

## **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**

Ref.: SCBD/SEL/OJ/JS/dm/81183

Convention on Biological Diversity  
Bráulio Ferreira de Souza Dias  
Executive Secretary  
413 Rue Saint-Jacques Ouest, Suite 800  
Montreal, Quebec  
Canada H2Y 1N9

1 April 2013

Dear Mr. Ferreira de Souza Dias,

This is a joint submission by a large and diverse group of Indigenous Peoples' organisations, community-based organisations, networks, and NGOs working on issues related to traditional knowledge and customary sustainable use of biodiversity in various countries. A list of signatory organisations is provided at the end.

It addresses the following elements of the request for contributions:

- XI/14/A on the in-depth dialogue,
- XI/14/F on the development of a Plan of Action for Customary Sustainable Use, and
- XI/14/G on recommendations arising from the Permanent Forum on Indigenous Issues.

We would like to thank you for providing us this opportunity to provide our views on these important matters in preparation for the 8<sup>th</sup> meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions (WG8(j)-8).

***XI/14/A: Progress in the Implementation of Article 8(j) and related provisions and its integration into the various areas of work under the Convention on Biological Diversity: In-depth Dialogue on “Connecting traditional knowledge systems and science, such as under the IPBES, including gender dimensions”***

Also in the before mentioned decision [XI/14/A], in paragraph 7, the Conference of the Parties decided to have an in-depth dialogue on “Connecting traditional knowledge systems and science, such as under the IPBES, including gender dimensions” at the eighth meeting of the Working Group on article 8(j) and related provisions. In order to assist the discussions, Parties, indigenous and local communities, NGOs and other relevant organizations are invited to submit relevant information on this subject so that it can be collated and summarised and made available to the Working Group, as preparation for the in-depth dialogue.

1. For the in-depth dialogue at WG8(j)-8, we would like to propose that the Secretariat again puts together a balanced panel to inform discussions, similar to the structure of the in-depth dialogue at the 7<sup>th</sup> Meeting of the Working Group on Article 8(j) and Related Provisions (WG8(j)-7).
2. We suggest that invited panellists include representatives of organisations and networks that are currently taking the lead on the topic of the in-depth dialogue, such as the Indigenous Peoples and Local Communities Forum on IPBES,<sup>1</sup> the Stockholm Resilience Centre,<sup>2</sup> UNESCO<sup>3</sup>, the International Indigenous Forum on Biodiversity (IIFB) and the Indigenous Women’s Biodiversity Network (IWBN)<sup>4</sup>, and the Indigenous Peoples of Africa Coordinating Committee (IPACC).<sup>5</sup>
3. Presentations should include background and overview of recent processes and dialogues on connecting traditional knowledge systems and science, and their progress or outcomes, such as:
  - The first meeting of the platform’s plenary (IPBES-1) (Bonn, 21-26 January 2013), which discussed the inclusion of indigenous and local knowledge in the work plan of IPBES; indigenous knowledge holders in the multi-disciplinary expert panel (MEP); and the full and effective participation of indigenous peoples and local communities in IPBES under the ‘policy and rules for the admission of observers’.
  - The workshop session at the World Indigenous Network (WIN) Conference (Darwin, Australia, 26-31 May 2013), on “Connecting indigenous, traditional and local knowledge

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<sup>1</sup> The Indigenous Peoples and Local Communities Forum on IPBES is a network of indigenous and local knowledge holders that has actively participated in, and contributed to, recent IPBES meetings and intersessional and related processes.

<sup>2</sup> The Resilience and Development Programme – SwedBio - at Stockholm Resilience Centre initiated a series of dialogues between various knowledge holders and scientists since 2011 and has been focusing on ‘connecting diverse knowledge systems’ in the IPBES. See <http://www.dialogueseminars.net/Panama/>.

<sup>3</sup> UNESCO prepared an information note for IPBES-1 on “Consideration of initial elements: recognizing indigenous and local knowledge and building synergies with science” (IPBES/1/INF/5) and is co-hosting an international expert and stakeholder workshop on the contribution of indigenous and local knowledge systems to IPBES: building synergies with science, organized on behalf of the IPBES Multidisciplinary Expert Panel with UNU and the Ministry of Environment of Japan (9-11 June 2013, Tokyo).

<sup>4</sup> In particular in relation to the gender dimension aspect, which was IWBN’s suggestion at COP11.

<sup>5</sup> IPACC has done a lot of work on promoting indigenous knowledge in the UNCCD and UNFCCC, including vis-à-vis climate science and adaptation (see, for instance, <http://www.climatefrontlines.org/es/node/608>).

and science – what’s in it for knowledge holders?”, organized by the Indigenous Peoples and Local Communities Forum on IPBES and Swedbio at Stockholm Resilience Centre.

- The International Dialogue Workshop “Knowledge for the 21st Century; Indigenous Knowledge, Traditional Knowledge, Science and Connecting Diverse Knowledge Systems” (10-13 April 2012, Guna Yala, Panama), and the dialogue between indigenous peoples and local communities, scientists, policymakers, and governments on connecting between diverse knowledge systems (June 2011, Jokkmokk, Sweden), both hosted by Swedbio at Stockholm Resilience Centre.<sup>6</sup>
  - The dialogue workshop between indigenous and local knowledge holders and scientists (22-25 April 2013, Isle of Vilm, Germany) hosted by the German government and two subsequent workshops in Bonn on community-based monitoring and information systems, which can contribute to models that are mutually supportive for communities and knowledge generation at large, such as IPBES: the Global Expert Workshop on Community-Based Monitoring and Information Systems (26-28 April 2013) and the Global Dialogue on Traditional Knowledge and Science on Forest Ecosystem Management (30 April-1 May 2013).<sup>7</sup>
  - The international expert and stakeholder workshop on the contribution of indigenous and local knowledge systems to IPBES: building synergies with science (9-11 June 2013, Tokyo), organized on behalf of the IPBES Multidisciplinary Expert Panel by UNESCO, UNU and the Ministry of Environment of Japan. The objectives are to examine and identify procedures and approaches for working with indigenous peoples’ and local communities’ knowledge systems in the framework of IPBES, and to review and assess possible conceptual frameworks for the work of IPBES that are based on or accommodate indigenous and local knowledge or worldviews.
4. Above and additional presentations should highlight and clarify several key issues and share insights and recommendations on, for example:
- The value, relevance, risks and challenges of collaborating and sharing knowledge, both from the perspective of indigenous and local knowledge holders as well as scientists and others
  - The current scope, benefits and limitations of instruments for free, prior and informed consent, access to and respect for traditional knowledge systems, and ownership and intellectual property, including customary and community-determined protocols and procedures, and other codes of conduct
  - Possible approaches and procedures for creating synergies between indigenous and local knowledge and science, such as the multiple evidence-based approach
  - The importance of community-based documentation, monitoring and information systems and local-level assessments of ecosystems and biological, cultural and linguistic diversity
  - The importance of strengthening local-global networks on indigenous knowledge, with appropriate safeguards
  - How IPBES could support the achievement and monitoring of Aichi Target 18, and how the monitoring of Target 18 could support IPBES
  - The gender dimensions of local and indigenous knowledge and the unique roles of men and women

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<sup>6</sup> Reports available here: <http://www.dialogueseminars.net/Panama/>

<sup>7</sup> Organised by Tebtebba and Swedbio at the Stockholm Resilience Centre, in partnership with FPP, Indigenous Peoples Partnership on Climate Change and Forests, IIFB Working Group on Indicators, Customary Sustainable Use and Rights on Protected Areas partners, and the Secretariat of the CBD.

### ***XI/14/F: Development of a Plan of Action for Customary Sustainable Use***

In paragraphs 3 and 4 of decision XI/14/F, the Conference of the Parties *invited* Parties, Governments, indigenous and local communities and relevant international organizations to submit information for the development of the plan of action for customary sustainable use, taking into consideration the priority tasks, and requested the Executive Secretary to develop a draft plan of action for customary sustainable use, based on the priority tasks, submissions, and other relevant information, including a gap analysis, for consideration by the Working Group at its eighth meeting.

We have the following suggestions for the development of the plan of action for customary sustainable use (CSU):

5. The draft plan of action on customary sustainable use could include a set of principles/points of departure that provide insight in key conditions and considerations related to CSU. These could be based on the points of departure and key messages that were formulated by the experts attending the “international meeting on 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 of the Convention”, held in Montreal in June 2011.<sup>8</sup> These points of departure were derived from the experts’ presentations.<sup>9</sup> In the draft plan of action, such key principles/considerations could be presented at the beginning (similar to the ‘general principles’ of the Programme of Work (POW) on Article 8(j)) or a ‘rationale’ could be added to clarify the relevance of each task in the work plan, similar to the structure of the Addis Ababa principles and guidelines.
6. The draft plan of action should make clear who is to perform certain tasks, similar to the POW on 8(j). An attempt was made at WG8(j)-7 to allocate the draft tasks to Parties, the Working Group, the Executive Secretary, and others, but for the sake of moving forward, it was decided to keep the tasks open and general for the time being. However, once the draft plan of action becomes operational it would be useful to specify who should carry out the tasks.
7. Following the example of the POW on 8(j), which has two phases, the draft plan of action on CSU could be composed of a phased timeline. The tasks of the first phase could be the initial priority tasks agreed at COP11. The priorities for the second (and potentially subsequent) phases could be determined and formulated through a process to be discussed and agreed upon at WG8(j)-8.
8. Each task would benefit from some suggested guidance for implementing and accomplishing the task, somewhat similar to the section on ‘ways and means’ in the POW on 8(j). The approach to define a limited number of concrete activities under the tasks was also proposed by Canada at COP11, however, that was not in the mandate of the contact group. We would like to propose that the limited number of concrete activities should contribute as much as possible to the achievement of the targets of the 2011-2020 Strategic Plan, especially Target 18.
9. All actions related to the tasks in the Plan of Action should involve collaboration between indigenous peoples and local communities and their representative organisations, relevant

<sup>8</sup> UNEP/CBD/WG8j/7/5/Add.1, Annex 1 (Advice on the content and implementation of the new major component of work on Article 10 with a focus on article 10c), paragraph 1.

<sup>9</sup> *Idem*, paragraph 12-45.

government agencies (in particular, focal points for Article 8(j)), and natural resource sectors.<sup>10</sup>

10. The initial tasks for the first phase of the major component of work on 10(c) are strongly interlinked and could be addressed through combined or complementary efforts to ensure effective use of resources and time, particularly as all tasks require close consultation and collaboration with indigenous peoples and local communities and their representative organisations.
11. There is also a strong linkage between the agreed initial tasks for the first phase and the indicative tasks for future consideration, and therefore activities under the first three tasks may partially address issues under tasks for future phase(s).
12. A proposal/example based on the suggestions above is presented below:

#### TASKS OF THE FIRST PHASE OF THE PLAN OF ACTION

##### **CSU in NBSAPs and national reports**

Task 1: [Parties]<sup>11</sup> to incorporate customary sustainable use practices or policy, as appropriate, with the full and effective participation of indigenous and local communities, into national biodiversity strategies and action plans, as a strategic way to maintain biocultural values and achieve human well-being, and to report on this in national reports.

##### Suggested rationale/background:

Incorporating CSU into National Biodiversity Strategies and Action Plans (NBSAPs) is an important and strategic way to integrate Article 10(c) (and its implementation) as a cross-cutting issue in the Convention's various programmes of work and thematic areas, the importance of which was reiterated in Decision XI/14.<sup>12</sup> If this is done in close collaboration and consultation with representatives of national and local organisations of indigenous peoples and local communities, the NBSAPs will reflect and address the actual local and national-level needs and requirements. This approach will also assist Parties in implementing paragraph 8 of Decision XI/14/F<sup>13</sup> and in raising funds (including GEF funds) to support implementation of the Plan of Action on 10(c).

##### Guidance for implementing and accomplishing this task (activities/ways and means):

- The national focal point for 8(j), or the CBD focal point where the focal point for 8(j) has yet to be established, to organise a dialogue/working session(s) with representative national and local organisations of indigenous peoples and local communities to examine and discuss relevant CSU issues and how to address these in the NBSAP, potentially including barriers

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<sup>10</sup> See also proposal in bracketed Task 13 *quarter* (to promote collaboration between indigenous and local communities and relevant government agencies and stakeholders, in particular the natural resource sectors, for the practical implementation of Article 10(c)) and Task 13 *quinquies* (to request the Executive Secretary to explore opportunities for initiating dialogues on customary sustainable use and associated traditional knowledge between representatives of indigenous and local communities and natural resource sectors).

<sup>11</sup> The text in brackets in Tasks 1, 2 and 3 has been added to the original COP11 decision to specify who is expected to take action.

<sup>12</sup> UNEP/CBD/COP/DEC/XI/14, preamble.

<sup>13</sup> *Invites* Parties to address customary sustainable use, in particular customary sustainable use policies, in their national biodiversity strategies and action plans, with the full and effective participation of indigenous and local communities.

and obstacles caused by governance, policy or regulatory frameworks<sup>14</sup> and ways and means to overcome them.

- Involve the representative indigenous peoples and local community organisations in the drafting of relevant sections of the NBSAP, based on relevant discussions and agreements.
- Engage the representative indigenous peoples and local community organisations in the national reporting process, in particular in relation to the CSU sections.

### **Community-based initiatives on 10(c)**

Task 2: [Parties] to promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c) and enhance customary sustainable use; and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c).

#### Suggested rationale/background:

Many indigenous peoples and local communities are engaged in community-based initiatives to enhance implementation of Article 10(c) at the national and local levels. Such initiatives include research and documentation of traditional knowledge and customary practices, education projects to revitalize indigenous languages and traditional knowledge associated with CSU, community mapping, community-based sustainable resource management plans, and biodiversity and climate change (impacts, mitigation and adaptation) monitoring and research. An overview of such initiatives was presented at the 10(c) expert meeting<sup>15</sup> and more detailed cases were presented at a *Philippine workshop on Community-based Monitoring and Information Systems* in February 2013.<sup>16</sup> By supporting such initiatives, or by getting involved in collaborative on-the-ground projects and monitoring of relevant CBD indicators, Parties and conservation organisations gain better insights in CSU issues in their countries, can more appropriately respond to existing needs or challenges, and can become more effective in implementing Article 10(c) and in contributing to the achievement of Target 18 and other relevant targets of the Strategic Plan.

#### Guidance for implementing and accomplishing this task (activities/ways and means):

- The national 8(j) focal points (or CBD focal points where 8(j) focal points have yet to be established) to compile an inventory of relevant existing or planned community-based initiatives at the local and (sub-)national level through a two-step approach: a) a scoping research based on field visits, possibly by an indigenous researcher or team, to develop a report highlighting key aspects and issues; b) a workshop (or workshops) where the scoping research is presented and indigenous peoples and local community organisations share their views and data on the community initiatives and next steps. The workshop(s) should be attended by relevant organisations and agencies working in the country.
- Facilitate discussions on the value and contributions of these initiatives, as well as on existing obstacles and required actions to overcome them.

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<sup>14</sup> Overlap with bracketed Task 2 *bis* (to examine any barriers and obstacles to the maintenance of community-based resource management and governance caused by existing governance, policy and regulatory frameworks) and also responds to bracketed Task 13 *septies* (to examine best practices for promoting the full and effective participation of representatives of indigenous and local communities in public policy-making and decision-making on sustainable use and conservation, and to explore potential challenges or constraints faced by governments and by indigenous and local communities).

<sup>15</sup> See UNEP/CBD/WG8j/7/5/Add.1, para 33. This presentation was based on a synthesis paper on examples, challenges, community initiatives and recommendations relating to CBD Article 10(c) by the Forest Peoples Programme and partners (October 2011): <http://www.forestpeoples.org/customary-sustainable-use-studies>.

<sup>16</sup> The report of the meeting is planned to be submitted to WG8(j)-8. A Global Technical Workshop on Community-based Monitoring and Information Systems is scheduled to take place in Bonn, Germany, from 26-28 April 2013.

- Discuss and take action to address the needs and opportunities to support community initiatives and potential collaboration, e.g. tools, capacity building, networking, or financial assistance.<sup>17</sup>

### **CSU and Protected Areas**

Task 3: [Parties] to identify best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives) to:

- (i) Promote, in accordance with national legislation and applicable international obligations, the full and effective participation of indigenous and local communities, and also their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas, including marine protected areas, that may affect indigenous and local communities;
- (ii) Encourage the application of traditional knowledge and customary sustainable use in protected areas, including marine protected areas, as appropriate;
- (iii) Promote the use of community protocols in assisting indigenous and local communities to affirm and promote customary sustainable use in protected areas, including marine protected areas, in accordance with traditional cultural practices;<sup>18</sup>

#### Suggested rationale/background:

Protected areas established without the involvement and free, prior and informed consent of indigenous peoples and local communities can restrict access and use of traditional areas and therefore undermine customary practices and knowledge associated with certain areas or natural resources. At the same time, conservation of biodiversity is vital for the protection and maintenance of CSU and associated traditional knowledge. CSU and traditional knowledge can provide important contributions to the effective conservation of important biodiversity sites, either through shared governance or joint management of official protected areas or through indigenous peoples' and community conserved territories and areas.<sup>19</sup> Community protocols can be used by indigenous peoples and local communities to articulate their values, procedures and priorities and engage in dialogue and collaboration with external actors (such as government agencies and conservation organisations) towards shared aims, for example, appropriate ways to respect, recognise and support customary sustainable use and traditional cultural practices in protected areas.

#### Guidance for implementing and accomplishing this task (activities/ways and means):

- National focal points for 8(j) and for protected areas (or CBD focal points where national focal points for 8(j) and for protected areas have yet to be established) should identify obstacles, challenges, successes, and lessons in relation to this task and develop a joint analysis and plan for (sub-)national and local-level actions through a two-step approach: a) a scoping research based on field visits, possibly by an indigenous researcher or team, to develop a report highlighting key aspects and issues; b) a workshop (or workshops) or other

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<sup>17</sup> Overlap with bracketed Task 4 *bis* (to provide the tools, capacity-building and networks to enable indigenous peoples and local communities to map their customary use of biodiversity at the local level) and bracketed Task 13 *ter* (to support the capacity-building, networking, participatory documentation and research, and sharing of experiences and lessons learned on customary sustainable use among indigenous peoples and local communities and their representative governments and organizations, with particular attention to the important role of women, and according to community-defined priorities).

<sup>18</sup> Former task 14 of the list of indicative tasks.

<sup>19</sup> Overlap with bracketed task 15 *bis*: To examine best practices (e.g. policy, legislation) to enable indigenous and local communities to voluntarily identify, designate, govern, manage and conserve protected areas and sacred sites, as a way to maintain their customary sustainable use.

forms of dialogue where the scoping research is presented and indigenous peoples and local community organisations, conservation organisations, and other relevant stakeholders share their views, experiences and develop an action-oriented working plan.

- In identifying best practices, Parties and other relevant stakeholders may draw on existing international initiatives, reference materials and tools for best practices in relation to protected areas and customary use, such as the CBD Technical Series No. 64: “Recognizing and Supporting Territories and Areas Conserved by Indigenous and Local Communities - Global Overview and National Case Studies” on indigenous peoples’ and community conserved territories and areas, the Whakatane Mechanism (<http://whakatane-mechanism.org>),<sup>20</sup> and community protocols ([www.community-protocols.org](http://www.community-protocols.org)).

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<sup>20</sup> This mechanism, which is an outcome of the 4<sup>th</sup> World Conservation Congress, aims to support conflict resolution and best practices in protected areas by ensuring that conservation practices respect the rights of indigenous peoples and local communities.

***XI/14/G: Recommendations to the Convention on Biological Diversity arising from the United Nations Permanent Forum on Indigenous Issues***

Furthermore, in decision XI/14, paragraph 2 the Conference of the Parties *noting* the recommendations contained in paragraphs 26 and 27 of the report of the 10th session of the United Nations Permanent Forum on Indigenous Issues (E/2011/43-E/C.19/2011/14) concerning the use of the term “indigenous peoples and local communities”, *requested* the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions, *taking into account submissions* by Parties, other Governments, relevant stakeholders and indigenous and local communities, to consider this matter, and all its implications for the Convention on Biological Diversity and its Parties, at its next meeting, for further consideration by the Conference of the Parties at its twelfth meeting. In light of the above, Parties are invited to communicate their views to the Secretariat on the use of the term “indigenous peoples and local communities”.

13. On 2 November 2011, the Ad Hoc Open-ended Working Group considered a note by the Executive Secretary containing the recommendations of relevance to the Convention on Biological Diversity arising from the ninth and tenth sessions of the United Nations Permanent Forum on Indigenous Issues (UNPFII) (UNEP/CBD/WG8J/7/7).

At its ninth session (2010), the UNPFII made the following recommendation to WG8(j)-7 in paragraph 112: *“The Permanent Forum calls upon the parties to the Convention on Biological Diversity to adopt the terminology ‘indigenous peoples and local communities’ as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago.”*

Paragraph 25 of document UNEP/CBD/WG8J/7/7 stated: *“This matter has been raised from time to time during meetings of the Convention, both in the Working Group on Article 8(j) and Related Provisions and during meetings of the Conference of the Parties. The phrase ‘indigenous and local communities’ is the phrase utilized in the text of the Convention and has been used consistently in decisions of the Conference of the Parties and its subsidiary bodies. However, the wording suggested by the Forum has been used in Conference of the Parties decisions in a few instances, notably in paragraphs 7, 8 and 10 of decision IX/13. The Conference of the Parties may wish to consider this matter and decide on an appropriate course of action.”*

14. The tenth session of the UNPFII (2011) made the following recommendation to the CBD in paragraph 26: *“Affirmation of the status of indigenous peoples as “peoples” is important in fully respecting and protecting their human rights. Consistent with its 2010 report (E/2010/43 - E/C.19/2010/15), the Permanent Forum calls upon the parties to the Convention on Biological Diversity, and especially including the Nagoya Protocol, to adopt the terminology “indigenous peoples and local communities” as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago.”*
15. The issue was taken up by WG8(j)-7, during which the representative of the Philippines stressed in a statement that the recommendation to use the term “indigenous peoples and local communities” instead of “indigenous and local communities” should be taken seriously, and invited the Bureau to explore options for incorporating the term proposed by the Forum in all documentation produced under the Convention.<sup>21</sup> However, the recommendation adopted by WG8(j)-7 for consideration by the Conference of the Parties at its eleventh

<sup>21</sup> UNEP/CBD/COP/11/7, para 105 (page 15).

meeting (Recommendation 7/8, document UNEP/CBD/COP/11/7) did not include a concrete proposal to adopt the revised terminology and did not include other considerations raised in paragraphs 26 and 27 of the UNPFII recommendations, including in relation to ‘established rights’ under the Nagoya Protocol.

16. Working Group I of the 11<sup>th</sup> Conference of the Parties to the CBD discussed the draft decision (Recommendation 7/8) on the recommendations of the UNPFII on 10 October 2012.
17. With reference to the Rio+20 outcome document, UN General Assembly resolutions, and the Ramsar Convention, Norway, supported by Guatemala and the IIFB, recommended referring to “indigenous peoples and local communities” under the Convention, rather than “indigenous and local communities”.<sup>22</sup>
18. Working Group I then discussed Conference Room Paper (CRP) 8 from 16-18 October. At that point, CRP 8 had an additional paragraph that was not previously reflected in the Recommendation 7/8. The new paragraph then read: *“Recalling the recommendation contained in paragraph 26 of the report on the tenth session of the United Nations Permanent Forum on Indigenous Issues (E/2011/43-E/C.19/2011/14), in which the Permanent Forum “calls upon the Parties to the Convention on Biological Diversity [...] to adopt the terminology ‘indigenous peoples and local communities’ as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago”, [decides from this point forward to use this phrase in decisions of the Conference of the Parties][decides to consider the matter at its twelfth meeting], noting that, for the purposes of the Convention, the terms ‘indigenous and local communities’ and ‘indigenous peoples and local communities’ are equivalent.”*
19. On 16 October, the discussion on the use of the term “indigenous peoples and local communities” was continued by Norway and Guatemala, who requested an update in the terminology used by the CBD. This received support from Colombia, Brazil, Guatemala, Bolivia, Peru, Argentina, the Philippines, and Denmark (on behalf of Greenland). Canada and India were the only two Parties to oppose. Canada proposed that the next meeting of the WG8(j) and COP12 further consider the issue, and the European Union and Chile suggested bracketing the text.<sup>23</sup>
20. On 17 October, delegates discussed whether to request the next WG8(j) meeting to consider changing terminology in COP decisions to “indigenous peoples and local communities”, for further consideration at COP12. Colombia, Bolivia, Peru, Norway, Brazil, Ecuador, Switzerland, and the African Group stated their desire to make such a decision at COP11. The IIFB stressed that the term is already included in a range of international agreements, including Agenda 21, the Rio+20 Outcome Document, and the UN Declaration on the Rights of Indigenous Peoples.<sup>24</sup>
21. On 18 October, on the same discussion, the EU suggested the following amendments to the draft decision: “noting” rather than “recalling” relevant UNPFII recommendations; deleting language on the terminology being “an accurate reflection of the distinct identities

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<sup>22</sup> Earth Negotiations Bulletin, 2012. *CBD COP11 Highlights: Wednesday 10 October 2012*. IISD Reporting Services, Vol. 9, No. 588. Available at: [www.iisd.ca/vol09/enb09588e.html](http://www.iisd.ca/vol09/enb09588e.html).

<sup>23</sup> Earth Negotiations Bulletin, 2012. *CBD COP11 Highlights: Tuesday 16 October 2012*. IISD Reporting Services, Vol. 9, No. 592. Available at: [www.iisd.ca/vol09/enb09592e.html](http://www.iisd.ca/vol09/enb09592e.html).

<sup>24</sup> Earth Negotiations Bulletin, 2012. *CBD COP11 Highlights: Wednesday 17 October 2012*. IISD Reporting Services, Vol. 9, No. 593. Available at: [www.iisd.ca/vol09/enb09593e.html](http://www.iisd.ca/vol09/enb09593e.html).

developed by those entities since the adoption of the Convention almost 20 years ago”; and requesting the next Article 8(j) Working Group, on the basis of submission by Parties, other governments, relevant stakeholders, and indigenous and local communities, to consider this matter, “including any legal implications and within the scope of the CBD.” After Colombia, Bolivia, Ecuador, and Timor Leste questioned reference to “legal implications”, the EU clarified that they could be either international or national, depending on discussions in the Working Group on Article 8(j).

22. Following informal consultations, delegates eventually agreed on the following compromise in Decision XI/14, section G, paragraph 2: “*Noting* the recommendations contained in paragraphs 26 and 27 of the report of the tenth session of the United Nations Permanent Forum on Indigenous Issues (E/2011/43-E/C.19/2011/14), *requests* the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, taking into account submissions by Parties, other Governments, relevant stakeholders and indigenous and local communities, to consider this matter, and all its implications for the Convention on Biological Diversity and its Parties, at its next meeting, for further consideration by the Conference of the Parties at its twelfth meeting.”
23. On 19 October, after Decision XI/14 was adopted, the IIFB expressed concern in the closing plenary about the resistance of some Parties to use the term “indigenous peoples”.<sup>25</sup>
24. The CBD emerged from the Rio Earth Summit in 1992, along with the Framework Convention on Climate Change and the Convention to Combat Desertification. Its implementation is guided by Agenda 21, which was also adopted at the Rio Summit and uses the term “indigenous people” in its Section 15 (Conservation of Biological Diversity) and Section 26 (Recognising and strengthening the role of indigenous people and local communities).

The World Summit on Sustainable Development (WSSD) meeting of 2002, on the ten-year anniversary of the Rio Summit, reaffirmed the importance of indigenous peoples in sustainable development and explicitly used the term ‘indigenous peoples’ in doing so.<sup>26</sup> On the twentieth anniversary of the Rio Summit, the international community again came together in Rio de Janeiro in June 2012 (‘Rio +20’), the outcome document of which (‘The Future We Want’) uses the term ‘indigenous peoples’ as well.<sup>27</sup>

25. In addition to the abovementioned instruments emanating from the Rio processes, a wide range of other international instruments and standards reference indigenous peoples’ rights, the vast majority of which were adopted by environmental organisations and underscore the

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<sup>25</sup> Earth Negotiations Bulletin, 2012. *Summary of the Eleventh Conference of the Parties to the Convention on Biological Diversity: 8-19 October 2012*. IISD Reporting Services, Vol. 9, No. 595. Available at: [www.iisd.ca/vol09/enb09595e.html](http://www.iisd.ca/vol09/enb09595e.html).

<sup>26</sup> Johannesburg Declaration on Sustainable Development, para 25.

<sup>27</sup> Resolution adopted by the General Assembly 66/288, “The Future We Want”, paragraph 197: “...We recognize that traditional knowledge, innovations and practices of indigenous peoples and local communities make an important contribution to the conservation and sustainable use of biodiversity, and their wider application can support social well-being and sustainable livelihoods. We further recognize that indigenous peoples and local communities are often most directly dependent on biodiversity and ecosystems and thus are often most immediately affected by their loss and degradation.

linkages between recognition of indigenous peoples' rights and the conservation and sustainable management of ecosystems and natural resources. They include the following (listed in chronological order):

- a) 1991 ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries
- b) 1996 IUCN Resolutions 1.21, 1.22, 1.26, 1.42, 1.49-1.56, and Recommendations 1.57, 1.62, 1.70, 1.91, 1.103, 1.107-1.109
- c) 1999 Ramsar Convention Guidelines for Establishing and Strengthening Local Communities' and Indigenous People's Participation in the Management of Wetlands
- d) 2000 IUCN Resolutions 2.22, 2.24, 2.30, 2.59, and Recommendations 2.83, 2.92, 2.94
- e) 2002 Ramsar Convention Guiding Principles for Taking into Account the Cultural Values of Wetlands for the Effective Management of Sites
- f) 2004 FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
- g) 2004 IUCN Resolutions 3.017, 3.018, 3.036, 3.037, 3.049, 3.055, 3.056, 3.061, 3.074, and Recommendations 3.082, 3.092, 3.101, 3.103, 3.111
- h) 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- i) 2006 FAO Responsible Management of Planted Forests: Voluntary Guidelines
- j) 2006 FAO Fire Management: Voluntary Guidelines: Principles and Strategic Actions
- k) 2007 UN Forum on Forests Non-legally Binding Instrument on All Types of Forests, adopted as General Assembly Resolution 62/98
- l) 2008 IUCN Resolutions 4.013, 4.033, 4.036, 4.038, 4.041, 4.043, 4.048-4.056, 4.068, 4.073, 4.075, 4.082, 4.083, 4.087, 4.090, and Recommendations 4.127, 4.133, 4.136
- m) 2010 UNFCCC Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention
- n) 2011 UN Guiding Principles on Business and Human Rights
- o) 2012 FAO Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security
- p) 2012 IUCN Resolutions 5.007, 5.035, 5.042, 5.043, 5.044, 5.046, 5.047, 5.053, 5.059, 5.063-5.065, 5.067, 5.076-77, 5.079, 5.082, 5.086, 5.089, 5.092-5.097, 5.099, 5.100-5.102, 5.104-5.107, 5.124, and Recommendation 5.147, 5.156, 5.163, 5.175, 5.179

26. In Decision X/43, COP10 decided to hold an "ad hoc expert group meeting of local-community representatives... with a view to identifying common characteristics of local communities, and gathering advice on how local communities can more effectively participate in Convention processes, including at the national level..."<sup>28</sup> The CBD therefore has recognized the distinctive nature of indigenous peoples and local communities in real terms, yet continues to conflate the groups in references in text.

27. The Parties to the CBD (given its near-universal membership) represent the same State Parties that have in all other international contexts used the terminology of "indigenous peoples", including in the 2007 adoption of the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** by the UN General Assembly. This Declaration recognizes that "*Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State*" (Article 5, emphasis added).<sup>29</sup> The countries that initially voted against the adoption of UNDRIP (Australia, New

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<sup>28</sup> Decision X/43 on the multi-year programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity, paragraph 21 (emphasis added).

<sup>29</sup> UNDRIP text accessible here: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

Zealand, Canada, and the United States of America) later overturned their decisions and endorsed UNDRIP in 2009 (Australia) and 2010 (New Zealand, Canada, and the USA).

28. Although UNDRIP is a voluntary declaration in and of itself, many of its provisions reflect recognised customary international law,<sup>30</sup> which means that even states that are not parties or signatories to specific instruments in which such rules are embodied are still bound by them.<sup>31</sup>
29. With specific reference to the 16 October opposition of Canada to the addition of “peoples” to the term “indigenous and local communities”, in domestic law, Canada uses the term “Aboriginal peoples” to refer to indigenous peoples. The 1982 Constitution Act recognises the Aboriginal and treaty rights of Aboriginal peoples of Canada, which states “includes Indian [First Nations], Inuit and Métis peoples” (Section 35(2)). All three are considered indigenous peoples for international discussions concerning the same.
30. There is a significant body of jurisprudence on the rights of Aboriginal peoples in Canada, including the following landmark cases, among others: *R. v. Sparrow*, [1990] 1 S.C.R. 1075; *R. v. Van der Peet*, [1996] 2 S.C.R. 507; and *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010; and *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511.<sup>32</sup> There is thus a strong precedent for legal recognition of Aboriginal peoples under domestic law in Canada.
31. Canada is party to the 1971 Ramsar Convention on Wetlands of International Importance, the 1991 UN Framework Convention on Climate Change, and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, all of which refer to “indigenous peoples” in their original texts and/or in Decisions and Guidelines adopted under their auspices. As mentioned in paragraph 27 above, Canada also endorsed the 2007 UN Declaration on the Rights of Indigenous Peoples.
32. The national government agencies of the Canadian Wildlife Service (under Environment Canada), Parks Canada, and Fisheries and Oceans Canada are all members of IUCN and thus obliged to uphold the numerous IUCN Resolutions and Recommendations listed in paragraph 25 above that recognise indigenous peoples as such. Notably, the Canadian Wildlife Service is also the National Focal Point to the CBD.
33. With this range of obligations and established precedents under both international and domestic law to recognise indigenous peoples as such, it is unclear why Canada opposed during COP11 to changing the CBD terminology to “indigenous peoples and local communities”.
34. With specific reference to the 16 October opposition of India to the use of the term “indigenous peoples and local communities”, Attorney Shri K. Rajendran Uliyakovil (an Indian national) filed an application under the Right to Information Act on 3 December 2012 to the

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<sup>30</sup> International Law Association, 2010. The Hague Conference on the Rights of Indigenous Peoples: Interim Report. Available at: <http://www.ila-hq.org/download.cfm/docid/9E2AEDE9-BB41-42BA-9999F0359E79F62D>.

<sup>31</sup> Fitzmaurice, M., and O. Elias, 2005. *Contemporary Issues in the Law of Treaties*. Eleven International Publishing: The Netherlands.

<sup>32</sup> Wilson, P., L. McDermott, N. Johnston, and M. Hamilton, 2012. *An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities: Report No. 8: Canada*. Natural Justice and Kalpavriksh: India. Available online at: <http://naturaljustice.org/wp-content/uploads/pdf/ICCALegalReviewCANADA.pdf>.

Ministry of Tribal Affairs, citing this opposition as a violation both of the observation of the Supreme Court of India that “Adivasis are the original inhabitants of India”<sup>33</sup> and of India’s endorsement of UNDRIP. This application noted that in all Indian languages, “Adivasis” means ‘original inhabitants’ or ‘indigenous peoples’<sup>34</sup> and sought the position of the Ministry on the meaning of the term and its implications. It also requested if there has been any discussion or decision on this issue in the Parliament or cabinet of the central government.

35. In a reply dated 14 January 2013, the Ministry of Tribal Affairs clarified that it “has not made any policy decision” on the issues raised in the application, in essence, to the effect that Adivasis are not indigenous peoples. In that same response, the Ministry of Tribal Affairs transferred the application to the Ministry of Parliamentary Affairs, which in turn forwarded it to the Ministry of Environment and Forests, India’s National Focal Point for the CBD.
36. The Ministry of Environment and Forests failed to respond within the required period of 30 days following the receipt of the request (Article 7(1), Right to Information Act 2005). Atty. Uliyakovil has since filed an appeal to further pursue the matter, which must be disposed of within a maximum of 45 days of receipt (Article 19(1), Right to Information Act 2005).
37. India is party to the 1971 Ramsar Convention on Wetlands of International Importance, the 1991 UN Framework Convention on Climate Change, and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, all of which refer to “indigenous peoples” in their original texts and/or in Decisions and Guidelines adopted under their auspices. India also endorsed the 2007 UN Declaration on the Rights of Indigenous Peoples at the time of its adoption.
38. The Ministry of Environment and Forests (India’s National Focal Point to the CBD) is also a state member of IUCN and thus obliged to uphold the numerous IUCN Resolutions and Recommendations listed in paragraph 25 above that recognise indigenous peoples as such.
39. At this point in time, given that the Ministry of Environment and Forests has not responded to clarify its position during COP11, that the Ministry of Tribal Affairs confirmed that it has no policy against recognising Adivasis as indigenous peoples, that a Supreme Court decision acknowledges Adivasis as “original inhabitants” (recognised as a key characteristic of indigenous peoples),<sup>35</sup> and that India has endorsed UNDRIP and a number of other international instruments that use the term ‘indigenous peoples’, it can be argued that the position taken by India during COP11 on this matter was not in line with official Government of India policy and that India should thus support the change in terminology under the CBD to ‘indigenous peoples and local communities’.
40. Taking into consideration the arguments above, we strongly endorse the UNPFII’s recommendation to use the terminology “indigenous peoples and local communities” in the CBD.

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<sup>33</sup> Kailas & others vs. State of Maharashtra in criminal appeal No. 11/2011 (Citation AIR 2011 Supreme Court 598).

<sup>34</sup> Also see the following article, which references the same Supreme Court case and acknowledge Adivasis as descendants of the original inhabitants of India: “India, largely a country of immigrants”. 12 January, 2011. *The Hindu*. Available online at: <http://www.thehindu.com/opinion/op-ed/india-largely-a-country-of-immigrants/article1081343.ece>.

<sup>35</sup> Anaya, J. S., 2004. *Indigenous Peoples in International Law* (2nd edition). Oxford University Press: New York.

## Signed:

1. ADeD-ONG, Benin
2. Adivasi Socio Educational and Cultural Association (ASECA), Rairangpur, Odisha, India
3. African Biodiversity Network, Kenya
4. Alliance for Democratising Agricultural Research in South Asia (ADARSA), India
5. Alliance for Food Sovereignty in South Asia (AFSSA), Hyderabad, Andhra Pradesh, India
6. Andhra Pradesh Social Service Society (APSSS), Hyderabad, Andhra Pradesh, India
7. Asia Indigenous Peoples Pact, Thailand
8. Association des Femmes Peuples Autochtones du Tchad (AFPAT), Chad
9. Asociacion ANDES, Cusco, Peru
10. Asociacion Ixacavaa De Desarrollo E Informacion Indigena, Costa Rica
11. Autochtones and Locales Communities of Hlanzoun Forest of Benin, Benin
12. Baiga Mahasabha, Dindori, Madhya Pradesh, India
13. Baikal Buryat Center for Indigenous Cultures, Russian Federation
14. Bharat Munda Samaj, Baripada, Odisha, India
15. Center for Research and Rural Economic Development (CRED), Burundi
16. Centre for Sustainable Development (CENESTA), Iran
17. Centro de Estudios Multidisciplinarios Aymara (CEM-Aymara), Bolivia
18. Chibememe Earth Healing Association (CHIEHA), Zimbabwe
19. Community Media Trust (CMT), Andhra Pradesh, India
20. Confédération des Associations Amazighes du Maroc, Morocco
21. Consejo Regional Otomi del Alto Lerma, México
22. Conservation International, USA
23. Deccan Development Society (DDS), Andhra Pradesh, India
24. Dulal, Baripada, Odisha, India
25. Forest Peoples Programme, United Kingdom
26. Forum Biodiversité du Bénin, Benin
27. Fundación para la Promoción del Conocimiento Indígena (FPCI), Panama
28. Fuerza de Mujeres Wayuu, Colombia
29. Gram Swaraj-Baripada, Odisha, India
30. ICCA Consortium, Switzerland
31. Innbrapi, Brazil
32. Indigenous Knowledge and Peoples Foundation (IKAP), Thailand
33. Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) , Thailand
34. Indigenous Information Network, Kenya
35. Jana Vikas, Kandhamal, Odisha, India
36. Keonjhar Integrated Rural Development and Training Institute ( KIRDTI), Odisha, India
37. Kibale Association for Rural and Environmental Development (KAFRED), Uganda
38. Organisation of Kaliña and Lokono in Marowijne (KLIM), Suriname
39. Ligue Nationale des associations Autochtones Pygmées du Congo (LINAPYCO), Congo
40. LIVING FARMS, Bhubaneswar, Odisha
41. Living Oceans Society, Canada
42. Madhya Pradesh Samaj Seva Sanstha (MPSSS), Madhya Pradesh, India
43. MELCA-Ethiopia, Ethiopia
44. Millet Network of India (MINI), Hyderabad, Andhra Pradesh, India
45. Naga Peoples movement For Human rights (NPMHR), Nagaland
46. Nama Traditional Leaders Association, Namibia
47. National Indigenous Women's Federation, Nepal
48. Natural Justice: Lawyers for Communities and the Environment, South Africa
49. NIRMAN-Sijhara, Madhya Pradesh, India

50. Nirmanee development Foundation, Hettimulla, Sri Lanka
51. Ogiek Peoples Development Program (OPDP), Kenya
52. ORRISSA, Bhubaneswar, Odisha, India
53. Pacari Network - Local Communities of the Savannahs, Central Brazil
54. Plenty Canada, Canada
55. Programme d'Intégration et de développement du peuple Pygmée au Kivu (PIDP SHIRIKA LA BAMBUTI), Democratic Republic Congo
56. Red de Mujeres Indígenas sobre Biodiversidad de America Latina y el Caribe (RMIB-LAC)
57. Red de Mujeres Indígenas y Biodiversidad de Guatemala, Guatemala
58. Red Indígena de Turismo de México (RITA), Mexico
59. Regional Centre for Development Cooperation (RCDC), Bhubaneswar, Odisha, India
60. Saami Council, Finland
61. Sahjeevan, India
62. Samoa Umbrella for Non-Governmental Organisation Inc. (SUNGO), Samoa.
63. Shade: Local Communities for Biodiversity and Livelihood Improvements, Ethiopia
64. Society for New Initiatives and Activities (SONIA), Italy
65. Southern Action on Genetic Engineering (SAGE), South India
66. Strong Roots Congo, Democratic Republic of Congo.
67. Sudhagad Pali Taluka (SOBTI), Rayghar, Maharastra, India
68. Tebtebba Foundation, Philippines
69. Tewa Women United, USA
70. Tulalip Tribes, USA
71. Union of Indigenous Camel Herders of Iran (UNICAMEL), Iran
72. Union of Indigenous Nomadic Tribes of Iran (UNINOMAD), Iran
73. Unissons-nous pour la Promotion des Batwa (UNIPROBA), Burundi
74. United Organisation for Batwa Development in Uganda (UOBDU), Uganda