



CONVENTION ON BIOLOGICAL DIVERSITY

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AD HOC OPEN-ENDED INTER-SESSIONAL WORKING GROUP ON ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY

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Item 3.2 of the provisional agenda*

REVIEW OF PROGRESS IN THE IMPLEMENTATION OF THE PRIORITY TASKS OF THE PROGRAMME OF WORK ON ARTICLE 8(j) AND RELATED PROVISIONS

Note by the Executive Secretary

I. INTRODUCTION

1. In paragraph 9 of its decision V/16, the Conference of the Parties decided to extend the mandate of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions to review progress in the implementation of the priority tasks of its programme of work according to reports provided by the Executive Secretary and the Parties to the meeting of the Working Group and recommend further action on the basis of this review.

2. In the same paragraph, the Working Group was also directed to explore further ways for increased participation by indigenous and local communities in the thematic programmes of work of the Convention on Biological Diversity. The Working Group should report to the Conference of the Parties at its sixth meeting.

3. In paragraph 1 of decision III/14, the Conference of the Parties requested those Parties that have not yet done so to develop national legislation and corresponding strategies for the implementation of Article 8(j) in consultation particularly with representatives of their indigenous and local communities. In paragraph 2 of that decision, Parties were urged to supply information about the implementation of Article 8(j) and related articles, for example, national legislation and administrative and incentive measures, and to include such information in national reports. As part of task 5 of the programme of work on Article 8(j), Parties were also to reflect in their national reports the current state of implementation of Article 8(j).

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The matter of national reporting in relation to the implementation of Article 8(j) and the programme of work, however, will be fully addressed by task 17 in the second phase of the programme of work.

4. The present note has been prepared on the basis of the information submitted by Parties in their national reports. Approximately two thirds of the 182 Parties to the Convention had submitted their first national reports by the end of September 2001. Of these, 87 countries (or 75 per cent of the national reports submitted) had provided information regarding the implementation of Article 8(j) and related provisions. In their reports, Parties had provided information regarding whether national legislation to implement Article 8(j) had been established or proposed; and whether other measures had been taken, or were proposed, to provide protection for traditional knowledge, innovations and practices; the wider application of traditional knowledge, and for the equitable sharing of benefits arising from the use of traditional knowledge and associated genetic resources.

5. With regard to the second national reports, of the 182 Parties, 58 reports have been received, that is, about one third of the Parties have responded. Of the reports received, in response to the general question (number 103) regarding the relative priority afforded to the implementation of Article 8(j) and the associated decisions by Conference of the Parties, 25 Parties had indicated a high priority; 17 medium; and 13 a low priority. The number indicating a low priority also reflects the number of Parties for whom the implementation of Article 8(j) is not relevant to their national circumstances.

6. In analysing responses to the 22 questions that address the implementation of Article 8(j) and related provisions, the relevant decisions of the Conference of the Parties and the programme of work, some clear trends have emerged. From the 58 reports, it is evident that only a small number of Parties (about four) have consistently given positive responses to the 22 questions, indicating that they have effectively addressed the requirements. On the other hand, about a third of the responses indicate that no measures have been taken to address the matters raised in the questions. For example, in response to question 112—Has your country reviewed the programme of work specified in the annex to decision V/16 and identified how to implement those tasks appropriate to national circumstances?—21 Parties responded negatively, while three Parties had reviewed the programme of work. However, 28 Parties had indicated that the programme of work was under review. In response to question 118—Has your country provided case-studies on methods and approaches concerning the preservation and sharing of traditional knowledge?—only 11 Parties had submitted case-studies. Generally, for most of the questions, a little more than half the reports indicated that some actions were either being taken or contemplated to address the implementation of Article 8(j).

7. Thus, while only a small number of Parties had taken the actions required to fully implement Article 8(j), a significant number of Parties nevertheless had started the process. Noting that many of the tasks of the programme of work concerned the development of guidelines and/or principles, many Parties indicated that they were waiting for these to be finalized in order for them to fully develop their own programmes for the implementation of Article 8(j).

8. In the context of this note, attention should be drawn to some of the responses. With regard to question 116, concerning the incorporation of women and women's organizations in the activities undertaken to implement the programme of work, 28 Parties indicated that they had fully done so, while 26 had not. In response to question 115 concerning the provision of appropriate financial support for the implementation of the programme of work, only three Parties had done so to a significant extent, while 14 had to a limited extent. A similar response was given to question 124 regarding the identification of resources for funding the activities identified in decision V/16. In response to question 122, regarding indigenous and local community participation in official delegations to meetings held under the Convention, only 11 Parties responded affirmatively. These response indicate that much more still needs to be done in relation to increasing the participation of women in the work of the Convention; issues of funding need to

be further addressed; and the levels of indigenous and local community participation in country delegations could be improved.

9. Information was also provided in many instances regarding customary usage of biological resources in response to the requirements of Article 10(c); and with regard to measures taken, or proposed, to address other cross-cutting areas which impinge on the implementation of Article 8(j) and its related provisions, namely, in the areas of monitoring and assessment (Article 7); incentive measures (Article 11); public education and awareness (Article 13); impact assessment (Article 14); and access to genetic resources (Article 15) - particularly in relation to measures regarding prior informed consent, mutually agreed terms and equitable sharing of benefits. Many Parties also provided information on measures taken, or proposed, for capacity building to assist measures and initiatives to implement Article 8(j) and to address the aforementioned cross-cutting areas in relation to the needs and interests of indigenous and local communities with regard to the conservation and sustainable use of biological diversity.

10. In many instances, the national reports also included national biodiversity strategies and action plans, and these also included information on the above areas.

II. PROGRESS IN THE IMPLEMENTATION OF THE PRIORITY TASKS

11. In the implementation of the programme of work, the Conference of the Parties decided to give priority to tasks 1, 2, 4, 5, 8, 9 and 11, as well as tasks 7 and 12. These tasks comprise the first phase of the programme of work.

12. The Conference of the Parties directed that tasks 7 and 12 should be initiated following the completion of tasks 5, 9 and 11. Documents on each of these three tasks have been prepared by the Executive Secretary for the consideration of the Working Group on Article 8(j) at its second meeting. Tasks 7 and 12 will therefore not be initiated until the Working Group has completed its deliberations and forwarded its recommendations to the sixth meeting of the Conference of the Parties. Progress in the implementation of tasks 7 and 12 is therefore not considered in the present note.

13. It should be noted, however, that task 7 requires the Working Group on Article 8(j) 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. These matters were addressed by the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing, which met in Bonn, Germany, from 22 to 26 October 2001 and, among other things, developed for consideration by the Conference of the Parties at its sixth meeting the draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising Out of Their Utilization. The Working Group also adopted recommendations on other approaches, including the development of an action plan for capacity-building, and the role of intellectual property rights in the implementation of access and benefit-sharing arrangements. As requested by the Working Group on Access and Benefit-sharing, in paragraph 11 of its recommendation 3, the report of the Bonn meeting (UNEP/CBD/COP/6/6), together with the reports of the two meetings of the Panel of Experts on Access and Benefit-sharing will be transmitted \ to the Working Group on Article 8(j).

A. *Task 1: Strengthen indigenous and local community capacity to be involved in decision-making related to the use of their traditional knowledge*

14. Many Parties and Governments have already undertaken many of the capacity-building measures described in section II of the note by the Executive Secretary on participatory mechanisms for indigenous and local communities (UNEP/CBD/WG8J/2/4) 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.

15. Some of these measures, particularly those regarding prior informed consent or approval of traditional knowledge holders, have been incorporated in national legislation and/or regulations for the conservation and sustainable use of biological diversity as part of regimes governing access to genetic resources, or as policy with respect to, for example, environmental impact assessments. For example, Brazil, Colombia, Costa Rica, Panama and the Philippines, have indicated that they have in place measures requiring evidence of prior informed consent of indigenous and local communities when access to genetic resources and associated traditional knowledge are being sought. Other measures, such as the establishment of registers of traditional knowledge, are being undertaken (or proposed) as part of *sui generis* mechanisms for the protection of traditional knowledge, as in India and in the draft legislation proposed by Namibia and Peru. In a number of instances, as with the Dene people and the Inuit community of Nunavik (both in Canada), indigenous and local communities have established their own traditional knowledge registers.

B. *Task 2: Develop and/or strengthen measures to promote effective indigenous and local community participation in decision-making, policy planning and development and implementation of the conservation and sustainable use of biological diversity at all levels*

16. As reported in the note by the Executive Secretary on participatory mechanisms for indigenous and local communities (UNEP/CBD/WG8J/2/4), in relation to task 2, a number of measures have been introduced to promote effective indigenous and local community involvement in decision-making, policy-planning and implementation of the conservation and sustainable use of biological diversity at international, national, subnational and local levels.

17. In addition to the measures taken to ensure indigenous and local community participation in the meetings and work of the Convention on Biological Diversity, other environment-related conventions and processes are either considering or have instituted measures. These include the adoption by the Conference of the Parties to the Ramsar Convention on Wetlands of guidelines for establishing and strengthening local communities' and indigenous peoples' participation in the management of wetlands.

18. In addition, the Bureau of the World Heritage Committee of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) at its twenty-fifth session, considered a proposal to establish a World Heritage Indigenous Peoples Council of Experts (WHIPCOE) ^{1/} and has established a working group to further develop the WHIPCOE proposal and report on progress to the twenty-fifth session of the World Heritage Committee to be held in Finland in December 2001. The Convention on Biological Diversity has been invited to participate in the meeting of the Working Group.

^{1/} See document WHC-2001/CONF.205/WEB.3 of 14 June 2001.

19. The World Intellectual Property Organization (WIPO) and the United Nations Conference on Trade and Development (UNCTAD) have both undertaken activities in the last couple of years, which have included the involvement of representatives of indigenous and local communities. Examples of these activities include the WIPO roundtables and fact-finding missions on intellectual property and traditional knowledge and the UNCTAD Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices, which took place late in 2000.

20. Indigenous and local communities may soon be able to provide input into the decision-making processes of the Economic and Social Council of the United Nations through the Permanent Forum on Indigenous Issues. The Permanent Forum is mandated to provide advice to the Economic and Social Council on a range of matters, including the environment.

21. The need to involve representatives of indigenous and local communities in decision-making processes at the regional and subregional levels has also been noted in such documents as the draft Framework Agreement on Access to Biological and Genetic Resources, developed by the Association of South East Asian Nations (ASEAN), the African model legislation for the protection of the rights of local communities, farmers and breeders, and for the regulation of access to biological resources, prepared by the Organization of African Unity (OAU), and Decision 391 of the Andean Pact Community regarding a Common Regime of Access to Genetic Resources. The OAU model law, for example, as part of institutional arrangements, contains a provision for the establishment of a National Inter-Sectoral Co-ordination Body “at the highest level” (part VII, article 59). The body is to include representation from local community organizations, and its functions include, “ensur[ing] that the rights of local communities including farming communities are protected, with due regard for gender equity, the activities relating to the accessing, collection or research on biological resources community innovations, practices, knowledge and technologies are conducted, including verifying that the requirements of prior informed consent by the local communities are complied with” (article 60 (ii)).

22. At the national level, a number of Parties have put in place legislative measures and policies regarding the involvement and participation of indigenous and local communities in their decision-making processes. For example, the Philippines, Executive Order No. 247 of 1995, Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, Their By-products and Derivatives, for Scientific and Commercial Purposes, and for Other Purposes, establishes the Inter-Agency Committee on Biological and Genetic Resources under Section 6. The Committee includes a “representatives from a People’s Organization with membership consisting of indigenous cultural communities and/or their organizations to be selected by the People’s Organization community through a process designed by themselves and through the endorsement of the Philippines Council for Sustainable Development.” One of the functions of the Inter-Agency Committee under section 7(e) is to “Ensure that the rights of the indigenous and local communities wherein the collection or researches are being conducted are protected, including verification that the consent requirements in sections 3 and 4 are complied with...”. In Australia, section 505A of the recently enacted Environment Protection and Biodiversity Conservation Act 1999 (Cwth) establishes the Indigenous Advisory Committee to advise the Minister on the operation of the Act, and indigenous peoples are to be represented on the Biological Diversity Advisory Committee established by section 504.

23. A number of indigenous and local communities have established community development plans, which also contain objectives and strategies for the management of the biodiversity of their territories. A number of indigenous communities in Australia, Canada, New Zealand, and the United States of America have indicated that they have such plans in place. Those communities that have not already done so are being urged to formulate community development plans while Parties, Governments and international and

regional development agencies are urged to undertake capacity-building initiatives to assist communities in this endeavour.

C. Task 4: Develop mechanisms to promote the full participation of indigenous and local communities, with specific provisions for the participation of women, in all elements of the programme of work

24. This task is addressed in detail in section V of the note by the Executive Secretary on participatory mechanisms for indigenous and local communities (UNEP/CBD/WG8J/2/4). A number of strategies and actions are outlined to promote the full participation of indigenous and local communities, and particularly that of women in the programme of work. While many mechanisms to promote the full participation and involvement of indigenous and local communities in these measures and activities have been widely reported by Parties, few have identified specific measures and activities to enhance the participation of women, exceptions being India, Panama and the Republic of Korea.

D. Task 5: Preparation of outline of composite report on the status and trends regarding indigenous and local community traditional knowledge

25. While a proposal for the outline of the composite report, plan and time table for its completion has been submitted for the consideration of the Working Group on Article 8(j) (UNEP/CBD/WG8J/2/5), it is noted that a considerable amount of information relevant to the report already exists in national data-bases, archives, public libraries and museums, universities and research institutions.

26. Human cultural diversity encompasses over 6,000 linguistic groups, the vast majority of whom comprise the indigenous and local communities embodying traditional lifestyles referred to in Article 8(j). A number of recent global surveys suggest that traditional knowledge is disappearing at an accelerating rate, and that much of it will be lost within a generation. Its state of maintenance, however, varies considerably both within countries and between countries, as does the state of its documentation. In developed countries, such as the United States, Canada, Australia, New Zealand, many indigenous communities maintain traditional lifestyles, and their traditional knowledge is often thoroughly documented and recorded as a result of community-based programmes, or as a result of scholarly research. In these countries, traditional knowledge is officially recognized and is incorporated or taken into consideration with both the consent and participation of the knowledge-holders in biological diversity-related activities, such as management of protected areas, impact assessments, monitoring, and species recovery and habitat/ecosystem restoration programmes.

27. In developing countries and countries with economies in transition, the state of maintenance and preservation of traditional knowledge varies considerably. In Asia and Africa, the traditional knowledge, innovations and practices of local farming communities are important contributors to national economies. Projects are now in place in many of these countries, and particularly in India, to record traditional biodiversity-related knowledge. Traditional communities in these countries have in many instances been extensively researched by anthropologists and other academic researchers from developed countries, with the information collected being housed in university departments and libraries, and ethnographic museums in Western Europe and North America. In many cases, this information is quite old and predates independence from colonial rule. The return of particularly biodiversity-related traditional knowledge is to be addressed by task 15 of the second phase of the programme of work on Article 8(j).

28. While national reports and national biodiversity action plans and strategies indicate that many countries are taking steps to preserve, protect and apply traditional knowledge, it is likely that the

traditional knowledge of indigenous and local communities living in the more remote and inaccessible regions (for example, in mountainous and tropical forest areas), whose lifestyles are based primarily on subsistence economies, and whose contributions to national economies are more marginal, is likely to be less well recorded.

E. Task 8: Identification of a focal point within the clearing-house mechanism to liaise with indigenous and local communities

29. A contact point has been identified within the clearing-house mechanism of the Convention on Biological Diversity for indigenous and local communities. The Canadian Government has, as a pilot initiative, contracted two members of the International Indigenous Forum on Biodiversity to review the needs and assessments in Meso-America in regard to the implementation of a communities-based communications network for use among indigenous and local communities, particularly to assist them to undertake national obligations vis-à-vis the Convention. The report proposing an initiative relating to the Meso-America communications network has been completed. The Spanish Government has also carried out a similar study.

F. Task 9: Development of guidelines or recommendations for the conduct on cultural, environmental and social impact assessments for developments proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities

30. A number of countries have indicated that they have established their own policies and/or guidelines for the conduct of impact assessments which take into account the interests of indigenous and local communities as stakeholders where developments are proposed to take place within or adjacent to their traditional territories. Such policies and guidelines indicate that the involvement and participation of affected indigenous and local communities in the whole of the impact assessment process is mandatory. Where development projects are being funded (wholly or partially) by agencies such as the World Bank, Parties are required to adhere to the policies of such institutions where the interest of indigenous and local communities are involved.

31. Policies and guidelines submitted by Parties, international agencies and other relevant organizations, including indigenous and local community organizations, were taken into account in the preparation of the draft guidelines contained in the annex to the note on the subject (UNEP/CBD/WG8J/2/6) prepared by the Executive Secretary for the consideration of the Working Group on Article 8(j) under task 9.

G. Task 11: Assessment of existing instruments, and particularly intellectual property rights instruments, which may have implications for the protection of traditional knowledge

32. To address task 11, the Executive Secretary has prepared a note (UNEP/CBD/WG8J/2/7) on the assessment of the effectiveness of existing subnational, national and international instruments that may have implications on the protection of the knowledge, innovations and practices of indigenous and local communities. In undertaking this assessment it is particularly important to note the work being undertaken by the World Intellectual Property Organization (WIPO) through the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

III. WAYS FOR INCREASING INDIGENOUS AND LOCAL COMMUNITY PARTICIPATION IN THE THEMATIC PROGRAMMES OF WORK OF THE CONVENTION

33. The progress report of the Executive Secretary regarding the integration of the relevant tasks of the programme of work on Article 8(j) and related provisions in the thematic programmes of the Convention (UNEP/CBD/WG8J/2/2) notes that the work programmes established for the different thematic areas all included in their principles, objectives, activities and ways and means, elements that expressly required the participation of indigenous and local communities in the relevant circumstances and the integration of Article 8(j) and related provisions of the Convention on Biological Diversity.

IV. SUGGESTED RECOMMENDATIONS

34. The Ad Hoc Working Group on Article 8(j) may wish to recommend that the Conference of the Parties at its sixth meeting:

(a) *Recalls* paragraph 6 of decision V/19, in which it is recommended that Parties prepare their national reports through a consultative process involving all relevant stakeholders, as appropriate, or by drawing upon information developed through other consultative processes, and requests Parties to ensure that indigenous and local communities are included in the consultative process, particularly in relation to the preparation of those sections of the national report dealing with Article 8(j) and related provisions and the programme of work;

(b) *Requests* the Executive Secretary to prepare a report on progress on the implementation of the programme of work on Article 8(j) and related provisions based on information submitted in national reports, and other relevant information, for the next meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions.

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