



## Convention on Biological Diversity

Distr.  
GENERAL

UNEP/CBD/WG8J/6/2/Add.6  
26 August 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\*

**IN-DEPTH REVIEW OF THE PROGRAMME OF WORK ON ARTICLE 8(j) AND RELATED  
PROVISIONS WITH THE PURPOSE OF CONTINUING THE WORK OF THE WORKING  
GROUP ON ARTICLE 8(j) – MULTI-YEAR PROGRAMME OF WORK**

*Note by the Executive Secretary*

### INTRODUCTION

1. In paragraph 11 of decision IX/13 A, the Conference of the Parties decided to undertake at its tenth meeting an in-depth review of the tasks in the programme of work of Article 8(j) and related provisions of the Convention on Biological Diversity with the purpose of continuing the work of the Working Group on Article 8(j), and with a view to placing greater focus on the interlinkages between the protection of traditional knowledge, innovations and practices and the conservation and sustainable use of biological diversity and, the fair and equitable sharing of the benefits arising from the utilization of traditional knowledge, innovations and practices.

2. To assist the Working Group in this task, the Executive Secretary has prepared the present document based on submissions received and building on the previous review conducted at the fourth meeting of the Working Group. Section I considers achievements to date and possible future directions. Section II considers the implementation of the priority tasks of the programme of work. In each case, the actual task is quoted and is followed by information regarding its implementation. Finally, section IV suggests draft recommendations that the Working Group may wish to submit for the consideration of the Conference of the Parties, with the purpose of continuing the work of the Working Group on Article 8(j), through the creation of a revised multi-year programme of work. Annex I reproduces relevant paragraphs of decision IV/9 concerning the mandate of the Working Group. Annex II reproduces the programme of work as adopted by decision V/16. Submissions were received from the Government of Australia and the European Union, as well as Tebtebba Foundation (an indigenous peoples organization), and are made available as an information document (UNEP/CBD/WG8J/6/INF/1).

---

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

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

## *Effectiveness of the Working Group on Article 8(j) and Related Provisions*

3. The Working Group on Article 8(j) and Related Provisions has met five times since its establishment in 1998 at the fourth meeting of the Conference of the Parties and has made some notable achievements. In particular, the Working Group has raised the profile of indigenous and local community issues throughout the Convention process. It has successfully developed and monitored the implementation of the work programme on Article 8(j) and related provisions. It has advanced the priority tasks of the work programme, including through improved indigenous and local community participation in the Convention process, the development of guidelines for the conduct of cultural, environmental and social impact assessments (the Akwe:Kon Voluntary Guidelines), the completion of the composite report on the status and trends of traditional knowledge bringing together detailed regional information from every region and the identification of processes at national and local levels that may threaten the maintenance, preservation and application of traditional knowledge. The Group is currently considering elements of *sui generis* systems for the protection of traditional knowledge, as well as elements of an code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities, which could make a substantial contribution not only to the advancement of the work programme on Article 8(j) and related provisions, but also to the negotiation and elaboration of an international regime on access and benefit-sharing. In short, the Working Group has ensured that appropriate attention and focus is given to traditional knowledge under the Convention process.

4. On the other hand, the existence of the Working Group has meant that most efforts in promoting traditional knowledge under the Convention have been concentrated in the Working Group on Article 8(j) and Related Provisions. This may have had the unintended result of reducing the focus on issues related to traditional knowledge in the work of the other subsidiary bodies under the Convention. While attention was paid to indigenous and local community concerns in such programmes as protected areas, and access and benefit-sharing, some have questioned whether indigenous and local community concerns are adequately reflected under other work programmes of significance to indigenous and local communities.

## *Article 10(c)*

5. One way to address this concern could be to place greater focus on the implementation of Article 10(c) <sup>1</sup> on the sustainable use of components of biological diversity as part of the mandate and work programme of work for Article 8(j) and related provisions. This could also address the interest by some Parties in the development of potential elements of a strategy for conservation and sustainable use, including customary use,<sup>2</sup> The Parties have alluded to a new emphasis on Article 10(c) as a priority in paragraph 4<sup>3</sup> of decision IX/13 A. Future work on Article 10(c) may also include the development of indigenous and local community specific indicators regarding sustainable use. Recalling that Article 10(c) is a cross-cutting issue, attention could also be given to the implementation of other related provisions and in particular 17.2 and 18.4, as well as throughout the thematic areas. Some Parties also see a need for an integration of the work towards the effective implementation of Article 10(c) and therefore have proposed the addition of a new task focusing on 10(c) to the revised programme of work on

---

<sup>1</sup> Article 10. Sustainable use of components of biological diversity. Each Contracting Party shall, as far as possible and as appropriate: (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

<sup>2</sup> IX/13 A, paragraph 10.

<sup>3</sup> 4. Requests the Executive Secretary to continue to compile case-studies, analyse and report on work concerning related provisions, focusing on Article 10(c), and to provide advice to the Working Group at its sixth meeting on how this related provision may be further advanced and implemented as a priority;

Article 8(j). Indigenous and local communities have suggested that a similar process to the indicators process for traditional knowledge could also be usefully initiated with respect to Article 10(c).

#### *Thematic areas*

6. In addition, the Working Group on Article 8(j) could provide specific advice to other subsidiary bodies regarding the relevance of traditional knowledge. However, such an approach may risk overloading the agenda of the Working Group, unless the current agenda is reworked and prioritized. A revised agenda could include a section of emerging issues. Another section devoted to thematic areas which could provide an opportunity for an in-depth study of each thematic area, rotating through all seven thematic areas, in three sessions of the Working Group. Another approach may be to strengthen the participation of indigenous and local communities in other subsidiary bodies.

7. In recent years, although their interests remain broad, indigenous and local communities have prioritized the Working Group on Article 8(j), the Working Group on Access and Benefit-sharing, the Working Group on Protected Areas and various expert meetings on climate change. In particular, its most recent decision on protected areas, through the fifth preambular paragraph of decision IX/18 A, the Conference of the Parties recognized the need to promote full and effective participation of indigenous and local communities in the implementation of the programme of work on protected areas at all levels, yet this remains elusive. A detailed analysis of indigenous and local community participation in protected areas issues can be found in the progress report on the implementation of Article 8(j) and related provisions (UNEP/CBD/WG8J/6/2).

8. The progress report on the implementation of the programme of work on Article 8(j) and related provisions in the thematic areas of the Convention (UNEP/CBD/WG8J/6/2) provides an analysis of achievements to date within selected thematic areas and through the national reports. In the in-depth review of the work programme on Article 8(j) and related provisions, it may be useful to consider how this can be more fully and effectively achieved.

9. The in-depth review provides an opportunity to think creatively about the work of Article 8(j) in the post-2010 period and in the light of emerging post-2010 targets. Another, more radical, approach to the full and effective implementation of Article 8(j) and in particular throughout the thematic areas, could be a re-conceptualization of the Working Group as – or the establishment alongside the Working Group of – an indigenous and local community solutions-oriented think-tank and a source of expertise, as well as a resource to be drawn upon by other areas of the Convention. This could see the Working Group itself become an effective mechanism in achieving implementation of Article 8(j) and related provisions, including Article 10(c) and throughout the thematic areas.

#### *Emerging issues*

10. In ongoing discussions with and submissions from indigenous and local community representatives, many have requested a stronger focus on the role of ecosystem services and biodiversity, also in relation to climate change and Millennium Development Goals. This would put a premium on implementation of the ecosystem approach, which could put indigenous and local communities and their traditional knowledge at the very centre of the equation. This could possibly be taken up through an in-depth dialogue involving the various thematic areas and other cross-cutting issues on a revised Working Group agenda.

#### *Capacity-building, community education and public awareness*

11. Indigenous representatives have also suggested that in looking at national implementation a large weakness continues to be the vertical and horizontal linkages between sectors, but more importantly, what is being said by central or national governments and local realities. They go on to say that much of this points to the ongoing need for capacity-building for Parties and other major actors, including the private sector and the building of creative partnerships between stakeholder groups. The full and effective implementation of the Convention calls for full and effective participation not only of indigenous and

local communities but of all stakeholders and the whole of society, if the Convention's goals are to be achieved.

12. In recent decisions and specifically in decision IX/13 E,<sup>4</sup> Parties have prioritized the capacity-building of indigenous and local communities and this remains an ongoing need and urgency and is crucial to their effective participation in the Convention. In considering a future programme of work it should remain an important priority.

13. If capacity-building efforts are to be increased for both indigenous and local communities, Governments, the private sector and other major players, community education and public awareness programmes will become even more important, including the contributions of indigenous and local communities.

*Un-started tasks of the programme of work and revising the programme of work*

14. Indigenous and local community representatives have emphasized in their submissions that there is a need to fully consider whether existing un-started tasks of the programme of work, need to be revisited, adjusted or replaced, in order to ensure their relevance, in the light of other developments in recent years and current needs. Some indigenous and local community representatives, particularly in the Latin American and Caribbean region, have emphasized that un-started tasks should not be abandoned if they remain relevant, especially in the light of the elaboration and negotiation and eventual implementation of the international regime on access and benefit-sharing. At the same time, indigenous and local community representatives also believe that there is a need for a more holistic and forward looking programme of work, rather than simply rehashing the list of tasks, which were developed more than a decade ago. Indigenous and local community organizations have highlighted in their submissions the following post 2010 priorities: biodiversity and climate, access and benefit-sharing, ecosystem approach, indicators and communication, education and public awareness. What is being discussed in the contemporary global crisis are major shifts and transformations in economics, politics and environment, in which indigenous and local communities, biological and cultural diversity can and should make a vital and major contribution.

15. Therefore, there may be a need for increased focus on implementing the ecosystem approach, which is very much aligned with both Article 8(j) and Article 10(c). If this is to happen, it would be desirable to have the relevant indicators in place, to accurately monitor what is happening on the ground. So the indicators work has to keep in step with the review of 2010 biodiversity target and also post-2010 targets.

16. The negotiation and smooth implementation of the international regime on access and benefit-sharing will require strong engagement by all stakeholders including indigenous and local communities. An intersessional process under Article 8(j) could consider, for example, tasks 7, 10 and 12. This could be similar to the indicators process, which had regional and international expert workshops and which could bring recommendations to next Working Group on Article 8(j).

17. Australia has emphasized in its submission, the need for an in-depth review of the programme of work on Article 8(j), and that task 15 be initiated through a request from the Secretariat for Parties to submit national approaches for compilation for consideration of best practices/lessons learned. The European Union stated in its submission that task 7 and 10 and other un-started tasks might usefully complement the effective implementation of the international regime on access and benefit-sharing and that this should be considered in the in-depth review of the programme of work on Article 8(j). The European Union also notes that many of the proposals under negotiation in the Working Group on Access

---

<sup>4</sup> Decision IX/13 D paragraph 1, States "notes with appreciation the advancement of the elements of the plan of action for the retention of traditional knowledge and, in particular, elements B and D, and decides that the priority for future work on the plan of action should focus on section E, on capacity-building".

and Benefit-sharing aim at more ambitious results than the non-binding guidance which would be the agreed result of some of the un-started tasks. Given this, some of the un-started tasks may have been superseded by current proposals. Therefore, the future programme of work for Article 8(j) should, amongst other things, complement the effective implementation of the international regime on access and benefit-sharing.

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

18. A fundamental principle of the programme of work for Article 8(j) has been the participation of indigenous and local communities in the work of the Convention. Participation has notably improved over time, especially regarding indigenous communities and could improve further through such mechanisms as the Clearing-House Mechanism (and specifically the Article 8(j) web-pages and Traditional Knowledge Information Portal), further capacity-building efforts, and the voluntary funding mechanism. However, the involvement of local communities has been limited for various reasons, including a lack of manifestation and organization at the international level, the lack of infrastructure within and between local communities, as well as lack of a working definition within the context of the Convention. In fulfilling the mandate and programme of work for Article 8(j) and related provisions, it may be useful to consider targeted outreach to local communities, with the view of more fully involving them in Convention processes.

19. In particular, indigenous and local communities would benefit from some focused activities and mechanisms as an avenue through which to channel their experience into the Convention and its implementation. Notifications to provide case-studies and experiences do not usually result in many inputs, because very few indigenous and local community organizations are geared up for these types of submissions and processes. Therefore, indigenous and local community organizations may need some support in terms of financial resources and mechanisms, or events through which to channel their inputs. A learning network about the ecosystem approach and the implementation of Article 10(c) could be developed based on existing electronic mechanisms such as the traditional knowledge information portal.

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

20. In paragraph 1 of its decision V/16, the Conference of the Parties adopted the programme of work on Article 8(j) and related provisions and, in paragraph 2 of the same decision, decided to implement the programme of work giving priority to tasks 1, 2, 4, 5, 8, 9 and 11, as well as 7 and 12, the latter to be initiated following completion of tasks 5, 9 and 11. For ease of reference, the full text of the programme of work is contained in annex II below. The following is an update of progress made in the implementation of the priority tasks since the adoption of the programme of work.

### **A. Tasks of the first phase of the programme of work**

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

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

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

Several mechanisms to redirect decision-making powers to the local level have been implemented and largely focus on capacity-building for effective participation in decision-making and management of biological diversity and access to national and international laws for the protection of traditional knowledge. Some such examples are provided through the national reports and in particular, it was noted that research initiatives, capacity-building and devolution of decision making were reportedly occurring in Australia, Bangladesh, Belgium, Bolivia, Botswana, China, Ecuador, Estonia, Finland, Germany, Lesotho, Morocco, Namibia, Norway, Poland, Senegal, Sweden, Thailand, United Republic of Tanzania and Zimbabwe. More detailed information on the implementation of paragraph 23 of decision VI/10 is contained in the progress report on the implementation of the programme of work on Article 8(j) and related provisions at the national level (UNEP/CBD/WG8J/6/2), in which most submitting Parties discussed various initiatives undertaken or being considered to enhance the capacity of indigenous and local communities and/or to devolve decision-making to local levels.

*Action required:* There is an ongoing need to support, organize and facilitate capacity-building workshops. This will require the provision of financial and technical support to indigenous and local community organizations. These efforts may need to be increased to ensure the effective implementation of the international regime on access and benefit-sharing, after 2010. The recent three-year strategy (2008-2010), made possible through the generous patronage of Spain for capacity-building of indigenous and local communities in the Latin American and Caribbean region, for a focus on Article 8(j) and Article 15, provides a useful regional model for consideration.

*Actors:* Parties and Governments, indigenous and local community organizations and the Secretariat.

*Timeframe:* Ongoing

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

*Status:* Progress has been made to facilitate participation of indigenous and local communities in the work of the Convention through various mechanisms. The progress report on the implementation of the programme of work on Article 8(j) and related provisions (UNEP/CBD/WG8J/6/2) addresses among other things, the issue of indigenous and local community participation in decision-making processes regarding the preservation, maintenance and utilization of traditional knowledge and explores potential sources of funding to facilitate the full and effective participation of indigenous and local communities in meetings organized within the framework of the Convention, as requested in paragraph 22 of decision VI/10.

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

In particular, fifteen countries, stated in their national reports that they have implemented and are developing participation procedures for indigenous and local communities. For example, Botswana uses community-based natural resource management programmes, community-based organizations and ecotourism as vehicles for participation of indigenous and local communities in decision-making processes. However, a major constraint to full and effective participation, particularly in the developing world, remains the lack of funds and the limited financial support available.

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

*Actors:* Parties and Governments.

*Timeframe:* Ongoing

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

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

*Status:* Progress was evidenced by almost half the countries that submitted their second national report indicating that they have fully incorporated women and women's organizations in the activities undertaken to implement the programme of work on Article 8(j) and related provisions and other relevant activities under the Convention. However, in the third national reports that were submitted, no country described mechanisms implemented specifically to promote the participation of women of indigenous and local communities in the Convention on Biological Diversity's programme of work. In the fourth national reports only four countries (Nepal, Philippines, Sri Lanka and Viet Nam) reported on initiatives specific to indigenous and local community women.

However, several countries have noted general measures to promote equal participation of women in decision-making and capacity-building projects. For example, China has the Law on the Protection and Interests of Women and Lesotho has a 30 per cent quota for women in local government community development councils, which are in charge of all development issues, including land management and conservation. Mauritania also has special funding available for women to create economic interest groups.

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

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

In the fourth national reports, only four countries (Nepal, Philippines, Sri Lanka and Viet Nam) reported initiatives specifically aimed at indigenous and local community women.

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

*Actors:* Parties and Governments.

*Timeframe:* Ongoing.

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

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

*Status:* This task is completed.

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

*Actors:* Secretariat and Parties and Governments.

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

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

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

*Status:* As this task is to be carried out after tasks 5, 9, and 11, it has not been directly addressed as yet. However, it is closely related to the ongoing work on access and benefit-sharing (within the framework of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing), and in particular the negotiation of an international regime on access and benefit-sharing. At its eighth meeting, the Working Group on Access and Benefit-sharing will take up this issue under its agenda item 3.2 (“Traditional knowledge associated with genetic resources”). The Working Group on Article 8(j) remains mandated to provide advice to the Working Group on Access and Benefit-sharing and this issue may be taken up under item 6 (Access and benefit-sharing) and item 7 (Multi-year programme of work) of the agenda for this meeting. The Working Group on Article 8(j) will also consider, under agenda item 4, the development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices. Both items can be considered as means to achieve task 7 since their objective is to ensure that indigenous and local communities obtain a fair and equitable share of benefits arising from the use of their traditional



knowledge based on prior informed consent and mutually agreed terms for the fair and equitable sharing of benefits.

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

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

*Timeframe:* Ongoing. This issue may be taken up by the sixth meeting of the Working Group on Article 8(j) under agenda items 6 (access and benefit-sharing) and/or 7 (Multi-year programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity).

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

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

*Status:* The Executive Secretary appointed the Programme Officer for Article 8(j) and related provisions, as the focal point for this purpose. Further guidance pertaining to the role of the thematic focal point was provided by the seventh meeting of the Conference of the Parties. Decision VII/16 G, requested the Executive Secretary to further develop the role of the thematic focal point on Article 8(j) and related provisions of the Convention under the clearing-house mechanism with a view to: (i) assisting national focal points, as appropriate and subject to available resources, to more effectively disseminate and make accessible Convention-related information to indigenous and local communities with particular emphasis on providing information in appropriate and accessible languages of indigenous and local communities; (ii) assisting indigenous and local communities, as appropriate and subject to available resources, in the use of information and communication technologies through the organization of capacity-building and training workshops at the local, national, and subregional levels; (iii) compiling information on existing networks, experts, tools, and resources relevant to meeting the needs of indigenous and local communities. Additional information on the development of the role of the focal point within the clearing-house mechanism is available in a note by the Executive Secretary on draft elements of a code of ethical conduct (UNEP/CBD/WG8J/4/6).

*Action required:* The focal point should continue to liaise with indigenous and local communities to build capacity and further develop the participation mechanisms, including the Article 8(j) homepage and the traditional knowledge information portal. It might be desirable to focus work on engaging local communities.

*Actors:* The Secretariat of the Convention on Biological Diversity and indigenous and local communities in close consultation with Parties.

*Timeframe:* Ongoing.

## **Element 6. Monitoring elements**

*Task 9. The Working Group to develop, in cooperation with indigenous and local communities, guidelines or recommendations for the conduct of cultural, environmental and social impact assessments regarding any development proposed to take place on sacred sites and on lands or waters occupied or used by indigenous and local communities. The guidelines and recommendations should ensure the participation of indigenous and local communities in the assessment and review.*

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

*Action required:* Task completed. Implementation of the Akwé: Kon Guidelines and capacity-building for all stakeholders, including indigenous and local communities, to ensure its effective operations are ongoing. Some countries reported in their national reports that they have similar or stronger standards already in place. Sweden has reported that, during 2007, the Akwé: Kon Voluntary Guidelines were used by the Sami Parliament to prevent a university field course with the objective to study old Sami burial sites and other religious settings in the area of a local Sami village. Further efforts are required to raise awareness about the guidelines both at the international and national levels.

*Actors:* Parties and other Governments.

*Timeframe:* Task completed (Guidelines adopted). Implementation ongoing.

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

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

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

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

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

*Timeframe:* Ongoing.

***Task 12.*** *The Working Group to develop guidelines that will assist Parties and Governments in the development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and its related provisions (which could include sui generis systems), and definitions of relevant key terms and concepts in Article 8(j) and related provisions at international, regional and national levels, that recognize,*

*safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention.*

*Status:* Under agenda item 4, the Working Group will examine the question of the development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices (see UNEP/CBD/WG8J/6/5), and decide on future directions.

*Action required:* Adoption of possible elements for *sui generis* systems for the legal protection of traditional knowledge, will be taken up by the Working Group at its sixth meeting under agenda items 4 (*sui generis* systems) and possibly item 6 (access and benefit-sharing). Parties and Governments to develop national and local *sui generis* models and other legal reforms for the protection of traditional knowledge and to report on these initiatives through the national reporting process and share experiences through the clearing-house mechanism of the Convention.

*Actors:* Parties and Governments.

*Timeframe:* Ongoing.

### ***B. Tasks of the second phase of the programme of work***

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

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

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

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

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

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

*Timeframe:* Ongoing.

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

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

*Status:* Not yet initiated. However, the Working Group on Article 8(j) and related provisions will consider, at its fifth meeting under agenda item 5, in response to a request by the Permanent Forum on Indigenous Issues, the negotiation and possible adoption (at the tenth meeting of the Conference of the Parties) of a code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities, as contained in the annex to the note by the Executive Secretary on the draft ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities (UNEP/CBD/WG8J/6/4). These broad guidelines will assist in achieving task 6.

*Action required:* The sixth meeting of the Working Group on Article 8(j) and Related Provisions, after deliberations on the draft code may make a recommendation to the tenth meeting of the Conference of the Parties concerning the possible adoption of the draft ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities. Parties may also consider at the Working Group, if the code could be a useful contribution to protecting traditional knowledge under the international regime on access and benefit sharing.

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

*Timeframe:* Tenth meeting of the Conference of the Parties, October 2010.

**Task 13.** *The Ad Hoc Working Group to develop a set of guiding principles and standards to strengthen the use of traditional knowledge and other forms of knowledge for the conservation and sustainable use of biological diversity, taking into account the role that traditional knowledge can play with respect to the ecosystem approach, in-situ conservation, taxonomy, biodiversity monitoring and environmental impact assessments in all biodiversity sectors.*

*Status:* Not yet initiated.

*Action required:* At its sixth meeting, under item 7 (Multi-year programme of work), the Working Group on Article 8(j) and Related Provisions will consider the desirability and the potential elements of a strategy for conservation and sustainable use, including customary use, of biodiversity by indigenous and local communities and initiation of this new task may assist, in part the realization of task 13. In revising the programme of work for Article 8(j), considering existing tasks, including un-started tasks and new proposals, the Working Group may wish to focus on goals and objectives and hence should give due regard to complementarity, duplication and overlap in future work.

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

*Timeframe:* Post 2010

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

*Status:* Not yet initiated.

*Action required:* In paragraph 4 of its decision IX/13 D, the Conference of the Parties invited Parties and Governments, with the input of indigenous and local communities, to report on positive measures for the retention of traditional knowledge in areas relevant for the conservation and the sustainable use of biological diversity, such as those contained in, but not limited to, the annex to the decision.

Measures contained in the annex to the decision are the following:

- (a) Strengthening traditional health-care systems based on biodiversity;

/...

- (b) Strengthening opportunities to learn and speak indigenous and local languages;
- (c) Culturally appropriate sport and tourism policies;
- (d) Research on the way of life and the environment of indigenous and local communities;
- (e) Building of culturally appropriate business structures within indigenous and local communities (such as cooperatives);
- (f) Developing technologies that focus on traditional methods of cultivation, harvesting and post-harvesting activities (i.e., storage and seed preparation activities);
- (g) Re-establishment of traditional spiritual/religious institutions;
- (h) Creation of media, such as radio, newspapers and television stations controlled by indigenous and local communities and with traditional content, according to national law;
- (i) Creation of protected areas, nature parks and others, in consultation with indigenous and local communities and also involving them in their management, consistent with national law;
- (j) Initiatives bringing together women, youth and elders;
- (k) Promotion of the creation of businesses offering traditional products and services;
- (l) Strengthening institutions that foster traditional collection and distribution of food, traditional medicine and other resources;
- (m) Culturally appropriate education-curriculum development and implementation initiatives, in indigenous and local communities;
- (n) Initiatives of indigenous and local communities for culturally appropriate and sustainable development.

However, to date, there has been only one report (fourth national report from Australia) that has provided detailed information about various policies and programme in place to respect, preserve, promote and maintain traditional knowledge. Some of these schemes include:

- Working on Country
- The Indigenous Heritage Programme
- The Indigenous Protected Areas Programme
- The National Arts and Crafts Industry Support Programme
- The Indigenous Broadcasting Programme
- The Maintenance of Indigenous Languages and Records Programme
- Indigenous Culture Support Programme
- The Return of Indigenous Cultural Property Programme

Further information is available in the compilation of views on tasks 7, 10 12 and 15 and views on the desirability and the potential elements of a strategy for conservation and sustainable use, as well as views on the in-depth review of the programme of work on Article 8(j) and related provisions (UNEP/CBD/WG8J/6/INF/1).

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

*Timeframe:* Ongoing.

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

**Status:** The Working Group on Article 8(j) and Related Provisions will take this issue up at its sixth meeting under agenda item 7 (Multi-year programme of work) by developing a terms of reference for the initiation and implementation of this task.

**Action required:** The Parties will consider a draft terms of reference based on submissions from Parties, at the sixth meeting of the Working Group on Article 8(j) and Related Provisions, under item 7, in order to take this task forward.

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

**Timeframe:** Post 2010

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

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

**Status:** The task of developing elements and models for codes of ethical conduct is being taken up under item 5 of the sixth meeting of the Working Group on Article 8(j) and Related Provisions. Existing codes of ethical conduct were compiled and analysed as part of the response to a request of the United Nations Permanent Forum on Indigenous Issues to develop elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity, taking into account task 16 of the programme of work on Article 8(j) and related provisions (decision VII/16 I, paragraph 5).

This work complements and builds on task 16, and in fact provides a broader framework concerning all interactions with indigenous and local communities including research, as well as possible elements of codes of ethical conduct, for the consideration of the Working Group. Further information is available in the note by the Executive Secretary on elements of a 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 (UNEP/CBD/WG8J/6/4).

**Action required:** The sixth meeting of the Working Group will further negotiate and develop the code, with a view to recommending its possible adoption at the tenth meeting of the Conference of the Parties. The adoption of the code will effectively supersede this task and thus Parties may wish to consider its retirement.

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

**Timeframe:** Initiated in 2006 and expected completion in 2010.

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

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

*Status:* The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, sets out the basic requirements for mutually agreed terms (MAT), potential contractual parameters for an agreements of MAT and offers a possible list of mutually agreed terms. The need for further work on this issue is taken up in the note by the Executive Secretary on elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices (UNEP/CBD/WG8J/6/5). This document also notes that any guidelines should properly reflect customary law and the concerns of indigenous and local communities and be developed with their effective participation and prior and informed consent. Furthermore this issue may be considered under both item 6 (access and benefit-sharing) as well as item 7 (the multiyear programme of work) with a view of considering whether this task may contribute to protecting traditional knowledge under the international regime on access and benefit-sharing.

*Action required:* This task will also be addressed by both the sixth meeting Working Group on Article 8(j) and Related Provisions under agenda items 6 and 7, and the eighth meeting of the Working Group on Access and Benefit-sharing in the negotiation of an international regime on access and benefit-sharing. Further work is required on this issue.

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

*Timeframe:* Ongoing.

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

*Status:* The Secretariat has developed a questionnaire to assist reporting Parties under the Convention in their national reporting. In particular, questions have been developed specifically for the programme of work of Article 8(j) and related provisions. Also, the Conference of the Parties has established an indicator of status and trends of linguistic diversity and numbers of speakers of indigenous languages as a measure of the status of traditional knowledge and the Working Group at its sixth meeting will consider a maximum of another two indicators to complement this, as contained in the note by the Executive Secretary on indicators for assessing progress towards the 2010 biodiversity target: status of traditional knowledge (UNEP/CBD/WG8J/6/2/Add.4) and make recommendations, as appropriate to the Conference of the Parties. Now that implementation has been under way for a decade, the Working Group may wish to develop recommendations for tenth meeting of Conference of the Parties on this issue.

*Action required:* Further work is required.

*Actors:* Parties, Governments and the Secretariat.

*Timeframe:* Ongoing.

### III. RECOMMENDATIONS

22. In light of developments and considerations discussed in sections II and III above, the Working Group may wish to consider the following and recommend that the Conference of the Parties adopt a decision along the following lines:

The Conference of the Parties,  
*Revised multi-year programme of work*

*Recognizing* the need for a more holistic and forward-looking programme of work, taking into account recent developments, including of the negotiation, adoption and implementation of the international regime on access and benefit-sharing,

*Recalling* paragraph 11 of decision IX/13 A, , in which the Conference of the Parties decided to undertake at its tenth meeting an in-depth review of the tasks of the programme of work on Article 8(j) and related provisions;

1. *Decides* to revise the programme of work as adopted by decision V/16, as follows:
  - (a) To retire completed or superseded tasks 3, 5, 8, 9 and 16;
  - (b) To maintain ongoing tasks, including 1, 2, 4;
  - (c) To initiate priority tasks 7, 10, 12, taking into account developments in the international regime on access and benefit-sharing, by developing draft guidelines for each task, based on diverse national experiences;
  - (d) To advance task 15, pursuant to paragraph 8 of decision IX/13 A;
  - (e) *Recalling* paragraphs 4 and 10 of decision IX/13 A, *decides* to further advance and implement Article 10(c), as a priority by adding the following task to the work programme on Article 8(j) and related provisions under element 3 (Traditional cultural practices for conservation and sustainable use) to be initiated immediately, as follows:
 

“The Ad Hoc Working Group on Article 8(j) and Related Provisions to develop a strategy and guidelines for the full and effective implementation of Article 10(c) of the Convention, to protect and encourage the customary use of biological resources, compatible with conservation or sustainable use requirements, aimed at empowering and strengthening the role of indigenous peoples and local communities in decision-making processes at local, national and international levels.”
  - (f) To postpone the consideration and commencement of other un-started tasks of the programme of work, pending the completion of current tasks, and in the light of ongoing developments, namely tasks 11, 6, 13, 14 and 17.

2. *Requests* Parties, Governments, relevant international organizations and indigenous and local communities to submit national approaches to facilitate tasks 7, 10 and 12 and furthermore *requests* the Executive Secretary to compile and analyze this information with a view to identifying minimal standards, best practices, gaps and lessons learned, for the consideration of the seventh meeting of the Working Group on Article 8(j) and Related Provisions;

3. *Requests* Parties, Governments, relevant international organizations and indigenous and local communities to submit national approaches to facilitate the repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity, and furthermore *requests* the Executive Secretary to compile and analyse this information with a view to identifying best practices, gaps and lessons learned, and to provide advice on how this task may be further advanced at the seventh meeting of the Working Group on Article 8(j) and Related Provisions;

4. *Invites* interested Parties and indigenous and local community organizations to submit to the Secretariat six months before the seventh meeting of the Working Group, information relevant to progressing the new task established on Article 10(c) to “develop a strategy and guidelines for the full and effective implementation of Article 10(c) of the Convention, to protect and encourage the customary use of biological resources”, and furthermore *requests* the Executive Secretariat to compile and analyse this



information and to make the results available, preferably three months before the next meeting of the Working Group for its consideration;

*Revised agenda for the Working Group on Article 8(j) and Related Provisions*

5. *Decides* to include a new agenda item on future meetings of the Working Group on Article 8(j), commencing at its seventh meeting, entitled: in-depth dialogue on thematic areas and other cross-cutting issues, commencing with protected areas and climate change;

*Indicators*

6. *Requests* the Secretariat, subject to the availability of funding, to cooperate with the indigenous working group on indicators to identify opportunities, including regional and global meetings, through which to progress the identification of indicators relevant to Article 10(c), taking into account to work of other international bodies, including the United Nations Permanent Forum on Indigenous Issues;

*Participation*

*Voluntary Fund*

7. *Requests* the Secretariat, through the Voluntary Trust Fund to Facilitate the Participation of Indigenous and Local Communities in the Work of the Convention, to strengthen, where possible and subject to the availability of funding, the participation of indigenous and local communities in capacity-building workshops on protected areas and relevant climate-change meetings, as appropriate;

*Local communities*

8. *Noting* that the involvement of local communities has been limited for various reasons, including as result of a lack of organization at the international level, the lack of infrastructure within and between local communities, as well as lack of a working definition within the context of the Convention, *decides* to convene an ad hoc expert group meeting of local community representatives with a view of identifying some common characteristics of local communities (in the absence of a definition), and to gather advice on how local communities can more effectively participate in Convention processes, including at the national level, as well as how to develop targeted outreach, in order to assist in the implementation the Convention and achievement of its goals;

*Capacity-building, community education and public awareness*

9. *Requests* the Secretariat to continue to work with donors and partners, with a view to increasing capacity-building efforts for indigenous and local communities, and in particular, where possible, and subject to the availability of funding, develop medium and long-term strategies, to raise awareness of and facilitate their effective participation in Convention processes, taking into account to negotiation, elaboration and implementation of the international regime on access and benefit-sharing;

10. *Further requests* the Secretariat to continue to develop communication, education and public awareness activities and products, including with the contributions of indigenous and local communities, to assist in the community education of indigenous and local communities about the work of the Convention and also raising awareness of the general public about the role of indigenous and local communities and their traditional knowledge in conservation and sustainable use of biodiversity.

*Annex I*

**RELEVANT EXTRACTS OF DECISION IV/9**

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

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

*The Conference of the Parties,*

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

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

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

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

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

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

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

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

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

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

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

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

(...)

*Annex II*

**DECISION V/16: ARTICLE 8(j) AND RELATED PROVISIONS**

*The Conference of the Parties,*

*Recalling* its decision IV/9,

1. Endorses the programme of work as contained in the annex to the present decision, which shall be subject to periodic review during its implementation;

2. Decides to implement the programme of work giving priority to tasks 1, 2, 4, 5, 8, 9 and 11, as well as 7 and 12, which shall be initiated following completion of tasks 5, 9 and 11 (...)

**PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY**

*Objectives*

The objective of this programme of work is to promote within the framework of the Convention a just implementation of Article 8(j) and related provisions, at local, national, regional and international levels and to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation.

**I. GENERAL PRINCIPLES**

1. Full and effective participation of indigenous and local communities in all stages of the identification and implementation of the elements of the programme of work. Full and effective participation of women of indigenous and local communities in all activities of the programme of work.

2. Traditional knowledge should be valued, given the same respect and considered as useful and necessary as other forms of knowledge.

3. A holistic approach consistent with the spiritual and cultural values and customary practices of the indigenous and local communities and their rights to have control over their traditional knowledge, innovations and practices.

4. The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use of biological diversity in an equitable way. 5. Access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices.

**II. TASKS OF THE FIRST PHASE OF THE PROGRAMME OF WORK**

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

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

*Task 2.* Parties to develop appropriate mechanisms, guidelines, legislation or other initiatives to foster and promote the effective participation of indigenous and local communities in decision-making, policy planning and development and implementation of the conservation and sustainable use of biological

/...

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

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

- (a) Build on the basis of their knowledge;
- (b) Strengthen their access to biological diversity;
- (c) Strengthen their capacity on matters pertaining to the conservation, maintenance and protection of biological diversity;
- (d) Promote the exchange of experiences and knowledge;
- (e) Promote culturally appropriate and gender specific ways in which to document and preserve women's knowledge of biological diversity.

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

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

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

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

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

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

## **Element 6. Monitoring elements**

*Task 9.* The Working Group to develop, in cooperation with indigenous and local communities, guidelines or recommendations for the conduct of cultural, environmental and social impact assessments regarding any development proposed to take place on sacred sites and on lands or waters occupied or used by indigenous and local communities. The guidelines and recommendations should ensure the participation of indigenous and local communities in the assessment and review.

**Element 7. Legal elements**

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

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

**III. TASKS OF THE SECOND PHASE OF THE PROGRAMME OF WORK****Element 1. Participatory mechanisms for indigenous and local communities**

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

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

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

*Task 13.* The Ad Hoc Working Group to develop a set of guiding principles and standards to strengthen the use of traditional knowledge and other forms of knowledge for the conservation and sustainable use of biological diversity, taking into account the role that traditional knowledge can play with respect to the ecosystem approach, in situ conservation, taxonomy, biodiversity monitoring and environmental impact assessments in all biodiversity sectors.

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

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

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

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

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

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

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

### **IV. WAYS AND MEANS**

In developing and implementing the programme of work, the Executive Secretary shall solicit information from Parties, Governments, indigenous and local communities and other relevant organizations, and consult with the liaison group on Article 8(j) and related provisions. The Executive Secretary to develop, in consultation with indigenous and local communities, Parties, Governments, and relevant international organizations, a questionnaire, as a basis for the provision of information concerning: (i) existing instruments and activities relevant to the tasks of the programme of work; (ii) gaps and needs concerning the guidelines referred to in task 6 above; and (iii) priorities for the further development of the programme of work. The Executive Secretary to consult with and invite relevant international organizations to contribute to the implementation of this programme of work, also with a view to avoiding duplication and to encouraging synergies. This programme of work shall, as relevant, take into account the work of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, and, as far as possible, be carried out in collaboration with other relevant organizations, including the World Intellectual Property Organization (WIPO). Parties, Governments, and international, regional and national organizations to provide appropriate financial support for the implementation of the programme of work.

-----