OCTOBER 2013 • *Issue 8*

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CBD NEWSLETTER FOR CIVIL SOCIETY

SPECIAL FOCUS

Enhancing stakeholder engagement

+ The Nagoya Protocol and the emergence of biocultural rights

Protecting and promoting stewarding lifestyles of traditional communities

Early lessons on developing a BSAP for cities

Using CBD best practices to inform conservation planning in Hong Kong

CBD
Secretariat of the Convention on Biological Diversity

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This newsletter aims to present a diversity of civil society opinions. The views expressed in the articles are the views of the authors and do not necessarily reflect the views of the Parties to the Convention on Biological Diversity, its Secretariat or the CBD Alliance.

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Article 8(j)—Traditional Knowledge, Innovations and Practices – www.cbd.int/traditional/default.shtml

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MESSAGE FROM THE EXECUTIVE SECRETARY

Enhancing stakeholder engagement

Braulio Ferreira de Souza Dias
Executive Secretary of the Convention on Biological Diversity

Following on the heels of the successful outcomes of the tenth meeting of the Conference of the Parties (COP 10) to the Convention on Biological Diversity (CBD), with the adoption of the 2011-2020 Strategic Plan for Biodiversity and its Aichi Targets, and COP 11, with developed countries agreeing to double the funding towards meeting the Strategic Plan and the Aichi Targets, the most pressing concern now is to enhance implementation of the Convention and close the gap between commitments and actual implementation.

Simply put, as the biodiversity community meets in Montreal in October at the Eighth meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity and at the Seventeenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 17), as well as the Third Global Conference on Business and Biodiversity, we need to improve how we go about achieving our aims in order to curtail the forces driving biodiversity loss.

These three meetings also represent one of the last opportunities before the midterm review at WGRI 5 and COP 12 to ensure that we have the processes in place to ensure implementation of the Strategic Plan. Where we are not on track, Parties will need to consider stepping up action. Thus we need to take stock whether we have the policy, the guidance and the means to implement and monitor progress. We are also using SBSTTA to promote a general discussion, not only based on science and technical knowledge, but also drawing from traditional knowledge and ensure that we have that integrated into our discussions.

Accordingly, we need to discuss how to further engage stakeholders in the CBD process and we welcome and look forward to suggestions from civil society in this regard. In fact, further involving and enhancing the participation of stakeholders, such as civil society, is key. During meetings, various groupings of Parties present their country and regional positions, which then help shape the final consensus decisions adopted by the COP. Significant gains could be made by considering ways and means of bringing regional groups together earlier and also by encouraging dialogue between major groups and governments before and during the COP.

The CBD enjoys a good reputation concerning the participation of civil society, but there remains room for improvement. When major groups engage with the Convention they often represent a spectrum of interests, often with a divergence of views, thus making it difficult to bring them together as a single caucus. But, there is always scope to further enhance the engagement of major groups and indigenous and local communities, so as to benefit from the unique perspectives of the various stakeholders, as well as allowing them greater buy-in into the process.

I have proposed a new approach to increase dialogue between and amongst Parties, and stakeholders, starting at the subsidiary body level, and including on the margins of CBD meetings and workshops. Thus, a specific agenda item could be introduced in the programme of work to encourage a full and broad solutions-oriented discussion to promote enhanced implementation of commitments. Preparation for these dialogues should be a multi-stakeholder process, and could contemplate a steering group of organizing partners from each major group. The content of the dialogue would be determined in consultation with the CBD Bureau and facilitated by the CBD Secretariat. The host government of the Conference of the Parties would also be involved. In addition, existing mechanisms aimed at engaging stakeholders, such as side-events, could be further structured to make a contribution to the dialogue.

Participants could then engage in consultations to draft 'dialogue papers', which could then be released together with the official documentation, possibly making useof a multi-stakeholder editorial committee. Consideration could be given to including such a multi-stakeholder dialogue in the meetings of the Conference of the Parties. The outcome of such a dialogue would be presented in the form of a summary report of views and not to be negotiated as part of COP decisions.

In addition to the consensus desire of limiting the number of COP decisions, such an initiative would bring a clearer focus to our discussions, thus freeing up time and resources to better discuss issues critically important to the Convention moving forward: implementation, sharing lessons learned and new opportunities, and, last but certainly not least, providing a voice for those most affected.

MESSAGE FROM THE BOARD OF THE CBD ALLIANCE

CBD: Towards strengthening implementation

by **S. Faizi** ● Chairperson, CBD Alliance (biodiversity@rediffmail.com)

It has been two decades since the Convention on Biological Diversity (CBD) came into force. It is time to pause and reflect on the past so that the future can be pursued with vigour, especially while the seventeenth meeting of SBSTTA is being held. The hope invested in the CBD during the treaty formation time needs to be lived up to.

The third Global Biodiversity Outlook's finding of the world's failure in most of the indicators ought to have stirred the CBD process to rethink the manner in which the CBD is implemented. But that still has to happen. It is important that the CBD process be constantly reminded of the legally binding nature of the treaty, even as there are players who seek to argue that the CBD is 'soft law' (indeed there is no international law that is 'soft law', which is a phrase used to describe non-legal instruments such as declarations and the like). One way to make CBD more effective is to reset the agenda of the COP meetings in a way the COP performs its original statutory mandate, namely, to "keep under review the implementation of the Convention". This would entail the critical review of national reports and issues of infractions and non-compliance. If we are looking for examples, I would readily point to the CITES COP. Similarly, the SBSTTA needs to be sufficiently focussed on its mandate as provided by Article 25.2.b to review the effectiveness of the measures taken in accordance with the Articles of the Convention.

The fact that the legally binding nature of the Nagoya Protocol was challenged in the early period of negotiation of the Protocol had meant a reopening of the treaty for negotiation, a trend pervasive in the CBD process. Challenging the introduction of a legally binding compliance mechanism for the Nagoya Protocol is in line with this trend. Meanwhile, the European Union seeks to undo its commitment to the CBD through its proposed legislation on ABS, deeply worrying civil society and the developing world. If this legislation goes through, the hard negotiated ABS provisions of CBD and the Nagoya Protocol go wasted as far as EU countries as recipients of genetic resources are concerned. This is disconcerting, especially in the context of escalating biopiracy.

It is important to ensure that the subsidiary bodies of COP such as working groups and expert groups work in an effective and truly representative manner so that instances like the repeated non-acceptance of the outputs of the Expert Group on Biodiversity and Development by the COP does not occur again.

The CBD Alliance on its part is set to play a larger role in mobilising civil society for implementing the CBD, to strengthen its role as a creative watchdog and to enhance partnerships with the Parties and the Secretariat.

The Nagoya Protocol and the emergence of biocultural rights

by **Kabir Bavikatte** ● Natural Justice
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While the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization has been hailed as a success in some quarters, it is not without its critics. Some indigenous peoples and local communities (hereafter referred to as communities) have questioned the Protocol arguing that it has insufficiently affirmed their rights to their genetic resources and associated traditional knowledge. Their reasoning is that the Protocol leans heavily in favour of sovereign rights of States over all genetic resources originating from their jurisdictions. While there is merit in these criticisms, they miss the opportunity to use the unprecedented spaces that the Protocol creates for communities to secure a range of rights that provide them with effective control over resources.

Emergence of biocultural rights

The genealogy of community rights in the Nagoya Protocol can be traced back to Article 8 (j) of the Convention on Biological Diversity (CBD). Article 8 (j) obliges States to respect, preserve and maintain knowledge, innovations and practices (hereafter referred to as traditional knowledge) of communities that embody traditional lifestyles relevant for conservation and sustainable use of biodiversity. It also requires States to promote the wider application of such traditional knowledge with the consent of communities and ensure that a fair share of the benefits arising from the research or commercial uses of such traditional knowledge flows back to these communities.

The spirit behind Article 8 (j) (and Article 10 (c)[1] of the CBD is one that recognizes the stewarding role of traditional communities in

1 Article 10 (c) obliges States to protect and encourage customary sustainable use of biological resources in accordance with traditional cultural practices that are compatible with conservation and sustainable use of biodiversity.

biodiversity conservation. In fact, this recognition of community stewardship of ecosystems gives rise to a unique set of rights in the Protocol increasingly referred to as 'biocultural rights'. Biocultural rights are community rights to govern and manage lands not because they have a legal title to such lands but because they have historically protected and nurtured the ecosystem therein. The impetus behind biocultural rights is the growing empirical evidence that *in-situ* biodiversity conservation in the long run is only possible by protecting and promoting the stewarding lifestyles of traditional communities.

> It is wise not to dismiss the Nagoya Protocol as imperfect but to strategically use the opportunities it creates to expand the spaces for biocultural rights

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The Nagoya Protocol thus seeks to protect and promote these stewarding lifestyles through a combination of biocultural rights and incentives. Effectively four pivotal biocultural rights of communities have been established through the Protocol. These are the rights to:

- Traditional knowledge associated with genetic resources
- Genetic resources
- Self-governance through customary laws and community protocols
- Benefit from the utilization of traditional knowledge and genetic resources by third parties.[2]

While these could be considered tall claims, they are nevertheless the result of a plausible reading that comes from observing the spaces created by the Nagoya Protocol. Let's take a closer look at these claims.

Traditional knowledge associated with genetic resources

The right of communities to their traditional knowledge associated with genetic resources is established through Article 7 of the Nagoya Protocol.[3] This may seem like a minor victory since it could be argued that this right was already pre-existent through Article 8(j), but *not really*.

Article 8(j) on a good day is a benign provision that at best requires States to *as far as possible and appropriate subject to national law* respect, preserve and maintain knowledge, innovations and practices of communities with their approval and involvement. This in no way compares to the strong rights wording of Article 7 of the Protocol requiring States ensure that the traditional knowledge of communities have been accessed and used subject to their prior informed consent and in accordance with established mutually agreed terms.

Article 7 begins with the statement: 'In accordance with domestic law each Party shall take measures as appropriate…' but it is testimony to the efforts of communities during the negotiations of the Protocol that they were able to turn the ambiguous and restrained wording of Article 8(j) – '*as far as possible and appropriate and subject to national law*' – to the bold wording of Article 7 of the Protocol that requires States *in accordance with domestic law* to respect the rights of communities to provide prior informed consent for the use of their traditional knowledge. The '*in accordance with domestic law*' differs significantly from '*subject to national law*' by implying that States must respect the rights of communities to their traditional knowledge but can do so through domestic legislation.

2 Conclusions drawn from an interpretation of specific articles of the Nagoya Protocol on ABS.

3 Article 7 states that 'in accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.'

Genetic resources

Article 6 of the Nagoya Protocol[4] is unprecedented in that it establishes the rights of communities to their genetic resources. This right did not exist in the CBD but has emerged solely through the persistent efforts of communities through years of negotiating the Protocol. Reservations have been expressed by some commentators that this right to genetic resources is subject to there being a pre-existing established right to the same in national law. While these reservations may be well founded, they underestimate the extent of established rights that communities have under domestic law.

Property jurisprudence in domestic law generally grants the landowner the right to the resources on the land. Even if the State asserts sovereign rights over all sub-surface minerals in the country, most legal systems require the State to compensate the landowner if it decides to start mining on private land. However, when it comes to flora and fauna, domestic law for the most part favours the landholders, as they generally have rights over the plants, trees and animals on their land unless explicitly stated to the contrary.

This means that the State would have to make a special law that arrogates to it all rights over genetic resources before it assumes such ownership. Until it does so, it is safe to assume in law that the landholders have established rights over genetic resources on their lands. For example, the ABS laws of India and South Africa recognize community rights to genetic resources on their lands as pre-existing rights, as does the draft ABS law of Namibia. Article 6 therefore opens the door for communities to lobby for their rights over genetic resources in domestic law using their existing rights in land law.

Self-governance through customary laws and community protocols

The Nagoya Protocol affirms a modest amount of self-determination for communities. Even this modest amount is significant since the Protocol is the first multilateral environmental agreement that asks States to take into consideration customary laws and community protocols of communities regarding commercial or research access to traditional knowledge.

During the negotiations of the Protocol, there was a great deal of reticence by some States to recognize customary laws in domestic legislation. However thanks to strong lobbying by communities Article 12 of the Protocol[5] now requires States when it comes to regulating access to traditional knowledge to implement their Protocol obligations by taking into consideration customary laws and community protocols of communities.

While this may not come off as a victory, Article 12 has created a valuable legal space. Several communities in different parts of the world are now developing community protocols as a way of regulating access to their knowledge and resources and asking States to legally recognize these protocols thereby affirming community self-governance and legal pluralism.

Benefit from the commercial and research utilization of TK and genetic resources

Article 5 of the Nagoya Protocol[6] is unequivocal in its recognition of the rights of communities to a fair and equitable share of benefits arising from the utilization of their genetic resources and associated traditional knowledge. Whereas Article 8(j) of the CBD required States to *encourage* equitable benefit sharing with communities when their traditional knowledge is utilized, Article 5 takes a huge leap forward. Article 5 is a mandatory obligation on States to take measures to *ensure* fair and equitable benefit sharing with communities when their genetic resources and associated traditional knowledge is used.

It is wise not to dismiss the Nagoya Protocol as imperfect but to strategically use the opportunities it creates to expand the spaces for biocultural rights. The spaces for rights that the Protocol facilitates are unprecedented when compared to any other multilateral environmental agreement. For that reason alone, it is critical for communities to engage with the Nagoya Protocol not as an end in itself but as a strong foundation on which they can build the edifice of biocultural rights.[7]

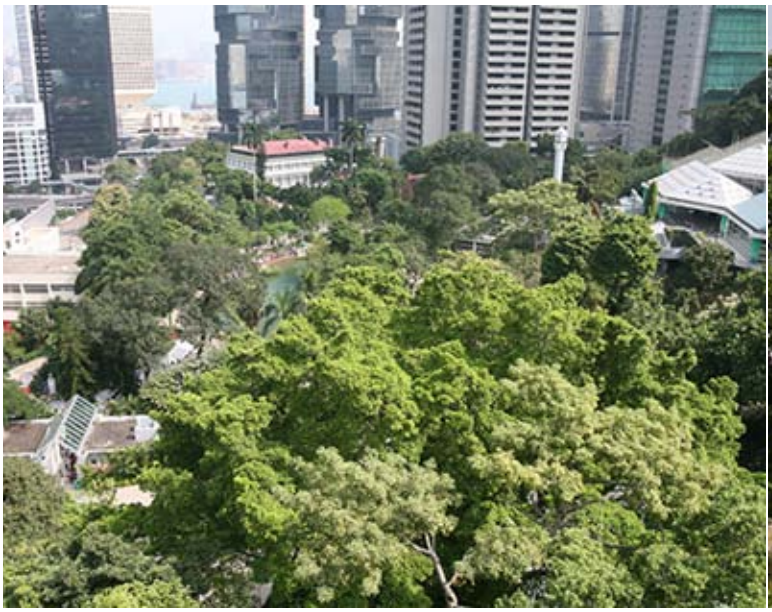
4 Article 6.2 states that in accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

5 Article 12.1 states that in implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

6 Article 5.2 states that each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

Article 5.5 states that each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

7 For a greater elaboration of the arguments made in this article: Bavikatte, Kabir and Robinson, Daniel, "Towards a Peoples History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing", *The Law, Environment and Development Journal*, 7/1, www.lead-journal.org/content/11035.pdf.



Early lessons on developing a BSAP for cities

by **Wilson Lau** ● Research and Project Officer, Civic Exchange (wlau@civic-exchange.org)

Developing Biodiversity Strategy and Action Plans (BSAPs) specifically for cities makes good sense. Cities are increasingly where the majority of a country's population lives and often where the conflict between people and nature is at its greatest.

Cities are also wonderful places for biodiversity yet Hong Kong, situated in East Asia and one of the most densely populated places on earth, might not be a city that immediately comes to mind. Yet the city is surprisingly biodiverse. Its countryside boasts some 3,000 species of vascular plants, 230 species of butterflies and over 500 species of birds. The famous comparison holds that within Hong Kong's land area of just over 1,000 square kilometres there are more wild species than in all of Great Britain.

Despite its natural assets, Hong Kong lacks a progressive policy on nature conservation. Without a shared understanding of what biodiversity we have, what of it we value and how much we wish to protect, Hong Kong is failing to equitably negotiate a balance between conservation and its many other priorities, such as affordable housing and infrastructure development.

Conservation planning

Civic Exchange, a Hong Kong-based public policy think-tank, has been using the best practices of the Convention on Biological Diversity (CBD) for a number of years to inform conservation planning in Hong Kong. Our most recent published reports in this area include devising a framework for a new nature conservation policy in Hong Kong and a step-by-step guide to developing a BSAP.

The publications drew extensively from CBD guidance, including National Biodiversity Strategies and Action Plans (NBSAP) Capacity Building Module 2 on *The Biodiversity Planning Process*, and Module 8 on *Developing a Sub-National Biodiversity Strategy and Action Plan*, which strongly emphasises a participatory approach in developing BSAPs.

Broad community consultations on setting strategic directions of policy areas are rare in Hong Kong. On the environment, consultations tend to occur during later stages when policy options have been defined and the government has a clear regulatory agenda. As well, the CBD was not formally recognised and applied by the Hong Kong Government until the extension of the CBD to Hong Kong from China in 2011. The Convention fell into an administrative vacuum for many years both before and after the transfer of sovereignty from Britain to China in 1997.

The promise of wide engagement of civil society from the outset with the Convention's extension was therefore a breath of fresh air for many and considered an unparalleled opportunity to inspire a new approach for policy development.

It spurred the conservation community, including environmental NGOs, academics and ecological consultants, to assemble in informal workshops and meetings and conceive what an ambitious BSAP would look like for Hong Kong. This was in the spirit of the CBD's

It is clear from Hong Kong's development of the BSAP that the process must be adaptive and cannot be taken as a linear process where one stage ends and another begins

emphasis on a participatory approach to developing BSAPs, that it should be "*jointly developed, adopted and owned by the full range of stakeholders and partners involved*".

With the initial absence of government-led initiatives on the BSAP, the conservation community sought to define the scope of work and recommended an operational structure that could involve the community in the BSAP plan-making process.

Government action

In recent months however, government actions on the BSAP have gathered steam. A steering committee and three working groups were set up to carry out a great variety of tasks, including biodiversity stocktaking, reviews of legislation and policies, communication and awareness-raising, as well as mainstreaming to key sectors, amongst others. These groups include both government officials and non-governmental specialists as members.

Despite being at the formative stages of our first BSAP, some insights have already emerged:

1. A parallel process has developed whereby informal gatherings of the conservation community operate in conjunction with the government's working groups. There are some advantages to this. The informal meetings are less constrained, without a formal structure, to open up dialogue with other interested or affected stakeholders. Facilitating contacts with the wider community in this way helps to fan the process out beyond working group silos.
2. The benefits of preparing a BSAP is not commonly understood yet, and that raising awareness and engaging stakeholders are tasks that are likely to span well beyond the assigned preparatory and implementing stages.
3. In fact, these two distinct phases in BSAP preparation and implementation should not be strictly divided. The preparatory stage should not just be about making plans for action, but should ideally include short-term actions and quick wins that can be implemented now. Doing this can provide tangible outcomes sooner rather than later, support people in envisaging the larger tasks ahead, and help to keep enthusiasm up.

True to the NBSAP Module's advice, what has been clear thus far in Hong Kong's development of the BSAP is that the process must be adaptive, and cannot be taken as a linear process where one stage ends and another begins.

Experience from other cities and countries shows that BSAPs are unlikely to fix everything, however perfectly planned. Indeed, Hong Kong has set a tight deadline for the BSAP, to be completed and have started implementation by 2015 (in line with Aichi Biodiversity Target 17). Expectations for this first BSAP are understandably subdued. However, one positive take-away is that the process has injected much needed enthusiasm in biodiversity planning, which has been sluggish and lacklustre for too long.

Making a difference for biodiversity

by **Yolanda Saito** ● Legal Specialist (ysaito@idlo.int), and **Rodrigo Vazquez**, Legal Consultant, International Development Law Organization (IDLO)

When we think of laws, we think strong words on paper. Once written down and agreed upon, we should all be subject to them. However, laws are only as real as we decide to make them. Laws, to be effective, must be accepted by all those expected to apply and use them – especially governments and civil society – amid a belief that they can make a real difference.

The Convention of Biological Diversity (CBD) is an international treaty, legally binding on 193 countries. One would expect everything to be going smoothly for its implementation. Hurdles remain, however, with important provisions of the Convention yet to be achieved despite more than 20 years of negotiations and near-unanimous global support.

In an urgent push for progress, the Strategic Plan for Biodiversity and the Aichi Biodiversity Targets were adopted in 2010 as a framework of action with a 2020 deadline. But these documents are non-legally binding. They "urge" countries to take action and invite them to seek out tailored pathways to implementation. At first glance, it seems we have moved from strong words on paper to a game of "choose your own adventure," with no consequences for wrong turns or not playing at all.

Synergies between international texts and national law

Even so, these international texts play an important role. The CBD, Strategic Plan for Biodiversity and the Aichi Biodiversity Targets provide an anchor of international standards and values. Indeed, it is the interaction of these international texts with national laws which help restore our confidence in law. Guided by globally agreed standards, countries have been designing laws, at the domestic level, in tailored and empowering ways. These national laws are inspiring people to work together, consider science and technology in governance decisions, and reach out across sectors to protect biodiversity while supporting human economies, livelihoods and innovation. The strong words on paper are helping shape on-the-ground impacts for people and biodiversity.

The state of Paraná in Brazil provides a longstanding example of these impacts. In 1991, the State legislated an ecological fiscal transfer (EFT) that allocates the portion of goods and services taxes received by a municipality according to environmental criteria, including the size

through law

of protected areas. The sums allocated are often a significant portion of municipal budgets. In 2009, the state of Paraná distributed US $62 million (equivalent) to municipalities that were proactively creating and managing new protected areas. An important effect of this legislation was to bring biodiversity conservation to the forefront of concerns for municipal officials, mainstreaming biodiversity into local governance decisions.

In Paraguay, the value of ecosystem services that forests provide – from water purification, soil conservation and carbon sequestration – has been recognized under a federal law enacted in 2006. The law requires farmers with 20 hectares of land or more to conserve at least 25% of their area. Farmers who choose to conserve more can generate income, through the sale of the environmental services (ES) preserved, to those who fail to comply. Importantly, this law offers a means to preserve ecosystems, while supporting rural livelihoods and poverty eradication.

Need for practical guidance on domestic legal approaches for biodiversity

Knowledge of these promising laws remains minimal – an unfortunate situation at a time when countries are actively redesigning and updating their National Biodiversity Strategies and Action Plans (NBSAPs) to commit to national goals and actions on the Aichi Biodiversity Targets. Many more such laws exist, and knowledge-sharing can combat the fragmented nature of global efforts to promote and protect biodiversity through law. We can take one important step further, to analyze and compare these domestic legal innovations to identify trends of good practice. If we equip countries with this guidance, they will be better able to consider legal approaches in their NBSAPs. And they, like us, may discover that national laws, guided by international standards but with their nuanced approaches, are making a real difference for biodiversity and people.

National laws, guided by international standards but with their nuanced approaches, are making a real difference for biodiversity and people

The International Development Law Organization (IDLO) and the CBD Secretariat are leading a global initiative for new thinking on legal approaches that benefit biodiversity and people. For more information, please attend our side event at SBSTTA 17 and visit www.idlo.int/AichiLaws.

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The CBD and the post-2015 agenda

by **Ashish Kothari** ● Kalpavriksh
(chikikothari@gmail.com)

There has been a flurry of activity around the review of the Millennium Development Goals (MDGs) and the possible new framework to replace them in 2015. Global discussions have increasingly focused on building sustainability into the post-2015 agenda, perhaps recasting the MDGs as sustainable development goals (SDGs). This was reinforced by the outcome declaration of the Rio+20 conference in 2012. How should the Convention on Biological Diversity's (CBD) process build on or input to this?

Unfortunately, much of the discussion on SDGs, including the spate of recent reports from the UN system and other global institutions, has focused on models like the 'green economy', advocating the greening of growth. These models do not adequately acknowledge the structural roots of poverty, destitution, hunger, malnutrition, unsustainability and inequities. So the reports remain within the currently dominant 'development' paradigm, recommending mainly modifications in the same; but in doing so, they are not transformative enough to achieve sustainability, equity and well-being.

Two key reports

An analysis of two key reports (the UN Secretary-General's *High Level Panel of Eminent Persons on the Post-2015 Development Agenda* and *An Action Agenda for Sustainable Development* by the Sustainable Development Solutions Network) reveals the following key shortcomings:

An inadequate focus on direct democratic governance: There is welcome stress on accountability and transparency, but not on direct democracy (decision-making by citizens and communities in face-to-face settings). Power in such a polity would flow upwards from the ground, enabling greater accountability and transparency than possible in only representative democracy. There is no mention

of indigenous peoples' rights of self-determination (now recognized under UNDRIP), or of free, prior and informed consent powers to communities relating to lands and resources.

Inability to recognize the limits of economic growth: While recognising ecological limits, the reports do not see the inherent contradiction between this and unending economic growth. Instead there is repeated talk of 'accelerated growth'. Given that human activity has already crossed several planetary limits, we may need global degrowth, along with radical redistribution so that countries/regions thus far deprived can gain without further threatening the earth.

Continued subservience to private capital: The reports are excessively soft on big private business, not once mentioning the need to reign in irresponsible behaviour towards the earth and people. Thus the focus on private investments and the faith in market mechanisms (e.g. REDD) are misplaced.

Modern science and technology held as panacea: Neither report mentions the importance of diverse forms of knowledge that have sustained human societies for millennia. For instance, traditional and community-based health systems are completely absent. They also ignore democratic, community-based R&D.

Culture, ethics, spirituality are not in the picture: An astounding omission from both reports is the importance of cultural diversity, ethical values (towards fellow humans and the rest of nature). The crucial links between culture, sustainability and equity must form core parts of the post-2015 agenda.

Unbridled consumerism not tackled head-on: While both reports recommend sustainable production and consumption, neither explicitly mentions the need to curb and drastically reduce the present consumption levels of the global North. Without this, the poor will never have the space needed to become more secure and genuinely prosperous.

Global relations built on localization and self-reliance missing: There is little acknowledgement of the need for relatively self-reliant communities, at least for basic material/physical, learning and health needs, with governments and civil society facilitation. Examples across the world testify to the possibilities of such a transformation, which dramatically cuts unsustainable transportation, empowers people to be in control of their own lives, democratizes markets and provides a stable basis for wider socio-economic and political relations across communities.

No new architecture of global governance: Missing is the need to change the current system of global governance to be far more responsive to the peoples of the world; whether it is a reformed UN, or a new global assembly of peoples that includes all of the partners mentioned in the High-Level Panel report (and in particular indigenous peoples and local communities). Such global governance would also prioritise human rights and environmental agreements over economic, finance, trade and commerce agreements.

Overall these reports are about reforms within the existing system of financial, corporate and nation-state control. Such reforms could be interim measures, but a truly sustainable and equitable future needs far more radical transformations.

Civil society has repeatedly raised such issues in the CBD forums. A number of governments and civil society have together won some hard-fought victories in the fields of traditional knowledge and practices, biosafety, people's participation in global forums, and upholding the CBD principles as a bulwark against other international processes that threaten the earth and its peoples. They need to send a clear signal to the UN General Assembly and other relevant forums, that the principles of sustainability and equity enshrined in the CBD are central to the post-2015 agenda. The COP decisions on Articles 8j and 10c, the Akwe-Kon guidelines, the Cartagena Protocol, the protected areas programme of work and other such outcomes could be used to bolster such a message.

A clear signal needs to be sent to the UN General Assembly and other relevant forums that the principles of sustainability and equity enshrined in the CBD are central to the post-2015 agenda

ERIC LAFFORGUE

OVERVIEW

COP 11 decisions affecting indigenous and local communities

by **John Scott** ● Programme Officer, Article 8(j) and related provisions, Convention on Biological Diversity (john.scott@cbd.int)

Indigenous and local communities (ILCs) from around the world, organized under the International Indigenous Forum on Biodiversity (IIFB) and the Indigenous Women Network on Biodiversity (IWNB), as well as the International Forum for Local Communities, participated with considerable success in the eleventh meeting of the Conference of the Parties (COP 11) to the Convention on Biological Diversity (CBD), held October 2012 in Hyderabad, India.

Indigenous and local communities focused on issues related to traditional knowledge and customary sustainable use of biodiversity, participated in the high-level segment, and contributed to broad ranging discussions covering community protected areas, restoration of ecosystems and the effective implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. At COP 11 it was decided that the Working Group on Article 8(j) and Related Provisions would meet prior to COP 12. In response the eighth meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the CBD, is being held in Montreal, Canada, 7-11 October 2013.

The following is a brief overview of some of the decisions emerging from COP 11 to be considered at the Working Group. These issues are pertinent for enhancing national implementation of Article 8(j) and Related Provisions and the Strategic Plan for Biodiversity 2011-2020 and assist in ensuring ILCs effectively participate at all levels in the implementation of the Convention.

Plan of action

Many indigenous and local communities depend directly on customary use of biodiversity in their traditional practices, such as fishing,

horticulture, subsistence agriculture, pastoralism and/or hunting and gathering. Customary use provides insights into sustainable use of biodiversity, which is one of the three pillars of the Convention. The CBD acknowledges the interconnectedness of traditional knowledge and customary practice both in its preamble and in Articles 8(j) and 10(c). Furthermore, Article 10(c) of the Convention states that Parties shall, as far as possible and as appropriate: "Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements."

Recognition, respect and support for the customary sustainable use of biodiversity underpins the survival of indigenous and local communities yet are some challenges to implementing Article 10(c) at the local and national levels, particularly in some regions when ILCs access biological resources located in government designated protected areas. COP 11 decided to continue the development of a plan of action on customary use of biodiversity with a focus on three tasks, to: a) incorporate customary sustainable use practices into national biodiversity strategies and action plans; b) promote and strengthen community-based initiatives and enhance customary sustainable use; and c) identify best practices on this issue.

The Working Group on Article 8(j) and related provisions, at its eighth meeting is poised to consider a global draft plan of action for customary sustainable use which will designate actors and timeframes to implement concrete steps forward on this vital issue.

Revised multi-year programme of work on Article 8(j)

The objective of the programme of work on Article 8(j) and related provisions is to promote within the framework of the Convention a just implementation of Article 8(j) and related provisions, at the local, national, regional and international levels and to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation.

At COP 11 it was decided to further develop guidance to ensure that indigenous communities obtain fair and equitable share of benefits arising from the use of their knowledge and that access to such knowledge is based on their prior and informed consent. More broadly, to develop guidelines for legislation or other national arrangements, such as national action plans, to implement Article 8(j) and its related provisions, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge within the context of the Convention.

It was also decided to develop standards and guidelines for the reporting and prevention of the unlawful appropriation of traditional knowledge and related genetic resources. These tasks may contribute to the effective implementation of the Nagoya Protocol by providing essential advice and guidance on how obligations arising from the Protocol may unfold at the local level. The Working group on Article 8(j) was also given a mandate by the COP to continue to provide views to the Nagoya process.

The Nagoya Protocol contains significant provisions relating to traditional knowledge associated with genetic resources held by indigenous and local communities, as well as to genetic resources held by indigenous and local communities where the rights of these communities over these resources have been recognized. It sets out clear obligations to seek prior informed consent of indigenous and local communities regarding such situations. It also provides for the sharing of benefits arising from the use of traditional knowledge associated with genetic resources, as well as benefits arising from the use of genetic resources in accordance with domestic legislation. Benefit sharing must be based on mutually agreed terms.

Connecting traditional knowledge systems and science

The Convention recognizes the importance of connecting traditional knowledge and scientific knowledge in its articles and COP decisions and seeks to apply this in its implementation. For example, information concerning indigenous and traditional knowledge and technologies should be included in work concerning exchange of information (Article 17.2) and cooperation regarding information and technologies including indigenous and traditional technologies (Article 18.4). However the connection between traditional knowledge systems and science is complex because of many reasons including the nature of traditional knowledge which is often collective and transmitted orally through their own traditional languages and the historical experiences of ILCs with science and scientists. It is critically important to improve the relationship between traditional knowledge and science so that both can contribute to the conservation and sustainable use of biodiversity. The eighth meeting of the Working Group on Article 8(j) and related provisions has committed to holding in-depth dialogue on: Connecting Traditional Knowledge Systems and Science, such as under the IPBES, Including Gender Dimensions. The expert panelists will included Kathy L Hodgson-Smith (Metis National Council on Canada), Jocelyn Carino (Director, Forest Peoples Programme), Pernilla Malmer (Senior Advisor, the Resilience and Development Programme – SwedBio / Stockholm Resilience Centre); Brigitte L. G. Baptiste (Director General, Humboldt Institute, Colombia) and Jennifer Rubis (representative of UNESCO).

Repatriation of indigenous and traditional knowledge

Many government departments, universities, museums, herbaria, botanical and zoological gardens and other entities may house collections containing information on the knowledge, innovations and practices of indigenous and local communities relevant for conservation and sustainable use of biodiversity. COP 11 decided to develop guidelines that would facilitate repatriation of traditional knowledge and related information, in accordance with Article 17, paragraph 2, of the Convention.

The guidelines goal is to assist indigenous and local communities in knowledge and cultural restoration, particularly that which is relevant for conservation and sustainable use of biodiversity. Such guidance may be a useful tool for Parties to implement the Convention, the Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets, and particularly Target 18 on traditional knowledge and customary sustainable use of biodiversity.

COURTESY OF BRAZIL

Time for the CBD to adopt the term 'indigenous peoples'

by **Caroline de Jong** ● Forest Peoples Programme (caroline@forestpeoples.org); and, **Holly Jonas**, Natural Justice

Throughout the text of the Convention on Biological Diversity (CBD), the decisions of the Conference of the Parties (COP) and in its subsidiary bodies, the phrase 'Indigenous and local communities' is used. The UN Permanent Forum on Indigenous Issues (UNPFII), at its ninth session in 2010, called upon Parties to the CBD "to adopt the terminology 'indigenous peoples and local communities' as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago."[1] At its tenth session in 2011, the UNPFII said, "Affirmation of the status of indigenous peoples as "peoples" is important in fully respecting and protecting their human rights."[2]

Subsequently, at the seventh meeting of the Working Group on Article 8(j) in 2011 and at COP 11 in Hyderabad a year later, several Parties said they were in favour of updating the terminology. However, it was decided to postpone discussions and to further consider this matter and all of its implications for the Convention and its Parties at the eighth meeting of the Working Group, in October 2013, and at COP 12, scheduled for October 2014 in the Republic of Korea.

In this decision, Parties and others are invited to communicate their views to the Secretariat on the use of the term "indigenous peoples and local communities". A group comprising more than 70 indigenous peoples' organisations, community-based organisations, networks and NGOs responded to the call for input in April 2013 by presenting a joint submission with comprehensive recommendations.

The CBD emerged from the Rio Earth Summit in 1992. Its implementation is guided by Agenda 21, also adopted at the Rio Summit, and uses the term "indigenous people" in Chapter 15 (Conservation of

1 Paragraph 112

2 Paragraph 26

biological diversity) and Chapter 26 (Recognising and strengthening the role of indigenous people and local communities). The 2002 World Summit on Sustainable Development (WSSD) meeting, held on the tenth anniversary of the Rio Summit, reaffirmed the importance of indigenous peoples for sustainable development and explicitly used the term 'indigenous peoples' in doing so.[3] At Rio+20, the international community-approved outcome document (*The future we want*) also uses the term 'indigenous peoples'.[4]

In addition to the aforementioned instruments emanating from the Rio processes, a wide range of other international instruments and standards reference indigenous peoples' rights, the vast majority of which were adopted by environmental organisations and underscore the linkages between recognition of indigenous peoples' rights and the conservation and sustainable management of ecosystems and natural resources. They include the following:

- 1991 International Labour Organisation Convention concerning Indigenous and Tribal Peoples in Independent Countries
- A large number of International Union for Conservation of Nature (IUCN) Resolutions and Recommendations in 1996, 2000, 2004, 2008 and 2012
- 1999 Ramsar Convention Guidelines for Establishing and Strengthening Local Communities' and Indigenous People's Participation in the Management of Wetlands
- 2002 Ramsar Convention Guiding Principles for Taking into Account the Cultural Values of Wetlands for the Effective Management of Sites
- Several Food and Agriculture Organization of the United Nations Voluntary Guidelines on: how to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004), Responsible Management of Planted Forests (2006), Fire Management (2006), the Tenure of Land Fisheries and Forests in the Context of National Food Security (2012)
- 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- 2007 UN Forum on Forests Non-legally Binding Instrument on All Types of Forests, adopted as General Assembly Resolution 62/98
- 2010 United Nations Framework Convention on Climate Change Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention
- 2011 UN Guiding Principles on Business and Human Rights.

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

The Parties to the CBD (given its near-universal membership) represent the same State Parties that have in all other international contexts used the terminology "indigenous peoples", including in the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly.

This Declaration recognises that "*Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State*" (Article 5, emphasis added). The countries that initially voted against the adoption of the UNDRIP, Australia, New Zealand, Canada and the United States of America, later overturned their decisions and endorsed UNDRIP in 2009 (Australia) and 2010 (New Zealand, Canada and the USA).

Thus the Convention on Biological Diversity is the only decision-making body of an international convention to still use the term 'indigenous and local communities'. It is now time to finally officially recognize indigenous peoples as peoples.

The full submission, including additional and more specific arguments, is available in English, Spanish and French at: www.forestpeoples.org/topics/convention-biological-diversity-cbd/publication/2013/submission-convention-biological-diversi

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3 Johannesburg Declaration on Sustainable Development, para 25.

4 Resolution adopted by the General Assembly 66/288, "The Future We Want", paragraph 197.

Common targets, diverse approach

by **Teppei Dohke** and **Azusa Oita**
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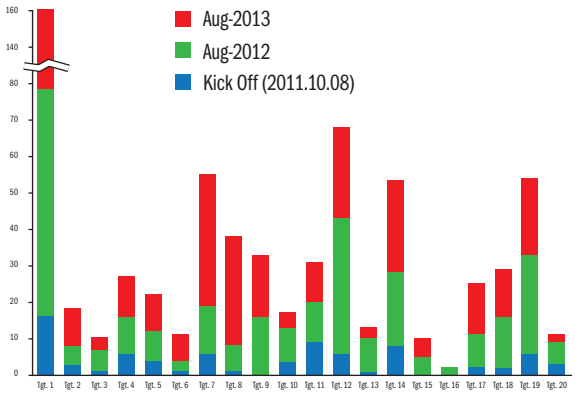
Are we taking "effective and urgent action to halt biodiversity loss by 2020"? The answer might be that we still have a way to go. Scaling up action and expanding actors for the Aichi Biodiversity Targets is still not at the level it should be. The Japan Committee for IUCN (IUCN-J) and its partner organizations keep challenging the status quo. This article looks at progress made in Japan.

As noted in a previous edition of [square brackets], IUCN-Japan recently introduced its Double 20 Campaign (Nijyu-maru Project in Japanese), a national civil society campaign to support implementation of the Aichi Biodiversity Targets. The campaign collects commitments for contributing to the Aichi Targets through three simple steps: [1] Know and agree on the importance of the targets, [2] think how my organization can contribute to each target, and, [3] commit and act on the ground. Organizations that make the commitment are called campaign partners and are registered on the special campaign website (http://bd20.jp).

Campaign progress

Over the past two years there has been rapid growth. The number of committed actions has gone from 28 to 207, while the number of organizations has increased from 19 to 150.

With regards to the Aichi Targets, most groups recognize the importance of biodiversity awareness (Target 1) and there are relatively few actions for biodiversity incentives (Target 3), sustainable marine resources exploitation (Target 6), genetic diversity (Target 13), ABS (Target 16) and resource mobilization (Target 20). The implementation gaps however provide us with good suggestions when considering what the next communication objective should be.



The number of related targets in commitment. The blue is at launching, green is as of end of August 2012 (about a year after, and red shows number as of end of August 2013

At the first stage of the campaign, nature conservation NGOs were the main partners, but the Double 20 Campaign has gone nation-wide and now includes commitments from business, local governments, education and academic research centers. The trend in the number of commitments has been adopted as a supplemental indicator for the Japan National Biodiversity Strategy and Action Plan (NBSAP). The United Nations Decade on Biodiversity Japan Committee (UNDB-J) has established a type of award system to encourage commitment towards the Aichi Targets, with good collaborative activities being registered by the Double 20 Campaign as eligible for awards by UNDB-J.

Showcasing actions in the field helps engage the average citizen in biodiversity conservation. The first special exhibition, together with a series of seminars, celebrating the 2013 International Day for Biological Diversity with support from the Marunouchi Saezuri Kan-nature information plaza, was held in May and June.

Field targets

Ramsar Network Japan, one of our powerful partners, translated the Aichi Targets into the "Rice Paddy Fields Targets and Action Plan" to promote sustainable management of rice paddy fields as key

IUCN-J and the National Institute for Environmental Studies (NIES), which serves as a focal point for environmental research in Japan, officially announced on 16 July 2013 that they have signed a letter of agreement for cooperation towards the Aichi Biodiversity Targets, with the NIES to provide scientific support and a knowledge network of leading biodiversity scientists.

habitats for many species including migratory birds1. As an active supporter of the rice paddy fields targets, over 50 farming-related organizations and individuals now help promote and enhance biodiversity in rice paddy fields. This includes promoting citizen nature monitoring of these fields and reducing the input of fertilizer and pesticide on farms. This kind of "habitat/theme translation approach" can be widely applied. In order to expand this approach we need a clear and common understanding of the Aichi Targets. Therefore, to support translating the targets into action, IUCN-J has launched a new easy to understand guidebook to all of the Aichi Targets, based on the Japanese translation of the "Quick Guides for the Aichi Biodiversity Targets (ver.2)" edited by the Secretariat of the Convention on Biological Diversity.

1 Promoting recognition and conservation of rice paddy fields as natural habitat was encouraged by Ramsar COP10 Resolution X.31 and UNEP/CBD/COP/DEC/X/34 para19, 20

The way ahead

This campaign was organized in two years and COP 12 will represent the halfway point. In order to review the outcomes of our campaign and to discuss the next phase, IUCN-J plans to convene the first partner meeting of the Double 20 Campaign in February 2014. Groups and individuals promoting the Aichi Targets will meet and review the outcomes of the campaign and national implementation of the targets. The report from this first partner meeting might be submitted as a complement to the Fifth National Report mandated by the national government.

CHRONICLING THE JOURNEY OF THE SEED, BUILDING A COMMUNITY OF KNOWLEDGE

Online portal provides access to resources on seeds, biodiversity and food

The story of seeds is fertile ground for increasingly pertinent conversations about biodiversity, food security and climate change. ***Seedmap.org***, a website set to be launched in fall 2013, focuses on the role agricultural biodiversity plays in these issues and chronicles the earth's crop genetic wealth, centres of origin, how biodiversity is threatened, what are the solutions – all laid out in an interactive website. According to ***Seedmap.org***, the information is geared towards policymakers, researchers, practitioners, students, food and environment movements that demand high-quality, science-based tools for use in their own work. It pays particular attention to the critical role of women, small holder farmers, indigenous peoples and their knowledge systems. The site features an interactive seed map that allows for navigation and the chance to "visit" close to 500 locations around the world. It includes case studies, stories and audiovisual resources. ***Seedmap.org*** is a product of USC Canada and the ETC Group.

Convention on Biological Diversity

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