

## Article 8(j) and DSI Working Groups Highlights: Wednesday, 15 November 2023

During a busy day, the Working Group on Article 8(j) and Related Provisions (WG8j) held a plenary session in the afternoon, addressing conference room papers (CRPs). Delegates further met under the Contact Group on the development of a new programme of work and institutional arrangements for Article 8(j). The Working Group on digital sequence information (DSI) continued working under the Contact Group on benefit-sharing from the use of DSI on genetic resources. Both Contact Groups continued deliberations late into the night.

### WG8j Plenary

In the afternoon, Working Group Co-Chair Ning Liu, China, opened the WG8j plenary session, inviting delegates to consider CRPs prepared by the Co-Chairs and the Secretariat.

Reporting on the work of the Contact Group on a new programme of work and institutional arrangements, Contact Group Co-Chairs Matilda Wilhelm (Sweden) and Lucy Mulenkei (Indigenous Information Network), stressed progress in addressing the group's mandate during productive discussions across four sessions. Noting that work was not yet concluded, Co-Chair Wilhelm proposed scheduling an additional session to allow the Contact Group to advance progress.

Co-Chair Liu introduced document CBD/WG8J/12/CRP.4 on the **in-depth dialogue on the role of languages** in the intergenerational transmission of traditional knowledge, innovations, and practices.

The DEMOCRATIC REPUBLIC OF THE CONGO (DRC), supported by INDONESIA, noted concern that the Contact Group had surpassed its mandate to improve the drafting by adding new text, and cautioned against re-opening negotiations on the Kunming-Montreal Global Biodiversity Framework (GBF).

Proposals to improve and clarify the preambular section, introduced by the DRC, Spain on behalf of the EU, TOGO, AUSTRALIA, NORWAY, CANADA, COLOMBIA, GUATEMALA, and MEXICO, converged to an outcome upholding principles of inclusivity and the objective of improving visibility on Indigenous Peoples and local communities' (IPLCs) concepts, cosmovisions, and epistemologies, including their value within the Convention on Biological Diversity's (CBD) work.

The RUSSIAN FEDERATION, the EU, TOGO, and others offered editorial comments to better align the operational items with the GBF. The draft recommendation was approved.

The plenary addressed document CBD/WG8J/12/CRP.2 on the joint programme of work on the links between biological and cultural diversity: review and update of the four adopted **traditional knowledge indicators**.

CANADA, supported by SWITZERLAND, requested the deletion of a paragraph that stresses the cross-cutting nature of an indicator under consideration, noting that the adopted GBF monitoring framework does not consider any cross-cutting indicators.

On a paragraph on considering additional headline indicators, BRAZIL, the UK, the RUSSIAN FEDERATION, and

SWITZERLAND raised doubts and concerns on its structure, wording, and substance. Discussions focused on a reference to trends in land-use change and land tenure in the traditional territories of IPLCs, noting that it might go beyond the scope of GBF Target 22 (participation, access to justice, and rights for IPLCs and other vulnerable groups). The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY highlighted that the reference is in line with language adopted at the 15th Meeting of the Conference of the Parties (COP15). The INTERNATIONAL LAND COALITION and the FOOD AND AGRICULTURE ORGANIZATION OF THE UN emphasized the need for maintaining the reference. Following an exchange of proposals, delegates agreed not to refer to "headline" indicators in the chapeaux, and to consider the development of indicators on trends in land-use change and land tenure as a standalone reference.

Delegates engaged in lengthy discussions on the need for additional indicators, particularly on environmental defenders' funding. The EU, COLOMBIA, and SWITZERLAND supported maintaining the reference, noting that Target 22 refers to "environmental human rights defenders" and that the request to the *Ad hoc* Technical Expert Group (AHTEG) to consider additional indicators should be comprehensive. SWITZERLAND cautioned against overburdening the AHTEG.

The RUSSIAN FEDERATION, the DRC, TOGO, and ALGERIA opposed the reference to environmental defenders, noting that Target 22 does not refer to funding of environmental human rights defenders, and that the proposed indicator in the monitoring framework is related to the number of environmental defenders killed annually.

The RUSSIAN FEDERATION proposed deleting the paragraph, to which COLOMBIA opposed, noting that the means to ensure the participation and full protection of environmental human rights defenders encompass their funding.

Co-Chair Liu suggested including the need for additional indicators for monitoring funding to IPLCs, and deleting reference to environmental human rights defenders. TOGO, the DRC, and the RUSSIAN FEDERATION supported the proposal.

COLOMBIA, opposed by the RUSSIAN FEDERATION, suggested considering an indicator for monitoring means of implementation for full protection of environmental human rights defenders. CANADA, supported by COLOMBIA and GUATEMALA, but opposed by the RUSSIAN FEDERATION and others, suggested referring to "environmental human right defenders from IPLCs" as a compromise. The UK noted that the AHTEG will conduct a gap analysis on indicators, which could include environmental human rights defenders. The Co-Chair's suggestion to refer to indicators for monitoring funding to IPLCs was accepted.

The RUSSIAN FEDERATION suggested replacing a reference to gender-disaggregated data, with "data disaggregated by sex."

On two provisions stressing the importance of community-based monitoring and information systems, BRAZIL, supported by the DRC, suggested acknowledging the need to engage IPLCs in the development and management of such systems, as well as the need for enhanced international cooperation in addressing technical and financial gaps in developing countries.

On a request to the Secretariat to facilitate a scientific and technical review of the traditional knowledge indicators and their links with the GBF monitoring framework indicators, the RUSSIAN FEDERATION suggested not pre-empting the Subsidiary Body on Scientific, Technical and Technological Advice decision on whether the issue should be discussed at COP16. The UK proposed clarifying that the aim is to provide the review's outputs to the AHTEG in time for its second face-to-face meeting, planned for March 2024.

With these and other minor amendments, delegates approved the document.

Co-Chair Liu introduced document CBD/WG8J/12/CRP.3 on **recommendations from the UN Permanent Forum on Indigenous Issues**. The DRC, ESWATINI, TOGO, CANADA, NORWAY, the EU, and UGANDA provided textual amendments to the preambular section. Discussions will continue on Thursday.

### **Contact Group on the Development of a New Programme of Work and Institutional Arrangements for Article 8(j)**

Co-Chair Mullenkei opened the session in the morning, noting that discussions on institutional arrangements “will be parked for the moment,” while acknowledging “good discussions” during Tuesday's session.

Co-Chair Wilhelm invited participants to focus on the new programme of work based on a revised non-paper, which streamlines previous discussions, noting that some tasks need further improvement. Several delegates pointed out that the updated non-paper does not reflect many of the concerns and suggestions raised on the previously discussed elements. Delegates reviewed the first three elements (conservation and restoration; sustainable use; and benefit-sharing), to ensure all suggestions are properly reflected.

Co-Chair Wilhelm invited the Contact Group to address **knowledge and culture** (element 4) in the revised non-paper. Delegates focused their suggestions on further streamlining and clarifying the text, including references to the roles and needs of women, girls, youth, and local languages. On **strengthening implementation and monitoring progress** (element 5), delegates offered minor editorial amendments.

On the **full and effective participation of IPLCs** (element 6), deliberations mainly focused on a legal and political analysis on issues related to the implementation of the recommendations from the three UN mechanisms on rights of Indigenous Peoples. A few delegations opposed including in the programme of work any task aimed at fulfilling Secretariat requirements coming from COP decisions. Co-Chair Wilhelm and delegates agreed that some tasks require further discussions, maintaining several proposals in brackets.

In the evening, Co-Chair Mullenkei proposed finalizing the review of the remaining elements and tasks before resuming discussions on institutional arrangements. Delegates focused on the **human rights-based approach** (element 7), and the **funding for IPLCs for conservation, restoration, and sustainable use of biodiversity** (element 8).

### **Contact Group on Benefit-Sharing from the Use of DSI on Genetic Resources.**

In the morning, Co-Chairs Nneka Nicholas (Antigua and Barbuda) and Salima Kempenaer (Belgium) introduced a non-paper summarizing main discussion points, including interventions from Tuesday's session of the Committee of the Whole.

On **contribution to the fund** (cluster A), views converged on the need to respect the boundaries and principles outlined in CBD Decision 15/9 on DSI on genetic resources, including upholding fair and equitable benefit-sharing. Delegates also underscored the need to ensure coherence between the development process and the CBD's existing relevant bodies, while cautioning against unnecessary administrative burdening. Several participants called for better information and understanding, including on scope and scale of expected monetary benefits.

Discussions continued, on: the need for timely operationalization of the DSI fund, with several stressing that voluntary contributions, from all sources and sectors, would

facilitate this; the importance of guaranteeing longer-term funding streams, with some suggesting accomplishing this through mandatory contributions; concerns on legal certainty for DSI users; modalities of needs-based benefit allocations; and challenges in defining the type and scope of users.

Delegates exchanged views on preferred types and scale of triggers, with many stressing the need to avoid any trigger that would hinder biodiversity conservation and sustainable use or hamper open-access.

On **disbursement of funds** (cluster B), many delegates suggested funds be used to promote biodiversity conservation and sustainable use, directed towards GBF implementation, with some also pointing to the implementation of the Sustainable Development Goals. Several parties underscored priorities identified by developing countries and IPLCs. A few cautioned against being overly prescriptive, leaving details to be decided by the fund's governing body.

On defining beneficiaries, many delegates highlighted IPLCs, already reflected in Decision 15/9, countries in need that face biodiversity-related challenges, and developing countries, including least developed countries and small island developing states. Some called for direct access to funding for IPLCs in all seven socio-cultural regions. Others suggested country-specific allocations aimed at providers of genetic resources, including associated traditional knowledge.

Many delegates suggested a needs-based approach on funding allocations, with some cautioning against allocations on a competitive basis. Others preferred a competitive, project-based process and some suggested following GBF priorities.

On geographical metadata, many delegates stressed that tracking and tracing is impractical and will lead to a costly, difficult to implement system. Opinions diverged on whether geographic origin can be considered as a distribution criterion. Some noted that disclosure of country of origin can be done without tracking and tracing.

In the evening, observers stressed that IPLCs should have direct access to funds, calling for overcoming relevant barriers, including countries affected by sanctions. Some called for disbursements linked to the volume of DSI generated rather than countries' needs.

On **non-monetary benefit-sharing** (cluster C), delegates views converged on the importance of capacity building and development, which many stressed should be based on needs and absorptive capacity. Discussions continued on: the need to guarantee fair and equitable non-monetary benefit-sharing; narrowing gaps between developed and developing countries' capacities; the monetary dimensions of non-monetary benefits; suggestions for the DSI fund to flow into capacity building and technology transfer programmes; and including gap assessments in national biodiversity strategies and action plans.

Discussions continued into the night on **governance** (cluster D) and **relation to other approaches and systems** (cluster E).

### **In the Corridors**

Prior to the meetings of the two Working Groups, most participants expected a challenging session on DSI and a lighter one on Article 8(j). “I am always concerned with such expectations,” a delegate noted “as they do not often materialize.” Indeed, the Working Group on Article 8(j) held lengthy discussions both in plenary and its Contact Group sessions, addressing more contentious issues than some would have presumed.

Discussions in plenary were challenging. Although delegates managed to find consensus on references to “cosmovisions and epistemologies,” deliberations on indicators on trends in land-use change and land tenure in the traditional territories of IPLCs, and in particular on a reference to “environmental human rights defenders” were lengthy. The Contact Group on the new programme of work and institutional arrangements had another late night with delegates' energy level rapidly declining. “Let's hope that increasing fatigue will not jeopardize the final outcome,” a delegate sighed, exiting the venue just before closure time at midnight.