

Achieving effective implementation of CBD Article 10(c):

Challenges and recommendations from indigenous peoples' case studies

by

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Introduction

Article 10(c) of the Convention on Biological Diversity (CBD) states that Parties shall: "(...) protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements."

Some years ago, Parties to the Convention requested practical information about and examples of sustainable use of biological diversity by indigenous and local communities and advice on how to best implement this article.¹ We, indigenous peoples and support organisations from Bangladesh, Suriname, Guyana, Cameroon and Thailand, took this opportunity to produce case studies, in which we clarify what sustainable customary use is. These studies provide insight in the sophistication of local management systems and the remarkable complexity of customary law systems, which guide responsible use of resources. We also analysed the threats the customary management systems are encountering and pointed out obstacles that prevent effective implementation of 10(c) in these countries. More importantly, we provided recommendations to our local and national governments about what they can or should be doing in order to implement article 10(c) (more) effectively. These "10(c) case studies" were produced between 2004 and 2008 and submitted to the CBD Secretariat to feed into the process about sustainable use and customary practices of indigenous peoples.²

At the end of 2009, effective implementation of this article is still a challenge. At the sixth meeting of the CBD Working Group on Article 8(j) and Related Provisions (WG8j-6) in Montreal, Parties and observers are discussing how Parties to the Convention can improve implementation of this important article (agenda item 7B). In preparation for the Montreal meeting, a note has been drafted by the Executive Secretary on how Article 10(c) can be further advanced and implemented as a priority.³ We and other indigenous peoples and experts have provided information to the Secretary for the development of this note by offering our case study material for reference and by providing additional insights and input into a CBD online discussion forum on Article 10(c) between February and March

¹ See Decision V/24 and Decision VII/12

² See <http://www.forestpeoples.org/documents/conservation/bases/10c.shtml>

³ UNEP/CBD/WG8J/6/2/Add.1.

2009. We are taking this opportunity to point out the challenges that are most urgent and relevant to us and express a clear message to the Working Group.

The challenges

Many obstacles still prevent effective application of article 10(c) in our local and national contexts. These include:

Lack of secure land and resource rights.

Secure rights to land, territories and resources, including access, control and management of those resources, represent a fundamental requirement for forest peoples 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, which is threatening our customary use systems.

- In the Highlands of Northern Thailand, the government does not legally recognise indigenous communities' property rights and peoples' participation in natural resource decision-making and management is very limited.
- The traditional resource users of the Sundarbans in Bangladesh are facing severe social problems and poverty as a result of restricted access to, and use of, the forest.
- The Lower Marowijne region in Suriname has been occupied and used by the Lokono and Kalin'a people for generations in a sustainable way, but formally, the State owns, governs and manages their lands and territories. Indigenous peoples' right to collectively own, control and manage resources is not recognised.
- Lack of secure land and resource rights is also a major and long-standing livelihood issue affecting the Wapichan communities in the Rupununi region of Guyana. Currently, five communities do not have title to land while the rest have title to only parts of their traditional lands.

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.

Lack of acknowledgement of the contribution of customary management and traditional knowledge to biodiversity conservation and sustainable use.

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. On 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 is restricted.

- In the Sundarbans, for example, communities living in the Sundarbans' periphery are often blamed to be responsible for the destruction of the forest, and their access and use is restricted.
- In Guyana, the National Biodiversity Strategic Action Plan (NBSAP) also considers indigenous peoples as "a threat to biodiversity".
- In Suriname, the value of traditional knowledge in biodiversity conservation and management is hardly taken into account in official circles. On the contrary: the state announces strategies to 'educate' indigenous and local communities on conservation issues and sustainable use.
- In Cameroon, the Baka's tradition of sustainable use and management of the resources has not been acknowledged when the Boumba-Bek and Nki National Parks recently gained

recognition as 'areas of high natural biodiversity'. In the plan to manage the national parks, the rights of the Baka, such as the right to participation in management and decision-making, have so far not been recognised and protected. Neither were traditional knowledge and practices considered or incorporated.

Protected Areas

The establishment of protected areas without respect for forest peoples' rights and their full and effective participation is posing challenges to indigenous and local communities in terms of both access and management of biological resources. This again has big impacts on the customary sustainable use and related knowledge by our communities of these areas.

- In Northern Thailand, the establishment of two national parks which partly overlap the traditional territory of the Hmong and Karen indigenous peoples (Doi Inthanon and Ob Luang National Parks) caused many problems for the Karen and Hmong's customary use practices in those areas.
- The Sundarbans in Bangladesh was declared as a Reserve Forest in 1875, which implied strict State control (through the Forest Department) over the area. Since then, the indigenous and local communities that had settled and used the area for centuries have faced severe restrictions on their access to the resources on which their livelihood depends.
- Two protected areas have also been established in the territories of the Kalin'a and Lokono communities in Marowijne (Suriname), without informing us or seeking our consent. This has been having negative effects on the communities' use and access of the concerned areas.
- In Cameroon, the Boumba-Bek and Nki National Parks were established recently (in 2005) and they overlap the traditional territories of Baka hunter-gatherers in southeast Cameroon. The conservation project has largely been excluding the Baka communities from the park area. Denied access to, and use of, their ancestral territories, the Baka have had their livelihoods and subsistence, health (decreased access to medicinal plants), and culture and knowledge, severely affected.
- In Guyana, no proper participatory process has been set up to develop a management plan for the proposed Kanukus Mountains Projected Area (KMPA) with the Wapichan people, despite the fact that half of the park overlaps with Wapichan's territory.

Lack of recognition of the right to free, prior and informed consent (FPIC).

Indigenous and local communities' right to FPIC is important to protect customary sustainable use from external threats such as extractive industries that destroy areas where we practice customary use and have knowledge about, or deny us access to these areas. However, in many countries FPIC is not institutionalised and not applied (and not fully understood).

- In Marowijne in Suriname, unsustainable commercial bauxite mining and logging takes place in important community use areas (hunting, gathering, fishing). This has been permitted by the government in and around indigenous areas, without the communities having a say in it, while we are dealing with the negative impacts from it, such as the decrease of resources in these areas and restricted access.
- Wapichan traditional lands in the Rupununi are currently under threat from mining, agricultural development (large-scale rice and soy farming), oil exploration, logging concessions and illegal hunters and cattle rustlers. Further threats are posed by a major paved highway planned under the Guyana-Brazil "interconnection" road project. In these cases, FPIC has only been (partly) applied on titled lands, whereas the majority of these activities take place on untitled lands, especially related to mining.

Lack of bilingual and cultural sensitive education

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. Many current education systems however, are aimed at assimilation and are enforcing non-indigenous languages on our children in the schooling system, which can lead to the loss of local knowledge and related practices. Our languages are essential as they capture the particular knowledge we have related to our natural resources and their use.

Message to the Working Group

For Parties to implement Article 10(c) effectively, serious efforts must be made to address the issues described above. Concretely, the following steps should be taken:

1. Take measures to recognise and respect indigenous peoples' rights to their lands and resources.
2. Recognition of the role of customary law and traditional institutions and freedom to use customary laws related to biodiversity use rather than rules or laws imposed by others.
3. Recognise the right of indigenous and local communities to fully and effectively participate in natural resource management and decision-making.
4. Take concrete actions to acknowledge the value of customary practices and traditional knowledge in relation to biodiversity conservation and sustainable use, for example by reviewing and reforming national policies and laws to make them compatible with, and to support, the protection of customary use and traditional knowledge.
5. Ensure that FPIC becomes a well-understood and generally applied principle in all matters affecting indigenous peoples' lands and territories.
6. Address all cases where protected areas have adversely affected indigenous peoples' customary sustainable use.
7. Educational policies and programmes should be culturally appropriate and should promote the use and revitalisation of indigenous languages and traditional knowledge.
8. Use the *United Nations Declaration on the Rights on Indigenous Peoples* as the basis for the full and effective implementation of Article 10 (c) of the Convention. It provides a framework for respecting the fundamental human rights of indigenous peoples, and provides a legal and environmental basis for protecting and encouraging customary sustainable use.

We recommend all parties to work on these issues as soon and as quickly as possible. Only when these requirements are met, progress can be made to enhance implementation of 10(c).