



# CONVENTION ON BIOLOGICAL DIVERSITY

Distr.  
GENERAL

UNEP/CBD/WG8J/4/2/Add.1  
21 December 2005

ORIGINAL: ENGLISH

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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

Fourth meeting

Grenada, 23-27 January 2006

Item 3 of the provisional agenda\*

### IN-DEPTH REVIEW OF THE IMPLEMENTATION OF THE PROGRAMME OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. In decision VII/16 C, the Conference of the Parties requested the Executive Secretary to report on progress in the implementation of the priority tasks of the programme of work of Article 8(j) and related provisions based on information submitted in the national reports and other relevant information. Document UNEP/CBD/WG8J/4/2 reviewed the information contained in the third national reports as regards the work programme on article 8(j) and related provisions.

2. In decision VII/31 on the multi-year programme of work of the Conference of the Parties up to 2010, the Conference of the Parties decided that it would conduct an in-depth review of the programme of work on Article 8(j) and related provisions at its eighth meeting, in March 2006. To prepare the ground for such an in-depth review, the Working Group may wish to examine the effectiveness in achieving its mandate contained in decision IV/9, paragraph 1, to re-examine the programme of work as established by decision V/16 annex, and in particular the implementation of the priority tasks of the programme of work with a view to making appropriate recommendations to the Conference of the Parties.

3. To assist the Working Group in this task, the Executive Secretary has prepared the present document. Section II considers the in-depth review, achievements to date and possible future directions. Section III considers the implementation of the priority tasks of the programme of work. Section IV examines work carried out which is of relevance to the other tasks of the work program. In each case, the actual task is quoted and is followed by information regarding its implementation. Finally, section V suggests draft recommendations that the Working Group may wish to submit for the consideration of the

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\* UNEP/CBD/WG8J/4/1.

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Conference of the Parties to further advance the implementation of the programme of work. Annex I reproduces relevant paragraphs of decision IV/9 concerning the mandate of the Working Group.

## **II. PROGRAMME OF WORK FOR ARTICLE 8(J) AND RELATED PROVISIONS: ACHIEVEMENTS TO DATE AND POSSIBLE FUTURE DIRECTIONS**

### *Effectiveness of the Working Group on Article 8(j) and related provisions*

4. In decision VII/31 on the multi-year programme of work of the Conference of the Parties up to 2010, the Conference of the Parties decided that it would conduct an in-depth review of the programme of work on Article 8(j) and related provisions at its eighth meeting. This decision provides a timely opportunity to revisit the mandate of Working Group established by decision IV/9, as well as its effectiveness, and to re-examine and revise the programme of work as established by decision V/16, annex, in the light of that mandate.

5. The Working Group on Article 8(j) and related provisions met four times since its establishment, once between each meeting of the Conference of the Parties. It has made some notable achievements since its first meeting, in March 2000. In particular the Working Group has raised the profile of indigenous and local community issues throughout the Convention. It has successfully developed, and monitored the implementation of the work programme on Article 8(j) and related provisions. It has advanced the priority tasks of the work programme, including through improved indigenous and local community participation in the Convention process, the development of guidelines for the conduct of cultural, environmental and social impact assessments (the Akwe:Kon Voluntary Guidelines), the preparation of the composite report on the status and trends of traditional knowledge bringing together detailed regional information from every region and the identification of processes at national and local levels that may threaten the maintenance, preservation and application of traditional knowledge, and is currently considering elements of *sui generis* systems for the protection of traditional knowledge as well as elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities, which could make a substantial contribution to the negotiation of an international regime on access and benefit-sharing. In short, the Working Group has ensured that appropriate attention and focus is given to traditional knowledge under the Convention process.

6. On the other hand, the existence of the Working Group has meant that most efforts in promoting traditional knowledge under the Convention have been concentrated in the Working Group on Article 8(j) and related provisions. This may have had the unintended result of reducing the focus on issues related to traditional knowledge in the work of the other subsidiary bodies under the Convention. While attention was paid to ensuring some indigenous and local community participation in meetings of the Convention on such programmes as protected areas, sustainable use, and access and benefit-sharing, it is open to question whether traditional knowledge is being paid due regard under other work programmes of significance to indigenous and local communities.

7. To address this difficulty, further implementation of Article 10 (c) <sup>1/</sup> on the sustainable use of components of biological diversity may be warranted as part of the mandate and work programme of work for Article 8(j) and related provisions. Future work on Article 10 (c) may include the development of indigenous and local community specific indicators regarding sustainable use. Recalling that Article 10 (c) is a cross-cutting issue, attention could also be given to the implementation of other related provisions and in particular 17.2 and 18.4, as well as throughout the thematic areas. In addition, the

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<sup>1/</sup> Article 10. Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate: (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

Working Group on Article 8(j) could provide specific advice to other subsidiary bodies regarding the relevance of traditional knowledge. However, such an approach may risk overloading the agenda of the Working Group. Thus, the best approach may be to strengthen the participation of indigenous and local communities in other subsidiary bodies.

8. The progress report on the implementation of the programme of work on Article 8(j) and related provisions, into the thematic areas of the Convention (UNEP/CBD/WG8J/4/3), provides an analysis of achievements to date within the thematic areas. In the in-depth review of the work programme on article 8(j) and related provisions, it may be useful to consider how this can be more fully and effectively achieved.

9. Another, more radical, approach to the full and effective implementation of Article 8(j) throughout the thematic areas, could be a reconceptualization of the Working Group as an indigenous and local community think-tank and a source of expertise to be drawn upon by other areas of the Convention. This could see the Working Group itself become an effective mechanism in achieving implementation of Article 8(j) throughout the thematic areas.

#### *Participation of indigenous and local communities in the work of the Convention*

10. A fundamental principle of the programme of work for Article 8(j) has been the participation of indigenous and local communities in the work of the Convention. Participation has notably improved over time and could improve further through such mechanisms as the Clearing House Mechanism (the Traditional Knowledge Information Portal) and the expected establishment of the voluntary funding mechanism. However, the involvement of local communities has been limited for various reasons, including the lack of infrastructure within local communities. In fulfilling the mandate and programme of work for Article 8(j) and related provisions, it may be useful to consider targeted outreach to local communities, with the view of more fully involving them in Convention processes. This is discussed in greater detail in documents UNEP/CBD/WG8J/4/5 and 6.

### **III. IMPLEMENTATION OF THE PRIORITY TASKS OF THE PROGRAMME OF WORK**

11. In its decision V/16, paragraph 2, adopted at its fifth meeting in May 2000, the Conference of the Parties decided to implement the programme of work giving priority to tasks 1, 2, 4, 5, 8, 9 and 11, as well as 7 and 12, the latter to be initiated following completion of tasks 5, 9 and 11. Following is an update of progress made in the implementation of the priority tasks since adoption of the programme of work.

#### **TASKS OF THE FIRST PHASE OF THE PROGRAMME OF WORK**

##### **Element 1. Participatory mechanisms for indigenous and local communities**

*Task 1. Parties to take measures to enhance and strengthen the capacity of indigenous and local communities to be effectively involved in decision-making related to the use of their traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity subject to their prior informed approval and effective involvement.*

*Status:* In line with task 1 of the programme of work, the Conference of the Parties, in paragraph 23 of decision VI/10, urged Parties and Governments to strengthen their efforts to support capacity-building aimed at the full and effective participation of indigenous and local communities, particularly women, in decision-making processes regarding the preservation, maintenance and utilization of traditional knowledge relevant for the conservation and sustainable use of biological diversity at all levels (local, national, regional and international); and, where indigenous and local communities and Parties and Governments deem appropriate, promote their participation in the management of biological diversity.

Several mechanisms to redirect decision-making powers to the local level have been implemented and largely focus on capacity building for effective participation in decision-making and management of biological diversity and access to national and international laws for the protection of traditional knowledge. Some such examples are provided through the national reports and in particular, it was noted that research initiatives, capacity building and devolution of decision making were reportedly occurring in Bangladesh, Belgium, Bolivia, Botswana, China, Ecuador, Estonia, Finland, Germany, Lesotho, Morocco, Namibia, Norway, Poland, Senegal, Sweden, Tanzania, Thailand and Zimbabwe. More detailed information on the implementation of paragraph 23 of decision VI/10 is contained in paragraphs 13–16 of the progress report on the implementation of the programme of work on article 8(j) and related provisions at the national level (UNEP/CBD/WG8J/4/2), in which most report submitting Parties discussed various initiatives undertaken or being considered to enhance the capacity of indigenous and local communities.

*Action required:* There is a need to support, organize and facilitate capacity building workshops. Provide financial and technical support to indigenous and local community organizations.

*Actors:* Parties and Governments.

*Timeframe:* Ongoing

*Task 2. Parties to develop appropriate mechanisms, guidelines, legislation or other initiatives to foster and promote the effective participation of indigenous and local communities in decision-making, policy planning and development and implementation of the conservation and sustainable use of biological diversity at international, regional, sub-regional, national and local levels, including access and benefit-sharing and the designation and management of protected areas, taking into account the ecosystem approach.*

*Status:* Progress has been made to facilitate participation of indigenous and local communities in the work of the Convention through various mechanisms. Documents UNEP/CBD/WG8J/4/6 and UNEP/CBD/WG8J/4/5 address the issue of indigenous and local community participation in decision making processes regarding the preservation, maintenance and utilization of traditional knowledge and explores potential sources of funding to facilitate the full and effective participation of indigenous and local communities in meetings organized within the framework of the Convention, as requested in paragraph 22 of decision VI/10.

Progress also appears to have been made with almost 40 per cent of respondent Parties reporting that they are facilitating the active participation of the representatives of indigenous and local communities in relevant working groups and meetings. Over 50 per cent of respondent Parties reported on taking measures, to a limited or significant extent, to facilitate the full and effective participation of indigenous and local communities in the implementation of the Convention.

In particular, twelve countries, through their national reports, have implemented and are developing participation procedures for indigenous and local communities. For example, Botswana uses Community Based Natural Resource Management programmes, Community Based Organizations and Ecotourism as vehicles for participation of indigenous and local communities in decision-making processes. However, a major constraint to full and effective participation remains the lack of funds and financial support available.

*Action required:*

Parties and Governments to adopt further measures and mechanisms according to their unique and diverse national situations, to foster and promote indigenous and local community participation in decision making, policy planning and development and implementation of the conservation and sustainable use of biological diversity.

*Actors:* Parties and Governments.

*Timeframe:* Ongoing

*Task 4. Parties to develop, as appropriate, mechanisms for promoting the full and effective participation of indigenous and local communities with specific provisions for the full, active and effective participation of women in all elements of the programme of work, taking into account the need to:*

*(a) Build on the basis of their knowledge, (b) Strengthen their access to biological diversity; (c) Strengthen their capacity on matters pertaining to the conservation, maintenance and protection of biological diversity; (d) Promote the exchange of experiences and knowledge; (e) Promote culturally appropriate and gender specific ways in which to document and preserve women's knowledge of biological diversity* Element 2. *Status and trends in relation to Article 8(j) and related provisions*

*Status:* Progress was evidenced by almost half the countries that submitted their second national report indicating that they have fully incorporated women and women's organizations in the activities undertaken to implement the programme of work on Article 8(j) and related provisions and other relevant activities under the Convention. However, in the third national reports that were submitted, no country described mechanisms implemented specifically to promote the participation of women of indigenous and local communities in the Convention on Biodiversity's programme of work. However, several countries have noted general measures to promote equal participation of women in decision-making and capacity building projects. For example, China has the Law on the Protection and Interests of Women and Lesotho has a 30% quota for women in local Government community development councils, which are in charge of all development issues, including land management and conservation. Mauritania also has special funding available for women to create economic interest groups.

In Burkina Faso, there is an explicit policy to integrate women and women's organizations in the implementation of the programme of work, and it has been remarked that this integration is progressing. Similarly, in Cameroon policies and programmes within the Ministry of Women's Affairs and the Ministry of Social Affairs promote culture traits, and value especially those that are identifiable within rural women throughout the country.

In Ethiopia, the Ethnobiology Department of the Institute of Biodiversity Conservation and Research (IBCR) has been studying the role of women in the development, maintenance and sustainable utilisation of biological resources with emphasis on food crops and cosmetic plants. Likewise, the IBCR Forest Department has established a "focus group" that works on gender issues. The Prime Minister's Office has a Department of Women's Affairs and all ministries and large agencies have their respective Departments of Women's Affairs. One of their main goals is the improvement of the conditions of rural women, in their role as managers and conservers of biological diversity, and as generators and users of the associated biological knowledge.

*Action required:* Parties and Governments to adopt measure and mechanisms according to their unique and diverse national situations to promote and involve indigenous and local communities, and specifically women, in all elements of the programme of work.

*Actors:* Parties and Governments.

*Timeframe:* Ongoing.

*Task 5. The Executive Secretary to prepare, for the next meeting of the Ad Hoc Working Group, an outline of a composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities, a plan and a timetable for its preparation, based, inter alia, on advice submitted by Parties, Governments, indigenous and local communities and other relevant organizations regarding sources and availability of information on these matters. Parties, Governments and indigenous and local communities and other relevant organizations to submit the information and advice to address the requirements of this task and to Parties include in their national reports the current state of implementation of Article 8(j).*

*Status:* This task is completed.

*Action required:* Composite report is now completed. The revised phase I and phase II of the Composite report will be considered by the Working Group under item 5 of the agenda. Information regarding the current state of the implementation of Article 8(j) is available in 60% of the submitted national reports.

*Actors:* Secretariat and Parties and Governments.

*Timeframe:* Composite report is complete but national reporting is ongoing.

#### **Element 4. Equitable sharing of benefits**

*Task 7. Based on tasks 1, 2 and 4, the Working Group to develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure: (i) that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices; (ii) that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities; (iii) advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices and the associated genetic resources are used.*

*Status:* As this task is to be carried out after tasks 5, 9, and 11, it has not been directly addressed as yet. However, it is closely related to and, indeed, an integral part of the ongoing work on access and benefit-sharing (within the framework of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing), and in particular the negotiation of an international regime on access and benefit-sharing, an issue which will be taken up by the Working Group under item 6 of the agenda for this meeting. The Working Group will also consider, under agenda item 8, the development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices. Both items can be considered as means to achieve task 7 since their objective is to ensure that indigenous and local communities obtain a fair and equitable share of benefits arising from the use of their traditional knowledge based on prior informed consent and mutually agreed terms for the fair and equitable sharing of benefits.

*Action required:* The development of guidelines for the development of mechanisms, legislation and other appropriate initiatives regarding benefit-sharing, prior informed consent and identifications of obligations of countries of origin to be integrated in discussions on an international regime for access and benefit-sharing.

*Actors:* Parties and Governments, indigenous and local communities.

*Timeframe:* Ongoing.

### **Element 5. Exchange and dissemination of information**

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

*Status:* The Executive Secretary appointed the Head of the clearing-house mechanism, as the focal point for this purpose. Further guidance pertaining to the role of the thematic focal point under the clearing-house mechanism, was provided by the seventh meeting of the Conference of the Parties. Decision VII/16 G, requested 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: (a) 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; (b) 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 sub-regional levels; (c) compiling information on existing networks, experts, tools, and resources relevant to meeting the needs of indigenous and local communities. Additional information on the development of the role of the focal point within the clearing-house mechanism is available in document UNEP/CBD/WG8J/4/6.

*Action required:* Focal point should continue to liaise with indigenous and local communities to build capacity and further develop the Clearing House Mechanism and the traditional knowledge information portal.

*Actors:* The CBD Secretariat (CHM) and indigenous communities in close consultation with Parties.

*Timeframe:* Ongoing.

### **Element 6. Monitoring elements**

*Task 9. The Working Group 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 lands 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.*

*Status:* The Guidelines were developed by the Working Group at its third meeting and were endorsed by the Conference of the Parties at its seventh meeting, in 2004 (decision VII/16F, paragraph 1).

*Action required:* Task completed. Implementation of the Akwe:Kon Guidelines and capacity building for all stakeholders, including indigenous and local communities, to ensure its effective operations.

*Actors:* Parties and Governments.

*Timeframe:* Task completed. Implementation ongoing.

### **Element 7. Legal elements**

*Task 11. The Working Group to assess existing subnational, as appropriate, national and international instruments, particularly intellectual property rights instruments, that may have implications on the protection of the knowledge, innovations and practices of indigenous and local communities with a view to identifying synergies between these instruments and the objectives of Article 8(j).*

*Status:* While this task has not been taken up as such by the Working Group on Article 8(j) as yet, work - related to this issue is being carried out within the framework of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. At its third meeting, this Working Group, conducted an analysis of existing national, regional and international legal instruments relating to access and benefit-sharing and experience gained in their implementation, including the identification of gaps (refer document UNEP/CBD/WG-ABS/3/2) as its consideration of instruments related to access and benefit-sharing also covers traditional knowledge associated to genetic resources. In addition, during the Working Group on ABS, developed a matrix for the further analysis of gaps. This matrix covers relevant provisions of existing international, regional and national instruments and processes, gaps identified and how they should be addressed for a number of issues, including the recognition and protection of rights of indigenous and local communities, on the basis of submission provided by Parties. A consolidation of the submissions provided by Parties and relevant organisations on the basis of the matrix is contained in document UNEP/CBD/WG-ABS/4/3 prepared for the fourth meeting of the Working Group on Access and Benefit-sharing. This issue is also being examined in-depth by Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, of the World Intellectual Property Organization (WIPO). The Working Group on Article 8(j) at its fourth meeting will consider access and benefit sharing under agenda item 6.

*Action required:* Consideration of the work carried out by the Working Group on Access and benefit-sharing and WIPO under agenda item 6 of the WG 8(j) at its fourth meeting with a view to provide input into the development of an international regime on access and benefit sharing and maximizing synergies with the implementation of Article 8 (j).

*Actors:* Parties and Governments, the Working Group on Article 8 (j) and the Secretariat.

*Timeframe:* Ongoing.

*Task 12. The Working Group to develop guidelines that will assist Parties and Governments in the development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and its related provisions (which could include sui generis systems), and definitions of relevant key terms and concepts in Article 8(j) and related provisions at international, regional and national levels, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention.*

*Status:* Under agenda item 8, the Working Group will examine the question of the development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices (see document UNEP/CBD/WG8J/4/7), including relevant definitions/glossary of terms for Article 8 (j) and related provisions.

*Action required:* Development of guidelines by the Working Group. Parties and Governments to develop national and local *sui generis* models for the protection of traditional knowledge and to report on these initiatives through the national reporting process and share experiences through the Clearing House Mechanism.

*Actors:* Parties and governments.

*Timeframe:* Ongoing.

#### IV. TASKS OF THE SECOND PHASE OF THE PROGRAMME OF WORK

12. The tasks of the second phase of the programme of work have not been formally initiated. However, relevant work is being done with respect to some of these tasks in connection with other work programs or processes. This is examined below.

##### **Element 1. Participatory mechanisms for indigenous and local communities**

*Task 3. On the request of the Executive Secretary, Parties and Governments, with the full participation of indigenous and local communities, would establish a roster of experts based on the methodologies used by the Conference of Parties, to allow the experts to support the implementation of this programme of work.*

*Status:* Indigenous and local community experts are being included in Ad Hoc Experts Groups under the Convention, were appropriate and subject to the availability of funds. With regard to rosters, it should be noted that, in its decision I/2 on the work of the SBSTTA, the Working Group on the Review of Implementation recommended that the Conference of the Parties discontinue the maintenance and use of the roster of experts and that it give priority to the nomination of appropriate scientific and technical experts for participation in ad hoc technical expert groups and other assessment processes. This recommendation will be taken up by the Conference of the Parties at its eighth meeting, in March 2006.

*Action required:* The Secretariat will continue to liaise with indigenous and local communities in close consultation with Parties to ensure the full and effective participation of indigenous peoples across the thematic areas and in the programme of work of Article 8(j) and related provisions and in the implementation of the programme of work.

*Actors:* The Secretariat, Parties and indigenous and local communities.

*Timeframe:* Ongoing.

##### **Element 3. Traditional cultural practices for conservation and sustainable use**

*Task 6. The Ad Hoc Working Group to develop guidelines for the respect, preservation and maintenance of traditional knowledge, innovations and practices and their wider application in accordance with Article 8(j).*

*Status:* Not yet initiated. However, the Working Group on Article 8(j) and related provisions will consider, at its fourth meeting under agenda item 9, in response to a request by the Permanent Forum on Indigenous Issues to develop an ethical code of conduct to ensure respect for the cultural heritage of indigenous and local communities, as contained in document UNEP/CBD/WG8J/4/8, Draft Ethical Code of Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities. These broad guidelines will assist in achieving task 6.

*Action required:* The Working Group will make a recommendation to the Conference of the Parties concerning the Draft Ethical Code of Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities.

*Actors:* Parties and Governments and the Working Group.

*Timeframe:* Eighth meeting of the Conference of the Parties, March 2006.

*Task 13. The Ad Hoc Working Group to develop a set of guiding principles and standards to strengthen the use of traditional knowledge and other forms of knowledge for the conservation and sustainable use*

*of biological diversity, taking into account the role that traditional knowledge can play with respect to the ecosystem approach, in situ conservation, taxonomy, biodiversity monitoring and environmental impact assessments in all biodiversity sectors.*

*Status:* Not yet initiated.

*Task 14. The Ad Hoc Working Group to develop guidelines and proposals for the establishment of national incentive schemes for indigenous and local communities to preserve and maintain their traditional knowledge, innovations and practices and for the application of such knowledge, innovations and practices in national strategies and programmes for the conservation and sustainable use of biological diversity*

*Status:* Not yet initiated.

*Task 15. The Ad Hoc Working Group to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity in order to facilitate the recovery of traditional knowledge of biological diversity.*

#### ***Element 5. Exchange and dissemination of information***

*Status:* Not yet initiated.

*Task 16. The Executive Secretary to identify, compile and analyse, with the participation of indigenous and local communities, existing and customary codes of ethical conduct to guide the development of models for codes of ethical conduct for research, access to, use, exchange and management of information concerning traditional knowledge, innovations and practices for the conservation and sustainable use of biological diversity.*

*Status:* The task of developing elements and models for codes of ethical conduct is being taken up under item 9. Existing codes of ethical conduct were compiled as part of the response to a request of the United Nations Permanent Forum on Indigenous Issues 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 (refer decision VII/16/I, paragraph 5).

This work complements and builds on task 16, and in fact provides a broader framework concerning all interactions with indigenous and local communities including research, as well as possible elements of codes of ethical conduct, for the consideration of the Working Group. Further information is available in document UNEP/CBD/WG8J/4/8, Elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage indigenous and local communities relevant to the conservation and sustainable use of biological diversity.

*Action required:* The Working Group will consider a draft recommendation regarding the elements of the code of ethical conduct, for the consideration of the Conference of the Parties.

*Actors:* Working Group on Article 8(j) and related provisions and the Conference of the Parties.

*Timeframe:* March 2006.

## **Element 5: Exchange and dissemination of information**

*Task 10. The Ad Hoc Working Group to develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.*

*Status:* The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, sets out the basic requirements for mutually agreed terms (MAT), potential contractual parameters for an agreements of MAT and offers a possible list of mutually agreed terms. The relevance of the Bonn Guidelines and the need for further work on this issue is taken up in document UNEP/CBD/WG8J/4/7, on “the development of elements of *sui generis* systems for the protection of traditional knowledge”. This document also notes that any guidelines properly reflect customary law and the concerns of Indigenous and local communities.

*Action required:* This task will also be addressed by both the Working Group on Article 8(j) and the Working Group on ABS in the negotiation of an international regime on access and benefit sharing. Further work is required on this issue.

*Actors:* The Working Group and the Secretariat in consultation with indigenous and local communities and other relevant stakeholders.

*Timeframe:* Ongoing.

*Task 17. The Executive Secretary to develop, in cooperation with Governments and indigenous and local communities, methods and criteria to assist in assessing the implementation of Article 8(j) and related provisions at the international, regional, national and local levels, and reporting of such in national reports in conformity with Article 26.*

*Status:* The Secretariat has developed a questionnaire to assist reporting Parties under the Convention in their national reporting. In particular, questions have been developed specifically for the programme of work of article 8(j) and related provisions. Also, the Conference of the Parties has established an indicator of status and trends of linguistic diversity and numbers of speakers of indigenous languages as a measure of the status of traditional knowledge and the Working Group at its fourth meeting will consider other indicators to complement this, in document UNEP/CBD/WG8J/4/10 (indicators for assessing progress towards the 2010 biodiversity target: status of traditional knowledge) and make recommendations, as appropriate to the Conference of the Parties. Now that implementation has been under way for five years, the Working Group may wish to develop recommendations for eight meeting of Conference of the Parties on this issue.

*Action required:* Further work is required.

*Actors:* Parties, Governments and the Secretariat.

*Timeframe:* Ongoing.

## V. RECOMMENDATIONS

13. As shown above, work on some of the tasks of the first phase of the programme of work has reached an advanced stage or, in some cases, has been completed. Six years after the adoption of the programme of work, the Working Group may wish to take stock of the current status of implementation of the priority and other tasks of the programme of work and make appropriate recommendations to the Conference of the Parties concerning future priorities in light of progress accomplished thus far.

*Annex I*

**RELEVANT EXTRACTS OF DECISION IV/9**

(paragraphs 5, 6, 8 to 11, 14 and 16 *retired* pursuant to decision VII/33, paragraph 1)

***Implementation of Article 8(j) and related provisions***

*The Conference of the Parties,*

1. *Decides* that an ad hoc open-ended inter-sessional working group be established to address the implementation of Article 8(j) and related provisions of the Convention. The mandate of this working group shall be:

(a) To provide advice as a priority on the application and development of legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;

(b) To provide the Conference of the Parties with advice relating to the implementation of Article 8(j) and related provisions, in particular on the development and implementation of a programme of work at national and international levels;

(c) To develop a programme of work, based on the structure of the elements in the Madrid report (UNEP/CBD/COP/4/10/Add.1) as set out in the annex to the present decision;

(d) To identify those objectives and activities falling within the scope of the Convention; to recommend priorities taking into account the programme of work of the Conference of the Parties, such as the equitable sharing of benefits; to identify for which work-plan objectives and activities advice should be directed to the Conference of the Parties and which should be directed to the Subsidiary Body on Scientific, Technical and Technological Advice; to recommend which of the work-plan objectives and activities should be referred to other international bodies or processes; to identify opportunities for collaboration and coordination with other international bodies or processes with the aim of fostering synergy and avoiding duplication of work;

(e) To provide advice to the Conference of the Parties on measures to strengthen cooperation at the international level among indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and make proposals for the strengthening of mechanisms that support such cooperation;

2. *Decides* that the working group shall be composed of Parties and observers, including, in particular, representation from indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity with participation to the widest possible extent in its deliberations in accordance with the rules of procedure;

3. *Encourages* Parties to include representatives of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity in their delegations;

4. *Encourages* Parties to promote consultations among indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity concerning the issues to be dealt with in the working group;

5. *Decides* that the working group shall report directly to the Conference of the Parties and that the working group may provide advice to the Subsidiary Body on Scientific, Technical and Technological Advice on issues relevant to its agenda;

6. *Requests* Parties according to their capabilities to facilitate the representation, and financially and logistically support the active participation in the working group of the indigenous and local communities from their territories;

7. *Encourages* Parties, when making applications to the interim financial mechanism for funding in respect of activities under Article 8(j) and related provisions, to consider: (a) priorities as set out in paragraph 10 and (b) projects in support of the development of national legislation and corresponding strategies on the implementation of Article 8(j), as well as (c) projects in support of preparations by indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity for their active participation in and contribution to the working group;

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