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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 5 of the provisional agenda*

PLAN OF ACTION FOR THE RETENTION OF TRADITIONAL KNOWLEDGE

Section D: Research on and implementation of mechanisms and measures to address the underlying causes of the decline of traditional knowledge, innovations and practices

Note by the Executive Secretary

I. INTRODUCTION

1. In decision VIII/5 B, paragraphs 11 and 12, the Conference of the Parties requested the Executive Secretary to continue to report on progress on the further development of elements of the plan of action and in particular, to continue gathering and analysing information, in consultation with Parties, Governments, indigenous and local communities, with a view to further developing the plan of action, giving priority to sections B and D and to report on the advancement of this task to the Working Group at its fifth meeting. ^{1/} The present document responds to that request focussing on section D.
2. Regarding section B on Indicators, in accordance with decision VIII/5 G, paragraph 5, a report has been prepared by the International Indigenous Forum on Biodiversity, which includes advice on indicators relevant to section B of the plan of action and this matter is taken up under item 10 of the provisional agenda. The report on indicators is available as UNEP/CBD/WG8J/5/8.
3. Pursuant to decision VIII/5 B, paragraph 12, regarding section D, the Executive Secretary commissioned a consultant report examining “Research on mechanisms and measures (including the implementation of measures and mechanisms) to address the underlying causes of the decline of traditional knowledge, innovations and practices”. ^{2/} A draft of the consultant’s report was reviewed by the Advisory Group to Article 8(j) at its second meeting in May, 2007. The final draft, which incorporates the recommendations of the Advisory Group, is provided in document UNEP/CBD/WG8J/5/INF/9.

* UNEP/CBD/WG8J/5/1.

^{1/} The Plan of Action is contained in the annex to decision VII/16/E.

^{2/} UNEP/CBD/WG8J/AG/2/4.

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4. The consultant's report emphasizes that traditional knowledge decline is a complex phenomenon which is best addressed through changing the underlying causal factors. Traditional knowledge, culture, language, spiritual values, and land are all interconnected. ^{3/}

5. The present document summarizes the consultant's report. It provides a toolkit of possible measures and mechanisms based on current practice in diverse countries and regions, to address the underlying causes of the decline in traditional knowledge, recognizing that each Party may need to design their own set of measures and mechanisms, based on their own unique national circumstances and the diversity of indigenous and local communities. Section II provides a brief discussion of how the decline in traditional knowledge can be addressed through legal mechanisms such as constitutional provisions, legislation and policy and principles. Sections III, IV, and V provide possible measures and mechanisms, which Parties may draw upon to create their own set of tools to address the decline in traditional knowledge. In each of these sections a different aspect of the underlying causes for the decline in traditional knowledge is addressed (territorial, cultural and socio-economic) and possible measures and mechanisms, which aim at reducing those causes are suggested. These sections also discuss factors and initiatives, which are supporting traditional knowledge retention and promotion. Section VI provides an overview of existing traditional knowledge coordination mechanisms and section VII discusses the need for mobilization of financial and technical resources from the local to the international levels. Finally section VIII, suggests draft recommendations for advancing the toolkit and the plan of action for the consideration of the Working Group.

II. LEGISLATION AND POLICIES TO PROTECT TRADITIONAL KNOWLEDGE

6. States may choose to protect traditional knowledge through a variety of legal mechanisms and measures such as constitutional protection, legislation or through the design and implement specific traditional knowledge policies.

7. The constitutions of some States enshrine rights which, when respected, protected and fulfilled, will improve the retention of traditional knowledge. For example, in Bolivia there is constitutional recognition of indigenous peoples' traditional territorial rights. The Canadian Constitution recognizes and affirms the existing aboriginal and treaty rights of the Aboriginal peoples of Canada. In Brazil, multicultural education is a constitutional right. In Thailand, the constitution provides the foundation for Indigenous and local communities' participation in natural resources development and biodiversity management. ^{4/}

8. In some States there are advanced legislation and consultation processes for the protection of traditional knowledge. For instance, Bangladesh has enacted the Biodiversity and Community Knowledge Protection Act to provide appropriate protection for traditional knowledge.

9. Policies, programmes, planning for traditional knowledge exists in many States. In Australia, the Nationally Consistent Approach (NCA) policy framework guides action by governments when developing or reviewing legislative, administrative or policy measures on access and benefit-sharing. The NCA seeks to ensure that the use of traditional knowledge in the scientific, commercial and public domains proceeds only with the cooperation and control of the traditional holders of the knowledge.

A. *Regional Model Laws*

10. At the regional level States have been collaborating to develop Model Legislation for traditional knowledge protection. The purpose of Model Legislation is to provide a starting point for States wishing to enact legislation for the protection of traditional knowledge and expressions of culture. States are free

^{3/} Task Force on Aboriginal Languages and Cultures, "Towards a New Beginning, A Foundational Report for a Strategy to Revitalize First Nation, Inuit and Metis Languages and Cultures", Canada, 2005.

^{4/} UNEP/CBD/WG8J/3/6 at para 16.

to adopt or adapt the Draft Model Law as they see fit. The approach taken is to protect the rights of traditional owners in their traditional knowledge and expressions of culture and permit tradition-based creativity and innovation, including commercialization thereof, subject to prior informed consent and benefit-sharing.

11. For example, the Draft Model Law for the Protection of Traditional Knowledge and Expressions of Culture 2002, also known as the Pacific Model Law, establishes procedures whereby consent can be obtained for the non-customary use of traditional knowledge and expressions of culture, including derivative works. It is intended to complement and not undermine intellectual property rights. It was developed by the Secretariat of the Pacific and endorsed by the Pacific Ministers of Culture in 2002. The Secretariat has also published a set of guidelines designed to assist policy makers in Pacific communities develop national legislation for the protection of traditional knowledge and expressions of culture. Some Pacific Island States, such as Fiji, have implemented the Pacific Model Law into national legislation.

12. The Pacific Model Law recognizes that a ‘one-size-fits –all’ or universal template to protect expressions of culture is unlikely to be a workable approach given the divergence of national and local priorities, and the legal and cultural environment and the needs of traditional communities. It promotes a ‘broad and holistic approach’ to issues relating to traditional knowledge to enable the development of policy solutions that work in a complementary manner. ^{5/}

B. Indigenous and local community participation

13. It is recognized that indigenous and local communities need to participate in the development of policy and law that affect their interests, needs and rights. The North American Regional Report recommends that States grant indigenous and local communities full control over the development of laws and policies, which affect their traditional knowledge retention. ^{6/} Development of policy and legislation that does not adequately factor the interests, needs and rights of Indigenous peoples and local communities has the potential to be a direct threat to a communities’ traditional knowledge, through not adequately factoring in the interests, needs and rights of these groups. ^{7/}

14. The Composite Report recommended that Parties to the Convention revise their policies and legislation that affect indigenous peoples and ensure there is secure funding to implement legislation regarding biodiversity and traditional knowledge. ^{8/}

C. Legalizing traditional knowledge related activities

15. National policies and legislation which legally prohibit or criminalize traditional activities upon which the practice and transmission of traditional knowledge is dependent are key causes of the decline in traditional knowledge. For example, some protected areas have been established without due regard for the indigenous and local communities who live within these areas and depend on its resources. Historically, protected areas legislation often made it an offence for indigenous and local communities to use their traditional territory and the resources contained within it. This type of legislation has resulted in a decline in traditional knowledge as it prevents a people or community from carrying out customary activities. ^{9/}

D. Incorporation of indigenous law and custom

16. Under Article 10(c), Parties to the Convention agreed to, as far as possible and as appropriate, protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

^{5/} Forward of Guidelines.
^{6/} UNEP/CBD/WG8J/AG/2/2/ Add.6 at para 16.
^{7/} UNEP/CBD/WG8J/AG/2/2/ Add.3 at p. 3.
^{8/} UNEP/CBD/WG8J/4/4 at p. 10.
^{9/} UNEP/CBD/WG8J/AG/2/2/ Add.3 at p. 3.

17. To protect against exploitation of traditional knowledge and to encourage its promotion and use with the free and prior informed consent of the knowledge holders it is desirable that principles of customary law are incorporated into intellectual property and other regimes.^{10/} An example of incorporation is in Canada's Nunavut Wildlife Act, which lists the most important Inuit customary law principles relating to biodiversity.

18. A higher level of consideration of the interests, needs and rights of these communities is possible when legislation and policy development processes include indigenous and local community polities and organization.^{11/} This approach leads to the creation of policy and legislation that is both in the interests of the State and does not directly provide a threat to traditional knowledge.

III. ADDRESSING TERRITORIAL FACTORS THROUGH MEASURES AND MECHANISMS

A. *Rights and access to lands and natural resources*

19. Severing or restricting the relationship indigenous and local communities have with traditional lands and waters removes their economic base and strikes at the heart of their emotional, social, cultural and spiritual support. Hence loss of ancestral lands, waters and marine areas is regarded as "the single most significant cause of decline in traditional knowledge."^{12/} This includes a decline in knowledge of land practices, which translates into an overall loss of biodiversity knowledge.^{13/}

20. That territories are essential to the transmission of traditional knowledge is emphasized in the Statement of Principles and Guidelines for the Protection of Heritage of Indigenous Peoples of the Working Group on Indigenous Populations, United Nations Commission on Human Rights. The Statement emphasizes that:

the discovery, use and teaching of indigenous peoples' knowledge, arts and culture is inextricably connected with the traditional lands and territories of each people.....; and that control over traditional territories and resources is essential to the continued transmission of indigenous peoples' heritage to future generations, and its full protection.^{14/}

Land issues need to be addressed at the national level, taking into consideration its relationships with culture and knowledge.^{15/} Maintaining the connection to land and waters can be achieved through a variety of means: recognizing and securing Indigenous land and marine tenure, facilitating access to protected areas and other lands, restricting access to sacred and significant sites, and active participation in environmental management.

Possible Measures and Mechanisms

Provide constitutional or legislative recognition of indigenous and local community land and marine tenure systems.

21. Collective tenure is a fundamental concern for most indigenous and local communities. The recognition of communities' land ownership or tenure helps meet the goals of benefit sharing, access and sustainable use of the components of biodiversity, and is essential to the implementation of Article 8(j).^{16/} Indigenous peoples see the legal recognition of rights to their land and waters, especially

^{10/} UNEP/CBD/WG8J/AG/2/2/ Add.6 at p. 4.

^{11/} UNEP/CBD/WG8J/AG/2/2/ Add.3 at p. 4.

^{12/} UNEP/CBD/WG8J/AG/2/2/ Add.6.

^{13/} UNEP/CBD/WG8J/4/4 at p. 7.

^{14/} E/CN.4/Sub.2/1995/26, annex.

^{15/} UNEP/CBD/WG8J/AG/2/2/Add.4 at p. 4.

^{16/} UNEP/CBD/8J/3/4 at p. 13.

land and territorial security, as paramount over monetary and non-monetary benefits. Only from this position of security can flow equitable sharing of benefits. ^{17/}

22. For example, Bolivia gives constitutional recognition to traditional territorial rights. ^{18/} Argentina, Paraguay, Guatemala, Brazil, Colombia, and Ecuador have all undertaken constitutional and other legal reforms in order to recognize or strengthen the land rights of indigenous peoples. ^{19/} Peru has legally recognized the collective property right of indigenous communities in the Amazon. Australia grants land titles based on Aboriginal customary land tenure systems through the Aboriginal Land Rights (Northern Territory) Act 1976.

Respect and protect indigenous and local communities' traditional territory in economic development policies and projects.

23. For instance, indigenous lands were exempted from the land market when Columbia and Ecuador implemented land market-oriented measures.

B. Protected areas

24. The establishment of protected areas has had a significant and detrimental impact on indigenous and local communities. Many protected areas were established on lands held in common property by communities during the nineteenth and twentieth centuries. Many of these areas and other newly established protected areas continue to operate under policies that exclude or restrict indigenous and local communities from their traditional lands. When indigenous peoples lose access to their traditional territories necessary to maintain their living cultural traditions, the processes which sustain and create traditional knowledge and beliefs are weakened or lost, thus putting traditional knowledge at serious risk. ^{20/}

25. The measures and mechanisms provided below for the consideration of Parties and Governments aim at enhancing the retention of traditional knowledge through measures and mechanism which protect and respect the rights of indigenous and local communities to their land and resources within protected areas. These instruments can be applied to both land and marine protected areas.

Possible measures and mechanisms

Ensure the full and effective participation of indigenous and local communities in the establishment and co-management of protected areas.

26. Successful implementation of conservation programmes is contingent upon receiving the free, prior and informed consent of indigenous and local communities whose traditional territories will be placed under protection. These communities' cultures, knowledge and territories contribute to the building of comprehensive protected areas and are key to conservation strategies. ^{21/} Therefore, where applicable, the decision to establish a protected area will involve the processes of free, prior and informed consent and social, economic, cultural and environmental impact assessment. Communication programmes may be necessary to ensure indigenous and local communities have the information needed to participate in consultation processes.

27. Joint management arrangements between the government and the indigenous and local communities whose territories are within the protected areas ensure the full and effective participation of these indigenous and local communities. For instance, Argentina's Forest Law allows co-management

^{17/} Statement of International Indigenous Forum on Biodiversity at the Ad Hoc Open-Ended Working Group on Access and Benefit Sharing Convention on Biological Diversity, 22-26 October 2001 - Bonn, Germany
http://www.treatycouncil.org/new_page_523211.htm.

^{18/} UNEP/CBD/WG8J/4/4 at para 53.

^{19/} UNEP/CBD/WG8J/AG/2/2/Add.4 at p. 5.

^{20/} UNEP/CBD/WG8J/4/INF/18 p. 3.

^{21/} Recommendation 24 of World Parks Congress 2003 at
<http://www.iucn.org/themes/wcpa/wpc2003/pdfs/outputs/recommendations/approved/english/html/r24.htm>

and access to resources within protected areas and Kakadu National Park, in Australia is managed jointly between the Aboriginal traditional owners and the Government. Furthermore, in Australia, the participation of Aboriginal people is legally required under the Environmental Protection and Biodiversity Conservation Act.

28. States may also wish to cooperate with indigenous and local communities who have established their own system of protected areas, providing added protection through State legislation. In the Pacific Islands indigenous communities have protect lands through a customary law system of taboos. Papua New Guinea, Vanuatu, Fiji and Samoa acknowledge the value of customary law in their national legislation and have recently made progress in forming partnerships between communities and national agencies for conservation. Indigenous land owners in Australia manage 13.9 million of hectares of their own land as protected areas under the national Indigenous Protected Areas programme. This programme provides significant economic, social and cultural benefits to indigenous communities, including promoting the retention of traditional knowledge related to the protected areas.

Provide legal recognition of indigenous and local communities' right to access and share in the benefits from their lands and resources within protected areas.

29. States may wish to adopt constitutional provisions, specific legislation and/or policies to protect the rights of indigenous and local communities to use and benefit from their territories, even when it is placed under State protection. Some States have implemented constitutional recognition of the rights of Indigenous peoples in protected areas. The Samoa Constitution guarantees that the use of areas in marine protected areas up to high tide mark current rests with the communities.

30. To ensure the survival of traditional knowledge regarding a protected area it is essential that management plans ensure indigenous and local communities have access to the land and resources within the protected area. For instance, some governments have enacted legislation which ensures indigenous peoples can undertake their traditional harvest of wildlife for hunting, food gathering and ceremony. It is also crucial that indigenous and local communities have access to resources in protected sacred sites.

Incorporate the principles of access and benefit sharing of resources into protected areas legislation, policies and management plans.

31. Sharing the social and economic benefits generated by protected areas management can assist the sustainable economic development of indigenous and local communities. In Australia, title to Aboriginal land is granted to the Aboriginal traditional owners under the National Parks joint management scheme. The Government then leases the same land back from the traditional owners in order to manage the land as a national park; this provides a valuable source of income to the Aboriginal owners.

C. Sacred sites

32. As acknowledged in the Tokyo Declaration on the Role of Sacred Natural Sites and Cultural Landscapes in the Conservation of Biological and Cultural Diversity, indigenous and local communities role as custodians of sacred natural sites and as holders of traditional knowledge is fundamental for the preservation of biological and cultural diversity. ^{22/} To be effective, measures and mechanisms to address the decline in traditional knowledge through sacred site protection need to be developed with the full and effective participation of indigenous and local communities. This is necessary to ensure respect for religious and spiritual traditions and practices linked to sacred natural sites. ^{23/}

33. In developing measures and mechanisms for sacred site protection States may wish to draw on the guidelines developed by international organizations and seminars. These include the UNESCO/IUCN *Guidelines for the Conservation and Management of Sacred Natural Sites*, the *Akwe: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment Regarding Developments Proposed to Take Place on, or Which are Likely to Impact on, Sacred Sites and on Lands*

^{22/} <http://www.unesco.org/mab/biodiv/Cdiversity/symposium/FinalDeclaration.pdf>

^{23/} UNEP/CBD/WG8J/4/INF/14.

and Waters Traditionally Occupied or Used by Indigenous and Local Communities, and the Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Cultural Heritage.

Possible measures and mechanisms

Involve indigenous and local communities in the elaboration of protection strategies for sacred and significant sites.

34. Traditionally, under customary law, the sacred sites of indigenous and local communities enjoyed protection and obligations often fell on specific extended families and/or individuals. This high degree of diversity of life forms on sacred sites could be explained by the fact that indigenous peoples may believe that sacred sites are places of origin of certain families or clans, and have been protected because many of these forms were believed to be ancestors. Effective protection must recognize the personal ties specific families may have with certain sites and their obligations to such sites.

Enact legislation or implement policies to protect sacred sites, including non-tangible aspects of heritage, on State and private land.

35. In Australia the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 empowers the Commonwealth Minister to place threatened sites, significant areas, or objects under protection. Sacred site protection may be most effective in halting the decline in traditional knowledge when it recognizes the importance of providing protection for non-material aspects of culture, such as knowledge, along side protection for specific sites and objects.

Adopt the Akwe:Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment.

36. Developed in cooperation with indigenous peoples, the Akwe:Kon Voluntary Guidelines are an instrument which States can draw on to implement Article 8(j). The Guidelines provides a collaborative framework for the benefit of Parties and Governments and indigenous and local communities, which ensures that, where applicable, development which impacts upon sacred sites takes into account the cultural, environmental and social concerns and interests of indigenous and local communities.

Provide assistance to indigenous and local communities to build their capacity to implement and monitor impact assessment processes.

37. Indigenous and local communities will need capacity building to both implement and monitor impact assessments in a way that is understandable to the outside world. Such guidelines as the Akwe:Kon Guidelines are useful for such purposes.

Establish a National Sacred Site Heritage Committee composed of indigenous and local community members.

38. Such a national committee could be responsible for determining which sites should be considered sacred and for the design of protection strategies. A report on sacred sites by the Russian Association of Indigenous Peoples of the North (RAIPON) advocated a “bottom-up” approach to sacred site protection, allowing indigenous communities to control the designation of sites and determine the most effective protection strategies.

39. A different approach is taken by the United States. The United States Advisory Council on Historic Preservation (ACHP) is an independent Federal agency that advises the President and Congress on preservation policy. In 2000, at the urging of the ACHP, the United States Department of the Interior withdrew over 9,000 acres of federal land to protect a Native American sacred site from development by a gold mining project. ^{24/}

^{24/} “Recent Developments, California: Development of Glamis Imperial Corporation Mine, Imperial County” March 2000, <http://www.achp.gov/casearchive/cases3-00CA1.html>

D. Environmental and natural resource management

40. Many of the regional reports on threats to traditional knowledge identified the degradation of lands and waters traditionally occupied or used by indigenous and local communities. ^{25/} Influence over decisions concerning natural resource management and the quality of the environment in which Indigenous and local communities live is directly tied to the social, cultural and economic future of those communities. Indigenous peoples should be actively involved in natural resource management projects from design to implementation, management and evaluation.

Possible measures and mechanisms

(a) Ensure the full and effective participation of indigenous and local communities in natural resource and environmental management.

(b) Build the capacity of indigenous and local communities to understand, identify and apply natural resource management practices.

(c) Establish indigenous and local community biodiversity advisory committees at the national, sub-national and/or regional levels. A third of reporting countries have already implemented this type of advisory committee.

(d) Provide funding and other assistance to support indigenous and local community organizations' environmental activities and planning, which contribute to national environmental objectives, at the community level.

IV. ADDRESSING CULTURAL FACTORS THROUGH MEASURES AND MECHANISMS TO MAINTAIN AND PROMOTE TRADITIONAL KNOWLEDGE

41. As noted in the Latin American Regional Report, "from the perspective of traditional knowledge maintenance in the long term, the essential challenge is to ensure inter-generational transmission within indigenous and local communities; the second major challenge is to encourage and support the adaptation of traditional knowledge to socio-economic and cultural change, particularly in terms of maintaining its functionality and its dynamic connections with the practices of individuals and groups in their daily interactions with their surroundings". ^{26/} Therefore, measures and mechanisms addressing the decline of traditional knowledge by building on cultural elements will focus on the management of the cultural processes, which enhance the transmission of traditional knowledge and the major drivers of cultural change. ^{27/}

A. Mitigating loss of languages

42. The survival and vitality of indigenous and local languages is a key to maintaining entire bodies of cultural and biological knowledge. ^{28/} Over generations indigenous and local communities have "accumulated a wealth of wisdom about their environments and its functions, management, and sustainable use. Local, minority, and indigenous languages are repositories and means of transmission of this knowledge and the related social behaviours, practices, and innovations." ^{29/} Indigenous and local communities have expressed the need to preserve, use and revitalize their languages as a chief vehicle for cultural and knowledge transmission. ^{30/}

^{25/} UNEP/CBD/WG8J/4/4 p. 16.

^{26/} UNEP/CBD/WG8J/AG/2/2/Add.4 at p. 8.

^{27/} UNEP/CBD/WG8J/4/INF/5 at Page 19.

^{28/} G. Borrini-Feyerabend, A. Kothari & G. Oveido, *Indigenous and Local Communities and Protected Areas*, Best practice Protected Area Guidelines Series No. 11, IUCN, 2004 at p.114.

^{29/} <http://www.terralingua.org/>

^{30/} <http://www.biodiv.org/doc/meetings/tk/wg8j-04/official/wg8j-04-04-en.pdf>

43. As noted in the Composite Report “although loss of indigenous languages occurs at the local level it is often the result of national policies of assimilation or integration, which do not adequately value diverse indigenous languages or as a direct result of government service delivery in the dominant language only.” ^{31/}

Possible measures and mechanisms

(a) Establish language revitalization initiatives with the full and effective participation of indigenous and local communities. Initiatives can include introducing traditional languages into the formal education system (discussed in section B) and also initiatives which support language retention among community members, for instance by supporting traditional lifestyles and the inter-generational transmission of languages. The realization of this measure will require that resources are allocated at the national and local levels.

(b) Create a National Language Retention Organisation that can help coordinate, support and fund language-retention initiatives.

(c) Use new innovations and communication technology to support the use and preservation of indigenous languages. As an example, in Algeria traditional language is promoted through the radio, with the National Amazigh radio channel now including a Tuareg section.

(d) Legalize the use of Indigenous and local languages, should prohibitions on language use or transmission exist. For instance, Morocco recently lifted ban on the Amazigh language, which was in place for 40 years.

B. Education systems

44. Education systems based on or incorporating traditional knowledge can have a powerful role in reversing the decline of traditional knowledge. ^{32/} Measures may include the integration of traditional knowledge into the formal curriculum, designing culturally sensitive education for indigenous peoples and providing instruction in indigenous and local languages.

45. Bolivia has undertaken significant educational reforms in order to better address the needs of its citizens, the majority of whom are indigenous. The reforms included a new Education Act (Law 1565), the establishment of Intercultural Bilingual Education and the involvement of indigenous peoples in the implementation of the Education Reform. ^{33/}

46. Indigenous and local community participation or control over education programs and curriculum will be essential in developing education measures to improve traditional knowledge retention.

Possible measures and mechanisms

Integrate traditional knowledge into mainstream formal national systems of education.

47. The incorporation of indigenous and traditional knowledge into mainstream formal education can ensure that indigenous and local people educated within such systems do not lose their traditional knowledge and practices, and can increase familiarity with, and respect for, such knowledge among non-indigenous public. For instance, Vanuatu is now incorporating traditional knowledge into its national education through its Education Master Plan (2000-2010).

48. Educational systems, which promote and encourage the inter-generational transfer of traditional knowledge and values alongside conventional forms of education has been recommended in the Australia/Asia Regional Report on Threats to Traditional Knowledge and the Composite Report. ^{34/}

^{31/} UNEP/CBD/WG8J/4/4 at p. 16.

^{32/} UNEP/CBD/WG8J/4/4 at p. 15.

^{33/} UNEP/CBD/WG8J/4/INF/5 Page 34.

^{34/} UNEP/CBD/WG8J/4/INF/4 Page 41.

Design and implement culturally sensitive education for indigenous peoples, with the full and effective participation of indigenous peoples.

49. The inclusive approaches to the design and development of curricula taken by some States have led to a significant increase in the teaching of traditional knowledge within the formal education system.

50. Mexico has taken many measures to implement culturally sensitive education. In 1997 it launched a national Multicultural Education Programme. Currently the Government is consulting with indigenous peoples on the design of relevant content for the national curriculum. ^{35/} Mexico has also opened several Intercultural Universities across the State, created with the aim of promoting a process of reevaluation and revitalization of indigenous cultures and language.

Ensure the full and effective participation of indigenous and local communities in education and curriculum design and delivery.

51. The respectful and effective implementation of traditional knowledge in educational programmes and curriculum requires the involvement of indigenous peoples. This involvement may vary from giving indigenous and local communities complete control over education design and delivery to consulting with indigenous and local communities. For example, legislation in Brazil, Colombia, and Chile recognizes the rights of indigenous peoples to set their autonomous education programmes.

52. When indigenous peoples do not have full control over indigenous education, training and decision-making processes the effectiveness of the resulting educational measures is limited. ^{36/} The full and effective participation of indigenous and local communities is necessary for the respectful incorporation of traditional knowledge and knowledge holders in educational programmes.

Integrate indigenous and local communities' languages at all levels of education.

53. Language and traditional knowledge retention are mutually dependent. Instruction provided in indigenous and local languages has been recognized as an important measure in improving traditional knowledge transmission and retention. Education could be delivered primarily in the indigenous and local language, or in bilingual or multilingual education programmes. Implementing language reforms may entail the training of teachers and the creation of educational resources in the indigenous or local language.

54. In New Zealand the complete immersion of pre-school children in the Maori language was developed as an urgent and strategic intervention (referred to as "language nests") to halt the demise of Maori language. In addition, there are opportunities to use the Maori language in mainstream education.

55. Many Latin American States have implemented Multicultural Bilingual Education programmes. Ecuador, Peru, Bolivia, Mexico, and Guatemala have Multicultural Bilingual Education as part of their national educational systems. In Brazil multicultural education is a constitutional right.

Provide assistance to indigenous and local communities to support development and implementation of non-formal traditional knowledge education programmes within communities.

56. Non-formal education systems have the potential to reach all members of a community, regardless of age or socio-economic status. For instance, the UNESCO Local and Indigenous Knowledge Systems (LINKS) programme is being used in the Solomon Islands to maintain the vitality of local knowledge within communities by strengthening ties between elders and youth. ^{37/}

Implement corrective measures to redress past educational policies and practices which resulted in the decline of traditional knowledge.

^{35/} Ibid.

^{36/} UNEP/CBD/WG8J/4/INF/7 Page 25.

^{37/} UNEP/CBD/COP/8/7.

57. The Expert Seminar on Indigenous Peoples and Education, a joint UNESCO and UNHCHR initiative, recommended specific measures which States may take to correct the educational policies and programmes which may have caused a decline in traditional knowledge. Recommendations included the following: ^{38/}

- Institute special measures to address racism and bias in the educational system;
- Involve Indigenous Peoples in educational design and development;
- Include indigenous culture, history, values and traditions in educational programs;
- Research and address special needs of Indigenous women and children,
- Involve Indigenous educators in design and teaching; and
- Evaluate bilingual and multicultural approaches to education.

C. Promoting & supporting traditional healthcare

58. Traditional medicine can be defined as “the sum total of knowledge, skills and practice on health care, not necessarily explicable in the context of modern, scientific philosophical framework, but recognized by the people to help maintain and improve their health towards the wholeness of their being the community and society, and their interrelations based on culture, history, heritage, and consciousness.” ^{39/}

59. The use of traditional medicine facilitates intergenerational transfer of knowledge, experiences and observations, and results in a health system that is culturally specific, but also continuously changing and strongly influenced by social, economic and political factors. In Africa, as in much of the world, there are two systems of medicine that co-exist: one based on traditional medicine and the use of biodiversity, and the other based on a western approach to healthcare and the use of pharmaceutical products. ^{40/} Numerous countries are now integrating traditional medicine into their official healthcare programmes whereby an estimated 80 percent of the African population uses traditional medicine for their health needs, including those who also visit modern health facilities.

Possible measures and mechanisms

Enact legislation or put into place policies which protect and promote the use of traditional medicine and health care.

60. In Ecuador national protection for traditional medicine is provided for in its national constitution.

Implement health programs and research which strengthen and enhance the complementarity of conventional and traditional health care practices.

61. In Australia in the Northern Territory, traditional medical knowledge is recognized in a limited way through the use of Aboriginal Health Workers who “act as a bridge between traditional healers, indigenous communities and conventional medical practitioners” under the *Health Practitioners and Allied Professionals Registration Act 1985*. ^{41/} Many African States are moving to formally recognize traditional healers and integrate them into the formal health system.

Develop health indicators to measure and monitor the state of retention of traditional biodiversity-related knowledge. ^{42/}

^{38/} See E/CN.4/2005/88/Add.4 15 December 2004 for conclusions and findings.

^{39/} Philippines the Traditional and Alternative Medicine Act, 1997

^{40/} UNEP/CBD/WG8J/4/INF/2 at p. 18

^{41/} “Report on Traditional Knowledge” Permanent Forum on Indigenous Issues, Sixth Session, New York, 14-25 May 2007 .

^{42/} <http://www.biodiv.org/doc/meetings/tk/wg8j-03/official/wg8j-03-04-en.pdf> at para 55

62. Establish specialized institutions to promote and protect traditional health care. The Philippines Republic Act 8423 (1997) established the Institute of Traditional and Alternative Health Care to enhance traditional healthcare throughout the country by promoting and validating the use of traditional medicine and practices.

D. Registers/databases

63. Documentation can play an important role in the retention and protection of Indigenous intellectual property ^{43/} although in isolation it is not enough to maintain the traditional knowledge that benefits biodiversity and sustainability. It is important to note that registers may also pose threats to indigenous and local communities, such as increasing opportunities for misappropriation of traditional knowledge. Therefore, as recommended in the Composite Report, registers should be developed at the local and national levels with the full and effective participation and the prior informed consent of indigenous communities. ^{44/} Policy and law related to traditional-knowledge databases needs to be flexible so it can be adapted to the particular circumstances of different indigenous and local communities, based on a fundamental respect for the customary laws and cultural integrity of indigenous and local communities.

Possible measures and mechanisms

(a) Repatriate the traditional knowledge of indigenous and local communities stored in national databases, and encourage the repatriation of traditional knowledge stored in private and corporate databases.

(b) Support, through funding and legislation, confidential registers developed and maintained by indigenous and local community organizations.

64. Desire to protect traditional knowledge from unapproved use has led to the establishment of confidential registers by indigenous and local communities and others. Confidential registers or databases are generally compiled by communities or community groups for their own benefit and have been found useful for organizing knowledge to enable better protection and improved management of the community resources.

E. Mitigating developmental impact – cultural impact assessment

65. See above under “Territorial Factors”.

V. SOCIO-ECONOMIC FACTORS – ADDRESSING THE DECLINE OF TRADITIONAL KNOWLEDGE

A. Promoting & supporting local capacity

66. The capacity and infrastructure of Indigenous communities need to be strengthened so that indigenous and local communities can remain intact, self-govern effectively and protect traditional knowledge in a suitable way. ^{45/}

67. The Composite Report emphasizes the crucial role of capacity building in the promotion of traditional knowledge and notes capacity-building,

involves a significant commitment to building the educational, governance, management and professional capacity of indigenous and local communities. It is also important to building the strength, infrastructure and capacity of indigenous and local institutions, such as governance structures, research bodies, economic structures, health care systems and education systems. ^{46/}

^{43/} <http://epress.lib.uts.edu.au/dspace/bitstream/2100/57/1/Libraries+and+Indigenous+Knowledge.pdf>

^{44/} <http://www.biodiv.org/doc/meetings/tk/wg8j-04/official/wg8j-04-04-en.pdf>

^{45/} UNEP/CBD/WG8J/4/INF/2 at p. 44.

^{46/} UNEP/CBD/WG8J/4/4 at p. 27.

Possible measures and mechanisms

Support Indigenous institutions, research organizations, political structures, and communities to conduct their own activities in relation to Article 8(j).

68. It is important to have an approach that reaffirms and supports local knowledge, strengths, and values when possible and appropriate, instead of using outside expertise.

Develop policies for agencies and organizations conducting research with indigenous and local communities with the aim of increasing the community's capacity.

69. Policies should discourage outside agencies and projects from imposing pre-conceived organizational models on communities. Research best practices include the employment of community capacities through the preferential use of indigenous and community experts. ^{47/}

Establish Universities and other training institutions dedicated to the cause of the further transmission of traditional knowledge with the full and effective involvement of indigenous communities.

70. Elders and traditional healers and other holders of traditional bodies of knowledge could then play a crucial role in such undertakings as teachers, lecturers and researchers. ^{48/} Indigenous peoples would be involved in all stages of research, including decision-making related to research results and conclusions. ^{49/} For example the proposed United Nations University Traditional Knowledge Institute could make an effective contribution to efforts to addressing the threats to traditional knowledge and indigenous communities.

B. Economic development and incentive measures

71. The sustainable economic development of indigenous and local communities is essential for the maintenance, preservation and use of traditional knowledge. Neither biodiversity nor traditional knowledge will be conserved in areas where indigenous and local communities lack the resources to survive.

72. Accordingly, Article 10 (c) of the Convention calls upon each Contracting Party, as far as possible and as appropriate, to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

73. Indigenous and local communities have a very valuable role in maintain and enhancing biodiversity through their traditional knowledge. Most biodiversity-related knowledge of indigenous peoples is related to and sustained by everyday practices and these need to be maintained and encouraged.” ^{50/} This will support the long-term protection and conservation of biological diversity. ^{51/} Article 11 of the Convention, on the adoption of economic and social measures that act as incentives for the conservation and sustainable use of biological diversity is therefore pertinent. Accordingly, the Proposals for the Design and Implementation of Incentive Measures, endorsed by the Conference of the Parties at its sixth meeting (“Proposals” hereafter), ^{52/} indicate that incentive measures should be “designed so that, to the extent possible, they support the social and economic development needs of indigenous and local communities.” ^{53/} They should also “be designed and introduced in a way to support poverty alleviation and reduction of disparities between rural and urban communities.” ^{54/}

^{47/} UNEP/CBD/WG8J/4/INF/7.

^{48/} UNEP/CBD/WG8J/AG/2/2/Add.1 at p. 13.

^{49/} UNEP/CBD/WG8J/4/INF/7 at p. 26.

^{50/} UNEP/CBD/WG8J/4/4 Arctic Report at p. 9.

^{51/} UNEP/CBD/WG8J/4/INF/7 at p. 23.

^{52/} Decision VI/15, annex I. As per paragraph 2 of the decision, the proposals were endorsed as far as they are consistent with Parties' national policies and legislation as well as their international obligations.

^{53/} Decision VI/15, annex I, paragraph 21.

^{54/} Decision VI/15, annex I, paragraph 20.

Possible measures and mechanisms

Design incentive measures for the conservation and sustainable use of components of biological diversity so that, to the extent possible, they support the social and economic development needs of Indigenous peoples and local communities. ^{55/}

Increase access to resources so that indigenous and local communities can build their own resource generating streams. ^{56/}

74. Both local subsistence and market-based activities need to be supported at local levels.

Integrate principles of sustainable development into national approaches to economic development, including laws, regulations, policies and negotiation strategies.

75. Economic development, particularly that which is based on natural resource extraction, must be reconciled with indigenous and local communities' ability to maintain their languages and culture through the use, retention and practice of traditional knowledge.

Support, through capacity-building and partnership, the sustainable development strategies and plans of indigenous and local communities.

76. As noted in the Composite Report, "Indigenous communities, as distinct peoples, hold their own concepts of development, based on their own values, aspirations, needs and priorities, and that these concepts are often different from other parts of the national population." ^{57/}

Involve indigenous and local communities in meaningful policy dialogue for the design and use of incentive measures for conservation and sustainable use of biodiversity. ^{58/}

Develop targets that are specific, measurable, time-driven, and based on an analysis of their effects, and associated indicators, to measure the success of incentive measures in protecting and promoting traditional knowledge.

77. This would be consistent with the recognition of the Proposals that "to the extent feasible, incentive measures should have targets that are specific, measurable, time-driven, and based on an analysis of their effects. The successful monitoring and evaluation of their impacts is an important factor in ensuring the ultimate success of incentive measures." ^{59/} that are specific, measurable, time-driven, and based on an analysis of their effects

C. Participation in decision making and management

78. The Composite Report recommends the full and effective participation of indigenous and local communities planning and decision making processes. This is also stressed in international law, for instance in the Convention on the Elimination of All Forms of Racial Discrimination. Achieving full and effective participation will require that Consultation mechanisms and prior informed consent mechanisms are strengthened and made mandatory.

79. In order to halt the decline in traditional knowledge retention, indigenous and local communities need to be included in decision-making processes at all levels, especially where indigenous land or other interests are at stake. This is highly important in the management of protected areas, environmental and natural resources, and education.

80. The suggested measures and mechanisms to enhance indigenous and local communities' participation provided below focus on participation in environmental and natural resource management, especially forestry and fisheries management.

^{55/} Decision VI/15, annex I, paragraph 21.

^{56/} UNEP/CBD/WG8J/4/INF/7 at p. 7.

^{57/} UNEP/CBD/WG8J/4/4 at para. 15.

^{58/} Decision VI/15, annex I, paragraph 8.

^{59/} Decision VI/15, annex I, paragraph 9.

Possible measures and mechanisms

81. **Implement mechanisms to ensure indigenous and local communities are involved and have influence over decisions concerning natural resources management and the quality of the environment in which they live.** ^{60/} Consultation processes which ensure indigenous and local communities have the relevant information and have an opportunity to participate in decision making is one mechanism which Parties and Governments may consider implementing.
82. **Base forestry regulations upon both scientific assessment and traditional knowledge to enhance sustainable management of forests.** ^{61/}
83. **Implement collaborative forestry management policies and programmes. Successful collaborative forestry management requires the empowerment of indigenous and local communities' institutions to enable them to negotiate and arrive at agreements as equals.** ^{62/} For example, Cameroon is initiating a new management phase which will employ community mapping projects to promote meaningful participation by local and indigenous communities in proposed planning discussions. ^{63/} In Canada the Canadian National Forest Strategy recognizes the implications of the definition, recognition and exercise of Aboriginal and Treaty rights for forest management.
84. **Provide formal recognition of indigenous and local communities' management plans and strategies for their fisheries and marine resources.**
85. **Protect local and indigenous communities' marine resources through rigorous supervision of offshore commercial fishing interests operating within the Exclusive Economic Zone of States.**

VI. INTERNATIONAL, REGIONAL, NATIONAL, SUB-NATIONAL AND LOCAL COOPERATION & COORDINATION MECHANISMS

A. *International coordination and cooperation mechanisms.*

86. The Convention on Biological Diversity remains a key international instrument to address traditional knowledge of indigenous and local communities relevant for the conservation and sustainable use of biological diversity. WIPO has addressed the issue of the relationship between intellectual property rights and traditional knowledge through its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Other forums of relevance include the United Nations Permanent Forum on Indigenous Issues.

91. In 2005, the United Nations Permanent Forum on indigenous Issues facilitated an International Technical Workshop on Indigenous Traditional Knowledge (E/C.19/2006/2), to promote a collaborative, complementary and holistic approach to traditional knowledge and in order to enhance better understanding of indigenous concerns and their possible solution. The workshop noted at least eleven intergovernmental organizations and United Nations agencies carry out programmes, activities and processes addressing, in one way or another, issues related to indigenous traditional knowledge. The mandate of the Forum requests it to promote coordination of indigenous issues throughout the international system and as such the Forum has an important role to play regarding the international system and traditional knowledge of indigenous communities and addressing the underlying causes for its decline.

B. *Regional cooperation mechanisms*

92. There are a number of regional systems and frameworks that aim for greater cooperation around the issues of traditional knowledge. They include Model Law and Model Provisions, Declarations such as the *Mataatua Declaration*, the *UNESCO Declaration on the Protection of Traditional Knowledge and*

^{60/} UNEP/CBD/WG8J/AG/2/2/Add.1 at p. 15.
^{61/} UNEP/CBD/WG8J/AG/2/2/ Add.2 at p. 15.
^{62/} Ibid.
^{63/} Ibid.

Expressions of Indigenous Cultures in the Pacific Islands, the Kari-Oca Declaration, and the Organization of American States Draft Declaration of the Rights of Indigenous Peoples.

93. As discussed in section II, several regions have developed Model Legislation to provide a starting point for States who are developing legislation for the protection of traditional knowledge.

C. National and Sub-National cooperation mechanisms

94. National and sub-national committees represent indigenous and local communities at the national level to enhance the exchange of information between the international, national and local levels. These committees are important mechanisms to facilitate effective indigenous and local community involvement and participation in the implementation of the Convention. ^{64/}

VII. MOBILIZATION OF FINANCIAL AND TECHNICAL RESOURCES

95. Adequate financial and technical resources are essential to successfully implement mechanisms and measures that enable and enhance the retention of knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity. This mobilization is required at the local, national, sub-national, regional and international levels.

96. At the local level the need for resources is especially high in the areas of protected areas management and capacity-building. Funding shortages and limitations in human skills and institutional capacity are some of the most consistently cited obstacles to effective protected area management. In addition, indigenous and local communities are recognized as the most cost effective managers of protected areas in many situations.

97. At the national and sub-national levels financial and technical resources are required for the implementation of Article 8(j). ^{65/} Parties to the Convention have used various mechanisms to ensure secure funding exists to implement legislation, incentive measures and policies concerned with biodiversity and associated traditional knowledge. For example, in New Zealand the Mataranga Kura Taiao Fund is a contestable fund that supports Maori initiatives to retain and promote traditional Maori knowledge and its use in biodiversity management as part of the New Zealand Biodiversity Strategy. Further, adequate funding of traditional knowledge related objectives of National Biodiversity Strategies, coupled with monitoring and evaluation mechanisms, is essential.

98. At the regional level it will be important to implement the recommendation of the Programme of Action for the 2nd Decade of the Worlds Indigenous People that requests “in an effort to systematize and build capacity, regional focal points on indigenous issues should be designated in all agencies, funds and programmes with regional offices that are mandated to follow up on the implementation of recommendations of the Permanent Forum and the objectives of the Second Decade”. The Regional Programme on Indigenous Peoples in Asia of the United Nations Development Programme should be further strengthened, and its other Regional Bureaux should also develop such programmes.”

^{64/} UNEP/CBD/WG8J/3/6 at para 25.

^{65/} UNEP/CBD/WG8J/4/4.

99. At the international level mobilization of resources is required to build the capacity of indigenous and local communities, government institutions and the United Nations system to address indigenous issues and enhance their participation in international fora. A process should be developed to facilitate the channeling of funds directly to indigenous peoples' organizations at the community level.

100. The Convention's Financial Mechanism ^{66/} plays an important role in addressing the capacity-building needs of indigenous and local communities. In decision IV/8, paragraph 4(d), the Conference of the Parties requested that the Financial Mechanism give special emphasis to biodiversity initiatives implemented by eligible Parties, specifically benefit-sharing initiatives, such as support for entrepreneurial developments by local and indigenous communities, facilitation of financial sustainability of projects promoting the sustainable use of genetic resources, and appropriate targeted research components.

VIII. RECOMMENDATIONS REGARDING THE PLAN OF ACTION

101. The Ad Hoc Working Group on Article 8(j) and Related Provisions may wish to recommend that the Conference of the Parties at its ninth meeting:

1. *Notes with appreciation* the advancement of the elements of the Plan of Action and in particular, elements B, and D;

2. *Urges* Parties and Governments to develop their own toolkit of measures and mechanisms to address the underlying causes for the decline of traditional knowledge, innovations and practices based on their own unique national circumstances and diversity of indigenous and local communities, with the full and effective participation of indigenous and local communities, as appropriate, and to report on experiences through the national reporting process and through the Clearing-House Mechanism and the Traditional Knowledge Information Portal.

^{66/} See the Global Environmental Facility webpage at <http://www.gefweb.org/>