



# 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

Fifth meeting

Montreal, 15-19 October 2007

Item 3 of the provisional agenda\*

### **PROGRAMME OF WORK ON ARTICLE 8(j) AND RELATED PROVISIONS: STATUS OF IMPLEMENTATION OF THE VARIOUS TASKS OF THE WORK PROGRAMME**

#### *Remaining tasks of the programme of work on Article 8(j) and related provisions*

*Note by the Executive Secretary*

#### **I. INTRODUCTION**

1. In decision VIII/5 A, paragraph 5, the Conference of the Parties requested the Working Group, at its fifth meeting, to address as a priority the timeframe to initiate work on the remaining tasks of the programme of work for Article 8(j) and related provisions.
2. The Conference of the Parties adopted the work programme on Article 8(j) and related provisions in its decision V/16, paragraph 1, in May 2000. In paragraph 2 of this decision, the Conference of the Parties decided, as a first phase, to initiate work on tasks 1, 2, 4, 5 and 8, 9 and 11. In addition tasks 7 and 12 would be initiated upon completion of tasks 5, 9 and 11. .
3. The Executive Secretary prepared the present document to assist the Working Group in its work. Section two of this document reviews the tasks of the programme of work on the implementation of Article 8(j) and related provisions already undertaken, identifying their current status and their relationship to other relevant work programmes, as well as the remaining tasks not yet commenced. Section III contains a draft recommendation on the timeframe for the initiation of work on the remaining tasks of the programme of work for the consideration of the Working Group.

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\* UNEP/CBD/WG8J/5/1.

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## II. 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: Ongoing. The Secretariat has provided as questionnaire to assist Parties in their reporting process, which includes questions specifically on the implementation of Article 8(j) and related provisions. Parties are encouraged to prepare their relevant responses in consultation with indigenous and local communities, as appropriate. As reported in the most recent third national report analysis some advances have been made in this area. The completion of 132 national reports <sup>1/</sup> has allowed for a more comprehensive assessment of the implementation of Article 8(j) and related provisions at the national level. However, based on this the overall implementation of Article 8(j) and related provisions requires increased efforts and support. Support to the efforts to determine the status and trends of traditional knowledge, innovations and practices of indigenous and local communities has progressed in many countries, because of an increasing awareness of its value across a wide range of areas however only some countries recognized the importance of traditional knowledge of indigenous and local communities to biodiversity conservation and sustainable use. Further detailed information on the implementation of Article 8(j) and related provisions through the national reports, is available in document UNEP/CBD/WG8J/5/2.*

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, subregional, national and local levels, including access and benefit-sharing and the designation and management of protected areas, taking into account the ecosystem approach

*Status: Some aspects of this task are ongoing in nature, however based on the analysis of 132 national reports as contained in document UNEP/CBD/WG8J/5/2, many Parties reported that some measures are in place. A few Parties have put comprehensive measures in place. Some Parties have not undertaken any measures or are considering taking some measures. Given this, acceleration of task 2 at the national level, regarding the effective participation of indigenous and local communities in decision-making, policy planning, development and implementation concerning the development of an international regime on access and benefit sharing may assist the process to advance taking into account the interests and rights of indigenous and local communities.*

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;

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<sup>1/</sup> A total of 132 national reports were submitted and available for analysis at the time this document was prepared.

- (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

*Status: Ongoing. Some Parties indicated that such a mechanism is in place. However, many countries indicated that they had not developed mechanisms particularly for involving women in the implementation of the programme of work on Article 8(j) and related provisions. A number of countries reported that their relevant laws and policies encourage women participation in biodiversity-related activities. Further detailed information on this subject is available in UNEP/CBD/WG8J/5/2*

***Element 2. Status and trends in relation to Article 8(j) and related provisions***

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: Task completed. Phase I and II of the composite report have been completed and reporting on implementation by Parties 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: Task not initiated. 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 could conceivably constitute a significant and timely contribution of the Working Group on Article 8 (j) to an international regime for access and benefit-sharing.*

***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: Task completed. The Executive Secretary has established a focal point for indigenous and local communities and a programme officer and programme assistant is dedicated to this task and supported by the manager of the Clearing House Mechanism.*

***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: Task completed. The Akwe:Kon Guidelines were adopted by the Conference of the Parties in decision VII/16 F. Implementation by Parties is 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: Not yet initiated. However, work closely related to this issue is being carried out within the framework of the Working Group on Access and Benefit Sharing, as well as in other forums, notably the World Intellectual Property Organization (WIPO).*

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: Not yet initiated. However, under agenda item 8, the Working Group will consider the related issue of the development of elements of sui generis systems for the protection of traditional knowledge. A decision to commence work on this task could make a significant contribution to the development of an international regime on access and benefit sharing.*

### **III. TASKS OF THE SECOND PHASE OF THE PROGRAMME OF WORK**

***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: Ongoing albeit in different format. Indigenous and local community experts are being included in Ad Hoc Experts Groups under the Convention, where appropriate and subject to the availability of funds. In addition, the Advisory Committee established in connection with the preparation of the composite report has strengthened the participation of indigenous and local communities in the work of the Convention. With regard to rosters, it should be noted that, in its decision VIII 10, I, paragraph 17, the Conference of the Parties decided to discontinue the maintenance and use of the roster of experts and that it will give priority to the nomination of appropriate scientific and technical experts for participation in ad hoc technical expert groups and other assessment processes. The Secretariat continues 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.*

***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, under item 9 the Working Group on Article 8(j) and related provisions will consider elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local, as contained in document UNEP/CBD/WG8J/5/7. These guidelines will contribute to achieving this task.*

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. However, under agenda item 9 the Working Group will consider elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local, as contained in document UNEP/CBD/WG8J/5/7. These broad guidelines include a substantive section on methods which may assist in achieving task 13.*

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.

*Status: Not yet initiated.*

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

Task 16. The Executive Secretary to identify, compile and analyze, 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: Completed. This task was completed as preparation for the development of draft elements of an ethical code of conduct, which will be considered by the Working Group under agenda item 9: "Elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities", as contained in document UNEP/CBD/WG8J/5/7. In addition, various codes have been assembled and made available through the Traditional Knowledge Information Portal.*

***Element 6. Monitoring elements***

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: Not yet initiated. 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, and as such are relevant to task 10. The relevance of the Bonn Guidelines and the need for further work on this issue is taken up in document UNEP/CBD/WG8J/5/6, on “the development of elements of sui generis systems for the protection of traditional knowledge”. This document also notes that any guidelines should properly reflect customary law and the concerns of Indigenous and local communities. This task will also be addressed by both the Working Group on Article 8(j) and the Working Group on ABS in the framework of the negotiation of an international regime on access and benefit sharing. The initiation and advancement of this task may assist the development of an international regime on access and benefit sharing.*

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: Ongoing. 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 fifth meeting will consider other indicators to complement this, in document UNEP/CBD/WG8J/5/8 (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 six years the Working Group may wish to develop recommendations for ninth meeting of Conference of the Parties on this issue.*

#### **IV. RECOMMENDATIONS**

The Ad Hoc Working Group may wish to recommend the Conference of the Parties adopts a decision along the following lines;

*The Conference of the Parties,*

*Recalling* decision V/16 concerning the adoption of the programme of work on Article 8(j) and related provisions and the tasks of the first phase of the programme of work,

*Recalling also* decision VIII/5 C, concerning the collaboration and contribution of the Ad Hoc Open-ended Working Group on Article 8(j) to the fulfillment of the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing by providing views on the elaboration of an international regime on access and benefit-sharing,

(a). *Decides* to continue work on the tasks of the first phase of the programme of work which have not yet been completed or are ongoing, namely tasks 1, 2, 4 and to commence work on tasks 7, 12,

10 and *requests* the Ad Hoc Working Group on Article 8 (j) and related provisions to initiate work on those tasks at its sixth meeting;

(b) *Further decides* that work on the remaining tasks of the work programme shall be initiated when work on tasks 7, 10 and 12 is completed;

(c) *Invites* Parties, Governments and international organizations, indigenous and local communities and other stakeholders to provide to the Secretariat their views on tasks 7, 10, 12, and *requests* the Executive Secretary to compile those views and submit them to the next meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions.

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