



Convention on Biological Diversity

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OPEN-ENDED AD HOC INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION

Third meeting

Pyeongchang, Republic of Korea, 24-28 February 2014

Item 5 of the provisional agenda*

OUTCOMES ON TASKS 7, 10 AND 12 OF THE PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY FROM THE EIGHTH MEETING OF THE AD HOC OPEN-ENDED INTERSESSIONAL WORKING GROUP ON ARTICLE 8(j) AND RELATED PROVISIONS

Note by the Executive Secretary

INTRODUCTION

1. The agenda for the eighth meeting of the Ad hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions included an item on how tasks 7, 10 and 12 of the programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity could best contribute to work under the Convention and to the Nagoya Protocol.

2. The meeting adopted recommendation 8/4 in which it noted the ongoing preparations for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol and efforts towards the implementation of the Protocol and requested the Executive Secretary to present the outcomes of this meeting of the Working Group on tasks 7, 10 and 12 to the third meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol for its consideration.¹

3. Accordingly, recommendation 8/4 is annexed to this document.

* UNEP/CBD/ICNP/3/1.

¹ See the report of the meeting (UNEP/CBD/COP/12/5) at: <http://www.cbd.int/doc/meetings/cop/cop-12/official/cop-12-05-en.pdf>.

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Annex

8/4. How tasks 7, 10 and 12 could best contribute to work under the Convention and to the Nagoya Protocol

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity,

1. *Noting* the ongoing preparations for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and efforts towards the implementation of the Protocol, *requests* the Executive Secretary to present the outcomes of this meeting of the Working Group on tasks 7, 10 and 12 to the third meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol for its consideration;

2. *Recommends* that the Conference of the Parties at its twelfth meeting adopt a decision along the following lines:

The Conference of the Parties,

Taking note of the Expert Study on how the implementation of tasks 7, 10 and 12 of the revised Multi-Year Programme of Work could best contribute to the work under the Convention and the Nagoya Protocol,

Noting the desirability for consistent terminology throughout the programme of work on Article 8(j) and related provisions, and within the Convention,

Recalling decision IX/13 C on considerations for guidelines for documenting traditional knowledge,

Also noting that at this time there is no centralized mechanism for indigenous and local communities to report unauthorized access of their traditional knowledge,

Further noting the need to advance tasks 7, 10 and 12 in a manner that avoids any inconsistencies with the Nagoya Protocol, avoids duplication and overlap of work undertaken in other international fora, and takes into account relevant developments, including under the Nagoya Protocol, the United Nations Permanent Forum on Indigenous Issues and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) of the World Intellectual Property Organization (WIPO),

Also noting that the Nagoya Protocol applies to traditional knowledge associated with genetic resources,

Recalling also the Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity,

Noting that this Working Group positively contributes to the implementation of the Nagoya Protocol,

Recognizing that the development of guidelines for tasks 7, 10 and 12 will contribute to capacity-building for the implementation of the Convention and the Nagoya Protocol,

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1. *Decides* to implement tasks 7, 10 and 12 in an integrated manner that is mutually supportive of the Nagoya Protocol and of the work undertaken in other international fora through the development of voluntary guidelines with the full and effective participation of indigenous and local communities that will assist Parties and Governments in the development of legislation or other mechanisms, including national action plans and *sui generis* systems, as appropriate, for an effective implementation of Article 8(j) and related provisions, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their knowledge, innovations and practices, within the context of the Convention;

2. *Decides* to include the following sub-tasks in priority order:

Phase I

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (“Working Group”) is to:

- (i) Develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities;
- (ii) Develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure 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;
- (iii) Develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge;
- (iv) Develop a glossary of relevant key terms and concepts to be used within the context of Article 8(j) and related provisions;

Phase II

The Working Group may consider further work on the following sub-task, in light of progress made on priorities (i), (ii), (iii) and (iv) above, including:

- (v) Advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices are used;

3. To ensure that advances made can contribute in a timely fashion to the effective implementation of the Convention, the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets, as well as the Nagoya Protocol, *decides* to address and adopt the voluntary guidance developed under each sub-task as a stand-alone but complementary element of the overarching task;

4. *Invites* Parties, Governments, relevant international organizations and indigenous and local communities to submit their views, including information on model clauses, best practices, experiences and practical examples for obtaining the prior informed consent or approval and involvement for access to the knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity and for the sharing of benefits arising from the use of this knowledge with those communities, and their complementarity with the Nagoya Protocol, on the sub-tasks (i), (ii), (iii) and (iv) to the Executive Secretary;

5. *Requests* the Executive Secretary to compile and analyse these views taking into account relevant work in related international processes and to draft guidelines for sub-tasks (i), (ii) and (iii) and, following a gap analysis, draft a glossary for sub-task (iv) and to make them available to the ninth meeting of the Working Group on Article 8(j) and Related Provisions for its consideration;

6. *Noting* the relevance of the elements of *sui generis* systems as well as the draft glossary of terms to the revised tasks 7, 10 and 12, *invites* the Working Group to use the elements of *sui generis* systems (UNEP/CBD/WG8J/8/6/Add.1) as appropriate, in its work on those tasks.
