



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/WG8J/7/INF/5/Rev.1
17 August 2012*

ENGLISH, FRENCH AND
SPANISH

AD HOC OPEN-ENDED INTERSESSIONAL
WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE
CONVENTION ON BIOLOGICAL
DIVERSITY

Seventh meeting

Montreal, 31 October-4 November 2011

**A REVISED COMPILATION OF VIEWS ON ARTICLE 10 WITH A FOCUS ON
ARTICLE 10(c)**

Note by the Executive Secretary

INTRODUCTION

1. As requested by the Conference of the Parties in decision X/43, and more recently in paragraph 3¹ of recommendation 7/6, of the report of the seventh meeting of the Working Group on article 8(j) and related provisions (UNEP/CBD/COP/11/7), the Executive Secretary is circulating herewith, for the consideration of participants in the eleventh meeting of the Conference of the Parties, a compilation of views and comments submitted to the Secretariat regarding a new major component of work on Article 10 with a focus on Article 10(c), as one of the inputs for deliberations to develop a strategy for the integration of this component, as a cross-cutting issue into the Convention's various programmes of work and thematic areas.

2. Submissions have been reproduced in the form and languages in which they were provided to the Secretariat.

* Reissued for COP 11 to include new submissions.

¹ Paragraph 3 “*Requests* the Executive Secretary to compile submissions from Parties, Governments, international organizations and indigenous and local communities, and to provide this compilation to the eleventh meeting of the Conference of the Parties as an official document for the agenda item of Article 10 with the focus on Article 10(c) as a major component of the programme of work of Article 8(j) and Related Provisions;”

SUBMISSIONS

A. *Submission from Parties*

ARGENTINA

COMENTARIOS SOBRE EL DOCUMENTO UNEP/CBD/COP/11/7: INFORME DE LA SEPTIMA REUNION DEL GRUPO DE TRABAJO ESPECIAL DE COMPOSICIÓN ABIERTA ENTRE PERIODOS DE SESIONES SOBRE EL ARTICULO 8 J) Y DISPOSICIONES CONEXAS DEL CONVENIO SOBRE LA DIVERSIDAD BIOLÓGICA

- Se acuerda con la propuesta de incluir un nuevo componente de trabajo sobre el Artículo 10, con un enfoque en el Artículo 10 (c) con el objeto de contribuir a la aplicación del programa de trabajo sobre el Artículo 8(j).

Se considera importante para el avance hacia el cumplimiento de los objetivos del convenio y la implementación del Plan Estratégico 2011-2020 I poder incorporar ejes transversales de trabajo para coordinar esfuerzos y enfoques en pos del cumplimiento de los objetivos.

- En particular se destaca la presencia clara de objetivos comunes en los puntos 8 (j) y 10 (c).
- Se remarca que la acción de promover y fortalecer iniciativas basadas en la comunidad que apoyen y contribuyan a la aplicación del artículo 10 c) y mejoren la utilización consuetudinaria sostenible conforman un esfuerzo dirigido conjuntamente hacia el cumplimiento del 8 (j), junto con la colaboración con las comunidades indígenas y locales en actividades conjuntas.
- Se apoya la propuesta de contar con una estrategia para integrar el artículo 10. con especial atención al párrafo c), como una cuestión intersectorial en los diferentes programas de trabajo y esferas temáticas del Convenio empezando por el Programa de Trabajo sobre Areas Protegidas.
- Se acuerda con la propuesta de elaborar un plan de acción para la utilización consuetudinaria sostenible. como un nuevo componente principal del Programa de Trabajo revisado sobre el artículo 8 j) y disposiciones conexas. con el fin de que sea desarrollado y adoptado por la Conferencia de las Partes en su 12a reunión.
- Se considera un paso importante para el cumplimiento de las metas de Aichi y el Plan Estratégico 2011-2020 contar con una visión que unifique los criterios de conservación y utilización sostenible y que por otra parte mantenga la visión ecosistémica e intercultural de la gestión de la biodiversidad.
- Se apoya la propuesta de explorar el vinculo entre la utilización consuetudinaria sostenible y la utilización sostenible, y las correspondientes oportunidades económicas para las comunidades indígenas y locales (**pagina 32 tarea 7**)

AUSTRALIA

AUSTRALIAN GOVERNMENT RESPONSE TO NOTIFICATION 2011-065 & 2010-210:
PROGRAMME OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS:

NOTE: *No consultation with state and territory governments or Indigenous groups occurred due to the tight deadline for responding to this notification. All information provided below has been drawn from Australian Government agency inputs only.*

**X/43 MULTI-YEAR PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(J)
AND RELATED PROVISIONS**

Article 10

Also in decision 10/43, the Conference of the Parties decided on a new major component of work on article 10 with a focus on article 10(c), and requested the seventh meeting of the Working group to provide advice on how this component could be implemented and to develop a strategy for the integration of this component, as a cross-cutting issue into the Convention's various programmes of work and thematic areas. To assist the Working Group in its consideration of this issue, Parties, indigenous and local community organizations, NGOs and other relevant organizations are requested to submit information regarding:

- (a) **The implementation of Article 10 of the Convention (sustainable use of biodiversity), with a focus on Article 10(c) (customary sustainable use), (decision X/43, paragraph 6);**

Working Together for Sea Country Management of the Great Barrier Reef: A Case Study of Traditional Use of Marine Resource Agreements

The Great Barrier Reef Marine Park Authority and Traditional Owner groups along the Great Barrier Reef are working together to establish cooperative arrangements for sea country management. Traditional Use of Marine Resource Agreements (TUMRAs) are being developed by Traditional Owner groups to describe formal management arrangements for a range of traditional use of marine resources activities within their sea country.

Traditional use of marine resources is the undertaking of activities as part of Aboriginal and Torres Strait Islander people's customs or traditions, for the purposes of satisfying personal, domestic or communal needs and may include: fishing, collecting (for example, shellfish), hunting, and looking after cultural and heritage sites.

Many Aboriginal and Torres Strait Islanders undertake traditional use of marine resources activities to educate younger generations about traditional and cultural rules, protocols and for activities in sea country; practice their 'living maritime culture'; and provide traditional food for families.

TUMRAs describe how Traditional Owner groups work with government to manage traditional use activities in sea country. A TUMRA may describe for example, how Traditional Owner groups wish to management or place limits on their take of turtle and dugong; their role in compliance; and in monitoring the condition of plants, and animals, and human activities in the Great Barrier Reef Marine Park. The TUMRA implementation plan may describe ways to educate the public about traditional connections to sea country, and to educate other members of a Traditional Owner groups about the conditions of their TUMRA and management arrangements for sea country.

See: www.gbrmpa.gov.au/_data/assets/pdf_file/0006/21885/reef-wide_framework_for_managing_tumra.pdf for more information.

BRAZIL

In response to Notification No. 098/2012 of the Secretariat of the Convention on Biological Diversity (CBD), the Department of Genetic Heritage (Departamento de Patrimônio Genético) recalls the efforts undertaken by the Brazilian government that conform to the text of article 10 (c). With this in mind, we lay out some relevant policies and instruments implemented to encourage the customary use of biological resources according to traditional cultural practices in a manner consistent with sustainable conservation or utilization, namely:

- 1) The National Policy on Traditional Peoples and Communities – PNPCT;
- 2) The National Socio-Biodiversity Plan;
- 3) The National System of Conservation Units;
- 4) Managed Access to Associated Traditional Knowledge – relationship between 8 (j) and 10 (c).

1) On 7 February 2007, the Brazilian government enacted Decree No. 6040 instituting the National Policy on Traditional Peoples and Communities (Política Nacional de Povos e Comunidades Tradicionais – PNCPT), the primary objective of which is to promote the sustainable development of traditional peoples and communities, with an emphasis on recognizing, strengthening, and guaranteeing their territorial, social, environmental, economic, and cultural rights with full respect and value for their identity, forms of organization, and institutions.

Specific objectives of the policy include: guaranteeing traditional peoples and communities their territorial rights and access to traditional natural resources employed for their physical, cultural, and economic reproduction; recognition, protection, and promotion of the rights of traditional peoples and communities to traditional knowledge, practices, and uses; and supporting and guaranteeing productive inclusion through sustainable technologies, in accordance, to this end, to the social organization of traditional peoples and communities, while valuing local natural resources and traditional practices, knowledge, and technologies.

Within the framework of this policy, was created the National Commission on Traditional Peoples and Communities (Comissão Nacional de Povos e Comunidades Tradicionais), a body composed of an equal number of government representatives from agencies engaged in this area and representatives of traditional communities and peoples.

2) Brazil also operates the National Socio-Biodiversity Plan, which is aimed at executing integrated measures to promote and strengthen socio-biodiversity supply chains, including through value addition and the consolidation of sustainable markets.

The following specific objectives warrant special mention:

- a) Promoting conservation and management and sustainable use of socio-biodiversity;

b) Strengthening supply chains in individual biomes through value addition to socio-biodiversity products;

c) Strengthening the social and productive organization of indigenous peoples, *quilombos*, traditional communities, and small farmers from the vantage of socio-biodiversity as the interrelationship between biological diversity and socio-cultural system diversity.

3) The National System of Conservation Units (Sistema Nacional de Unidades de Conservação – SNUC) constitutes the set of federal, state, and municipal conservation units (Unidades de Conservação – UC).

The System is composed of 12 categories of UCs, the purposes of which vary in regard to types of protection and authorized uses: those requiring greater protection due to their fragile state and specific features and those suited for sustainable use and conservation simultaneously.

Within the scope of the UCs, the Extraction Reserves (Reservas Extrativistas – RESEX) and the Sustainable Development Reserves (Reservas de Desenvolvimento Sustentável – RDS) play an important role.

a) Extraction Reserves consist of areas used by traditional extraction communities engaged in the following subsistence activities: extraction and subsistence agriculture as well as small animal raising.

Establishment of these areas is aimed at protecting the lives and cultures of the target populations by ensuring sustainable natural resource use on the unit. The inhabitants of the units are issued a grant of right of use, as the respective areas are encompassed under the public domain.

Public visitors to these areas are permitted, provided the related activities are consistent with local interests and the applicable provisions of the unit management plans. Research is allowed and encouraged with prior authorization from the Chico Mendes Institute.

b) Sustainable Development Reserves consist of natural areas housing traditional populations organized into systems of sustainable natural resource use developed over the generations and adapted to local ecological conditions.

This UC category plays an important role in the conservation and maintenance of biological diversity. As in Extraction Reserves, the respective use is governed by a grant of right of use, given that the RDSs are encompassed under the public domain.

4) Managed Access to Associated Traditional Knowledge – relationship of 8 (j) to 10 (c):

Article 10 (c), a component of the Working Group’s work program on 8 (j), recognizes customary use of biodiversity by indigenous and local communities as a central element for its conservation. In this light, Brazilian law includes instruments that require this recognition for the implementation of any initiative involving access to genetic resources used in traditional cultural practices. The connection of indigenous and local communities to those resources is rooted in their specific cultures, in which

significant information on Brazilian biodiversity has been incorporated over time, including as a response to the imperative for survival.

Protecting this knowledge, an immaterial heritage generally passed down orally, is thus a strategic aspect of the biodiversity conservation measures adopted. This perspective has been enshrined in Brazilian law through the requirement that applicants seeking authorizations to access associated traditional knowledge ensure full transparency in their interactions with local communities, employing accessible language, including native languages, where necessary, so as to ensure any prior consent given by indigenous and local communities is in fact legitimate and justified. In addition, the law requires an anthropological report elaborated by an independent professional that describes the process, while assuring full respect and recognition for the traditional social organization and political representation of the community.

Moreover, the Genetic Heritage Management Council (Conselho de Gestão do Patrimônio Genético) published a decision in September 2011 certifying the National Institute for Historical and Artistic Heritage (Instituto do Patrimônio Histórico e Artístico – IPHAN) as the competent body to evaluate and authorize access to traditional knowledge associated to genetic resources for scientific research purposes. The accreditation enabled incorporation of IPHAN's recognized quality, experience with immaterial heritage, and installed capacity, in addition to its presence throughout the national territory, to the genetic heritage management system. IPHAN, in turn, established a permanent working group to review applications for access and handle the respective procedures and its implementation.

Prior well-founded consent or approval, originally applied in the international sphere between countries, is set forth in domestic law as prior consent, simplifying the genetic management process and the application of CBD provisions domestically. The interpretation of the four resolutions regulating the CGEN procedures on prior consent in regard to the customary use of genetic resources based on traditional cultural practices is extremely broad and encompasses a range of negotiating positions and possibilities. The focus on respect for the historical and cultural processes from which associated traditional knowledge derived, the organizational arrangement of those societies and communities, customary uses which are frequently rooted in principles linked to religious expressions or rituals involving family values, and a particular view of the world synthesize the broad outline of the applicable national legislation, founded on the principles enshrined in the Brazilian Federal Constitution.

The technical requirements to secure access to associated traditional knowledge in Brazil are stringent. Validation of prior consent by the CGEN requires submission of an independent anthropological report, often performed by distinguished researchers. This provision, specifically adapted to Brazilian reality, prevents communities or their representatives from damage or injury in the negotiations on the terms and conditions of agreements signed. This reality should be reflected or duly noted in any decisions on prior informed consent within the scope of WG 8 (j).

This set of instruments and solutions demonstrates Brazil's experience in implementing the provisions of article 8 (j) and 10 (c) in a mutually supportive fashion. Similarly, as a country with one of the broadest diversity of indigenous and local communities, Brazil is of the view that this integrated approach is of strategic importance with a direct impact on one of the nation's key priority public policy areas.

Brasília, July of 2012

CANADA

Programme of work on Article 8(j) and related provisions: Request for contributions from Parties and Stakeholders regarding possible elements of a new major component of work on Article 10, with a focus on Article 10(c)

**Submitted by Canada
August 24, 2012**

Pursuant to paragraph 8 of decision X/43, in its recommendation 7/6, the Ad Hoc Open-ended Working Group on Article 8 (j) and Related Provisions (WG8J) requested the Executive Secretary, to compile submissions from Parties, Governments, international organizations and indigenous and local communities on Article 10, with a focus on Article 10 (c) as a major component of the program of work on Article 8 (j) and related provisions, and to provide this compilation to the eleventh meeting of the Conference of the Parties. In paragraph 2 of the same recommendation, the WG8J recognized the importance of customary use of biodiversity to indigenous and local communities, and encouraged Parties to facilitate their full and effective participation in the negotiation and elaboration of this new major component of work.

Canada welcomes the progress made at WG8J-7 in beginning to develop the elements of a new major programme on Article 10, with a focus on Article 10(c).

Canada recalls that many Parties expressed the view at WG8J-7 that more time was needed to develop a work programme on customary sustainable use and that such a work programme would be further developed at the eighth meeting of the WG8J and then adopted at the twelfth meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP12). At the WG8J-7 meeting, Canada along with some other Parties, expressed the view that work on some priority tasks on sustainable use of the components of biodiversity should be initiated at the eleventh meeting of the Conference of the Parties to the Convention on Biological Diversity for further consideration at WG8J-8.

Canada is of the view that priority should be given to initiating work prior to CBD COP12 on developing guidance for indigenous and local communities (ILCs) on sustainable use of biodiversity. Canada foresees implementation of this priority area through, inter alia: the preparation of ad hoc technical papers, the development of resource management and conservation planning tools and enhanced capacity-building in support of sustainable use of biodiversity. Canada would like to see the Convention and the WG8J better utilize the global wealth of ILC expertise and networks, in particular the technical capacity amongst indigenous and local communities, specifically, land and resource, environmental, biodiversity, wildlife, and fisheries management officials in ILC governments and organizations.

Canada is also of the view that there may be synergies if the Secretariat were to explore increased coordination on customary sustainable use with other relevant international bodies with overlapping interests such as the Inter-governmental Platform on Biodiversity and Ecosystem Services (IPBES), the United Nations Conference on Trade and Development (UNCTAD), the International Union for Conservation of Nature (IUCN), the Equator Initiative, and the UN Food and Agriculture Organization.

Canada is of the view that the Parties need to have a better understanding of the nature and scope of customary resource management by indigenous and local communities. There would be merit in compiling case studies on customary resource and land use practices which contribute to sustainable use and management of local biodiversity and ecosystems by indigenous and local communities including the nature of community protocols, practices and rules governing the harvesting and use of biodiversity, including rights and obligations to access and use traditional knowledge.

Canada sees great value in the Secretariat publicizing best ILC land and resource management practices with a focus on identifying community-led and co-management initiatives. Some more practical work could involve establishing networks to map traditional land and resource use or support ILC local environmental planning, implementation, and local monitoring of the status and trends of biodiversity (e.g. community-based indicators of biodiversity). Complementary to this work on best ILC community practices would be a customary use workplan initiative to develop tools and networks to assist indigenous and local communities to sustainably use biodiversity at the local level.

At WG8J-7 Canada heard from many participants that capacity-building is a top priority for indigenous and local communities. Our view is that there are merits in identifying regional capacity-building priorities following the identification of best ILC sustainable use practices and the development of guidance on best local practices for the sustainable use of biodiversity for use in land/biodiversity planning, implementation and management by indigenous and local communities.

With respect to incentive measures in support of customary sustainable use Canada sees advantages in coordinating with other international organizations such as the Biotrade Initiative of the United Nations Conference on Trade and Development (UNCTAD) to explore a potential role for the Convention to mainstream the use of the existing intellectual property rights system (e.g. certification marks and geographic indicators) in support of sustainable harvesting and livelihoods of indigenous and local communities, as well as identifying potential opportunities to facilitate increased fair international trade of biodiversity-derived commodities produced by indigenous and local communities.

Canada would support the WG8J undertaking an analysis of two successful CBD mechanisms - the “Global Platform for Business and Biodiversity” and the “Plan of Action on Sub-national Governments, Cities, and other Local Authorities for Biodiversity” to consider whether a similar engagement model could be used to increase the breadth and effectiveness of Convention engagement of indigenous and local communities and governments in community-level implementation of sustainable use and conservation provisions of the Convention, in particular representative ILC governments and organizations, at the national and local level in the implementation of Article 10.

Canada welcomes the efforts by WG8J-7 to engage with the fifteenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-15) on the issue of the “Development of indicators relevant for traditional knowledge and customary sustainable use” and the SBSTTA-15 recommendation to engage the WG8J on the issue of “Sustainable use of biodiversity: revised recommendations of the Liaison Group on Bushmeat, including options for small-scale food and income alternatives, and report on how to improve sustainable use in a landscape perspective.” However, it is Canada’s view that the Parties need to consider some other network-based options in order to more fully and effectively engage ILC expertise on land and resource management on the wide range of thematic and cross-cutting issues considered by SBSTTA and the Working Group on Implementation.

Many participants in the WG8J would like to see more work on protected areas. Canada is of the view that considerable expertise on customary use in protected areas rests with the World Commission on Protected Areas (WCPA) and the Global Protected Areas Programme of the IUCN and perhaps the COP may wish to initiate work on the development of best practices on customary use of biological resources in the context of the IUCN’s categories of protected areas.

CHINA

CHINA GOVERNMENT RESPONSE TO NOTIFICATION 2011-065 & 2010-210: PROGRAMME OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS:

2. Article 10 of the Convention

China is a civilized ancient country with long history, and accumulated rich traditional knowledge, innovation and practices during thousands years of agricultural production. Meanwhile, China is also a country composed of many nationalities, people of different nationalities accumulated very rich traditional knowledge during long-term production and life practices, and many farmers, especially people of some ethnic minorities living in remote mountainous areas, still inherit, use and develop the traditional knowledge and practice beneficial to the conservation and sustainable use of biological diversity. The traditional knowledge of China is too rich to be named one by one, which includes

nationality dresses, traditional cuisines, traditional houses, traditional Chinese medicine, acupuncture, local dramas, ceramics, wushu and qigong, etc.

Chinese Government very respects the rights and interests of ethnic minorities and local communities, respects the traditional life styles beneficial to the conservation and sustainable use of biological diversity, encourages local communities to participate in the activities consistent with goal of the CBD, strengthens the collection, reorganization and management of traditional knowledge, improves public awareness of protection of traditional knowledge, strengthen the innovation, research and development of traditional knowledge, which enhances greatly the sustainable development of national economy and society, and also makes great contribution to the conservation of ecosystems, species and genetic resources of Chinese characteristics.

China has established Outline on Basic Study of Traditional Chinese Medicine and Outline of Clinic Study of Traditional Chinese Medicine, fulfill overall Plan on Prevention and Control of AIDS with Traditional Chinese Medicine (2004-2005); launched the compilation of Planning on Standardization Construction of Traditional Chinese Medicine, completed 12 traditional Chinese medicine standards, among them 11 standards including Terminology for Basic Theories of Traditional Chinese Medicine have been completed; strengthened the study over basic theories of symptom, Syndrome, viscera and their manifestation, meridians and collaterals, prescription, therapeutic principles and treatment by applying traditional methods; organized and implemented the preparation for investigation and inventory of traditional Chinese medicine resources; strengthened the reorganization of classical literature, the platform of literature digitalization research is initially established, and the construction of literature database of traditional Chinese medicine is speeded up; organized and carried out the publicity and training of protection of intellectual property rights; the international cooperation of traditional Chinese medicine is strengthened, and has signed health cooperative agreements including articles of traditional Chinese medicine with 51 countries such as US, Canada, France, UK and Germany, and has signed 17

cooperative agreements on traditional Chinese medicine with countries such as Norway and Ireland. In 2005, the State Council has started the revision of Regulation on Protection of Traditional Chinese Medicine Varieties, which shall become the umbrella of intellectual property rights of traditional Chinese medicine industry.

Nationality medicines are the great treasures of medicines of various nationalities of China. For instance, traditional Tibetan medicine is not only one important component of traditional Chinese medicine, but also has very important academic position and historical position in the field of global traditional medicines. And medicines of other nationalities also have their unique characteristics and attractions. China has accomplished great achievements in the unearthing and reorganization of nationality medicines. Over 300 literatures of medicines of ethnic minorities were compiled, reorganized or translated into Chinese. State Administration of Traditional Chinese Medicine itself had arranged the reorganization of 82 literatures of medicines of ethnic minorities during 2001-2004. Besides the type of medicines of Tibet, Mongolia, Uigur, Dai Nationality, Korean Nationality and Hui Nationality that have historic literatures, medical science histories, medical monographs, pharmaceutical monographs or comprehensive books were published for the medicines of ethnic minorities of Zhuang, Miao, Yao, Yi, Dong, Tujia, Buyi, Gelao, She and Shui minorities. 25 kinds of serial university textbooks of Tibetan medicine were published. Internal Medicine of Zhuang Medicine regarding Zhuang medicine was also published. These books not only collected many clinic experiences and medicine technologies, but also summarized and reorganized their own medical theories to different extents. In addition, under the support of competent authorities of central government, the minority regions developed vigorously the cause of nationality medicines. Now there are 4 institutes of high learning of nationality medicines. In terms of clinic, there are 157 nationality hospitals nationwide, among them, 55 hospitals of traditional Tibetan medicine, 41 hospitals of traditional Mongolia medicine, 33 hospitals of traditional Uigur medicine, 30 hospitals of traditional Dai medicine,

traditional Yao medicine, traditional Kazak medicine, traditional Zhuang medicine and traditional medicines of other nationalities and 359 clinics of nationality medicines. The minority autonomous regions and some minority autonomous prefectures have established research institutes of nationality medicines. What's more delightful is that, the nationality medicines rise quickly in the past decade, over 130 manufacturers of nationality medicines appeared, and they manufacture 853 officinal of nationality medicines approved by the state and involving six categories of nationality medicines of traditional Tibetan medicine, Miao medicine, Mongolia medicine, Uigur medicine, Dai medicine and Yi medicine, and the annual turnover is around USD 0.605 billion.

But China has 56 nationalities, the traditional knowledge of different nationalities are spread among the society which needs to be collected and reorganized systematically; the awareness of protection of traditional knowledge is still relatively weak and not sensitive enough; and the professionals of protection and management of traditional knowledge is in shortage, and their capabilities to apply the means of intellectual property rights are not sufficient; no enough research is carried out for special issues of protection of traditional knowledge, the corresponding national policies, strategies and legislations are rather weak; the fair system of sharing the benefits arising out of the utilization of traditional knowledge, innovation and practice has not been established yet; with the development of nationality medicines, the collection of medicinal material resources of nationality medicines is excessive; the national capacities and skills to protect the traditional knowledge is rather weak, which causes the loss of a great deal of traditional knowledge.

COLOMBIA

COLOMBIAN GOVERNMENT RESPONSE TO NOTIFICATION 2011-065 & 2010-210:
PROGRAMME OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS:

Asunto: Comentarios al Programa de Trabajo 8 (j): integración del artículo 10 con enfoque en el artículo 10 (c)

Señor Secretario:

De manera atenta me dirijo a usted con ocasión de la Notificación a las Partes SCBD/SEL/OJ/JS/DM/7443, a través de la cual se solicita remitir comentarios sobre el Programa de Trabajo en el Artículo 8 (j) y disposiciones conexas.

A continuación, y en consideración a la Decisión X/43 de la Conferencia de las Partes sobre el Programa de Trabajo en el Artículo 8 (j), y específicamente a lo que respecta a los avances en la integración del artículo 10 con enfoque en el artículo 10(c) sobre el uso consuetudinario de la biodiversidad, remito los siguientes comentarios de Colombia al respecto.

1. El uso consuetudinario de la biodiversidad por parte de las comunidades indígenas y locales en Colombia está determinado por la autonomía en la gestión de sus territorios. De esta manera, ese uso consuetudinario no puede entenderse por fuera de la institucionalidad local que caracteriza tal autonomía (reglas, normas y derechos propios), ni tampoco por fuera de su reconocimiento estatal.

- ✓ El Estado colombiano ha avanzado en el reconocimiento de los sistemas de reglas propias en torno a la gestión de los territorios colectivos¹. Los avances se refieren a los procesos de facilitación de instancias de participación entre las instituciones estatales y las comunidades, con el propósito principal de establecer procedimientos

¹ La Constitución Política de Colombia de 1991 constituye la base fundamental para el reconocimiento de la autonomía local, así como las Leyes que definen el alcance de los Territorios Colectivos. Existen, además instrumentos legales que obligan reflexión sobre la autonomía territorial de los grupos étnicos como los acuerdos regionales, las Sentencias de la Corte Constitucionales, y disposiciones generales como el Acuerdo 169 de la OIT.

de consulta en sus territorios, el fortalecimiento de las formas propias de gobierno, la armonización entre Jurisdicciones Indígenas y Ordinarias, el desarrollo y ajuste de instrumentos propios de gestión territorial, el desarrollo de protocolos y procedimientos para la articulación económica, presupuestal y de inversión, así como para el seguimiento a las formas de gobierno. Existe entonces un marco desde el cual podría avanzarse en la implementación del artículo 10 con enfoque en el artículo 10(c), sin embargo, debe mencionarse que existen limitantes relacionadas con los acuerdos entre las Instituciones y la Comisión Permanente de Concertación. El reto estriba en fortalecer la gobernanza de los territorios locales, y en avanzar en la discusión sobre el carácter o no de autoridad ambiental de dichas comunidades.

- ✓ Una de las experiencias más representativas que se han tenido desde el punto de vista del reconocimiento de la institucionalidad local asociada al uso consuetudinario de la biodiversidad, es el de los Regímenes Especiales de Manejo (REM) por parte de la Unidad Especial Administrativa de Parques Nacionales Naturales². La construcción de dichos acuerdos en diferentes contextos territoriales ha sido una oportunidad de legitimar para la institucionalidad formal colombiana las distintas formas locales de apropiación y uso de la biodiversidad. Estos acuerdos constituyen avances concretos con los planteamientos del artículo 10 y en general con su enfoque 10(c), sin embargo, es necesario avanzar en términos de la cobertura en el territorio nacional. Existe el reto concreto de armonizar dichos acuerdos con las directrices más generales que reconocen la autoridad y autonomía de las comunidades locales en la gestión de su territorio. Al mismo tiempo es importante continuar con el trabajo de agendas de articulación por parte de la Autoridad Ambiental Nacional, de manera que se avance en la constitución de mecanismos acoplados para la gestión de la biodiversidad.
- ✓ Además de los grupos étnicos referidos principalmente a indígenas y negritudes, las comunidades campesinas también tienen institucionalidades alrededor del uso y aprovechamiento de la biodiversidad que no siempre son reconocidas. Para el caso colombiano no existe soporte legal sobre el cual se permita a las comunidades campesinas establecer sistemas de uso y manejo consuetudinario. Es evidente que las comunidades campesinas también se benefician de forma directa de estos recursos, y que la desarticulación de las disposiciones de las autoridades ambientales puede redundar en comprender el uso como un proceso ilegal. En este sentido, vale la pena avanzar en el reconocimiento de procesos de uso de costumbre de la biodiversidad por grupos campesinos, así como identificar elementos que permitan acoplar dichas dinámicas con los referentes legales e institucionales del Estado.

² Los Regímenes Especiales de Manejo (REM) son figuras de entendimiento entre la Autoridad Ambiental encargada de la gestión de las áreas de Parques Nacionales y las comunidades indígenas o grupos locales que tienen sus territorios superpuestos con las reservas en mención. Dichos acuerdos nacen del artículo 7 del Decreto 622 de 1977 en el que se de busca *"...establecer un régimen especial en beneficio de la población indígena de acuerdo con el cual se respetará la permanencia de la comunidad y su derecho al aprovechamiento económico de los recursos naturales renovables, observando las tecnologías compatibles con los objetivos del sistema señalado al área respectiva"*.

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Bogotá D.C., Colombia sur América

2. La aproximación al conocimiento sobre los usos consuetudinarios de la biodiversidad es un proceso complejo. La promoción de los usos consuetudinarios de la biodiversidad es posible en la medida en que se comprendan los rasgos y dominios de los conocimientos tradicionales, el entendimiento de las prácticas en las que éstos se expresan, y su concordancia con las reglas y normas sociales que en consecuencia se desarrollan.
- ✓ Siendo el conocimiento tradicional un elemento fundamental asociado a la comprensión de los usos locales y consuetudinarios, considerarlo más allá de los planteamientos que aseguran que es una unidad discreta es fundamental para avanzar en la promoción y mantenimiento de los usos consuetudinarios. Colombia ha tenido avances relevantes en la consideración de los conocimientos tradicionales como valores intangibles y de importancia para la competitividad³, sin embargo, es necesario recalcar que dichos conocimientos tradicionales no existen sin un medio y unas formas culturales que así lo permiten, y que por tal razón debe consolidarse una política de recuperación, protección y fomento del conocimiento tradicional.
 - ✓ La pérdida de sistemas de uso y manejo tradicional de la biodiversidad es un factor preocupante. No obstante, se cuenta con experiencias exitosas en la recolección, sistematización e incorporación del conocimiento tradicional en contextos territoriales específicos. En tal sentido, dicha incorporación ha estado más determinada por procesos de conservación que de uso y mantenimiento de dinámicas locales de gestión del territorio. El reto, en este orden de ideas, para avanzar en los presupuestos del artículo 10(c), está en reconocer que si bien el conocimiento tradicional es un elemento importante para la conservación explícita de la biodiversidad, también es un marco en el que se definen prácticas de uso y aprovechamiento de la biodiversidad de las que depende el bienestar de las comunidades locales⁴.
 - ✓ Colombia ha tenido avances importantes en el entendimiento de las prácticas de uso de la biodiversidad en contextos locales. Básicamente se ha enfrentado a reconocer diferentes sistemas de uso de la biodiversidad, donde principalmente tiene avances en la caracterización de las actividades de caza de subsistencia por parte de comunidades indígenas y algunas con comunidades campesinas. De dichos estudios, los principales resultados están relacionados con datos biológicos, ecológicos y socio-

³ El Plan Nacional de Desarrollo (2010-2014) nombra la importancia del conocimiento tradicional como base para el Desarrollo del país, específicamente en el sentido en que se constituye como una oportunidad para avanzar en procesos de innovación que garantizarían que los mercados colombianos de bienes y servicios sean más competitivos.

⁴ Algunos de los más importantes avances han estado vinculados con experiencias como las de Tropenbos Colombia, donde a partir del conocimiento local, y de la comprensión entre éste y las prácticas de los habitantes locales, han logrado desarrollar estrategias de manejo de información orientada al monitoreo de la sostenibilidad en los usos cotidianos y de costumbre, específicamente en pesca. Los resultados han sido muy valiosos, y a este punto se cuenta con más de 12 años de registros de caza y pesca, y con acuerdos ajustados y adaptativos para el uso y gestión de la biodiversidad.

<http://www.tropenbos.org/index.php/es/where-we-work/colombia>

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culturales, y en general se accede a información sobre las técnicas utilizadas de caza y el uso dado a los animales cazados⁵. Si bien muchos de estos estudios son realizados en contextos territoriales donde prevalecen sistemas de uso consuetudinario, no todos los trabajos dan cuenta de la dinámica institucional alrededor del aprovechamiento.

- ✓ Un referente importante al momento de considerar los avances en la implementación del artículo 10(c) tiene que ver con el desarrollo de investigaciones propias por parte de los usuarios consuetudinarios. Algunas asociaciones de comunidades locales, principalmente indígenas, han avanzado en la formalización de procesos de generación de conocimiento propio sobre la significación y el comportamiento de la biodiversidad que es usada⁶. Desde el punto de vista del conocimiento, estas experiencias son fundamentales para construir una base sobre la cual puedan comprenderse, de mejor manera, los sistemas consuetudinarios de uso de la biodiversidad y su sostenibilidad. El reto es seguir avanzando sobre este tipo de iniciativas, eso sí vinculando al horizonte de investigación la percepción local sobre los procesos de transformación que pueden percibirse en dichos territorios.
3. El uso consuetudinario de la biodiversidad además requiere, además de considerar las perspectivas institucionales y del conocimiento como factores determinantes, también requiere incorporar una dimensión instrumental. La promoción y el mantenimiento de los usos consuetudinarios debe fundamentarse en acuerdos que sean reconocidos y que puedan ser incorporados dentro de los procesos de seguimiento de las Decisiones del Convenio.
- ✓ Un avance importante en este tema es la construcción de agendas conjuntas por parte del Ministerio del Interior y de Justicia, y también la voluntad por parte del Ministerio de Ambiente, Vivienda y Desarrollo Territorial en el apoyo a la construcción de agendas ambientales propias. No obstante, el reto a futuro es poder articular dichas agendas con los compromisos establecidos al nivel central para el manejo del territorio y la biodiversidad, específicamente el vínculo a través de instrumentos entre dichos procesos y las disposiciones existentes que orientan la gestión de la biodiversidad.
 - ✓ Es importante destacar que Colombia ha avanzado en el reconocimiento de algunos compromisos sobre uso sostenible de la biodiversidad, y que se continúa el trabajo de instrumentalización de dichos marcos. La promoción y el mantenimiento de los usos

⁵ La información en este caso suele ser dispersa, asimétrica y heterogénea en términos de enfoques y escalas de aproximación. No siempre en ellas hay participación directa de las comunidades locales. Vieira *et al.* (2006) identifica que uno de los principales referentes en los estudios del uso sostenible es el concepto de máxima cosecha sostenible, advirtiendo su limitante para comprender procesos de cambio y la incertidumbre asociada a los usuarios.

⁶ La Asociación de Cabildos y Autoridades Indígenas de la Selva de Matavén – ACATISEMA, ha trabajado a través de becas en la generación de estudios sobre la biodiversidad de su territorio, enfatizando sobre las relaciones de uso de la biodiversidad. Esta experiencia también ha sido desarrollada por Tropenbos Colombia en otras regiones de la Amazonia. De la misma manera el Ministerio de Cultura de Colombia, en alianza con WWF-Colombia, han desarrollado becas de colaboración con comunidades locales para identificar prácticas culturales asociadas al uso de la biodiversidad.

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consuetudinarios de la Biodiversidad deben darse sobre un escenario de reconocimiento en el que sea posible articular diferentes estrategias y mandatos. La sostenibilidad en el uso de dicha biodiversidad debe ser elemento a considerar en este abordaje, en tal sentido se recomienda continuar con las discusiones de ajuste y aplicación de los principios de Addis Abeba.

- ✓ Otro aspecto importante, más en el orden del desarrollo de elementos conceptuales para entender las relaciones entre biodiversidad y bienestar humano, ha sido la consideración explícita de la biodiversidad como aportante a la seguridad alimentaria y la salud de las comunidades locales. Un elemento a considerar en el proceso de implementar los enunciados del artículo 10(c) del Convenio, sería el reconocimiento formal del aporte de la biodiversidad que, a través de sus usos consuetudinarios, tiene aportes evidentes y explícitos a la autonomía de los sistemas de alimentación y de salud de dichas comunidades. El reto está en avanzar en la construcción de instrumentos de política.
- ✓ La consideración de la dimensión del riesgo en la gestión de la biodiversidad es un tema que merece ser considerado en los procesos de implementación del artículo 10(c). Resulta claro que una gestión ineficiente, inequitativa y centralizada de la biodiversidad, puede aumentar las condiciones del riesgo a que ésta se pierda, y a que las comunidades que de ella dependen se perjudiquen. Existen un reto importante y es el de visibilizar los procesos de uso consuetudinario (así como sus reglas) como elementos favorables para la disminución de los factores del riesgo en la gestión de la biodiversidad y el bienestar humano.

Cordialmente,


PATTI LONDOÑO JARAMILLO
Viceministra de Asuntos Multilaterales

European Union and its Member States

(Submission from 2011)

The EU and its Member States is pleased to share with the Secretariat views on the below elements in response to CBD Notification 2010-210 on “the Programme of Work on Article 8(j) and related provisions consistent with relevant decisions of the tenth meeting of the Conference of the Parties”:

Article 10

Also in decision 10/43, the Conference of the Parties decided on a new major component of work on article 10 with a focus on article 10(c), and requested the seventh meeting of the Working group to provide advice on how this component could be implemented and to develop a strategy for the integration of this component, as a cross-cutting issue into the Convention’s various programmes of work and thematic areas. To assist the Working Group in its consideration of this issue, Parties, indigenous and local community organizations, NGOs and other relevant organizations are requested to submit information regarding:

- (i) The implementation of Article 10 of the Convention (sustainable use of biodiversity), with a focus on Article 10(c) (customary sustainable use), (decision X/43, paragraph 6);

Since 2006 Sweden has had a National programme regarding local and traditional knowledge concerning conservation and sustainable use of biological diversity. It was established in accordance with CBD Article 8(j), but it has had a broader focus and a broader definition on ILCs. When focusing on conservation and sustainable use of biodiversity in the entire country there is a need also to include other local groups in Sweden, not generally considered as ILCs. Therefore, the focus has rather been on the local and traditional knowledge connected to customary use of biological diversity. Among the studied groups are artisanal fishermen and pastoralists with mountainous summer pastures and they have in common that they represent groups with small-scale, traditional and sustainable use of natural resources of importance for rural development.

(Submission from 2012)

**Draft Submission by the EU and its Member States to the CBD notification 2012-098: Programme of Work on Article 8(j) and related provisions: Request for contributions from Parties and stakeholders regarding possible elements of a new major component of work on Article 10, with a focus on Article 10(c)
18 July 2012**

Customary, sustainable use of biodiversity is not only important to the indigenous and local communities and others who practice such use to sustain their livelihoods, but to the world as a whole as an essential component of sustainable use of biodiversity and thereby to the achievement of the 2nd objective of the CBD. Therefore, the EU and its Member States strongly supported COP 10 decision X/43 to include a new major component of work on Article 10 with a focus on Article 10(c), building on the Addis Ababa Principles and Guidelines.

The EU and its Member States also support the follow-up recommendation 7/6 of the 7th Meeting of the Working Group on Article 8(j) and Related Provisions (wg8j7). Articles 8(j) and 10(c) are interconnected and mutually reinforcing, and we believe that more focus on Article 10(c) in the work of wg8j could lead to renewed impetus to this working group. We agree with the recommendation that wg8j should be mandated to provide advice directly to SBSTTA on Article 8(j) and 10 (c) considerations and that SBSTTA should include these considerations as cross-cutting in its deliberations on thematic programmes including the protected areas work programme.

We support the development of a Plan of Action on customary sustainable use and believe that the list of 15 indicative tasks outlined in the annex to recommendation 7/6 provides a good framework.

GUINEE-BISSAU

Contribution de la Guinée-Bissau à la conservation et l'utilisation de la diversité biologique à travers les pratiques ancestrales des communautés locales, dans le cadre du Programme de travail sur l'article 8(j)

Les communautés locales de la Guinée-Bissau, composé par différentes ethnies, ont la tradition de réaliser la cérémonie de « mandjidura »².

Cet une pratique socioculturelle ancestral, mais qu'apporte une contribution significative dans l'esprit de l'article 8 (j) de la CDB.

Cette procédure a son spécificité en fonction d'ethnie.

Vers l'année 1995, lors de création du Parc National des Mangroves de Cacheu, à travers le Bureau National de la Planification Côtière (MDR/DGFC/UICN, 1995)³, cette approche à été utilisée avec succès, à partir des entretiens avec Madame la Gouverneur de la Région, ainsi qu'avec la population à la base, appartenant à différents ethnies⁴ au nord ainsi qu'au sud du Parc, pour faire le zonage du parc, tenant compte qu'elle est aussi utilisée a fin d'empêcher l'exploitation des huitres jusqu' \a sa phase de maturation.

Au niveau de l'Archipel des Bijagos, qui est une Réserve de la Biosphère, au niveau de l'Ilôt de Papagaio, les Bijago font la mandjidura pour empêcher la cueillette des arches (*Anadara senilis*), que d'ailleurs a entraîné le conflit interethnique avec les gens de l'ethnie pepel, que violent cette disposition lors qu'ils se déplacent vers les Iles pour la campagne d'exploitation d'huile de palme (*Elaeis guineensis*).

La pratique de mandjidura est courante aussi dans beaucoup des endroits, surtout au niveau du verger, des jardins.

Notre point de vue s'est que cette pratique, est dans beaucoup des cas a plus d'impacte para rapport aux lois classiques approuvées par les gouvernements.

PROJET DE DECRET SUR LA VALORISATION DE LA DIVERSITE BIOLOGIQUE,
DES CONNAISSANCES TRADITIONNELLES
ET DES ŒUVRES ARTISANALES ET ARTISTIQUES
DE GUINEE BISSAU

Article 1 : Définitions

Article 2 : Objet

Article 3 : Patrimoine naturel et culturel de la Nation, souveraineté de l'Etat et droits intellectuels des

communautés

Article 4 : Mise en œuvre du système de consentement informé préalable

Article 5 : L'autorité compétente

Article 6 : Droits intellectuels des communautés locales et professionnelles

Article 7 : Droits intellectuels des communautés locales sur les ressources biologiques et les savoirs associés

Article 8 : Droits intellectuels des communautés locales et professionnelles sur les œuvres artisanales et artistiques traditionnelles

Article 9 : Informations fournies par le demandeur d'une autorisation de collecte de ressources biologiques et des connaissances associées

Article 10 : Les consentements préalables

Article 11 : L'autorisation de collecte

Article 12 : Le partage des bénéfices

Article 13 : Les certifications

Article 14 : Les bases de données

Article 15 : Règlement des différends

Considérant que les communautés locales et professionnelles de Guinée Bissau ont entretenu les ressources biologiques de la faune et de la flore sauvages au sein d'écosystèmes variés, qu'elles ont sélectionné des plantes et des animaux domestiques originaux, développé des connaissances sur leur milieu et tout ce que les composantes de ce milieu peuvent leur fournir, et qu'elles en ont assuré la transmission ; que les rapports entretenus par les différents lignages avec leurs terroirs se sont exprimés dans des récits, des croyances, des mythes, des rites et des œuvres artisanales et artistiques,

Affirmant qu'il est nécessaire de protéger la diversité biologique et d'encourager la diversité culturelle en déclarant que ces ressources, ces savoirs et ces créations font l'objet de droits intellectuels collectifs, inaliénables et imprescriptibles,

Reconnaissant que l'Etat de Guinée Bissau exerce des droits souverains sur les ressources biologiques se trouvant sur son territoire dans le respect des droits intellectuels collectifs, inaliénables et imprescriptibles de ces communautés ; que dans ce but, l'Etat doit encadrer l'accès aux ressources biologiques et aux connaissances qui leur sont associées dans l'esprit de l'article 15 de la Convention sur la diversité biologique et organiser le partage équitable des bénéfices qui sont susceptibles d'en être retirés dans l'esprit de son article 8 j ; que les droits des femmes de participer aux décisions et au partage des bénéfices doivent faire l'objet d'une attention particulière,

Le Gouvernement, conformément à l'article 100 de la Constitution, décrète :

Article 1 : Définitions

Communauté locale : Population humaine habitant une zone géographique donnée, qui, par l'organisation en lignages, exerce une autorité sur les terroirs et les ressources biologiques qu'ils recèlent ; ces lignages gèrent terres et ressources sur la base des pouvoirs et procédures coutumiers, dans le cadre des lois édictées par l'Etat.

Communauté professionnelle : Ensemble d'individus participant à une activité traditionnelle, - agriculture, pêche, élevage, vannerie, poterie, teinture, tissage, sculpture, médecine traditionnelle notamment-

Connaissances traditionnelles : Connaissances accumulées et transmises tout au long de leur histoire par les communautés locales et professionnelles dans le cadre de leurs activités diverses, y compris les activités rituelles, sur leurs milieux de vie et l'utilisation des ressources, biologiques ou autres, qui y sont disponibles.

Diversité biologique : Variabilité des organismes vivants, y compris la diversité au sein des espèces et entre espèces ainsi que celle des écosystèmes, le matériel génétique qu'ils contiennent et tous les produits qui en sont dérivés, directement et indirectement.

Diversité culturelle : Particularismes et diversité des expressions de la pensée et de la créativité humaine, toutes ces expressions étant dotées d'une égale dignité.

Ressources biologiques : Tout ce qui est vivant relève d'une double acception. Populations, organismes et éléments de ceux-ci existent en tant que tels. Ils peuvent alors relever traditionnellement du droit de la chasse, de la pêche, du droit rural, etc. Mais ils existent aussi comme bases de départ pour des valorisations commerciales plus indirectes, dont certaines passent par la recherche et le développement. C'est en tant que support de ces valorisations que les ressources biologiques sont envisagées ici. Les ressources biologiques font l'objet d'un droit souverain de l'Etat. Il doit être articulé aux droits intellectuels des communautés locales sur leurs ressources naturelles.

Article 2 : Objet

1. Par le présent décret, l'Etat assure la mise en valeur du patrimoine naturel et culturel de la Guinée Bissau dans le but de favoriser sa protection dans l'intérêt de la Nation et des communautés locales et professionnelles qui la composent, notamment en :
 - organisant la valorisation internationale des ressources biologiques, objet des droits souverains de l'Etat de Guinée Bissau dans le cadre de la stratégie nationale pour la diversité biologique ;
 - assurant la diffusion des connaissances traditionnelles et des œuvres artisanales et artistiques du peuple de Guinée Bissau dans le respect des intérêts des auteurs, collectifs ou individuels, de ces connaissances et de ces œuvres et de leur droit au secret ;
 - reconnaissant aux communautés locales et professionnelles des droits intellectuels de nature collective, inaliénable et imprescriptible sur leurs ressources biologiques, leurs connaissances et leurs œuvres ;
 - déterminant les modalités de la collecte, de l'utilisation et de la circulation internationale des ressources biologiques, de leurs dérivés et des connaissances qui y sont associées, dans la perspective d'un développement durable et bénéfique pour l'intérêt national et les communautés locales et professionnelles, et d'un partage équitable des avantages qui peuvent en être retirés ;
 - protégeant le consentement des communautés locales et professionnelles lors du recueil de leurs récits, chants, croyances, traditions, rites et mythes ;
 - organisant le marquage des œuvres artisanales et artistiques permettant d'identifier les conditions de leur production, leur origine, composition et, le cas échéant, la fonction symbolique de ces œuvres ;
 - assurant la participation des communautés locales et professionnelles aux décisions les concernant par leurs instances de représentation, locales et nationales, traditionnelles ou non ;
2. Cette réglementation n'affecte pas l'usage traditionnel local de ces ressources et de ces œuvres ; elle doit faire l'objet d'une mise en cohérence avec les réglementations portant sur les aires protégées, la chasse, la pêche, la foresterie, l'agriculture et le régime des terres notamment.

Article 3 : Patrimoine naturel et culturel de la Nation, souveraineté de l'Etat et droits intellectuels des communautés

1. Les ressources biologiques, leurs composants et leurs dérivés qui se trouvent sur le territoire de Guinée Bissau, *in situ et ex situ*, ou ceux dont l'origine bissau-guinéenne est attestée, les connaissances, les savoirs, croyances et les œuvres traditionnelles, sont le patrimoine naturel et culturel de la Nation et des communautés qui la composent, quelle que soit la date à laquelle ils ont été collectés, attestés ou divulgués.
2. L'Etat de Guinée Bissau exerce un droit souverain sur l'ensemble des ressources biologiques de son territoire. Aucune collecte de ces ressources ne peut avoir lieu sans que l'Etat ait donné son consentement informé préalable, dans le respect des articles 4, 7, 10 et 11 du présent décret.
3. Les communautés locales et professionnelles de Guinée Bissau jouissent de droits intellectuels sur les biens qui composent leur patrimoine naturel et culturel dans les termes des articles 6, 7 et 8 du présent décret.

Article 4 : Mise en œuvre du système du consentement informé préalable

1. En vertu des articles 5, 7, 9 à 12 du présent décret, toute personne physique ou morale voulant avoir accès aux ressources biologiques, à leurs composants, à leurs dérivés, aux connaissances qui leur sont associées, doit effectuer auprès de l'IBAP une demande en vue d'obtenir l'autorisation de collecte qui déterminera les modalités de l'usage de ces ressources et connaissances.
2. Les ressources et les connaissances sont réputées avoir été acquises de manière illicite si elles ne sont pas accompagnées de cette autorisation. Aucun droit, de quelque nature que ce soit, ne peut être reconnu sur les ressources et les connaissances acquises de manière illicite, ni sur les inventions ou les œuvres qui pourraient en résulter directement ou indirectement. Toute demande de brevet, devant quelque office de brevet que ce soit, doit être accompagnée de la mention de l'origine bissau-guinéenne de la ressource ou de la connaissance utilisée et de l'autorisation de collecte.
3. Les travaux d'ethnographie, d'anthropologie ou de sciences humaines et sociales en général, sont effectués librement dans le cadre des lois en vigueur. Toutefois, les récits faisant état, notamment, de mythes, croyances ou rites, ne doivent être divulgués que dans la limite de l'autorisation donnée par ceux qui en ont fait le récit. L'enregistrement d'images et de sons, sur quelque support et par quelque technique que ce soit, doit faire l'objet d'une déclaration auprès du ministère concerné et du dépôt d'un double de ce qui a été enregistré lors de la diffusion des résultats de la recherche ou au plus tard cinq ans après l'enregistrement. L'utilisation de ces images et de ces sons à des fins autres que muséales et académiques, est soumise à autorisation préalable de l'Autorité compétente et des autorités coutumières des communautés concernées. Tout changement de destination doit faire l'objet d'une autorisation préalable. La divulgation du nom des plantes ou animaux utilisés dans les pratiques rituelles ou thérapeutiques décrites dans les travaux de sciences sociales fait l'objet d'une procédure d'autorisation préalable, en tant que connaissance potentiellement valorisable.
4. Les travaux d'ethnographie, d'anthropologie ou de sciences humaines et sociales qui aboutissent à la divulgation d'une connaissance traditionnelle ne peuvent être divulgués que dans les conditions des articles 6, 7, 10, 11, 12 du présent décret.

Article 5 : L'autorité compétente

1. L'autorité compétente pour organiser l'accès au patrimoine naturel et culturel de la Guinée Bissau est l'IBAP.
2. Un décret déterminera les différentes formations de l'IBAP compétentes pour recevoir, instruire et conserver les déclarations et les demandes. La composition de ces formations doit être adaptée à l'objet de la demande. Chaque formation réunit les représentants de toutes les parties concernées par la demande, notamment des représentants des aires protégées lorsque la collecte a lieu dans une telle zone, de l'administration de la santé et des tradipraticiens en cas de recherche de plantes médicinales, du ministère de l'agriculture pour les plantes et les animaux domestiques, du musée ethnographique et du ministère de la culture pour les œuvres artistiques, du secrétariat d'Etat à l'artisanat pour les œuvres artisanales.
3. Chaque formation comprend pour moitié des représentants des communautés locales et professionnelles impliquées, en assurant une représentation adéquate des femmes. Il est possible de désigner des experts pour former une commission ad hoc.

Article 6 : Droits intellectuels des communautés locales et professionnelles

1. Les droits intellectuels des communautés locales et professionnelles sont collectifs, inaliénables, imprescriptibles, antérieurs aux autres droits de propriété, corporelle ou incorporelle, qui doivent être conciliés avec eux.
2. Ils portent notamment sur les ressources biologiques, sauvages et domestiques, les savoirs et pratiques traditionnels, les récits, les œuvres artisanales et les œuvres artistiques.
3. Ils sont exercés dans le respect des droits souverains de l'Etat pour ce qui concerne les ressources

biologiques et dans le cadre des procédures de représentation propres à chaque communauté et/ou lignage en réservant une place particulière aux femmes, tant en matière de décision qu'en matière de partage des avantages. Les mécanismes de représentation, inspirés du droit coutumier, sont adaptés à chaque type de communauté et d'objet à protéger, particulièrement lorsqu'il s'agit d'un métier spécifique : on se réfèrera aux pratiques locales, qu'elles soient coutumières ou apparues plus récemment, pour représenter, au niveau local concerné, les agriculteurs, pêcheurs, chasseurs, tradipraticiens, forgerons, fabricants de teinture végétale, artisans et artistes, notamment.

4. Les droits intellectuels donnent le pouvoir de décider ou de participer aux décisions en matière de droits de collecte et d'usage direct ou indirect des ressources, des connaissances et savoirs. Ils portent tout particulièrement sur la divulgation des techniques, des savoirs et des oeuvres, sur leur modalité d'échange et de reproduction. Ils font obstacle à la dénaturation des techniques artisanales par des procédés industriels. Ils sont exercés par des mécanismes d'autorisation préalable, de concession d'usages et par la détermination du partage des bénéfices potentiels. Les communautés titulaires des droits intellectuels agiront par l'intermédiaire de leurs représentants et pourront demander le soutien d'ONG et d'experts de leur choix.

Article 7 : Les droits intellectuels des communautés locales sur les ressources biologiques et les savoirs associés

1. Les communautés locales et professionnelles bissau-guinéennes ont entretenu et conservé les écosystèmes, maintenu la flore et la faune sauvages, développé des connaissances et des savoir-faire, mis au point des variétés végétales et des races animales qui sont le reflet de leur culture et des liens qu'elles entretiennent avec leur terroir. Seules ou en association avec d'autres savoirs, ces ressources et ces connaissances peuvent présenter un intérêt scientifique, écologique ou économique.
2. Les communautés locales et professionnelles exercent leurs droits intellectuels dans le respect des droits souverains de l'Etat sur les ressources biologiques de son territoire. En vertu de leurs droits intellectuels, elles peuvent refuser l'accès à ce patrimoine naturel et culturel si la collecte risque de porter atteinte à leur environnement ou à leur culture, ou si la part de bénéfices qui leur revient n'est pas équitable. Dans le cas contraire elles ne peuvent s'y opposer, mais l'IBAP doit les tenir informées de la collecte et de ses buts. Les savoirs associés aux ressources ne peuvent être divulgués que dans les formes et les limites prévues par les autorités coutumières.
3. L'utilisateur des ressources ou des savoirs doit faire état de leur origine dans la publication susceptible de découler de la collecte et dans toute demande de protection par un droit de propriété intellectuelle.
4. En vertu de leurs droits intellectuels, les collectivités ou professions concernées participent à la négociation du partage des avantages tirés de l'utilisation de leurs ressources et de leurs connaissances dans les termes de l'article 12.

Article 8 : Les droits intellectuels des communautés locales et professionnelles sur les œuvres artisanales et artistiques traditionnelles

1. Le peuple bissau-guinéen a créé et continue de créer des œuvres artisanales et artistiques présentant des caractéristiques traditionnelles propres à des lignages et/ou des communautés locales ou professionnelles. Pour assurer la protection des droits intellectuels de chaque lignage ou communauté et, le cas échéant, une meilleure valorisation de ces œuvres, l'IBAP peut octroyer des appellations matérialisées par un marquage et les assortir de mécanismes de certification.
2. Toute communauté locale ou professionnelle produisant traditionnellement des œuvres artisanales ou artistiques a droit à une appellation qui garantit l'origine de l'œuvre en la reliant à un lignage, une communauté professionnelle précise ou un artiste reconnu par sa communauté d'origine. Ce droit à l'appellation diffère du droit des dessins et modèles et du droit d'auteur qui peuvent être octroyés

dans le cadre du droit de la propriété intellectuelle à la condition que l'œuvre individuelle se distingue suffisamment de la tradition pour exprimer la personnalité de l'auteur qui en demande la protection.

3. L'appellation peut être assortie d'une certification qui, outre l'origine, garantit la composition de l'œuvre, les caractéristiques générales de l'œuvre et, le cas échéant, sa fonction symbolique dans la communauté dont elle est une expression.
4. Le peuple bissau-guinéen est un peuple de *sculpteurs*. Ses communautés représentent leurs mythes, les esprits, le monde animal et la vie quotidienne par des effigies traditionnelles propres à chaque ethnie ou lignage. Chaque communauté de sculpteurs peut désigner les objets ayant droit à l'appellation collective et donner les éléments constitutifs de la certification. Si un sculpteur, présenté par sa communauté, en fait la demande auprès du musée ethnographique de Bissau, celui-ci peut l'autoriser à utiliser l'appellation collective suivie de son nom ou d'une marque qui lui est propre.
5. Le musée ethnographique de Bissau peut en outre apposer un label de qualité sur des œuvres individuellement choisies comme particulièrement représentatives d'une création de qualité. Il peut en outre s'opposer à l'exportation d'une œuvre considérée comme « Trésor national ».
6. L'appellation est un droit collectif, inaliénable et imprescriptible. La communauté titulaire du droit veille à ce que la vente des œuvres et les éventuelles concessions d'usage d'une technique artisanale n'aboutissent pas à sa dénaturation. Dans ce cas, les « gardiens de la technique » fixent les conditions de son utilisation et les modalités du processus de production (matières premières utilisées, procédés de fabrication, limites quantitatives de la production notamment).
7. Un décret fixera la liste des communautés susceptibles de bénéficier d'une appellation collective utilisable lors de la vente des œuvres. Toute utilisation induite d'une appellation ou d'une certification donnera lieu à la saisie des objets litigieux et sera punie de ***.

Article 9 : Informations fournies par le demandeur d'une autorisation de collecte de ressources biologiques et des connaissances associées

1. Aucune collecte ne peut être effectuée sans autorisation préalable octroyée par l'IBAP dans les conditions prévues au présent décret.
2. Le demandeur doit fournir tout renseignement sur son identité, sa capacité juridique à conclure un contrat et sa capacité scientifique, technique ou commerciale pour mener à bien le projet envisagé. Il doit fournir des renseignements comparables sur tous ceux qu'il compte associer au projet et dont il se porte garant.
3. Le demandeur délimite la zone dans laquelle il souhaite effectuer la collecte, la nature et la quantité des organismes qu'il souhaite collecter, le but académique ou commercial de la collecte, les objectifs poursuivis, la durée de la collecte ; il désigne avec précision les personnes qui seront effectivement chargées de cette collecte et indique les possibilités d'association de scientifiques bissau-guinéens et d'institutions de recherche nationales.
4. Dans le cas d'une collecte à but académique, le demandeur décrit le but de sa recherche et fait état de ses liens personnels et des liens de son institution avec l'industrie. Il donne la destination initiale des échantillons collectés, notamment, collection privée ou publique, indique comment il désignera l'origine géographique de la ressource et comment il assurera sa traçabilité ultérieure. Il précise les conditions de l'accès de tiers à ces échantillons, accès libre ou restreint. Il décrit les possibilités de transformation du but académique en but commercial et explique les procédures par lesquelles l'IBAP sera tenu au courant de ce projet de transformation pour pouvoir exercer son pouvoir d'autorisation.
5. Dans le cas d'une collecte à but commercial, le demandeur décrit les étapes de son projet, notamment celle qui concerne les plans de développement, les droits de propriété intellectuelle qu'il compte demander, les marchés envisagés, le partage des bénéfices avec les différents partenaires de Guinée Bissau, et le cas échéant les modalités des transferts de technologies.
6. Dans tous les cas, le demandeur doit faire une évaluation de l'impact environnemental de la collecte envisagée ; l'impact devra être évalué en tenant compte non seulement des prélèvements à court terme, mais aussi des conséquences d'une commercialisation sur une grande échelle.

7. La demande est alors instruite par l'IBAP qui se charge de l'information des différents acteurs concernés en expliquant le contenu du projet du demandeur. L'absence de l'une des informations mentionnées à l'article 9 fait obstacle à la délivrance de l'autorisation.

Article 10 : Les consentements préalables

1. Dans toutes les hypothèses, l'IBAP recueille et enregistre les avis des communautés concernées sur l'opportunité de la collecte et leurs propositions en matière de partage des bénéfices, et les transmet au demandeur. Ces avis sont émis par les représentants autorisés, rois, chefs de villages, représentantes des femmes, comités de gestion, dirigeants d'associations notamment. Le consentement ou les réticences et refus des représentants des communautés sont enregistrés. L'IBAP enregistre également les consentements préalables des personnes physiques et morales ayant des droits sur les terres situées dans la zone de collecte, propriétaires privés ou publics, gestionnaires des aires protégées, et des institutions scientifiques concernées par une collecte à but académique .
2. Les consentements portent sur la nature et la quantité des organismes prélevés, les modalités et la localisation des prélèvements, l'identité des collecteurs et des guides locaux, le partage des bénéfices et la divulgation des connaissances associées aux ressources et à leur utilisation. Ils sont annexés à l'autorisation préalable ou à son refus. L'IBAP transmet les propositions de modification, puis la décision finale au demandeur.
3. L'ensemble de la procédure est suivi et conservé dans un registre accessible au public. La demande, la décision et les motifs de cette décision sont publics. Toute personne physique et morale peut faire des commentaires sur la demande et il devra lui être répondu. La décision est susceptible de recours.
4. L'absence de l'un de ces consentements ou avis fait obstacle à la délivrance de l'autorisation.

Article 11 : L'autorisation de collecte

1. L'octroi ou le refus de l'autorisation de collecte par l'IBAP sera signifié à toutes les parties concernées par la décision publiée au Registre. L'autorisation vaut contrat entre le demandeur et l'IBAP ; toutes les exigences mentionnées aux articles 4, 7, 8 à 12 sont d'ordre public.
2. A la décision d'autorisation sont annexés les consentements préalables ou les refus de consentement, les formalités sanitaires exigibles, les précautions à prendre pour éviter les atteintes à l'environnement, aux droits de propriété ou droits d'usage, aux coutumes locales. Le contrat entre l'IBAP et le demandeur fixe les obligations de chaque partie et fixe les conditions de l'utilisation des échantillons collectés. Au cas où la collecte est réalisée dans une aire protégée, ce sont les autorités en charge de cette aire protégée qui sont chargées de la mise en œuvre du contrat sur le terrain et du respect des conditions de la collecte. Dans les autres cas, ce sont les représentants des communautés locales ou professionnelles qui sont en charge de cette mise en œuvre.
3. L'autorisation fixe avec précision la ou les personnes chargées de la collecte, la zone, l'itinéraire et la durée de la collecte, la quantité et la nature des organismes collectés, les restrictions imposées à l'usage des échantillons, le partage des bénéfices. Elle prévoit que tout changement d'affectation de la ressource, d'utilisation de la connaissance ou plus généralement du titulaire des droits et autorisations doit faire l'objet d'une information de l'IBAP et d'une nouvelle autorisation indiquant les nouveaux droits d'usage. Cette procédure est particulièrement importante en cas de transfert à un tiers de la ressource ou de ses composants ou dérivés ; l'autorisation doit être préalable au transfert et indiquer avec précision les conditions d'utilisation par le nouveau titulaire.
4. L'autorisation prévoit obligatoirement le dépôt d'un double des échantillons collectés dans une institution de Guinée Bissau apte à les conserver, ou dans une institution étrangère ou internationale que l'IBAP désignera ; des exceptions peuvent être prévues dans le cas d'animaux vivants. Le titulaire de l'autorisation devra effectuer un relevé géographique des prélèvements. Ce relevé est susceptible d'être déclaré confidentiel soit en raison de la protection de secret des affaires, soit en

- raison de risques pour l'environnement (risques d'excès de prélèvement non autorisés par exemple).
5. L'Autorité compétente peut délivrer une autorisation de prospection à but académique ou à but commercial.
 6. Le permis de collecte à but académique doit préciser les conditions d'accès aux échantillons et aux connaissances, sachant qu'aucun élément ne peut être divulgué ou transféré sans être assorti d'une clause par laquelle le demandeur s'engage à respecter le but académique et à demander l'autorisation de l'IBAP pour toute transformation du but académique en but commercial. Le bénéficiaire de l'autorisation doit rendre compte des résultats de sa recherche dans un rapport adressé à l'Autorité compétente à l'issue de l'opération et indiquer dans tout rapport, base de données ou publication, l'origine de la ressource et les moyens prévus pour en assurer la traçabilité.
 7. Le permis de collecte à but commercial doit indiquer les conditions précises de l'usage autorisé, les étapes de la recherche, la transmission des résultats et les prévisions d'un partage équitable des bénéfices qui seront éventuellement tirés de l'exploitation des résultats commerciaux de la recherche.
 8. La décision d'autorisation peut être contestée par toute personne concernée devant le Tribunal régional territorialement compétent. L'autorisation peut être suspendue ou révoquée sans indemnisation s'il apparaît que le demandeur ne respecte pas les obligations prévues au contrat ou si la poursuite de la collecte met en péril la sécurité alimentaire, l'environnement, la santé humaine ou l'équilibre économique des communautés locales concernées. La décision de suspension ou de révocation peut être contestée par toute personne concernée devant le Tribunal régional territorialement compétent.
 9. Est illégale toute utilisation à quelque fin que ce soit d'un échantillon ou d'une connaissance qui n'est pas accompagnée de son autorisation.

Article 12 : Le partage des bénéfices

1. Il n'y a pas de modèle unique de partage des bénéfices.
2. En cas de collecte à but académique, l'opérateur doit chercher à associer des scientifiques bissau-guinéens ou des scientifiques désignés par l'IBAP, quelle que soit leur nationalité. Ils seront cosignataires des publications issues de la recherche. Si cette première étape, qui doit faire l'objet d'un rapport sur les résultats de la recherche, est suivie d'une phase de recherche-développement, un nouveau contrat doit être signé.
3. En cas de collecte à but commercial ou de transformation du but académique en but commercial, une provision doit être déposée. Elle sera partagée entre l'IBAP et les titulaires de droits concernés par la collecte, communautés locales, propriétaires privés ou publics, détenteurs des connaissances traditionnelles, administration des parcs notamment.
4. Au cas où la collecte concerne un produit qui sera vendu sans transformation sur un marché intermédiaire ou sur le marché final, le prix de vente doit réserver une part équitable du prix final aux propriétaires ou gardiens traditionnels de la ressource ou de la connaissance, aux cueilleurs, collecteurs et transformateurs locaux. Une clause interdisant toute autre utilisation que celle du produit final en l'état, et notamment toute reproduction des organismes ou extraction d'un produit dérivé ou d'un principe actif, doit obligatoirement être insérée dans le contrat de vente ; cette disposition ne concerne pas les usages locaux.
5. Au cas où la collecte concerne un produit destiné à être reproduit à l'étranger, dont un principe actif doit être tiré ou dont une forme ou une autre de produit dérivé peut être extraite ou dérivée, le prix de vente du produit brut est complété par un pourcentage du chiffre d'affaires des produits dérivés. Une priorité sera donnée aux projets qui réalisent tout ou partie des opérations sur le territoire de Guinée Bissau.
6. En cas d'exploitation commerciale, un pourcentage du chiffre d'affaires doit être reversé à la communauté locale ou professionnelle concernée. Il dépend de la valeur économique du produit fini, de la valeur de la contribution de la communauté au regard de la valeur économique du produit fini et de l'importance de la recherche qui a été nécessaire pour l'amener sur le marché lorsqu'il s'agit d'un produit dérivé. Ces redevances doivent être payées tant que le produit est exploité. Le contrat peut prévoir de verser la redevance à un fonds local à vocation sanitaire, éducative ou environnementale.

La réalisation de structures ne nécessitant pas de budget de fonctionnement hors de portée des possibilités des communautés locales, sera privilégiée.

Article 13 : Les certifications

1. L'exploitation durable des ressources biologiques peut être attestée par un certificat d'exploitation durable. Ce label peut être apposé sur tout produit issu de ressources biologiques exploitées d'une manière qui ne porte pas atteinte à leur caractère renouvelable. La certification est réalisée par un ou plusieurs organismes certificateurs agréés par l'IBAP et l'Institut de la propriété intellectuelle.
2. Le partage équitable des bénéfices peut être attesté par un certificat de commerce équitable. Ce label peut être apposé sur tout produit issu des ressources biologiques, des connaissances ou des œuvres traditionnelles, lorsqu'un effort particulier a été fait pour qu'une part importante des bénéfices revienne aux producteurs de base. La certification est réalisée par un ou plusieurs organismes certificateurs agréés par l'IBAP et l'Institut de la propriété intellectuelle.
3. Ces critères peuvent être appliqués aux produits de l'artisanat et aux œuvres artistiques ayant droit à l'appellation prévue à l'article 8 du présent décret.

Article 14 : La protection des bases de données

1. Les ressources biologiques, leurs composants, leurs dérivés, les connaissances sur ces ressources, leur localisation et leur usage notamment, ainsi que des informations sur les œuvres des communautés locales et professionnelles peuvent être rassemblés en bases de données susceptibles de comprendre des éléments matériels et immatériels ordonnés de manière méthodique et individuellement accessibles. La constitution de ces ensembles a pour vocation d'assurer une meilleure connaissance du patrimoine naturel et culturel de la Guinée Bissau d'une part, de permettre la valorisation économique de certains éléments de ce patrimoine d'autre part.
2. Ces bases de données sont soumises à un règlement intérieur propre à assurer le respect des droits souverains de l'Etat, des droits intellectuels des communautés et des droits des fournisseurs de données, quelle qu'en soit la nature.
3. Le producteur de la base de données dispose d'un droit exclusif sui generis sur la base, définie comme un ensemble, et sur l'extraction des données qu'elle contient. Ce droit s'exerce dans le respect des droits corporels et incorporels des fournisseurs de matériels, de données, de connaissances et d'œuvres inclus dans la base.
4. Le producteur de la base bénéficie du droit exclusif d'interdire, d'autoriser ou d'assortir de conditions :
 - i. La reproduction de tout ou partie de la base par quelque moyen que ce soit.
 - ii. Toute forme de distribution au public de la base ou de ses copies.
 - iii. Toute communication au public de tout ou partie de la base.
5. Le producteur de la base a le droit d'interdire l'extraction et/ou la réutilisation de la totalité ou d'une partie du contenu de celle-ci. L'extraction est un transfert permanent ou temporaire de la totalité ou d'une partie du contenu d'une base de données sur un autre support par quelque moyen ou sous quelque forme que ce soit ; la réutilisation s'entend de toute forme de mise à la disposition du public de la totalité ou d'une partie substantielle du contenu de la base par distribution de copies, location, transmission en ligne notamment.
6. Le règlement intérieur de toute base de données portant sur le patrimoine naturel et culturel de la Guinée Bissau veille au respect des droits souverains de l'Etat sur les ressources biologiques et des droits intellectuels des communautés locales et professionnelles. Il distingue différents régimes juridiques de consultation des données et matériels inclus dans la base, certains pouvant être en accès libre et gratuit, le matériel n'étant transféré qu'avec un accord de transfert de matériel (MTA). Certaines données peuvent être réservés, gratuitement ou non, aux membres du réseau adhérent au

règlement intérieur. Enfin, d'autres données, susceptibles d'avoir une valeur économique, peuvent être tenues secrètes. Elles ne pourront être transférées qu'à la suite d'une évaluation réalisée en coopération entre le producteur de la base de données, et éventuellement par le responsable de la collecte du matériel ou de celui qui a recueilli la connaissance. La donnée ne sera transférée qu'à la suite de la signature d'un contrat obéissant aux termes du présent décret.

Article 15 : Règlement des différends

1. Les litiges entre les communautés et l'IBAP sont tranchés par les tribunaux régionaux compétents ayant pris l'avis des autorités coutumières pour tout ce qui relève de la coutume.
2. Les litiges entre l'Etat de Guinée Bissau et les utilisateurs de ressources, connaissances ou d'oeuvres, font l'objet d'une médiation ou d'un arbitrage. Les langues utilisées sont le portugais ou le français. Le droit applicable est le droit bissau-guinéen. Médiateurs et arbitres sont des juristes compétents dans le domaine des ressources biologiques. Ils peuvent se faire assister par des experts en tant que de besoin.
3. Tout conflit entre l'Etat et les utilisateurs de ressources, connaissances et oeuvres doit faire l'objet d'une première tentative de médiation à distance, chaque partie ayant nommé un médiateur et les deux médiateurs devant désigner un président. Toute transaction négociée par les deux médiateurs et acceptée par les parties en conflit fait l'objet d'un document écrit et contresigné par chacune des parties en présence ; l'accord est automatiquement entériné par le président et devient exécutoire. En cas de désaccord persistant plus d'un an entre les médiateurs sur un litige inférieur à ***** F CFA, le président reprend le dossier et tranche en dernier ressort dans un délai de 100 jours.
4. En cas de désaccord persistant plus d'un an entre les médiateurs sur un litige supérieur à ***** F CFA, chaque partie dispose de 30 jours pour nommer un arbitre. Les deux arbitres disposent d'un mois pour désigner le président du tribunal arbitral. Le lieu de l'arbitrage est (Dakar). Le règlement de procédure est celui de la Cour d'arbitrage de l'OHADA don't le secrétariat permanent est à Yaoundé, la Guinée Bissau étant Etat Partie. La sentence est définitive.

NORWAY

NORWAY GOVERNMENT RESPONSE TO NOTIFICATION 2011-065 & 2010-210: PROGRAMME OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS:

Article 10

The Nature Diversity Act states that official decisions that affect biological, geological and landscape diversity shall, as far as is reasonable, be based on scientific knowledge of the population status of species, the range and ecological status of habitat types, and the impacts of environmental pressures. The knowledge required shall be in reasonable proportion to the nature of the case and the risk of damage to biological, geological and landscape diversity. Furthermore, the authorities shall attach importance to knowledge that is based on many generations of experience acquired through the use of and interaction with the natural environment, including traditional Sami use, and that can promote the conservation and sustainable use of biological, geological and landscape diversity.

In addition, in 2011 the Norwegian government decided to launch a national programme on local and traditional knowledge concerning the conservation and sustainable use of biological diversity. This was a direct result of the ongoing discussions concerning article 8j and 10 c in the Convention on biological diversity (CBD). The national programme has as aim to safeguard relevant traditional knowledge, innovations and practices according to article 8(j).

Norway is one of the few European countries to have indigenous peoples, the Saami. In addition to the Saami, Norway also has many tradition holders represented in small-scale use of the biological resources. Reindeer husbandry, small-scale farming, forestry, hunting, and artisanal fishery all depend on traditional knowledge. Artisanal fishermen are still dependent on knowledge of the seasonal behaviour of the fish, weather conditions and wind directions to make their catches. Fish, both fresh and smoked, is sold directly by the fishermen locally to tourists and summer guests. Farm dairies produce traditional cheese made from cows and goats that graze in forest that have been grazed for centuries. Traditional knowledge and local traditional products still play

an important role in rural development even in a highly industrialized country like Norway.

PERU

DOCUMENTO PRELIMINAR

Contribución del Perú a la recopilación de información sobre el Artículo 10, con un enfoque en el Artículo 10 (c) como un componente importante del programa de trabajo sobre el Artículo 8(j) y disposiciones conexas

En respuesta a la Notificación de la Secretaría del CDB, del 19 de junio de 2012, el Perú alcanza las siguientes contribuciones a la aplicación del Programa de Trabajo sobre el Artículo 8(j) y en

/...

particular sobre los posibles elementos relativos a un nuevo componente importante del trabajo sobre el Artículo 10, con un enfoque en el Artículo 10 (c), de conformidad con los proyectos de decisiones a considerarse en la undécima reunión de la Conferencia de las Partes.

DIVERSIDAD CULTURAL, POBLACIÓN Y EXTENSIÓN TERRITORIAL DE LOS PUEBLOS INDÍGENAS DEL PERÚ

De conformidad con lo señalado en el Artículo 10 c) del CDB, en el Perú se viene impulsando de manera importante la utilización consuetudinaria de los recursos biológicos con base en prácticas culturales tradicionales compatibles con las exigencias de la conservación y uso sostenible de la diversidad biológica. Ello es posible porque, en concierto con lo que sucede a nivel mundial, en el Perú las sociedades tradicionales interactúan, desde hace milenios, con los reservorios más ricos de diversidad biológica, manteniendo e incrementando la diversidad biológica agrícola, y representan el grueso de la diversidad cultural. El Perú presenta una gran diversidad cultural y lingüística, la cual responde a los espacios naturales y se relaciona con las modalidades económicas que han venido incorporando los pueblos (caza, pesca, recolección, utilización de plantas medicinales, agricultura, ganadería, comercio, artesanía, etc). En este sentido son destacables las diferencias que podemos apreciar entre etnias amazónicas, andinas y costeñas (Chirinos *et al.*, 2004).

Aún cuando todavía se siguen precisando la información, al momento se reconoce la existencia de más de **14 familias etnolingüísticas y 72 grupos étnicos** en el país (MINAM, 2010)⁵. De acuerdo a un estudio reciente sobre la niñez indígena realizado en conjunto por el Instituto Nacional de Estadística e Información (INEI) y la UNICEF (2010), utilizando como indicador el aprendizaje de una lengua originaria y con base en el Censo Nacional 2007, se calculó una **población indígena de más de cuatro millones** (4.045.713) de personas mayores de 3 años de edad, lo cual representa el 16% del total de peruanos en ese rango de edad.

Al interior de ese grupo, la mayoría de la población indígena (83%) tiene como materna la lengua quechua (3.360.331 habitantes), seguida en número (11%) por la población con lengua materna aymara (443.248 habitantes) y la lengua asháninka (1,7%) y otras lenguas originarias amazónicas (4.3%), que en conjunto representan a 242 mil pobladores (6% de la población indígena). Cabe precisar que, en el marco del II Censo de Comunidades Indígenas de la Amazonía Peruana 2007, elaborado por el INEI, la población indígena amazónica pertenece a 51 etnias agrupadas en 13 familias lingüísticas. Asimismo, hay que señalar que en cada una de las 25 regiones del país residen personas que tienen como lengua materna el quechua, el aymara, el asháninka u otra lengua amazónica; no obstante, la población indígena suele estar concentrada en determinadas regiones, en especial la aymara (en Puno) y la asháninka (en Junín) (Benavides *et al.*, 2010)⁶.

Esta población indígena u originaria se organiza mayormente en **comunidades nativas y comunidades campesinas**, ambas instancias reconocidas legalmente (Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y de Ceja de Selva, Ley 22175 de mayo 1978, y Ley General de Comunidades Campesinas, Ley 24656 de abril 1987). Los grupos étnicos de la amazonia se organizan mayoritariamente en comunidades nativas, en tanto que los grupos étnicos andinos (quechuas y aymaras), ubicados fundamentalmente en la sierra, y los grupos étnicos costeños se organizan en comunidades campesinas. En conjunto, se podría estimar que estas comunidades representan alrededor de **6 millones de habitantes** y ocupan alrededor de **34 millones de hectáreas**, a partir de las bases de datos oficiales (IBC 2012 y COFOPRI 2009) con las que cuenta la Oficina de Ordenamiento Territorial del MINAM.

Asimismo, en el Perú se pueden identificar un conjunto de sociedades tradicionales que conocen y manejan la biodiversidad de manera sostenible, pero que no constituyen pueblos indígenas u originarios y a los cuales podríamos agrupar bajo la denominación de **comunidades locales** (aunque este es un concepto y un término aún por definir en el país), dentro de las cuales se puede ubicar a los pescadores

⁵ MINAM. 2010. Plan Nacional de Acción Ambiental PLANAA-PERÚ 2011-2021. Lima

⁶ BENAVIDES, M.; MENA, M.; PONCE, Carmen. 2010. **Estado de la niñez indígena en el Perú**. Instituto Nacional de Estadística e Informática (INEI) y Fondo de las Naciones Unidas para la Infancia (UNICEF). Lima. 156 p.

artesanales, por ejemplo. Parte de estas comunidades locales forma parte también de las comunidades campesinas y comunidades nativas.

MARCO LEGAL E INSTITUCIONAL DEL PAÍS VINCULADO A LA UTILIZACIÓN CONSUECUDINARIA DE LA DIVERSIDAD BIOLÓGICA

A. Correspondencia de los artículos 8j) y 10c) con los objetivos de la Estrategia Nacional de Diversidad Biológica – ENDB

La ENDB incluye objetivos estratégicos dirigidos a atender de manera importante los conocimientos tradicionales y la utilización consuetudinaria de la diversidad biológica, los cuales guardan correspondencia con los Artículos 8j) y 10 c) del CDB. Tales objetivos están orientados fundamentalmente a la revaloración, rescate e innovación de los conocimientos y tecnologías tradicionales (Objetivo 5.3); a garantizar una distribución equitativa de los beneficios derivados del acceso a los recursos, la información y el conocimiento o tecnologías tradicionales (Objetivo Estratégico 2); a eliminar o minimizar los impactos adversos sobre la diversidad biológica como resultado de la extracción del recurso (Objetivo Estratégico 2.1), y a apoyar el uso sostenible de los agroecosistemas (Objetivo Específico 2.2).

B. Marco jurídico nacional y desarrollo de sistemas *sui generis* para protección de conocimientos tradicionales y utilización consuetudinaria de los recursos biológicos

A nivel internacional, el Perú es uno de los países que ha aprobado el Convenio 169 OIT a través del Decreto Ley N° 26253. A nivel nacional, en la Constitución de 1993 el Perú incorporó el reconocimiento a los derechos colectivos de las comunidades nativas y pueblos indígenas, entre otros dispositivos legales que las regulan y protegen. Entre los dispositivos legales más importantes de reconocimiento de los derechos de las comunidades indígenas y locales (entre ellos los territoriales) están la Ley de Comunidades Nativas y de Desarrollo Agrario de las Regiones de Selva y Ceja de Selva (Decreto Ley N° 22175, mayo 1975) y el reglamento respectivo: “Reglamento de la Ley de Comunidades Nativas y de Desarrollo Agrario de las Regiones de Selva y Ceja de Selva” (Decreto Supremo N°003-79-AA), así como la Ley General de Comunidades Campesinas (Ley 24656, abril 1987) y su respectivo reglamento (Decreto Supremo N° 008-91-TR).

Dentro de este gran marco, el Perú ha sido prolífico en el desarrollo de sistemas *sui generis* encaminados a la protección de los conocimientos tradicionales asociados a los recursos genéticos, así como a la promoción y protección de la utilización consuetudinaria de los recursos biológicos y ecosistemas (incluidos los agroecosistemas), como describiremos a continuación:

a) Ley 27811

De acuerdo a la Ley 27811, Régimen de Protección de los Conocimientos Colectivos de los Pueblos Indígenas vinculados a los Recursos Biológicos, promulgada en el año 2002, la Dirección de Invenciones y Nuevas Tecnologías (DIN) del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) es la autoridad nacional competente encargada de conocer y resolver en primera instancia todo lo relativo a la protección de dichos conocimientos colectivos. En ese marco, INDECOPI ha venido realizando una serie de actividades a fin de difundir la norma e implementarla efectivamente, dentro de los ámbitos de sus competencias.

Como parte de dichas actividades se ha elaborado diversos materiales de difusión especializados impresos, digitales y radiales, con el objetivo principal de informar a los miembros de las comunidades indígenas sobre la protección, preservación y respeto de sus conocimientos vinculados con la biodiversidad, del mismo modo a sus organizaciones representativas, a medios de comunicación e

instituciones gubernamentales y no gubernamentales que están vinculadas de una u otra manera a los Pueblos Indígenas.

Por otro lado, se han establecido en el TUPA del INDECOPI⁷ los procesos de trámites establecidos en la Ley 27811 (Registros de Contrato de Licencia, Registros de Conocimientos Colectivos Públicos y Confidenciales y Cancelación de Registro de Conocimiento Colectivo). De la misma manera se ha establecido que todos estos procedimientos sean totalmente gratuitos, teniendo en cuenta la legislación referente a Comunidades Campesinas y Nativas.⁸ Finalmente, se han elaborado formatos para la solicitud de Registro de Conocimientos Colectivos y para la descripción clara y completa de los conocimientos.⁹

De igual modo desde la fecha de promulgación de la norma se vienen realizando permanentemente actividades de difusión de la misma, dirigidas a tanto a las organizaciones representativas de Comunidades nativas de la selva y Comunidades andinas de la sierra; los miembros de las propias comunidades, y en espacios donde la actividad está vinculada a esta temática, como es el caso de Universidades e Institutos de investigación, por mencionar algunos. La promoción del registro de conocimientos colectivos en un inicio estuvo focalizada en la realización de pilotos de registro *in situ*, los cuales buscaron promover los registros de conocimientos colectivos como mecanismo de preservación y, de este modo, coadyuvar al INDECOPI a defender los intereses de los pueblos indígenas.

Hasta fines del año 2011, la DIN había logrado otorgar cerca de 900 registros (885) de conocimientos tradicionales de propiedad colectiva, de un total de 988 solicitudes presentadas por 13 comunidades nativas y 4 comunidades campesinas (Tabla 1).

Tabla 1. N° de Registros Otorgados

N°	Tipo de Registros Otorgados	N° Registros
1	Registro Confidencial	492
2	Registro Público	381
3	Registro Confidencial y Público	12
TOTAL		885

Fuente: Dirección de Invenciones y Nuevas Tecnologías

b) Ley 29763, Ley Forestal y de Fauna Silvestre

En la Ley N° 29763-Ley Forestal y de Fauna Silvestre, en su artículo 78 sobre el respeto a los conocimientos tradicionales, se establece que la Autoridad Nacional Forestal y de Fauna Silvestre y la autoridad regional forestal y de fauna silvestre reconocen la concepción del bosque de los pueblos indígenas y respetan sus conocimientos tradicionales sobre el uso y manejo forestal y de fauna silvestre.

c) Ley 27104, Ley de Bioseguridad

En mayo del año 1999, se promulgó la Ley 27104, Ley de Prevención de Riesgos derivados del Uso de la Biotecnología, y su Reglamento (D.S. N° 108-. 2002-PCM) en el marco del Protocolo de Cartagena sobre la Seguridad de la Biotecnología Moderna del Convenio de Diversidad Biológica.

En el marco del Grupo Técnico de Bioseguridad de la Comisión Nacional de Diversidad Biológica (CONADIB), se está trabajando en una propuesta de modificatoria de esta ley para incluir capítulos relacionados con riesgos socioeconómicos, consulta participación de la ciudadanía sobre los riesgos y la necesidad de establecer zonas libres de transgénicos.

⁷ <http://www.indecopi.gob.pe/repositorioaps/0/0/jer/datgentupa1/Tupa/DIN.pdf>

⁸ Ley de Comunidades Campesinas (Ley 24656 reglamentada por el DS 008-91-TR) y Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y Ceja de Selva (DL 22175 reglamentado por DS – 003 – 79- AA)

⁹ <http://aplicaciones.indecopi.gob.pe/portaltcpi/index.jsp>

Lo resaltante de estas propuestas de modificación de la Ley de Bioseguridad es que se estarían incluyendo medidas que permitan consultar a los pueblos indígenas y comunidades locales asentadas en territorios que constituyen mayormente reservorios de alta diversidad genética de agrobiodiversidad, donde se pretenda introducir OVM.

Es importante mencionar que, al momento, hay 15 regiones que por Ordenanza Regional se han declarado como Libres de Transgénicos: Cusco, Ayacucho, San Martín, Huánuco, Lambayeque, Junín, Lima Metropolitana, Lima Región, Loreto, Arequipa, Cajamarca, Ancash, Puno, Huancavelica y Madre de Dios.

Ley 29811, Ley que establece la Moratoria al Ingreso y Producción de Organismos Vivos Modificados al Territorio Nacional por un Período de 10 Años

La Ley 29811, establece la moratoria de diez (10) años al ingreso y producción en el territorio nacional de Organismos Vivos Modificados (OVM) con fines de cultivo o crianza, incluidos los acuáticos, a ser liberados en el ambiente, para prevenir daños en un país centro de origen de la agricultura, como es el Perú. Es importante hacer notar que justamente las áreas que concentran la mayor diversidad genética de cultivos y crianzas nativos corresponden a territorios que pertenecen o son ocupados por los pueblos indígenas, debido a que estos pueblos son guardianes y permanentes creadores de esta reserva genética a través de sus conocimientos y prácticas consuetudinarias.

El Ministerio del Ambiente, como Autoridad Nacional Competente (Art. 6), se encarga de proponer y aprobar las medidas necesarias para el cumplimiento del objetivo mencionado y establece el ordenamiento territorial ambiental que garantice la conservación de los centros de origen y la biodiversidad. Asimismo, corresponde a los ministerios de Agricultura, Salud y Producción, y a los organismos adscritos al Ministerio del Ambiente, en coordinación con el Ministerio Público y con los gobiernos regionales y locales, vigilar y ejecutar las políticas de conservación de los centros de origen y la biodiversidad, así como controlar el comercio transfronterizo (Art.7).

PROMOCIÓN DE LA UTILIZACIÓN DE LOS CONOCIMIENTOS TRADICIONALES Y OTRAS FORMAS DE CONOCIMIENTO DE LAS COMUNIDADES INDÍGENAS Y LOCALES PARA LA CONSERVACIÓN Y UTILIZACIÓN SOSTENIBLE DE LA DIVERSIDAD BIOLÓGICA

La reivindicación de los conocimientos tradicionales y, particularmente, el reconocimiento del conocimiento etnobiológico ha permitido desarrollar el manejo y gestión de ecosistemas y recursos biológicos de manera sostenible garantizando la preservación de las prácticas culturales y el uso consuetudinario de los pueblos indígenas y comunidades locales. Esto es particularmente claro en el caso de las áreas naturales protegidas, las plantas medicinales y la conservación *in situ* de la agrobiodiversidad

A. Áreas Naturales Protegidas

El Perú cuenta con un total de 75 Áreas Naturales Protegidas, entre Parques Nacionales (12), Santuarios Nacionales (9), Santuarios Históricos (4), Reserva Nacional (15), Refugio de Vida Silvestre (3), Bosque de Protección (6), Reserva Paisajística (2), Reserva Comunal (8), Coto de Caza (2) y Zonas Reservadas (14), las cuales cubren un total de 19.562.085 hectáreas. Estas ANP son de administración nacional y conforman el Sistema Nacional de Áreas Naturales Protegidas por el Estado – SINANPE, el cual está a cargo del Servicio Nacional de Áreas Protegidas por el Estado (SERNANP), organismo adscrito al Ministerio del Ambiente (MINAM). Adicionalmente, existen Áreas de Conservación Regional (15) y Áreas de Conservación Privada (50), que sumadas a las 75 ANP alcanzan una extensión de 22.139.071 hectáreas (alrededor del 15% del territorio nacional).

El SERNANP señala que todas las áreas naturales protegidas, con excepción del Parque Nacional del Río Abiseo, cuentan con grupos poblacionales que habitan en su interior, los cuales además de tener derechos sobre la tierra (propiedad o posesión), aprovechan en su mayoría los recursos naturales para garantizar así la satisfacción de sus necesidades. Asimismo, existen grupos poblacionales que si bien no habitan al interior del área natural protegida aprovechan también los recursos naturales. Muchos de estos grupos poblacionales son calificadas de manera general como “población local” o “población rural” por el Sistema Nacional de Áreas Naturales Protegidas del Perú (SINANPE).

Los pueblos indígenas no han tenido un tratamiento diferenciado sustancialmente del tratamiento que se les brindaba a otros pobladores locales (llámese colonos, ribereños, campesino, etc.), es decir, que a la par que se les reconoce y garantiza la titularidad de los derechos reales que les asisten en el área naturales protegida, también se les ha gravado con las limitaciones y restricciones al ejercicio de éstos derechos.

El actual Plan Director y la Ley de Áreas Naturales Protegidas (Ley N° 26834) no mencionan una distinción relevante o tratamiento diferenciado entre población local y pueblos indígenas. Pese que el Reglamento de la Ley (D.S. N° 038-2001-AG) toma en consideración algunas recomendaciones del Plan de Acción para los Asuntos Prioritarios, elaborado por la Mesa de Diálogo y Cooperación para las Comunidades Nativas de la Comisión Especial Multisectorial para las Comunidades Nativas (D.S. N° 15-2001-PCM), lo cierto es que las disposiciones normativas y de planificación en materia de ANP no han contemplado integralmente los derechos de estos pueblos en relación con las ANP.

No obstante, en la práctica, la posición privilegiada de los pueblos indígenas frente a los otros grupos poblacionales, dado su carácter intrínseco de “descendientes de la poblaciones que originalmente habitaban el territorio peruano (a quienes se les debe garantizar el cabal ejercicio de sus derechos culturales como pueblos y garantizar su identidad)” ha permitido que se les reconozca “derechos tradicionales”, más allá de los derechos de subsistencia, tales como el derecho al aprovechamiento de los recursos naturales (caza, pesca, recolección y tala tradicional), desplazamiento por “rutas tradicionales” (zonas de aprovechamiento y manejo de recursos naturales, zonas donde realizan prácticas y ritos religiosos, zonas de importancia cultural, etc.).

Asimismo, existen al interior de cuatro áreas naturales protegidas (Parques Nacionales Cordillera Azul, Manu y Alto Purús, y del Santuario Nacional Megantoni) y una zona reservada (Zona Reservada Pucacuro) pueblos indígenas que se encuentran en “aislamiento voluntario” y evitan tener contacto con la población local. Estos pueblos han recibido un tratamiento orientado a garantizar tanto su vida y hábitat como su derecho al “no contacto”, a través de:

1. Acciones que delimitan las áreas que habitan y usan como “áreas de protección estricta” dentro de la zonificación aprobada por el Plan maestro del ANP;
2. Documentos de planificación que buscan garantizar los derechos de estos pueblos a través de sus planes maestros (p.e. los planes maestros de los Parques Nacionales Huascarán, Cordillera Azul, Manu, Otishi, Alto Purús y Bahuaja-Sonene, Reservas Nacionales Pacaya Samiria, Allpahuayo Mishana, Tambopata, Titicaca, Salinas y Aguada Blanca, etc);
3. Documentos de planificación específicos como los planes antropológico y de uso turístico del Parque Nacional del Manu, el primero de los cuales está a la fecha pendiente de aprobación; (4) protocolos de relacionamiento para poblaciones indígenas en aislamiento voluntario PN Manu, etc). Pese a todos estos esfuerzos, no se ha sistematizado un sistema de protección a favor de estos pueblos indígenas en aislamiento.

No debe olvidarse la elaboración, aprobación e implementación del régimen especial de administración para las reservas comunales. Este régimen, aplicable a cinco (05) ANP del SINANPE (Reservas Comunales El Sira, Purús, Yanasha, Machiguenga y Asháninca) pasó por un largo período de gestación (2002-2005) llegando a aprobarse mediante Resolución de intendencia N° 019-2005-INRENA-IANP (2005), no sin antes aprobar un sistema transitorio.

B. Revaloración del conocimiento de la medicina tradicional y de conservación y uso de plantas medicinales

El Centro Nacional de Salud Intercultural –CENSI, órgano de línea del Instituto Nacional de Salud – INS del Ministerio de Salud El CENSI, por su lado ha venido trabajando en base a la presente línea estratégica:

- El reglamento de la Ley de Promoción de Complementos Nutricionales para el Desarrollo Alternativo Ley N° 27821.
- Plan de implementación y asistencia técnica de Jardines Botánicos de Plantas Medicinales (PM).
- Realiza la conservación *ex situ* de plantas medicinales de las tres regiones del país (Costa, Sierra y Selva).
- Se cuenta con dos jardines botánicos institucionales en la ciudad de Lima (uno ubicado al costado del Ministerio de Salud de la Av. Salaverry con 300 plantas y otro en la sede institucional del INS en Chorrillos con 150 plantas).
- A nivel nacional, a solicitud de las instituciones, se ha brindado asistencia técnica para la implementación de jardines botánicos en Hospitales (Hospital de Collique, Guillermo Almenara, Villa El Salvador) y otros servicios de salud (CS Jepelacio Región San Martín, CS Tarata en la Región Tacana, entre otros), así como la universidad (Universidad Agraria La Molina).
- Recopilación de información (conocimientos tradicionales) para el Inventario Nacional de Plantas Medicinales.
- Elaboración de un procedimiento participativo para la Identificación de los Agentes de Medicina Tradicional –AMT.
- Se ha elaborado la ficha de registro de agentes de medicina tradicional (en proceso de validación).
- Se ha elaborado la propuesta de identificación de AMT.
- Elaboración de la Tecnología Sanitaria denominada Diálogo Intercultural de Salud – DIC, para un mejor relacionamiento del personal de salud con los agentes de medicina tradicional. Esta tecnología sanitaria permite obtener un diagnóstico sociocultural de salud local más preciso, una agenda de salud con participación de los agentes de medicina tradicional y planes concertados para articular acciones y revalorar la medicina tradicional.
- Se ha elaborado la Guía del procedimiento del Diálogo Intercultural de Salud entre la medicina académica y la medicina tradicional.

C. Conservación in situ de la agrobiodiversidad

En las últimas dos décadas, el Perú ha ejecutado y viene ejecutando varios proyectos de conservación *in situ* de la agrobiodiversidad de envergadura nacional, basados en el reconocimiento del manejo tradicional de las plantas cultivadas y sus parientes silvestres en áreas de cultivo conducidas por campesinos andinos y amazónicos del país. Resalta, en particular, la participación de 164 comunidades tradicionales en la ejecución del Proyecto “Conservación in situ de cultivos nativos y sus parientes silvestres” en 11 regiones del país, entre el 2001 y 2006.

El impacto de este esfuerzo no sólo se ha traducido en la adopción del tema en los sectores, la elaboración de un Programa Nacional de Agrobiodiversidad – PNABD (Grupo Técnico de Agrobiodiversidad, 2004) y en la consolidación de un capital social en torno al tema, incluyendo a la academia y al sector empresarial, sino que sobre todo ha permitido registrar y organizar en bases de datos

los saberes, prácticas y usos tradicionales asociados a la agrobiodiversidad nativa y ha desencadenado un proceso de motivación para el desarrollo de la gestión del conocimiento tradicional a nivel país, incluyendo la construcción de mecanismos de salvaguarda para su protección.

Así, actualmente, existen en marcha dos proyectos de conservación *in situ* de la agrobiodiversidad, que pasaremos a describir brevemente:

SIPAM

EL PROYECTO: SISTEMAS IMPORTANTES DEL PATRIMONIO AGRICOLA MUNDIAL – SIPAM, SE VIENE DESARROLLANDO EN 6 PAISES: CHINA, CHILE, TUNEZ, FILIPINAS, ARGELIA Y PERU. EN EL CASO DEL PERU TIENE COMO OBJETIVO REVALORAR LOS SISTEMAS DE GESTION SOSTENIBLE DE LA AGRO BIODIVERSIDAD Y DE LOS AGRO ECOSISTEMAS INGENIOSOS DE ALTA MONTAÑA DE LAS COMUNIDADES ORIGINARIAS EN EL TRANSECTO MACHUPICCHU - LAGO TITICACA COMO PATRIMONIO DE LA HUMANIDAD, ES UN ESPACIO QUE INCLUYE DOS CUENCAS HIDROGRAFICAS: VILCANOTA (CUSCO) Y RAMIS (PUNO) DENOMINADO CORREDOR “CUSCO - PUNO”. ES EJECUTADO POR FAO – PERU Y EL MINISTERIO DEL AMBIENTE CON EL APOYO FINANCIERO DEL FONDO MUNDIAL PARA EL MEDIO AMBIENTE.

PRODERN I

El Proyecto Desarrollo Estratégico de los Recursos Naturales -PRODERN I, busca el fortalecimiento de las capacidades en los Gobiernos Regionales de Apurímac, Ayacucho y Huancavelica y en el MINAM para el desarrollo estratégico y puesta en valor del patrimonio natural, con el objetivo de reducir la pobreza en un medio ambiente caracterizado por la sostenibilidad y una buena gestión del patrimonio natural. Es ejecutado por el Ministerio del Ambiente con el apoyo financiero de la Cooperación Técnica Belga.

Finalmente, mediante el **Proyecto Conservación de la Agrobiodiversidad en chacra de agricultores** se han formulado un plan de implementación de parcelas demostrativas de conservación *in situ* de cultivos andinos con buenas prácticas agrícolas, el cual derivará en un manual técnico para el manejo de germoplasma bajo condiciones *in situ*, es decir, en las chacras o parcelas de los agricultores. El Plan y el manual no pretenden validar las técnicas y prácticas agrícolas tradicionales, sino trata de formalizar los mecanismos tradicionales de conservación *in situ* que los agricultores hacen de manera consuetudinaria como su modo de vida. Ambos documentos han sido propuestos para cuatro comunidades campesinas de Huancavelica.

INCENTIVOS NACIONALES PARA PRESERVACIÓN Y MANTENIMIENTO DE CONOCIMIENTOS TRADICIONALES Y LOS AGROECOSISTEMAS

En cuanto a los incentivos de carácter nacional promovidos en el país, cabe resaltar el de la creación y reconocimiento de las zonas de agrobiodiversidad.

Las «Zonas de Agrobiodiversidad» constituyen un instrumento *sui generis* de la legislación peruana orientado a la protección de los cultivos nativos y de los derechos de los agricultores a partir del reconocimiento jurídico del territorio donde se despliega la conservación *in situ* de cultivos nativos y sus parientes silvestres, y se presentan como una categoría distinta a las formas tradicionales de Áreas Naturales Protegidas (ANP).

El artículo 38^a del Reglamento de la Ley 26839 sobre la Conservación y Aprovechamiento Sostenible de la Diversidad Biológica (DS 068-2001-PCM) de 2001, define a las zonas de agrobiodiversidad como aquellas que «...orientadas a la conservación y uso sostenible de especies nativas cultivadas por parte de pueblos indígenas no podrán destinarse para fines distintos a los de conservación de dichas especies y el mantenimiento de las culturas indígenas», permitiendo sí el desarrollo de actividades turísticas que coadyuven a tal fin”.

El artículo 39 del referido Reglamento señala la necesidad de desarrollar un reglamento que le dé contenido a esta nueva categoría de conservación o, alternativa o complementariamente, buscar instrumentos y categorías existentes, como es el caso de las Áreas Privadas de Conservación (ACP).

El Proyecto: “Conservación *in situ* de cultivos nativos y sus parientes silvestres en el Perú”, implementado de 2001 a 2006, desarrolló la propuesta de Áreas de Manejo Especial de Conservación de la Agrobiodiversidad (AMECA), como categoría ad hoc para las zonas de agrobiodiversidad.

En el marco del proyecto “Iniciativa de Políticas de los Recursos Genéticos – GRPI-Perú”, ejecutado el año 2008, se elaboraron tres expedientes técnicos para la creación de Zonas de Agrobiodiversidad en Laria (Huancavelica), Pariahuanca (Junín) y Sorochuco (Cajamarca). Sin embargo, no se pudo concretar su creación y reconocimiento oficial debido a la falta de un reglamento que definiera los procedimientos específicos.

Teniendo en cuenta los antecedentes mencionados, se conformó un Grupo de Trabajo integrado por el INIA, IIAP, SERNANP, MINAM, SPDA y CCTA, con el objetivo de desarrollar el artículo 38 del DS 068-2000-PCM. El año 2011 dicho Grupo de Trabajo formuló una propuesta de Reglamento de Creación y Reconocimiento de zonas de agrobiodiversidad, el cual señala que la creación y el reconocimiento de zonas de agrobiodiversidad debe hacerse por iniciativa de los propios agricultores tradicionales y que dicha creación deberá redundar en beneficios para las comunidades, agricultores y sus asociaciones, como por ejemplo, a través del pago por servicios ecosistémicos, distribución equitativa de beneficios, apoyo a saneamiento físico legal, el turismo vivencial u otros, siempre cuando se mantenga la agrobiodiversidad y los conocimientos y prácticas tradicionales asociados.

El mencionado proyecto de Reglamento de Creación y Reconocimiento de Zonas de Agrobiodiversidad ha pasado por la aprobación de los distintos sectores involucrados y está expedito para ser discutido y aprobado por el Consejo de Ministros.

Lima, 16 de julio de 2012

¹ Mandjidura: interdiction traditionnel relatif à l'accès à un espace et/ou des ressources, que parfois est matérialisé para une cérémonie et des fétiches. Cette interdiction est faite souvent au tour d'un espace et/ou des ressources sur lequel se repose l'économie d'une ethnie déterminé.

¹ Da Costa G, Directeur National au Bureau de la Planification Côtière

¹ Au Nord. du parc habite les ethnies Cobiana, Balantes, Manjac, Baiote, Banhun et Felupes
Au Sud, habite les Cobiana et les Manjac

C. Submission from relevant organizations

ASSEMBLE OF FIRST NATIONS

**The AFN views on the Convention on Biological Diversity (CBD)
Article 10(c) – Customary Sustainable use of Biological Resources**

Assembly of First Nations (AFN) Background:

- The AFN is presenting this submission of views on the development of a program of work under Article 10(c) of the Convention on Biological Diversity (CBD). Time and capacity limitations do not allow the AFN to make a comprehensive submission on Article 10(c). As a result, the AFN will focus its submission on the importance of considering the rights of indigenous peoples when developing plans of action to promote customary sustainable use of biological resources.
- The AFN is a national organization, based in Canada, dedicated to advancing the interests of First Nations. First Nations Chiefs from across Canada meet in Assembly to coordinate on issues of common concern, facilitate discussions and develop plans of action.
- The Environmental Stewardship Unit (ESU) of the AFN provides scientific, technical and policy to support First Nations on environmental issues. The ESU works in a variety of program areas, including fisheries, species at risk, parks and forestry, climate change and conducts direct environmental health research in First Nations communities.¹⁰
- The AFN is committed to the promotion of practices which support sustainable development, including the recognition of Aboriginal and Treaty rights. First Nations understand that the realization of sustainable development is complementary with the recognition and implementation of First Nations inherent, treaty and aboriginal rights.

General Comments on Customary and Sustainable Use:

- First Nations have been conserving since time immemorial. First Nations have always recognized that humanity is part of the environment – we cannot conserve by failing to use resources anymore than we can conserve by overusing them. Our shared prosperity depends on our ability to use environmental resources in a balanced fashion. This is not a unique consideration for First Nations; it is a common feature of all societies and, indeed all life on earth.
- Articles 8(j) and 10(c) of the CBD are closely linked. Whereas Article 8(j) calls for Parties to “respect, preserve and maintain knowledge, innovations and practices of

indigenous and local communities embodying traditional lifestyles”; Article 10(c) calls for Parties to “[p]rotect and encourage customary use of biological resources in accordance with traditional cultural practices”.

- The AFN holds that Article 10(c) requires Parties to protect the very activities and practices which support the preservation and promotion of traditional knowledge referred to in Article 8(j). Traditional cultural practices provide the context in which traditional knowledge is applied. The AFN asserts that traditional knowledge cannot be preserved nor promoted if there are no opportunities for First Nations to apply that knowledge.
- The text of Article 10(c) is clear that Parties are to “[p]rotect and encourage customary use of biological resources”. The text does not limit customary sustainable use to non-commercial applications. This is a key point for many First Nations because commercial aspects of customary sustainable uses provide powerful economic incentives to engage in ancestral practices and promote the wider application of traditional knowledge.
- A casual survey of the locations of species at risk in Canada reveals that a substantial number of them are located on First Nations reserves. Most First Nations do not have enforceable biodiversity laws and remarkably limited regulatory capacity, particularly on environmental matters. Customary sustainable uses and the ability to apply traditional knowledge on First Nations reserves, results in *de facto* environmental management regimes which support critical habitats for species at risk.
- As in other parts of the Convention which implicate indigenous peoples, the AFN cautions Parties against taking too narrow a view on customary sustainable use. While customary sustainable use may be perceived as an environmental matter, it is critical for Parties to understand that a range of other considerations, particularly indigenous rights considerations, may either support or hinder efforts to implement customary sustainable use.
- Customary sustainable use is the basis for a range of harvesting rights recognized and protected in Treaties between First Nations and the Crown. There is a remarkable diversity of terms used to protect First Nations customary sustainable use rights. Examples include the Treaty 3 assurance that First Nations would “have [the] right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described”,¹¹ as well as the comparatively detailed provisions of modern land claims agreements.¹²
- First Nations rights were recognized and affirmed in the *Constitution Act, 1982*. Since that time, a number of First Nations have claimed constitutional rights to harvest resources based on ancestral rights and customary practices. In 1996, the Supreme Court of Canada defined an aboriginal right as “practices, customs and traditions integral to the

¹¹ Treaty 3 between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods with Adhesions (3 October 1873): <http://www.aadnc-aandc.gc.ca/eng/1100100028675>. See also *Keewatin v. Minister of Natural Resources*, 2011 ONSC 4801: <http://canlii.ca/t/fmzc4>.

¹² See for example, Chapter 11 of the Maa-nulth First Nations Final Agreement (9 December 2006): http://www.bctreaty.net/nations/agreements/Maanulth_final_intial_Dec06.pdf.

distinctive cultures of aboriginal peoples”¹³. For First Nations, this is one reason why customary sustainable use is inexorably bound to First Nations rights.

- First Nations rights are inherently sustainable. In 1990, the Supreme Court of Canada recognized that First Nations rights could be ‘infringed’ if a proposed federal action has the objective of conserving a resource shared by First Nations and non-natives¹⁴.
- Ignoring treaty rights may hinder the development of conservation initiatives. In 2005, the Supreme Court of Canada held that an attempt to build a road in an existing national Park could not proceed because the Mikisew Cree First Nation had not been consulted with respect to the effects of the road on their rights under Treaty 8.¹⁵
- ‘On the ground’ implementation of customary and sustainable use is important. The AFN recognizes that there is a tendency for Parties to focus on the existence of legislative or policy measures when assessing progress under the CBD. However, whether customary sustainable use is actually practiced is inherently local in nature. This is particularly true because customary sustainable use implicates indigenous peoples, who rarely pass legislation, regulations or policies.
- Stewardship of biological resources often implicates a range of governmental actors within a Party. For example, Environment Canada, Parks Canada, the Department of Fisheries and Oceans, and the Department of Aboriginal Affairs and Northern Development Canada each have their own expertise, interests and mandates. In addition, sub-national governments often have a variety of responsibilities for implementing customary sustainable use. Yet the AFN is unaware of any situation in which a policy maker or a court has cited Article 10(c) of the CBD as supporting any particular decision on customary sustainable uses.
- The experience of First Nations in Canada suggests that while legislation, regulation and policies may support customary sustainable uses of resources, most success stories are borne from partnerships, not regulation. In order for partnerships to be successful, Parties must be mindful of rights implications, whether they arise from constitutional rights, other domestic laws, international treaties such as International Labour Organization Convention 169, or customary international law, as articulated in the United Nations Declaration on the Rights of Indigenous Peoples.

Specific Comments on Recommendation 7 and 6:

- The AFN strongly supports the invitation to Parties to report on customary sustainable use in their National Biodiversity Strategies and Action Plans (NBSAPs), with the full and effective participation of indigenous peoples. The AFN regards customary sustainable use as the key to an effective biodiversity strategy and a cornerstone of any environmental management plan. In Canada, due to the interdepartmental and intergovernmental nature of customary sustainable use and biodiversity management, full

¹³ R. v. Van der Peet, [1996] 2 SCR 507: <http://canlii.ca/t/lfr8r>.

¹⁴ R. v. Sparrow, [1990] 1 SCR 1075: <http://canlii.ca/t/lfsvj>.

¹⁵ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388.

and effective participation of First Nations in development and reporting through NBSAPs would provide an ‘on the ground’ perspective, which is capable of recognizing and assessing the effects of multiple departments and multiple governments attempts to coordinate efforts to preserve biological diversity.

- Implementation of rights is important. Parties should consider not only the existence of national legislation and applicable international instruments, but should also consider the effectiveness of laws, and where appropriate, policies, when developing a workplan under Article 10(c). First Nations in Canada have won hard-fought decisions which establish harvesting rights only to see those decisions fail to be implemented. The AFN Resolution 67/2010, *Establishment of a National Mechanism for the Negotiation and Implementation of Supreme Court Decisions regarding Fisheries*, states that First Nations are seeking implementation of rights from Supreme Court of Canada decisions. Parties should consider not only the existence of the law, but the *effect* of the law, particularly when considering development of a workplan which is meant to conserve biological diversity, rather than to promote proliferation of laws.
- Indigenous Peoples should not have to choose between pursuing their cultures and remaining in poverty, or pursuing extractive development and gaining economic wealth. Under section A.1, *Customary sustainable use and diverse local economies*, the AFN asserts that there is nothing in the term ‘customary sustainable use’ which precludes a commercial aspect to such a use. Rather than supporting unsustainable use, recognition of the commercial aspects of customary harvesting practices provides a powerful economic incentive to indigenous peoples to continue such practices. Recognizing the economic value of First Nations harvesting activities also provides a disincentive for First Nations to explore forms of economic development which have deleterious impacts on local biological diversity, such as mining or oil and gas development.
- The AFN reminds Parties that there is a range of ‘national legislation’ and ‘applicable international instruments’, many of which are not focused on biodiversity. Parties should pay particular attention to constitutional rights, as well as international instruments which implicate customary sustainable use. The United Nations Declaration on the Rights of Indigenous Peoples is an obvious example; however there are other instruments which may have a subtle, but powerful impact. For example, International Labour Organization Convention 111, *Discrimination in Employment and Occupation Convention* may be interpreted to prevent discrimination against indigenous peoples pursuing traditional occupations.¹⁶ A workplan under Article 10(c) of the CBD may assist Parties with compliance under such international instruments only if Parties are aware and consider the impact of such instruments when developing such a workplan.
- Under Task 5, the AFN suggests that Parties should consider adding “particularly funding for indigenous peoples and local communities” after the phrase “availability of funding”. Given the AFN’s statements on the importance of implementation of national laws and international instruments, there is no doubt that Parties require funding to ensure their laws are implemented effectively. In addition, Article 10(c) is fundamentally about

¹⁶ International Labour Office, *Eliminating Discrimination Against Indigenous and Tribal Peoples in Employment and Occupation A Guide to ILO Convention 111*, (Geneva: International Labour Organization, 2007).

encouraging customary and sustainable use by indigenous peoples and local communities. The AFN views Article 10(c) as a community-based obligation under the Convention. As a result, Parties should ensure that indigenous peoples and local communities are aware, to the extent practicable, of funding opportunities to advance customary and sustainable use.

- Under Task 7, the AFN reiterates its points regarding the relationship between commercial aspects of customary sustainable use and the term ‘sustainable’. First Nations have encountered problems with using these terms together and therefore implore Parties to recognize the importance of commercial aspects of customary sustainable uses of resources.
- Under Task 8, the AFN suggests adding the term “free” before “prior and informed consent” and removing the term “approval and involvement”. Under international environmental law, ‘prior and informed consent’ (PIC) is a term which generally applies to Parties, whereas ‘free, prior and informed consent’ (FPIC) is a term which is generally applied to indigenous peoples. The term “approval and involvement” has been rejected by First Nations in the context of the Nagoya Protocol Joint Submission¹⁷. This issue recurs in Task 14(a). An extremely minor point under Task 8 is that it may be unclear from whom the PIC or approval and involvement must be secured because the sentence never identifies indigenous peoples or local communities. The AFN prefers that, particularly where FPIC is involved, that Parties clarify that FPIC is to be secured from an indigenous government, rather than from an individual.
- Under Task 9, the AFN notes that customary sustainable use may be an issue of both vulnerability and resilience as related to climate change adaptation. In addition, the AFN notes that there is also a relationship between customary sustainable use, traditional knowledge and invasive species. The AFN recommends including invasive species in Task 9, or creating a new Task devoted to this particular linkage.
- The AFN strongly supports Tasks 10-13, related to Education and Gender Dimensions. The AFN is currently involved in two research networks of relevance to Article 10(c): the Sustainability in Education Policy Network and the Fisheries-Western and Indigenous Knowledge Systems (Fish-WIKS).
- The AFN strongly supports identification of best practices under Task 14(a). This submission has detailed a range of outstanding issues between First Nations and Canada. Yet, despite these issues, First Nations and Canada are able to come together to conserve shared resources and promote our common interests. There are several success stories, too numerous to detail here. Because the AFN has focussed this submission on rights, we will focus our examples on strategies First Nations and Canada have used to navigate rights in the context of conserving biological diversity.
- For example, when First Nations rights are recognized, First Nations can fulfill their obligations to the Creator under First Nations laws. For example, the Tla-o-qui-aht First

¹⁷ Grand Council of the Crees (Eeyou Istchee) *et al.*, “Nagoya Protocol on Access and Benefit Sharing: Substantive and Procedural Injustices relating to Indigenous Peoples’ Human Rights”, Expert Mechanism on the Rights of Indigenous Peoples, 4th sess., Geneva (July 2011): <http://www.cbd.int/icnp1/submissions/>

Nation developed a Tribal Park, using only its inherent rights. Last year, the Doig River First Nation announced it would apply its inherent rights to create a 90,000 hectare Tribal Park within its traditional territory. These are unilateral actions taken by First Nations to apply their rights in order to protect critical environments for future generations.

- Partnerships between First Nations, Canada and others are more common. In June 2010, Gwaii Haanas National Marine Conservation Area Reserve and Haida Heritage Site (3500 km²) was established under the Canada National Marine Conservation Areas Act. In this particular situation, the Government of Canada and the Council of the Haida Nation agree to disagree on many issues. They did agree to work together to maintain and restore healthy and productive ecosystems for the continuity of Haida culture, including traditional renewable resource harvesting and the protection of sites of spiritual-cultural significance to the Haida. The Gwaii Haanas Agreement took almost six years to negotiate. The agreement is administered through the Gwaii Haanas Archipelago Management Board (AMB) with equal representation from Haida and Parks Canada. The AMB is responsible for all aspects of planning, operation, and management of Gwaii Haanas. The agreement commits \$106 million toward the development of water and land-based national park and other activities.
- The Pimachiowin Aki World Heritage Project/Whitefeather Forest Initiative is a collaboration between Bloodvein First Nation, Poplar River First Nation, Pauingassi First Nation, Little Grand Rapids First Nation, Pikangikum First Nation and the provinces of Manitoba and Ontario. The initiative seeks to designate the east side of Lake Winnipeg as a UNESCO World Heritage Site, while preserving the rights of partner First Nations to continue sustainable harvesting activities within Project lands.
- Under Species at Risk Act, the use of Agreements and Permits has led to creative recovery measures by Bamfield Huu-ay-aht Community Abalone Project, Gwa'sala-'Nakwaxda'xw Nation, Haida Gwaii Abalone Stewards, Kitsoo Abalone Stewardship Project, Malcolm Island Shellfish Cooperative, First Nations, coastal communities, and the public. Communities have combined commercial activities with conservation to find balance between socio-economic interests and the need to conserve biodiversity for future generations and the environment as a whole. The AFN is currently calling for a mainstreaming of this model beyond permits and agreements and into general legislative and policy measures.

Conclusion:

- Customary sustainable uses of biological resources have been practiced by First Nations since time immemorial. When Europeans first came to Canada, they encountered a wonder of biological diversity. First Nations have, and continue to, oppose forms of economic development which threaten their ability to use key biological resources because the customary use of those resources is often at the root of First Nations cultures.
- When Parties discuss customary sustainable use of resources, they do so in the narrow confines of the CBD. Such focus on customary sustainable use is welcomed by the AFN because it is rare for Parties, or for other actors such as NGOs and industry, to consider the importance of customary sustainable use. Indeed, the AFN has taken a position that customary sustainable use of resources should be the centerpiece of a National Conservation Plan, currently under development by the government of Canada.¹⁸
- However, the cost of such a narrow focus is that other important considerations may not receive attention. In the experience of the AFN, it is impossible to ignore the importance of customary sustainable use to First Nations culture and First Nations rights. In Canada, these concepts are closely connected. Whereas there are examples where ignoring rights can hinder conservation initiatives, Canada is also replete with examples of First Nations working with Canada to conserve by supporting the customary sustainable use of resources.

FOREST PEOPLES PROGRAMME (FPP) AND BIODIVERSITY PROJECT' (FPBP) AND THE INDIGENOUS WOMEN AND BIODIVERSITY NETWORK AND 24 OTHER INDIGENOUS PEOPLES' AND COMMUNITY-BASED ORGANISATIONS AND SUPPORTING NGOS

2011 SUBMISSION

This is a joint submission by:

- Red Mujeres Indigenas sobre la Biodiversidad (Indigenous Women and Biodiversity Network)
- The South Central People Development Association (SCPDA) (Wapichan people, Guyana)
- Unnayan Onneshan – The Innovators, centre for research and action on development (Sundarbans traditional resource users, Bangladesh)
- The Association of Kaliña and Lokono Peoples in Marowijne (KLIM) (Kaliña and Lokono people Suriname)
- *The Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) (Hmong and Karen people, Thailand)*
- Association OKANI (Baka people Cameroon)
- The Foundation for the Promotion of Indigenous Knowledge (FPCI) (Kuna people Panamá)

Article 10

Also in decision 10/43, the Conference of the Parties decided on a new major component of work on article 10 with a focus on article 10(c), and requested the seventh meeting of the Working group to provide advice on how this component could be implemented and to develop a strategy for the integration

¹⁸ See remarks of National Chief Shawn A-in-chut Atleo, Standing Committee on Environment and Sustainable Development, 3 May 2012: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5554450&Language=E&Mode=1&Parl=41&Ses=1>.

of this component, as a cross-cutting issue into the Convention's various programmes of work and thematic areas. To assist the Working Group in its consideration of this issue, Parties, indigenous and local community organizations, NGOs and other relevant organizations are requested to submit information regarding:

- (i) The implementation of Article 10 of the Convention (sustainable use of biodiversity), with a focus on Article 10(c) (customary sustainable use), (decision X/43, paragraph 6);

Our submission consists of the following elements:

1. Assessment of the implementation of Article 10(c) so far
2. Advice on how this component can be implemented more effectively
3. Suggestions for the development of a strategy on how this component can be integrated as a cross-cutting issue in the CBDs POWs

Assessment of the implementation of Article 10(c) so far

In this section we describe some key issues and concerns related to our customary sustainable practices, and explain various obstacles to effective implementation of 10(c) at local and national levels

1. Secure rights to lands, territories and resources, including access, control and management of those resources, represent a fundamental requirement for indigenous peoples and local communities to maintain and practise customary use and traditional knowledge in their daily interaction with biodiversity. However, our communities do not have secure land and resource rights; this situation threatens our customary use systems.
2. Lack of recognition of customary laws and institutions. Customary laws are the backbone of customary sustainable use, and customary institutions (such as village councils) enforce customary laws and make sure they are respected. If these are not respected and recognized by our governments and laws, customary practices can become weakened.
3. Lack of appreciation of customary sustainable management of natural resources often results in top-down natural resource management and conservation approaches that exclude customary practices. Policies and programmes often do not support or promote communities' traditional ecological principles and knowledge about sustainability and conservation. In the long term, this can have negative consequences for the vitality of these systems. Often, the situation is even worse; biodiversity loss is unjustly blamed on indigenous peoples and local communities' actions and therefore customary use and management are restricted or severely curtailed.
4. The establishment of protected areas without respect for forest peoples' rights and their full and effective participation is posing challenges to indigenous peoples and local communities in terms of both access and management of biological resources. This again has severe impacts on the customary sustainable use of these areas by our communities.
5. External challenges: our communities are facing many external challenges that impact on our territories, such as mining, logging, infrastructure, hydro-electric projects, etc. Such external threats destroy areas where we practice customary use and have knowledge about, or deny access to us to these areas. The right to free, prior and informed consent (FPIC) is important to protect our rights but in our cases this right is not formally recognised, not fully understood, and not applied as it should.
6. Education in our own language and on issues that relate to our environment and related knowledge and practices is vital to maintain customary sustainable use and traditional knowledge. Ecological concepts and knowledge in many instances cannot be translated into non-indigenous languages,

and the transfer of knowledge and skills usually takes place in the ecosystem, not in a classroom. Access to these educational locations is therefore vital. Many current education systems however, are aimed at assimilation and at enforcing non-indigenous languages upon our children. This can lead to the loss of local knowledge and related practices.

Advice on how this component can be implemented more effectively

In relation to the issues and obstacles described above, we have drafted a few possible recommendations to improve the implementation of Article 10(c).

1. Take measures to recognise and respect indigenous peoples' rights to their lands and resources, with their full and effective participation, including, inter alia, measures to:
 - a) Revise current land laws, land administration policies and regulations on natural resource use and ownership, to bring them into line with international standards and obligations
 - b) Review and strengthen land demarcation and titling methods and regulations to ensure alignment with international obligations
 - c) Support and recognise indigenous community maps of the occupation and use of their traditional territories, to assist in ensuring secure land tenure of these territories
 - d) Establish or update a registry of outstanding land and territorial claims and unresolved land conflicts
 - e) Build the capacity of relevant government agencies on the land and resource rights of indigenous peoples in relation to international obligations
 - f) Recognize and support collective land titles
 - g) Develop effective mechanisms for the restitution of lands and resources that have been taken from indigenous peoples and local communities without their free, prior and informed consent

2. Promote the full and effective participation of indigenous peoples and local communities in biodiversity conservation, management, use and decision- making, for instance by:
 - a) Revising and reforming laws and policies to ensure the full and effective participation of indigenous peoples and local communities in biodiversity conservation, management , use and decision- making
 - b) Establishing local and national mechanisms to ensure the full and effective participation of indigenous peoples and local communities in biodiversity conservation, management , use and decision-making, using participatory methods and tools that are culturally appropriate

3. Take actions to recognize and strengthen customary laws and traditional institutions, through, inter alia:
 - a) Putting in place laws and policies, and establishing pluri-legal national frameworks, which recognize and respect customary law systems in relation to the management and conservation of biological resources
 - b) Establishing mechanisms for strengthening traditional institutions and customary laws in relation to the management and conservation of biological resources, in accordance with their customary laws and traditions

4. Take concrete actions to acknowledge, respect and promote customary practices and traditional knowledge in relation to biodiversity conservation and sustainable use through, *inter-alia*,:
 - a) Updating relevant national laws and policies, to fully recognise the contribution of traditional knowledge and customary practices of indigenous peoples and local communities to the conservation and sustainable use of biodiversity, including, inter alia, NBSAPs, protected areas laws and legislation, national forest programmes (NFPs), national programmes for climate change adaptation and mitigation, etc.

- b) Support initiatives by indigenous peoples and local communities which aim to strengthen and promote customary use and practices and traditional systems of biodiversity management at the local level
5. Ensure that free, prior and informed consent (FPIC) is respected and fully applied in all decisions, policies, actions and measures that may affect indigenous peoples' lands and territories, in accordance with UNDRIP and related international instruments. This should be done, *inter-alia*, by:
- a) Recognising and respecting community rules and customary laws
 - b) Establishing effective mechanisms for the enforcement of free, prior and informed consent
6. Address all cases where protected areas have adversely affected indigenous peoples, or may adversely affect them in current or future protected areas programmes or projects
- a) Establish a transparent process to document and address situations in which the establishment or expansion of protected areas have adversely affected indigenous peoples and local communities, *inter alia* through:
 - i. Reviewing the historical record of the national protected areas system and their impacts on indigenous peoples, with their full and effective participation
 - ii. Develop national and global mechanisms for redress, reparation, restitution and fair compensation to indigenous peoples and local communities for past injustices and damages in relation to protected areas
 - b) Ensure that any current or new activities related to protected areas are carried out in accordance with the Programme of Work on Protected Areas, in particular programme element II on governance, participation, equity and benefit-sharing
7. Take steps to ensure that indigenous peoples have access to an education that is culturally appropriate and promotes the use and revitalisation of indigenous languages and traditional knowledge, noting Article 17(d) and 30 of the Convention on the Right of the Child and Article 14 of the United Nations Declaration on the Rights of Indigenous Peoples:
- a) Include indigenous languages in the national curriculum
 - b) Promote the use of mother tongue and use locally-developed curricula
 - c) Support local initiatives for the revitalisation of indigenous languages and traditional knowledge
 - d) Remove imposed mainstream education or assimilation policies for indigenous children

General recommendation for a more effective implementation of Article 10(c) at the international, national and local level:

- WG8j should recommend COP11 to take a decision to request the WG8j to develop a set of guidelines to effectively promote and encourage customary sustainable use, focusing on enabling conditions at the national and local level. This could constitute a useful tool to guide Parties and other relevant stakeholders in the implementation of Article 10(c).

Suggestions on the development of a strategy on how this component can be integrated as a cross-cutting issue in the Programmes of Work of the Convention:

- Bring the programmes of work in line with the 2011-2020 Strategic Plan (particularly with Target 18)
- Include customary sustainable use in the revised programmes of work when they are reviewed and updated; all revised POWs should include a task on 10(c)
- Analyze whether the integration of traditional knowledge and customary sustainable use can take place through the updating of the programmes of work in accordance with the MYPOW of the Convention; in case that this is insufficient, a recommendation should be developed for an

effective integration of traditional knowledge and customary sustainable use in the various POWs

- When a decision is made about revision of POWs, a notification should be sent to Parties, indigenous peoples and local communities and other stakeholders for input on 10(c) in the POW revision
- Hold a SBSTTA or WGRI meeting to revise and update all the POWs to bring them in line with the 2011-2020 Strategic Plan, including the integration of Article 10(c).
- Promote and ensure effective participation of indigenous peoples and local communities and civil society in developing NBSAPs

2012 SUBMISSION

The [Forest Peoples Programme](#), [Natural Justice](#) and 24 other Indigenous peoples' and community-based organisations and supporting NGOs made a [joint submission](#) to the Secretariat of the Convention on Biological Diversity (CBD) concerning the further development of the Plan of Action for customary sustainable use as a new major component of the [revised Programme of Work on Article 8\(j\) and Related Provisions](#). The submission suggests that the new component addresses secure land, resource and tenure rights as a fundamental condition for effective customary sustainable use of biological resources.

Overall, the submission states that the draft Plan of Action should encourage Parties to the CBD to:

1. Take necessary measures to secure indigenous peoples' and local communities' territories and land, resource and tenure rights;
2. Promote and support stewardship, governance and management by indigenous peoples and local communities;
3. Ensure that laws, policies, and decision-making processes at all levels appropriately recognize and respect customary laws, institutions, worldviews, resource management practices, and traditional knowledge, languages, educational systems, and occupations;
4. Review, revise, enact, and implement laws and policies at all levels in accordance with the ecosystem approach and with the full and effective participation and free, prior and informed consent of indigenous peoples and local communities; and
5. Respect and apply the right of free, prior informed consent of indigenous peoples and local communities in all actions that may affect their territories, lands and waters (including and inland, coastal and marine).

The joint submission is available for download [here](#). Other legal submissions compiled by Natural Justice and its partners can be found [here](#).

Source: <http://natural-justice.blogspot.com/2012/08/joint-submission-on-programme-of-work.html>

Please find FOLLOWING the joint submission of FPP and other 24 Indigenous peoples' and community-based organisations and supporting NGOs

SUBMISSION

**In relation to the notification on the Programme of Work on Article 8(j) and related provisions
Request for contributions from Parties and stakeholders regarding possible elements of a new
major component of work on Article 10, with a focus on Article 10(c)**

Ref.: SCBD/SEL/OJ/JS/dm/80290

This is a joint submission by indigenous and local community organisations and supportive NGOs working on issues related to customary sustainable use of biodiversity in various countries. We would like to thank you for providing us this opportunity to provide our views on this important matter.

1. Introduction

We would like to bring to your attention the following information and suggestions with the objective to advance the development of the Plan of Action for customary sustainable use as a new major component of the revised Programme of Work on Article 8(j) and Related Provisions, including a set of indicative tasks. This information is based on local-level experiences, realities and needs in relation to customary sustainable use, the report and recommendations of the International Expert Meeting on Article 10(c), and the forthcoming CBD Technical Series and complementary legal review on recognizing and supporting territories and areas conserved by indigenous peoples and local communities.ⁱⁱ

2. Outcomes of international expert meeting on Article 10(c) as an INF document for COP11

The report of the International Expert Meeting on Article 10(c) (held in Montreal in June 2011), particularly Annex I, contains very useful considerations and proposals that deserve further attention and reflection. We therefore suggest that the 10(c) expert meeting report be made an INF document for COP11 so that it can be used for reference and input.

1

3. Key elements for the new major component

Secure land,ⁱⁱⁱ resource and tenure rights represent a fundamental condition for indigenous peoples' and local communities' effective customary sustainable use. In relation to this, governance and management by indigenous peoples and local communities is essential for effective and thriving customary sustainable use.

In-depth case studies carried out in the past few years demonstrate that in order to be able to continue to apply, generate, maintain and pass on customary sustainable practices and associated knowledge, indigenous and local communities need secure access to customary areas and the power to decide on use, control and management. This is a crucial incentive for communities to make it worthwhile to continue to invest in customary knowledge and practices and to manage resources in a long-term sustainable way. In cases where land, resource and tenure rights are insecure, customary sustainable use is weakened and threatened.^{iv}

The fundamental importance of these issues is recognized in the United Nations Declaration on the Rights of Indigenous Peoples, particularly Articles 11 (on practicing and revitalizing cultural traditions and customs), 18 (participation in decision-making), 26 (on rights to lands, territories, and resources), 29 (conservation and protection of the environment), 32(2) (free, prior and informed consent for any activities affecting them). The importance of secure land, resource and tenure rights is also recognized in the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO Voluntary Guidelines), which were endorsed by the 38th special session of the Committee on World Food Security on 11 May 2012.^v Further underscoring this point, the Rio+20 Outcome Document recognizes the importance of secure land tenure and traditional sustainable practices to address the needs of rural communities and food security (paragraph 109), encourages countries to implement the aforementioned FAO Voluntary Guidelines (paragraph 115), and commits to improving livelihoods by promoting secure land tenure, participation in decision-making, and benefit-sharing (paragraph 193).

These experiences contained in the case studies were reflected in the advice of the International Expert Meeting in 2011 for the content and implementation of the new major component of work on Article 10 with a focus on 10(c). The experts emphasised the importance of securing the territories and land, resource and tenure rights of indigenous peoples and local communities. The report states that respect for their territories includes cultural, social, economic, and ecological elements associated with the traditional stewardship and management systems of indigenous lands, waters and territories. It went on to stress that

effective access, control, governance, management, and use by indigenous peoples and local communities of local territories are essential requirements for customary sustainable use.

An important element of secure land, resource and tenure rights is to ensure that **free, prior and informed consent** (FPIC) is respected and fully applied in all actions that may affect indigenous and local communities' lands and territories. This is an inherent component of indigenous peoples' and local communities' systems of stewardship, governance and management. It is a crucial mechanism for indigenous peoples and local communities to prevent unsustainable activities from entering and damaging their lands and territories.

Overall, the (indicative) tasks for the draft Plan of Action should therefore encourage Parties to:

2

Take necessary measures to secure indigenous peoples' and local communities' territories and land, resource and tenure rights;

Promote and support stewardship, governance and management by indigenous peoples and local communities;

Ensure that laws, policies, and decision-making processes at all levels appropriately recognize and respect customary laws, institutions, worldviews, resource management practices, and traditional knowledge, languages, educational systems, and occupations;

Review, revise, enact, and implement laws and policies at all levels in accordance with the ecosystem approach and with the full and effective participation and free, prior and informed consent of indigenous peoples and local communities; and

Respect and apply the right of free, prior informed consent of indigenous peoples and local communities in all actions that may affect their territories, lands and waters (including and inland, coastal and marine).

This would be a natural step to bring the Plan of Action on CSU in line with the Addis Ababa Principles and Guidelines, in particular Practical Principle 2:

The current list of indicative tasks for the action plan represents a good basis to develop the action plan. We would like to take this opportunity to suggest a number of changes and additions building on the work done so far on the indicative list.

4. Proposed Changes to the Draft COP11 Decision and the Indicative List of Tasks

4.1. Preamble of the Draft COP11 Decision on Article 10(c)

A number of elements mentioned above in the Key Elements for the New Component section above are to a certain extent addressed in existing CBD instruments such as the Akwé: Kon Guidelines and the Tkarihwaí:ri Code of Ethical Conduct and all of those elements are addressed in the United Nations Declaration on the Rights of Indigenous Peoples. It would be very useful to have reference to these instruments in the preamble of the draft Decision.

We therefore suggest the inclusion of the following text in the preamble of the draft Decision: “*Recalling and acknowledging* the Akwé: Kon Guidelines (Decision VII/16) and the Tkarihwaí:ri Code of Ethical Conduct (Decision X/42) and the United Nations Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in September 2007...”

Addis Ababa Practical Principle 2:

Recognizing the need for a governing framework consistent with international / national laws, local users of biodiversity components should be sufficiently empowered and supported by rights to be responsible and accountable for use of the resources concerned.

Rationale: (...) Sustainability is generally enhanced if Governments recognize and respect the "rights" or "stewardship" authority, responsibility and accountability to the people who use and manage the resource, which may include indigenous and local communities. (...) Moreover, to reinforce local rights or stewardship of biological diversity and responsibility for its conservation, resource users should participate in making decisions about the resource use and have the authority to carry out any actions arising from those decisions.

3

4.2. List of Indicative Tasks, Section A: “Guidance on sustainable use and related incentive measures for indigenous and local communities”

4.2.1. Land and resource rights

As mentioned in the section on “Key elements” above, secure land, resource and tenure rights is an essential element (and incentive) for customary sustainable use.

Based on the Expert Meeting on 10(c) report among others^{vi}, we would like to propose the addition of the following task under the section “lands, waters and biological resources” to address this important issue: *Task xx*: To review national and sub-national laws and policies, with a view towards legal recognition of collective or communal ownership and customary governance and management of territories, lands, sacred natural sites, and resources and to report on development through the national reporting system.

4.2.2. Free, prior and informed consent

A task related to free, prior and informed consent should also be developed under the section “lands, waters and biological resources”. We would like to suggest the following text:

Task xx: To develop mechanisms at the national and local level to ensure that the free, prior and informed consent of indigenous peoples and local communities is fully respected and upheld in all actions that may affect their territories, land, sacred natural sites, and resources, in accordance with the UN Declaration of the Rights of Indigenous Peoples and other relevant international instruments.

4.2.3. Customary law and institutions

Another key element and incentive measure of the new Plan of Action should be one or more tasks that **recognize and strengthen customary laws and traditional institutions**. Customary laws (including community norms, protocols, rules and procedures) are the backbone of customary sustainable use, and customary institutions play a key role in guiding their communities and enforcing customary laws. As such these are essential elements of effective and sustainable governance and management. If customary laws and institutions are not respected and recognized in biodiversity decision-making and activities, sustainable customary practices and the related biodiversity and ecosystem functions are likely to be undermined.

With regards to customary law and traditional institutions, we have two suggestions:

Urge Parties to remove the brackets around Task 3, or

Propose a new task reading: “To review and update laws, policies, and decision-making processes at all levels to recognize and respect customary laws and traditional institutions related to customary sustainable use of biodiversity.

We would also suggest the inclusion of the following text (in bold) in Task 2 under the sub-heading “Customary sustainable use and diverse local economies”:

4

“To incorporate customary sustainable use practices and customary law and institutions~~[or policy]~~, as appropriate, with the full and effective participation of indigenous peoples and local communities, and taking into account **the Addis Ababa Principles and Guidelines, Akwé: Kon Guidelines, and Tkarihwaié:ri Code of Ethical Conduct** ~~[into]~~ **within** national biodiversity strategies and action plans, as a strategic way to maintain biocultural values and to achieve human well-being and to report on this through the national reports.”

4.2.4. Traditional occupations and livelihoods

Also inextricably linked to customary sustainable use are traditional occupations and livelihoods. As reported by the International Expert Meeting on Article 10(c), former Equator Initiative prize winners proposed the following prerequisites for successful community projects that promote customary sustainable use and conservation: security of tenure; project driven from the bottom-up and with community ownership, support of elders, and commitment from community leaders; and redressing power imbalancesvii.

We therefore suggest the inclusion of the following text, drawn from the advice of the International Expert Meeting, in the List of Indicative Tasks under the sub-heading “Customary sustainable use and diverse local economies”:

Task xx: To encourage, promote and develop innovative and equitable community-based economic initiatives and diverse local economies based upon secure land, resource and tenure rights, customary sustainable use and traditional occupations, and in accordance with customary laws and community-defined development priorities.

4.2.5. An ecosystem approach to the law

Given the indivisible dependence between indigenous peoples’ and local communities’ cultures and identities, and customary laws and practices with their territories and areas, they are well-placed to implement the ecosystem approach and to advise on effective ways to enact and uphold an ecosystem approach in laws and policies. According to the recommendations of the forthcoming CBD Technical Series referred to in page 1, laws and policies at all levels should themselves integrate an ecosystem approach in order to effectively respond to the realities of natural and social-cultural processes that interact in an integrated manner.

We therefore suggest that Parties include the following text under the sub-heading “Lands, waters and biological resources”:

Task xx: To review, revise, enact, and implement laws and policies in accordance with the ecosystem approach and with the full and effective participation and free, prior and informed consent of indigenous peoples and local communities.

4.3. List of Indicative Tasks, Section B: “Measures to increase the engagement of indigenous and local communities and governments at the national and local levels in the implementation of Article 10 and the ecosystem approach” 5

4.3.1. New sub-heading on “Decision-making, participation, capacity-building and access to information”

Drawing directly from the advice of the International Expert Meeting and the recommendations of the forthcoming CBD Technical Series mentioned in page 1, we suggest the inclusion of a new sub-heading on “Decision-making, participation, capacity-building, and access to information” in the List of Indicative Tasks under “Measures to increase the engagement of indigenous and local communities and governments at national and local levels in the implementation of Article 10 and the ecosystem approach”. We suggest the following Tasks to be included under this new sub-heading:

Task xx: To ensure the full and effective participation of indigenous peoples and local communities, in particular women, in public policy-making and biodiversity management and decision-making processes at all levels.

Task xx: To promote collaboration between indigenous peoples and local communities and relevant government agencies and other stakeholders for the practical implementation of Article 10(c) at national and local level, including through on-the-ground projects on customary sustainable use and the implementation of the Addis Ababa Guidelines, Akwé: Kon Guidelines, and Tkarihwaí:ri Code of Ethical Conduct, with the full and effective participation and free, prior and informed consent of indigenous peoples and local communities.

Task xx: To increase financial support and opportunities for participation of indigenous peoples and local communities in the CBD Secretariat’s sub-regional capacity building workshops on, inter alia, NBSAPs and the CBD Programme of Work on Protected Areas.

Task xx: To make information on traditional knowledge, customary sustainable use, the ecosystem approach, and related provisions and instruments of the CBD available in appropriate languages and disseminate to indigenous peoples and local communities, including through a series of sub-regional capacity-building workshops in collaboration with relevant organisations and networks.

Task xx: To support the capacity-building, networking, participatory documentation and research, and sharing of experiences and lessons learned on customary sustainable use amongst indigenous peoples and local communities and relevant institutions, particularly women, according to community-defined priorities.

4.3.2. Climate change and customary sustainable use

The International Expert Meeting discussed the linkages between customary sustainable use and climate change, particularly how climate change further exacerbates threats to sustainable use. They emphasised the particular vulnerability of indigenous peoples and local communities to climate change because of their direct dependence on ecosystems and on predictable seasons and weather-based indicators. They also stressed that traditional knowledge and customary sustainable use practices provide significant experience with and insights into effective methods for adapting to climate change.

We therefore suggest that under the heading “Guidance on sustainable use and related incentive measures for indigenous and local communities”, Parties adopt a task specifically

addressing these issues by removing the brackets around Task 9 or further strengthening it by including reference to the particular vulnerability of indigenous peoples and local communities to the impacts of climate change.

4.4. List of Indicative Tasks, Section C: “Article 10, with a focus on Article 10(c), as a cross-cutting issue into the Convention’s various programmes of work and thematic areas”

4.4.1. General section on Article 10(c) as a cross-cutting issue

The Plan of Action should include one or more Tasks that specifically address the cross-cutting nature of customary sustainable use within the various programmes of work and thematic areas under the Convention.

We therefore suggest the inclusion of the following text in the List of Indicative Tasks before the sub-heading “1. Protected areas”:

Task xx: To develop, in synergy with other relevant bodies of the Convention, a phased approach with a suitable process and timeline to ensure the integration of Article 10, with a focus on 10(c) as a cross-cutting issue into the Convention’s various programmes of work and thematic areas.

4.4.2. Protected Areas

Many recent academic studies, global in reach, also demonstrate that many territories and areas under the stewardship, governance and management of indigenous peoples and local communities are actually more effective at conserving biodiversity (including reducing deforestation) and ecosystem functions than State-governed areas.viii Appropriate respect, recognition and support for such territories and areas (including for their customary laws and institutions, and traditional knowledge, languages and occupations therein) would strengthen the capacities of indigenous peoples and local communities to continue to practice customary sustainable uses of biodiversity and to safeguard and revitalise ecosystems and their functions.ix It would also contribute directly to the achievement of the 2011-2020 Strategic Plan and Aichi Targets, particularly Targets 11 (potentially contributing as “effective area-based conservation measures” where and when indigenous peoples and local communities desire to do so), 14 and 18, as well as implementation of the Programme of Work on Protected Areas, particularly Element 2 on governance, participation, equity, and benefit-sharing.x

We therefore suggest the inclusion of the following text, drawn from the advice of the International Expert Meeting and the recommendations of the forthcoming CBD Technical Series mentioned in page 1, in the List of Indicative Tasks under the sub-heading “Protected areas”:

Task xx: To review, revise and enact legislation or policies, with the full and effective participation and free, prior and informed consent of indigenous peoples and local communities, that enable indigenous peoples and local communities to voluntarily identify, designate, govern, manage, sustainably use, and conserve their territories, areas, sacred natural sites, and natural resources through their own means and customary laws, institutions, and practices.

Task xx: To recognize the importance and role of sacred natural sites and their custodians, customary forms of protection, law, governance, and associated social, cultural, and spiritual values in the customary sustainable use of biodiversity, with the full and effective participation and free, prior and informed consent of the relevant indigenous peoples and local communities.

Task xx: To respect the wishes of indigenous peoples and local communities who do not want legal or other forms of recognition or support, particularly in situations of voluntary isolation or in relation to cultural sensitive or confidential information.

5. Indicators for customary sustainable use

We take note that the recommendation to COP11 by WG8(j)-7 concerning indicators recognises the possible dual application and complementarity of some of the indicators adopted for traditional knowledge as also being relevant for customary sustainable use and calls for further work to be carried out on the three indicators so far adopted for traditional knowledge by COP7 and COP10. We believe, however, that additional indicators related to customary sustainable use and traditional knowledge should be added to the existing ones. We would like to propose the consideration of the following two indicators:

1. “Number of governments legally recognizing customary law, institutions and practices”

This indicator was identified by the Working Group on Indicators of the International Indigenous Forum on Biodiversity at the “International Experts Seminar on Indicators Relevant for Indigenous Peoples, the Convention on Biological Diversity and the Millennium Development Goals” (see UNEP/CBD/WG8j/5/INF/2). It could be proposed as it is or slightly amended as follows: “Status and trends in the legal recognition of customary sustainable use practices and customary law and institutions”.

The latter version is our preferred option.

1. “Vitality Index of Traditional Ecological Knowledge (VITEK)”

This indicator, developed by Terralingua (www.terralingua.org/vitek), makes an effort to directly measure the status and trends in traditional ecological knowledge in indigenous communities and has already been tested in a number of such communities.

6. Relevance to Other International Instruments

We would also like to note that issues related to sustainable use (Article 10) and customary sustainable use (Article 10(c)) apply not just to the CBD, but also to many other international instruments, including all of the biodiversity-related conventions, the UNFCCC, CCD, human rights instruments, and the Millennium Development Goals. We would like to propose that the Secretariat explores ways and means through which the lessons learned and the standards developed on these issues in the CBD could apply to other relevant instruments and processes, for example, through the Inter-Agency Support Group on Indigenous Issues in collaboration with the secretariats of relevant conventions and treaties.

Signed:

- . The South Central People Development Association (SCPDA) (Wapichan people, Guyana)
- . Unnayan Onneshan – The Innovators, centre for research and action on development (working in support of Sundarbans traditional resource users, Bangladesh)
- . The Association of Kaliña and Lokono Peoples in Marowijne (KLIM) (Kaliña and Lokono people, Suriname)
- . The Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) (Hmong and Karen people, Thailand)
- . Association OKANI (Baka people, Cameroon)
- . The Foundation for the Promotion of Indigenous Knowledge (FPCI) (Kuna people, Panamá)
- . Forest Peoples Programme (UK)
- . Natural Justice: Lawyers for Communities and the Environment (South Africa/international)
- . The ICCA Consortium (Switzerland/international)
- . Sacred Natural Sites Initiative (the Netherlands/international)
- . Partners of Community Organisations (PACOS) Trust (Sabah, Malaysia)
- . Jaringan Orang Asal SeMalaysia (JOAS) (Indigenous Peoples Network of Malaysia)
- . Indigenous Peoples' Rights Programme – Open Society Initiative of Southern Africa
- . Kalpavriksh Environmental Action Group (India)
- . Asociacion ANDES (Peru)
- . International Collective in Support of Fishworkers (India/international)
- . ETC Foundation-COMPAS Network for Endogenous Development (the Netherlands/international)
- . Centre for Indigenous Knowledge and Organizational Development (CIKOD) (Ghana)
- . Kivulini Trust (Kenya)
- . Save Lamu (Kenya)
- . National Network for the sustainable management of Genetic Resources (JINUKUN) (Benin)
- . NATURE TROPICALE NGO (Benin)
- . Coalition for the Protection of African Genetic Heritage (COPAGEN) (present in Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Guinea Conakry, Mali, Niger, Senegal, and Togo)
- . African Biodiversity Network
- . The Gaia Foundation (UK)
- . Terralingua (Canada)

ⁱ Zaalman, Kumanajare, Biswana, Watalmaleo, Barend, Oeloekanamoe, Majarawai, Galgren, Kambel, de Jong, 2006, *Marauny Na'Na Emandobo Lokono Shikwabana. 'Marowijne: Our Territory'*. Commission on Land Rights of the Indigenous People of Lower Marowijne, Suriname and Forest Peoples Programme, UK. (English and Spanish); Tchoumba, Nelson, Handja, Nounah, Minsolo, 2006, *Protecting and Encouraging Customary Use of Biological Resources by the Baka in the west of the Dja Biosphere Reserve*. Forest Peoples Programme, UK. (English and French); Highland Mapping Development and Biodiversity Management Project, Inter-Mountain Peoples' Education and Culture in Thailand Association, 2006, *Indigenous Knowledge, Customary Use of Natural Resources and Sustainable Biodiversity Management*. IMPECT, Thailand and Forest Peoples Programme, UK.; David, Isaacs, Johnny, Johnson, Pugsley, Ramacindo, Winter and Winter, 2006, *Wa Wiizi, Wa Kaduzu: Our Territory, Our Custom*. Guyana. (English and Spanish); Colchester, Monterrey and Tomedes, 2004, *Protecting and Encouraging Customary Use of Biological Resources: the Upper Caura, Venezuela*. Forest Peoples Programme, UK. (English and Spanish); Kabir and Hossain, 2008, *Resuscitating the Sundarbans: Customary Use of Biodiversity & Traditional Cultural Practices in Bangladesh*. Unnayan Onneshan, Bangladesh.

ⁱⁱ Kothari, et al. (editors), forthcoming 2012. *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global overview and national case studies*. Forthcoming CBD Technical Series volume; Jonas, et al, forthcoming 2012. *An Analysis of the Interplay between International, Regional and National Laws, Judgements and Institutional Frameworks on Indigenous Peoples' Territories and Community Conserved Areas* (working title). Available in September 2012 at www.iccaconsortium.org.

ⁱⁱⁱ In the context of this submission, when the word 'land' is used, we understand it in the same way as described it in the Akwé: Kon Guidelines terminology: lands and waters traditionally used and occupied by indigenous peoples and local communities. It also encompasses the concept of landscape and seascape.

^{iv} See, for example, Centre pour l'Environnement et le Développement (CED) and Association Okani (Cameroon), South Central Peoples Development Association (SCPDA) (Guyana), Organisation of Kaliña and Lokono in Marowijne (KLIM) (Suriname), Inter-Mountain People Education & Cultures in Thailand Association (IMPECT) (Thailand) and Forest Peoples Programme (United Kingdom). Customary sustainable use of biodiversity by indigenous peoples. Case studies relevant to the *Satoyama Initiative* from Suriname, Guyana, Cameroon and Thailand. In Bélair C., Ichikawa K., Wong B.Y. L., and Mulongoy K.J. (Editors) (2010). *Sustainable use of biological diversity in socio-ecological production landscapes. Background to the 'Satoyama Initiative for the benefit of biodiversity and human well-being*. Secretariat of the Convention on Biological Diversity, Montreal. Technical Series no. 52, pp.22-35. Available at www.cbd.int/doc/publications/cbd-ts-52-en.pdf ; Customary sustainable use studies listed in footnote 1 and available at <http://www.forestpeoples.org/customary-sustainable-use-studies>; Kothari, et al., forthcoming 2012; Swiderska, et al., 2012. *Biodiversity and Culture: Exploring community protocols, rights and consent*. Participatory Learning and Action Journal, Volume 65. IIED: London. Available at: <http://pubs.iied.org/14618IIED.html>; IUCN/CEESP, 2010. *Bio-cultural diversity conserved by indigenous peoples and local communities: Examples and analysis*, Companion volume to Briefing note no 10, IUCN/CEESP. Available in three languages from: <http://tinyurl.com/dx7fgwu>; Parrotta and Trosper (eds.) *2011 Traditional Forest-Related Knowledge: Sustaining Communities, Ecosystems and Biocultural Diversity*.

^v For example, the general principles of the FAO Voluntary Guidelines referenced above call upon States to "... Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measure to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights." The general principles continue by calling on States to "safeguard legitimate tenure rights against threats and infringements... promote and facilitate the enjoyment of legitimate tenure rights... provide access to justice to deal with infringements of legitimate tenure rights... [and] prevent tenure disputes, violent conflicts and corruption."

^{vi} Rights and Resources Initiative, 2012. *What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights*. Washington DC: Rights and Resources Initiative; Jonas, et al, forthcoming 2012. *An Analysis of the Interplay between International, Regional and National Laws, Judgements and Institutional Frameworks on Indigenous Peoples' Territories and Community Conserved Areas* (working title). Available in September 2012 at www.iccaconsortium.org; Hussein, A., forthcoming 2012. *Sacred Natural Sites in Kenya: A legal analysis*. African Biodiversity Network and the Gaia Foundation; *Statement of Common African Customary Laws for the Protection of Sacred Sites*. African Biodiversity Network, Kenya, April 2012; Customary sustainable use studies listed in footnote 1 and available at <http://www.forestpeoples.org/customary-sustainable-use-studies>.

^{vii} See paragraphs 24-28 in the main report of the International Expert Meeting.

^{viii} See, for example, Nelson and Chomitz, World Bank, 2011; Porter-Bolland *et al*, *Forest Ecology and Management*, 2011; Chaatre and Agrawal, *PNAS*, 2009; Soares Filho *et al*, *PNAS*, 2009; Nepstad *et al*, 11

Conservation Biology, 2006; Duran, Mas, and Velasquez, *The Community Forests of Mexico*, 2005; Bray *et al*, *Ecology and Society*, 2008; TM Hayes, *Human Ecology*, 2007; Ojha, Persha & Chhatre, *IFPRI*, 2010; Blomley *et al.*, *Oryx*, 2008.

^{ix} For more information and specific recommendations, see Kothari, et al., forthcoming 2012 *CBD Technical Series* volume.

^x In response to a call for resources, tools, and capacity development to further the implementation of the Programme of Work on Protected Areas, particularly Element 2, the ICCA Consortium, IUCN Global Protected Areas Programme, GIZ, CEESP, WCPA, and the Secretariat of the CBD produced draft guidance on governance of protected areas, which will be published as part of the IUCN WCPA Best Practice Guidelines. See: Borrini-Feyerabend, G., N. Dudley, B. Lassen, N. Pathak and T. Sandwith, forthcoming 2012. *Governance of Protected Areas—From Understanding to Action*, IUCN WCPA Best Practice Guidelines. Available at: <http://tinyurl.com/chc9n26>.

<p>SACRED NATURAL SITES INITIATIVE NETHERLANDS PROGRAMME COORDINATOR BAS VERSCHUUREN,</p>
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The following suggestion for new programme areas have been developed by The Sacred Natural Sites Initiative, Gaia Foundation and the African Biodiversity Network. They are based on long standing experience in working on the ground and at the national and international policy levels.

1. The review national laws that support the recognition of sacred natural sites and the customary laws and practices and customary governance systems that support conservation and revitalization of sacred sites,
2. Field testing in pilot countries of the Akwe Kon Guidelines ; the IUCN UNESCO BPG16 on Sacred Natural Sites, and other instruments that support the recognition of SNS and their custodial governance systems,
3. Develop advice for governments and companies on the implementation of the Akwe Kon and the IUCN UNESCO BPG16 Guidelines and other instruments related to the recognition of SNS and the customary laws and practices and governance systems related to the conservation and revitalization of sacred sites,
4. To develop country summaries on the status (biodiversity, legal, spiritual and cultural) of SNS,
5. Better study of and eventually the endorsement of sacred natural sites as indicators of traditional knowledge under the CBD,

6. Recognition of Indigenous and local knowledge systems related to sacred sites in line with the intergovernmental platform on biodiversity and ecosystem services (IPBES) process.

We hope these ideas will be useful and would like to support their uptake in to the programme of the CBD in any way we can.

Please don't hesitate to contact us in case more elaboration is required on each of these points.

IUCN - SUSTAINABLE USE AND LIVELIHOODS SPECIALIST GROUP SUBMITTED BY MS. ROSIE COONEY
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IUCN comments on the Ad Hoc Open-ended Working Group on Article 8 (j) and Related Provisions' Recommendation 7/6 Article 10, with a focus on Article 10(c), as a major component of the programme of work on Article 8(j) and related provisions

IUCN recommends the following minor modifications to the current **II. Recommendation to the Conference of the Parties:**

Main text (under point 4):

“Further recognizing that the implementation of sustainable use, including customary sustainable use, <innovations and practices> is crucial in achieving the Aichi Biodiversity Targets and the Strategic Plan for Biodiversity 2011-2020.”

Note: “innovations and practices” is the wording of Aichi Target 18.

Insert after para beginning *Further recognizing:*

<“Noting the strong linkages between implementation of Article 10(c) and implementation of 10(d) and 10(e),”>

8. “...in their national biodiversity strategies and action plans (NBSAPs) <and sectoral policies>
...

Annex:

A. Guidance on sustainable use and related incentive measures for indigenous and local communities

1. Customary sustainable use and diverse local economies

Task 1. “To develop guidelines <and information technology> to promote...”

Task 2. “...as a strategic way to maintain biocultural values<, enhance conservation and restoration of species and habitats>, and to achieve human well-being...”

Insert new task after Task 2:

<“To examine any barriers and obstacles to the maintenance and encouragement of community-based resource management and governance caused by existing governance, policy and regulatory structures.”>

3. Targeted support and funding

Task 5. "... through the Article 8(j) web-pages <and elsewhere> concerning ..."

4. Opportunities and knowledge gaps for further exploration

Task 7. "To explore the nexus between customary ~~sustainable~~ use and sustainable use, and <their potential role in> ~~related~~ economic opportunities for indigenous <peoples> and local communities."

Task 9. We strongly support the removal of brackets around this Task.

Insert two new Tasks after Task 9:

<"To examine the role of customary sustainable use in ensuring the resilience of communities, in relation to social, cultural and economic aspects.">

<"To examine ways in which scientific and indigenous/traditional knowledge can be integrated in management and governance of sustainable use.">
