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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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PARTICIPATORY MECHANISMS FOR INDIGENOUS AND LOCAL COMMUNITIES

Note by the Executive Secretary

I. INTRODUCTION

1. The present document is intended to assist Parties by providing information relevant to the implementation of tasks 1, 2 and 4 of element 1, concerning participatory mechanisms for indigenous and local communities, of the first phase of the programme of work for the implementation on Article 8(j) and related provisions endorsed by the Conference of the Parties in paragraph 1 of decision V/16.

2. The note addresses tasks 1, 2 and 4 in sections II, III and IV respectively. It is noted that there are a number of strategies common to each task, such as capacity-building and indigenous and local community representation on advisory bodies that can be used to enhance indigenous and local community participation in the work of the Convention. However, these strategies are addressed in terms of the particular focus of each task, namely:

- (a) Task 1: participation in decision-making regarding use of traditional knowledge;
- (b) Task 2: participation at different levels of decision-making, policy planning, development and implementation concerning conservation and sustainable use of biological diversity; and
- (c) Task 4: participation of indigenous and local communities, and especially women, in the programme of work.

3. Section V discusses funding of indigenous and local community participatory mechanisms in relation to these tasks, while section VI contains suggested recommendations.

* UNEP/CBD/WG8J/2/1.

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4. For the purposes of the present note, the term “traditional knowledge” refers to indigenous knowledge and the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity.

II. TASK 1: CAPACITY-BUILDING FOR EFFECTIVE INVOLVEMENT IN DECISION-MAKING REGARDING USE OF TRADITIONAL KNOWLEDGE

5. In task 1, Parties are 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.

6. In the preamble to both decisions III/14 and IV/9, the Conference of the Parties recognized that traditional knowledge should be given the same respect as any other form of knowledge in the implementation of the Convention. This recognition is also incorporated in principle 11 of the ecosystem approach, which states that the ecosystem approach should consider all forms of relevant information, including scientific and indigenous and local knowledge, innovations and practices. In paragraph 1 of decision V/6, the Conference of the Parties recommended the application of the 12 principles of the ecosystem approach as contained in part B of the annex to that decision. And finally, with regard to the general principles guiding the implementation of the programme of work on the implementation of Article 8(j) and related provisions, traditional knowledge should be valued, given the same respect and considered as useful and necessary as other forms of knowledge.

7. There is therefore a general expectation that Parties and Governments will avail themselves of the relevant traditional knowledge where it exists, subject to the obligations specified in Article 8(j), in a range of activities related to the conservation and sustainable use of biological diversity. However, it is also incumbent on Parties and Governments to ensure that the holders of traditional knowledge intended to be used in conservation and sustainable use measures be effectively involved in any decision-making processes regarding the use and application of such knowledge.

8. The range of activities for which traditional knowledge will be a useful, if not essential, component include:

- (a) Environmental impact assessment;
- (b) Access to and identification of genetic resources for a wide range of (commercial and non-commercial) purposes;
- (c) Monitoring and assessment;
- (d) Taxonomy;
- (e) Alien species management;
- (f) The range of measures identified in Article 8 with respect to *in situ* conservation of biological diversity (e.g., establishment and management of protected areas, restoration of degraded ecosystems, threatened species recovery programmes);

(g) *Ex situ* conservation (particularly with regard to identification, selection and documentation of species and germplasm to be maintained *ex situ*); and

(h) Customary use(s) of biological diversity.

9. As with the range of activities, the purposes or reasons for seeking access to traditional knowledge will also vary, but may include:

(a) Academic research;

(b) Research for product development (commercial purpose);

(c) Use in management of biodiversity (e.g., decision-making about species harvest levels, management of protected areas);

(d) Use in impact assessment procedures (environmental, cultural and social); and

(e) Integration with scientific knowledge (taxonomy, threat abatement, ecosystem rehabilitation).

10. With regard to some of the above activities (environment impact assessment, access to genetic resources), processes have been established under the Convention on Biological Diversity to formulate relevant guidelines which include 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. ^{1/}

11. Among the most important measures that Parties and Governments can undertake to facilitate the effective involvement of indigenous and local communities in decision-making related to the use of their traditional knowledge, are those concerned with: (i) ensuring indigenous and local community representation on any statutory or other bodies established to provide advice or oversee any activity related to the conservation and sustainable use of biological diversity; (ii) formalizing, in either legislation or policy, procedures to address the need to secure the prior informed approval (or consent) of knowledge-holders; (iii) capacity-building to ensure that traditional knowledge holders have an equitable say in decision-making processes; (iv) administrative support; and (v) development of traditional knowledge registers.

A. *Indigenous and local community representation on decision-making and advisory bodies at the national level*

12. A favoured mechanism for ensuring stakeholder participation in decision-making processes is through the establishment of advisory bodies or committees. Such bodies can either be established by legislation governing, for example, biological diversity conservation or environmental protection, that is, as statutory bodies, or as ad hoc bodies created for a particular purpose. While statutory bodies may be created by governments at national, subnational and local levels, ad hoc bodies may exist at any level relevant to their purpose.

^{1/} See, for example, the note by the Executive Secretary on draft guidelines and recommendations for cultural, environmental and social impact assessments regarding developments proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities (UNEP/CBD/WG8J/2/6), and the note by the Executive Secretary on assessment of user and provider experience, identification of approaches to involvement of stakeholders, and complementary options, prepared for the Panel of Experts on Access and Benefit-sharing (UNEP/CBD/EP-ABS/2/2).

13. A number of Parties have provisions in their legislative regimes for the management, conservation and sustainable use of biological resources that either establish separate indigenous and local community advisory bodies, or require their representation on relevant bodies. However, much depends on how such representatives are appointed. Ideally, such appointments should be made on the basis of indigenous and local community consultation or via an appropriate peak body that represents such communities at the national level, i.e., indigenous and local communities should have a say in who represents them at such levels.

14. Ad hoc bodies may be formed, for example, to oversee a development and the conduct of associated impact assessments, provide input into the establishment of a protected area, or respond to a particular environmental emergency (e.g., industrial waste spillage into a waterway caused by equipment malfunction).

15. In the context of such committees, it could be one of the responsibilities of the indigenous and local community representative(s) to ensure that protocols are followed with regard to the use of traditional knowledge, innovations and practices. Such protocols would normally include procedures for prior informed approval/consent and involvement of knowledge holders.

16. In the selection of indigenous and local community representatives to committees at all levels, due regard should be given to gender balance, and particularly in regard to the vital role that women play in the conservation and sustainable use of biological diversity. In this regard, the Parties affirmed, in the preamble to the Convention, the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.

B. Formalizing prior informed approval (PIA)/prior informed consent (PIC) procedures

17. To further 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, it would help significantly if the procedures for acquiring the PIA/PIC of traditional knowledge holders are formally recognized in legislation, or as an officially endorsed set of protocols or guidelines. Under these conditions, it is implied that conditions for the use of traditional knowledge with regard to a particular activity have been formally agreed to by the holder of traditional knowledge, and endorsed by the appropriate authority. It would also help if the approval/consent form, or a copy, is lodged with an appropriate registry maintained by the Government.

18. Parties and governments, indigenous and local communities, and others with an interest in accessing and applying traditional knowledge should take into account the relevant sections of the guidelines and approaches for access to genetic resources and benefit-sharing developed by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing for the consideration of the Conference of the Parties at its sixth meeting (see document UNEP/CBD/COP/6/6).

C. Capacity-building for equity in decision-making

19. Further development of capacities for all aspects of equity in decision-making is required for indigenous and local communities. Such communities are not always in the most advantageous position when making decisions about the use of their traditional knowledge. Proposals for activities which require access to traditional knowledge are often expressed in a language not of the community and are often replete with technical terms (scientific, legal and administrative) and unfamiliar concepts all of which require “unpacking” in order to be properly understood by such communities. To assist in this process, and in instances where local expertise is not available, indigenous and local communities may require various

forms of assistance, for example, legal and scientific advice, the help of a linguist and/or anthropologist, in order to accurately assess:

- (a) How their traditional knowledge is to be used (practical use, publication);
 - (b) The implications of such use;
 - (c) What conditions they should attach to its use (secret/sacred knowledge);
 - (d) The most suitable means to protect their traditional knowledge (e.g., legal contract, mou);
- and
- (e) How they can benefit from its application.

20. It also must be emphasized, that in order for holders of traditional knowledge to properly respond to requests for access to their knowledge, information concerning activities that propose use of traditional knowledge must also be legally and factually correct and offer sufficient detail so that decision-making can indeed be informed.

D. Administrative support

21. Parties and Governments can also 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 by providing administrative support to those indigenous and local community organizations that assist holders of traditional knowledge to maintain, conserve and pass on their knowledge and skills to other community members. Such support may take the form of: human resources and the provision of office space, and communications equipment (computer with Internet and video-conferencing capacity, fax machine, etc) to facilitate exchange of information, networking and organization of meetings.

22. The capacity to exchange information is important as it will enable indigenous and local communities to independently check credentials of, for example, researchers and those seeking access to genetic resources and associated traditional knowledge (and their institutions and companies), as well as receive feedback from other communities that have experience with such researchers and access-seekers.

23. Annex II to the report of the Panel of Experts on Access and Benefit-Sharing (UNEP/CBD/COP/5/8) on the work of its first meeting, in October 1999, points out that a wide range of entities have come into being which provide specialized services to the commercial end-users of genetic resources. Such services include the collection and provision of genetic-resource samples, extracts, and associated information, as well as assistance in assuring that access and benefit-sharing laws and procedural requirements in provider countries have been met with respect to the samples provided. These entities, sometimes termed “intermediaries”, are appearing in a wide range of institutional forms. They may be, for example, private-sector firms operating in multiple countries, small domestic firms working in their own country, or local universities.

24. The document cautions that, since these “intermediaries” represent a new and largely unregulated sector of activity, there exists a potential for unscrupulous or technically incompetent entities to move into this field as well. Where such entities do not truly add value to the resource, or give intentionally false or mistaken assurances that genetic material has been legally obtained, they pose a

threat to the access and benefit-sharing objectives of both the Convention on Biological Diversity and national access and benefit-sharing measures.

25. Such administrative support can facilitate the building of the communications capacity of indigenous and local communities to facilitate exchange of information on issues related to traditional knowledge, innovations and practices, as urged by the Conference of the Parties in paragraph 12(b) of decision V/16.

E. Development of traditional knowledge registers

26. In paragraph 17 of decision V/16, the Conference of the Parties requested Parties to support the development of registers of traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity through participatory programmes and consultations with indigenous and local communities, taking into account strengthening legislation, customary practices and traditional systems of resource management, such as the protection of traditional knowledge against unauthorized use.

27. The establishment of such registers should be accompanied by protocols or regulations governing deposit of, access to, use and dissemination of information. Security of information held in a register is of paramount importance, and the best methods for the protection of security should be a matter of consultation with those most likely to deposit information in the register.

28. Linkages with other organizations, such as national patent and plant breeders' rights offices is also a consideration. The need for such linkages and how they might operate is further explored in the note by the Executive Secretary on assessment of the effectiveness of existing subnational, 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 (UNEP/CBD/WG8J/2/7).

III. TASK 2: DEVELOPMENT OF APPROPRIATE MECHANISMS FOR EFFECTIVE PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES IN DECISION-MAKING, POLICY PLANNING AND DEVELOPMENT AND IMPLEMENTATION

29. Under task 2, Parties are 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.

A. Promoting effective indigenous and local community participation in meetings under the Convention on Biological Diversity

30. A number of decisions have been taken by the Conference of the Parties to facilitate the effective participation and involvement of indigenous and local communities in the work of the Convention. These decisions involve both general invitations for indigenous and local participation as well as a number of specific decisions to include indigenous and local community representation in particular bodies and processes established under the Convention, such as the Panel of Experts on Access and Benefit-sharing (see decision IV/8, para. 3) and the Ad Hoc Open-ended Working Group on Access and Benefit-sharing

(see decision V/16, para. 5). The invitations cover the participation of representatives of indigenous and local communities both as members of official delegations and as observers.

1. Indigenous and local community participation in meetings of the Working Group on Article 8(j) and Related Provisions

31. In paragraph 2 of decision IV/9, the Conference of the Parties decided in relation to indigenous and local community participation in the Working Group on Article 8(j) that this should take place “to the widest possible extent in its deliberations in accordance with the rules of procedure”, and, in paragraph 12 of that decision, the Conference of the Parties requested Parties, according to their capabilities to facilitate the representation, and financially and logistically support the active participation in the working group of the indigenous and local communities from their territories.

32. A number of Parties to the Convention of Biological Diversity, have previously provided funds to the Secretariat specifically for the participation of indigenous and local community representatives from developing countries and small island developing States to attend the Traditional Knowledge and Biological Diversity Workshop held in Madrid in 1997. Parties may therefore wish to explore similar processes to ensure continued participation of indigenous and local communities at further meetings under the Convention on Biological Diversity.

2. Indigenous and local community membership on official delegations

33. Further to paragraph 3 of decision, IV/9, and paragraph 18 of decision V/16, the Conference of the Parties invited Parties and Governments to increase the participation of representatives of indigenous and local communities in official delegations to meetings held under the Convention on Biological Diversity.

34. While a number of Governments have included such representation in their official delegations to recent meetings of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, the Conference of the Parties and the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), the overall level of such representation remains relatively modest. Some countries have supported and implemented these decisions by the inclusion of several indigenous and local community representatives in their delegations, as well as by providing financial assistance to support other indigenous and local community representatives to attend meetings under the Convention on Biological Diversity.

3. International Indigenous Forum on Biodiversity and other relevant international and regional indigenous and local community organizations

35. In paragraph 11 of decision V/16, the Conference of the Parties invited Parties and Governments to support the participation of the International Indigenous Forum on Biodiversity (IIFB), 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. Such participation would take place with observer status in accordance with the rules of procedure.

4. Rosters of experts and ad hoc technical expert groups

36. The Executive Secretary has established and administers a roster of experts in the relevant fields of the Convention on the basis of input from Parties, and as appropriate, from other countries and relevant bodies. The Executive Secretary, together with the national focal points and relevant bodies, regularly

updates the roster, including the information on each expert. The information on the roster is accessible through the clearing-house mechanism.

37. A proposed uniform methodology for the use of the roster has been developed by SBSTTA (recommendation V/14, annex I) and was noted by the Conference of the Parties at its fifth meeting. In doing so, the Conference of the Parties, in paragraph 31 of its decision V/20, encouraged Parties, other Governments and relevant bodies, when nominating their experts for inclusion in the roster to consider:

- (a) Gender balance;
- (b) Involvement of indigenous people and members of local communities;
- (c) Range of relevant disciplines and expertise, including, *inter alia*, traditional knowledge.

38. A roster of experts is also being developed under the Cartagena Protocol on Biosafety, in accordance with paragraph 14 of decision EM-I/3 of the Conference of the Parties.

39. The experts on the roster are invited to make available, upon request of the Executive Secretary, Parties or other countries and relevant bodies, their specific expertise in order to contribute to the further development of the scientific, technical and technological issues of the work programme of the Convention. Such requests may entail, *inter alia*, peer reviews, questionnaires, clarifications or examinations of scientific, technical and technological issues, specific contributions to the compilation of documents, participation in global and regional workshops and assisting in connecting the Convention-process to international, regional and national scientific, technical and technological processes.

In addition to the rosters of experts, a limited number of ad hoc technical expert groups on specific priority issues on the programme of work of the SBSTTA may be established. The Executive Secretary, in consultation with the SBSTTA Bureau, nominates up to fifteen experts in the relevant field of expertise from the roster of experts for the ad hoc technical experts groups. (decision IV/16, annex II, para. 12). Currently there are five such groups in the areas of: marine and coastal protected areas, mariculture, dry and sub-humid lands; forest biological diversity; and biological diversity and climate change. ^{2/}

40. Representatives of indigenous and local communities have been nominated to the rosters of experts and have participated in a number of meetings involving ad hoc technical expert groups. Parties and Governments, indigenous and local community organizations and relevant institutions may wish to forward names of individuals with the relevant expertise to the Executive Secretary.

41. A roster of experts drawn from indigenous and local communities is to be established in accordance with task 3 of the second phase of the programme of work on the implementation of Article 8(j) and related provisions to support the implementation of the programme of work. The roster would be established with the full participation of indigenous and local communities and be based on the methodologies used by the Conference of the Parties.

5. *Indigenous and local community liaison group*

42. To assist in the preparation of documents for the consideration of the Working Group on Article 8(j), the Executive Secretary has established an indigenous and local community liaison group to

^{2/} For more information on the work of these groups, see the progress report prepared by the Executive Secretary for the seventh meeting of SBSTTA (UNEP/CBD/SBSTTA/7/2).

participate in the peer-review of documents thus facilitating indigenous and local community participation in the drafting process as requested with regard to the tasks of the programme of work under decision V/16.

43. The establishment of the roster as proposed above would facilitate the participation of indigenous and local community representatives in the peer-review of documents prepared for SBSTTA and other relevant bodies under the Convention.

B. Promoting indigenous and local community participation in other international biodiversity-related instruments and processes

44. At the international level, a number of environment-related conventions and programmes have activated, or are in the process of activating, processes to examine the role of traditional knowledge and practices in their work, including an examination of effective ways and means to increase participation of indigenous and local communities. Of particular importance are the guidelines for establishing and strengthening local communities' and indigenous peoples' participation in the management of wetlands adopted by the Conference of the Parties to the Convention on Wetlands at its seventh meeting, through resolution VII.8. The Convention to Combat Desertification (CCD), the Convention on Trade in Endangered Species of Wild Flora and Fauna (CITES), the World Heritage Convention (WHC) and the United Nations Forum on Forests have also established processes to increase participation of indigenous and local communities in their work.

45. In paragraph 2 of decision V/2, the Conference of the Parties endorsed the second joint work plan for the period 2000-2001 between the Convention on Biological Diversity and the Convention on Wetlands (UNEP/CBD/SBSTTA/5/INF/12). In part B (Cross-cutting areas) of the joint work plan, actions to be taken under section 7 (Traditional knowledge of indigenous and local communities embodying traditional lifestyles) include an invitation to the Working Group on Article 8(j), *inter alia*, "to consult with other environment conventions about developing a multi-convention approach to examining this cross-cutting area". Furthermore, in paragraph 4 of decision V/21, the Conference of the Parties commends the proposed joint work plan "as a useful example of future cooperation between the Convention on Biological Diversity and other environment conventions".

46. In view of these processes and the commonality of their purpose, the Working Group on Article 8(j) may wish to explore the desirability of developing a multi-convention approach and explore ways and means to facilitate collaboration between the relevant conventions and programmes through, for example, the exchange of information, cooperation and coordination of activities to ensure that they are mutually supportive with regard to the maintenance and application of traditional knowledge and the involvement and participation of indigenous and local communities in their respective activities. The Working Group may also wish to explore whether a special body should be established to oversee and coordinate such collaboration. The Working Group may wish to recommend to the Conference of the Parties the possibility of the Secretariat consulting with the various environmental conventions in developing a multi-convention approach to examining this cross-cutting area.

47. In this regard, the Working Group may also wish to consider the role that the Convention on Biological Diversity may have in relation to the work of the Permanent Forum on Indigenous Issues, established as a subsidiary organ of the Economic and Social Council. The Permanent Forum will serve as an advisory body to the Council with the mandate to discuss indigenous issues within the mandate of the Council relating to a range of matters, including the environment.

C. Promoting effective indigenous and local community participation at the regional and subregional levels

48. To promote effective indigenous and local community participation in environment and biological diversity related forums, strategies and action plans taking place at the regional and sub-regional levels, as with meetings and other activities held under the Convention on Biological Diversity, Parties and Governments may wish to include representatives of indigenous and local communities and their organizations in official delegations, as well as encourage their participation in other relevant capacities.

D. Promoting effective indigenous and local community participation at the national level

49. To promote effective participation of indigenous and local communities at the national level, their input into the drafting of such mechanisms as legislation, policies, strategies, programmes and action plans, including those for strategic environmental assessment, for the conservation and sustainable use of biological diversity may be sought. Such mechanisms could include in their objectives: the involvement of indigenous and local communities in conservation and sustainable use strategies and measures; the application of their traditional biodiversity-related knowledge (subject to their approval and involvement); the equitable sharing with the knowledge-holders of benefits that arise from the use of their knowledge; and the customary use of biological resources. Such mechanisms might also include requirements for consultations with indigenous and local communities in situations where their interests in biological diversity are to be affected.

50. In any measure designed for the conservation and sustainable use of biological diversity or for the management of particular natural resources (such as fisheries, forests, inland waters), it is usual that committees are established comprised of, for example, people with the relevant scientific expertise, or which reflect the interests of various stakeholder groups, to provide advice to decision-makers. It is important that representatives of indigenous and local communities are also represented on such committees consistent with principles 2, 11 and 12 of the ecosystem approach as recommended by the Conference of the Parties in paragraph 1 of decision V/6.

51. It is also important that a process negotiated with indigenous and local communities—perhaps through their representative bodies—should be established for the appointment of indigenous and local community members to these committees.

52. The national biodiversity focal point might also play an important role in promoting effective indigenous and local community participation at the national level by:

(a) Liaising directly with indigenous and local communities and their representative organizations;

(b) Acting as a clearing house to ensure that all information, documents for meetings, decisions of the Conference of the Parties, etc., are also provided to indigenous and local communities - in some cases, the national focal point may be able to provide assistance for the translation of key documents into a language that is accessible to indigenous and local communities;

(c) Convening meetings of indigenous and local community representatives before and after meetings of the Conference of the Parties and the Ad Hoc Working Group on Article 8(j). In meetings prior to Convention meetings, indigenous and local community representatives can provide input into agenda items and assist national delegations in their preparation for such meetings. After the Convention

meetings, representatives of indigenous and local communities, together with key people from the national focal point, might discuss the implications of decisions and related work programmes, and develop strategies for their implementation at the community level; and

(d) Facilitating the selection of representatives of indigenous and local communities as members of national delegations to meetings of the Convention.

53. In its work, the national focal point could be assisted through the establishment of a committee or caucus of representatives of indigenous and local communities to provide advice, and to share responsibility for facilitating the implementation of Article 8(j) and its programme of work at the community level.

E. Promoting effective indigenous and local community participation at the local level

54. In some countries, the local level may be defined in terms of a third tier of government, and many indigenous and local communities are constituted as self-governing communities within the national and/or subnational framework of governance. Indigenous and local communities that enjoy powers of self-governance usually are responsible for the lands and waters and natural resources within the boundaries of their local government area, subject to relevant national laws and policies. As appropriate at this level of governance, many such communities have formulated community development plans. The purpose of community development plans is generally to enable communities to adopt a strategic, integrated and phased approach to their developmental needs which will enable them to accommodate change at a pace which is comfortable. Community development plans will also frequently prioritize a community's development goals and needs.

55. Typically, community development plans set out a number of community development objectives which would normally include economic, social and cultural goals, and which would identify strategies for achieving them within short- medium- and long-term time frames, that is, for example, over 5, 10 and 25 year periods. Such plans are usually based on assessments of a community's current situation: its assets (including natural resources); size and age-structure of its population; its educational and skills base; levels and areas of employment; infrastructure needs (housing, schools, health services, transport, etc); economic opportunities and potential for development; and cultural needs (e.g., protection of sacred sites, recording of traditional knowledge).

56. A community development plan may contain a development objective with regard to the environment that would, for example, aim at promoting sustainable development and economic growth while protecting the environment in the long term, by actively promoting and maintaining the welfare of the community and its inhabitants by adopting policies aimed at the maintenance of ecosystems, essential ecological processes and biological diversity, and utilization of living natural resources on a sustainable basis for the benefit of all members the community, both present and future. The community might place a high priority on maintaining maximum biological diversity by ensuring the survival and promoting the conservation in their natural habitat of all species of flora and fauna, in particular those of endemic, threatened, endangered, and of high economic, cultural, educational, scientific and conservation interest.

57. Where indigenous and local communities have not established community development plans that take into account the conservation and sustainable use of biological diversity, but wish to do so, Parties and governments, and relevant development agencies may wish to support such communities to formulate their own community development plans, and assist in the necessary capacity-building where this is lacking.

F. Access to genetic resources and benefit-sharing

58. With regard to access to genetic resources and benefit-sharing, mention has already been made of the work carried out by the Panel of Experts and the Working Group on Access and Benefit-Sharing on the preparation of guidelines and approaches to assist Parties and stakeholders and take into account the need to involve indigenous and local communities in decision-making processes.

G. Designation and management of protected areas

59. In relation to the designation and management of protected areas, consistent with principle 2 of the ecosystem approach, which states that management should be decentralized to the lowest appropriate level, indigenous and local communities should play a key role in the designation of protected located in or adjacent to the territories which they traditionally occupy or use, and in their day-to-day management, taking into account Article 10(c) of the Convention. Ideally, each protected area should have its own management plan that is implemented through a management board, and provisions governing such plans and their management should be incorporated in national and/or subnational legislation. Such legislation should provide for management bodies to have significant representation from indigenous and local communities.

60. Parties and Governments, indigenous and local communities, and other stakeholders may wish to take into account the above-mentioned guidelines for establishing and strengthening local communities' and indigenous peoples' participation in the management of wetlands adopted by the Conference of the Parties to the Convention on Wetlands. While specific to the wise use and management of wetlands, the guidelines are also generally relevant to indigenous and local community participation in the designation and management of protected areas.

H. Capacity-building to promote effective indigenous and local community participation in decision-making

61. In paragraph 12 of decision V/16, the Conference of the Parties urged Parties and Governments and, as appropriate, international organizations and organizations representing indigenous and local communities, to facilitate the full and effective participation of indigenous and local communities in the implementation of the Convention. In order to do so, the Conference of the Parties detailed a number of actions that should be taken, and which are identified by the sub-headings below.

1. Indigenous and local community identification of their capacity needs

62. Indigenous and local communities should be sufficiently resourced to undertake a thorough assessment of their capacity needs relevant to the implementation of the Convention. Such an assessment should take into account needs for education and training, particularly with regard to the Convention processes in order to make effective use of them.

2. Funding for building communications capacity of indigenous and local communities

63. Governments, and relevant development agencies, should assist indigenous and local communities through the identification of sources and provision of funds to build/enhance their communications capacity. Such funds may be necessary to enable the linking of remote communities into national, sub-national or local communications networks; the provision of programming capacity for indigenous news and other services (and if needs be, in local languages); and the establishment of remote area communications networks (via satellite).

3. *Providing sufficient capacity in national institutions*

64. National institutions in Parties to the Convention have an obligation to fulfil the various requirements of the Convention, and are indeed best placed to do so because of the “grass-roots” nature of much of their activities. National research facilities, publicly funded universities and statutory bodies charged with administering natural resources and protected areas, for example, are largely responsible for carrying out or overseeing work programmes of the Convention in accordance with the decisions of the Conference of the Parties. Where their activities directly impact on the territories of indigenous and local communities and their natural resources, such institutions need to take account of the obligations contained in Article 8(j) and related provisions, and give effect to the parts of the relevant decisions. These obligations should be carried out in direct consultation with affected communities, and their representatives should be appointed to the relevant management and advisory bodies. National institutions, in developing their strategic plans and framing their research agendas, in consultation with the affected communities, should build into such plans and agendas programmes that:

- (a) Sufficiently take into account the research, training and capacity-building needs of the affected communities;
- (b) The need to integrate traditional knowledge, subject to the approval and involvement of the knowledge-holders; and
- (c) Provide tangible benefits to the affected communities.

4. *Strengthening and building indigenous and local community capacity for communications with Governments, and at local, national, regional and international levels*

65. Strengthening and building indigenous and local community capacity for communications with Governments, and at local, national, regional and international levels essentially requires both procedural and technological means to be established to facilitate communications. Procedural means involve the establishment of lines of communication, particularly with Governments and the relevant departments and agencies. This can be aided by legislative requirements for indigenous and local community representation on the relevant committees with access to Ministers and other Government officials and/or by the establishment of special indigenous and local community bodies to provide high level advice to Governments.

66. Technological capacity requires that indigenous and local communities have adequate access to modern electronic communications equipment, i.e., computers, fax machines, and access to the Internet, so that they are able to obtain electronically transmitted information and be able to respond to it. Access to such technologies should also include the maintenance and upgrading of equipment, and where possible, training of community members to carry out these tasks.

67. Indigenous and local communities are particularly dependent on the flow of information from government focal points out to their representative organizations. Such organizations usually have the responsibility to ensure grassroots dissemination of this information and to facilitate community discussion. Governments should ensure that the organizations have sufficient resources to be able to undertake this responsibility.

5. *Identification of appropriate means of communication with indigenous and local communities*

68. In its decision IV/10 B, the Conference of the Parties stressed that modern technologies and expanding access to electronic communications means bring new opportunities for promoting and encouraging understanding of the importance of, and measures required for, the conservation of biological diversity. The Conference of the Parties also recognized, however, the importance of traditional communication systems among local communities, with emphasis on maintaining their integrity and dynamism. Accordingly, the Conference of the Parties called upon Parties, where necessary, to illustrate and translate the provisions of the Convention into the respective local languages to promote public education and awareness-raising of relevant sectors, including local communities.

69. In order to support traditional communication systems it may be necessary for Governments to provide resources, for example, for interpreters, video production, and to facilitate meetings and networking.

6. *Case-studies regarding indigenous and local community preservation of and control over sharing of traditional knowledge, innovations and practices*

70. Case-studies provide an important means for indigenous and local community participation in the work of the Convention. In addition to national reports, case-studies provide important information for the evaluation of various strategies and actions introduced by the Conference of the Parties for the implementation of the Convention, providing valuable information on what works and what doesn't, how various actions could be modified, the efficacy of various programmes, and by providing evidence of best practice.

71. The experiences of indigenous and local communities in the day-to-day management, conservation and sustainable use of biological diversity provide important information regarding the success of various policies and programmes conducted at local, national, regional and international levels. These experiences provide important subject matter for case studies. It is important therefore, that capacity-building also includes the provision of human and financial resources to indigenous and local communities to undertake case studies in support of the work of the Convention.

72. Case-studies regarding indigenous and local community preservation and control over sharing of traditional knowledge, could, for example, address: community-based strategies for protecting traditional knowledge, experiences and assessment of different mainstream/standard mechanisms (e.g., contracts, letters of intent), use of standard intellectual property rights (e.g., patents, plant breeders' rights, trade secrets); experiences with the application processes and administration of intellectual property rights; success of various access and benefit-sharing arrangements; and the implementation and effectiveness of incentive measures.

IV. TASK 4: DEVELOPMENT OF MECHANISMS TO PROMOTE FULL AND EFFECTIVE PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES, AND ESPECIALLY OF WOMEN, IN ALL ELEMENTS OF THE PROGRAMME OF WORK

73. Under task 4, Parties are 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:

- (a) Build on the basis of their knowledge;
- (b) Strengthen their access to biological diversity;
- (c) Strengthen their capacity on matters pertaining to the conservation, maintenance and protection of biological diversity;
- (d) Promote the exchange of experience and knowledge; and
- (e) Promote culturally appropriate and gender specific ways in which to document and preserve women's knowledge of biological diversity.

74. In paragraph 10 of decision V/16 the Conference of the Parties requested Parties, Governments, subsidiary bodies of the Convention, the Executive Secretary and relevant organizations, including indigenous and local communities, when implementing the programme of work contained in the annex to the present decision and other relevant activities under the Convention, to fully incorporate women and women's organizations in the activities.

A. *Building on indigenous and local-community knowledge*

75. A number of recent studies have shown a high correlation between biological and cultural diversity in a number of regions of the world. Many of the countries of highest biological diversity are also home to culturally diverse indigenous and local communities, who are the primary custodians of this biological diversity. This means that such communities have two considerable assets, the biological wealth of their territories and their traditional knowledge of it.

76. One of the most urgent of challenges facing indigenous and local communities worldwide is the maintenance of their traditional knowledge, innovations and practices in the face of globalizing trends that foster cultural homogeneity at the expense of local diversity. While Governments may be able to put in place measures to protect and preserve traditional knowledge (for example, through *sui generis* legislation, the establishment of traditional knowledge registers, or resourcing local language programmes), one way to ensure the maintenance of such knowledge at the local level is to make sure that it retains its relevance in today's world - the principle of "use it or lose it".

77. While traditional knowledge of biological diversity is important in a wide range of conservation and sustainable use strategies, and as recognized by the Convention itself and in numerous decisions of the Conference of the Parties, it is also important that indigenous and local communities build on and capitalize on their traditional knowledge by using it, for example, to create new products and processes. A number of rosters of experts have been established by the Executive Secretary as well as a number of liaison groups to assist in the programmes of work in other thematic areas of the Convention on Biological Diversity. Representatives of indigenous and local communities have been nominated to the rosters of experts and have participated in a number of meetings involving ad hoc technical expert groups. Parties and Governments, indigenous and local community organizations and relevant institutions should forward names of individuals with the relevant expertise to the Executive Secretary. In order for this to happen, however, indigenous and local communities will need to build their capacity for research and development by, for example, entering into research partnerships and contractual arrangements with national institutions, universities, and private sector companies, subject to the usual caveats regarding prior informed consent, mutually agreed terms, and access and benefit-sharing.

B. *Strengthening indigenous and local community access to biological diversity*

78. Article 10(c) of the Convention states that each Contracting Party 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.

79. In paragraph 16 of decision V/16, the Conference of the Parties recognized that the maintenance of knowledge, innovations and practices of indigenous and local communities is dependent on the maintenance of cultural identities and the material base that sustains them and invites Parties and Governments to take measures to promote the conservation and maintenance of such identities.

80. In Chapter 26 of Agenda 21, which employs the phrase “indigenous people and their communities”, one of the objectives states that, in full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at establishing a process to empower indigenous people and their communities through measures that include, *inter alia*, recognition that traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical well-being of indigenous peoples and their communities.

81. Indigenous and local community access to biological diversity may be strengthened by:

- (a) Recognizing and protecting in legislation traditional systems of land tenure;
- (b) Restoring to indigenous and local communities as much of their traditional territory and communal lands as is possible, and/or extending usufructuary rights to natural resources where return of land and waters is not possible; and
- (c) Involving indigenous and local community in the management of ecosystems and species that they rely upon for their subsistence, health and well-being. Such management should include the power to make decisions about levels of harvesting, access by traditional healers to medicinal species, and implementation of conservation measures.

C. *Strengthening indigenous and local community capacity on matters pertaining to the conservation, maintenance and protection of biological diversity*

82. Strengthening indigenous and local community capacity on matters pertaining to the conservation, maintenance and protection of biological diversity can be achieved through:

- (a) Ensuring indigenous and local community representation on bodies established for biodiversity-related purposes (e.g., management of protected areas, impact assessment, monitoring, invasive species control, etc);
- (b) Access to relevant information, technology and training (e.g., geographic information systems, water-, air- and soil-testing kits), including training in the maintenance of such technologies;
- (c) Security of tenure over traditional territories and communal lands to promote long term sustainable management practices; and
- (d) Strengthening communications networks, and particularly the linkages with government departments and agencies with responsibilities for biological diversity.

D. Promoting the exchange of indigenous and local community experience and knowledge

83. In paragraph 12 (b) of decision V/16, the Conference of the Parties urged Parties and Governments and, as appropriate, international organizations, and organizations representing indigenous and local communities, to facilitate the full and effective participation of indigenous and local communities in the implementation of the Convention and, to this end, include, in proposals and plans for projects carried out in indigenous and local communities, funding requirements to build the communications capacity of indigenous and local communities to facilitate dissemination and exchange of information on issues related to traditional knowledge, innovations and practices.

84. In paragraph 15 of the same decision, the Conference of the Parties invited Parties and Governments to exchange information and share experiences regarding national legislation and other measures for the protection of the knowledge, innovations and practices of indigenous and local communities. In this regard it is also important that indigenous and local communities are able to exchange information, share experiences and promote dialogue with each other, for example, between communities in different regions and continents.

E. Promoting culturally appropriate and gender specific ways to document and preserve women's knowledge of biological diversity

85. In many traditional societies, women maintain a discrete body of biodiversity-related knowledge that, in accordance with local custom, may not be shared with men. This knowledge may also be shrouded in secrecy and ritual; relate to issues of women's health, and child-rearing; and extend to the growth and preparation of food, diet and nutrition, and the preparation and administration of medical remedies.

86. Many women want to preserve their knowledge in ways that will assist intergenerational transfer. Recording and storage of such knowledge in registers, for example, will require the establishment of protocols for safe-keeping, access and use. The recording of such knowledge may also require the training of women to operate the necessary equipment. Similarly, the negotiation of contracts that involve access and use of women's traditional knowledge may also require that women are involved throughout the negotiating process (as local experts, lawyers, ethnobiologists, anthropologists/linguists, etc).

V. FUNDING INDIGENOUS AND LOCAL COMMUNITY PARTICIPATION

87. In paragraph 7 of decision V/16, the Conference of the Parties requested Parties, Governments, and international, regional and national organizations to provide appropriate financial support for the implementation of the programme of work. This request is reiterated in part IV (Ways and means) of the programme of work.

88. Enabling indigenous and local communities to participate effectively in decision-making, policy planning and development and implementation of the conservation and sustainable use of biological diversity at all levels requires both substantial and secure levels of funding. Apart from national contributions made directly to enable indigenous and local community participation at the various levels, funds could also be made available through the Global Environment Facility, the Convention's financial mechanism. It may also be necessary to consider other potential sources of funds. One such source that may enable the participation of representatives of indigenous communities is the United Nations Voluntary

Fund for Indigenous Populations. Parties may also wish explore further sources of funds to provide assistance to indigenous and local communities in the implementation of the Convention.

A. *The financial mechanism - the Global Environment Facility (GEF)*

89. The Conference of the Parties has requested GEF to finance projects that strengthen the involvement of indigenous and local communities in the conservation of biological diversity and sustainable use of its components (decision IV/8, para. 4(d)) and to provide support for the implementation of the priority activities identified in the programme of work on Article 8(j) and related provisions.

90. In paragraph 2 (b) (i) of decision V/13, the Conference of the Parties, in providing further advice to the financial mechanism, decided to provide the following additional guidance to the Global Environment Facility in the provision of financial resources, namely, to provide financial resources to developing country Parties for country-driven activities and programmes, consistent with national priorities and objectives, recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries, *inter alia*, for the implementation of the priority activities identified in the programme of work on Article 8(j) and related provisions, in accordance with decision V/16. Pursuant to paragraph 2 of decision V/16, task 2 is included among those tasks to which priority has been given.

91. Indigenous and local communities have also indicated that there is a lack of information about GEF, and in a form that is directly addressed to them. Many indigenous and local communities have expressed the need to know about the GEF processes, the kinds of projects that are eligible for GEF funding and the criteria for eligibility, how projects are selected, GEF projects that are taking place in other communities and countries, size and duration of projects, how they are established and managed, and so on.

B. *Voluntary Fund for Indigenous and Local Communities*

92. The United Nations Voluntary Fund for Indigenous Populations is a possible example for a Voluntary Fund for Indigenous and Local Communities to support their participation in the work of the Convention on Biological Diversity. The United Nations Voluntary Fund was established pursuant to General Assembly resolution 40/131 of 13 December 1985, with the purpose of assisting representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on Prevention of Discrimination and Protection of Minorities) of the Commission on Human Rights, by providing them with financial assistance, funded by means of voluntary contributions from Governments, non-governmental organizations and other private or public entities. The Fund is administered in accordance with the Financial Regulations and Rules of the United Nations by the Secretary-General assisted by a Board of Trustees. The mandate of the Board is to advise the Secretary-General on the use of the funds, through the Office of the High Commissioner on Human Rights. The Board recommends grants to indigenous applicants as representative of indigenous communities or organizations, in accordance with its guidelines for selection, for the consideration of the High Commissioner for Human Rights on behalf of the Secretary-General.

93. Since its establishment, the application of the Voluntary Fund has been extended twice: firstly in 1995 to assist representatives of indigenous communities and organizations authorized to participate in the deliberations of the open-ended inter-sessional working group of the Commission on Human Rights on the draft United Nations Declaration on the Rights of Indigenous Peoples; and again, in 1998, to assist indigenous representatives to participate in the deliberations of the open-ended inter-sessional ad hoc working group on the Permanent Forum For Indigenous Peoples in the United Nations system. In the

context of the establishment of voluntary funds, it is also relevant to note that a United Nations Voluntary Fund for the International Decade of the World's Indigenous Peoples was also established.

C. Other options for funding

94. There is a broad range of potential sources of funds that both Parties and indigenous and local community organizations may wish to explore to enable indigenous and local communities to participate in the work of the Convention, and for capacity-building purposes. These sources include:

- (a) Development cooperation agencies (official development assistance);
- (b) National research institutions and universities;
- (c) Multilateral agencies with relevant mandates and expertise;
- (d) Regional economic cooperation organizations;
- (e) International research organizations;
- (f) Private foundations; and
- (g) Non-government organizations and networks.

VI. SUGGESTED RECOMMENDATIONS

95. The Working Group may wish to recommend that the Conference of the Parties at its sixth meeting:

- (a) *Invites* Parties and Governments to consider the elements in the present note to support the development of guidelines for participatory mechanisms for indigenous and local communities in the implementation of the Convention on Biological Diversity at international, regional, national and local levels;
- (b) *Urges* Parties that have not done so to establish a mechanism at the national level, to ensure stakeholder participation in the decision-making process regarding the use of traditional knowledge;
- (c) *Requests* the Executive Secretary, to consult with the secretariats of relevant environmental conventions and programmes to explore the possibility of developing a multi-convention approach to coordinate and facilitate collaboration with regard to the maintenance and application of traditional knowledge relevant for the conservation and sustainable use of biological diversity, and the participation and involvement of indigenous and local communities, as cross-cutting issues;
- (d) *Requests* the Executive Secretary to communicate with the Permanent Forum on Indigenous Issues, established as a subsidiary organ of the United Nations Economic and Social Council, to explore possibilities of coordination and collaboration on matters of mutual concern;
- (e) *Requests* the Global Environment Facility, in consultation with representatives of indigenous and local communities, to provide information on its activities and processes, including information on the criteria for eligibility for GEF project funding assistance, and make such information in appropriate format available to indigenous and local communities.