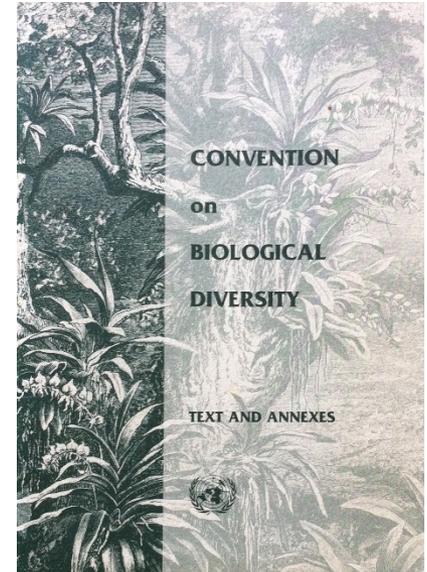


***WHAT DO THE UN CONVENTION ON  
BIOLOGICAL DIVERSITY (CBD) AND  
SUSTAINABLE DEVELOPMENT GOALS (SDG  
15) HAVE TO OFFER TO PROTECT  
INDIGENOUS PEOPLES' RIGHTS AND  
KNOWLEDGE ON BIODIVERSITY?***



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7.5.2019

# Content

## Part I, *Sabine Schielmann*

- About INFOE
- The CBD and the SDGs
- Indigenous Peoples, biological diversity and sustainable development
- SDG 15, Traditional Knowledge (TK) and Article 8j
- TK and FPIC in the framework of CBD discussions
- Biocultural Community Protocols: Example from Peru

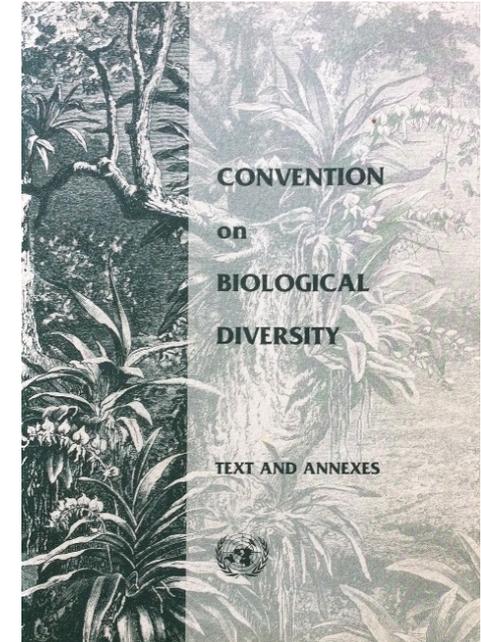
## Part II, *Johannes Rohr*

- What is FPIC and why is important
- FPIC Protocols: Examples

# CBD – Convention on Biological Diversity

## Objectives of the CBD

- Conservation of biodiversity
- Sustainable Use of biodiversity
- Access to genetic resources (and associated traditional knowledge) and the fair and equitable sharing of benefits arising from the use of such resources

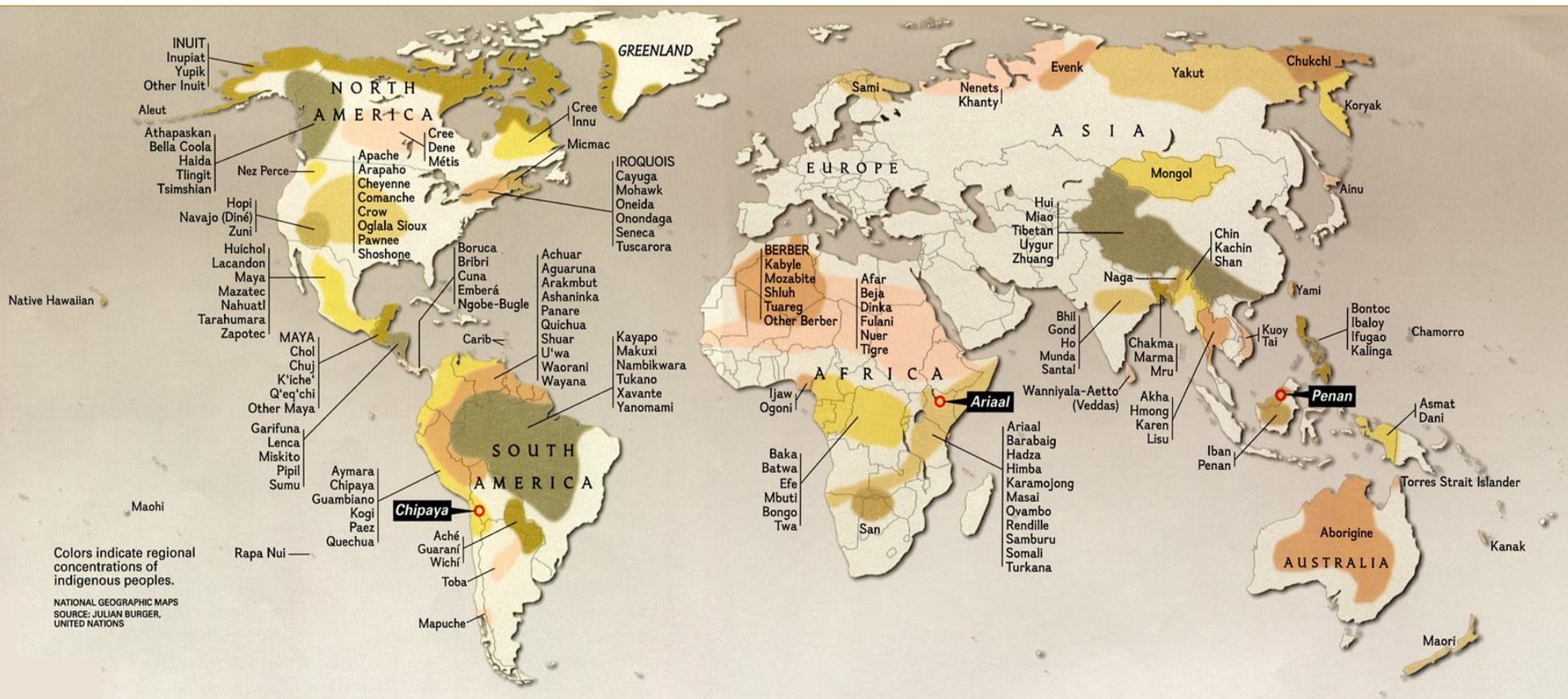


# SDGs – Sustainable Development Goals



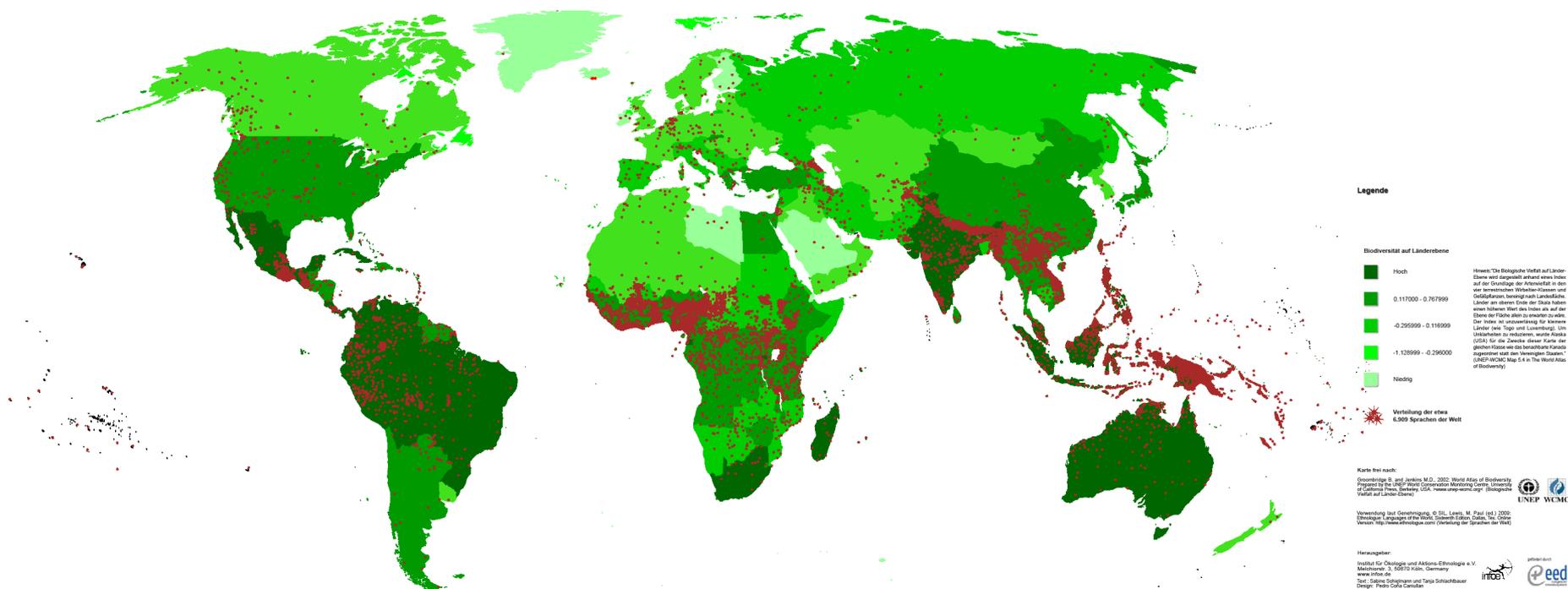
In 2015, the international community adopted „The Agenda 2030 for Sustainable Development“, comprising 17 global *Sustainable Development Goals* (SDGs) which unite the three dimensions of sustainable development – the economic, social and environmental. All countries are called upon to implement these goals. Human beings are at the core of sustainable development processes and their implementation.

# Indigenous Peoples worldwide



<https://propresobama.files.wordpress.com/2014/07/indigenouspeoplesmap.jpg>

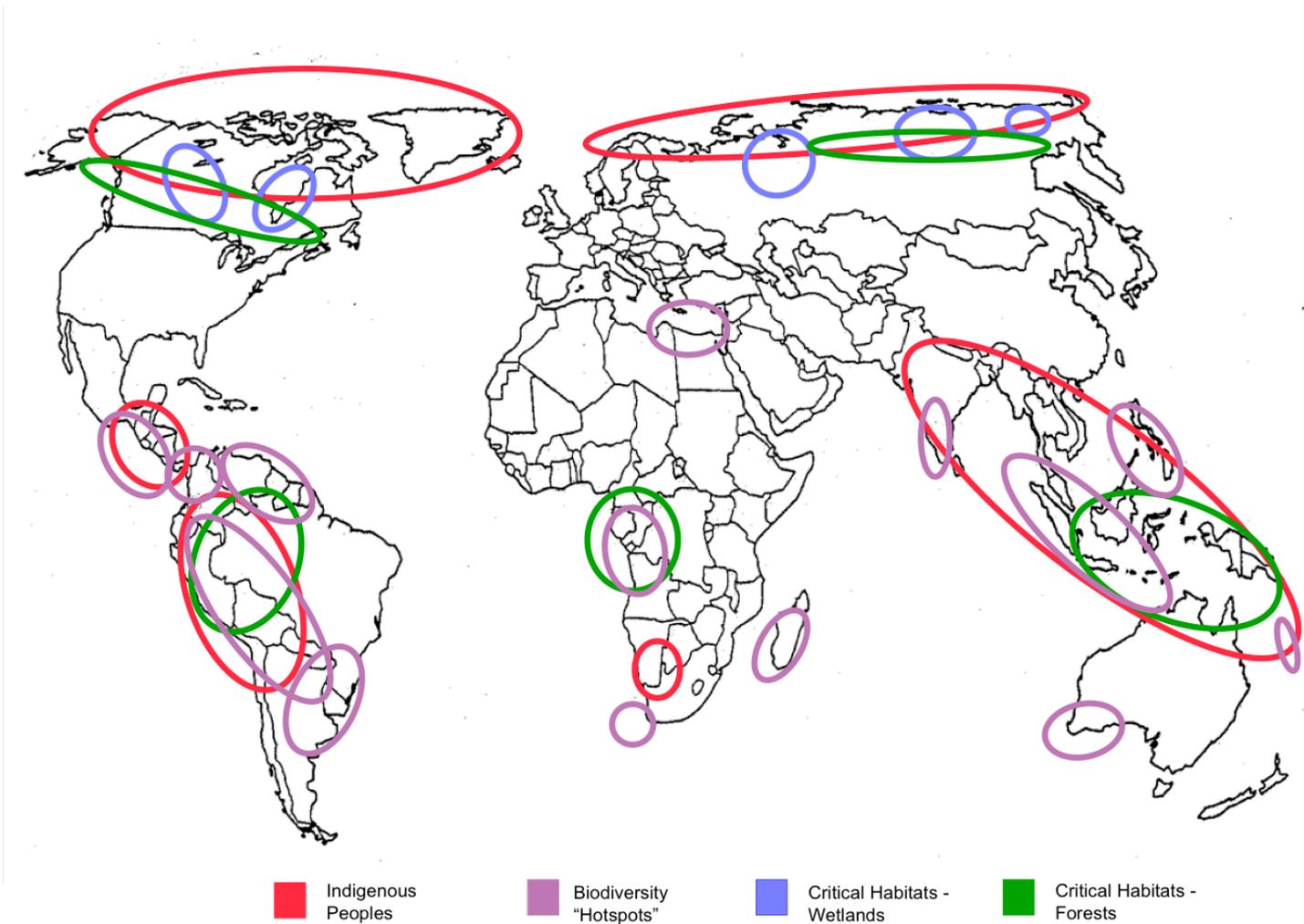
# Biological and cultural diversity



## Cultural and Biological Diversity

- Inextricable link between indigenous peoples and the conservation and sustainable use of biodiversity
- Indigenous peoples and local communities around the world possess detailed and sophisticated knowledge of the plants, animal and other species located within their lands and territories
- Indigenous knowledge, understanding and practice is based on sustainable principles

# Biodiversity, Sustainable Development and Traditional Knowledge



# SDG 15

A close-up photograph of a vibrant red tree frog with bright orange eyes, perched on a green leaf. The background is a soft-focus green forest.

**GOAL 15**

PROTECT, RESTORE AND PROMOTE SUSTAINABLE USE OF TERRESTRIAL ECOSYSTEMS, SUSTAINABLY MANAGE FORESTS, COMBAT DESERTIFICATION, AND HALT AND REVERSE LAND DEGRADATION AND HALT BIODIVERSITY LOSS

**SUSTAINABLE DEVELOPMENT GOALS**  
More at [sustainabledevelopment.un.org/sdgsproposal](https://sustainabledevelopment.un.org/sdgsproposal)



## SDG 15.1



*“By 2020, ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater **ecosystems** and their services, in particular forests, wetlands, mountains and drylands, **in line with obligations under international agreements.**”*

UN 2015, Agenda 2030, A/RES/69/315

## SDG 15.1 and the ecosystem approach

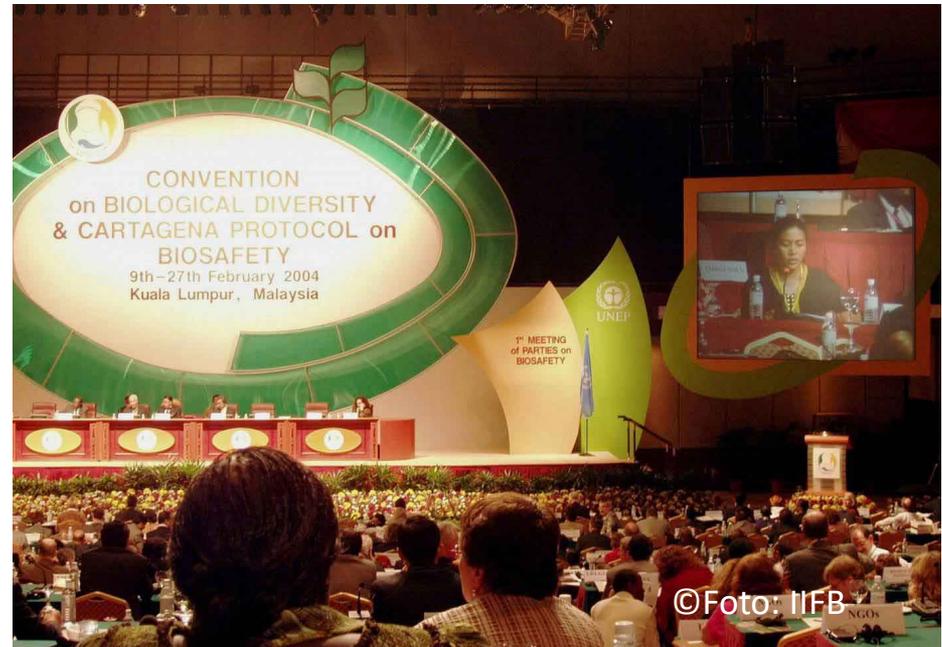


Why is the demand in 15.1 for conservation of ecosystems „in line with obligations under international agreements“ particularly important for indigenous peoples?

- The CBD recognizes cultural diversity as integral to ecosystems and their sustainable use
- The CBD is the only internationally binding agreement that takes a holistic ecosystem approach to the conservation of biodiversity and sustainable use
- A fundamental element of the ecosystem approach is the recognition of the socio-cultural dimension of using and protecting land, water and resources.

# Importance of the CBD

At the international level, the Convention on Biological Diversity contains the clearest recognition of the links between traditional knowledge, sustainable customary use and the preservation and protection of biological diversity, setting out responsibilities of Parties, under article 8 (j).



**COP 5 Decision V/16**  
**Article 8(j) and related provisions**  
**The Conference of the Parties,**

[...] Recognizing the role that the International Indigenous Forum on Biodiversity has played since the third meeting of the Conference of the Parties in addressing the Conference of the Parties on the implementation of Article 8(j) and related provisions, [...]

11. Invites Parties and Governments to support the participation of the International Indigenous Forum on Biodiversity, as well as relevant organizations representing indigenous and local communities, in advising the Conference of the Parties on the implementation of Article 8(j) and related provisions; [...]

## **Article 8(j): *Traditional Knowledge (In-situ conservation)***

*“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.”*

# CBD PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY (Decision V/16)



## ONGOING TASKS FOR PARTIES

### ELEMENT 1

#### Participatory mechanisms for indigenous and local communities

##### Task 1

Parties to take measures to enhance and strengthen the capacity of indigenous and local communities to be effectively involved in decision-making related to the use of their traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity subject to their prior informed approval and effective involvement.

##### Task 2

Parties to develop appropriate mechanisms, guidelines, legislation or other initiatives to foster and promote the effective participation of indigenous and local communities in decision-making, policy planning and development and implementation of the conservation and sustainable use of biological diversity at international, regional, subregional, national and local levels, including access and benefit-sharing and the designation and management of protected areas, taking into account the ecosystem approach.

##### Task 4

Parties to develop, as appropriate, mechanisms for promoting the full and effective participation of indigenous and local communities with specific provisions for the full, active and effective participation of women in all elements of the programme of work, taking into account the need to:

- Build on the basis of their knowledge
- Strengthen their access to biological diversity
- Strengthen their capacity on matters pertaining to the conservation, maintenance and protection of biological diversity
- Promote the exchange of experiences and knowledge
- Promote culturally appropriate and gender specific ways in which to document and preserve women's knowledge of biological diversity.



## OBJECTIVES

The objective of this programme of work is to promote within the framework of the Convention on Biological Diversity a just implementation of Article 8(j) and related provisions, at 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.

## GENERAL PRINCIPLES

- Full and effective participation of indigenous and local communities in all stages of the identification and implementation of the elements of the programme of work. Full and effective participation of women of indigenous and local communities in all activities of the programme of work.
- Traditional knowledge should be valued, given the same respect and considered as useful and necessary as other forms of knowledge.
- A holistic approach consistent with the spiritual and cultural values and customary practices of the indigenous and local communities and their rights to have control over their traditional knowledge, innovations and practices.
- The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use of biological diversity in an equitable way.
- Access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices or prior informed approval from the holders of such knowledge, innovations and practices.

## NEW TASK

New major component: Article 10 with a focus on Article 10(c): Development of further guidance on sustainable use and related incentive measures for indigenous and local communities and measures to increase the engagement of indigenous and local communities and governments at national and local levels in the implementation of Article 10 and the ecosystem approach [Decision X/43]



## ONGOING TASKS FOR WG 8(j)

### ELEMENT 4

#### Equitable sharing of benefits

##### Task 7

Based on tasks 1, 2 and 4, the Working Group to develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure: (i) that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices (ii) that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities (iii) advancement of the identification of the obligations of countries of origin, as well as Parties and governments where such knowledge, innovations and practices and the associated genetic resources are used.



## ONGOING TASKS FOR WG 8(j)

### ELEMENT 7

#### Legal elements

##### Task 12

The Working Group to develop guidelines that will assist Parties and governments in the development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and its related provisions (which could include sui generis systems), and definitions of relevant key terms and concepts in Article 8(j) and related provisions at international, regional and national levels, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention.

##### Task 15

The Ad Hoc Working Group to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity in order to facilitate the recovery of traditional knowledge of biological diversity.

## ONGOING TASKS FOR WG 8(j)

### ELEMENT 6

#### Monitoring elements

##### Task 10

The Ad Hoc Working Group to develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.



Convention on  
Biological Diversity

## Article 8(j): *Traditional Knowledge (In-situ conservation)*

### GENERAL PRINCIPLES

1. Full and effective participation of indigenous and local communities in all stages of the identification and implementation of the elements of the programme of work. Full and effective participation of women of indigenous and local communities in all activities of the programme of work.
2. Traditional knowledge should be valued, given the same respect and considered as useful and necessary as other forms of knowledge.
3. A holistic approach consistent with the spiritual and cultural values and customary practices of the indigenous and local communities and their rights to have control over their traditional knowledge, innovations and practices.
4. The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use of biological diversity in an equitable way.
5. Access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices or prior informed approval from the holders of such knowledge, innovations and practices.



# CBD PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY (Decision V/16)

## COMPLETED TASKS

### ELEMENT 2

Status and trends in relation to Article 8(j) and related provisions

#### Task 5

Elaboration of a composite report on status and trends regarding traditional knowledge [completed: Decision IX/13 B paragraph 1]



## POSTPONED TASKS, PENDING COMPLETION OF CURRENT TASKS, AND IN LIGHT OF ONGOING DEVELOPMENTS

### ELEMENT 3

Traditional cultural practices for conservation and sustainable use

#### Task 6

The Ad Hoc Working Group to develop guidelines for the respect, preservation and maintenance of traditional knowledge, innovations and practices and their wider application in accordance with Article 8(j).

#### Task 13

The Ad Hoc Working Group to develop a set of guiding principles and standards to strengthen the use of traditional knowledge and other forms of knowledge for the conservation and sustainable use of biological diversity, taking into account the role that traditional knowledge can play with respect to the ecosystem approach, *in situ* conservation, taxonomy, biodiversity monitoring and environmental impact assessments in all biodiversity sectors.

#### Task 14

The Ad Hoc Working Group to develop guidelines and proposals for the establishment of national incentive schemes for indigenous and local communities to preserve and maintain their traditional knowledge, innovations and practices and for the application of such knowledge, innovations and practices in national strategies and programmes for the conservation and sustainable use of biological diversity.



## POSTPONED TASKS, PENDING COMPLETION OF CURRENT TASKS, AND IN LIGHT OF ONGOING DEVELOPMENTS

### ELEMENT 7

Legal elements

#### Task 11

The Working Group to assess existing subnational, as appropriate, national and international instruments, particularly intellectual property rights instruments, that may have implications on the protection of the knowledge, innovations and practices of indigenous and local communities with a view to identifying synergies between these instruments and the objectives of Article 8(j).

## COMPLETED TASKS

### ELEMENT 5

Exchange and dissemination of information

#### Task 8

Identification of a focal point within the Clearing-House Mechanism [completed: Decision VII/16 G]

#### Task 16

Development of models for codes of ethical conduct for research, access to, use, exchange and management of information concerning traditional knowledge [completed: the Tkarihwaí:eri Code of Ethical Conduct was adopted in Decision X/42]



## COMPLETED TASKS

### ELEMENT 6

Monitoring elements

#### Task 9

Development of guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities [completed: Akwé: Kon Guidelines adopted in Decision VII/16 F]



## POSTPONED TASKS, PENDING COMPLETION OF CURRENT TASKS, AND IN LIGHT OF ONGOING DEVELOPMENTS

### ELEMENT 5

Exchange and dissemination of information

#### Task 17

The Executive Secretary to develop, in cooperation with governments and indigenous and local communities, methods and criteria to assist in assessing the implementation of Article 8(j) and related provisions at the international, regional, national and local levels, and reporting of such in national reports in conformity with Article 26.

Source: Decisions V/16 & 10, Decision X/43



Convention on Biological Diversity

# CBD Milestones relating to Indigenous Peoples

- **Akwé: Kon Voluntary Guidelines** for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities (1998)
- **Tkarihwaí:ri Code of Ethical Conduct** to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biodiversity (2010)
- In 2010, the COP adopted a revised and updated Strategic Plan for Biodiversity, which included the Aichi Biodiversity Targets for the 2011–2020 period. Of particular relevance to indigenous peoples is **Aichi Target 18**.

# Nagoya Protocol

## Article 6.2.

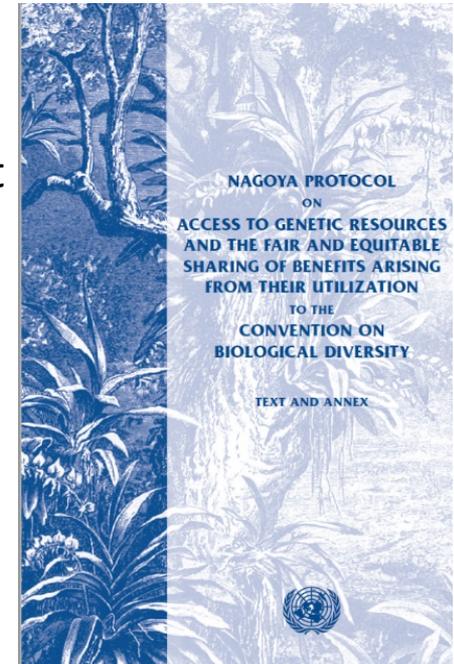
In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to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

## Article 7

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.

## Article 12.1.

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.



# Concerns of Indigenous Peoples regarding the CBD



Fotos : Pablo Lasansky, IWGIA; Christian Erni, IWGIA; Sabine Schielmann, INFOE; Glenn Switkes, International Rivers; Anthony Laymunda, FEMAPPO.

Despite of progress in terms of participation and recognition of traditional knowledge as well as, to some extent, associated rights, there remain significant concerns!

The concept of 'traditional' ('embodying traditional lifestyles') gives the impression that Article 8(j) only applies to indigenous peoples who are isolated and living in a never changing present.

The CBD subjects all provisions to state sovereignty, national circumstances and domestic law.

FPIC is granted for access to traditional knowledge and only to a very limited extent for the access to the biological, natural or genetic resources on indigenous land to which this knowledge is associated to.

# Mo'otz Kuxtal Voluntary Guidelines

CBD COP 13 adopted the **Mo'otz Kuxtal Voluntary Guidelines**, for the development of mechanisms, legislation or other appropriate initiatives to ensure the “prior and informed consent”, “**free, prior and informed consent**” or “approval and involvement”, depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge.

# Community Protocols and FPIC

- **Community protocols (CPs)** are charters of rules and responsibilities in which communities set out their customary rights to natural resources and land, as recognized in customary, national and international laws.
- **Free, prior informed consent (FPIC)** involves processes in which communities decide whether or not to allow projects affecting their land or resources to go ahead, and on what terms.

IIED, 2012



65  
participatory learning and action

Biodiversity and culture:  
exploring community protocols,  
rights and consent



# Biocultural Community Protocols



Potato Park biocultural community protocol (BCP) for equitable benefit-sharing: an innovative action-research approach, which was led and shaped by indigenous Quechua communities in Peru. It was a process of empowerment for the communities and their institutions, enabling effective control of decision-making, particularly in defining the content of the BCP.



IIED 2012, p. 91

*Argumedo, Alejandro und Tammy Stenner, 2008, Association ANDES, Conserving Indigenous Biocultural Heritage in Peru, IIED.*

# Vielen Dank!



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[www.indigeneswissenundklima.blog](http://www.indigeneswissenundklima.blog)



© Foto: Sabine Schielmann, Parque de la Papa, Peru

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- Information on Article 8(j) and its work programme from :  
<https://www.cbd.int/traditional/pow.shtml>
- Participatory Learning and Action 65, © IIED, 2012: Community protocols and free, prior informed consent – overview and lessons learnt (2012) by Krystyna Swiderska with Angela Milligan, Kanchi Kohli, Holly Shrumm, Harry Jonas, Wim Hiemstra and María Julia Oliva. International Institute for Environment and Development (IIED). <https://www.iied.org/pla-65-biodiversity-culture-exploring-community-protocols-rights-consent>
- IPMG - Indigenous Peoples Major Group (2015): Policy Brief on Sustainable Development Goals and Post-2015 Development Agenda: A Working Draft.
- SCBD (2010): Forest Biodiversity: Earth's Living Treasure, Montreal: Secretariat of the Convention on Biological Diversity.
- Sophie Chao (2012): FOREST PEOPLES: Numbers across the world. Forest Peoples Programme – FPP
- UN E/C.19/2019/5: Traditional knowledge: generation, transmission and protection
- CBD/COP/DEC/XIII/18, 17 December 2016: DECISION ADOPTED BY THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY XIII/18. Article 8(j) and related provisions: MO'OTZ KUXTAL VOLUNTARY GUIDELINES

# Links and Information

## *Biodiversity and Biopiracy*

- <http://www.fao.org/biodiversity/cross-sectoral-issues/indigenous-people/en/>
- <http://www.dgvn.de/themenschwerpunkte/biodiversitaet/>
- <http://indigenousbiodiv.org/>

## *UN Agenda 2030 (SDGs):*

- <https://sustainabledevelopment.un.org/sdgs>
- <https://sustainabledevelopment.un.org/sdg15>
- <http://www.iwgia.org/environment-and-development/sustainable-development-goals-and-post-2015>

## *Sustainable Development and Indigenous Peoples:*

- <https://sustainabledevelopment.un.org/majorgroups/indigenouspeoples>
- <http://www.dgvn.de/themenschwerpunkte/indigene-voelker/>
- <https://www.un.org/development/desa/indigenouspeoples/focus-areas/post-2015-agenda/the-sustainable-development-goals-sdgs-and-indigenous/recommendations.html>
- **Indigenous Navigator**, Internet Plattform zum Monitoring der Umsetzung indigener Rechte, <http://www.indigenousnavigator.org>
- **UN Human Rights Office of the High Commissioner**, Human Rights and the 2030 Agenda for Sustainable Development, <http://www.ohchr.org/EN/Issues/MDG/Pages/The2030Agenda.aspx>

# Links and Information

## *Human rights approach*

- **Bundeministerium für wirtschaftliche Zusammenarbeit und Entwicklung, “Rechte indigener Völker”**  
[http://www.bmz.de/de/themen/allgemeine\\_menschenrechte/hintergrund/blickpunkt\\_indigene.html](http://www.bmz.de/de/themen/allgemeine_menschenrechte/hintergrund/blickpunkt_indigene.html)

## *Indigenous Organisations*

- **International Indian Treaty Council**, <http://www.iitc.org/>
- **IWGIA**, International Work Group for Indigenous Affairs, <http://www.iwgia.org/>
- **TEBTEBBA**, Indigenous Peoples’ International Centre for Policy Research and Education, <http://www.iwgia.org/>
- **LandMark, Global Platform of Indigenous and Community Lands**, <http://www.landmarkmap.org>

## *Traditional Knowledge:*

- <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indigenous-knowledge-key-biodiversity-conservation>
- [http://www.ipcb.org/publications/other\\_art/globalization.html](http://www.ipcb.org/publications/other_art/globalization.html)

## *UN Special Rapporteur on Indigenous Rights*

- **Vitoria Tauli-Corpuz, UN Sonderberichterstatterin für die Rechte indigener Völker**,  
<http://unsr.vtaulicorpuz.org>