



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/WG8J/6/INF/11
21 May 2009

ENGLISH ONLY

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

Sixth meeting

Montreal, 2-6 November 2009

REPORT OF THE INDIGENOUS AND LOCAL COMMUNITY, BUSINESS AND BIODIVERSITY CONSULTATION

Note by the Executive Secretary

1. The Executive Secretary is circulating herewith, for the consideration of participants in the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, the report of the Indigenous and Local Community, Business and Biodiversity Consultation, which took place at the United Nations Headquarters in New York, on 12 and 13 May 2009.
2. The report is circulated in the form and language in which it was received by the Secretariat of the Convention on Biological Diversity.

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REPORT OF THE INDIGENOUS AND LOCAL COMMUNITY, BUSINESS AND BIODIVERSITY CONSULTATION

INTRODUCTION

1. Under Article 8(j) of the Convention on Biological Diversity (CBD), Parties undertake to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity, and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices. The Convention's three overall goals include the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.
2. Through the Declaration on the Rights of Indigenous Peoples, which was adopted by the United Nations General Assembly on 13 September, 2007, Governments have committed to recognizing and respecting the collective rights of indigenous peoples, as articulated in the Declaration.
3. In October 2008, the Natural Resources Stewardship Circle (NRSC) of the Aromatic, Perfume, and Cosmetics Industry at their International Centifolia Conference held in Grasse, France, adopted a declaration referred to as the Natural Resources Stewardship Circle Declaration (NRSCD) in an effort to support the goals of the Convention on Biological Diversity (CBD), the Declaration on the Rights of Indigenous Peoples (UN-DECRIPS), the UN Global Compact, and the International Labour Organization standards (in particular ILO 169). The Natural Resources Stewardship Circle Declaration (NRSCD) is available as Working Document III.
4. With this in mind, the NRSC, convened a meeting, in partnership with Tribal Link, the Secretariat of the Convention on Biological Diversity (SCBD) and in collaboration with the United Nations Permanent Forum on Indigenous Issues (UNPFII), at United Nations Headquarters from 12-13 May 2009, to seek advice from indigenous and local community representatives on how the goals of the Natural Resources Stewardship Circle Declaration may be operationalised by the industries involved.
5. The meeting facilitated a lively and interactive dialogue between industry specialists and indigenous and local community experts, which provided practical advice on how these industries can implement the commitments contained in the Natural Resources Stewardship Circle Declaration. The meeting has produced a procedural report and initial draft guidance. The initial draft guidance, which was adopted by consensus at the closing of the meeting, is contained in section III, of annex I of this report. A list of participants is also attached as annex II.
6. The draft guidance will be communicated to the next annual meeting of the Natural Resource Stewardship Circle (NSRC), the eighth session of the UNPFII, the 6th meeting of the Working Group on Article 8(j) and related provisions and the Third meeting on Business and the 2010 Biodiversity Challenge of the Convention on Biological Diversity and other relevant meetings.
7. Furthermore, Industry is considering a trailing of the draft guidelines through a series of projects, with a view to learn lessons arising from their practical implementation, to further refine the guidelines with a view to eventual adoption. Further information on this will be supplied by the NRSC in due course.

ITEM 1. OPENING OF THE MEETING

8. The meeting was opened with an indigenous blessing by Chief Tashka Yawanawa of the Yawanawa people of Brazil, at 9:30 am on 12 May 2009. Representatives of the NRSC, the SCBD, and Tribal Link Foundation welcomed participants at 10.00 a.m.

ITEM 2. ORGANIZATIONAL MATTERS

9. The meeting elected by acclamation, Mr. Sem Shikongo, Director of Sustainable Tourism within the Directorate of Tourism, Namibia, as Chairperson and Mr. Kabir Bavikatte, representative of the South African NGO, Natural Justice, as Rapporteur from amongst the participants.

10. The participants were familiarized with the agenda of the meeting on the basis of the provisional agenda and the annotated agenda by the Secretariat, after which the representative of NRSC and the Secretariat of the Convention on Biological Diversity provided an overview of the long term process.

ITEM 3. PRESENTATION OF INTERNATIONAL PROCESSES TO FRAME THE DISCUSSIONS

The Natural Resource Stewardship Circle Declaration

11. Catherine Peyreaud, the coordinator of the Natural Resources Stewardship Circle (NRSC) of the Aromatic, Perfume, and Cosmetics Industry introduced the Natural Resources Stewardship Circle Declaration. Ms. Peyreaud discussed the history of the development of the Declaration and the process envisaged to take the Declaration from aspiration into action. In particular, she stressed that the industry was interested in obtaining some initial guidance from this meeting that could then be trialed through a number of projects or case studies, after which the initial guidance could be further refined with a view of eventual adoption.

The Convention on Biological Diversity

12. 13. Mr. John Scott, programme officer for Article 8(j) and related provisions and focal point for indigenous peoples and local communities at the Secretariat of the Convention on Biological Diversity, provided a short overview of the Convention and its processes relevant to indigenous peoples and local communities, the private sector and biodiversity with a particular focus on article 8(j) (traditional knowledge) and article 15 (Access to Genetic Resources and Benefit Sharing - ABS) of the Convention. Mr. Scott also discussed inter-agency work on these issues.

UN Declaration on the Rights of Indigenous Peoples (DECRIPS)

13. 14. Professor Michael Dodson, an independent expert of the UNPFII, provided an introduction to the DECRIPS and drew attention to the articles most relevant for this meeting and in particular those concerning the private sector and biological (including genetic) diversity. He also discussed the importance of implementing the Declaration and how this might shape interactions between indigenous peoples and the private sector.

World Intellectual Property Organization

14. 15. Mr. Rama Rao, representative of the World Intellectual Property Organization (WIPO), provided a short overview of the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and briefly discussed such issues as patents, copyright, and *sui generis* systems of protection for traditional knowledge, amongst others.

ITEM 4. ROUNDTABLE: STORIES OF SUCCESS AND CHALLENGE

15. A moderated panel composed of three indigenous and local community representatives (Esther Camac, Costa Rica; Richard Walley, Australia; Osvaldo Munguia, Honduras) together with three private

sector representatives (David Hircock, USA; Olivier Behra, Madagascar; Michel Mane, France) provided first hand views and stories on lessons learnt from community level businesses based on biodiversity. The presenters, amongst other things, discussed the possible barriers and benefits of building relationships between indigenous and local communities and the private sector.

ITEM 5. THE DEVELOPMENT OF ADVICE/GUIDANCE ON THE IMPLEMENTATION OF THE NATURAL RESOURCES STEWARDSHIP CIRCLE DECLARATION

16. After an initial review of the discussions from day I, the Chairperson requested each participant to write down three priorities regarding what advice they would offer to industry regarding the implementation of the NRSD. Industry representatives were similarly requested to write down three burning questions they would like answered by indigenous and local community participants. The participants were then divided into 3 groups and each group nominated a chairperson and rapporteur. The groups discussed the priorities of each participant, considering the nine questions below and reflecting on the zero draft (Working document IV). Based on this methodology, the rapporteur and chairperson of each working group reported back to plenary on the three priorities arrived at by each group.

17. Below are the questions provided by the participants to aid their priority setting:

- (a) Do **contracts** provide one way forward? (best practices and examples of successful, sustainable partnerships, the incorporation of customary law requirements, etc)?
- (b) How can **biopiracy** (misappropriation/unauthorised access and use) be prevented?
- (c) Does **exclusivity** serve the interests of indigenous and local communities? If not, how to avoid it in order to ensure that indigenous and local communities fully benefit?
- (d) How can the issue of **trademarks** and **patents** be addressed?
- (e) How will developments concerning the International Regime on Access and Benefit-Sharing of genetic resources and equitable sharing of benefits effect the reality of this work on the ground?
- (f) How to achieve **long-term sustainability** of ILC/private sector relationships and its benefits for biodiversity? How to protect a community when a company discontinues a product line which was using community raw materials? What is the responsibility of companies to do sustainable, long term business relationships with communities?
- (g) Complexities of working with ILCs and how to resolve them, including conflict resolution solutions/ culturally appropriate alternate dispute resolution.

ITEM 6. REPORTING TO PLENARY

18. On Day II at 3 p.m. the chairperson and rapporteur of each group reported back to plenary regarding the three priorities of each group. These priorities were then collated by the Secretariat, as draft guidance/advice to industry, for consideration by the participants under agenda item 7.

ITEM 7. DISCUSSION AND ADOPTION OF THE RECOMMENDATIONS/GUIDELINES

19. A collation of the prioritised draft guidance/advice was prepared by the Secretariat for the consideration of the plenary. In plenary the participants considered, discussed and adopted by consensus the advice/guidance to industry, which is attached to this report as section III, of annex I. The twelve

points are not in any prioritised order, however they have been rearranged by the Secretariat to provide coherency.

20. The final report will be made available to the 8th session of the UNPFII, and the 6th meeting of the Working Group on Article 8(j) and related provisions and for the consideration of the Natural Resources Stewardship Circle (NRSC) of the Aromatic, Perfume, and Cosmetics Industry at their annual International Conference to be held in Grasse, France in October 2009, as well as other relevant meetings.

ITEM 8. CLOSURE OF THE MEETING

21. The meeting closed at 6 p.m. on Wednesday 13th May, 2009.

Annex I

**ADVICE/GUIDANCE TO INDUSTRY CONCERNING THE IMPLEMENTATION OF
COMMITMENTS CONTAINED IN THE NATURAL RESOURCE STEWARDSHIP CIRCLE
DECLARATION FOR THE CONSIDERATION OF THE NATURAL RESOURCES
STEWARDSHIP CIRCLE (NRSC) OF THE AROMATIC, PERFUME, AND COSMETICS
INDUSTRY**

PREAMBLE

The Parties of the:

NATURAL RESOURCE STEWARDSHIP CIRCLE

Recognizing the interconnectedness of all humanity and the environment – the web of life;

Learning to listen to each other, to the Earth and to indigenous peoples as the stewards and custodians of the biological and cultural diversity;

Acknowledging the rights of indigenous peoples to protect their lands, waters and resources as articulated in the Declaration on the Rights of Indigenous Peoples;

Recognizing that indigenous peoples and their traditional knowledge are essential for human survival as we face the crises of climate change and species loss;

Recognizing that all parties need peace, security and stability as the basis for working together;

Recognizing that indigenous peoples and local communities are already good business people, coming from different world views and acknowledging the need to find common ground, in mutually rewarding partnerships

Recognizing that all partners in business need capacity building and an opportunity to learn together and to build long term partnerships;

Acknowledging that Sustainability is not just conservation of habitat, but conservation and quality of life for all people in the value chain;

Building tools together to achieve sustainable development and wellness;

Taking into account the various international bodies, instruments, programmes, strategies, standards, reports and processes of relevance and the importance of their harmonization and complementarity and effective implementation, in particular:

- UN Declaration on the Rights of Indigenous Peoples, as adopted by the United Nations General Assembly, 13th September 2007;
- The Convention on Biological Diversity (1992);
- International Labour Organization Convention 169 on Indigenous and Tribal Peoples, (1989) and other relevant ILO labour standards;
- The Global Compact
- The Natural Resources Stewardship Circle Declaration (NRSCD)

Section 1

NATURE AND SCOPE

The following advice is intended to provide guidance to the Aromatic, Perfume, and Cosmetics Industry and others interacting with indigenous peoples and local communities to ensure respect for the collective rights of these communities and to ensure a long term viable industry build upon the sustainable use of the Earth's biological diversity and resources. As such it may provide a useful model for other private sector engagement with indigenous peoples and local communities.

The chief value of this guidance is as working-level tool. It is particularly relevant for industry sourcing natural ingredients from, or which are likely to impact upon, indigenous peoples and local communities, their sacred sites, sacred species and/or on lands and waters traditionally occupied and/or used by them.

The industry is encouraged to examine and develop mechanisms for monitoring interactions with indigenous peoples and local communities and in particular, compliance with agreements and respect for prior and informed consent, reflecting each companies own unique economic, social, legal and cultural circumstances and by the indigenous peoples and local communities themselves.

Members of the Natural Resources Stewardship Circle (NRSC) of the aromatic, perfume, and cosmetics industry, should actively cooperate in the promotion and implementation of these guidelines, among all those interacting with indigenous peoples and local communities.

Section 2

RATIONALE

This guidance aims to ensure respect for the cultural heritage and intellectual property of indigenous peoples and local communities, especially that which is relevant for the conservation and sustainable use of biological diversity. In doing so, it contributes to the implementation the Natural Resources Stewardship Circle Declaration (NRSCD), and through this instrument, the Declaration on the Rights of Indigenous Peoples and the achievement of the objectives of Article 8(j) of the Convention on Biological Diversity and its Plan of Action for the retention and use of traditional knowledge, innovations and practices of indigenous peoples and local communities and other internationally agreed standards, as reflected in the labour standards established by the International Labour Organization¹ and the Global Compact.

This guidance provides advice to Industry in establishing or improving frameworks for interactions with indigenous peoples and local communities and in particular, for access to natural or biological resources on lands and waters traditionally occupied by indigenous peoples and local communities while enabling the indigenous peoples and local communities to protect their traditional knowledge and the associated biological and genetic resources and their diversity.

One of the aims of these guidelines is to actively cooperate with each other and indigenous peoples and local communities in the promotion, understanding and implementation of these guidelines among those interacting with indigenous peoples and local communities and in relevant business dealings involving traditional knowledge, including bio-prospecting and bio-trade activities.

¹ Refer to <http://www.ilo.org/ilolex/english/convdisp1.htm>

Section 3

ADVICE/GUIDANCE TO INDUSTRY

Have agreed as follows,

Ways of working together:

1. Traditional Knowledge

Traditional Knowledge, its role and its commercial use in the aromatic, perfume and cosmetics industrial sector should be acknowledged and further investigated with the full and effective participation of Indigenous peoples and local communities.

Traditional Knowledge should be recognised/respected by the industry and its access and use should be determined by the Free Prior and Informed Consent (FPIC) of the Indigenous peoples and local communities, who are the knowledge holders.

2. Sustainability

Ensure sustainable use and support indigenous and local communities to ensure sustainability. The resource must be sustainable and renewable. Make sure the origins of the raw materials are acknowledged. Promote investigation of other product development/diversification possibilities. Promote in the industry, the potential use of one product in other formulas. Consider the potential of long term use considering the socio-economic evolution of indigenous peoples and local communities.

3. Sustainability of project

Indigenous peoples and local communities require capacity building to negotiate (on a level playing field), capacity to evaluate quality of ingredients, evaluating sustainability of the project and not to be dependant upon one company (or partner).

4. Know the capacity of supply

Both the supplier community and the industry should understand the potential and limitations of supply (sustainability).

5. Understand the supply chain and added value (including the added value of traditional knowledge and sustainability). Both communities and industry should understand the value added at each stage and develop realistic expectations.

6. Profitability

The price of products – know what is the added value of the product at each step of the chain. The final consumer should support sustainability of the project by paying more if necessary for a product produced from sustainable community sourced extracts. Indigenous peoples and local communities can use profits to secure their land tenure. No risks should be taken that impact on food security.

7. Independent Audits/Certification/Verification

This system allows for evidence of sustainable community sourcing and equity in the supply chain, acknowledging goals of conservation and sustainable use. Such certification could be provided by the industry or the community and could add value to the final product.

8. Community protocols

Users need certainty about community processes and Indigenous peoples and local communities also need a common understanding of agreements entered into. Indigenous peoples and local communities should be encouraged to diversify their interests. There is no “one-size fits all” community protocol. Each

community must develop their own processes/protocols according to their customary laws and unique national and cultural circumstances. Interactions should be based on an equal dialogue between partners, in order to have equitable sharing of benefits and to achieve mutual goals including conservation and sustainable use.

9. Legal frameworks considering the community protocols (including customary laws).

Legal frameworks should consider land tenure, traditional organization of Indigenous peoples and local communities. Indigenous peoples and local communities should be included as a partner in the registration of the products. Business partnerships can proceed without a legal framework however minimal standards need to be agreed upon prior to commencement of activities.

10. Educating the customer regarding the added value of sustainable product sourcing and traditional knowledge.

Customers should be educated about the value added to products by sustainable sourcing of ingredients, traditional knowledge and common goals of conservation and sustainable use and be willing to pay a higher price for these elements.

11. Contracts

Contracts may be a useful tool. Contracts should include duration, working terms and quality aspects. Contracts should translate commitment including the need for benefits for both community and environment. Contracts should constitute ethical standards of fairness and sustainable use. Contracts should clarify for the end of the supply chain the requirements at the local level. Contracts should establish clarity in the supply chain.

12. Exclusivity

Exclusivity is not a problem if it is for a limited time period. It can ensure a fair price. Industry should promote a clear understanding of the limited interest for exclusivity. Exclusivity should be negotiated on a case by case basis.

Annex II

Participants List

**INDIGENOUS AND LOCAL COMMUNITIES, BUSINESS AND BIODIVERSITY
CONSULTATION**

UN Headquarters, New York,

First Name	Last Name	Category	Title	Organization	Country
Luigi	Palombi	Academic		The Australia National University	Australia
Sarah	Chandler	Academic	Global Consulting	Wharton School of Business	
Luisa	Lema	Donor	Practicum participant	UN Foundation	Colombia/USA
Catherine	Jouve	Government		Pole Azur Provence/Grasse	France
Emmanuel	Lebrun-Damiens	Government		Permanent Mission of France to the UN	
Sem	Shikongo	Government	Director	Directorate of Tourism, Ministry of Tourism	Namibia
Gweneth	Thirlwell	independent Indigenous/Local Community Representative	Consultant	Formerly with CBD	Canada
Augusto	Otárola	Indigenous/Local Community Representative	Director	ILFOCEIN	Costa Rica
Carlos	Mamani Condori	Indigenous/Local Representative	Special Rapporteur Community	UNPFII Special Rapporteur	Bolivia Guyana/Barbados
Damon	Corrie	Indigenous/Local Community Representative			
Elisa	Canqui Millo	Indigenous/Local Representative	Special Rapporteur Community	UN Permanent Forum on Indigenous Issues	Bolivia
Esther	Camac	Indigenous/Local Representative	Community	IXACAVAA	Costa Rica
Gulnara	Abbasova	Indigenous/Local Representative	Community		Ukraine
Jose Fredy	Quintanilla Chan	Indigenous/Local Community Representative		Asociacion Biotza	Guatemala
Mick	Dodson	Indigenous/Local Representative	Special Rapporteur Community	UN Permanent Forum on Indigenous Issues	Australia
Noélie	Ouedraogo	Indigenous/Local Representative	Community	Association Songtaab-Yalgré	Burkina Faso
Richard	Walley	Indigenous/Local Representative	Community		Australia
Roberto	Borrero	Indigenous/Local Representative	Community		US/Puerto Rico
Rumiñahui	Anrango	Indigenous/Local Representative	Community	UNORCAC	Ecuador
Tafue	Lusama	Indigenous/Local Representative	Community		Tuvalu
Tashka	Yawanawa	Industry		Ojon/Estee Lauder	Brazil
Alicia	Sontag	Industry			
Benoit	Nicol	Industry	Sales Manager/USA	Biolandes	France

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Carol	Ruiz	Industry	Sr VP/Innovation & Sustainability	Ojon/Estee Lauder	
Daria	Myers	Industry		Origins	
Devin	Hibbard	Industry	Co-founder, Director	BeadforLife	
Elise	Rebut	Industry	R&D	Yves Rocher	France
Genevieve	Du Parc	Industry	Marketing Manager	Darphin	France
Georges	Ferrando	Industry	Chairman	Albert-Vieille	France
Gilles	Andrier	Industry	CEO/Circle Founder	Givaudan	Switzerland
Greg	Minick	Industry		Rainforest Alliance	
Jacques	Pain	Industry	President	Club Des Entrepreneurs Grasse	France
Jean-Yves	Berthon	Industry	Chairman	Greentech	France
John	Brebner	Industry	Director	S&D Aroma	UK
Karelle	Messner	Industry		Ojon/Estee Lauder	
Michael	Mane	Industry	Chairman	Mane	France
Pascal	Chevalier	Industry	CEO	Provital	France
Pierre	Bonnefoi	Industry	Sales Manager	Albert-Vieille	France
Remi	Pulverail	Industry	Purchasing Man.	Givaudan	Switzerland
Roger	Rich	Industry		Premier Specialties, Inc.	
Stephen	Piquart	Industry	Chairman	Behave & TFS	France
			Faculty, Country Manager Peru, Region Manager		
Steven	Smolinsky	Industry	Africa	Wharton School of Business	
Sylvie	Noguer	Industry		Deloitte & Touche	
Torkin	Wakefield	Industry	Co-founder, Director Sustainable Development Manager	BeadforLife	
Yvette	James	Industry/Indigenous/Local Community Rep		Clarins	France
Nick Govindaswamy	McCabe Hariramamurthy (Hari)	NGO/Civil Society		TFS/Mount Romance Foundation for Revitalisation of Local Health Traditions	Australia India
Juliette	Crepin Sanjay	NGO/Civil Society		Conservation International Natural Justice (Lawyers for Communities/Environment)	USA South Africa
Kabir	Bavikatte	NGO/Civil Society	Lawyer		
Manisha	Gutman	NGO/Civil Society		eCoexist	India
Olivier	Behra	NGO/Civil Society	President	L'Homme et L'Environnement	France/Madagascar
Osvaldo	Munguia	NGO/Civil Society	Executive Director	MOPAWI	Honduras
Rik	Lojenga	UN	Executive Director	Union for Ethical BioTrade	
Ahmed	Djoghla	UN	Executive Secretary	Convention on Biological Diversity	Algeria/Canada
John	Scott	UN	Programme Officer	CBD	Australia/Canada
Malte	Dold	UN		UN Global Compact	USA
Mirian	Masaquiza	UN		Office of the President of the GA, UN	Ecuador/US
Rachel	Davis	UN	Advisor	UN Special Representative on Business and Human Rights	
Rama	Rao	UN		WIPO	USA
Terence	Hay-Edie	UN	Programme Specialist	UNDP/GEF Small Grants Programme	
Organizers/Staff					
Catherine	Peyreaud	Organizer	Coordinator	Natural Resources Stewardship Circle	France/International
David	Hircock	Organizer	Advisor	Estee Lauder Companies	Bulgaria/USA
Devon	White	Organizer	Intern	Fordham University	USA
Erin	Hinkle	Organizer	Executive Assistant	Tribal Link Foundation	USA

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Nina	Kantcheva	Organizer	Program Coordinator	Tribal Link Foundation	USA
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