



# Earth Negotiations Bulletin

SBSTTA 19  
Article 8(j)-9

#6

**iisd** Reporting  
Services

A Reporting Service for Environment and Development Negotiations

Online at <http://www.iisd.ca/biodiv/sbstta19-wg8j9/>

Vol. 9 No. 662

Published by the International Institute for Sustainable Development (IISD)

Saturday, 7 November 2015

## WORKING GROUP ON ARTICLE 8(J)-9 HIGHLIGHTS: FRIDAY, 6 NOVEMBER 2015

The Working Group on Article 8(j) met in plenary on Friday morning to consider recommendations on: a glossary of relevant terms and concepts to be used in the context of Article 8(j) and related provisions; recommendations from UNPFII to the Convention; and preparation of best-practice guidelines for the repatriation of TK. Plenary also discussed possible topics for future in-depth dialogues on thematic areas and other cross-cutting issues.

The contact group on the guidelines on PIC or approval and involvement and benefit-sharing from the use of TK met in the afternoon and in the evening.

### PLENARY

Christine Teresa Grant, Co-Chair of the contact group on the draft guidelines on TK, reported progress in the group's deliberations on Thursday night, and underscored as outstanding issues references to: "free PIC" rather than PIC; PIC rather than "PIC or approval or involvement;" and IPLCs instead of "indigenous and local communities." She noted that the EU had requested time for consultation prior to the next contact group meeting.

**GLOSSARY:** Co-Chair Choe introduced the revised draft recommendation on a glossary of relevant key terms and concepts in the context of Article 8(j) and related provisions. JAPAN proposed bracketing text inviting parties and the Working Group to make use of the glossary, in light of a request to the Secretariat to review the glossary. Delegates agreed on the draft with the proposed brackets and other minor amendments.

**UNPFII RECOMMENDATIONS:** Co-Chair Choe introduced a revised draft recommendation on the recommendations from UNPFII to the CBD. In a preambular paragraph, BOLIVIA preferred "reaffirming," rather than "noting," decision XII/12 F on the IPLC terminology.

SWITZERLAND favored "recalling" it. BOLIVIA underscored the paramount importance of the IPLC theme, but accepted recalling the decision. The document was agreed upon with this amendment.

**REPATRIATION:** Co-Chair Choe introduced a revised draft recommendation on draft best-practice guidelines on repatriation of TK. On the purpose of the guidelines, the IIFB, noting that materials now considered offensive or inappropriate still form part of the historical record and, as such, may possess a contextual contribution or value, proposed clarifying that the guidelines do not promote "arbitrary" censorship of materials now considered offensive or inappropriate, and "do not preclude measures for justified regulation and voluntary repatriation of such materials." Co-Chair Choe cautioned against introducing new text and delegates agreed, instead, to delete a paragraph stating that the guidelines do not promote censorship. On scope of the guidelines, ETHIOPIA proposed explicit mention that the guidelines are "within the scope of the CBD." Plenary adopted the recommendation.

**TOPIC FOR NEXT IN-DEPTH DIALOGUE:** The Secretariat introduced the relevant document (UNEP/CBD/WG8J/9/5) inviting proposals for the topic for the in-depth dialogue to be held at the tenth meeting of the Working Group. The IIFB, supported by LOCAL COMMUNITIES IN LATIN AMERICA AND THE CARIBBEAN, recommended "IPLCs and their sustainable development goals," with NORWAY noting that this topic may need to be narrowed down. The EU suggested "climate change: effects on IPLCs, customary sustainable use of biodiversity and measures for adaptation, including learning from indigenous peoples' observations and adaptation practices." The PHILIPPINES proposed "implications of synthetic biology on TK." INDIA suggested "biodiversity, TK and livelihoods." COLOMBIA proposed developing guidelines, recommendations or mechanisms to identify human rights issues and right holders in respect of TK. BRAZIL suggested "contributions and challenges regarding IPLCs' role and their TK to promote,

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Daniela Diz, Ph.D., Lynn Finnegan, Elisa Morgera, Ph.D., and Asterios Tsioumanis, Ph.D. The Digital Editor is Francis Dejon. The Editor is Pamela Chasek, Ph.D. <pam@iisd.org>. The Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are the European Union, the Government of Switzerland (the Swiss Federal Office for the Environment (FOEN), the Swiss Agency for Development Cooperation (SDC)), and the Kingdom of Saudi Arabia. General Support for the *Bulletin* during 2015 is provided by the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB), the New Zealand Ministry of Foreign Affairs and Trade, SWAN International, the Finnish Ministry for Foreign Affairs, the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES), the United Nations Environment Programme (UNEP), and the International Development Research Centre (IDRC). Funding for translation of the *Bulletin* into French has been provided by the Government of France, the Wallonia, Québec, and the International Organization of La Francophonie/Institute for Sustainable Development of La Francophonie (IOF/IFDD). The opinions expressed in the *Bulletin* are those of the authors and do not necessarily reflect the views of IISD or other donors. Excerpts from the *Bulletin* may be used in non-commercial publications with appropriate academic citation. For information on the *Bulletin*, including requests to provide reporting services, contact the Director of IISD Reporting Services at <kimo@iisd.org>, +1-646-536-7556 or 300 East 56th St., 11D, New York, NY 10022 USA. The ENB team at the 19th Meeting of the Subsidiary Body on Scientific, Technical and Technological Advice and the 9th meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the CBD can be contacted by e-mail at <elisa@iisd.org>.



<http://enb.iisd.mobi/>

protect and restore terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation, and halt biodiversity loss.”

### CONTACT GROUP

In the afternoon, the contact group considered a revised version of the guidelines on PIC and benefit-sharing from the use of TK. Delegates debated a regional proposal for the guidelines to be applied in a manner that “ensures consistency with domestic law, gives due importance to the customary laws and community protocols of IPLCs, and when applied to TK associated with genetic resources ensures consistency with provision of the Nagoya Protocol.” A developing country objected to the reference to the Nagoya Protocol, in consideration of CBD parties that are not party to the Protocol. A developed country noted that the Nagoya Protocol contains a provision on encouraging non-parties to adhere to it. Delegates eventually agreed to “seek consistency when the guidelines are applied to TK associated with genetic resources under the Nagoya Protocol.”

Delegates then considered a proposal that granting PIC to users of TK may not transfer ownership but merely allow temporary use, and that ownership is retained by IPLCs at all times and especially upon expiration of the terms of temporary use. A regional group proposed stating that in the cases in which granting PIC to users of TK allows temporary use, ownership is retained by IPLCs. A developing country preferred stating that granting PIC to users, “unless otherwise mutually agreed,” does not transfer ownership. Delegates agreed on language that granting PIC to users, unless otherwise mutually agreed, does not transfer ownership but merely allows temporary use, and in such cases, ownership is retained by IPLCs. Among important tools against unauthorized use of TK, a developed country requested to delete reference to the “internationally recognized certificate of compliance,” as this only applies under the Nagoya Protocol.

Delegates decided to reintroduce explanations for “prior,” “informed,” “consent” and “involvement.” On involvement, delegates agreed that it refers to the effective participation of IPLCs as TK owners, holders or providers in decision-making processes related to access. On consent implying that the agreement of the TK holders to provide a potential user with access to TK is obtained in good faith with no coercion, intimidation or manipulation, a regional group proposed to add “and therefore freely given.” A developing country proposed to clarify that this clarification applies to “consent or approval.” Delegates agreed to these amendments, as well as to refer throughout the guidelines to “TK holders or owners.”

Delegates discussed whether the expression “free PIC” could be used in the guidelines, and whether a self-standing explanation of “free” could be provided. A developing country referred to international instruments on indigenous peoples

referring to free PIC. Another developed country noted that her national legislation includes free PIC to refer to the history of marginalization of indigenous peoples and the collective nature of their decision-making processes. She proposed as a clarification that “free implies that consent is given voluntarily and without coercion, intimidation or manipulation, and is a process that is self-directed by the community from whom the consent is sought, unencumbered by expectations or timelines that are externally imposed.” Some delegations cautioned against departing from CBD and Nagoya Protocol terminology. A regional group proposed that “free implies that IPLCs are not coerced, pressured or intimidated in their choices of development and that their consent is sought and freely given prior to access.” An IPLC group emphasized the need to refer to IPLCs’ ability to control the context of decision-making. A developing country offered as compromise text, “consent shall be obtained in good faith and given voluntarily and without coercion, intimidation and manipulation; it refers to a process that is self-directed by the community from whom the consent is sought.”

In the evening, the contact group reconvened briefly. Co-Chair Bodegard noted that brackets remain around “free,” including text to clarify it, “approval and involvement,” and “peoples.” A regional group urged removing brackets around “peoples,” but a country requested more time to consult with capital. Co-Chair Bodegard proposed to leave the outstanding items for discussion in plenary, and thanked participants for their constructive spirit.

### IN THE CORRIDORS

Article 8(j) veterans were pleasantly surprised with the good progress made in the contact group on draft guidelines on PIC and benefit-sharing from the use of traditional knowledge. Concerns about importing Nagoya Protocol-specific tools into the guidelines, which cover a broader notion of traditional knowledge than that “associated with genetic resources” under the Protocol, appeared to some to have been dealt with rather swiftly. Others observed that the several proposals made by IPLCs and supported by parties have significantly contributed to shape the draft. Predictably, the “hot issue” of using terms such as “free PIC,” as in the UN Declaration on the Rights of Indigenous Peoples, remain to be sorted out, but – as a long-standing participant remarked – they were addressed in a constructive manner. Some delegates involved in national implementation, however, wondered whether the guidelines offer sufficient level of detail on tricky “how to” issues in relation to traditional knowledge.

**ENB SUMMARY AND ANALYSIS:** The *Earth Negotiations Bulletin* summary and analysis of the 19th meeting of SBSTTA and the 9th meeting of the Working Group on Article 8(j) will be available on Tuesday, 10 November 2015, online at: <http://www.iisd.ca/biodiv/sbstta19-wg8j9/>