



## **POSSIBLE INSTITUTIONAL ARRANGEMENTS AND THEIR MODUS OPERANDI FOR THE IMPLEMENTATION OF ARTICLE 8(J) AND OTHER PROVISIONS**

The Government of Canada is committed to supporting the full and effective participation of Indigenous Peoples in the implementation of the Convention on Biological Diversity (CBD). This is in line with the *United Nations Declaration on the Rights of Indigenous Peoples*, the [Alta Outcome Document](#), the [Outcome Document](#) of the World Conference of Indigenous Peoples, and the [Quito Outcome Document](#). Canada further recognizes that, in its quarter century of existence, the Ad Hoc Working Group on Article 8(j) and related provisions (WG8J) has made strong contributions to operationalizing the CBD, including via the adoption of the Glossary of relevant key terms and concepts within the context of Article 8(j) and related provisions in [decision 14/13](#).

All Parties to the CBD have agreed under article 8(j), as far as possible and subject to their national legislation, “to 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”. To date, the WG8J represents the main method used by the CBD to achieve this goal. The upcoming twelfth meeting of the WG8J and the agenda item on the future of the WG8J represents an opportunity to renew this commitment to article 8(j) and recognize the importance and value of Indigenous Peoples in the CBD and the relationship and unique perspective they maintain vis-a-vis biodiversity and its conservation and sustainable use. This renewed commitment is of particular importance in order to support the implementation of the Kunming-Montreal Global Biodiversity Framework (the Framework) that has made strong commitments and advances towards acknowledging the contributions of Indigenous Peoples to achieving CBD objectives. Canada therefore recognizes that meaningful implementation of the Framework will necessarily require enhanced participation of Indigenous Peoples and also increase the Working Group’s workload.

Canada understands that there are three main options on the table in terms of institutional arrangements for the future of the WG8J:

- (a) Establishing a subsidiary body on Article 8(j) and related provisions with a mandate to provide advice to the Conference of the Parties, other subsidiary bodies, and, subject to their approval, the Conference of the Parties serving as the meeting of the Parties to the respective Protocols, on matters that are relevant to indigenous peoples and local communities and are within the scope of the Convention;
- (b) Continuing the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions with a revised mandate within the framework of the Kunming-Montreal Global Biodiversity Framework; and
- (c) Applying the enhanced participation mechanisms used by the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions for the participation of representatives of indigenous peoples and local communities, as appropriate, when addressing matters of direct relevance to indigenous peoples and local communities in the



subsidiary bodies, to ensure their effective participation and to fully integrate them into the work of the Convention.

Canada is of the view that there is a strong rationale for option (a) the establishment of a permanent subsidiary body in combination with option (c) further enhancing the participation of Indigenous Peoples in relevant work of the other subsidiary bodies in order to facilitate the mainstreaming of Indigenous views and input across all areas of work of the CBD. Canada's position on this issue is centered on the need for an enhanced status for Indigenous Peoples to enable enhanced participation in all venues Indigenous Peoples judge to affect their interests. Indeed, enhanced participation (option c) within the existing subsidiary bodies would be insufficient as a stand-alone action as neither the Subsidiary Body on Scientific, Technical and Technological Advice nor the Subsidiary Body on Implementation has the participatory expertise or core mandate to address the central issue of Article 8(j) and its related provisions. Similarly, the creation of a stand-alone permanent subsidiary body (option a) alone would limit enhanced participation to one body risks hindering progress on enhanced participation in other bodies of the CBD, and integrating Indigenous Peoples' perspectives into the rest of the work of the CBD.

Canada would like to share the below key considerations and questions for both options (a) and (c) to help inform the work of the Ad Hoc Technical Expert Group on Article 8(j) as well as the negotiations of WG8J-12.

### **Option A - Establishing a permanent subsidiary body**

Many matters of the CBD are relevant to Indigenous Peoples and would benefit from their ongoing participation and expert advice in Convention processes through the establishment of a subsidiary body. The CBD needs a permanent body that provides a forum for Indigenous Peoples to take on issues that are of particular concern to them given their unique and important perspectives on the CBD's work. The formalization of a subsidiary body with enhanced participation for Indigenous Peoples operationalizes an already existing right: Indigenous Peoples' right to self-determination has been affirmed and reaffirmed continually by the United Nations General Assembly and is defined in common article 1 of the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, and in the *UN Declaration on the Rights of Indigenous Peoples*.

#### Mandate of a new, permanent body

The new permanent body could be mandated to provide advice to the COP and other CBD bodies, and subject to their approval, the COP serving as the meeting of the Parties to the respective Protocols, on matters that are relevant to Indigenous Peoples and are within the scope of the Convention. While a new permanent body could continue addressing specific issues and gaps of relevance to Indigenous Peoples and the Convention, it could also assume a mandate to provide advice to the COP, the SBI and SBSTTA on issues related to Indigenous Peoples. This could include providing advice from the perspective of Indigenous Peoples on draft decisions submitted to the COP by SBSTTA and SBI. As such, the new body could have both an advisory



role vis-à-vis the work of SBSTTA and SBI as well as a mandate for providing advice on issues of interest to Indigenous Peoples not covered by SBSTTA or SBI.

#### Objective of a new, permanent body

The overall objective of the new permanent body could be to ensure that CBD decisions benefit from the perspective and experiences of Indigenous Peoples, and in this way contribute to the respect, preservation and maintenance of the knowledge, innovations and practices of Indigenous Peoples relevant for the conservation and sustainable use of biological diversity and promote their wider application.

#### Functions and roles of a new, permanent body

The new permanent body could have two roles: (a) to provide advice to Parties on the perspectives of Indigenous Peoples on relevant draft COP decisions developed by SBSTTA and SBI ; (b) to provide advice to Parties and other organizations, through the COP, on how they could more effectively implement Article 8(j), including, inter alia: guidance to Parties, identification of policy and implementation gaps, reviewing existing processes and initiatives, amongst other areas. The CBD secretariat could support and facilitates the work of the permanent body in the same way as it does for the other subsidiary bodies.

#### Governance and participation for the permanent body

The possible governance modality of a new permanent body is one of the elements that would require extensive consultation within the CBD community. The “enhanced participation” modalities currently used under the WG8(j) would need to be retained at the least, with Indigenous representation on a Bureau, an Indigenous co-chair of the Body, and prioritize the ability of Indigenous Peoples to intervene. In addition, if it is agreed that the role of the new permanent body is an advisory one, it could be proposed that Indigenous Peoples have a certain number of seats, with the responsibility to represent the views of the broader Indigenous community and the ability to propose language to be considered in the development of the new body’s advice. The COP would retain its role as the ultimate decision-making body at the CBD.

In terms of accreditation of Indigenous representations, the accreditation body or mechanism must be Indigenous-led with members that are self-selected in accordance with their own procedures. The body/mechanism should only determine the eligibility of Indigenous Peoples’ representative institutions for enhanced participation, rather than the status of any group as Indigenous Peoples or not. Canada supports the creation of this status strictly for Indigenous Peoples’ representative institutions, and not for individual representatives, as Indigenous Peoples are peoples with a right to self-determination as defined in common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and Article 3 of the UN.

#### Questions

1. Canada recognizes that the establishment of a permanent subsidiary body on Article 8(j) will require purposeful, targeted, sustained funding for the participation of Indigenous



Peoples in this work, and capacity building, beyond what is currently available to the Ad Hoc Working Group. How would a potential subsidiary body on Article 8(j) differ from the Working Group in terms of modalities of participation, capacity-building, and financial support?

2. Canada recognizes that there is an increasing push across international fora such as the UNFCCC, the Human Rights Council, and the Permanent Forum on Indigenous Issues, to not conflate references to “Indigenous Peoples” with “local communities”. Canada recognizes that, as peoples, Indigenous Peoples have particular rights enshrined in human rights treaties and in the UN Declaration. Will consideration be given to this issue in the context of the future institutional arrangements for the WG8J?
3. What can be learned from the processes adopted under other fora? For instance, the Local Communities and Indigenous Peoples Platform (the Platform) was established by the Paris Agreement to strengthen the knowledge, technologies, practices, and efforts of local communities and Indigenous Peoples related to addressing and responding to climate change, to facilitate the exchange of experience and the sharing of best practices and lessons learned on mitigation and adaptation in a holistic and integrated manner and to enhance the engagement of local communities and Indigenous Peoples in the United Nations Framework Convention on Climate Change (UNFCCC) process. The UNFCCC Secretariat supports and facilitates the work of the body. The Facilitative Working Group (FWG) is currently unique within the United Nations system as a constituted body exercising a model of shared governance, with equal representation of Parties and Indigenous Peoples, both in membership and decision-making. Indigenous partners have stressed that the existence of the Platform and its FWG are not sufficient in terms of ensuring effective and meaningful engagement of Indigenous Peoples in the UNFCCC process.

### **Option C- Enhanced participation mechanisms in the subsidiary bodies**

Canada would also like to emphasise the importance of ensuring that the contributions of Indigenous Peoples are not siloed and separate from the rest of the CBD. Should a permanent subsidiary body be established, measures should be put in place to ensure discussions surrounding knowledge, innovation, and practices of Indigenous Peoples are not limited to the subsidiary body, and that there are enhanced opportunities for Indigenous Peoples to effectively participate and provide advice in the work of other subsidiary bodies and programmes of significance. This is of particular importance because limiting enhanced participation to one body risks hindering progress on enhanced participation in other bodies of the CBD, and integrating Indigenous Peoples’ perspectives into the rest of the work of the CBD. Canada would further stress that a body does not have to have the word “Indigenous” in it to be relevant to Indigenous Peoples, and that Indigenous Peoples should have access to all venues that they judge to affect their interests.



Enhanced modalities (that could be put in place *in addition* to a body on Article 8(J)) could include:

- Rotating chair lists between Indigenous Peoples' representative institutions and Parties, prioritizing chairs that are most relevant to the topic at hand.
- Working with the International Indigenous Forum on Biodiversity (IIFB) ahead of subsidiary body meetings to identify which agenda items are of particular interest to Indigenous Peoples to ensure that enhanced modalities can be put in place for the relevant agenda items.
- A separate chair list for Indigenous Peoples.
- Distinction between Indigenous Peoples and other organizations/groups with respect to modalities on oral statements and written submissions.
- Prioritization of Indigenous Peoples over other organizations/groups with respect to seating and order of speaking.
- A reverse list for certain agenda item, where the order of speakers prioritizes Indigenous Peoples then Parties.