditional economy in the areas along the border builds on dairy products, game and fishing.

Naptekk has from 2010 collaborated with the Norwegian research institute Bioforsk Midt-Norge in several EU-projects regarding the safeguarding and continuation of transhumance pastoralism among non-Sami people with mountainous summer farms in the Southern part of the mountain range. The grazing of outlying lands and related traditional activities in forests and mountain areas on both sides of the border has created a biological cultural heritage consisting of semi-natural grasslands, coppiced and pollarded trees, and a related biodiversity. Continuation of this land use is important from a biodiversity point of view as well as an important part of the local cultural character of these areas and contributes to attract tourists. However, the continuation depends on the possibility for the summer farmers to make their sustenance from their pastoralism and that the use is authentic and not converted into a touristic image of the traditional practice. To some extent the continuation of this customary practice is dependent on an understanding from the surrounding society and the governmental agencies when preparing the regulations. It is all a matter of perspectives. Similarities and differences in regulations and policies in Sweden and Norway give interesting possibilities to optimize actions for safeguarding sustainable customary use of biological resources.

B. Submission from relevant organizations

<i>Inuit Circumpolar council</i>

SUBMISSION

1) Challenges

Jurisdiction

The Inuit span four circumpolar borders. Inuit share traditional knowledge across borders and this may create challenges of jurisdiction. How jurisdiction issues will be addressed across and between regions is a key concern.

In an Inuit context, issues of jurisdiction by the Party may be subject to the jurisdiction of Inuit lands claims decision making processes when such access and benefit sharing for associated traditional knowledge is occurring on their lands. Therefore any prior informed consent to be established has to occur early on in the process and with mutually agreed terms.

Scope

Closely linked to the jurisdictional issue is the issue of scope of the traditional knowledge that is to be protected across borders. The protection of traditional knowledge associated with arctic genetic resources, and transboundary arctic resources will need to be addressed.

Lack of legislation

The protection of traditional knowledge held by Inuit does not meet the criteria under existing intellectual property rights regimes. Neither do the existing intellectual property regimes reflect the values and beliefs which Inuit hold. These gaps illuminate the need for a more adequate form of protection which will respond to the beliefs and values of Inuit.

Other laws

Legal pluralism across arctic states may create challenges for Inuit traditional knowledge protection. Another issue surrounding challenges involve the extent of the strengthening of traditional knowledge in light of the broader challenges such as existing international instruments including the EU legislation on the seal ban and other instruments that prevent Inuit from strengthening their traditional knowledge because of the seal ban disincentive with seal hunting practices and related traditional knowledge application.

2) Opportunities

Traditional Protocols/Customary laws

Before the type of protection is determined, the issues of ownership of the traditional knowledge should be established according to community established processes of ownership/customary laws and will take into account such questions as what is commonly owned by the community and what is individually owned. Prior to any protection schemes the question of whom and how such protection is to be managed is a necessary pre-requisite.

Self Government Arrangements

Opportunities for Inuit traditional knowledge to be protected through regional cooperation may be available through the existence of Inuit self government arrangements and other self determination processes such as Greenland home rule.

Rede Pacari de Plantas Medicinaiis**SUBMISSION**

Sugerimos invitar a representantes de IPBES y CITES, como organismos de cooperación internacional, a presentar informes y evidencias científica, técnica y comercial disponibles, con el fin de proteger el conocimiento tradicional desde la perspectiva de cumplimiento de los objetivos del Convenio, en armonía con la Naturaleza/Madre Tierra.

Redcam**SUBMISSION**

Sugerimos se inviten a organismos de integración regionales para que puedan informar acerca de su trabajo en esta materia y particularmente al programa SUR-SUR, acerca de cómo integrar la visión de los pueblos indígenas y comunidades locales en los planes de acción que desarrollan.

Igualmente creemos necesario que se tome en cuenta los diversos convenios sobre la materia en especial el Convenio 169 de la Organización Internacional del Trabajo, cuyo articulado específicamente señala la movilidad más allá de las fronteras, de los pueblos indígenas y tribales.

Por otra parte, teniendo en cuenta que el lema de la década de Naciones Unidas para la Diversidad Biológica 2011-2020 es “Viviendo en Armonía con la Naturaleza”, este pueda ampliarse e incluir: “y la Madre Tierra”, en especial para la segunda mitad de la década.

Asimismo aprovechar esta oportunidad para generar materiales en español y los otros idiomas de Naciones. Con vista a distribuirlos en la próxima Decimo tercera Conferencia de las Partes, que en esta oportunidad, se llevará a cabo en América Latina y una sugerencia al país hospedador, México, que su delegación considere la posibilidad de incluir imagen de la Madre Tierra en el logo de la misma.

Sami Parliament**SUBMISSION**

Challenges for international and regional cooperation in the protection of traditional knowledge sharing across borders to strengthen traditional knowledge and fulfillment of the three objectives of the CBD and in harmony with nature / Mother Earth:

National borders in Sápmi complicates especially the collaboration with the reindeer herding. The reindeers will walk in his landscapes where either regional or national borders exist. The boundaries can easily lead to conflict than cooperation in many situations. The countries' different laws and practices make it difficult to directly transfer practical examples and thus seek support from each other. The challenge in Sápmi is to take joint responsibility for the protection of dividing the Sami traditional knowledge. The landscape, including water areas, should be considered as an indivisible whole in which the natural and cultural values associated and where it is important situation to be Sami's knowledge of biodiversity. The landscape perspective is also consistent with the traditional Sami use of the area, where large areas of its land, water, and plant and animal resources has been the go-to resource and habitat of the Sami collectors, fishing and reindeer herding culture.

The opportunities internationally is that independent nation and indigenous people so we take lessons from each other and strengthen each other when the common objectives are obvious for us and part of our way of life.