



## Convention on Biological Diversity

Distr.  
GENERAL

UNEP/CBD/WG8J/6/2/Add.5  
3 September 2009

ORIGINAL: ENGLISH

---

### 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

Item 7 of the provisional agenda\*

### **Recommendations arising from the Seventh and Eighth Sessions of the United Nations Permanent Forum on Indigenous Issues to the Convention on Biological Diversity**

*Note by the Executive Secretary*

#### **INTRODUCTION**

1. New recommendations arising from both the seventh session (2008) and the eighth session (2009) of the United Nations Permanent Forum on Indigenous Issues (UNPFII) made to the Convention will be considered by the Working Group on Article 8(j) and Related Provisions, when it meets in Montreal, from 2 to 6 November, 2009. The resulting draft decisions will then be forwarded to the tenth meeting of the Conference of the Parties, to be held in Nagoya, Japan, in October 2010, for consideration and action, as appropriate.

2. However, it is important to note that some of the recommendations arising from the report of the UNPFII at its seventh session (E/2008/43) are already in the process of being addressed as they are related to previous recommendations and current or ongoing processes. The Secretariat therefore takes this opportunity to provide a quick update on these current or ongoing recommendations in section I of the present document. Section II draws attention to recommendations not yet considered by the Working Group or the Conference of the Parties. Section III proposes a draft decision for the consideration of the Working Group, based on the UNPFII recommendations.

#### **I. RESPONSE TO RECOMMENDATIONS MADE BY THE UNPFII AT ITS SEVENTH SESSION, TO THE CONVENTION ON BIOLOGICAL DIVERSITY<sup>1</sup>**

Paragraph 19. *The Forum further recommends that discussions and negotiations on strengthening the links between climate change, biodiversity and cultural diversity under the Convention on Biological*

---

\* UNEP/CBD/WG8J/6/1.

<sup>1</sup> The paragraph numbers in this section refer to the paragraphs in the report on the seventh session of the Permanent Forum on Indigenous Issues (E/2008/43-E/C.19/2008/14).

*Diversity or the United Nations Framework Convention on Climate Change ensure the effective participation of indigenous peoples.*

3. The Secretariat in partnership with United Nations University and Tebtebba Foundation, facilitated a Global Indigenous Peoples Consultation on Reducing Emissions from Deforestation and Forest Degradation (REDD) in Baguio City, Philippines, from 12 to 14 November 2008 (UNEP/CBD/WG8J/6/INF/4). The Secretariat also ensured that indigenous and local communities are represented in climate related meetings of the Convention including the first meeting of the Second Ad Hoc Technical Expert Group Meeting on Biodiversity and Climate Change, held in London from 17 to 21 November 2008 (UNEP/CBD/AHTEG/BD-CC-2/2/5). The Secretariat has officially submitted a summary document of these meetings for consideration at the next meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change, in 2009.

Paragraph 32. *The Permanent Forum supports collaborations between indigenous groups and conservation organizations that bring together traditional and scientific knowledge holders to add the wealth of current and historical knowledge of indigenous peoples to the analysis of impacts of climate change and to mitigation solutions and adaptation strategies — recognizing and respecting the United Nations Declaration on the Rights of Indigenous Peoples and the provisions of Article 8(j) of the Convention on Biological Diversity.*

4. Article 8(j) requires that Parties to the Convention (subject to national legislation) “respect” traditional knowledge. In implementing this obligation, the Conference of the Parties is considering ways and means that traditional knowledge can be valued alongside of scientific knowledge in pursuit of the goals of the Convention. The recent work on climate change and biodiversity including the International Expert Meeting on Responses to Climate Change for Indigenous and Local Communities and the Impact on their Traditional Knowledge Related to Biological Diversity -The Arctic Region, held in Helsinki, from 25-28 March 2008 (UNEP/CBD/COP/9/INF/43), provided an avenue to explore how these two pools of knowledge can be complementary and equally valued.

Paragraph 33. *The Permanent Forum recommends that donors and United Nations agencies give more support to indigenous peoples in Africa, where appropriate, to promote, recognize, protect and enhance indigenous traditional knowledge.*

5. The Secretariat, in partnership with the German Government through the GTZ, is pursuing an ABS capacity-building strategy in the African region and indigenous and local community representatives are regularly included in these workshops, as well as regional capacity-building workshops on protected areas.

Paragraph 80. *The Permanent Forum applauds the effective participation mechanisms for indigenous peoples in such mechanisms as the Convention on Biological Diversity Working Group on Article 8(j) and Related Provisions and recommends that, in accordance with the Declaration on the Rights of Indigenous Peoples, such practices be extended to all critical areas of interest to indigenous peoples, such as the Working Group on Access and Benefit-sharing and in particular the Working Group on Protected Areas.*

6. The Working Group on Article 8(j) is unique both within and beyond the Convention on Biological Diversity and deals specifically with the knowledge, innovations and practices of indigenous and local communities. At the sixth meeting of the Working Group on Article 8(j), participants will discuss a multi-year programme of work for Article 8(j) and related provisions and in this discussion, will consider, amongst other things, if the Working Group could be used as a think tank for important issues such as climate change and protected areas. That said, other meetings of the Convention have multiple interest holders and a balance must be achieved for all interested parties, including indigenous and local

communities. In such cases, indigenous and local communities can enjoy effective participation mechanisms but cannot be elevated above other parties.

7. The Working Group on Access and Benefit-sharing and the ninth meeting of the Conference of the Parties in its most recent decisions has recognized the importance of the participation of indigenous and local communities in the elaboration and negotiation of the international regime on access and benefit-sharing and the Co-Chairs of the Working Group are endeavouring to ensure that representatives of indigenous and local communities can make timely interventions, within the rules of procedure.

Paragraph 81. *The Permanent Forum requests the Secretariat of the Convention on Biological Diversity to complete its work on the draft code of ethical conduct for the recognition and protection of indigenous intellectual property and cultural heritage, taking into account the Declaration on the Rights of Indigenous Peoples, as a minimum standard, with a view to adopting the code at the tenth meeting of the Conference of the Parties in 2010, the International Year of Biodiversity.*

8. In paragraph 5 of decision IX/13 G, the Conference of the Parties requested that the Ad Hoc Working Group on Article 8(j) and Related Provisions further develop the draft elements of a code of ethical conduct and submit them to the Conference of the Parties at its tenth meeting for its consideration and possible adoption. Further to this, in paragraph 3 of the same decision, the Executive Secretary has been requested to transmit the present decision to the United Nations Permanent Forum on Indigenous Issues and to seek collaboration in the development of the elements of a code of ethical conduct.

9. In response to this request, the UNPFII which is composed of independent experts,<sup>2</sup> has agreed by consensus on the before mentioned recommendation, as concrete advice to assist in the development and adoption of the code by the tenth meeting of the Conference of the Parties, in October 2010. This advice has been included in a compilation of views concerning the draft elements of a code of ethical conduct (UNEP/CBD/WG8J/6/INF/2) for the consideration of the Parties at the sixth meeting of the Working Group on Article 8(j).

Paragraph 82. *The Permanent Forum requests the secretariats of the Convention on Biological Diversity and the Permanent Forum to consult and collaborate with indigenous organizations to promote the role of indigenous peoples as stewards of biological and cultural diversity for the International Year of Biodiversity.*

10. In paragraph 3 of decision IX/13 I, the Conference of the Parties requested the Executive Secretary to draw attention to the important role of indigenous and local communities in activities related to 2010 as the International Year of Biodiversity, and to cooperate closely with the United Nations Permanent Forum on Indigenous Issues, to explore opportunities for common activities as related to information exchange and awareness-raising under the guidance of the Bureau. Further to this and thanks to the generous patronage of the Government of Spain, the Secretariat has prepared a menu of activities which has been considered by the Bureau and indigenous and local community working group on education and community awareness, as well as the Secretariat and interested members of the UNPFII, so that products can be prepared for use during the international year. The products will have two focuses including for indigenous and local communities to improve knowledge of and effective participation in convention processes and/or for the General Public about indigenous and local communities, traditional knowledge and goals of the Convention.

11. Products under development may include:

- (a) Animation for use on television, airlines, screen-savers, etc.;
- (b) Community-based short film/video ILCs, *Traditional Knowledge and Biodiversity*;

---

<sup>2</sup> Eight of whom are nominated by Governments and eight of whom are nominated through indigenous regional processes.

- (c) Exhibition – United Nations Headquarters;
  - (d) UNESCO posters partnership (on TK) – translated into languages;
  - (e) Community radio stories and interviews translated into diverse languages;
  - (f) Partnership with [www.indigenousportal.com](http://www.indigenousportal.com) to improve related sections of the web-pages;
  - (g) Participation Guide for ILCs for effective participation in CBD processes (multiple-languages) developed as training materials;
  - (h) The Article 8(j) newsletter *Pachamama*, which is issued in English, Spanish, and French.
12. Possible high-profile events for the showcasing of products may include:
- (a) Opening of International Year of Biodiversity, Berlin, January 2010;
  - (b) Ninth session of UNPFII, to be held New York in April 2010;
  - (c) The Global Conference on Cultural and Biological Diversity for Development, Montreal, July 2010;
  - (d) The joint CBD/UNESCO 2010 Display on Cultural and Biological Diversity (throughout 2010);
  - (e) The tenth meeting of the Conference of the Parties, to be held in Japan, October 2010.

Paragraph 83. *The Permanent Forum requests the Secretariat of the Convention on Biological Diversity and the World Intellectual Property Organization to assist it in finalizing the study on sui generis systems based on customary laws for the protection of traditional knowledge with a view to advancing its protection.*

13. The note by the Executive Secretary on the development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices to identify priority elements (UNEP/CBD/WG8J/5/6) is being revised in collaboration with the World Intellectual Property Organization (WIPO) and UNPFII and with input from Parties, Governments, agencies and indigenous and local community representatives for the consideration of sixth Working Group on Article 8(j) and Related Provisions will be available through the Secretariat webpage as early as May 2009. After consideration by the Working Group as draft decision it will be sent to the governing body at the tenth meeting of the Conference of the Parties for adoption and action.

14. A study on compliance in relation to the customary law of indigenous and local communities, national law, across jurisdictions, and international law, by indigenous experts, was commissioned by the Secretariat, in response to paragraph 13 (e) of decision IX/12, to inform the development and negotiation of the international regime on access and benefit-sharing. The study was made available to the meeting of the Group of Technical and Legal Experts on Compliance in the Context of the International Regime on Access and Benefit-sharing and the seventh and eighth meetings of the Working Group on Access and Benefit-sharing. The paper addresses compliance in relation to the customary law of indigenous and local communities, national law, across jurisdictions, and international law.

15. All relevant documents produced by the Secretariat have been forwarded through the Secretariat of UNPFII to the Special Rapporteur on *sui generis* systems for his consideration.

Paragraph 84. *The Permanent Forum recommends that the secretariat of the Convention on Biological Diversity explore ways of ensuring that traditional knowledge issues and indigenous peoples' rights are fully addressed in the development of an international regime on access and benefit-sharing, welcomes the proposal of an indigenous expert meeting on traditional knowledge issues related to the international regime and requests the participation of some Permanent Forum members, as well as regional representation of indigenous experts, including indigenous female representatives.*

16. In paragraph 11 of decision IX/12, the Conference of the Parties considered UNPFII recommendations, among other things, and decided to establish three distinct groups of technical and legal experts on: (i) compliance; (ii) concepts, terms, working definitions and sectoral approaches; and (iii) traditional knowledge associated with genetic resources. The terms of reference of the groups, including the criteria for the selection of experts are laid out in annex II to decision IX/12 and are reproduced in the annex to the present note below.

17. The expert group meeting took place in Hyderabad, India, from 16 to 19 June 2009 and the report (UNEP/CBD/WG-ABS/8/2) has been made available for the consideration of the eighth meeting of the Working Group on Access and Benefit-sharing and to the Working Group on Article 8(j) for its information.

18. Furthermore, to ensure that traditional knowledge issues and indigenous peoples' rights are fully addressed in the development of an international regime on access and benefit-sharing, some Parties and regional groupings, in collaboration with the Secretariat, have also pursued their own initiatives, as the European Union sponsored the Vienna Workshop on Matters related to Traditional Knowledge associated with Genetic Resources and the International ABS Regime, which was held from 15 to 17 December 2008 (UNEP/CBD/WG8J/6/INF/13) and the Vilm Workshop on Matters related to Traditional Knowledge associated with Genetic Resources and the International Regime on Access and Benefit-sharing, which was sponsored by the Government of Germany on the Isle of Vilm from 6 to 10 June, 2009. (UNEP/CBD/WG8J/6/INF/13)

## **II RECOMMENDATIONS ONGOING OR NOT YET CONSIDERED BY THE WORKING GROUP ON ARTICLE 8(j) OR THE CONFERENCE OF THE PARTIES**

### ***Recommendation from the seventh session of the Permanent Forum, 21 April – 2 May 2008***

*The Permanent Forum requests the Secretariat of the Convention on Biological Diversity to complete its work on the draft code of ethical conduct for the recognition and protection of indigenous intellectual property and cultural heritage, taking into account the Declaration on the Rights of Indigenous Peoples, as a minimum standard, with a view to adopting the code at the tenth meeting of the Conference of the Parties in 2010, the International Year of Biodiversity.<sup>3</sup>*

### ***Recommendation from the eighth session of the Permanent Forum, 18-29 May 2009***

*The Permanent Forum welcomes such initiatives as the indigenous and local community, business and biodiversity consultation, held at United Nations Headquarters in New York on 12 and 13 May 2009, as a useful dialogue between the private sector and indigenous peoples, and encourages further discussions with a view to ensuring the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples while stimulating community-level businesses based on the sustainable use of biodiversity through such creative partnerships.<sup>4</sup>*

#### *Other matters*

19. At its eighth session in 2009, UNPFII adopted a new method of work. Each year, six agencies will self-nominate to participate in an in-depth dialogue with the members of the Forum. The Secretariat of the Convention on Biological Diversity has committed to an in-depth dialogue in 2010, as a useful

---

<sup>3</sup> Report on the seventh session of the United Nations Permanent Forum on Indigenous Issues (E/2008/43-E/C.19/2008/14), para. 81.

<sup>4</sup> Report on the eighth session of the United Nations Permanent Forum on Indigenous Issues (E/2009/43-E/C.19/2009/14), para.7.

opportunity to provide a timely update on the development and negotiation of the international regime on access and benefit-sharing.

### **III. DRAFT RECOMMENDATIONS FOR THE CONSIDERATION OF THE WORKING GROUP**

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions may wish to recommend that the Conference of the Parties at its tenth meeting:

1. *Requests* Parties to consider, in the development, negotiation and adoption of the code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity, that the standard established in the code adequately reflect relevant international standards, including the Declaration on the rights of indigenous peoples;

2. *Notes with appreciation* the report of the Indigenous and Local Community, Business and Biodiversity Consultation (UNEP/CBD/WG8J/6/INF/11), held at United Nations Headquarters in New York on 12-13 May 2009, as a useful dialogue between the private sector and indigenous and local communities, and encourages further discussions with a view to ensuring the effective implementation of the Convention on Biological Diversity, through creative partnerships between stakeholders, while stimulating community-level businesses based on the sustainable use of biodiversity.

*Annex*

**TERMS OF REFERENCE OF THE EXPERT GROUP ON TRADITIONAL KNOWLEDGE  
ASSOCIATED WITH GENETIC RESOURCES AS CONTAINED IN DECISION IX/12,  
ANNEX II**

1. A group of technical and legal experts on traditional knowledge associated with genetic resources is established to further examine the issue of traditional knowledge associated with genetic resources in order to assist the Working Group on Access and Benefit sharing. The expert group shall provide legal and technical advice, including, where appropriate, options and/or scenarios. The expert group will address the following questions:

(a) What is the relationship between access and use of genetic resources and associated traditional knowledge?

(b) What practical impacts should the negotiations of the international regime take into account based on the range of community level procedures and customary systems of indigenous and local communities for regulating access to traditional knowledge associated with genetic resources at the community level?

(c) Identify the range of community level procedures and determine to what extent customary laws of indigenous and local communities regulate access to genetic resources and associated traditional knowledge at the community level and its relevance to the international regime;

(d) To what extent measures to ensure compliance with prior informed consent and mutually agreed terms under Article 15 also support the prior informed consent of indigenous and local communities for the use of their associated traditional knowledge?

(e) Identify elements and procedural aspects for the prior informed consent of holders of associated traditional knowledge when traditional knowledge associated with genetic resources is accessed also taking into account potential trans-boundary contexts of such associated traditional knowledge and identifying best-practice examples;

(f) Is there a basis for prior informed consent for indigenous and local communities relative to traditional knowledge associated to genetic resources in international law? If so, how can it be reflected in the international regime?

(g) Assess options, considering the practical difficulties and distinct implementation challenges, for including traditional knowledge associated with genetic resources in a potential internationally recognized certificate issued by the competent domestic authority also by considering the possibility of a declaration on such certificate as to whether there is any associated traditional knowledge and who the relevant holders of traditional knowledge are;

(h) How to define traditional knowledge associated to genetic resources in the context of access and benefit-sharing?

2. The expert group shall be regionally balanced and composed of thirty experts nominated by Parties and fifteen observers, including seven observers from indigenous and local communities nominated by them, and remaining observers from, *inter alia*, international organizations and agreements, industry, research institutions/academia and non-governmental organizations.

3. Parties are also encouraged to nominate experts from indigenous and local communities where possible.