



## CONVENTION ON BIOLOGICAL DIVERSITY

Distr.  
GENERAL

UNEP/CBD/COP/7/7  
12 December 2003

ORIGINAL: ENGLISH

CONFERENCE OF THE PARTIES TO THE  
CONFERENCE ON BIOLOGICAL DIVERSITY  
Seventh meeting  
Kuala Lumpur, 9-20 and 27 February 2004  
Item 19.8 of the agenda\*

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

#### INTRODUCTION

##### *A. Background*

1. The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity was established by decision IV/9 of the Conference of the Parties to the Convention on Biological Diversity. It held its first meeting in Seville, Spain, from 27 to 31 March 2000. In paragraph 9 of its decision V/16, the Conference of the Parties extended the mandate of the Ad Hoc Open-ended Inter-Sessional Working Group to review progress in the implementation of the priority tasks of its programme of work. Accordingly, the second meeting of the Working Group was held in Montreal from 4 to 8 February 2002, and its report (UNEP/CBD/COP/6/7) forwarded to the sixth meeting of the Conference of the Parties to the Convention on Biological Diversity.

2. At that meeting, in decision VI/10, the Conference of the Parties decided that one meeting of the Working Group should be organized prior to the seventh meeting of the Conference of the Parties in order to ensure further advancement of the implementation of the work programme on Article 8(j) and related provisions. Consequently, the third meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions was held in Montreal from 8 to 12 December 2003 at the headquarters of the International Civil Aviation Organization (ICAO).

##### *B. Attendance*

3. The meeting was attended by representatives of the following Parties to the Convention and Governments: Algeria, Antigua and Barbuda, Argentina, Bahamas, Barbados, Belgium, Benin, Bhutan, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Denmark,

---

\* UNEP/CBD/COP/7/1 and Corr.1.

Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, European Community, Gambia, Germany, Ghana, Guinea, Guinea-Bissau, Haiti, India, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Jordan, Kenya, Kiribati, Lao People's Democratic Republic, Liberia, Lithuania, Madagascar, Malaysia, Mali, Mexico, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Niger, Norway, Pakistan, Palau, Peru, Poland, Rwanda, Saint Lucia, Samoa, Senegal, Seychelles, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yemen, Zambia.

4. The following indigenous people and local community organizations were also represented: Aboriginal and Torres Strait Islander Commission (ATSIC), African Indigenous Women Organization, Arctic Athabaskan Council, Asociacion Aradikes, Asociación Ixacavaa De Desarrollo e Información Indígena, Asociacion Napguana, Call of the Earth—Llamado de la Tierra, Canadian Indigenous Biodiversity Network, Consejo de la Nacion Otomi Nātho, Consejo de Organizaciones Mayas de Guatemala, Consejo de Todas Las Tierras, Consejo Indígena de Centro America, Coord. Mapuche de Neuquen, Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA), Coordinadora de Pueblos y Organizaciones Indígenas de la Region Chaqueña (COPIRECHA), Cree Regional Authority, Fundacion para la Promocion del Conocimiento Indígena, Indigenous Forum, Indigenous Network on Economies and Trade, Indigenous People (Bethechilokono) of Saint Lucia Governing Council, Indigenous Peoples Biodiversity Information Network (IBIN), Indigenous Peoples Council on Biocolonialism, Indigenous Peoples' Secretariat on the CBD (Canada), International Indian Treaty Council, Kowalisyon ng Katutubong Samahan ng Pilipinas, Metis National Council, Na Koa Ikaika o Ka Lahui Hawai'i, National Aboriginal Health Organization (NAHO), Nunavut Sivuniksavut, Observatorio de Derechos Indígenas / Asociación De La Juventud Indígena Argentina, Peguis First Nation, Russian Association of Indigenous Peoples of the North (RAIPON), Tebtebba/Asia Indigenous Women's Network, and Tulalip Tribes of Washington.

5. Representatives from the following United Nations bodies, Secretariat units and specialized agencies also attended: Food and Agriculture Organization of the United Nations (FAO), Global Environment Facility (GEF), Permanent Forum on Indigenous Issues, United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP), UNEP World Conservation Monitoring Centre (UNEP-WCMC), United Nations University (UNU), and the World Intellectual Property Organization (WIPO).

6. The following other organizations were also represented: ALMACIGA, Association Canadienne pour les Nations Unies (ACNU/UNAC), Biolatina, Care Earth, Carleton University, Center For International Environmental Law, Centre for Economic and Social Aspects of Genomics, Friends of the Earth-Ghana, Fundacion Sociedades Sustentables, Grupo de Estudios Ambientales A.C., Hutchins, Soroka & Grant, ICT Development Group, Institute for Ecology and Action - Anthropology (INFOE), Instituto Nacional de Ecologia, IUCN—The World Conservation Union, Japan Biodiversity Association, Japan Bioindustry Association, McGill University, Netherlands Centre for Indigenous Peoples (NCIV), Observatoire de l'Écopolitique Internationale, Quaker International Affairs Programme, Terra Nuova, Universidad de Buenos Aires, Université de Montréal, York University.

## **ITEM 1. OPENING OF THE MEETING**

7. The meeting was opened at 9.30 a.m. on Monday, 8 December 2003, with a ceremony of prayer led by a representative of the Mohawk community.

8. Opening statements were made by Mr. Hans Hoogeveen, President of the Conference of the Parties to the Convention on Biological Diversity, Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity, and Mr. Nehemiah Rotich, speaking on behalf of the Executive Director of the United Nations Environment Programme (UNEP).

9. Mr. Hoogeveen welcomed participants and expressed deep appreciation to the Mohawk and other indigenous and local communities that had performed the ceremonial opening of the meeting. Recalling that the Conference of the Parties at its sixth meeting had marked the shift from conservation to sustainable use of natural resources, and from making ambitious plans to the implementation of those plans, he stressed that the implementation of the Convention could only be successful with the involvement of all the relevant stakeholders. The indigenous and local communities were of crucial importance in that respect and held a special position.

10. To maintain the political momentum generated at the World Summit on Sustainable Development, it was necessary to reverse the trend towards diminished human, technical and financial resources. It was necessary to live up to the promises and commitments, so that indigenous and local communities would be involved in decision-making related to their traditional knowledge, so that their capacities would be strengthened, and so that more funds would be available for their participation and work.

11. Drawing attention to the meeting's agenda, he said that tangible progress on the issues therein would mark a significant step forward in the implementation of Article 8(j) and the related provisions of the Convention. That would represent a great contribution to advancing the objectives of the Convention, and would also strengthen the indigenous and local communities as key stakeholders in biological diversity and reinforce their ability to make a contribution to the work of the Convention. Expressing thanks to the Secretariat for the excellent preparation and organization of work, he invited participants to maintain the spirit of cooperation and dedication that had prevailed at previous meetings, which he was confident would help them fulfil the mandate set by the Conference of the Parties for the current meeting.

12. Mr. Zedan welcomed all participants, and expressed gratitude to the Government of Spain for its generous financial contribution that had enabled the Secretariat to support the participation of many representatives of indigenous peoples and local communities. He also expressed appreciation to the Governments of Canada, Finland, Italy, Norway, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland for their financial support to enable the attendance of representatives from the developing countries and countries with economies in transition.

13. With reference to decision VI/10 of the Conference of the Parties at its sixth meeting, and to the work programme adopted in decision V/16, he enumerated the issues which the current meeting was mandated to address. He noted that reports from Parties, particularly those with a large indigenous population, seemed to indicate that they were according high priority to the implementation of Article 8(j) and related provisions, and were in the process of developing programmes and policies to promote the role of the indigenous and local communities in the conservation and sustainable use of biological diversity. However, the implementation of Article 8(j) and related provisions remained a challenge, with the main problem identified by Parties being the lack of human, technical and financial resources to support implementation.

14. He invited participants to take stock of the progress made so far; to encourage the further implementation of the elements of the work programme at the national level; and to examine the participatory mechanisms in decision-making processes that affected indigenous and local communities, with a view to further strengthening the involvement of indigenous and local community representatives in the work of the Convention. Noting that the active participation of representatives of indigenous and local communities in meetings under the Convention had, so far, been critical to the process, he invited all participants to be faithful to the spirit of collaboration that had characterized previous meetings of the Working Group, with a view to making further recommendations to the Conference of the Parties on future action to further enhance the important programme of work on Article 8(j) and related provisions.

15. Mr. Rotich said that the Convention on Biological Diversity was a unique multilateral environmental agreement, which recognized the fundamental role of indigenous and local communities in

the conservation and sustainable use of biodiversity. A perusal of biodiversity hot spots was eloquent testimony to the value of indigenous and local communities' wisdom and efforts in this regard. However, incentives were required to encourage indigenous and local communities to continue conserving the earth's biological diversity and sustainably using its genetic resources. The implementation of Article 8(j) would ensure the full and effective participation of indigenous and local communities in decision-making under the Convention, and their fair access to genetic resources and equitable sharing of benefits. Hopefully, all other multilateral environmental agreements, as pillars of sustainable development, would follow the Convention's example and involve indigenous and local communities in their respective forums.

## **ITEM 2. ORGANIZATIONAL MATTERS**

### ***2.1 Officers***

16. The Bureau of the Conference of the Parties served as the Bureau of the Working Group for the meeting. Mr. Hans Hoogeveen (Netherlands), President of the Conference of the Parties to the Convention on Biological Diversity, acted as presiding officer for plenary sessions. Mr. Soumayila Bance (Burkina Faso) served as Rapporteur.

### ***2.2 Adoption of the agenda***

17. At the 1st plenary session of the meeting, on 8 December 2003, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG8J/3/1):

1. Opening of the meeting.
2. Organizational matters:
  - 2.1 Officers;
  - 2.2 Adoption of the agenda;
  - 2.3 Organization of work
3. Reports:
  - 3.1 Report on progress in the integration of relevant tasks of the programme of work on Article 8(j) and related provisions into each of the thematic areas of the Convention on Biological Diversity;
  - 3.2 Report on progress in the implementation of the programme of work on Article 8(j) and related provisions.
4. Composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities, relevant to the conservation and sustainable use of biodiversity.
5. Guidelines for the conduct of 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.
6. Participatory mechanisms for indigenous and local communities.
  - 6.1 Mechanisms to promote the effective participation of indigenous and local communities in matters related to the objectives of Article 8(j) and related provisions;
  - 6.2 Communication mechanisms for indigenous and local communities;

- 6.3 Cooperation and collaboration among environmental conventions concerning the participation and involvement of indigenous and local communities in the maintenance and application of traditional knowledge relevant for the conservation and sustainable use of biological diversity.
7. *Sui generis* systems for the protection of knowledge, innovations and practices of indigenous and local communities.
8. Other matters.
9. Adoption of the report.
10. Closure of the meeting.

### 2.3. *Organization of work*

18. At the 1st plenary session of the meeting, on 8 December 2003, the Working Group approved the organization of work for the meeting on the basis of the proposal contained in annex I to the annotations to the provisional agenda (UNEP/CBD/WG8J/3/1/Add.1/Rev.1). Accordingly, the Working Group agreed to establish two sessional sub-working groups: Sub-Working Group I, co-chaired by Mr. John Herity (Canada) and Mr. Earl Stevenson (Peguis First Nation), to consider agenda items 4 (Composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities, relevant to the conservation and sustainable use of biodiversity) and 5 (Guidelines for the conduct of 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); and Sub-Working Group II, co-chaired by Ms. Diann Black Layne (Antigua and Barbuda) and Ms. Lucy Mullenkei (African Indigenous Women Organization), to take up items 6 (Participatory mechanisms for indigenous and local communities) and 7 (*Sui generis* systems for the protection of knowledge, innovations and practices of indigenous and local communities).

19. Following proposals from representatives, the Working Group agreed to take up two additional issues in the sub-working groups. The issue of technology transfer and cooperation would be added to the work of Sub-Working Group I, and the issue of genetic use restriction technologies (GURTs) would be added to the work of Sub-Working Group II.

20. It was further agreed that the Group of Friends of the Bureau should be composed of the following participants nominated by indigenous and local community organizations attending the meeting: Mr. Vladimir Bocharnikov (Russian Association of Indigenous People of the North), Ms. Esther Camac Ramírez (Asociación Ixacavaa de Desarrollo e Información Indígena), Ms. Debra Harry (Indigenous Peoples Council on Biocolonialism), Ms. Myrle Traverse (Canadian Indigenous Biodiversity Network), and Ms. Jannie Lasimbang (Asia Indigenous Peoples Pact Foundation).

21. It was decided that a brief plenary session would be held at the end of each day to allow small delegations to be informed of the discussions that had taken place in each Sub-Working Group.

22. Accordingly, Sub-Working Group I met under the co-chairmanship of Mr. John Herity (Canada) and Mr. Earl Stevenson (Peguis First Nation) to consider item 4 (Composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities), item 5 (Guidelines for the conduct of cultural, environmental, and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, and the issue of capacity-building, technology transfer and cooperation).

23. Sub-Working Group I held 7 meetings from 8 to 11 December 2003. The proceedings of these meetings are reflected under the appropriate agenda items in the present report.

24. Sub-Working Group II met under the co-chairmanship of Ms. Diann Black Layne (Antigua and Barbuda) and Ms. Lucy Mulenkei (African Indigenous Women Organization), to consider item 6 (Participatory mechanisms for indigenous and local communities) and item 7 (*Sui generis* systems for the protection of the knowledge, innovations and practices of indigenous and local communities). The Sub-Working Group also considered the issue of genetic use restriction technologies (GURTs).

25. Sub-Working Group II held 7 meetings from 8 to 11 December 2003. The proceedings of these meetings are reflected under the appropriate agenda items in the present report.

26. At the 3rd, 4th and 5th plenary sessions on 9, 10 and 11 December 2003, the Co-Chairs of the Sub-Working Groups gave interim reports on the deliberations in their respective groups.

#### **2.4. *Statements and general comments***

27. Following the adoption of the agenda and the organization of work, the Co-Chairs invited statements by representatives of regional groups, intergovernmental organizations, and indigenous and local communities.

28. Many representatives who took the floor congratulated the Secretariat on the quality of the documents produced and several made technical corrections to update the information on their countries.

29. The representative of Italy (speaking on behalf of the European Community, its member States and the acceding countries) said that the Working Group was a forum made unique by the strong and active participation of indigenous and local communities in constructive dialogue with government representatives. Traditional knowledge, innovations and practices had to be protected, both as an indispensable tool in the conservation and sustainable use of biodiversity, and to ensure the fair and equitable sharing of the benefits arising from the use of such knowledge, with the involvement and approval of its holders. The full involvement of indigenous and local communities in the negotiations of an international regime on access and benefit-sharing was encouraged, as was continued cooperation between the Convention on Biological Diversity and the World Intellectual Property Organization (WIPO). In that respect, the European Community Directive on the legal protection of biotechnological inventions contained an encouragement to fully take into account Article 8(j) and related provisions in the adoption of national laws, regulations and administrative provisions. Since the issue of traditional knowledge cut across the work of many other international forums, and there was a risk of overlap and duplication of efforts, it was necessary to promote coordination and synergies among all involved.

30. The representative of the Food and Agriculture Organization of the United Nations (FAO) said that rural populations and vulnerable groups were the natural beneficiaries of much of the work of the FAO, and that indigenous and local communities were amongst the most vulnerable groups in the world. He provided an update on the process of ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture, which had a specific article on Farmer's Rights that recognized the historical role of indigenous and local communities and farmers; the country-driven Report on the State of the World's Animal Genetic Resources, which was the first assessment of the current state of these resources and the capacity to use, develop and conserve them; and the Globally Important Indigenous Agricultural Heritage Systems Initiative, which aimed to establish the basis for the global recognition, conservation and sustainable management of the world's outstanding agricultural systems and their associated landscapes, biological diversity, knowledge systems and culture. He also briefly reported on the Forest, Trees and People Programme, the Sustainable Fisheries Livelihood Programme and a project on aquatic biodiversity in rice-based farming systems.

31. The representative of the World Intellectual Property Organization (WIPO) described the key issues under consideration in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which comprised the scope of traditional knowledge and the distinction between traditional knowledge and expressions of folklore, or traditional cultural expressions; a range of practical mechanisms on the positive protection of traditional knowledge and traditional cultural expressions; and the policy needs and possible means of *sui generis* protection of traditional knowledge. In that latter connection, at its fifth session, the WIPO Intergovernmental Committee had organized a panel to compare experiences with existing *sui generis* measures, to recount lessons learned and to identify elements common to existing systems. In response to the invitation by the Conference of the Parties at its sixth meeting, the Committee also prepared a technical study on disclosure requirements related to genetic resources and traditional knowledge (UNEP/CBD/WG-ABS/2/INF/4). In September 2003, the WIPO General Assembly took note of the study and agreed to transmit it to the Secretariat of the Convention on Biological Diversity for reference by the Conference of the Parties and relevant subsidiary working groups.

32. Concerning participation by indigenous and local communities, the representative of WIPO pointed to the work of the WIPO Intergovernmental Committee on outreach and consultations, particularly its work with non-governmental organizations. Concerning needs and capacities, she noted that the work of the Intergovernmental Committee had been aimed at two complementary outcomes: the strengthened capacity of holders of traditional knowledge and cultural custodians; and a stronger empirical understanding of the nature of intellectual property protection of traditional knowledge and traditional cultural expressions. She described the new, extended mandate of the Intergovernmental Committee, requiring it to accelerate its work and to focus on the international dimension of intellectual property and genetic resources, traditional knowledge and folklore. She also described the work undertaken to date between WIPO and the Convention and looked forward to further cooperation between the two secretariats and the implementation of practical results of that work.

33. The representative of the International Indigenous Forum on Biodiversity noted that the meeting was being held on the traditional territory of the Mohawk nation, and thanked the Executive Secretary and some Parties for making it possible for members of indigenous and local communities to attend the meeting. She said that the agenda item on the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities was a positive step forward, but that the process of revising regional reports on the first and subsequent phases of the composite report should benefit from the participation of indigenous peoples. The fact that the documents before the meeting on *sui generis* systems for the protection of the knowledge, innovations and practices of indigenous and local communities did not promote existing *sui generis* systems based on indigenous customary law was cause for concern. It was essential for both *sui generis* systems and guidelines for the conduct of cultural, environmental and social impact assessments regarding developments to take place on, or likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities to recognize the fundamental rights of indigenous peoples to self-determination, and their inherent, inalienable property rights over their traditional knowledge and genetic resources. The priority for indigenous peoples was to protect their rights as the owners of traditional knowledge for future generations. They therefore supported the development of instruments that prevented the expropriation and commercialization of that knowledge. The marketing of genetic use restriction technologies (GURTs) also had to be prevented. With regard to participatory mechanisms, while considerable progress had been made, the lack of available funds and financial support remained the biggest obstacle to full and effective participation.

34. A representative of the Millennium Ecosystem Assessment described the present status of work on the Assessment. She indicated that sound policy and management intervention could often reverse ecosystem degradation, but it was essential to know how and when to intervene and that implied a profound understanding of the ecological and social systems involved. It should be noted that, after a period when international scientific assessment had focused on global rather than regional or national

processes, scientists and policy-makers had become aware of the need for new assessment processes that accommodated the multi-scale and multi-stakeholder nature of environmental concerns. The Millennium Ecosystem Assessment, for example, was working with communities on integrated ecosystem assessments in which local knowledge was central. She added that the Assessment was designed as a multi-scale effort, but one that paid particular attention to sub-global processes and interactions.

35. The representative of the Permanent Forum on Indigenous Issues drew attention to the report of the Permanent Forum on the work of its second session, held in May 2003 (E/2003/43 -- EC/19/2003/22), which contained recommendations addressed to the Executive Secretary of the Convention on Biological Diversity. Those recommendations were also before the current meeting (UNEP/CBD/WG8J/3/8).

36. A representative of the Kitasoo Xai'Xais First Nation emphasized that the Convention on Biological Diversity, and the Ad Hoc Open-ended Inter-Sessional Working Group in particular, were at a turning point. The development of a negotiating mandate for an international regime on access and benefit-sharing by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing underlined the increasingly complex interrelationship among the key Articles of the Convention and the need for closer links among the Convention's bodies and with the Conference of the Parties. He regretted that indigenous peoples and local communities were not invited to participate in relevant United Nations meetings on a regular basis. The positive experience of participation by indigenous peoples could but enrich the Convention.

37. A representative of the indigenous people of Saint Lucia and of the Caribbean Antilles Indigenous People's Caucus regretted that the indigenous peoples of the Caribbean Antilles had long been neglected, although his participation in the present meeting meant that the 10 million indigenous people in the Caribbean, as well as the 10 million indigenous people composing the Caribbean diaspora, had now been recognized and given due regard. He concluded by recalling the historical background to the protracted struggle waged by the indigenous peoples of the Caribbean against slavery.

38. Following the statements by regional groups, intergovernmental organizations, and indigenous and local communities, statements were also made by the representatives of Canada, Ethiopia, Iran (Islamic Republic of), Jordan, Kenya, Mexico, Myanmar, Namibia, Pakistan, South Africa, Turkey, Uganda, the United Republic of Tanzania and Yemen.

### ITEM 3. REPORTS

#### ***3.1 Report on progress in the integration of the relevant tasks of the programme of work on Article 8(j) and related provisions into each of the thematic areas of the Convention of Biological Diversity***

#### ***3.2 Report on progress in the implementation of the programme of work on Article 8(j) and related provisions***

39. The Working Group took up agenda items 3.1 and 3.2 together, at the 2nd plenary session of the meeting, on 8 December 2003. In considering this item, the Working Group had before it a progress report prepared by the Executive Secretary on the integration of the relevant tasks of the programme of work on Article 8(j) into the thematic areas of the Convention (UNEP/CBD/WG8J/3/2), as well as a note by the Executive Secretary containing a report on the implementation of the programme of work on Article 8(j) and related provisions. (UNEP/CBD/WG8J/3/3). It also had before it, as an information document, the report of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies on the analysis of the potential impacts of such technologies on smallholder farmers, indigenous and local communities and Farmer's Rights (UNEP/CBD/WG8J/3/INF/2).

40. Introducing item 3.1, the Secretariat noted that the Conference of the Parties, in decision VI/10, paragraph 4, had requested the Executive Secretary to prepare a progress report on the integration of the



relevant tasks of the programme of work on Article 8(j) into each of the thematic areas. The Secretariat reported that use of traditional knowledge and the ecosystem approach were generally to be found in all of the thematic areas. He noted that, in line with the decision taken by the Working Group at its 1st plenary session, the issue of GURTs would be taken up by Sub-Working Group II.

41. Introducing item 3.2, the Secretariat noted that the implementation of Article 8(j) was still proving a challenge for a number of countries, but that many had given it a high priority and more than half of the reporting countries were at various stages of developing national legislation and strategies for the implementation of Article 8(j). He said there were also constraints to implementation because of the lack of human, technical and, above all, financial resources.

42. Following the introduction, a statement was made by the representative of Argentina.

43. Statements were also made by the representatives of the IUCN and the Permanent Forum on Indigenous Issues.

#### ***Action by the Working Group***

44. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up a draft recommendation submitted by the Chair, a report on progress in the integration of the relevant tasks of the programme of work on Article 8(j) into the thematic areas of the Convention, contained in UNEP/CBD/WG8J/3/L.2, and adopted it as recommendation 3/1. The text of the recommendation as adopted is contained in the annex to the present report.

45. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group also took up a draft recommendation submitted by the Chair, on review of progress in the implementation of the priority tasks of the programme of work on Article 8(j) and Related Provisions, contained in UNEP/CBD/WG8J/3/L.3, and adopted it as orally amended, as recommendation 3/2. The text of the recommendation as adopted is contained in the annex to the present report.

#### ***Genetic use restriction technologies***

46. As agreed at the 1st plenary session of the Working Group, Sub-Working Group II was requested to consider the issue of the report of the Ad Hoc Technical Expert Group meeting on the potential impacts of genetic use restriction technologies (GURTs) on smallholder farmers, indigenous and local communities and Farmers' Rights (UNEP/CBD/WG8J/3/INF/2). In its deliberations, the Sub-Working Group also had before it a copy of recommendation IX/2 of the Subsidiary Body on Scientific, Technical and Technological Advice adopted at its ninth meeting, as well as an informal paper containing a proposal from Brazil for recommendations to be submitted to the Conference of the Parties at its seventh meeting regarding the impacts of GURTs on smallholder farmers, indigenous and local communities and Farmer's Rights.

47. Introducing the item, the Secretariat recalled that, in paragraph 21 of its decision VI/5, the Conference of the Parties at its sixth meeting established an ad hoc technical expert group (AHTEG) on genetic use restriction technologies and mandated it to report to both the Subsidiary Body on Scientific, Technical and Technological Advice and to the Working Group on Article 8 (j) prior to the seventh meeting of the Conference of the Parties. The Secretariat explained that, because the Subsidiary Body had had insufficient time to consider the report of the AHTEG, in its recommendation IX/2 it had transmitted the report to the Conference of the Parties for information, and had asked the Conference of the Parties at its seventh meeting to request the Subsidiary Body to consider the AHTEG report at its tenth meeting. The Secretariat invited participants to consider the AHTEG report, which touched on issues of relevance to the Working Group, and to consider what further actions might need to be addressed by the Conference of the Parties.

48. During the discussion of the item, statements were made by the representatives of Argentina, Brazil, Costa Rica, Italy (on behalf of the European Community, its member States and the acceding countries), Namibia (on behalf of the African Group), Norway, Senegal, Switzerland, Uganda, United Republic of Tanzania, the United States of America and Zambia.

49. The representative of Mexico wished to have reflected in the report its account of four regional training workshops on genetic use restrictions which had been attended by representatives of five indigenous peoples, and the availability of a video documenting the workshops' organization and results.

50. Statements were also made by the representatives of the International Indigenous Forum on Biodiversity and the Indigenous Peoples' Council on Biocolonialism.

51. The Sub-Working Group concluded that, while there had been no consensus within the current meeting of the Sub-Working Group concerning the draft proposal from Brazil for recommendations regarding the impacts of GURTs on smallholder farmers, indigenous and local communities and Farmer's Rights, Brazil was free to table its own proposal to the Conference of the Parties at its seventh meeting.

52. The Co-Chair announced that she would prepare a Co-Chairs' draft text for subsequent submission to the Sub-Working Group. The Chair's text would be prepared in collaboration with the Secretariat and the other Co-Chair, and would be based on the comments made in the discussion on the agenda item and on further inputs to be received from representatives of the indigenous peoples and local communities.

53. The Sub-Working Group considered the Co-Chairs' draft text under this agenda item at its 6th meeting, on 11 December 2003.

54. At its 6th meeting, the Sub-Working Group also heard from the representative of the Food and Agriculture Organization of the United Nations (FAO), who recalled paragraph 20 of decision V/5 of the Conference of the Parties, which had invited competent organizations and other research bodies to further study the potential implications of genetic use restriction technologies for the conservation and sustainable use of agricultural biological diversity and the range of agricultural production systems in different countries, and identify the relevant policy questions and socio-economic issues that might need to be addressed. Pursuant to this decision, the FAO had prepared a technical study, on Potential Impacts on Genetic Use Restriction Technologies on agricultural biodiversity and agricultural production systems, which had been adopted by the FAO Intergovernmental Commission on Genetic Resources for Food and Agriculture at its 9th regular session in October 2002, and had been submitted to the Executive Secretary of the Convention on Biological Diversity for consideration by the Conference of the Parties at its next meeting.

55. At its 7th meeting, on 11 December 2003, the Sub-Working Group considered a draft recommendation on GURTs, submitted by the Co-Chairs.

56. Some representatives, while expressing agreement with the spirit of the draft recommendation, considered that at the current meeting there had been insufficient time to adequately address the issue, which required an in-depth assessment and discussion.

57. Following the discussion, the Sub-Working Group agreed to transmit the draft recommendation to the plenary as draft recommendation UNEP/CBD/WG8J/3/L.5.

#### ***Action by the Working Group***

58. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG8J/3/L.5 and adopted it as recommendation 3/3. The text of the recommendation as adopted is contained in the annex to the present report.

#### **ITEM 4. COMPOSITE REPORT ON THE STATUS AND TRENDS REGARDING THE KNOWLEDGE, INNOVATIONS AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES**

59. Agenda item 4 was taken up by Sub-Working Group I at its 1st meeting, on 8 December 2003. In considering the item, the Sub-Working Group had before it a report by the Executive Secretary on the first phase of the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities (UNEP/CBD/WG8J/3/4), which also contained an executive summary of the first phase of the composite report. It also had before it, as information documents, the full text of the composite report (UNEP/CBD/WG8J/3/INF/1), and copies of the regional reports compiled by the team of consultants, which had served as the basis for the first phase report (UNEP/CBD/WG8J/3/INF/3-10).

60. Introducing the item, the Secretariat said that the Executive Secretary had undertaken the first phase of the composite report based on elements 1 and 2 of the outline for the report adopted by the Conference of the Parties in decision VI/10, namely: the state of retention of traditional biodiversity-related knowledge, and identification and assessment of measures and initiatives to protect, promote and facilitate the use of traditional knowledge. All regions covered by the composite report had produced examples of traditional knowledge that had either disappeared or was at risk of disappearing, due to a series of interlinked threats, which included lack of respect for and recognition of the value of traditional knowledge and its holders, and the fact that traditional knowledge could not be codified and categorized according to existing “Western” scientific and technical methods. Measures and initiatives to protect, promote and facilitate the use of traditional knowledge were unevenly developed, but even where they were well developed, the conservation or sustainable use of biodiversity was rarely a priority of such activities. A first step toward securing traditional knowledge was to raise its profile as a viable management strategy by promoting closer engagement between traditional knowledge and “Western” science, among other measures. The Sub-Working Group was invited to consider the recommendations contained in the composite report, for possible forwarding to the Conference of the Parties.

61. Following the introduction, the Co-Chair invited Ms. Harriet Gillett of the UNEP World Conservation Monitoring Centre (WCMC) to give an overview of how the composite report had been drafted.

62. Ms. Gillett described the time constraints that had made the report a preliminary overview of the current status of traditional biodiversity-related knowledge and the practices in place to conserve it, rather than the comprehensive examination requested by the Conference of the Parties. Variability in the number of national reports available had also been a clear problem in that respect. Nevertheless, 27 recommendations had been made in relation to the composite report, organized under the following headings: improving the reporting process, definitions, indicators, research ethics, incentive and capacity-building, education, land practices, legislation and international-level activities.

63. Following the presentations, statements were made by the representatives of Argentina, Canada, China, Italy (on its own behalf), Italy (on behalf of the European Community, its member States and the acceding countries), Liberia, Lithuania, Mexico, the Netherlands, Norway, Pakistan and Poland.

64. Statements were also made by the representatives of the Food and Agriculture Organization of the United Nations (FAO) and the IUCN.

65. The representatives of the Canadian Indigenous Biodiversity Network, Care Earth, Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA), International Indigenous Forum on Biodiversity, Russian Association of Indigenous Peoples of the North (RAIPON), and the Saami Parliament also made statements.

66. Following the statements, the Co-Chair undertook to revise the draft recommendations of the composite report based on the comments made during the meeting, in collaboration with the other Co-Chair and the Secretariat.

67. At its 6th meeting on 11 December 2003, the Sub-Working Group took up consideration of the draft recommendation prepared by the Co-Chairs on the composite report.

68. Following an exchange of views, the Sub-Working Group agreed to transmit the draft recommendation on the composite report, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG8J/3/L.9.

***Action by the Working Group***

69. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG8J/3/L.9 and adopted it, as orally amended, as recommendation 3/4. The text of the recommendation as adopted is contained in the annex to the present report.

**ITEM 5. GUIDELINES FOR THE CONDUCT OF CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS REGARDING DEVELOPMENTS PROPOSED TO TAKE PLACE ON, OR WHICH ARE LIKELY TO IMPACT ON, SACRED SITES AND ON LANDS AND WATERS TRADITIONALLY OCCUPIED OR USED BY INDIGENOUS AND LOCAL COMMUNITIES**

70. Sub-Working Group I took up agenda item 5 at its second meeting, on 9 December 2003. In considering the item, the Sub-Working Group had before it a note by the Executive Secretary on draft Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities (UNEP/CBD/WG8J/3/5).

71. Introducing the item, the Secretariat drew attention to paragraph 13 of decision VI/10 of the Conference of the Parties, which requested the Ad Hoc Open-ended Inter-Sessional Working Group to carry out further work on the guidelines. The Guidelines were intended to serve as guidance for Parties and Governments, subject to their national legislation, in the development of their impact assessment regimes. Their objective was to provide general advice on the incorporation of cultural, biodiversity-related environmental and social considerations of indigenous and local communities into new or existing environmental impact assessment procedures, noting that some existing procedures might already be taking them into consideration in different ways. The Guidelines should be applied in conjunction with the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment. In addition, it was recognized that development projects varied enormously and would therefore have to be adapted to suit the circumstances of each development project.

72. Following the Secretariat's introduction, the Co-Chair called for comments on the suggested recommendations. Statements were made by the representatives of Algeria, Argentina, the Bahamas, Burkina Faso, Burundi, Canada, Côte d'Ivoire, Egypt, Ethiopia, Gambia, India, Jamaica, Jordan, Kenya, Liberia (on behalf of the African Group), Mexico, Rwanda, Sweden, and the United States of America.

73. A statement was also made by the representative of the IUCN.

74. Representatives of the Canadian Indigenous Biodiversity Network, Care Earth, International Indigenous Forum on Biodiversity, Russian Association of Indigenous Peoples of the North (RAIPON), and the Saami Parliament also made statements.

75. The Co-Chair undertook to prepare a revised text of the recommendations with the assistance of the other Co-Chair and the Secretariat. He then called for comments on the annex to the recommendations, which contained the draft guidelines.

76. In addition to the documents prepared by the Secretariat, the Sub-Working Group had before it a draft text on part V ("General considerations") of the draft Guidelines, prepared by the International Indigenous Forum on Biodiversity.

77. During the discussion of the draft Guidelines at the 2nd, 3rd, 4th and 5th meetings, on 9 and 10 December, statements were made by the representatives of Algeria, Argentina, the Bahamas, Burkina Faso, Burundi, Canada, Côte d'Ivoire, Ethiopia, India, the Islamic Republic of Iran, Jamaica, Jordan, Kenya, Liberia (on behalf of the African Group), Lithuania, Mexico, Myanmar, the Netherlands, Niger, Pakistan, Palau, Rwanda, Saint Lucia, Sweden, the United States of America and Yemen.

78. A statement was also made by the representative of the IUCN.

79. The representatives of the Canadian Indigenous Biodiversity Network, Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA), Care Earth, Interethnic Association for the Development of the Peruvian Rainforest (AIDSEP), International Indigenous Forum on Biodiversity, and the Russian Association of Indigenous Peoples of the North (RAIPON) also made statements.

80. Following the statements, the Co-Chair undertook to revise the draft guidelines based on the comments made during the meeting, in collaboration with the other Co-Chair and the Secretariat.

81. At its 7th meeting, on 11 December 2003, the Sub-Working Group took up consideration of the revised draft guidelines prepared by the Co-Chairs in collaboration with the Secretariat.

82. Following an exchange of views, the Sub-Working Group agreed to transmit the draft recommendation containing the draft guidelines, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG8J/3/L.8.

83. The representative of the International Indigenous Forum on Biodiversity expressed disagreement with the text of paragraph 52 of the draft voluntary guidelines.

#### ***Action by the Working Group***

84. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG8J/3/L.8 and adopted it, as orally amended, as recommendation 3/5. The text of the recommendation as adopted is contained in the annex to the present report.

**ITEM 6. PARTICIPATORY MECHANISMS FOR INDIGENOUS AND LOCAL COMMUNITIES**

- 6.1 *Mechanisms to promote the effective participation of indigenous and local communities in matters related to the objectives of Article 8(j) and related provisions***
- 6.2 *Communication mechanisms for indigenous and local communities***
- 6.3 *Cooperation and collaboration among environmental conventions concerning the participation and involvement of indigenous and local communities in the maintenance and application of traditional knowledge relevant to for the conservation and sustainable use of biological diversity***

85. Sub-Working Group II took up items 6.1, 6.2 and 6.3 together, at its 2nd meeting, on 9 December 2003. In considering this item, the Sub-Working Group had before it a note by the Executive Secretary on mechanisms to promote the effective participation of indigenous and local communities in matters related to the objectives of Article 8(j) and related provisions (UNEP/CBD/WG8J/3/6), the report of the Ad Hoc Technical Expert Group on Traditional Knowledge and the Clearing-House Mechanism on communication mechanisms for indigenous and local communities (UNEP/CBD/WG8J/3/6/Add.1), and a note by the Executive Secretary on cooperation and collaboration among environmental conventions concerning the participation and involvement of indigenous and local communities in the maintenance and application of traditional knowledge relevant to the conservation and sustainable use of biological diversity (UNEP/CBD/WG8J/3/6/Add.2). It also had before it a recommendation from the Permanent Forum on Indigenous Issues (UNEP/CBD/WG8J/3/8).

86. Introducing the item, the Secretariat said that the note by the Executive Secretary on mechanisms to promote the effective participation of indigenous and local communities in matters related to the objectives of Article 8(j) and related provisions (UNEP/CBD/WG8J/3/6) had been prepared on the basis of the submissions made to the Executive Secretary in response to paragraph 20 of decision VI/10. A synthesis of these submissions was to be found in section II of the document, which provided information on national experiences, case-studies, best practices and lessons learned. The Secretariat noted that section II also discussed potential sources of funding to facilitate participation in meetings under the Convention on Biological Diversity, as requested by paragraph 22 of decision VI/10. The Secretariat also recalled paragraphs 23 and 24 of decision VI/10 and noted that section III of the document dealt with capacity-building in relation to indigenous and local communities participation in decision-making processes and communication mechanisms, while section IV contained possible recommendations to the Conference of the Parties.

87. The Secretariat also reported that in accordance with paragraph 28 of decision VI/10, the Executive Secretary had established a technical expert group to develop the roles and responsibilities of the thematic focal point within the clearing-house mechanism of the Convention on issues related to Article 8(j) and Related Provisions. The report of this technical expert group was before the Sub-Working Group for its consideration (UNEP/CBD/WG8J/3/6/Add.1). The Secretariat also recalled paragraphs 25 and 26 of decision VI/10, which requested the Executive Secretary to communicate with the Permanent Forum on Indigenous Issues, as well as to consult with the secretariats of relevant environmental conventions and programmes. The Sub-Working Group therefore had before it a recommendation of the Permanent Forum on Indigenous Issues (UNEP/CBD/WG8J/3/8), as well as a report on collaboration among the different Conventions with regard to the participation and involvement of indigenous and local communities, relating to the maintenance and application of traditional knowledge (UNEP/CBD/WG8J/3/6/Add.2).

88. During the discussion of the item, statements were made by the representatives of Argentina, Brazil, Canada, China, Costa Rica, Ethiopia, Haiti, Malaysia, Mexico, Namibia, New Zealand, Senegal, Uganda (on behalf of the African Group), and Zambia,

89. Statements were also made by the representatives of Asociación Ixacavaa de Desarrollo e Información Indígena, Coordinadora de Pueblos y Organizaciones Indígenas de la Región Chaqueña y Misiones (COPIRECHA), Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA), Indigenous People of Saint Lucia (on behalf of the Caribbean Antilles Indigenous People's Caucus), International Indigenous Forum on Biodiversity and Indigenous Women's Biodiversity Network.

90. The Co-Chair announced that, based on the comments made in the initial discussion on the agenda item, in collaboration with the Secretariat and the other Co-Chair, she would prepare a Co-Chairs' draft text for subsequent submission to the Sub-Working Group.

91. The Sub-Working Group considered the Co-Chairs' draft text under this agenda item at its 6th meeting on 11 December 2003.

92. At its 7th meeting, also on 11 December 2003, the Sub-Working Group considered a conference room paper containing a draft recommendation on participatory mechanisms for indigenous and local communities, submitted by the Co-Chairs.

93. Following the discussion, the Sub-Working Group agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG8J/3/L.7.

#### ***Action by the Working Group***

94. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG8J/3/L.7 and adopted it, as orally amended, as recommendation 3/6. The text of the recommendation as adopted is contained in the annex to the present report.

### **ITEM 7. *SUI GENERIS* SYSTEMS FOR THE PROTECTION OF THE KNOWLEDGE, INNOVATIONS AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES**

95. Sub-Working Group II took up agenda item 7 at the 1st meeting, on 8 December 2003. In considering the item, the Sub-Working Group had before it the note by the Executive Secretary on the development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices (UNEP/CBD/WG8J/3/7), as well as a note by the Executive Secretary containing recommendations of the Permanent Forum on Indigenous Issues to the Convention on Biological Diversity (UNEP/CBD/WG8J/3/8).

96. Introducing the item, the Secretariat explained that the note by the Executive Secretary had been produced in response to the issues raised by paragraph 34 of decision VI/10 of the Conference of the Parties at its sixth meeting. The note contained suggested elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices, and participants were invited to use it as a basis for their discussions, and to propose additional elements for such systems. In addition, they might wish to consider how such elements related to the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization, particularly in terms of how the elements might complete the Guidelines by focusing on the specific needs and interests of indigenous and local communities in the protection, utilization and equitable sharing of benefits when access to their genetic resources was sought. He also drew attention to the draft recommendations contained in section VIII of the note, as well as its annex, on terminology.

97. The Secretariat also noted that the Bureau of the Conference of the Parties had recommended that, in the discussions on *sui generis* systems for the protection of traditional knowledge, innovations and practices, the Working Group take into account recommendation 9 of the Permanent Forum on Indigenous Issues to the Convention on Biological Diversity (UNEP/CBD/WG8J/3/8).

98. During the ensuing discussion, statements were made by the representatives of Argentina, Bahamas, Brazil, Canada, Costa Rica, Denmark, Haiti, India, Jamaica, Mexico, Namibia (on its own behalf and on behalf of the African Group), New Zealand, Saint Lucia, Senegal, South Africa, Sweden, Switzerland, Uganda and the United States of America.

99. The representative of the United Nations University/Institute for Advanced Studies also made a statement.

100. Statements were also made by the representatives of Asociación Ixacavaa de Desarrollo e Información Indígena, Friends of the Earth International, International Indigenous Forum on Biodiversity, Kichwa, Russian Association of Indigenous Peoples of the North (RAIPON), and Tulalip Tribes of Washington.

101. The Co-Chair announced that, based on the comments made in the initial discussion on the agenda item, a Co-Chairs' draft text would be prepared for subsequent submission to the Sub-Working Group.

102. The Sub-Working Group considered the Co-Chairs' draft text under this agenda item at its 4th and 5th meetings, on 10 December 2003.

103. The representative of the United Nations Conference on Trade and Development (UNCTAD), noting that UNCTAD was the focal point for development, trade and related issues within the United Nations system, explained that its approach to traditional knowledge was based on a holistic and sustainable development perspective. *Sui generis* systems for the protection of traditional knowledge were not just measures for protection of intellectual property, but should also be holistic, recognizing that traditional knowledge had value and that its preservation was tied to the continued existence of the community that held the knowledge. Moreover, to avoid poverty and/or migration to urban areas, measures were needed to support community-based development in line with the values and traditional lifestyles. She drew attention to the objectives of the forthcoming UNCTAD-Commonwealth Secretariat workshop, tentatively planned for Geneva from 4 to 6 February 2004, on elements of national *sui generis* systems for the preservation, protection and promotion of traditional knowledge, innovations and practices and options for an international framework.

104. At its 7th meeting, on 11 December 2003, the Sub-Working Group considered a conference room paper containing a draft recommendation on development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices, submitted by the Co-Chairs.

105. Following the discussion, the Sub-Working Group agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG8J/3/L.6.

#### ***Action by the Working Group***

106. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG8J/3/L.6 and adopted it as orally amended, as recommendation 3/7. The text of the recommendation as adopted is contained in the annex to the present report.



## ITEM 8. OTHER MATTERS

### *Technology transfer and cooperation*

107. At its 5th meeting, on 10 December 2003, Sub-Working Group I took up the issue of technology transfer and cooperation, which had been added to its work at the 1st plenary session (see para.19 above).

108. In considering the issue, the Sub-Working Group had before it, for reference purposes, a copy of, the note by the Executive Secretary for the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) on proposals for the development of a programme of work on technology transfer and cooperation (UNEP/CBD/SBSTTA/9/7), and SBSTTA decision IX/5 on technology transfer and cooperation.

109. The Co-Chair introduced the issue, explaining that technology transfer and cooperation had been an item on the agenda of SBSTTA's ninth meeting. SBSTTA had discussed the item at length and had agreed that the best place for dealing with issues relating to technology transfer from indigenous and local communities to other users would be the programme of work on Article 8(j) and related provisions. SBSTTA had therefore decided to delete references to such technology transfer from the text it was discussing and to refer the issue to the Working Group. The Working Group would therefore have to make recommendations that would complement the SBSTTA recommendations on technology transfer and cooperation in relation to traditional knowledge, technology and innovations.

110. Following the introduction, the representative of Mexico read out a proposed text for the recommendations.

111. Subsequently, statements were made by Canada, Colombia, Italy (on behalf of the European Community, its member States and the acceding countries) and Liberia.

112. A statement was also made by the International Indigenous Forum on Biodiversity.

113. Following the statements, the Co-Chair undertook to prepare a text of draft recommendations based on the text read out by the representative of Mexico and the comments made by other speakers.

114. At its 7th meeting, on 11 December 2003, the Sub-Working Group took up consideration of the draft recommendation on technology transfer and cooperation prepared by the Co-Chairs.

115. Following an exchange of views, the Sub-Working Group agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG8J/3/L.10.

### *Action by the Working Group*

116. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG8J/3/L.10 and adopted it as recommendation 3/8. The text of the recommendation as adopted is contained in the annex to the present report.

### *Recommendations of the Permanent Forum on Indigenous Issues*

117. At its 4th meeting, on 10 December 2003, the Sub-Working Group considered recommendations 1 and 8 of the second session of the Permanent Forum on Indigenous Issues addressed to the Convention on Biological Diversity (UNEP/CBD/WG8J/3/8), which were of direct relevance to the programme of work on Article 8(j) and related provisions.

118. Clarification was provided by the representative of the Permanent Forum on Indigenous Issues on the purpose of the recommendations, which was to promote better understanding, in all international forums, of issues of concern to indigenous peoples.

119. Following this clarification, statements were made by the Bahamas, Canada, Liberia, Norway and Sweden.

120. A statement was also made by the representative of the IUCN.

121. The representatives of the International Indigenous Forum on Biodiversity, the Permanent Forum on Indigenous Issues and the Saami Parliament also made statements.

122. Following the statements, the Co-Chair undertook to prepare a draft recommendation for submission to the plenary on how to proceed with recommendations 1 and 8 from the Permanent Forum on Indigenous Issues, in collaboration with the other Co-Chair and the Secretariat, based on the comments made, noting that recommendation 9 was on the agenda of Sub-Working Group II.

### ***Action by the Working Group***

123. At the 6th plenary session of the meeting, on 12 December 2003, the Working Group took up a draft recommendation UNEP/CBD/WG8J/3/L.4 on this subject submitted by the Chair and adopted it, as orally amended, as recommendation 3/9. The text of the recommendation as adopted is contained in the annex to the present report.

### ***Other matters raised by participants***

124. The representative of India raised the matter of the Asian and Pacific Group's regional preparatory meeting for the Conference of the Parties. The Islamic Republic of Iran had taken the initiative of organizing the regional meeting and had identified sponsors. The representative of India was seeking clarification on the Secretariat's role in the organization of the regional meeting.

125. The Executive Secretary explained that the Islamic Republic of Iran had approached the Secretariat, which had provided all of the documents needed to organize the meeting. With regard to funds, it had been made clear to the Secretariat that all donated funds would go directly to the Islamic Republic of Iran. No pledges had been made by Parties to the Secretariat for the organization of a regional preparatory meeting in the Asian and Pacific Region. In fact, the only pledge received for regional preparatory meetings had been made by Switzerland for a meeting of the Latin American and Caribbean Group to be held tentatively in Buenos Aires. In the absence of sufficient funds to hold preparatory meetings in the regions for the Conference of the Parties, the Secretariat was making provisions for the regional groups to meet just prior to the Conference of the Parties in Kuala Lumpur, and would be paying daily subsistence allowance for the time covered by those meetings.

### ***Statement by the International Indigenous Forum on Biodiversity***

126. At the closing plenary session of the meeting, on 12 December 2003, the representative of the International Indigenous Forum on Biodiversity wished the report of the meeting to reflect that the Indigenous Forum wanted to dedicate the work accomplished during the week to their two Arhuaco brothers, Julian Crespo and Dwiarusingumu Arroyo, who had been brutally murdered by paramilitaries in Colombia on 26 November 2003, just for being indigenous people. He said that, in order for traditional knowledge to be protected, the indigenous people themselves must be protected.

127. In reply, the representative of Colombia reiterated his Government's firm rejection of terrorism and of the action of armed groups, operating outside the law and attacking innocent members of civil society. He stressed that the competent authorities were actively pursuing an investigation, with the aim of finding and punishing those responsible for the crime. Colombia was working to protect the life, liberty and property of all its citizens, and he thanked all those who had expressed their solidarity with its policy of peaceful co-existence and respect for all. The Working Group on Article 8(j) was not the appropriate forum in which to raise such matters.

**ITEM 9. ADOPTION OF THE REPORT**

128. The present report was adopted at the 6th plenary session of the meeting, on 12 December 2003, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG8J/L.1).

**ITEM 10. CLOSURE OF THE MEETING**

129. After the customary exchange of courtesies, the meeting was closed at 2 p.m. on Friday, 12 December 2003.

*Annex*

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

<i>Recommendation</i>	<i>Page</i>
3/1 Progress report on the integration of the relevant tasks of the programme of work on Article 8(j) into the thematic areas of the Convention.....	21
3/2 Review of progress in the implementation of the priority tasks of the programme of work on Article 8(j) and related provisions .....	22
3/3 Genetic use restriction technologies .....	23
3/4 Composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biodiversity .....	24
3/5. Draft Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.....	29
3/6. Participatory mechanisms for indigenous and local communities .....	45
3/7 Development of elements of sui generis systems for the protection of traditional knowledge, innovations and practices .....	49
3/8. Technology transfer and cooperation.....	53
3/9. Recommendations of the Permanent Forum on Indigenous Issues to the Convention on Biological Diversity .....	54

**3/1. *Progress report on the integration of the relevant tasks of the programme of work on Article 8(j) into the thematic areas of the Convention***

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

*Recommends* that the Conference of the Parties at its seventh meeting:

(a) *Notes* the progress made in the integration of the relevant tasks of the programme of work in the thematic programmes of the Convention;

(b) *Requests* the Executive Secretary to prepare a progress report on the integration of the relevant tasks of the programme of work on Article 8(j) into each of the thematic areas for the consideration of the Ad Hoc Working Group on Article 8(j) and Related Provisions at its fourth meeting.

**3/2. *Review of progress in the implementation of the priority tasks of the programme of work on Article 8(j) and related provisions***

*The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions*

*Recommends* that the Conference of the Parties at its seventh meeting:

- (a) *Notes* the progress made in the implementation of the priority tasks of the programme of work on Article 8(j) and related provisions;
- (b) *Urges* Parties, where they have not already done so, to include information in their national reports on the status and trends in relation to traditional knowledge, innovations and practices of indigenous and local communities and on progress made in the implementation of the priority tasks of the programme of work at the international, national, subnational and local levels;
- (c) *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.

### 3/3. *Genetic use restriction technologies*

*The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, Recalling decisions V/5, paragraph 23, and VI/5, paragraph 21, of the Conference of the Parties;*

*Noting the report of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies (UNEP/CBD/WG8J/3/INF/2),*

*Noting also the potential socio-economic impacts of genetic use restriction technologies on small holder farmers and indigenous and local communities,*

*Noting further recommendation IX/2 of the Subsidiary Body on Scientific, Technical and Technological Advice adopted at its ninth meeting,*

*Aware of the need, expressed by a number of Parties and representatives of indigenous and local communities, to address this issue as a matter of urgency and priority,*

*Recommends that the Conference of the Parties at its seventh meeting:*

(a) *Invite Parties and Governments, in collaboration with relevant organizations, to urgently create and develop, in accordance with identified needs and priorities, capacity-building programmes including the promotion of information and awareness campaigns, to involve and enable smallholder farmers, indigenous and local communities, and other relevant stakeholders to effectively participate in decision-making processes related to genetic use restriction technologies;*

(b) *Request the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, to consider the potential socio-economic impacts of genetic use restriction technologies on indigenous and local communities, at its next meeting, on the basis of the report of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies, the outcome of the deliberations of the tenth meeting of the Subsidiary Body on Scientific Technical and Technological Advice on this issue, and the study undertaken by the Food and Agriculture Organization of the United Nations, pursuant to decision V/5, on potential impacts of genetic use restriction technologies on agricultural biodiversity and agricultural production systems;*

(c) *Invite Parties and indigenous and local communities to review the recommendations of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies, as they relate to Article 8(j) and related provisions of the Convention, and provide comments thereon to the Executive Secretary, for consideration at the fourth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention;*

(d) *Request the Executive Secretary to compile information provided by Parties and indigenous and local communities pursuant to subparagraph (c) above and submit the compilation to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention at its fourth meeting.*

**3/4. *Composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biodiversity***

*The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions,*

*Mindful* that any information-gathering exercise pertaining to traditional knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity should be conducted with the prior informed consent of the holders of such knowledge, innovations and practices,

*Taking note* of the report of the Ad Hoc Technical Expert Group (AHTEG) on biodiversity and climate change, which stresses the special impact of climate change on Arctic biodiversity and indigenous and local communities depending on such biodiversity,

*Recalling* that, by decision VI/10, the Conference of the Parties decided to adopt the outline of the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity, and to request the Executive Secretary to undertake the first phase of the composite report based on elements 1 and 2 of the outline,

*Having considered* the report on the first phase of the composite report on the status and trends of traditional knowledge, innovations and practices, of indigenous and local communities relevant to the conservation and sustainable use of biological diversity,

*Recalling* that phase I of the composite report is intended to provide an accurate and comprehensive assessment of the state of retention of traditional biodiversity-related knowledge, innovations and practices and identify and assess measures and initiatives to protect and promote the use of traditional knowledge, innovations and practices,

*Recognizing* the conceptual and methodological challenges and financial and time constraints faced in preparing the composite report as foreseen in decision VI/10,

*Acknowledging* that further activities are necessary in phase I of the preparation of the composite report in order to address gaps and deficiencies,

*Also acknowledging* the desirability of ongoing information-gathering and sharing of knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity, particularly, for the purpose of judging the collective success at reversing the decline of such knowledge, innovations and practices,

*Emphasizing* that any further activity needed under the first phase of the composite report should not prevent immediate initiation of activities under a second phase of the composite report, based upon sections 3 to 7 of the outline of the composite report (annex I to decision VI/10),

*Recommends* that the Conference of the Parties at its seventh meeting:

***Phase one***

1. *Takes note* with appreciation of the information contained in document UNEP/CBD/WG8J/3/INF/1;



2. *Decides* to undertake further activities to complete phase I of the composite report by the next meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions,

3. *Urges* Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders to provide information, through the clearing-house mechanism of the Convention and other feasible means/media, to the Executive Secretary to support the completion of phase I of the composite report,

4. *Requests* the Executive Secretary to continue work on phase I of the composite report in order to produce a revised version of it, in consultation with and with input from Parties, Governments, relevant organizations, all relevant stakeholders as appropriate, and from indigenous and local communities through the national focal points in consultation with and after approval of indigenous and local communities, taking into account the following elements, *inter alia*:

- (a) Organization of regional workshops;
- (b) Gathering at national level and inclusion in phase I of the report of additional information in particular on:
  - (i) Assessment, particularly by indigenous and local communities, of the success of measures and initiatives to support the retention and use of knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity, including the advantages and limitations of registers as a measure to protect traditional knowledge, innovations and practices, and to promote its use as well as approaches used for the implementation of registers, and of incentives and disincentives for the retention and use of traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity,
  - (ii) Examples of measures to protect traditional knowledge, innovations and practices and promote their use,
  - (iii) Recent field studies undertaken with the full involvement of indigenous and local communities which demonstrate the state of knowledge, innovations and practices,
- (c) Preparation of a regional report focusing on the Arctic region;
- (d) Action on decision VI/10, annex I, paragraph 28 (b), to create an advisory group/steering committee in which indigenous and local communities will be represented to assist in the completion of the report and undertake a peer review of the revised version, in consultation with indigenous peoples and local community organizations that have participated in the work on the Convention.

### ***Phase two***

5. *Requests* the Executive Secretary, through the national focal points in consultation with and after approval of indigenous and local communities and in consultation with and with input from Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders as appropriate, to immediately start work on a second phase of the composite report, laying emphasis on sections 4 and 5 of the outline of the composite report, foreseeing respectively the identification of national processes that may threaten the maintenance, preservation and application of traditional knowledge, innovations and practices and the identification of processes at the local community level that may threaten the maintenance, preservation and application of traditional knowledge, innovations and practices (annex I to decision VI/10);

6. *Encourages* Parties, Governments and competent organizations to support the efforts of indigenous and local communities to undertake field studies to determine the status, trends and threats related to traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity, with the full involvement and approval of these communities. In undertaking these studies, the general principles of the programme of work on Article 8(j) and related provisions should be respected and followed, as should decision VI/10, annex I, paragraph 28 (d), which states that codes of ethics/guidelines which entail permission and/or consent of indigenous and local communities to enter the communities and conduct the research, will be respected and followed;

### ***Financial support***

7. *Urges* Parties, Governments and relevant organizations to provide financial assistance for the completion of phase I and activities under phase II of the preparation of the composite report, in particular in order to support the full involvement and participation of indigenous and local communities in this work;

### ***Development of a plan of action***

8. *Requests* the Executive Secretary, through the national focal points in consultation with and after approval of indigenous and local communities, to further develop the draft elements for an action plan contained in the annex to the present recommendation, in particular with a view to identifying actors and timeframes, taking fully into account ongoing work under the Convention and relevant international organizations. The action plan would aim to:

(a) Facilitate synergy between existing initiatives aimed at halting the loss of and encouraging the retention and use of traditional knowledge, innovations and practices of indigenous and local communities;

(b) Provide further practical guidance, respectful of indigenous and local communities' perspectives, for the implementation of the programme of work on the implementation of Article 8(j) and related provisions as it relates to the retention of traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

9. *Invites* Parties, Governments and relevant organizations to take the elements identified in the annex into consideration when deciding upon activities to protect traditional knowledge, innovations and practices and to promote their use.

### *Annex*

## **DRAFT ELEMENTS OF A PLAN OF ACTION FOR THE RETENTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES EMBODYING TRADITIONAL LIFESTYLES**

### ***A. Improved monitoring and reporting process***

1. National reports on Article 8(j) should be compiled by Parties in consultation with indigenous and local communities, based on a questionnaire to be produced by the Secretariat.
2. Reporting periods should be agreed upon and reviews of the status and trends of traditional knowledge, innovations and practices should be pursued on a regular basis.
3. Mobilization of resources to undertake regular review should be promoted.

4. Mechanisms should be established to encourage representatives of indigenous groups and local communities to present information under the Convention on Biological Diversity, including capacity building and incentive measures.
5. Mechanisms should be developed to ensure input from overseas territories and autonomous or semi-autonomous regions<sup>1/</sup>.
6. The thematic focal point on Article 8(j) under the clearing-house mechanism should be utilized to catalogue and share best.
7. A survey of current activities of international organizations relevant to Article 8(j) should be undertaken with view to developing synergy

#### *B. Indicators*

8. Indicators on the state of retention of traditional knowledge, innovations and practices should be established with the active involvement of indigenous and local communities, in consultation with relevant organizations, in connection with the ongoing work on indicators under the Convention.
9. Indicators to assess the success or failure of measures to promote or preserve traditional knowledge, innovations and practices should be established, with the active involvement of indigenous and local communities, in connection with the ongoing work on indicators under the Convention.
10. Information on legislative measures to protect and promote the use of traditional knowledge, innovations and practices as drawn from regional and national reports, should be kept up to date.

#### *C. Research ethics*

11. Examples of codes of ethics and conduct governing research as used by such bodies as research institutions, business and indigenous and local communities, should be gathered with a view to assisting in future possible development of codes of ethics or conduct, and to guide further research on the retention and use of traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity;
12. Parties governments, international organizations, research institutions and business should respect and promote existing codes of ethics or conduct governing research, and Parties, Governments and relevant organizations should facilitate the development of additional codes by indigenous and local communities where none exist.

#### *D. Research on and implementation of mechanisms and measures to address the underlying causes of the decline of traditional knowledge, innovations and practices*

13. Research should be undertaken on existing and new threats to the retention and use of traditional knowledge, innovations and practices.
14. Mechanisms to promote cooperation in order to address the cause of decline should be identified in cooperation with the Permanent Forum on Indigenous Issues of the United Nations and other relevant initiatives and organizations.
15. Parties should be encouraged, in accordance with national domestic law and international obligations, to recognize land tenure of indigenous and local communities, as recognized rights and access to land are fundamental to the retention of traditional knowledge, innovations and practices.

---

<sup>1/</sup> The provisions contained in this recommendation relating to territories under sovereignty disputes recognized by the United Nations shall only be implemented with the consent of all Parties involved in the dispute.

16. Subject to national legislation and international obligations, Parties should be encouraged to pursue the fair and equitable resolution of land claims as an essential element of efforts to facilitate the retention and use of traditional knowledge, innovations and practices,
17. Indigenous and local communities should, where relevant, be actively involved in the management of protected areas.
18. The rights of indigenous and local communities should be given due respect when establishing new protected areas.
19. Parties should establish measures to ensure respect for the rights of unprotected or voluntarily isolated communities.
20. Restrictions on use of and access to sacred sites or otherwise culturally significant sites should be incorporated into appropriate local or national legislation, in consultation with and with full involvement of indigenous and local communities.
21. Legislation intended to protect, promote the use of traditional knowledge, innovations and practices should be consistent with the needs and views of indigenous and local communities, comprehensive and enforceable.
22. Parties should be encouraged to work with indigenous and local communities to develop measures and mechanisms to mitigate the consequences of actions arising from perverse incentives leading to the decline of traditional knowledge, innovations and practices of relevance for the conservation and sustainable use of biological diversity.
23. Parties should share their experiences with incentive measures as well as other mechanisms and measures to support the retention and use of traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity.
24. Mobilization of financial and technical resources should be promoted to support the design and implementation of mechanisms and measures to support retention of traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity.

*E. Capacity-building, education and training*

25. Parties, Governments and relevant organizations should be encouraged to facilitate strengthening existing indigenous organizational structures and organizations representing local communities.
26. Specific capacity-building activities should be targeted at indigenous women and women in rural or otherwise marginal communities, and at traditional knowledge, innovations and practices.
27. Where appropriate, traditional knowledge, innovations and practices should be integrated into formal, local, subnational or national systems of education, which are directed towards local or indigenous communities.
28. Education and training should be offered to indigenous and local communities with special attention to the future role of young people so as to enable sustainable development, while being compatible with their traditions.
29. Parties, Governments and relevant stakeholders should be encouraged to learn about traditional knowledge, innovations and practices of indigenous and local communities of relevance for the conservation and sustainable use of biological diversity and to incorporate it in decision-making processes.

**3/5. *Draft Akwé: Kon 2/Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities***

*The Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions,*

*Recalling* that, in decision VI/10, the Conference of the Parties requested the Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions to carry out further work on guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, and that such work should complement and be in conjunction with the guidelines for incorporating biodiversity-related issues into environmental assessment legislation and/or processes and in strategic environmental assessment endorsed by the Conference of the Parties in decision VI/7 A,

*Recognizing* that the long-term negative impacts of many developments proposed to take place on, or which are likely to impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities, and in particular the loss of these communities' traditional knowledge, innovations and practices, <sup>3/</sup> continue to be a source of great concern,

*Further recognizing* that adequate impact assessment procedures and methodologies play a key role in providing information on the cultural, environmental and social impacts of proposed developments,

*Recognizing also* that developments should not include incentives and mitigation measures that adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations,

*Recognizing also* the importance of giving appropriate recognition to species considered to be sacred,

*Bearing in mind* that cultural, social and environmental impact assessment processes should enable assessment of the alternative of not proceeding with the proposed development, and that the wishes of indigenous and local communities to live in isolation should be respected,

*Emphasizing* that the conduct of impact assessments within an integrated process will increase the effectiveness of the involvement of indigenous and local communities,

*Emphasizing also* that the effective participation, involvement and approval of indigenous and local communities will require close cooperation among these communities, as well as between all relevant actors, and the design of appropriate mechanisms,

*Recommends* that the Conference of the Parties at its seventh meeting:

(a) *Endorse* the draft Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, as contained in the annex to the present recommendation;

(b) *Encourage* Parties and Governments to initiate a legal and institutional review of matters related to cultural, environmental and social impact assessment, with a view to exploring options for

---

<sup>2/</sup> Pronounced {agway-goo}. A holistic Mohawk term meaning "everything in creation" provided by the Kahnawake community located near Montreal, where the guidelines were negotiated.

<sup>3/</sup> Throughout the recommendation the expression "traditional knowledge, innovations and practices" shall be understood to mean the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, as contained in Article 8(j) of the Convention on Biological Diversity.

incorporation of these guidelines into national legislation, policies, and procedures, bearing in mind that nothing in these guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations;

(c) *Request* Parties and Governments to use these guidelines, as appropriate, in conjunction with the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment endorsed by the Conference of the Parties at its sixth meeting bearing in mind that nothing in these guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations;

(d) *Request* the Executive Secretary to publish these guidelines as a booklet in the official languages of the United Nations, and *further invite* Parties and Governments, in collaboration with indigenous and local communities, to also make the guidelines available in local languages in relevant circumstances;

(e) *Also request* Parties and Governments to conduct public education and awareness campaigns and develop strategies to ensure that relevant government departments and agencies, indigenous and local communities and their organizations, private sector developers, civil society organizations and potential stakeholders in developments, and the public at large, are made aware of the existence of these guidelines and the need for their application when developments are proposed to take place on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities;

(f) *Invite* intergovernmental organizations, Parties to intergovernmental agreements and civil society organizations active in development and biodiversity conservation, to take into consideration the guidelines for cultural, environmental and social impact assessment regarding developments proposed to take place on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities;

(g) *Request* the Executive Secretary to continue to liaise with relevant international organizations, multilateral environmental agreements and processes on impact assessment with a view to developing or enhancing synergies between, and ensuring coherence of, assessment methodologies and guidelines;

(h) *Invite* international funding and development agencies that provide funding and other forms of assistance to Governments to undertake developments, within the framework of bilateral and multilateral cooperation efforts, or to assist in the formulation of development policies, as well as policies, plans and guidelines for strategic environmental assessment, to take into consideration the need to incorporate and implement the guidelines within such developments and policies, and plans, guidelines and policies for strategic environmental assessment, and to provide funds, as appropriate, for the prevention and mitigation of negative impacts and risk factors of proposed projects and policies, such as, for example, the implementation of waste-management policies;

(i) *Encourage* Parties and Governments, regarding developments proposed to take place on, or which are likely to impact on, sacred sites and land and waters traditionally occupied or used by indigenous and local communities, to:

- (i) Promote the participation of indigenous and local communities in any bodies established by Governments at national, subnational and local levels, and in consultation with indigenous and local communities, in the assessment of proposed developments in which such communities have an interest;
- (ii) Take appropriate steps to ensure full transparency of the assessment process, including, but not limited to, the allocation of a sufficient amount of time to conduct a complete assessment of proposed developments prior to their implementation;

- (iii) Facilitate the exchange of information among relevant national agencies, developers, indigenous and local communities and all stakeholders on matters of relevance to the conduct of impact assessments of proposed developments;
- (iv) Provide, the necessary capacity and funding to ensure these measures can be put into effect, taking into account the views of indigenous and local communities as to their needs;

(j) *Call upon* Parties and Governments to support, financially and otherwise, indigenous and local communities, where they have not already done so, in formulating their own community development and biodiversity conservation plans that will enable such communities to adopt a culturally appropriate strategic, integrated and phased approach to their development needs in line with community goals and objectives. These plans should include a strategic environmental assessment policy or plan to provide a systematic process with the participation of indigenous and/or local communities for integrating cultural, environmental, and social considerations in planning and decision-making;

(k) *Also call upon* the international community to provide the necessary means to Parties to assist in the formulation and development of strategic plans for the building or enhancement of the capacity of indigenous and local communities to conduct of cultural, environmental and social impact assessments, giving full recognition to community development and biodiversity conservation plans;

(l) *Invite* indigenous and local communities to take note of the guidelines and to request their application in the case of developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities;

(m) *Call upon* Parties for full transparency when developments are proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities;

(n) *Request* Parties to include in their national reports information on practices, systems, mechanisms and experiences in the area of strategic environment assessment and cultural, environmental and social impact assessment and any measures adopted to formalize these guidelines in any policies, plans or programmes.

#### *Annex*

### **DRAFT VOLUNTARY GUIDELINES FOR THE CONDUCT OF CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS REGARDING DEVELOPMENTS PROPOSED TO TAKE PLACE ON, OR WHICH ARE LIKELY TO IMPACT ON, SACRED SITES AND ON LANDS AND WATERS TRADITIONALLY OCCUPIED OR USED BY INDIGENOUS AND LOCAL COMMUNITIES**

#### **I. PURPOSE AND APPROACH**

1. The present Guidelines are voluntary and intended to serve as guidance for Parties and Governments, subject to their national legislation, in the development and implementation of their impact-assessment regimes. The guidelines should be taken into consideration whenever developments are proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.

2. The objective of these Guidelines is to provide general advice on the incorporation of cultural, environmental, including biodiversity-related, and social considerations of indigenous and local communities into new or existing impact-assessment procedures, noting that some existing procedures may take these concerns into consideration in different ways. The Guidelines should be applied in conjunction with the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment endorsed by the Conference of the Parties in paragraph 1 of decision VI/7 A, and contained in the annex to that decision.

3. More specifically, the purpose of these Guidelines is to provide a collaborative framework within which Governments, indigenous and local communities, decision makers and managers of developments can:

(a) Support the full and effective participation and involvement of indigenous and local communities in screening, scoping and development planning exercises;

(b) Properly take into account the cultural, environmental and social concerns and interests of indigenous and local communities, especially of women who often bear a disproportionately large share of negative development impacts;

(c) Take into account the traditional knowledge, innovations and practices of indigenous and local communities as part of environmental, social and cultural impact-assessment processes, with due regard to the ownership of and the need for the protection and safeguarding of traditional knowledge, innovations and practices;

(d) Promote the use of appropriate technologies;

(e) Identify and implement appropriate measures to prevent or mitigate any negative impacts of proposed developments;

(f) Take into consideration the interrelationships among cultural, environmental and social elements.

4. The Guidelines recognize that developments vary enormously in nature, scale and complexity with respect to such aspects as their scope, size and duration; strategic and economic importance; and the nature of impacts. The Guidelines therefore should be adapted to suit the appropriate circumstances of each development. Individual countries may redefine the steps in the cultural, environmental and social impact assessment procedure to their needs and requirements, taking into account the needs and concerns of indigenous and local communities and their national legislative, administrative and policy framework, bearing in mind that nothing in these Guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations.

5. Cultural, environmental and social impact assessment procedures should refer to other relevant domestic legislation, regulations, guidelines and international and multilateral environmental agreements and protocols that have been ratified by the Party and have come into force, bearing in mind that nothing in these Guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations.

## II. USE OF TERMS

6. For the purpose of the draft Guidelines:

(a) *Cultural impact assessment* – is a process of evaluating the likely impacts of a proposed development on the way of life of a particular group or community of people, with full involvement of this group or community of people and possibly undertaken by this group or community of people: a cultural impact assessment will generally address the impacts, both beneficial and adverse, of a proposed development that may affect, for example, the values, belief systems, customary laws, language(s), customs, economy, relationships with the local environment and particular species, social organization and traditions of the affected community;

(b) *Cultural heritage impact assessment* – is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development on the physical manifestations of a community's cultural heritage including sites, structures, and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological or aesthetic value or significance;



(c) *Customary law* – law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws; <sup>4/</sup>

(d) *Environmental impact assessment* – is a process of evaluating the likely environmental impacts of, and proposing appropriate mitigation measures for, a proposed development, taking into account interrelated socio-economic, cultural and human health impacts, both beneficial and adverse;

(e) *Sacred site* – may refer to a site, object, structure, area or natural feature or area, held by national Governments or indigenous communities to be of particular importance in accordance with the customs of an indigenous or local community because of its religious and/or spiritual significance;

(f) *Social impact assessment* – is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development that may affect the rights, which have an economic, social, cultural, civic and political dimension, as well as the well-being, vitality and viability, of an affected community – that is, the quality of life of a community as measured in terms of various socio-economic indicators, such as income distribution, physical and social integrity and protection of individuals and communities, employment levels and opportunities, health and welfare, education, and availability and standards of housing and accommodation, infrastructure, services;

(g) *Strategic environmental assessment* – is a process of evaluating the likely environmental impacts of proposed policies, plans or programmes to ensure that they are fully included and addressed at an early stage of decision-making, together with economic, social and cultural considerations; <sup>5/</sup>

(h) *Traditional knowledge* – refers to the traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

### III. PROCEDURAL CONSIDERATIONS

7. Noting that the actors involved in the assessment process may include the proponent of the development, one or more governmental agencies, indigenous and local communities, stakeholders, and technical experts conducting the assessment; noting further the desirability of integrating cultural, environmental, and social impacts within a single assessment process, and taking into account the fundamental components of an environmental impact assessment as described in the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment, an integrated assessment should involve the following stages:

(a) *Preparatory stage:*

- (i) Screening;
- (ii) Scoping;

(b) *Main stage:*

- (i) Impact analysis and assessment;
- (ii) Consideration of mitigation measures (including not proceeding with the development, finding alternatives which avoid the impacts, incorporating safeguards in the design of the development, or providing compensation – monetary and/or non-monetary – for adverse impacts);

(c) *Reporting and decision-making stage:*

- (i) Reporting of the impact assessment study;

---

<sup>4/</sup> See definition contained in *Black's Law Dictionary* (7th edition), 2000.

<sup>5/</sup> Term derived from the definition contained in paragraph 1(b) of the *Guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment* contained in the annex to decision VI/7 A.

- (ii) Review of the impact assessment study;
  - (iii) Decision-making; and
  - (iv) Devising management and monitoring plans, including roles and responsibilities, alternative proposals and mitigation requirements and conditions;
- (d) *Monitoring and auditing stage:* Monitoring and environmental auditing.
8. As part of the above stages, the following steps may also be considered in carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:
- (a) Notification and public consultation of the proposed development by the proponent;
  - (b) Identification of indigenous and local communities and relevant stakeholders likely to be affected by the proposed development;
  - (c) Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups, in the impact assessment processes;
  - (d) Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development;
  - (e) Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community;
  - (f) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures;
  - (g) Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development;
  - (h) Identification of actors responsible for liability, redress, insurance and compensation;
  - (i) Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development;
  - (j) Establishment of a review and appeals process.
9. While the focus of environmental, cultural and social impact assessments is necessarily different, it is assumed, however, that the steps or phases for carrying out all three kinds of assessment will be the same for the most part. However, in the case of small-scale locally-based and initiated development, it may be possible to omit some of these steps.

**A. *Notification and public consultation of proposed development by the proponent***

10. The proponent of a development proposal or the responsible government authority should engage in a process of notification and public consultation of intention to carry out a development. Such notification should use all normal public means of notification (print, electronic and personal media, including newspapers, radio, television, mailings, village/town meetings, etc.), take into account the situation of remote or isolated and largely non-literate communities, and ensure that such notification and consultation take place in the language(s) of the communities and region that will be affected. Such notification should clearly identify the proponent, contain a brief summary of the proposal, the sites and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, as well as possible cultural and social impacts, arrangements for public consultation, contact details, key dates in the life of the project, including those regarding impact assessment

procedures, and identify obligations under national and subnational laws as well subregional, regional and international agreements.

11. The development proposal and impact assessment should be made available to organizations representing affected indigenous and local communities and relevant stakeholders for the purposes of public scrutiny and consultation. It should include all details relevant to the proposal. Notification and public consultation of the proposed development should allow for sufficient time to allow the affected indigenous or local community to prepare its response. An opportunity to present its response should be allowed for full and fair consideration by the proponent.

***B. Identification of indigenous and local communities and stakeholders likely to be affected by the proposed development***

12. In any development proposed to take place on, or likely to have an impact on, sacred sites and lands and waters traditionally occupied or used by them, indigenous and local communities should be invited to participate in and are to be accorded full respect at all stages of the assessment and development process, including planning and implementation;

13. A formal process to identify the indigenous and local community members, experts and organizations, and relevant stakeholders should be engaged, including local and open consultations. Once all parties have been identified, it is appropriate that a committee representative of the parties be formally established and its mandate defined to advise on the impact assessment processes, particularly in relation to screening and scoping phases, and for the establishment of any environmental management and monitoring plan, as well as cultural and social contingency plans. In establishing this committee, special consideration should be given to ensuring the adequate representation of indigenous and local communities.

***C. Establishment of mechanisms for indigenous and local community participation***

14. Affected indigenous and local communities should be invited to participate on any body appointed to advise on the screening and scoping phases or should be consulted on an impact assessment process for a development proposal, and should be involved in the establishment of the terms of reference for the conduct of the impact assessments, subject to national legislation. The screening and scoping phases should also take into account any community development plans and any mechanisms for strategic environmental assessment that have been formulated by an affected community.

15. In addition to representation on any body established to advise on the other impact assessment process phases, the full and effective participation and involvement of affected indigenous and local communities should contemplate using participatory models of community engagement during the conduct of the impact assessments, including in decision-making. The proponent should also provide regular feedback to the affected community throughout all stages of the impact assessment and development processes.

16. In order to facilitate the involvement and participation of the affected indigenous and local communities, local experts should be identified and their expertise recognized and engaged at the earliest opportunity.

***D. Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development***

17. The proponent and members of the affected indigenous or local community should establish a process by which community views and concerns can be properly recorded, as community members may not be in a position to attend public meetings because of, for example, remoteness of the community, or poor health. While written statements may be preferred, the views of the community members could also be recorded on video or audio tape, or any other appropriate way, subject to the consent of communities.

***E. Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures***

18. Early identification by the State and affected indigenous and local communities and, as circumstances warrant, provision of necessary human, financial, technical and legal resources, particularly to those indigenous and local communities, to support indigenous and local expertise, will facilitate effective indigenous and local community participation in the impact assessment process. In general, the larger the proposed development, the greater and more widespread the potential impacts and therefore potentially greater are the requirements for support and capacity-building.

***F. Establishment of an environmental management or monitoring plan, including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development***

19. In order to maximize benefits and minimize adverse impacts, it will be necessary in most instances to establish an environmental management or monitoring plan to provide a framework within which the development can take place. Formulation of the environmental management or monitoring plan should be guided by an affected community's development plan and/or measures for strategic environmental assessment, where such plans exist, and should also include contingency plans for possible adverse cultural and social impacts.

***G. Identification of actors responsible for liability, redress, insurance and compensation***

20. In order to maintain the health, wellbeing and security of affected indigenous and local communities and the ecosystems that sustain them, and, to the extent that it is possible, in order to prevent adverse cultural, environmental and social impacts of any proposed developments, actors that should bear the responsibility for liability, redress, insurance and compensation should be clearly identified.

***H. Conclusion of agreements or action plans on mutually agreed terms between the proponents of the proposed development and the affected indigenous or local community***

21. In order to protect the interests of affected indigenous and local communities, an agreement, could be negotiated between the community and the proponent of the development. The terms of such an agreement, subject to national legislation and regulations, could cover the procedural aspects of impact assessments, including the option of a no-action alternative, setting out the rights, duties and responsibilities of all parties, and also address measures to prevent or mitigate any negative impacts of the proposed development.

***I. Establishment of a review and appeal process***

22. Parties, if they have not already done so, should seek to ensure the full participation of affected indigenous and local communities, in accordance with national legislation, in the decision-making process for of any development proposal, including the review and appeal process, taking into account methods of mediation and dispute resolution, which may include customary methods.

**IV. INTEGRATION OF CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS AS A SINGLE PROCESS**

23. Bearing in mind the unique relationship between indigenous and local communities and the environment, the Guidelines allow for the consideration of the integration of cultural, environmental, social impact assessments as a single process. The conduct of impact assessments should meet the requirements of the Convention on Biological Diversity as defined in its Articles 14 and 8(j), and take into account the general principles guiding the programme of work on Article 8(j) and related provisions. The Guidelines should take into account work on integration of biodiversity issues into the environmental

impact assessment and strategic impact assessment in accordance with Article 14 of the Convention, and give special attention to incorporating cultural and social considerations within any environmental impact assessment legislation or policies.

#### **A. Cultural impact assessments**

24. Through the cultural impact assessment process, and particularly during the screening and scoping phases, the issues that are of particular cultural concern should be identified, such as cultural heritage, religions, beliefs and sacred teachings, customary practices, forms of social organization, systems of natural resource use, including patterns of land use, places of cultural significance, economic valuation of cultural resources, sacred sites, ceremonies, languages, customary law systems, and political structures, roles and customs. The possible impacts on all aspects of culture, including sacred sites, should therefore be taken into consideration while developing cultural impact assessments.

25. Cultural heritage impact assessment is concerned with the likely impacts of a proposed development on the physical manifestations of a community's cultural heritage and is frequently subject to national heritage laws. A cultural heritage impact assessment will need to take into account, as the circumstances warrant, international, national and local heritage values.

26. In the event that sites or objects of potential heritage significance are uncovered during earthworks associated with a development, then all activities in and around the area of discovery should cease until a proper archaeological or heritage assessment has been completed.

27. In determining the scope of a cultural impact assessment, the following should be considered:

- (a) Possible impacts on continued customary use of biological resources;
- (b) Possible impacts on the respect, preservation, protection and maintenance of traditional knowledge, innovations and practices;
- (c) Protocols;
- (d) Possible impacts on sacred sites and associated ritual or ceremonial activities;
- (e) Respect for the need for cultural privacy; and
- (f) Possible impacts on the exercise of customary laws.

##### *1. Possible impacts on continued customary use of biological resources*

28. The assessment should take the customary uses of biological resources that meet the requirements of the Convention, particularly in relation to Article 10(c), fully into consideration, as the diminution of the genetic diversity maintained and fostered by such customary use may lead to a loss of associated traditional knowledge, innovations and practices;

##### *2. Possible impacts on the respect, preservation, protection and maintenance of traditional knowledge, innovations and practices*

29. In the conduct of cultural impact assessments, due consideration should be given to the holders of traditional knowledge, innovations and practices and the knowledge itself. Customary laws governing ownership, access, control, use and dissemination of traditional knowledge, innovations and practices should be observed. Protocols with regard to indigenous and local communities should be followed with regard to the disclosure of secret and or sacred knowledge, including those that may involve public hearings and judicial processes in the courts. In the event of the disclosure of secret and or sacred knowledge, prior informed consent and proper protection measures should be ensured.

##### *3. Protocols*

30. As part of possible agreements or action plans to be concluded by the proponent of the development and the concerned communities, protocols could be established in order to facilitate the proper conduct of the development, and personnel associated with it, on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Specific protocols may need

to be established for particular kinds of development activity (for example, adventure tourism, mining) and may need to take into account the behaviour to be observed when visiting local communities, particular sites or when dealing with members of indigenous and local communities. Protocols should respect regulations already existing under relevant national, sub national or community self-government legislation.

4. *Possible impacts on sacred sites and associated ritual or ceremonial activities*

31. When developments are proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, personnel associated with such developments should recognize that many sacred sites, and areas or places of other cultural significance may have important functions with respect to the conservation and sustainable use of biological diversity and, by extension, the maintenance of the natural resources upon which such communities rely for their well-being.

32. If it is necessary to assess the potential impact of a proposed development on a sacred site, the assessment process should also include the selection of an alternate site for development in consultation with the site custodians and the affected community as a whole. Where a sacred site is to be affected by a proposed development, and in cases where no law exists to protect the site, the concerned indigenous and local community may wish to develop protocols regarding the site in the context of the proposed development.

5. *Respect for the need for cultural privacy*

33. Proponents of development and personnel associated with the development should respect the cultural sensitivities and needs of indigenous and local communities for privacy, especially with regard to important rituals and ceremonies such as those associated with rites-of-passage and death, and also ensure their activities do not interfere with the daily routines and other activities of such communities.

6. *Possible impacts on the exercise of customary laws*

34. Development proposals should be assessed for possible impacts on the customary laws of an affected community. If a development requires the introduction of an outside work-force, or requires changes in local customary systems (e.g. regarding land tenure, distribution of resources and benefits) conflicts may result. It may therefore be necessary to codify certain parts of customary law, clarify matters of jurisdiction, and negotiate ways to minimize breaches of local laws.

**B. *Environmental impact assessments***

35. In the conduct of the environmental component of an impact assessment regarding a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment, should be taken into account. National environmental impact assessment legislation and processes should respect existing inherent land and treaty rights as well as legally established rights of indigenous and local communities. As information gathering processes, environmental impact assessments can contribute to the protection of the rights of indigenous and local communities by recognizing the distinct activities, customs and beliefs of the affected indigenous and local communities.

36. The direct impacts of the development proposal on local biodiversity at the ecosystem, species and genetic levels should be assessed, and particularly in terms of those components of biological diversity that the affected indigenous or local community and its members rely upon for their livelihood, well-being, and other needs. Indirect impacts should be carefully assessed and monitored over the long term. The development proposal should be rigorously assessed with respect to the introduction of invasive species.

### *1. Baseline studies*

37. In order to effectively undertake an environmental impact assessment for a proposed development, it is desirable to carry out a baseline study, in consultation with the affected indigenous and local communities, to ascertain those components of biological diversity of particular significance to the affected indigenous or local community. Detailed knowledge of biological resources (ecosystems, species and genetic diversity), including valuation of these resources, is essential to the protection of both biodiversity and cultural values. Such baseline study should include whether, for example, habitat types to be affected by the proposed development are represented elsewhere in existing conservation reserves (under national reserve systems), and whether particular crop species (and varieties) for food and agriculture are represented in *ex situ* collections. Baseline studies should collect information with respect to:

(a) Species inventories (including identification of particular species important to the affected indigenous or local community as food, medicine, fuel, fodder, construction, artefact production, clothing, and for religious and ceremonial purposes, etc);

(b) Identification of endangered species, species at risk, etc (possibly referenced to the World Conservation Union (IUCN) Red Data Book, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and national inventories);

(c) Identification of particularly significant habitat (as breeding/spawning grounds, remnant native vegetation, wild-life refuge areas including buffer zones and corridors, habitats and routes for migratory species) and crucial breeding seasons for endangered and critical species;

(d) Identification of areas of particular economic significance (as hunting areas and trapping sites, fishing grounds, gathering areas, grazing lands, timber harvesting sites and other harvesting areas);

(e) Identification of particularly significant physical features and other natural factors which provide for biodiversity and ecosystems (e.g. watercourses, springs, lakes, mines/quarries that supply local needs); and

(f) Identification of sites of religious, spiritual, ceremonial and sacred significance (such as sacred groves and totemic sites).

38. Consistent with Principle 11 of the ecosystem approach, endorsed by the Conference of the Parties in paragraph 1 of decision V/6, traditional knowledge, innovations and practices should be considered an important and integral component of baseline studies, particularly the traditional knowledge, innovations and practices of those who have a long association with the particular area for which the development is proposed. Traditional knowledge, innovations and practices can be cross-referenced by old photographs, newspaper articles, known historical events, archaeological records, anthropological reports, and other records contained in archival collections.

### *C. Social impact assessments*

39. In order to effectively undertake a social impact assessment with respect to an indigenous or local community that is or is likely to be affected by a proposed development, the screening and scoping phases should take into account gender and demographic factors, housing and accommodation, employment, infrastructure and services, income and asset distribution, traditional systems and means of production, as well as educational needs, technical skills and financial implications.

40. Proposed developments should be evaluated in relation to tangible benefits to such communities, such as non-hazardous job creation, viable revenue from the levying of appropriate fees from beneficiaries of such developments, access to markets and diversification of income opportunities. Evaluation of changes to traditional economies could involve economic valuation of negative social impacts, such as crime and sexually transmitted diseases.

41. Developments involving changes to traditional practices for food production, or involving the introduction of commercial cultivation and harvesting of a particular wild species, should have those changes and introductions assessed.
42. In social impact assessments, social development indicators consistent with the views of indigenous and local communities should be developed and should include gender, generational considerations, health, safety, food and livelihood security aspects and the possible effects on social cohesion and mobilization.
43. In determining the scope of a social impact assessment, the following should be considered:
- (a) Baseline studies;
  - (b) Economic considerations;
  - (c) Possible impacts on traditional systems of land tenure and other uses of natural resources;
  - (d) Gender considerations;
  - (e) Generational considerations;
  - (f) Health and safety aspects;
  - (g) Effects on social cohesion;
  - (h) Traditional lifestyles; and
  - (i) The possible impact on access to biological resources for livelihoods.

*1. Baseline studies*

44. In the conduct of baseline studies, the following areas should, *inter alia*, be addressed:
- (a) Demographic factors (number and age structure of population, ethnic grouping, population distribution and movement - including seasonal movements);
  - (b) Housing and human settlements, including involuntary resettlement, expulsion of indigenous peoples from lands and involuntary sedentarization of mobile peoples;
  - (c) Health status of the community (particular health problems/issues - availability of clean water - infectious and endemic diseases, nutritional deficiencies, life expectancy, use of traditional medicine, etc);
  - (d) Levels of employment, areas of employment, skills (particularly traditional skills), education levels (including levels attained through informal and formal education processes), training, capacity-building requirements;
  - (e) Level of infrastructure and services (medical services, transport, waste disposal, water supply, social amenities (or lack of) for recreation, etc);
  - (f) Level and distribution of income (including traditional systems of distribution of goods and services based on reciprocity, barter and exchange);
  - (g) Asset distribution (e.g. land tenure arrangements, natural resource rights, ownership of other assets in terms of who has rights to income and other benefits);
  - (h) Traditional systems of production (food, medicine, artefacts), including gender roles in such systems; and
  - (i) Views of indigenous and local communities regarding their future and ways to bring about future aspirations
45. In particular, in relation to subsistence-based indigenous and local communities, the following additional social factors should also be taken into consideration, including impacts thereon:



- (a) Traditional non-monetary systems of exchange such as hunting, barter and other forms of trade, including labour exchange;
- (b) Related economic and social relations;
- (c) Importance of gender roles and relations;
- (d) Traditional responsibilities and concepts of equity and equality in society; and
- (e) Traditional systems of sharing natural resources, including resources that have been hunted, collected or harvested.

## 2. *Economic considerations*

46. Proposed developments on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities should ensure that tangible benefits accrue to such communities, such as payment for environmental services, job creation within safe and hazard-free working environments, viable revenue from the levying of appropriate fees, access to markets and diversification of income-generating (economic) opportunities for small and medium-sized businesses. In accordance with national legislation or relevant national regulations, indigenous and local communities should be involved in the financial auditing processes of the developments in which they participate to ensure that the resources invested are used effectively.

## 3. *Possible impacts on traditional systems of land tenure and other uses of natural resources*

47. Developments that particularly involve changes to traditional practices for food production, or involve the introduction of commercial cultivation and harvesting of a particular wild species (e.g. to supply market demands for particular herbs, spices, medicinal plants, fish, fur or leather) may lead to pressures to restructure traditional systems of land tenure or expropriate land, and to pressures on the sustainable use of biological diversity, in order to accommodate new scales of production. The ramifications of these kinds of changes can be far-reaching and need to be properly assessed, taking into account the value systems of indigenous and local communities. Likely impacts associated with the cultivation and/or commercial harvesting of wild species should also be assessed and addressed.

## 4. *Gender considerations*

48. In social impact assessments, there is a particular need to examine the potential impacts of a proposed development on women in the affected community with due regard to their role as providers of food and nurturers of family, community decision-makers and heads of households, as well as custodians of biodiversity and holders of particular elements of (gender-specific) traditional knowledge, innovations and practices.

## 5. *Generational considerations*

49. In any social impact assessment, the potential impact of a proposed development on all generations within a community should be examined. Of particular concern are the impacts that may potentially interfere with opportunities for elders to pass on their knowledge to youth, or which might render certain skills and traditional knowledge, innovations and practices redundant.

## 6. *Health and safety aspects*

50. In the impact assessment process, the health and safety aspects of the proposed development should be scrutinized. Safety aspects should include such risks as physical injury during construction, and health risks resulting from various forms of pollution, sexual exploitation, social disturbance, disruption to habitats of medicinal species, and use of chemicals, such as pesticides. Foreign workers should be screened for any infectious diseases for which local populations may have no immunity, or for which there is no evidence of infection within their communities.

## 7. *Effects on social cohesion*

51. The impact assessment process should take into consideration the possible effects that a proposed development might have on the affected community and its people as a whole by ensuring that particular individuals or groups are not unjustly advantaged or disadvantaged to the detriment of the community as a result of the development.

## V. **GENERAL CONSIDERATIONS**

52. The following general considerations should also be taken into account when carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:

- (a) Prior informed consent of the affected indigenous and local communities;
- (b) Gender considerations;
- (c) Impact assessments and community development plans;
- (d) Legal considerations;
- (e) Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes;
- (f) Mitigation and threat-abatement measures;
- (g) Need for transparency; and
- (h) Establishment of review and dispute resolution procedures.

### ***A. Prior informed consent of the affected indigenous and local communities***

53. Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities.

### ***B. Gender considerations***

54. The vital role that women and youth play, in particular women and youth within indigenous and local communities, in the conservation and sustainable use of biological diversity and the need for the full and effective participation of women in policy-making and implementation for biological diversity conservation should be fully taken into consideration.

### ***C. Impact assessments and community development plans***

55. Indigenous and local communities should be encouraged, and provided with the necessary support and capacity to formulate their own community development plans. Such plans should include and should develop mechanisms for strategic environmental assessment that are commensurate with the goals and objectives of the development plans and appropriate poverty eradication programmes as defined by the indigenous and local communities.

56. Any developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities should maintain a balance between economic, social, cultural and environmental concerns, on the one hand, while, on the other hand, maximizing opportunities for the conservation and sustainable use of biological diversity, the access and equitable sharing of benefits and the recognition of traditional knowledge, innovations and practices in accordance with Article 8(j) of the Convention, and should seek to minimize risks to

biological diversity. The cultural, environmental and social impact assessment processes should reflect this.

#### ***D. Legal considerations***

57. In any assessment procedure, subject to national legislation consistent with international obligations, Governments, their agencies and development proponents should take into account the rights of indigenous and local communities over lands and waters traditionally occupied or used by them and the associated biological diversity.

58. There is a need for clarification of legal responsibilities, particularly with regard to matters that may arise during the conduct of cultural, environmental and social impact assessments, including enforcement, liability and redress measures.

#### ***E. Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes***

59. Consistent with the ecosystem approach, proponents of development proposals should recognize the importance of understanding and applying the values and knowledge, where relevant, of use of biological diversity held by indigenous and local communities and their application for sustainable development.

60. In all circumstances related to the proposed development, the customary laws and intellectual property rights of the indigenous and local communities with respect to their traditional knowledge, innovations and practices, should be respected. Such knowledge should only be used with the prior informed consent of the owners of that traditional knowledge. In order to safeguard their rights, indigenous and local communities should establish, or be assisted to establish, protocols consistent with relevant national legislation for access to and use of traditional knowledge, innovations and practices in the cultural, environmental and social impact assessment processes. Assistance in establishing such protocols should be provided if so requested.

#### ***F. Mitigation and threat-abatement measures***

61. In the context of impact assessments, and particularly with respect to mitigation measures associated with the development, where there is a threat of significant reduction or loss of biodiversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

#### ***G. Need for transparency***

62. Transparency and public accountability should be maintained regarding the conduct of all phases of the cultural, environmental and social impact assessments, and in any decision-making processes, except in cases of national security and where confidentiality regarding the handling of secret/sacred traditional knowledge, innovations and practices is required. A clause on non-disclosure of information gathered through the impact assessment process of baseline studies related to traditional knowledge, innovations and practices should be ensured.

#### ***H. Establishment of review and dispute resolution procedures***

63. In order to manage any disputes that may arise in relation to a development proposal and in the ensuing impact assessment processes, dispute resolution means or mechanisms should be available or be established.

### **VI. WAYS AND MEANS**

#### ***A. Strengthening and rebuilding of capacity***

64. Any activity aimed at the incorporation of cultural and social considerations, and the biodiversity-related considerations of indigenous and local communities, into national environmental

impact assessment systems should be accompanied by appropriate strengthening and rebuilding of capacities. Expertise in traditional knowledge, innovations and practices is required within the agencies responsible for impact assessment. At the same time, indigenous and local community expertise is required in impact assessment methodologies, techniques and procedures. Environmental impact assessments should include in the assessment team experts, including indigenous experts, in the traditional knowledge, innovations and practices related to the relevant ecosystems.

65. Training workshops on cultural, social and biodiversity-related aspects of environmental impact/strategic assessment and on economic valuation of cultural social and biodiversity resources for both assessment practitioners and representatives of indigenous and local communities would facilitate the emergence of a cross-cultural understanding of the issues.

66. Governments should encourage and support indigenous and local communities, where they have not already done so, to formulate their own community-development plans that will enable such communities to adopt a more culturally appropriate strategic, integrated and phased approach to their development needs in line with community goals and objectives. These plans should include a strategic environment assessment policy or aim to provide a systematic process for integrating social, environmental and cultural considerations in planning and decision-making, for the application of impact assessments to development proposals.

#### ***B. Legislative authority***

67. If cultural, environmental and social impact assessment processes relevant to indigenous and local communities are made an integral part of environmental impact assessment and strategic environmental assessment procedures and incorporated into legislation, and the requirements for project/policy developers to find the most culturally, environmentally and socially sound, efficient options that avoid, reduce or mitigate adverse impacts are made explicit, this will prompt developers, at a very early stage, to use cultural, environmental and social impact assessment tools to improve the development process prior to the project application or consent stage or in some cases prior to screening procedures.

#### ***C. Exchange of information***

68. Web-based resources, such as the clearing-house mechanism of the Convention on Biological Diversity and other means of exchanging experiences and information, including traditional means of communication, may help to raise awareness about best available methods and useful sources of information and experience concerning both the conduct and integration of cultural, social and biodiversity-related concerns of indigenous and local communities in environmental impact assessment processes and in strategic environmental assessment, and should be developed and used for the provision and exchange of information on environmental impact assessment.

69. Communication between assessment practitioners and indigenous and local community members with experience in cultural, environmental and social impact assessment is in urgent need of improvement and should be enhanced through workshops, case-study assessments and through the sharing of experiences through, for example, the focal point on Article 8(j) and related provisions of the clearing-house mechanism of the Convention on Biological Diversity.

#### ***D. Resources***

70. Resources, including financial, technical and legal support, should be made available to indigenous and local communities and relevant national organizations to enable them to participate fully in all aspects of national impact assessments. This support may be provided by national Governments, where possible, or, in developing countries and countries with economies in transition, by appropriate donor agencies.

### **3/6. Participatory mechanisms for indigenous and local communities**

*The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions,*

*Recalling* decisions VI/10 and VI/18 of the Conference of the Parties,

*Recognizing* the importance of the full and effective participation of indigenous and local communities in the Convention process and in decision-making processes and the implementation of the Convention at the national level,

*Recognizing also* the need to strengthen and develop mechanisms to further promote the full and effective participation of indigenous and local communities in the Convention process, particularly in matters related to the objectives of Article 8(j) and related provisions,

*Recognizing further* the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation, as recognized in the preamble of the Convention,

*Noting* the work of the Ad Hoc Technical Expert Group on Traditional Knowledge and the Clearing-House Mechanism at its meeting in Santa Cruz de la Sierra, Bolivia, from 24 to 26 February 2003,

*Noting* the need to ensure adequate financial support for the participation of indigenous and local communities in meetings organized under the Convention,

*Noting further* that a number of Parties have put in place measures to facilitate the involvement and participation of indigenous and local communities in decision-making processes and the implementation of the Convention at the national level,

*Emphasizing* the need to strengthen the capacity of indigenous and local communities, in particular at the local level, in order to ensure full and effective involvement and participation in Convention related matters,

*Recommends* that the Conference of the Parties at its seventh meeting:

(a) *Reiterates* its invitation, contained in paragraph 18 of decision V/16, to Parties and Governments to increase the participation of representatives of indigenous and local communities in official delegations to meetings held under the Convention and *urges* them to further enhance such participation;

(b) *Requests* the Executive Secretary to compile information on the participation of indigenous and local communities in the Convention process, and in decision-making processes and the implementation of the Convention at the national level, making it available through the clearing-house mechanism;

(c) *Requests* the Executive Secretary to incorporate practical measures to enhance the participation of indigenous and local communities, where appropriate, in the working groups of the Convention on Biological Diversity, Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties, in accordance with the rules of procedure, where appropriate;

(d) *Requests* the Executive Secretary, in consultation with the Bureau of the Conference of the Parties, with regard to meetings held under the Convention, to consider the spacing of such meetings, particularly with regard to those of the Ad Hoc Working Group on Article 8(j) and Related Provisions, *vis-à-vis* meetings of the Open-ended Ad Hoc Working Group on Access and Benefit-sharing and of the Conference of the Parties, in order to allow sufficient time and opportunity for indigenous and local community representatives to contribute to and analyse documents prepared for such meetings, and to secure financial support for attendance;

(e) *Requests* the Executive Secretary to continue to promote synergies between international environmental instruments, in particular through the joint liaison group of the secretariats of the Convention on Biological Diversity, the United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change on issues of relevance to Article 8(j) and related provisions of the Convention;

(f) *Invites* Parties and Governments, in consultation with indigenous and local communities, where they have not already done so, to:

- (i) Promote the effective participation of indigenous and local communities in the development of national mechanisms for participation in decision-making and implementation;
- (ii) Establish national, subregional and/or regional indigenous and local community biodiversity advisory committees, taking into account gender equity at all levels;
- (iii) Enhance the capacity of national institutions, governmental and civil organizations and organizations of indigenous and local communities to take into account the requirements of Article 8(j) and related provisions and to facilitate its implementation; and
- (iv) Build sufficient capacity to ensure that the national biodiversity focal point, in accordance with domestic law, is able to make information available to indigenous and local communities with regard to the circulation of documents and outcomes of meetings held under the Convention, with particular emphasis on providing the documents in appropriate and accessible languages of indigenous and local communities;
- (v) Enhance the capacity of indigenous and local communities to collaborate with national research organizations and universities in order to identify research and training needs in relation to the conservation and sustainable use of biological diversity;

(g) *Mindful* of the particular constraints of developing countries, in particular small island developing States amongst them, *urges* Parties, Governments and international organizations, when providing financial or other support for *in situ* conservation, in accordance with Article 8(m) and Article 20, paragraphs 2 and 3, of the Convention, to pay particular attention to the establishment and implementation of participatory mechanisms;

(h) *Encourages* Parties and Governments to assist indigenous and local community organizations in their regions to hold regional meetings to discuss the outcomes of the decisions of the Conference of the Parties and to prepare for meetings under the Convention, in particular the meetings of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions and the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;

(i) *Invites* Parties to include information regarding the level of participation of indigenous and local communities in their national reports, as well as the measures and approaches used to encourage the participation of indigenous and local communities;

(j) *Decides* to establish a voluntary funding mechanism under the Convention to facilitate the participation of indigenous and local communities[, in particular] from developing countries and countries with economies in transition and small island developing States in meetings under the Convention, including meetings of the indigenous and local community liaison group and relevant meetings of ad hoc technical expert groups. The funding mechanism for the participation of indigenous and local communities established herein shall operate according to criteria to be developed by the Conference of the Parties in consultation with indigenous and local communities and taking into account any United Nations practice in this field;

(k) *Requests* the Executive Secretary to further develop the role of the thematic focal point on Article 8(j) and related provisions of the Convention under the clearing-house mechanism with a view to:

- (i) Assisting national focal points, as appropriate and subject to available resources, to more effectively disseminate and make accessible Convention-related information to indigenous and local communities with particular emphasis on providing information in appropriate and accessible languages of indigenous and local communities;
- (ii) Assisting indigenous and local communities, as appropriate and subject to available resources, in the use of information and communication technologies through the organization of capacity-building and training workshops at the local, national, and subregional levels;
- (iii) Compiling information on existing networks, experts, tools, and resources relevant to meeting the needs of indigenous and local communities;

(l) *Requests* the Executive Secretary, in consultation with indigenous and local communities, through the national focal points, to further assist in the development of communication networks and tools for use by indigenous and local communities, *inter alia*, by:

- (i) Publishing information through the clearing-house mechanism toolkit on formats, protocols, and standards for use by indigenous and local communities and assist in the further development of communication networks;
- (ii) Publishing information through the clearing-house mechanism toolkit on electronic communication tools appropriate for use by indigenous and local communities;
- (iii) Making available through the thematic focal point electronic forums and other communication tools to promote the further development of communications networks by indigenous and local communities;
- (iv) Publishing information on network architecture and custodianship of data through the clearing-house mechanism toolkit to assist indigenous and local communities in the further development of communication networks by indigenous and local communities;

- (v) Identifying other traditional, alternative and non-electronic communication tools to ensure full and effective participation in the communication network by indigenous and local communities.



**3/7 Development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices**

*The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions,*

*Recalling* decision VI/10 in which the Conference of the Parties recognized that the Convention on Biological Diversity is the primary international instrument with the mandate to address issues regarding the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

*Recalling* paragraph 34 of decision VI/10,

*Recalling also* paragraph 11 of decision V/26 A, by which the Conference of the Parties decided that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing shall maintain communication and exchange of information with the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention,

*Recognizing* that the preservation and maintenance of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity are linked to the continued stewardship by indigenous and local communities of biological resources on lands and waters traditionally occupied or used by them,

*Also recognizing* that indigenous and local communities have their own systems, as part of their customary laws, for preserving and maintaining traditional knowledge, innovations and practices as well as for the protection and transmission of traditional knowledge,

*Recognizing* the transboundary distribution of some biological and genetic resources and associated traditional knowledge,

*Recognizing also* the collective and inter-generational nature of traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity,

*Recognizing also* the need to halt the misuse and misappropriation of traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity and related genetic resources through effective mechanisms that will protect the rights of indigenous and local communities,

*Recognizing* the importance of access and benefit-sharing arrangements in the conservation of genetic resources and the preservation and maintenance of traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity,

*Noting* that a mix of defensive and positive measures, taking into account both proprietary and non-proprietary aspects, may be necessary for the protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity,

*Recognizing* that a *sui generis* system for the protection of traditional knowledge at the international level may enable indigenous and local communities to effectively protect their knowledge against misuse and misappropriation and that such a system should be flexible and respect the interests and rights of indigenous and local communities,

*Recognizing* that while in some cases databases and registers may play a role in the protection of traditional knowledge, innovations and practices, such databases and registers are only one approach in the effective protection of traditional knowledge, innovations and practices and their establishment should be voluntary, not a requirement for protection, and established with the prior informed consent of indigenous and local communities, and *further recognizing*, if indigenous and local communities decide

to use such databases and registers, the need for funding and capacity-building for indigenous and local communities regarding the establishment and maintenance of such databases and registers,

*Emphasizing* that any *sui generis* system for the protection of traditional knowledge, innovations and practices needs to be developed taking into consideration customary law and practices with the full and effective involvement and participation of concerned indigenous and local communities,

*Recognizing* that traditional knowledge is sometimes accessed without the consent of indigenous and local communities and that these communities have a right to grant or refuse such access as well as to determine the level of such access, consistent with Article 8(j) and subject to national [and international] law,

*Recognizing also* that some traditional knowledge has already been accessed without the prior informed consent of indigenous and local communities, and therefore the continued use of such traditional knowledge should, subject to national [and international] law, only be granted with the prior informed consent of the relevant indigenous and local communities,

*Aware* of the need for further work by the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, on a number of issues relating to the protection of traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity,

*Recognizing* the need for continued collaboration with other relevant organizations working on issues related to the protection of traditional knowledge, innovations and practices of indigenous and local communities, such as the World Intellectual Property Organization (WIPO), the Permanent Forum on Indigenous Issues (PFII), the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) to ensure mutual supportiveness and avoid duplication of efforts,

*Recommends* that the Conference of the Parties at its seventh meeting:

(a) *Request* the Executive Secretary to continue gathering and analysing information on the issues set out in paragraphs 34 (b) to (e) of decision VI/10 and disseminate this information through the clearing house mechanism;

(b) *Invite* Parties, Governments, indigenous and local communities, and relevant international organizations to communicate to the Executive Secretary any relevant information on existing indigenous, local, national and regional *sui generis* systems for the protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity and any relevant information on innovative policy, administrative and legislative measures that are supportive of customary law and practices;

(c) *Request* the Executive Secretary to compile information on issues identified in subparagraph (b) above, and on the nature of customary laws and traditional protocols of indigenous and local communities relating to customary uses and the conservation and sustainable use of biological diversity, in cooperation with indigenous and local communities, for consideration by the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention;

(d) *Request* the Executive Secretary, based on submissions by Parties, Governments, indigenous and local communities and relevant international organizations, to develop, in cooperation with the ongoing work on the use of terms in the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing and in consultation with Parties, indigenous and local communities and relevant international organizations, a glossary of terms relevant to Article 8(j) and related provisions for the consideration by the fourth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention;

(e) *Decide* on appropriate mechanisms for better cooperation between the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing and the Ad Hoc Open-ended Inter-Sessional

Working Group on Article 8(j) and Related Provisions of the Convention in order to ensure the participation and involvement of indigenous and local communities in the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing;

(f) *Request* the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, with the collaboration of relevant international organizations and bodies such as the United Nations Permanent Forum on Indigenous Issues to:

- (i) Consider non-intellectual-property-based *sui generis* forms of protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biodiversity;
- (ii) Further develop elements for *sui generis* systems, listed in the Annex, for protection of traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity and ensure benefit-sharing arrangements for these communities when their traditional knowledge and associated genetic resources are accessed;
- (iii) Review the relevance and applicability of the Bonn Guidelines to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention in accordance with decision VI/24A of the Conference of the Parties;
- (iv) Review and, if appropriate, make recommendations regarding the international regime on access and benefit-sharing with a view to including *sui generis* systems and measures for the protection of traditional knowledge, innovations, and practices relevant for the conservation and sustainable use of biological diversity;
- (v) Assess the role of databases and registers in the protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;
- (vi) Explore, taking into account the work of the World Intellectual Property Organization and the United Nations Permanent Forum on Indigenous Issues, the potential of and conditions under which the use of existing as well as new forms of intellectual property rights can contribute to achieving the objectives of Article 8(j) and related provisions of the Convention;

(g) *Invite* Parties and Governments to consider appropriate measures, with the full and effective participation of indigenous and local communities, to implement at local, national, subregional, regional and international levels *sui generis* systems and other new innovative mechanisms that ensure the protection of traditional knowledge, taking into consideration customary law and traditional practices;

(h) *Request* the Executive Secretary, with the cooperation of Parties, indigenous and local communities and relevant international organizations, to collect information on the role of databases and registers in the protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;

(i) *Invite* Parties, Governments and international organizations to strengthen the capacity of indigenous and local communities to protect, use, preserve, maintain and promote their traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;

(j) *Invite* both Parties and indigenous and local communities to share national experiences amongst themselves on local and national approaches, as well as international approaches, for the protection of traditional knowledge and to consider the harmonization of approaches at the regional level;

(l) *Invite* the World Intellectual Property Organization to make available to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, the results of its work on issues relevant to the implementation of Article 8(j) and related provisions of the Convention, in particular in relation to the protection of traditional knowledge and its recognition as prior art.

*Annex*

**SOME POTENTIAL DRAFT ELEMENTS TO BE CONSIDERED IN THE  
DEVELOPMENT OF *SUI GENERIS* SYSTEMS FOR THE PROTECTION  
OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES  
OF INDIGENOUS AND LOCAL COMMUNITIES**

1. Statement of purpose, objectives and scope.
2. Clarity with regard to ownership of traditional knowledge associated with biological and genetic resources.
3. Set of relevant definitions.
4. Recognition of elements of customary law relevant to the conservation and sustainable use of biological diversity with respect to: (i) customary rights in indigenous/traditional/local knowledge; (ii) customary rights regarding biological resources; and (iii) customary procedures governing access to and consent to use traditional knowledge, biological and genetic resources.
5. A process and set of requirements governing prior informed consent, mutually agreed terms and equitable sharing of benefits with respect to traditional knowledge, innovations and practices associated with genetic resources and relevant for the conservation and sustainable use of biological diversity.
6. Rights of traditional knowledge holders and conditions for the grant of rights.
7. The rights conferred.
8. A system for the registration of indigenous/local knowledge./Systems for the protection and preservation of indigenous/local knowledge.
9. The competent authority to manage relevant procedural/administrative matters with regard to the protection of traditional knowledge and benefit-sharing arrangements.
10. Provisions regarding enforcement and remedies.
11. Relationship to other laws, including international law.
12. Extra-territorial protections.

### **3/8. Technology transfer and cooperation**

*The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions,*

*Mindful* that the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles are relevant for the transfer of technologies as envisaged in Article 16, and for technical and scientific cooperation as envisaged in Article 18 of the Convention on Biological Diversity,

*Taking note* of recommendation IX/5, on technology transfer and cooperation, of the Subsidiary Body on Scientific, Technical and Technological Advice, and of the draft elements of a programme of work on technology transfer and technological and scientific cooperation annexed thereto,

*Recommends* that the Conference of the Parties at its seventh meeting take into account in a comprehensive fashion, when reviewing the draft elements of a programme of work on technology transfer and technological and scientific cooperation submitted by the ninth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice:

- (a) Both the traditional and the innovative technologies from indigenous and local communities; and
- (b) Mechanisms for ensuring that technology transfer and cooperation fully respect the rights of indigenous and local communities.

**3/9. Recommendations of the Permanent Forum on Indigenous Issues to the Convention on Biological Diversity**

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

*Stressing the need* for a better understanding among United Nations agencies on issues pertaining to indigenous and local communities and their traditional knowledge,

*Noting* recommendations 1, 8 and 9 of the Permanent Forum on Indigenous Issues contained in the report of the second session of the Forum, which are addressed to the Convention on Biological Diversity (UNEP/CBD/WG8J/3/8),

*Recommends* that the Conference of the Parties at its seventh meeting,

(a) *Welcomes* the increasing collaboration between the Convention process and the Permanent Forum on Indigenous Issues on matters pertaining to indigenous and local communities and their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;

(b) *Requests* the Executive Secretary to contribute as appropriate to the preparation of the report of the Secretary General to the Forum on Indigenous Issues on the implementation of chapter 26 of Agenda 21 and other relevant chapters, such as chapters 36 and 15;

(c) *Requests* the Executive Secretary to transmit to the Permanent Forum on Indigenous Issues at its third session the Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities;

(d) *Further requests* the Executive Secretary to consult and coordinate with the Secretariat of the Forum and to collaborate with United Nations agencies and relevant international organizations with a view to organizing a workshop on cultural, environmental and social impact assessments based on the Akwé: Kon Voluntary Guidelines and aimed at the further strengthening of the understanding of the link between environment and cultural diversity, with the participation of representatives of indigenous and local communities, and *urges* Parties and Governments to provide financial resources in support of the organization of the workshop;

(e) *Requests* the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions to develop elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity, taking into account task 16 of the programme of work on Article 8(j) and related provisions.

-----