

University of Victoria

From the Selected Works of Sam Grey

2007

From Text to Action: Negotiating and Advancing Indigenous Peoples' Rights through the Convention on Biological Diversity

Sam Grey, *University of Victoria*



Available at: <https://works.bepress.com/samgrey/17/>

From Text to Action

*Negotiating and Advancing
Indigenous Peoples' Rights through the
Convention on Biological Diversity*

*This publication is dedicated to all
Indigenous Peoples who struggle to make
sense of the Convention on Biological
Diversity, to make it relevant to their daily
lives, and to use its processes as a framework
through which to articulate and advance
Indigenous rights and concerns.*

From Text to Action

Published by:

The Indigenous Peoples Network for Change Project (IPNC) of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF)
P.O. Box 182 Chiang Mai University Post Office
Chiang Mai 50202, Thailand
E-mail: its@international-alliance.org
Website: www.international-alliance.org

Written by: Jill Carino

Edited by: Minnie Degawan and Sam Grey

Cover design and layout: Ms.Barbara Benda and Kittisak R.

Back cover picture: Colin Nicholas

Published by: Chotana Print, Chiang Mai, Thailand

Contents

	Page
Acknowledgement	iii
List of acronyms	iv
Foreword	v
Part I: The Convention on Biological Diversity	
What is biodiversity and why is it important to Indigenous Peoples?	2
What is the Convention on Biological Diversity?	3
What are the objectives of the CBD?	4
How does the CBD operate?	4
How do the various CBD structures function?	6
The Conference of the Parties	6
The Subsidiary Body on Scientific, Technical and Technological Advice	7
The Secretariat	7
The Financial Mechanism	7
The Clearing House Mechanism	8
The Subsidiary Organs	8
What are the work areas of the CBD?	9
What is the Cartagena Protocol on Biosafety?	12
How is the CBD related to other international agreements?	12
Part II: Main CBD Issues and Themes Directly Relevant to Indigenous Peoples	
What CBD provisions and articles are directly relevant to Indigenous Peoples?	15
Preamble	15
Article 8(j): Traditional Knowledge	16
Article 10(c): Sustainable Use	16
Article 15: Access to Genetic Resources	16
Article 16: Access to and Transfer of Technology	17
Article 17(2): Exchange of Information	18
Article 18(4): Technical and Scientific Cooperation	18
What are Indigenous Peoples' critiques of the CBD and its provisions?	18

How are the CBD's thematic programmes relevant to Indigenous Peoples?	20
Agricultural Biodiversity	20
The Biodiversity of Dry and Sub-Humid Lands	22
Forest Biodiversity	23
Inland Waters Biodiversity	24
Island Biodiversity	25
Marine and Coastal Biodiversity	26
Mountain Biodiversity	26
How are the CBD's cross-cutting issues relevant to Indigenous Peoples?	28
Access to Genetic Resources and Benefit Sharing	28
Traditional Knowledge	29
Protected Areas	31
 Part III: Indigenous Peoples' Participation in the CBD	
How did the participation of Indigenous Peoples in the CBD process begin?	33
How does the International Indigenous Forum on Biodiversity work?	34
How can Indigenous Peoples' organizations use the CBD to advance their rights and interests?	36
How have Indigenous Peoples successfully made use of the CBD?	37
Guyana: The Wapichan	37
Thailand: The Hmong	38
Suriname: The Kalina en Lokono	39

Acknowledgements

The publisher gratefully acknowledges the financial assistance of the United Nations Environment Programme (UNEP), the Global Environment Facility (GEF), the Netherlands Organization for International Development Cooperation (NOVIB), and the Norwegian Agency for Development Cooperation (NORAD). We also wish to thank all those who have assisted in making this primer.

The information contained in this primer is meant to be shared as widely as possible to Indigenous Peoples and their communities and to their advocates. May those who find it useful continue to share the information contained in it.

The Indigenous Peoples Network for Change Project responds to the continued recognition within the CBD process of the importance and need for increased participation by Indigenous Peoples. One way of enhancing that participation is through materials disseminating and simplifying information, such as this primer.

Indigenous Peoples Network for Change Project (IPNC)

List of Acronyms

CBD	Convention on Biological Diversity
COP	Conference of the Parties
CPB	Cartagena Protocol on Biosafety
FPIC	free, prior informed consent
GEF	Global Environment Facility
GURT	Genetic Use Restriction Technologies
IAITPTF	International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, also known as “The Alliance”
IIFB	International Indigenous Forum on Biodiversity
IPs	Indigenous Peoples
IPR	intellectual property rights
IUCN	World Conservation Union
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
UNFF	United Nations Forum on Forests
UNPFII	United Nations Permanent Forum on Indigenous Issues



Foreword

Why should we care about the Convention on Biological Diversity?

We may not know it, but the *Convention on Biological Diversity* (CBD) has significant and long-lasting impacts on our daily lives as Indigenous Peoples (IPs). We may just be tending to our farms, forests, rivers, and seas from day to day, using the Indigenous knowledge passed on by our forbears to manage our natural resources in a sustainable manner, so that our grandchildren and their grandchildren may continue to live off the land in harmony with nature. Yet, in international debates and via the actions of our governments implementing the CBD, our futures, our lands, our natural resources, our cultures, and our continued survival as Indigenous Peoples could be at stake.

The CBD is an all-encompassing convention that affects the lives of IPs all over the world. By signing on to the CBD, our governments have made international commitments to respect our traditional knowledge and protect our biodiversity, right down to the level of species and genes. Indigenous Peoples need to know what commitments have been made by governments through the CBD, and explore how we can utilize these commitments in our struggles to defend and assert Indigenous Peoples' rights.

Indigenous Peoples have a wealth of traditional knowledge and innovative practices in the management of natural resources. In fact, conservation and sustainable use of biodiversity are central to Indigenous Peoples' traditional livelihoods, such as farming, livestock-raising, and fishing. Indigenous lands and territories are located in areas which hold the highest levels of biodiversity in the world. As such, Indigenous Peoples cannot be excluded, and in fact must be directly involved in the implementation of the CBD at the national level, and in the work of the Convention itself.

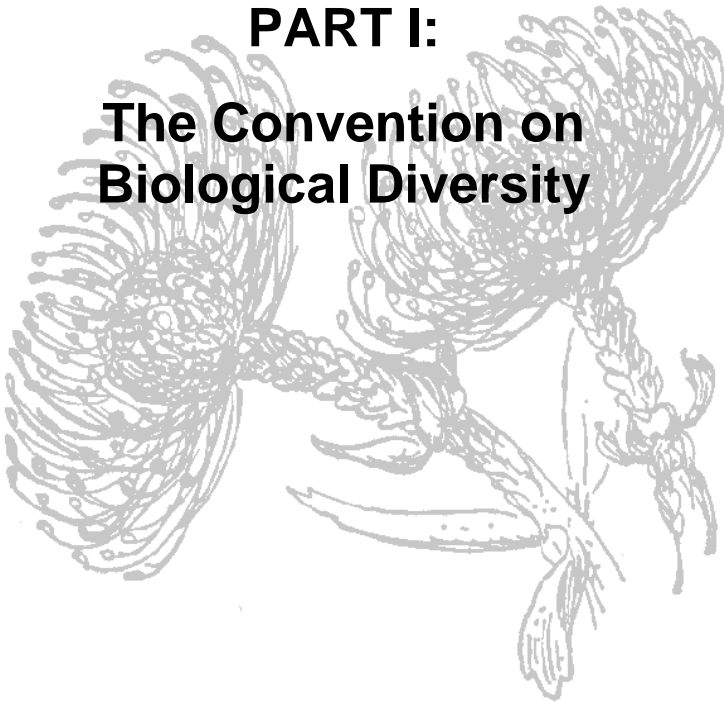
Why this Primer?

The purpose of this primer is to provide basic information on the *Convention on Biological Diversity* that Indigenous Peoples can easily understand. It aims to familiarize IPs with the processes and programmes of work of the CBD, so that they can participate effectively at various levels and take advantage of available opportunities for engagement. It presents some strategies used by Indigenous Peoples in holding their governments accountable for their commitments to the CBD. It could serve as a tool for Indigenous Peoples in negotiating and advancing their rights to land, resources, biological diversity, cultural diversity, and self-determination – not just in the text or programmes of work of the CBD, but also in its implementation at the national level.

The primer is composed of three main parts. Part I will familiarize the reader with the CBD and its history, structures and processes. Part II will look into the main articles, programmes of work, and crosscutting issues of the CBD that are directly relevant to Indigenous Peoples. Part III will look at Indigenous Peoples' strategies for participating in CBD processes, as well as how some organizations have successfully used these strategies to advance their rights and interests.

Much of the content of this primer was taken from existing materials already written on the topic of the CBD and Indigenous Peoples. Our main sources were the *Field Guide on the CBD* written by Paul Oldham; the workshop papers and report prepared by the Tebtebba Foundation for the Asia Regional Capacity Building and Strategy Workshop on the Implementation of the CBD; and PowerPoint presentations of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF), Joji Carino, and the Forest Peoples Programme. These materials were used liberally in the preparation of this primer, which is a summary, in simplified language and form that can be easily understood by grassroots Indigenous Peoples and those who are only just beginning to venture into the complex arena of the *Convention on Biological Diversity*.

PART I:
**The Convention on
Biological Diversity**



What is biodiversity, and why is it important to Indigenous Peoples?

The term ‘biodiversity’ describes the diversity of all forms of life on this planet, ranging from the genes that make up the smallest organisms to the multiplicity of plant and animal life and the ecosystems sustaining them. This concept is all-encompassing. It covers all biological life forms and the interconnectedness of all life on Earth. All people, including Indigenous Peoples, form part of this diversity. We all depend upon the maintenance of the world’s biodiversity for our survival and well-being.¹

For Indigenous Peoples, this Western scientific concept of biodiversity may seem alien and distant, and many Indigenous and local languages may not possess an equivalent term. However, because of their close relationship with land and nature, Indigenous Peoples clearly understand the interrelationship of all life forms, and appreciate the importance of maintaining a broad diversity of plant and animal life as a key element in maintaining a balance in nature. In fact, Indigenous Peoples possess important knowledge that plays a vital role in the conservation of biodiversity. Their traditional knowledge – about the diversity of species, their habitats, behaviours, and their traditional ways of managing and protecting natural resources – allow them to have a sustainable relationship with the environment upon which we all ultimately depend for our welfare and survival.

Studies show that the lands and territories of Indigenous Peoples are within the areas of the highest biological diversity in the world. These are areas of outstanding environmental importance, such as tropical forests, arctic tundra, and mangrove forests. This fact underlines the inextricable link between Indigenous Peoples and the conservation of biodiversity.²

¹ Paul Oldham, *Negotiating Diversity: A Field Guide to the Convention on Biological Diversity* (Lancaster: Lancaster University and the Centre for Economics and the Social Aspects of Genomics, 2001-2002) 14.

² Oldham, 17.

What is the Convention on Biological Diversity?

The origins of the *Convention on Biological Diversity* (CBD) can be traced back to the 1970s and 1980s, when Western scientists became increasingly alarmed at the accelerated degradation of tropical forests around the world. These scientists believed that the loss of these species-rich regions would seriously endanger the future of humanity. Once lost, this ‘biodiversity of life’ could never be recovered. Thus, the concept of biodiversity was born. This initiative eventually led to the creation of the legally binding *Convention on Biological Diversity*.³

The CBD is an international agreement that emerged from the United Nations World Conference on Environment and Development, held in Rio de Janeiro, Brazil, in 1992. Popularly known as the ‘Earth Summit’ this meeting was, at the time, the largest gathering of world leaders in history. The conference produced two major treaties. The first was an agreement for nations to voluntarily reduce emission of gases leading to global warming. The second treaty was the *Convention on Biological Diversity*, a pact requiring countries to develop plans to protect endangered species and habitats.⁴

As of 2005, 188 governments, including the European Union, are Parties to the Convention.⁵ The United States was one of the very few countries that refused to sign the biodiversity treaty; it did so because it objected to a part of the text specifying that proceeds from the use of natural resources in protected ecosystems should be shared equally between the source country and the corporation or institution removing the materials.⁶

³ Oldham, 15.

⁴ Michael Zimmerman, “Environment,” *Microsoft Encarta* (Redmond, WA: Microsoft Corporation, 2005) n.p.

⁵ Tebtebba Foundation, *Indigenous Peoples and the Convention on Biological Diversity: Asia Report* (Baguio City, Philippines: Tebtebba Foundation, 2006) 60.

⁶ Zimmerman.

What are the objectives of the CBD?

Article 1 of the CBD lays down the objectives of the Convention, as follows:

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

In short, the CBD seeks to pursue three objectives, namely:

- The conservation of biodiversity.
- The sustainable use of biodiversity and its components.
- Fair access to, and equitable sharing of, benefits arising from the utilization of genetic resources.⁷

How does the CBD operate?

The CBD operates using an institutional framework, which is made up of the following structures:

- The Conference of Parties (COP)
- The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)

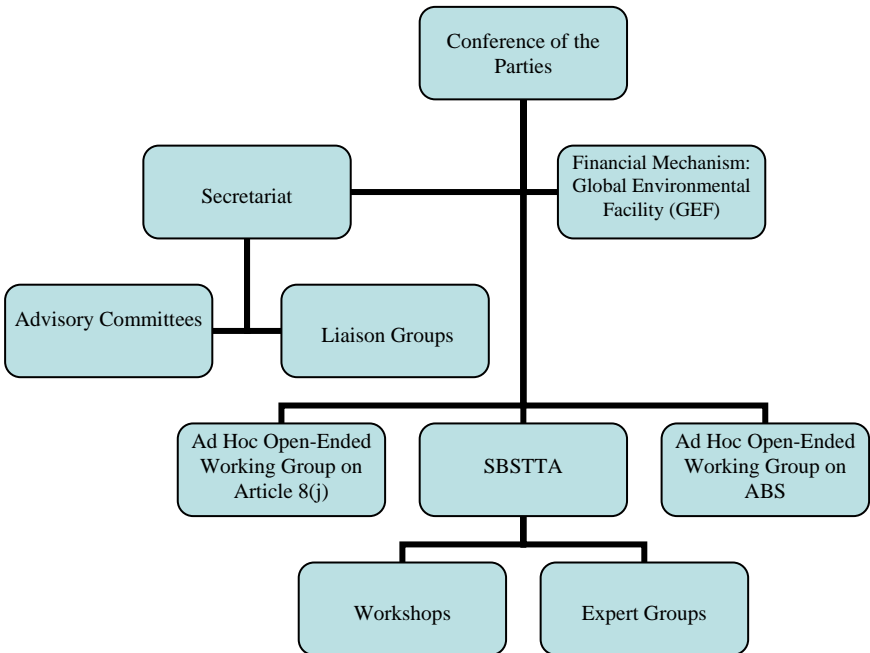
⁷ John Scott, "The CBD and Traditional Knowledge," *Indigenous Peoples and the Convention on Biological Diversity: Asia Report* (Baguio City, Philippines: Tebtebba Foundation, 2006) 60.

- The Secretariat
- The Financial Mechanism
- The Clearing House Mechanism
- Subsidiary Organs

How the Convention operates can best be illustrated through a flow chart of its institutional framework, shown below:⁸ Indigenous Peoples can participate in CBD processes through these various international institutions, as well as by engaging with their governments in the implementation of the CBD at the national level.



⁸ John Scott, "IPs and the CBD," *Indigenous Peoples and the Convention on Biological Diversity: Asia Report* (Baguio City, Philippines: Tebtebba Foundation, 2006) 63.

Figure 1: Institutional Framework of the CBD

How do the various CBD structures function?

The Conference of the Parties (COP)

The Conference of the Parties (COP) is the highest decision-making body of the CBD. It is composed of national governments and the European Union, who form the 'Parties' to the Convention. The COP meets every two years. The last COP was COP-8, held in Brazil in 2006. Governments that are not Party to the Convention, such as the United States, and interested

organizations, including Indigenous Peoples and local community organizations, may attend the COP as observers.⁹

The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)

The SBSTTA is a group of scientists and technical experts nominated by government Parties. It meets twice in between COP meetings, or once a year. This group provides the COP with advice and recommendations in the form of draft proposals. Indigenous Peoples and governments can attend SBSTTA meetings as observers.¹⁰

The Secretariat

The Secretariat of the CBD has fifty-five staff members, led by the Executive Secretary (currently, Mr. Ahmed Djoghla). It is based in Montreal, Canada. The staff is primarily responsible for preparing and servicing the meetings of the CBD. The Secretariat is the first contact point for Indigenous Peoples seeking to participate in the CBD.¹¹ An Indigenous Focal Point on Traditional Knowledge, also based in Montreal, has been appointed to the Secretariat; as of 2006 this post is occupied by Mr. John Scott.

The Financial Mechanism

Through the Financial Mechanism of the CBD, developing countries can access the financial resources necessary to implement the Convention. The Global Environment Facility (GEF) serves as the main intergovernmental financial mechanism for addressing global environmental problems and for implementing the CBD. The GEF was established in 1991 to help

⁹ Scott, 60.

¹⁰ Scott, 61.

¹¹ Scott, 61.

developing countries fund projects and programmes that protect the global environment. Its grants support projects related to biodiversity, climate change, international waters, land degradation, the ozone layer, and persistent organic pollutants.^{12,13} As of 2006, the total allocation to the GEF stood at US\$3.1 billion, funding some 450 projects in the developing and transitional countries of the world.¹⁴

The Clearing House Mechanism

The Clearing House Mechanism is a series of internet sites established by governments and organizations linked to the CBD website (www.biodiv.org). These provide a mechanism for the exchange of information on the CBD. It has three purposes: (1) to promote and facilitate technical and scientific cooperation within and between countries; (2) to develop a global mechanism for exchanging and integrating information on biodiversity; and (3) to develop the necessary human and technological network.¹⁵

The Subsidiary Organs

The subsidiary organs of the CBD include the Ad Hoc Open-Ended Working Groups, Panel of Experts and Ad Hoc Technical Expert Groups.

The Ad Hoc Open-Ended Working Groups are made up of experts and others nominated by governments. They are considered 'ad hoc' because they are established as and when needed and are not intended to be permanent. They are 'open-

¹² Persistent organic pollutants (POPs) are dangerous chemical substances that do not break down, and actually become stronger as they spread through the food chain/web. This group of pollutants consists primarily of pesticides and industrial chemicals, which often spread across boundaries to areas where they have never been produced or used.

¹³ Scott, 61.

¹⁴ Frank A. Campbell, *Protecting and Improving the Global Commons: 15 Years of the World Bank Group - Global Environment Facility Programme* (Washington: IBRD, 2006).

¹⁵ Scott, 62.

ended' because their meetings are open to all parties and observers until the COP feels its work has been completed. The working groups that have been established are: Biosafety; Article 8(j) and Related Provisions; Access and Benefit Sharing (ABS); and Protected Areas.

The Panel of Experts is convened by the COP from time to time, with members drawn from a roster of experts nominated by governments. A few government-nominated Indigenous Persons have participated in various meetings of the Panel of Experts.

The Ad Hoc Technical Working Groups are created by the COP or the SBSTTA to push progress in particular areas. There have been technical working groups created for biological diversity and climate change, forests, marine and coastal protected areas, dry land and associated ecosystems, and on education and public awareness. Members of these groups are drawn from a small international roster of experts.¹⁶

The COP has recognized the importance of improving the range and quality of advice available to the Parties, and is now increasing the involvement of Indigenous and local community delegates in all of its work.¹⁷

What are the work areas of the CBD?

The work areas of the CBD enfold its whole agenda for addressing each of the particular issues of biodiversity. The activities of the COP are organised around specific programmes of work, the first of which were generated during the CBD's first ten years of strategy and policy formulation (1992 – 2002). Since then, the focus has shifted to a review of progress made and implementation goals, with national-level implementation now being the priority.

The COP has identified several 'thematic programmes' and 'cross-cutting issues' to organise its work.¹⁸

¹⁶ Scott, 62-63.

¹⁷ Oldham, 28.

¹⁸ Scott, 64.

Thematic programmes include:

- Forest biological diversity
- Agricultural biodiversity
- Marine and coastal biodiversity
- Inland waters biodiversity
- Dry land biodiversity
- Mountain biodiversity
- Island biodiversity

Cross-cutting issues include:

- Access and benefit sharing
- Alien species
- Protected areas
- Traditional knowledge
- Sustainable use
- Indicators
- Ecosystem approach
- Global taxonomy initiative
- Impact assessments
- Biological diversity and tourism
- Technology transfer and cooperation

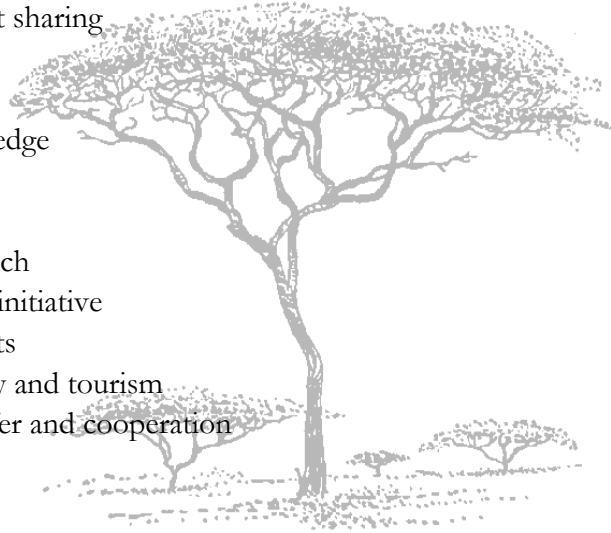
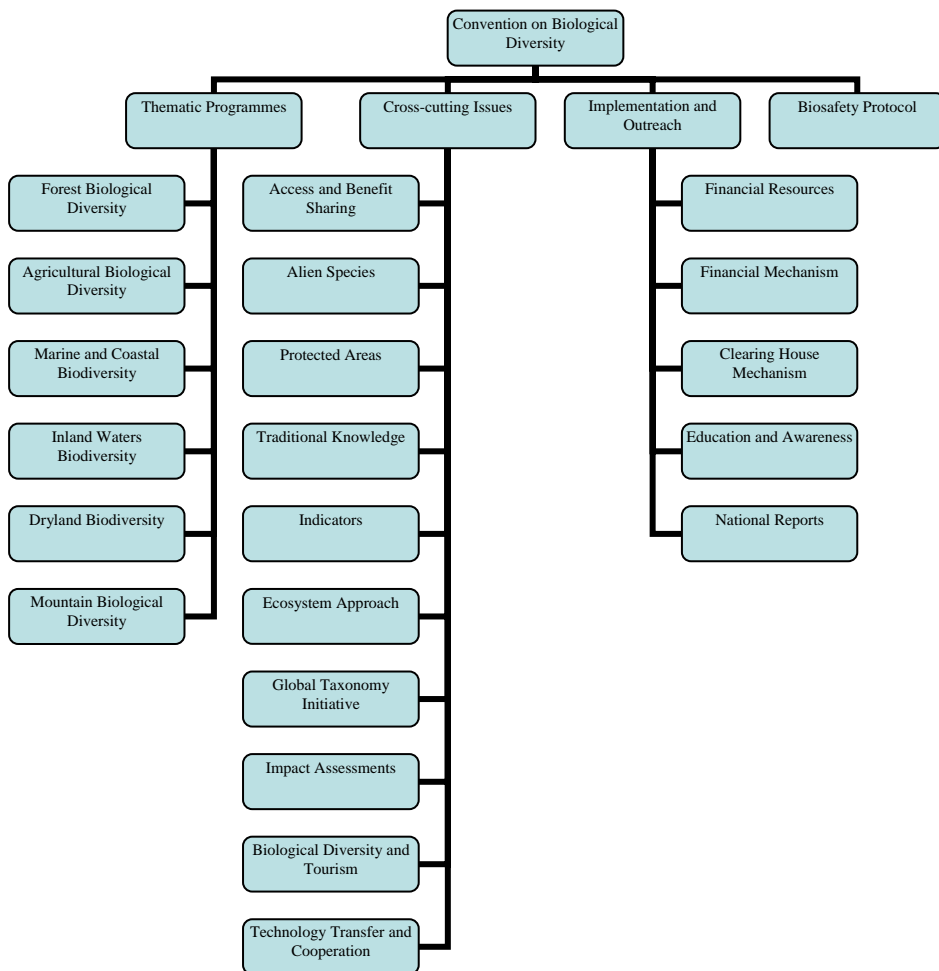


Figure 2: CBD Programmes of Work¹⁹



¹⁹ Scott, 65.

What is the Cartagena Protocol on Biosafety?

A protocol is a supplementary agreement that addresses a specific area of a Convention, which constitutes an independent and legally-binding international instrument in its own right. Protocols are open both to Parties and non-Parties to the Convention.²⁰ One protocol that has come out of the CBD is the *Cartagena Protocol on Biosafety* (CPB), which is of particular importance to Indigenous Peoples who are threatened by the importation of genetically modified crops. The protocol was developed after many European and developing nations voiced concern about the health and environmental risks associated with imported genetically modified food crops from the United States and other countries. In early 2000, 130 nations devised the CPB, which was formally approved in Cartagena in June of 2003. It requires exporting nations to notify importers when products (including seeds, food crops, cattle, and fruit trees) contain genetically modified organisms.²¹

How is the CBD related to other international agreements?

The CBD has established several collaborative relationships with related international agreements. For instance, there is now a joint programme of the CBD and the *Ramsar Convention on Wetlands*,²² while collaboration between the CBD and the United Nations Forum on Forests (UNFF) has taken the form of a joint workshop. In the case of the CBD and the United Nations Permanent Forum on Indigenous Issues (UNPFII), the Inter-Agency Support Group for the Permanent Forum includes the

²⁰ Oldham, 28.

²¹ "Genetic Engineering," *Microsoft Encarta* (Redmond, WA: Microsoft Corporation, 2005).

²² The *Ramsar Convention on Wetlands* was adopted in Ramsar, Iran, in 1971. Member countries are required to designate at least one wetland as a conservation project to add to the List of Wetlands of International Importance. The Ramsar List includes more than 30 million hectares (74 million acres) of wetlands in more than 500 locations. See www.ramsar.org.

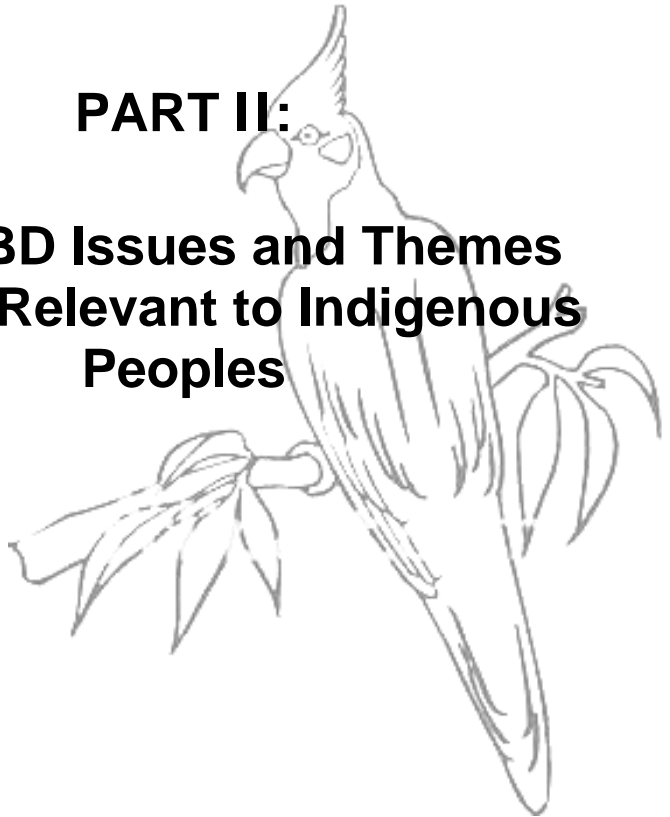
Secretariat of the CBD. These collaborative arrangements represent an important trend on the part of the CBD to harmonize its work with related agreements. This trend opens up opportunities for Indigenous Peoples and local communities to participate in the work of the CBD, while at the same time contributing to other international processes and conventions.²³



²³ Oldham, 29.

PART II:

**Main CBD Issues and Themes
Directly Relevant to Indigenous
Peoples**



What CBD provisions and articles are directly relevant to Indigenous Peoples?

It is important for Indigenous Peoples to become familiar with the text of the CBD, particularly those articles that have the potential to directly impact their lives. The CBD contains forty-two Articles and two Annexes. The whole text has been approved and signed by 188 government Parties to date. As such, Indigenous Peoples can hold these Parties accountable for their international commitments as stated in the CBD text.

On the other hand, there are some portions of the CBD text that contradict the interests of Indigenous Peoples. These sections should continue to be criticized and negotiated in order to advance the rights of Indigenous Peoples. The following are the most important Articles that should be noted by IPs participating in CBD processes:²⁴

Preamble

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

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity

²⁴ Tebtebba Foundation, *Overview – Relevant CBD Articles in a Nutshell* [seminar kit for the Asia Regional Capacity Building and Strategy Workshop on the Implementation of the CBD, 25-27 April 2005, Baguio City, Philippines].

and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.²⁵

Article 8(j): Traditional Knowledge

Each Contracting Party shall, as far as possible and as appropriate: (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Article 10(c): Sustainable Use

Each Contracting Party, shall, as far as possible and as appropriate: (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

Article 15: Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to

²⁵ This and all subsequent quotations from the *Convention on Biological Diversity* have been taken from the actual text of the Convention, available on the CBD website (<http://www.biodiv.org/convention/convention.shtml>).

genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavor to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this convention.

4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.

Article 16: Access to and Transfer of Technology

Article 16(2) provides that access to and transfer of technologies “subject to patents and other intellectual property rights” must occur on mutually-agreed terms that “recognize and are consistent with the adequate and effective protection of intellectual property rights.” Article 16(3) calls for Contracting Parties to take legislative, administrative, or policy measures to provide access to and transfer of technology, including “technology protected by patents and other intellectual property rights.” This is to be carried out “in accordance with international law.” Article 16(4) calls on Contracting Parties to take legislative, administrative or policy measures to facilitate the private sector’s “joint development and transfer of technology.” Article 16(5) recognizes that “patents and other intellectual property rights may have influence on the implementation” of the CBD, but States are called upon to cooperate to “ensure that such rights are supportive of and do not run counter to” the CBD’s objectives.

Article 17(2): Exchange of Information

Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18(4): Technical and Scientific Cooperation

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

What are Indigenous Peoples' critiques of the CBD and its provisions?

The CBD Articles mentioned above are important for Indigenous Peoples because they open up possibilities for the protection of IPs' rights to biological resources and traditional knowledge. Indigenous and local communities embodying traditional lifestyles are specifically mentioned in the CBD, and

their central contributions to biodiversity conservation are recognized. Customary use of biological resources in accordance with traditional cultural practices are likewise recognized, and should be protected and encouraged.

However, the same articles also contain weaknesses that have been criticized by Indigenous Peoples in the past. Terms such as “adequate,” “effective,” or “appropriate” have broad and multiple interpretations when national governments come to implement the CBD. Wording such as “as far as possible,” “as appropriate,” and “subject to national legislation” allow governments to interpret the provisions in their own interests.

Use of the terms “indigenous and local communities” rather than “Indigenous Peoples and local communities” itself restricts the rights of Indigenous Peoples. Their existence *as peoples* and their rights to self-determination, to their territories, to their languages, to prior informed consent, and to control over their own knowledges, though set down in existing and emerging international instruments, are not recognized.

Article 15 of the CBD fails to recognize Indigenous Peoples as owners of a vast amount of the world’s genetic resources. In fact, the CBD only recognizes the sovereign rights of States over natural resources and ignores the proprietary rights of Indigenous Peoples living in the same territories. Thus, the right of Indigenous Peoples to permanent sovereignty over their genetic and natural resources is threatened.

The CBD ignores Indigenous Peoples’ status as “rights holders” and demotes them to the status of “stakeholders,” a category that includes corporations, academic institutions, non-governmental organizations, and just about any other non-State entity. The Parties use “full and effective involvement” rather than “full and effective participation,” and “prior informed involvement” rather than “prior informed consent,”²⁶ which is a documented right of Indigenous Peoples.

²⁶ The principle of “prior informed consent” is quite well known in law and ethics, and refers to the fact that before an individual is subjected to risk he or she is entitled to be

Article 16, on Access to and Transfer of Technology, emphasizes the commodification²⁷ of biological resources, subject to patents and intellectual property rights (IPRs). As private monopoly rights, IPRs are incompatible with the protection of traditional knowledge. Traditional knowledge is held as part of a community's heritage, passed down from generation to generation, and cannot be allowed either to be privatized or to fall into the public domain. Commercialization of genetic resources and traditional knowledge implies that one is moving away from communal ownership and accepting individual property rights over these resources.²⁸

How are the CBD's thematic programmes relevant to Indigenous Peoples?

As mentioned earlier, the CBD's work is organized into specific programmes of work in 'thematic areas.' The following is an overview of each of these different thematic areas of work of the CBD, including its relevance to IPs, and any critique that has been articulated by Indigenous Peoples.²⁹

Agricultural Biodiversity

Indigenous Peoples have great concern for agricultural biodiversity, which includes all plant and animal species used for food and agriculture, as well as microbial and fungal genetic resources. Agricultural biodiversity provides not only food and income, but also raw materials for clothing, shelter, medicines, for

fully informed well in advance, so as to make an informed decision about whether to accept or reject the proposition in question.

²⁷ To "commodify" something is to treat it as, or turn it into, a commodity, using even such things as land, cultural goods, and traditional knowledge for commercial gain.

²⁸ Tebtebba, *Overview*.

²⁹ Tebtebba, *Overview*.

breeding new plant and animal varieties, and such activities as the maintenance of soil fertility and soil and water conservation.

Nearly one-third of the world's land area is used for food production. In recent years agricultural expansion, combined with overgrazing and urban and industrial growth, has substantially reduced levels of biodiversity over significant tracts of forested and marginal land – land where many Indigenous Peoples live. About 7,000 plant species have been cultivated and collected for food by humans since agriculture began about 12,000 years ago. Today, only about fifteen plant species and eight animal species supply 90% of our food.

The CBD's agricultural diversity work programme focuses on assessing the status of, and trends affecting, the world's agricultural biodiversity, as well as that of the local knowledge relevant to its management. It promotes the conservation and sustainable use of genetic resources that are of value in agriculture. It focuses on developing new technologies such as Genetic Use Restriction Technologies (GURT)³⁰ and studies the potential implications of these technologies on agricultural biodiversity. The CBD calls for

[...] the mobilization of farming communities, including indigenous and local communities, for the development, maintenance and use of their knowledge and practices in the conservation and sustainable use of biological diversity in the agricultural sector.

Decentralized management of agricultural biodiversity is increasingly seen as a prerequisite for sustaining food systems, livelihoods, and environments. However, agriculture is fast

³⁰ “Genetic Use Restriction Technologies (GURT's), sometimes referred to as ‘terminator’ technologies, are experimental forms of genetic engineering technology that provide the means to either restrict the use of a plant variety, or the expression of a trait in a plant variety, by turning a genetic switch on or off.” Canadian Food Inspection Agency, “What are GURT's?” *Plant Biosafety*, 4 May 2007, Government of Canada, 7 May 2007 <<http://www.inspection.gc.ca/english/plaveg/bio/gurtse.shtml>>.

evolving from traditional, sustainable methods to modern, intensive systems which are destructive to agricultural biodiversity. It is important to support local farming systems and improve the livelihoods of subsistence farmers.

The Biodiversity of Dry and Sub-Humid Lands³¹

Dry and sub-humid lands are home to over two billion people, or approximately 35% of the global population. These lands have great biological value and contain many of the world's food crops and much of its livestock. About 70% of Africans depend directly on dry and sub-humid lands for their livelihoods.

Many communities, such as those engaged in subsistence farming, are highly dependent on drylands biodiversity; however, these ecosystems are often extremely fragile and suffer from habitat conversion, overgrazing and over-harvesting, the introduction of alien species, changes in water availability, changes in natural fire regimes, and climate change. Conservation and sustainable use of dry and sub-humid lands is therefore central to livelihood protection and development and to poverty alleviation. Drylands include many fragile environments that need priority attention in order to avoid an irreversible loss of biodiversity and subsequent negative impacts on livelihoods.

An Ad Hoc Technical Expert Group on dry and sub-humid lands met twice and provided inputs into the work of the SBSTTA. The programme of work on the biodiversity of dry and sub-humid lands will be under in-depth review at the next meetings of the COP and the SBSSTA.

³¹ Dry and sub-humid lands are collectively known as "drylands." These are areas exposed to arid, semi-arid, or dry-sub-humid climate conditions and are therefore easily threatened by practices that lead to desertification.

Forest Biodiversity

Forest biodiversity may be the richest of all biodiversity found in terrestrial ecosystems. Tropical, temperate, and boreal forests offer diverse sets of habitats for plants, animals, and micro-organisms, holding the vast majority of the planet's terrestrial species. At the same time, forests provide livelihoods for hundreds of millions of people, including Indigenous Peoples, worldwide. Forest biological diversity also has an important economic, social, and cultural role in the existence of many Indigenous Peoples and local communities.

In the last 8,000 years, about 45% of the earth's original forest cover has disappeared, cleared mostly during the past century. Forest biodiversity is being lost due to rapid deforestation, fragmentation, and degradation of all forest types. The most important factors are human-induced causes: conversion to agricultural land, overgrazing, unmitigated shifting agriculture, unsustainable forest management, introduction of invasive alien plant and animal species, infrastructure development, mining and oil exploitation, forest fires, pollution, and climate change.

Sustainable forest management should recognize and support Indigenous and community-based forest management systems in order to ensure their full and effective participation. A CBD Ad Hoc Technical Expert Group on forest biological diversity has been established to give advice and suggest priority actions for the conservation and sustainable use of forest biodiversity. At the national level, governments are called upon to implement the programme of work on forest biodiversity towards advancing the 2010 Biodiversity Target. This target, set at COP-6, is "to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a

contribution to poverty alleviation and to the benefit of all life on earth.”³²

Inland Waters Biodiversity

Inland water systems can include lakes, rivers, ponds, streams, groundwater, springs, cave waters, and floodplains, as well as bogs, marshes and swamps. The biodiversity of inland waters is important in maintaining sources of food, income, and livelihoods, particularly in rural areas in developing countries. Other benefits of these ecosystems include: water supply, energy production, transportation, recreation and tourism, maintenance of hydrological balance, retention of sediments and nutrients, and provision of habitats for various flora (plants) and fauna (animals).

Inland water ecosystems are often extensively modified by man and are among the most threatened types of ecosystems. Industrialization, rapid economic development, and population growth have triggered ecological transformation and biodiversity loss in these areas on an unprecedented scale. Physical alteration, habitat loss and degradation, water withdrawal, overexploitation, pollution, and the introduction of invasive alien species are the main threats to these ecosystems and their associated biological resources.

Ownership of land and control of aquatic life have become contentious issues. In the case of migratory fish, several Indigenous communities may claim traditional ownership and the right to be consulted by a collector of fish if said fish passes through their territory at some stage in its life cycle. On the other hand, recognition of national sovereignty under the CBD means that aquatic genetic resources in the wild are owned by the country in which they are located. National sovereignty over public lands

³² CBD Secretariat, “2010 Biodiversity Target,” *The Convention on Biological Diversity*, n.d., 7 May 2007 <<http://www.biodiv.org/2010-target/default.shtml>>.

extends as well to inland waters and to the aquatic life they contain.

In general, there is a need to conserve inland water biodiversity and maintain the goods and services they deliver. The global demand for fresh water is also rapidly increasing. The COP has urged Parties to give priority to projects related to inland water biodiversity and to integrate and implement work programmes addressing inland water ecosystems in their national plans.

Island Biodiversity

Islands are home to an extraordinary number of endemic species per unit of surface area, as well as unique ecosystems; however, their rich biodiversity is countered by their natural fragility. Climate variability and change are affecting large parts of island territories, resulting in significant land losses, particularly on low-lying islands. Small island territories are prone to natural disasters and the effects of earthquakes, volcanic eruptions, cyclones, hurricanes, floods, and tidal waves. Another major hazard is invasive alien species, which can devastate native flora and fauna due to the low resistance of native plants and animals to outside influences. Because of their limited distribution, endemic island species are also particularly susceptible to human activities such as tourism and forestry, as well as natural factors like population fluctuations, disease, and fire.

It is important to note that cultural diversity and the traditional knowledge and practices of island-dwelling Indigenous Peoples and local communities are unique and need special consideration. All aspects of the programme of work on island biodiversity must be implemented with the full recognition of, and respect for, the rights of Indigenous Peoples and local communities, as well as their full and effective participation and free, prior, and informed consent.

Marine and Coastal Biodiversity

The oceans cover 70% of the planet's surface, and marine and coastal environments contain diverse habitats that support an abundance of marine life. Life in our seas produces a third of the oxygen we breathe, offers valuable sources of protein, and moderates global climatic change. Some examples of marine and coastal communities are mangroves, coral reefs, seagrasses, algae, open-ocean communities, and deep-sea communities.

The CBD has a programme for the conservation and sustainable use of marine and coastal biodiversity called the *Jakarta Mandate on Marine and Coastal Biodiversity*. It focuses on integrated marine and coastal areas management, sustainable use of living resources, marine and coastal protected areas, mariculture,³³ and alien species.

According to the Centre for Indigenous Fisheries and Biodiversity-Related Knowledge, Indigenous Peoples continue to rely on traditional aquatic biodiversity, particularly for food. Harvesting of traditional aquatic biodiversity is an important part of Indigenous cultural practice. Measures need to be implemented to protect Indigenous aquatic reliance.

Mountain Biodiversity

Mountain environments cover some 27% of the Earth's land surface and directly support 22% of the world's people. Mountains feature spectacular landscapes, a great diversity of species and habitats, and distinctive human communities. They are found on all continents, in all latitude zones, and support a wide variety of ecosystems. They harbour a significant portion of distinct ethnic groups, cultural traditions, environmental

³³ "Mariculture" is the cultivation of aquatic plant and animal species, in their natural habitats, for human consumption or commercial sale. Examples include fish farming and the harvesting of seaweed.

knowledge, and habitat adaptations. They play an important role in Indigenous communities' lives, and many mountains are held in high regard and are actually considered sacred. Lowland peoples also depend on mountain environments for a wide range of goods and services, including water, energy, timber, biodiversity maintenance, and opportunities for recreation.

Agro-ecosystems in mountainous areas have led to the evolution of a tremendous diversity of plant life adapted to a wide range of environmental conditions and human needs. This part of mountain biodiversity is threatened by continued modernization of agricultural production, leading to an impoverishment of the agro-ecosystem through the use of fewer and (genetically) less diverse varieties. The expansion of agricultural production into formerly uncultivated mountain lands reduces the habitats of other species, and leads to a deterioration of ecosystems.

Mountain forest ecosystems are threatened by the expansion of agriculture and unsustainable methods of timber harvesting, such as clear-cutting and the establishment of forest monocultures. Other issues include tourism, hydropower, mining, climate change, air pollution, and alien invasive species.

The CBD values the programmes of work on mountain biodiversity. Governments are encouraged to protect their mountain ecosystems and to significantly reduce the rate of mountain biodiversity loss by 2010, as a contribution to poverty reduction and for the benefit of Indigenous and local communities dependent on mountains.



How are the CBD's cross-cutting issues relevant to Indigenous Peoples?

There are several cross-cutting issues that span the *Convention on Biological Diversity*. These include biosafety; access to genetic resources, traditional knowledge, innovations and practices; intellectual property rights; indicators; taxonomy; public education and awareness; incentives; and alien species.³⁴ Ad Hoc Open Ended Working Groups have been established and work programmes are being developed for a number of these cross-cutting issues. The participation of Indigenous Peoples and local communities in the development of these work programmes could be vital to enshrining their rights and needs within its processes and outcomes. Following is an overview of some of the cross-cutting issues most relevant to Indigenous Peoples, along with the actions taken by the CBD under each issue heading.

Access to Genetic Resources and Benefit Sharing³⁵

The issue of access to genetic resources and benefit sharing is of particular concern to developing countries and Indigenous Peoples, as the territories occupied by these groups hold most of the world's biodiversity. Unfortunately, they do not obtain a fair share of the benefits derived from the use of their resources for the development of commercially viable products, such as high-yielding plant varieties, pharmaceuticals, and cosmetics.

In 2002, the Parties to the CBD adopted the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization*. These guidelines were meant to help governments and other stakeholders develop a strategy for obtaining access to genetic resources and sharing the benefits of such resources. The *Bonn Guidelines* lay out a detailed process for

³⁴ Oldham, 30.

³⁵ Tebtebba, *Overview*.

access and benefit sharing, with careful consideration of the participation of local and Indigenous communities before collectors may use genetic resources for a particular purpose. It serves to assist member countries in coming up with fair legislation to express their sovereign right over their genetic resources.

However, the *Bonn Guidelines* is a voluntary and non-binding instrument. Its provisions cannot be legally invoked to protect the interests of Indigenous Peoples and local communities, or even to request compliance from those who seek the use of genetic resources. To be of real benefit and relevance to developing countries and Indigenous Peoples, the sharing of benefits from the commercial utilization of genetic resources should be mandatory, as these resources mostly come from biodiversity-rich, but economically poor, areas.

Traditional Knowledge³⁶

The Preamble of the CBD, as well as a number of its Articles, acknowledge the role of Indigenous and local communities and their traditional knowledge in helping conserve and sustain biodiversity. Three main actions were taken by the CBD to implement the commitment of Parties with regard to traditional knowledge.

The first action was the establishment of an open-ended process of implementation, including the setting up of the Ad Hoc Open-Ended Working Group on Article 8(j) and Related Provisions. This group encouraged Indigenous and local community representatives to participate fully in the process and programme of work on Article 8(j).

The second action was setting up the programme of work on Article 8(j). This resulted in the drafting of the *Akwe:Kon Voluntary Guidelines for the Conduct of Cultural Environmental and Social Impact Assessment*. Endorsed by COP-7, the *Akwe:Kon Guidelines* seek to

³⁶ Scott, 66.

guide Parties as they develop and implement impact assessments on development projects that are proposed to take place in or likely to impact on sacred sites on the lands and waters of Indigenous and local communities. The guidelines also provide advice on how to incorporate the environmental and social concerns of Indigenous and local communities into impact assessment processes.

The third action involves the development of *sui generis*³⁷ systems for protecting traditional knowledge and ensuring the equitable sharing of benefits. COP-7 requested that the Ad Hoc Working Group on Article 8(j) consider and develop non-intellectual property-based *sui generis* forms of protection of traditional knowledge. The working group was also charged with assessing the role of databases and registers in protecting traditional knowledge, and exploring new forms of intellectual property protection.



³⁷ “*Sui generis*” is Latin for “of its own kind,” and is used to describe something that is unique or different.

Protected Areas

Article 8(j) of the CBD defines *in situ*³⁸ conservation of biodiversity as the conservation of ecosystems and natural habitats, and the maintenance and recovery of viable populations of species in their natural surroundings. The establishment of protected areas is therefore considered important for *in situ* biodiversity conservation. Protected areas are seen as valuable in the protection of natural habitats of flora and fauna, and in the maintenance of the environmental stability of surrounding regions. All but a few countries have developed systems of protected areas.

Indigenous Peoples' territories have traditionally been managed according to the principles of the conservation and sustainable use of biodiversity. The establishment of regional, sub-regional, and national protected areas systems should not result in resettlement or any breach of the territorial rights of Indigenous Peoples. Protected areas must be established in accordance with the principle of free, prior, and informed consent.

The International Alliance of Indigenous and Tribal Peoples of the Tropical Forests ("the Alliance") asserts that there should first be a thorough assessment of existing protected areas before any new parks are designated. These protected areas should not exclude community access, while a conservation system should include communities and allow the presence of people within protected areas. The Alliance also recommends that protected areas located within Indigenous territories be fully managed by those peoples, and that they should have a say in the establishment of the protected area.

³⁸ "*In situ*" is Latin for "in its original place."

PART III:

Indigenous Peoples' Participation in the CBD



How did the participation of Indigenous Peoples in the CBD process begin?

Indigenous Peoples' participation in the CBD started as an attempt to persuade the Parties that Indigenous Peoples had the right to take part in the debates of the Convention. This long and difficult process took off during the Second Conference of Parties (COP-2) in Jakarta, Indonesia, in 1994, at which a significant number of Indigenous Peoples were present.³⁹

Then, during COP-3 (Buenos Aires, Argentina, 1996), Article 8(j) on traditional knowledge was included as an official agenda item of the CBD. Indigenous organizations decided to organize themselves in order to participate, and subsequently convened a meeting of national and international Indigenous organizations prior to the COP. This international Indigenous meeting was called the International Indigenous Forum on Biodiversity (IIFB). The convenors of this first international meeting were Indigenous organizations (such as the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests) who could facilitate communication between regions, along with local Indigenous organizations from Argentina.

In 1997, the CBD organized a Workshop on Traditional Knowledge in Madrid, in order to decide how to address the issue of traditional knowledge within the Convention. Over 300 Indigenous delegates from around the world were present. The Indigenous organizations reconvened again as the IIFB and coordinated their work in order to present a unified position to the Parties. They advocated for the creation of an open-ended Working Group on Article 8(j) and related provisions as the best mechanism for guaranteeing their participation in the discussions.

³⁹ Oldham, 36.

Prior to COP-4, the IIFB again organized a preparatory meeting for Indigenous Peoples and organizations. The combined efforts of the Indigenous organizations and the support of 'friendly' countries resulted in the creation of the Working Group on Article 8(j), in spite of the opposition of some Parties. From then on, the IIFB has held sessions prior to all of the meetings of the Working Group on Article 8(j), as well as in advance of all COP meetings. A smaller group of IIFB Indigenous representatives follows the issue of access and benefit sharing, and the Indigenous Peoples' Committee on Conservation monitors the meetings of the Working Group on protected areas.⁴⁰

How does the International Indigenous Forum on Biodiversity work?

The IIFB is an open Indigenous forum, with a mandate to facilitate the full and effective participation of Indigenous peoples in CBD processes in order to advocate for Indigenous rights.⁴¹ The IIFB does not have members and is not an organization or an institution. Rather, it is a mechanism created by Indigenous Peoples themselves to establish and articulate positions in their negotiations with government Parties to the *Convention on Biological Diversity*. Its purpose is to provide a venue for Indigenous Peoples to debate ideas, discuss strategies, and define positions in preparation for official CBD meetings.⁴² Anyone who attends international meetings of the CBD can get involved in the IIFB.

Throughout the years of its operation, the IIFB has struggled to find space and resources for its work. It has faced numerous difficulties, including lack of funding for Indigenous Peoples'

⁴⁰ Joji Carino, *The International Indigenous Forum on Biodiversity* [PowerPoint presentation] (Baguio City, Philippines: Tebtebba Foundation, 2007) n.p.

⁴¹ Carino.

⁴² Oldham, 36-43.

participation, lack of logistical support and equipment (such as computers, and printing and translation services), lack of time for preparation, and varying priorities and approaches among Indigenous representatives. Despite these difficulties, the IIFB has gained prominence and credibility within the CBD. In fact, members of the Forum were given considerable time to speak during plenary discussions on Article 8(j) and related provisions, and the Forum's position was adopted by a significant number of government delegations.⁴³

During COP-5 in Nairobi, Parties' Decision V/16 appreciated and recognized the important role of the IIFB in the implementation of Article 8(j), and officially recognized the IIFB as an advisory body to the Convention. Recognition of the advisory status of the IIFB was a major victory for Indigenous Peoples and represents an increasing openness to the participation of Indigenous delegates in a wide variety of CBD activities. Since COP-5, the IIFB has participated at various levels, including participation in Expert Groups and the Panel of Experts, SBSTTA meetings, the Working Groups on Article 8(j) and on Access and Benefit Sharing, and in the Liaison Group. Aside from attending meetings, the IIFB has worked in other ways, for example preparing case studies, issuing bulletins, organizing thematic teams, presswork, lobbying, and holding parallel events.

For the future, the IIFB sees the need to bring the CBD down to the national level so that more people can participate. This is especially true since the priority of the CBD for the next ten years is national implementation. Indigenous Peoples' organizations (IPOs) linked to the IIFB need to undertake education and information dissemination activities so that more local organizations can get involved in the CBD. In addition, the IIFB sees the need to conduct national capacity-building programmes to empower IPOs to participate in the CBD, and to

⁴³ Oldham, 36-43.

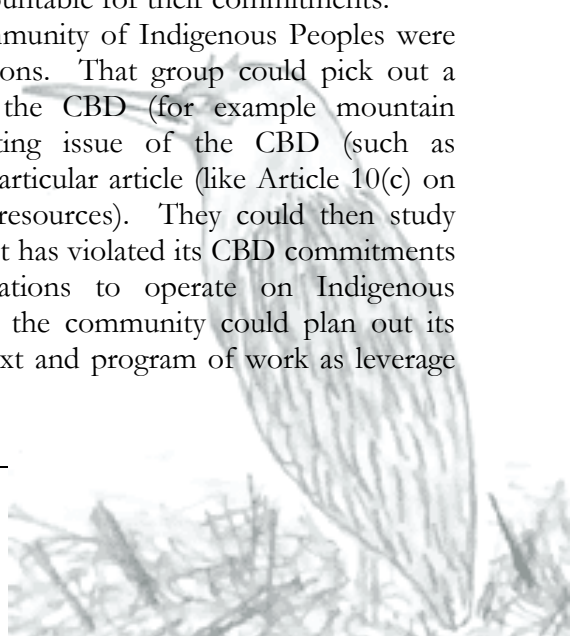
better articulate Indigenous Peoples' positions at the local and national levels.⁴⁴

How can Indigenous Peoples' organizations use the CBD to advance their rights and interests?

The *Convention on Biological Diversity* is a legally binding instrument. As such, Parties are obliged to comply with and implement its programmes of work. Therefore, Indigenous Peoples' organizations can use the CBD as a tool to pressure their national governments, raise their issues and concerns, and advance their rights and interests. This can be done at all levels – not only in policy formulation at the international level, but also down to the implementation of work at the national and local level. To do this, IPOs need to start by finding out which of the CBD's programmes of work are most relevant to their particular situations and environment, and use this information to their advantage. They need to become more familiar with the national biodiversity strategy and implementation plan of their government, and hold the government accountable for their commitments.

Say, for instance, a community of Indigenous Peoples were threatened by mining operations. That group could pick out a particular thematic area of the CBD (for example mountain biodiversity), or a crosscutting issue of the CBD (such as traditional knowledge), or a particular article (like Article 10(c) on customary use of biological resources). They could then study how their national government has violated its CBD commitments by allowing mining corporations to operate on Indigenous Peoples' lands. From there, the community could plan out its strategies, using the CBD's text and program of work as leverage

⁴⁴ Carino.



for making demands of the government aimed at advancing their rights and interests.

How have Indigenous Peoples successfully made use of the CBD?

Three short case studies are mentioned here (below) to show how IPs have proven that the customary use of biological resources is sustainable, and to demonstrate how they have raised their issues and advocated for their rights using the framework of the *Convention on Biological Diversity*.

Guyana: The Wapichan

In a recent case study, the Wapichan people in South Rupununi, Guyana, showed that all of their territory and the entire range of their ecosystems and habitats are used for livelihood and cultural purposes, including savannah, forest, bush islands, mountains, swamps, lakes, ponds, and rivers. The Wapichan customary system of low-intensity shifting and rotational farming is practiced over extensive agricultural land. Customary norms and traditional Wapichan institutions promote the sensible use of resources. Key conclusions of the case study are that traditional practices are proven to be sustainable, as the forests and habitats in South Rupununi are healthy and intact. Resources remain generally abundant after generations of occupation and use; however, there are legal obstacles to the continuation of traditional practice. The law on IPs is inconsistent with the Constitution of Guyana. The government does not recognize the vital relationship between customary tenure, traditional land use, and protection of Indigenous practices. There also are threats to long-term sustainability – no security of tenure; inadequate title; and the

imposition of mining, logging and protected area projects that curtail traditional livelihoods. Additionally, there is the risk of colonization and land invasion linked to international infrastructure projects. Through the case study employing Article 10(c) of the *Convention on Biological Diversity*, the Wapichan people have forwarded recommendations to the government. These recommendations include calls for the government to amend its laws and policies in order to protect customary and traditional practices, to legally recognize Wapichan territory, to recognize IPs' contributions to the maintenance of biological resources, to ensure that international development projects like those funded by the Global Environment Facility and the World Bank fully respect IPs' rights to land and resources, and to support Indigenous initiatives for the sustainable use of biological resources in South Rupununi.⁴⁵

Thailand: The Hmong

Within the highland areas of Chomthong District in Chiang Mai, Thailand, several Indigenous Hmong and Karen communities recently completed a community mapping project on traditional land use and natural resource management, and drafted a case study on Article 10(c) of the CBD using participatory action research. The case study was presented at the national level, in various international fora, including the World Conservation Union (IUCN), and SBSTTA and COP-8 of the CBD. The case study shows that villagers have established customary use systems and regulations around various ecosystems, and which demonstrate traditional, sustainable resource management. Areas inhabited by IPs are rich in plant and animal biodiversity, partly due to rotational farming and overall low community impact on the environment. IPs have maintained their traditional structure

⁴⁵ Toshao Tony James, Patrick Gomes, and Gavin Winter, *An Indigenous Case Study on the Customary Use of Biological Resources and Related Traditional Practices within Wapichan Territory in Guyana* [PowerPoint presentation for Forest Peoples Programme workshop, 19 September 2006, Braziers Park, UK] n.p.

and leadership systems, which regulate and control resource use. Policies and development projects developed and implemented by external actors have had negative impacts on the traditional structures and practices of IPs, underscoring the need to respect and recognize cultural practices. The study recommends that existing laws in conflict with the Thai Constitution, and with Articles 8(j) and 10(c) of the CBD should be revised, while the government should approve the *Community Forest Bill* proposed by local and Indigenous communities. The study also asserts that the Thai government should take active steps to protect customary use of biodiversity, and to promote the full and effective participation of IPs in natural resource planning and management. The Indigenous authors of the case study also ask that a mechanism be established to ensure full and effective participation of IPs in the implementation and monitoring of the CBD at the national level.⁴⁶

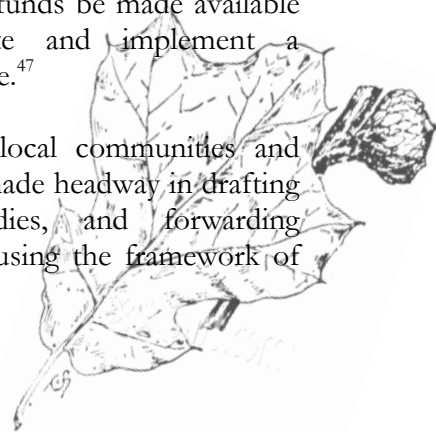
Suriname: The Kalina en Lokono

In the case of the Kalina en Lokono Indigenous Peoples of Suriname, traditional use of natural resources includes agriculture, hunting, fishing, and the gathering of non-timber forest products for handicrafts. The sustainable use and conservation of nature by IPs is accomplished through traditional rules and customary laws that maintain equilibrium between humans and nature for the sake of the coming generations. These are unwritten rules that are put directly into practice. Threats to sustainable, traditional land use include non-recognition of traditional government and customary laws, mining, logging, individual title granted to outsiders, and a school system that does not take into account Indigenous languages and knowledge systems. Nature reserves are established the Lower-Marowijne without attention to the principle of free,

⁴⁶ Inter Mountain People Education and Culture in Thailand (IMPECT) and Forest Peoples Programme (FPP), *Biological Resource Management by Indigenous Peoples in Thailand: Case Study on Hmong and Karen Communities* [PowerPoint presentation for Forest Peoples Programme workshop, 19 September 2006, Braziers Park, UK] n.p.

prior, and informed consent (FPIC) of Indigenous and local communities, while the government uses violence to keep IPs out. IPs cannot fish or hunt freely, yet at the same time mining activities are permitted inside of the nature reserve areas. The obvious consequence is that IPs cannot live freely and are losing control of traditional territories that are steadily becoming smaller, and within which biodiversity is fast declining. Recommendations from the Kalina en Lokono include the implementation of international conventions, including the Convention on Biological Diversity (and Article 10(c) in particular), and the legal recognition of collective rights to own, use, and manage land and natural resources. Traditional governance and Indigenous customary laws should also be recognized. The Kalina en Lokono have asked the government to revoke all existing mining and logging concessions, the nature reserve system, and individual land titles, and not to issue new concessions without consideration of FPIC. The Kalina en Lokono have also recommend that a mechanism for dialogue with IP communities be set up, and that funds be made available for communities to further elaborate and implement a management plan for the Lower-Marowijne.⁴⁷

These experiences illustrate how local communities and Indigenous Peoples' Organizations have made headway in drafting concise documents, undertaking studies, and forwarding recommendations to their governments, using the framework of the CBD to advance their rights.



⁴⁷ The Association of Indigenous Village Leaders in Suriname (VIDS), the Indigenous Land Rights Commission of the Lower Marowijne (CLIM), and the Forest Peoples Programme, *Traditional Use and Management of the Lower Marowijne area by the Kalina en Lokono Indigenous Peoples of Suriname in the Framework of Article 10(c) of the CBD* [PowerPoint presentation for Forest Peoples Programme workshop, 19 September 2006, Braziers Park, UK] n.p.