

A Monumental Moment

At the Conference of the Parties to the UN Convention on Biological Diversity, a particular focus was on the rights of indigenous peoples and local communities

Two weeks of negotiations for the sixteenth Conference of the Parties (COP16) to the United Nations Convention on Biological Diversity (CBD) focused in large part on how to implement and finance the Kunming-Montreal Global Biodiversity Framework (KMGBF), adopted two years ago, as well as how to measure progress. Held from October 21 to November 1, 2024, in Cali, Colombia, it was the biggest CBD COP to date.

The fortnight saw a frenzied move to adopt several decisions that would set the stage for the effective implementation of the KMGBF, adopted at the previous CBD COP. ‘Peace with Nature’ was the official tagline for COP16. Some of the key highlights were the finalization of a monitoring framework for GBF; assessment of the status of national-level implementation through the National Biodiversity Strategies and Action Plans (NBSAPs); securing and bolstering of adequate means of implementation, including resource mobilization, financial mechanisms, capacity building, technical and scientific co-operation, and access and transfer of technology; and the finalization of progress on access and benefit sharing of—in particular, but not limited to—the digital sequence information on genetic resources.

However, one of the pivotal moments of COP16 was the establishment of a permanent Subsidiary Body on Article 8(j) and related provisions for the full and effective participation of indigenous peoples and local communities in the work undertaken under the convention. A new Programme of Work (PoW) was also adopted, which now, with the New Subsidiary Body, would be instrumental

in ensuring that traditional knowledge, practices, innovations and indigenous peoples and local communities are recognized, respected and included in the implementation through their full and effective participation, subjected to free prior informed consent (FPIC).

Article 8(j), a history

Highlighting the recognition of the traditional knowledge that indigenous peoples and local communities

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particularly hold towards the access and sustainable use of biodiversity, Article 8 of the Convention focuses on in-situ Conservation. Its section J states the following: “(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”.

The first decision to implement Article 8(j) was taken at COP3 in 1996 in Buenos Aires, Argentina. This was followed by establishing the Ad-Hoc

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In a historic decision, COP16 establishes a Subsidiary Body on Article 8(j). Indigenous peoples and local communities continue to fight and protect their territories while facing violence and a lack of visibility worldwide

Open-Ended Inter-sessional Working Group on Article 8(j) at COP4, held in Bratislava. The subsequent COP adopted the PoW for the implementation of Article 8(j), which will operationalize its implementation and related provisions.

Between 2000 and 2024, the Working Group on Article 8(j) met twelve times to review the progress on the implementation of the PoW, and to develop various guidelines, including the Akwe: Kon Voluntary Guidelines on the conduct of cultural, environmental and social-impact assessments, the Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, the Mo’otz Kuxtal Voluntary Guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure “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, among others.

COP16 Deliberations on Article 8(j)

In 2023, the 12th Working Group (WG8j-12) in Geneva developed five recommendations, some of which were the key focus for deliberations within COP16, under Agenda Item 14 on Implementation of Article 8(j). These included the development of a new PoW and Institutional Arrangement; in-depth dialogue on the role of languages in the inter-generational transmission of traditional knowledge, innovations and practices; the updated knowledge management component of the KMGBF; review and update of the four adopted traditional knowledge indicators; and the recommendations from the Permanent Forum on Indigenous Issues pertaining to CBD.

Through multiple Contact Groups spread out over the two weeks, negotiations spanned prioritizing the various activities underlined in the new PoW, institutional arrangements and a new text proposal from Colombia and Brazil, backed by the Group of Latin America and the Caribbean (GRULAC), which asked for the recognition of people of African descent with traditional lifestyles in the conservation and sustainable use of biodiversity in the implementation

of Article 8(j) as well as of the GBF through NBSAPs.

The new PoW has nine guiding principles and eight elements, which will enable the realization of Article 8(j) implementation. Every element has various tasks under it that parties to the convention will implement and will be subject to revision and updating after 2030. These eight elements are:

1. Conservation and restoration
2. Sustainable use of biological diversity
3. Sharing of benefits from the utilization of genetic resources and digital sequence information on genetic resources, as well as traditional knowledge associated with genetic resources
4. Knowledge and culture
5. Strengthening implementation and monitoring progress
6. Full and effective participation of indigenous peoples and local communities
7. Human rights-based approach
8. Access, including direct access, to funding for indigenous peoples and local communities for the conservation, restoration and sustainable use of biodiversity


Within the institutional arrangements, which proposed the establishment of a Permanent Subsidiary Body (SB_{8j}), the discussion was informed by budget estimates for possible scenarios concerning the institutional arrangements on Article 8(j) and related provisions carried out by the Secretariat of the CBD. These estimates show that establishing a new Subsidiary Body would, in principle, have the same cost implications as the existing WG_{8j}.

When it was finally adopted in the plenary on the late night of November 1, the final text established the SB_{8j} with a mandate to advise the COP, other Subsidiary Bodies (including the Subsidiary Body on Scientific, Technical and Technological Advice and the Subsidiary Body on Implementation) and the COP/MOP to the Cartagena Protocol on Biosafety and the Nagoya Protocol on Access to

Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their utilization. It also mandated the SB_{8j} to finalize the modus operandi, which would be considered during COP17. Until then, the modus operandi of the Subsidiary Body on Scientific, Technical and Technological Advice and the established procedures and practices applied under WG_{8j} will prevail.

In the final plenary of COP16, five decisions under this agenda item were finalized, which included the adoption of the new PoW, the establishment of the new subsidiary body through institutional arrangements for the full and effective participation of indigenous peoples and local communities in work undertaken under the CBD, the role of languages in the inter-generational transmission of traditional knowledge, the role of people of African descent, who embody traditional lifestyles, in the implementation of CBD and the recommendations from the Permanent Forum on Indigenous Issues pertaining to CBD.

Reflections Post-COP16

While there is definite positive progress in recognizing indigenous peoples and local communities in a global advocacy context, at national and sub-national levels the path ahead is long. Indigenous peoples and local communities continue to fight and protect their territories while facing violence and a lack of visibility worldwide. The first step is the recognition of rights, and their incorporation in crucial decision-making processes, including through national legislation, and establishing a National Focal Point for the Subsidiary Body on Article 8(j). 

For more

Women4Biodiversity

<https://www.women4biodiversity.org/>

Decision III/14 on Implementation of Article 8(j)

<https://www.cbd.int/decision/cop/default.shtml?id=7110>

Budget Estimates

<https://www.cbd.int/doc/c/ced9/1504/c2717fcaabbc6e18396758ff/cop-16-inf-36-en.pdf>

Decision 14/17

<https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-17-en.pdf>