



# **CONVENTION ON BIOLOGICAL DIVERSITY**

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

Second meeting

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Item 5 of the provisional agenda\*

### **DRAFT GUIDELINES OR RECOMMENDATIONS 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**

*Note by the Executive Secretary*

#### **I. INTRODUCTION**

1. The draft guidelines and recommendations for cultural, environmental and social impact assessments contained in this note have been prepared by the Executive Secretary for the second meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions in accordance with task 9 of the programme of work endorsed by the Conference of the Parties under decision V/16. Task 9 provides that:

“The Working Group is to develop, in cooperation with indigenous and local communities, guidelines or recommendations for the conduct of cultural, environmental and social impact assessments regarding any development proposed to take place on sacred sites and on land or waters occupied or used by indigenous and local communities. The guidelines and recommendations should ensure the participation of indigenous and local communities in the assessment and review.”

2. The present document should be read in conjunction with the background note prepared as an addendum hereto (UNEP/CBD/WG8J/2/6/Add.1), which provides explanatory notes and rationales for each of the elements of the draft guidelines.

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3. The Executive Secretary has invited Parties, Governments, indigenous and local communities, national and international organizations to transmit information to the Secretariat to assist in the development of the guidelines.

4. Environmental legislation in many countries requires the assessment of potential environmental, social and cultural impacts of proposed developments. However, it is rare that traditional knowledge, technologies and customary methods are included or required as part of the assessment process. The draft guidelines contained in this document suggest a framework within which governments, indigenous and local communities, decision-makers and managers of development and planning projects could ensure appropriate participation and involvement of indigenous and local communities and inclusion of their traditional knowledge, technologies and customary methods as part of environmental, social and cultural impact assessment processes.

5. This document takes into account, *inter alia*, the information provided in the note by the Executive Secretary on impact assessment and minimizing adverse impacts: implementation of Article 14, prepared for the fourth meeting of the Conference of the Parties (UNEP/CBD/COP/4/20); the synthesis of reports and case-studies relating to environmental impact assessment prepared for the fourth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) (UNEP/CBD/SBSTTA/4/10); and the compilation and overview of existing instruments and guidelines, codes of ethics and other activities relevant to the programme of work for the implementation of Article 8(j) and related provisions prepared for the current meeting of the Working Group on Article 8(j) (UNEP/CBD/WG8J/2/INF/1), as well as documents and relevant information provided by Parties, indigenous and local community organizations and other relevant bodies.

6. Of particular assistance, were the environmental assessment sourcebook updates provided by the Environment Department of the World Bank, as well as operational directive 4.20, on indigenous peoples; the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People (revised text) of the Sub-Commission on the Promotion and Protection of Human Rights of the United Nations Commission on Human Rights (E/CN.4/Sub.2/2000/26); and *Integrating Indigenous Knowledge in Project Planning and Implementation*, prepared by Alan Emery for the International Labour Organization, the World Bank, the Canadian International Development Agency and KIVU Nature Inc. (2000).

7. This document also acknowledges the ongoing work on environmental impact assessment and strategic environmental assessment undertaken by SBSTTA in accordance with paragraph 4 of decision V/18. The Conference of the Parties has requested SBSTTA to “further develop guidelines for incorporating biodiversity-related issues into legislation and/or processes on strategic environmental assessment impact assessment, in collaboration with the scientific community, the private sector, indigenous and local communities, non-governmental organizations and relevant organizations at the international, regional, subregional and national levels, as well as Parties, and further elaborate the application of the precautionary approach and the ecosystem approach, taking into account needs for capacity-building, with a view to completion by the sixth meeting of the Conference of the Parties”.

## II. SUGGESTED RECOMMENDATIONS

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

(a) *Endorses/adopts* the (draft) guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on sacred sites and on lands

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and waters occupied or used by indigenous and local communities as contained in the annex to the present note;

(b) *Requests* Parties and Governments at all levels to conduct education and awareness campaigns and develop strategies to ensure that indigenous and local communities, relevant government departments and agencies, private sector developers, potential stakeholders in development projects, 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 occupied or used by indigenous and local communities;

(c) *Invites* intergovernmental agreements, agencies, organizations and processes whose mandates and activities involve potential impacts on the environment and on biological diversity, or who are in the process of developing guidelines or policies regarding such impacts, 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 occupied or used by indigenous and local communities;

(d) *Invites* international funding and development agencies that provide funding and other forms of assistance to Governments to undertake development projects, or to assist in the formulation of development policies, and policies, plans and guidelines for strategic environment assessment, to take into consideration the need to incorporate the guidelines within such development projects and policies, and policies, plans and guidelines for strategic environment assessment;

(e) *Requests* Parties and Governments at all levels to ensure the involvement and participation of indigenous and local communities in the development of any measures for strategic environmental assessment, as well as policies, legislation, administrative arrangements or action plans to guide development, and also ensure their involvement and participation in all phases of the development, operation and monitoring of such measures;

(f) *Further requests* Parties and Governments to ensure that:

- (i) Indigenous and local communities are represented on any national and subnational bodies created to oversee development in which they have an interest;
- (ii) They are encouraged and resourced to form their own bodies to represent their interests at national, subnational and local levels; and
- (iii) The necessary capacity exists to ensure these measures can be put into effect;

(g) *Invites* Parties and Governments to encourage 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 strategic, integrated and phased approach to their development needs in line with community goals and objectives, and encourage indigenous and local communities to include in such plans a development objective with regard to the environment that would aim to promote sustainable development and economic growth while protecting the environment in the long term, by actively promoting and maintaining the welfare of the community and its inhabitants by adopting policies aimed at the maintenance of ecosystems, essential ecological processes and biological diversity, and utilization of living natural resources on a sustainable basis for the benefit of all members of the community, both present and future. Such plans should also include a strategic environment assessment policy or plan to provide a systematic process for integrating environmental, socio-economic, cultural and health considerations in planning and decision-making, and include formal requirements and guidelines for the application of impact assessments to development proposals;

(h) *Invites* international funding and development agencies and relevant non-governmental organizations, where requested, and in accordance with their mandates and responsibilities, to consider providing assistance to indigenous and local communities to formulate community development plans that will enable them to adopt a strategic, integrated and phased approach to their developmental needs in line with their developmental goals and objectives, and that take into account the need to conserve and sustainably use biological diversity, and that also incorporate plans, policies or guidelines for strategic environment assessment;

(i) *Invites* relevant non-governmental organizations, community-based organizations and community service providers, in accordance with their mandates and capabilities, to provide assistance where requested to indigenous and local communities 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 which take into account the guidelines;

(j) *Invites* Parties and Governments to make available to indigenous and local communities a flexible mix of instruments to assist them to maintain environmentally, socially and culturally sustainable levels of development activity within their territories. Such instruments could include, for example, integrated community planning, multi-stakeholder dialogue which includes representatives of the concerned indigenous and local communities, zoning in land-use planning, establishment of environmentally and culturally appropriate industry standards, industry performance-recognition standards, strategic environmental and cultural assessment, recognized accreditation bodies, eco-labelling, codes of good practice, environmental and cultural management and audit systems, economic instruments, and indicators and limits regarding the sustainable capacity of natural areas. Governments may need to enhance the capacity of concerned communities (through the provision of the necessary technology, expertise, infrastructure, and training) in order for such communities to establish, administer and benefit from these instruments;

(k) *Invites* Parties and Governments at all levels, where development is proposed to take place within indigenous and local territories and communal lands, to allocate an equitable proportion of any revenues from such development raised through taxes, levies, or fees, to the communities concerned for the purpose of facilitating sustainable development and *further invites* Parties and Governments, with the advice and involvement of the affected communities, to consider the establishment of community trust funds to facilitate the fair, equitable, and transparent distribution of funds derived from such revenues.

*Annex*

**DRAFT 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**

The purpose of these (draft) guidelines is to suggest a framework within which Governments, indigenous and local communities, decision-makers and managers of development and planning projects can ensure:

- (a) Appropriate participation and involvement of indigenous and local communities;
- (b) That the cultural, environmental and social concerns and interests of indigenous and local communities are properly taken into account; and that
- (c) That the traditional knowledge, innovations and practices, including technologies and customary methods, of indigenous and local communities are included as part of environmental, social and cultural impact assessment processes.
- (d) Whenever developments are proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities.

**I. USE OF TERMS**

1. For the purposes of the draft guidelines:

*Affected (indigenous and local) community* - refers to any indigenous and/or local community likely to be affected in any way by a development proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities;

*Cultural impact assessment* - refers to the assessment of the impact on way of life of a particular 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, customs, language(s), economy, relationships with local environment and particular species, social organization and traditions of the affected community;

*Cultural-heritage impact assessment* - refers to 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, or aesthetic value or significance;

*Environmental impact assessment* - refers to a category of impact assessment procedures that is generally used for evaluating the likely environmental impacts, both beneficial and adverse, of a proposed development project or activity on the physical and biological characteristics of the area likely to be affected by the proposed project or activity;

*Proponent* - refers to the owner(s) of a proposed development and/or those legally responsible for the development, and will normally include all those who have a direct financial and/or material interest in the proposed development;

*Proposed development* - includes any activity associated with the development during planning, construction, operation, maintenance, remediation and site rehabilitation;

*Social impact assessment* - generally addresses the impacts, both beneficial and adverse, of a proposed development that may affect 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, employment levels and opportunities, health and welfare, education, and availability and standards of housing and accommodation, infrastructure, and services;

*Stakeholder* - refers to any individual, community or organization that has an interest in sacred sites, or lands or waters occupied or used by indigenous and local communities, and the resources (physical and biological) of those sacred sites, lands or waters, that may be affected by a proposed development;

*Territory/communal land(s)* - unless otherwise indicated, means the lands and waters occupied or used by indigenous and local communities and includes any sacred sites located therein;

*Traditional knowledge* – includes indigenous knowledge and, unless otherwise indicated, refers to the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

## **II. GENERAL CONSIDERATIONS**

### ***A. Integration of cultural, environmental and social impact assessments as a single process***

2. For any development proposed to take place on territories occupied or used by indigenous and local communities, cultural, environmental and social impact assessments should be undertaken as a single integrated process.

### ***B. Meeting the requirements of the Convention on Biological Diversity***

3. The conduct of impact assessments should meet the requirements of the Convention on Biological Diversity as defined in its Articles 14 and 8(j), the relevant decisions of the Conference of the Parties to the Convention and any other relevant guidelines (or parts thereof) adopted by the Conference of the Parties with regard to the conduct of cultural, environmental and social impact assessments.

### ***C. Prior informed consent of the affected community***

4. In the consideration of a development proposal and in the conduct of the necessary impact assessments, various levels of prior informed consent corresponding to various phases of the impact assessment process will be required. However, irrespective of the level of prior informed consent required, the following principles should guide the development of prior informed consent procedures:

(a) Proponents must supply sufficient and accurate information in a timely manner to allow for informed consent, including the best scientific and commercial information, and information regarding

relevant cultural, environmental and social issues. Such information should be factually and legally correct, as the provision of misleading or false information could invalidate the prior informed consent;

(b) Changes or modifications to the initial development proposal may require the additional prior informed consent of the affected community;

(c) Prior informed consent must be sought adequately in advance to be meaningful to both the proponent and the affected community, therefore the prior informed consent process should be set within a realistic and agreed time-frame, taking into account the situation and capacity needs (particularly with regard to access to necessary expertise and advice) of the affected community;

(d) The community affected by the proposed development must be given the opportunity to request further particulars;

(e) The information should be provided to the community to be affected by the proposed development in a manner and language that are comprehensible to the community;

(f) Consent should be construed strictly; and

(g) The prior informed consent of an affected community is dependent on clear recognition and protection of their rights, and knowledge and innovations and practices.

#### ***D. Full and effective participation of the affected community***

5. For any environmental impact assessment to be effective, the concerned indigenous and local communities must be able to participate in all phases of the assessment process, and if need be, must be adequately resourced financially and with appropriate legal and technical expertise so that their social, cultural and economic concerns are fully taken into account. It is also vital to the outcomes of the assessment process that the traditional biodiversity-related knowledge of the affected indigenous and local communities is integrated with modern scientific assessment methodologies and procedures.

6. In order to ensure full and effective consultation and indigenous and local community participation, the following conditions should be observed:

(a) Sufficient time should be allowed for consultation;

(b) Community access to appropriate technical and legal expertise/advice should be facilitated;

(c) Communications should take place in the appropriate languages and in a way which is intelligible to the communities affected;

(d) Consultation should take place in a culturally appropriate manner (and particularly where this relates to decision-making) and should include all those within the concerned community (or communities) likely to be affected by the proposed development.

7. Indigenous and local communities should participate in the long-term monitoring and assessment, including the development and use of indicators to measure impacts of development on biological diversity, and on the cultures, societies and economies of concerned indigenous and local communities, with a view to improving strategies and plans for development.

### ***E. Gender considerations***

8. The vital role that women play in the conservation and sustainable use of biological diversity and the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation should be fully taken into consideration, in accordance with the Convention.

### ***F. Consideration of capacity-building needs of the affected community***

9. While local expertise should be encouraged and supported to the fullest extent, consideration should be given to the capacity-building needs of indigenous and local communities to facilitate their effective participation in any impact assessment procedures. Such capacity-building needs may include the provision of necessary professional, technical, scientific, legal and financial support, and access to the relevant technologies and equipment and the relevant training both to operate such technology and to carry out ongoing monitoring of impacts during and after a development has taken place, and for such communities to undertake control and mitigation measures. Professional support may include the services of anthropologists, linguists, archaeologists and economists. The affected indigenous and local communities should be consulted as to their capacity requirements and have a say in the selection of any personnel hired to assist them.

10. The needs of indigenous and local communities, in terms of their capacity to manage and benefit from development within their territories and communal lands, must be closely monitored by the affected communities. Capacity-building may need to be undertaken in many communities to ensure that they have the necessary infrastructure to cope with the extra demands placed upon them by development-related activities.

### ***G. Development and the alleviation of poverty***

11. In recognizing the importance of development to the economies of many countries, and particularly developing and least developed countries, and small island developing States, with regard to any development proposed to take place within indigenous and local community territories, the essential human rights of indigenous and local communities to food, a safe and clean environment, work, health and education must be respected and maintained in balance. In this regard, the need for economic development should not compromise respect for these and other social and cultural rights.

12. Indigenous and local communities must be in a position to determine what constitutes sustainable levels of development in the context of their natural resources, economies, cultures and societies, and as such, consideration of what constitutes sustainable levels of development must be addressed as an integral part of the impact assessment process. Such levels should be respected by proponents of development.

13. Any development proposed to take place within indigenous and local community territories should maintain a balance between economic, social, cultural and environmental concerns, while maximizing opportunities for the conservation and sustainable use of biological diversity, the equitable sharing of benefits and the recognition of traditional knowledge, in accordance with Article 8(j) of the Convention, and seek to minimize risks to biological diversity. Consideration of the need for this balance should be addressed in the impact assessment process.

### ***H. Strategic environmental assessments and community development plans***

14. In the development of mechanisms for strategic environmental assessment at the national and subnational levels, the needs of indigenous and local communities should be taken into account through a



process of consultation that includes such communities. Indigenous and local communities should also be encouraged, and provided with the necessary capacity to formulate their own community development plans, with such plans including mechanisms for strategic environmental assessment that are commensurate with the goals and objectives of the community development plans.

### *I. Legal considerations*

#### *1. Rights and responsibilities of Governments and indigenous and local communities under national and subnational laws*

15. In the context of cultural, environmental and social impact assessments, indigenous and local communities may have various codified legal rights, including rights with regard to land and waters, and associated biological diversity; and rights to control access to their territories, and monitor and police any activities carried out. These rights need to be taken into account in any assessment procedure.

#### *2. Jurisdictional issues regarding the application of customary laws in the area of a proposed development*

16. In impact assessment procedures, there needs to be a clear articulation of legal responsibilities particularly in relation to which party (that is, the national/subnational government or the government of the indigenous or local community) has jurisdiction over matters that may arise during the conduct of impact assessments, how judgements are to be enforced, and how issues of liability and redress are to be resolved.

#### *3. Issues of liability and redress with regard to development proposals*

17. Provisions on liability and redress should be incorporated within a development proposal, and addressed within the impact assessment procedures. The principal elements with respect to liability and redress which should be addressed in the impact assessments include:

- (a) Definition of the activities or substances covered;
- (b) Definition of damage;
- (c) Type of liability;
- (d) Establishment of the measure of damage;
- (e) Channelling liability;
- (f) Determination of who may bring a claim;
- (g) Determination of the available remedies
- (h) Identification of a court or courts to receive claims;
- (i) Provision for the enforceability of national judgements in the courts of all Parties;
- (j) Limitation on the amount of liability;
- (k) Provisions for exoneration.

18. In the impact assessment process, due consideration should be given to each of these elements in the context of the needs and requirements of affected indigenous and local communities, and particularly in any environmental management plan established to manage the impacts of a development proposed to take place within their territories or in adjacent areas.

***J. Ownership, protection and control of traditional knowledge and technologies used in impact assessment processes***

19. The intellectual property rights of indigenous and local communities with respect to their traditional biodiversity-related knowledge, innovations and practices should be respected in all circumstances related to the proposed development. Such knowledge should only be used with the prior informed consent of the traditional knowledge holders, be subject to mutually agreed terms, take into account the equitable sharing of benefits arising from the use of the knowledge, and may be the subject of legally binding contracts.

20. In the absence of any legal mechanisms for the protection of traditional knowledge, innovations and practices, indigenous and local communities should establish their own protocols for access to and use of traditional knowledge in impact assessment procedures. Such protocols should form part of any contractual arrangements negotiated or concluded between the parties to an impact assessment procedure (principally, the government or its agents, affected indigenous and local communities, those authorized to conduct the impact assessments, the proponents of the proposed development, and any parties (scientists, consultants) engaged to provide independent evaluation of impact assessment findings).

21. In the development of indigenous and local community protocols to safeguard ownership, protection and control of their traditional knowledge and technologies used in impact assessment procedures, such communities may need access to scientific and legal advice.

***K. Integration of traditional and global scientific knowledge in impact assessment processes***

22. Consistent with the ecosystem approach, proponents of development proposals should recognize the importance of understanding the values and knowledge of use of biological diversity held by indigenous and local communities and their application for sustainable development and support of local development-related activities, and seek to integrate such values and knowledge, with the consent and involvement of the knowledge holders, with the relevant scientific knowledge in the impact assessment processes.

***L. Application of the ecosystem approach***

23. The principles of the ecosystem approach, as endorsed by the Conference of the Parties in part B of the annex to decision V/6, as a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use of biological diversity in an equitable way, and as a framework for the analysis and implementation of the objectives of the Convention on Biological Diversity, should be fully applied to the impact assessments regarding any development proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities.

***M. Application of the precautionary principle***

24. In the context of impact assessments concerning a development proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities, and particularly with respect to mitigation and threat-abatement measures associated with the development, the precautionary approach should be applied.

***N. Need for transparency***

25. In all disclosures and dealings concerning the development proposal, in the conduct of all phases of the 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 is required, transparency and public accountability should be maintained.

***O. Establishment of review and dispute resolution procedures***

26. In order to manage any disputes that may arise in relation to a development proposal and in the ensuing impact assessment processes, a special body comprised of competent individuals should be established to oversee any review processes and to mediate disputes. Irrespective of the level at which a dispute may take place, affected indigenous and local communities should be fairly and adequately represented.

***P. Reporting***

27. In conformity with the request made by the Conference of the Parties in paragraph 3 of its decision V/18, Parties should include in their national reports pursuant to Article 26 information on practices, systems, mechanisms and experiences in the area of strategic environment assessment and impact assessment. Parties should also include in their national reports their experiences with regard to the implementation of these guidelines for cultural, environmental and social impact assessment, and any measures adopted to formalize these guidelines in any policies, plans or programmes regarding strategic environment assessment.

**III. INSTITUTIONAL AND PROCEDURAL CONSIDERATIONS**

***A. Recognition of diverse nature of development proposals***

28. In recognizing the diverse nature and purpose of development proposals with regard to their size, scope, duration, areas to be affected, number and diversity of stakeholders involved, and likely impacts on biological diversity, there is a need to treat each proposal on its merits with regard to all phases of the impact assessment procedures.

***B. Phases for the conduct of impact assessment procedures***

29. The various procedural and institutional steps or phases for carrying out an impact assessment for a development proposed to take place within territories occupied or used by indigenous and local communities are:

- (a) Public notification of proposed development by the proponent;
- (b) Identification of stakeholders likely to be affected by the proposed development;
- (c) Screening of proposal(s) - evaluation of the merit of the proposed development;
- (d) Development of the terms of reference and time-frames for impact assessments;
- (e) Indigenous and local community participation;

(f) Identification and provision of human, financial, technical and legal resources for effective local participation in impact assessment procedures;

(g) Establishment of an environmental management plan (EMP), including contingency plans;

(h) Identification of parties responsible for liability, redress, insurance, compensation, etc.;

(i) Conclusion of some form of agreement between the proponents of the proposed development and the affected community.

30. 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 for the most part be the same. However, in the case of small-scale locally-based and initiated development, it may be possible to omit some of these steps.

### ***C. Public notification by the proponent of development proposal***

31. The proponent of a development proposal should engage in a process of public notification of intention to carry out a development. Such notification should use all normal public means of notification (newspapers, radio, television, mail-outs, etc), and ensure that such notification takes 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 areas and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, 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.

32. The development proposal should be made available to organizations representing affected indigenous and local communities and other stakeholders for the purposes of public scrutiny and consultation. It should include all details relevant to the proposal.

### ***D. Identification of stakeholders***

33. Indigenous and local communities are to be considered significant stakeholders in any developments proposed to take place within their traditional territories and are therefore to be accorded the same respect as any other stakeholders in all stages of the development process.

34. While a development proposal should identify the parties likely to be affected by the development, a more formal process to identify the stakeholders should be engaged, including local consultations. Once all stakeholders have been identified, it is appropriate that a committee representative of the stakeholders be formally established and its mandate defined to provide oversight of the impact assessment processes, particularly in relation to screening and scoping phases, and for the establishment of any environmental management plan. This would assist in meeting the requirements regarding public participation identified in paragraph 1 (a) of Article 14 of the Convention.

### ***E. Screening of development proposals***

35. Affected indigenous and local communities should be represented on any body appointed to screen a development proposal. Ideally the screening process should take into account any community development plans and any mechanisms for strategic environmental assessment that have been formulated by an affected community.

***F. Development of terms of reference for the conduct of impact assessments***

36. Representatives of affected indigenous and local communities should be involved in the establishment of the terms of reference for the conduct of the impact assessments.

***G. Participation of the affected community***

37. In addition to representation on any body established to oversee the impact assessment process, the full and effective participation and involvement of affected indigenous and local communities must be sought during the conduct of the impact assessments. Such involvement and participation can be achieved through community/public discussions (including review of any impact-assessment findings), community involvement in decision-making at critical points in the assessment process (and particularly with regard to the ultimate decision whether to allow a project proposal to proceed, and under what conditions), and involvement of holders of relevant traditional knowledge, expertise and authority in the actual conduct of impact assessments.

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

***H. Identification and provision of human, financial, technical and legal resources to enable effective participation of the affected community***

39. In order to facilitate effective community involvement and participation in the impact assessment processes, early identification and provision of necessary human, financial, technical and legal resources, to support local expertise, are essential. In general, the larger the proposed development, the greater and more widespread the potential impacts and therefore there may be greater requirements for support and capacity building.

***I. Establishment of an environmental management plan***

40. Most developments proposed to take place within indigenous and local communities will have both positive and negative impacts. In order to maximise benefits and minimize adverse impacts it will be necessary in most instances to establish an environmental management plan to provide a framework within which the development can take place. In general, the greater the scale of the proposed project, the greater the need for an environmental management plan. Formulation of the environmental management plan should be guided by an affected community's development plan and/or measures for strategic environmental assessment.

***J. Identification of parties responsible for liability and redress***

41. In order to maintain the health, well-being and security of affected indigenous and local communities and the ecosystems that sustain them, and to the extent that it is possible to anticipate adverse impacts of any proposed development, parties that should bear responsibility for such adverse impacts should be clearly identified, and the extent of their liabilities defined in the event that damage is caused to the environment, biological diversity, sacred sites, or that impacts on the health, well-being or livelihoods of affected indigenous and local communities and which can be directly attributed to the development.

***K. Conclusion of an agreement between the proponent and the affected community***

42. In order to protect the interests of affected indigenous and local communities, an agreement, preferably legally binding, should be negotiated between the community and the proponent of the development. The agreement should cover the conduct of impact assessments, setting out rights, duties and responsibilities of all parties, and also address any specifications or modifications to the proposed development that result from the findings of the impact assessments.

**IV. SPECIFIC GUIDELINES FOR CONDUCT OF CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS**

***A. Cultural impact assessments and cultural-heritage impact assessments***

***1. Scope of cultural impact assessments***

43. A cultural impact assessment should have due regard to the affected community's

- (a) Belief systems and values;
- (b) Particular customary practices, ceremonies;
- (c) Forms of social organization (kinship system, family groupings) and how these may be manifested in housing and accommodation arrangements, obligations entailed, and so on;
- (d) Species of particular sacred, ritual and ceremonial significance;
- (e) Particular sacred sites, and other sites of significance (burial grounds, art sites);
- (f) Languages;
- (g) Customary law systems (and particularly customary laws governing categories of traditional knowledge and access, use and dissemination of such knowledge);
- (h) Political and governance structures (decision-making, etc, and particularly who has the authority to make decisions in relation to particular matters);
- (i) Gender roles (economic responsibilities, distribution of labour, family and community responsibilities); and
- (j) Customs associated with status of particular individuals and groups (elders, shamans, chiefs, head-men/women, etc, and particularly with regard to protocols/customs to be observed when dealing with members of the opposite sex).

44. In arriving at the terms of reference for any cultural impact assessment, it is important that the community concerned be able to identify issues which are of particular cultural concern.

## *2. Definition and scope of cultural-heritage impact assessments*

45. Cultural-heritage impact assessments are concerned with the likely impacts of a proposed development on the physical manifestations of a community's cultural heritage and are frequently subject to national heritage laws. A cultural-heritage impact assessment will need to take into account both national and local heritage values.

46. 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.

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

47. It is necessary to have due regard in the assessment process that any proposed development does not unduly interfere with the customary uses of biological resources that meet the requirements of the Convention as this may well lead to a diminishment of the genetic diversity maintained and fostered by such customary use, with a consequent loss of associated traditional knowledge and practices.

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

48. In the conduct of cultural impact assessments, care should be taken to respect both the custodian or holder of traditional knowledge and the knowledge itself. Customary laws governing ownership, access, control, use and dissemination of traditional knowledge should be strictly observed. Traditional knowledge will be an important component of the assessment process and may be gathered as evidence. In the event of disputes over the alleged nature of impacts, traditional knowledge may be questioned. It is therefore necessary to establish protocols that can cover all foreseeable circumstances particularly with regard to the disclosure of secret/sacred knowledge, including those which may involve public hearings and judicial processes in the courts.

## *5. Protocols*

49. In order to facilitate the proper conduct of development and those associated with it within indigenous and local community territories, protocols should be jointly established by the proponent of the development and the concerned 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.

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

50. When developments are proposed to take place within indigenous and local community territories, 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 subsistence.

51. If it is necessary that the potential impact of a proposed development on a sacred site be assessed, 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.

#### 7. *Respect for the need for cultural privacy*

52. 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.

#### 8. *Possible impacts on the exercise of customary laws*

53. 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***

#### 1. *Scope of environmental impact assessments*

54. An environmental impact assessment process may include:

(a) A detailed examination of the environment to identify areas of conservation significance and environmental constraints (including contribution to biological diversity at the regional level);

(b) Identification of the proposal's impacts, ranking of their significance and assessment against the above attributes, including modifications needed to the proposal to maximize protection of biological values;

(c) Consideration of the proposal and its impacts at the regional level, over a 50-year time span, and taking into account cumulative impacts from existing and likely developments;

(d) Recognition of economic significance of environmental attributes (e.g., seagrass beds for fishing, woodlands as habitat for pollinator species), and the need to ensure that the costs of protection measures were commensurate with the scale of impacts; and

(e) Identification of management measures needed to ensure conservation of key resources over time, including a regional management approach.

#### 2. *Baseline studies*

55. In order to effectively undertake an environmental impact assessment for a proposed development, it is desirable to carry out base-line studies. Detailed knowledge of biological resources (ecosystems, species and genetic diversity) is essential to the protection of biodiversity values. Such baseline studies 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 particularly 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 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 iucn red data book, and national inventories);
- (c) Identification of particularly significant habitat (as breeding/spawning grounds, remnant native vegetation, wild-life refuge areas and corridors, habitats and routes for migratory species) and crucial breeding seasons for critical species;
- (d) Identification of areas of particular economic significance (as hunting, fishing grounds, harvesting areas, important timber);
- (e) Identification of particularly significant physical features (e.g., watercourses, springs, mines/quarries that supply local needs); and
- (f) Identification of sites of religious, spiritual, ceremonial and sacred significance.

56. In the conduct of these studies traditional knowledge must be considered an important and integral component, and particularly the traditional knowledge of those who have a long association with the particular area for which the development is proposed. Traditional knowledge can often be supported by old photographs, oral histories cross-referenced to newspaper articles and known historical events, anthropological reports, and other records contained in archival collections.

### 3. *Direct impacts on local biological diversity*

57. The direct impacts of the development proposal on local biological diversity at ecosystem, species and genetic levels should be assessed, and particularly in terms of those components of biological diversity that the affected community and its members rely upon for their subsistence, livelihood, and other needs.

### 4. *Indirect impacts on local biological diversity*

58. The nature of some developments, and particularly some industrial and tourism developments, is such that they may have little direct effect on local biological diversity because the site they occupy is small and can generally be located in non-biologically sensitive areas. However, the by-products of such industries (air and water pollution, wastes, pesticides and industrial contaminants) may affect local biological diversity over time, and therefore their potential impacts must be carefully assessed and monitored over the long term.

### 5. *Assessment of potential for introduction of invasive species*

59. Development proposals should be rigorously assessed for their potential to introduce alien and invasive species into local ecosystems. Introduction may result from pests taking advantage of new migratory paths, or may result from an introduced species spreading beyond its designated area or escaping into the wild.

### *C. Social impact assessments*

#### *1. Scope of social impact assessments*

60. A social impact assessment (SIA) may include the following:

- (a) The conduct of base-line studies;
- (b) Economic impacts;
- (c) Possible impacts on traditional systems of land tenure;
- (d) Gender considerations;
- (e) Generational considerations; and
- (f) Health and safety aspects.
- (g) Effects on social cohesion

#### *2. Baseline studies - socio-economic indicators*

61. In the conduct of baseline studies, the following areas should be addressed:

- (a) Demographic factors (number and age structure of population, population distribution and movement - including seasonal movements);
- (b) Housing and accommodation;
- (c) Health status of the community (particular health problems/issues - availability of clean water, infectious and endemic diseases, nutritional deficiencies, life expectancy, etc);
- (d) Levels of employment, areas of employment, skills (particularly traditional skills: weaving, carving, basketry, boat-building), education levels (including levels attained through informal education processes), training;
- (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); and
- (h) Traditional systems of production (food, medicine, artefacts), including gender roles in such systems.

62. For affected communities whose economies are subsistence-based, more appropriate sets of socio-economic indicators may have to be devised.

### *3. Economic impacts*

63. Developments proposed to take place within indigenous and local community territories should ensure tangible benefits to such communities, such as job creation, viable revenue from the levying of appropriate fees, access to markets and diversification of income-generating (economic) opportunities for small and medium-sized businesses.

### *4. Possible impacts on traditional systems of land tenure*

64. 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 a particular herb, spice, medicinal plant) may lead to pressures to restructure traditional systems of land tenure to accommodate new scales of production. The ramifications of these kinds of changes can be far-reaching and need to be properly assessed. Likely impacts associated with the cultivation and/or commercial harvesting of wild species need to be particularly addressed.

### *5. Gender considerations*

65. 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, as well as custodians of biodiversity and holders of particular elements of (gender-specific) traditional knowledge.

### *6. Generational considerations*

66. In any social impact assessment, the potential impact of a proposed development on all generations within a community must be examined.

### *7. Health and safety aspects*

67. 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 associated from various forms of pollution, disruption to medicinal plant habitat, and use of chemicals (eg, pesticides).

68. In developments that propose the use or introduction of living modified organisms, the proponent(s) should take into consideration Article 26, as well as other relevant provisions, of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

### *8.. Effects on social cohesion*

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

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