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

Eighth meeting
Item 4(c) of the provisional agenda*
Montreal, 7-11 October 2013

**SECOND COMPILATION OF VIEWS ON TASKS 7, 10, AND 12 OF THE PROGRAMME OF
WORK ON ARTICLE 8(j) AND RELATED PROVISIONS**

Note by the Executive Secretary

Addendum

INTRODUCTION

1. As requested by the Conference of the Parties in paragraph 3 of decision XI/14, the Executive Secretary is circulating herewith, for the consideration of participants in the eighth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, a compilation of views and comments submitted to the Secretariat in response to the draft expert study on tasks 7, 10 and 12, which was made available for online peer-review from 12 June to 12 July 2013.
2. Views on the draft expert study were received from the Governments of Bangladesh, Brazil, India, Lithuania (supported by EU Member States), as well as the World Intellectual Property Organization (WIPO) and the Assembly of First Nations Canada. Submissions have been reproduced in the form and language in which they were provided to the Secretariat.

* UNEP/CBD/WG8J/8/1.

SUBMISSIONS

A. *Submission from Parties*

Bangladesh

The Government of Bangladesh highly appreciates the expert study on tasks 7, 10 and 12 of the programme of work on Article 8(j) and related provision, to identify how the implementation of these tasks could best contribute to work under the Convention and the Nagoya Protocol. In fact, the piece of the study would be helpful in on-going negotiation as well as implementation of the Convention on Biological Diversity and that of the Nagoya Protocol in the domestic level.

The drafted study took into account of the relevant conventions, protocols, guidelines, covenants, etc. to come up with the précised analysis on the tasks. Bangladesh supports with the study that the Traditional Knowledge related to conservation and sustainable use of biodiversity should be protected considering the rights of the communities and in accordance with the domestic legal, socio-economic and cultural framework. Rights of local communities as are elaborated in various international documents have got variable meanings in local situations.

Bangladesh would like to see that the development and implementation of the legal system and policy for the protection of traditional knowledge should be community/centred centric and rights-based. Bangladesh, attaches more importance on establishing *sui generis system*, wherever possible, looking at the database of traditional knowledge. However, the establishing database requires capacity building of the community and that of the government. Therefore, the pace of capacity building activities in the local level should vigorously be enhanced towards implementation of the Article 8 (j) as well as the Nagoya Protocol. Bangladesh is opted for following up the study and further analysis of the issue during the upcoming inter-sessional meetings.

Brazil

General Comments:

The draft study presents very relevant information that contributes to the discussions of the Working Group on Article 8(j) and Related Provisions (WG8-J). Nevertheless, the study fails to address the question of how the implementation of tasks 7, 10 and 12 can contribute to the work of the Convention and the Nagoya Protocol.

It should also be noted that the structure of the draft study is not clear and straight forward, allowing for repetition of information throughout the text. Moreover, its conclusions and recommendations present the authors' positions on the best approach to protect traditional knowledge, rather than guidance on how to implement the tasks 7, 10 and 12 of the WG8- J work program. However, some relevant observations mentioned in the study could be considered by experts and the Parties to the Convention in the preparation of the guidelines as foreseen on the tasks.

It is not clear in the draft study why tasks 7, 10 and 12 or the work plan should be rewritten and unified, or what should be the elements on this new unified task. The study should contain the rationale behind this suggestion and a concrete proposal to be evaluated by the Parties during the WG8J-8 and later at COP-12.

In our view, the development of guidelines mentioned in task 7 can help Parties, particularly developing countries, to build capacity and develop national legislations with a view to an early entry into force of the Nagoya Protocol and to foster its effective implementation. Accordingly, the guidelines to be developed under this task should be based on the text of the Protocol and take into account the capacity-building and awareness raising-initiatives underway within the Convention. These guidelines should also address the protection of traditional knowledge that is not associated with genetic resources and is covered by Art. 8 (j). In order not to duplicate efforts, before the elaboration of the guidelines referred in

task 7, the CBD Secretariat could be requested to compile and synthesize existing guidelines on the subject.

The guidelines mentioned in task 10 may also contribute to the implementation of the CBD and the Nagoya Protocol. Although it should take into account the ongoing discussions within WIPO and other international organizations, the guidelines to be developed under the CBD on this matter should take into consideration that the misappropriation of traditional knowledge is not limited to questions related to the intellectual property rights system.

The guidelines referred in task 12 are more generic and could be considered in the context of the previous tasks. With regard to the proposed definitions and the glossary of terms, it is paramount to clarify that the glossary elaborated by the WIPO Secretariat was not endorsed nor thoroughly discussed by the Members of that organization and remain as an information document. Therefore, the glossary of terms to be developed and approved under the CBD should not have its scope restricted by the terms suggested in that document.

Specific Comments:

Item B, Goal 2: “Prior Informed Consent” – A reference to the Convention 169 of the International Labor Organization should be included in the text. It should also be clear that the right to prior informed consent includes the obligation to warn the community about its right to deny access to their traditional knowledge. The guidelines for obtaining prior consent contained in Resolution No. 5/2003, art. 2, of the Brazilian Council for the Management of Genetic Heritage (CGEN) might be mentioned as an example. The text of the Resolution can be found in the following address: http://www.mma.gov.br/estruturas/sbf_dpg/arquivos/res5.pdf

Item 12 of the document: “TK and Sui generis Protection” - It should be clear in the study that the concept of ownership does exist, though it may vary from one logical system (collective - community) to another.

Item II, para. 15: “TK as cultural patrimony” - As an example, it could be mentioned that, according to the Brazilian legislation (MP 2186-16, art. 8, § 2), traditional knowledge associated with genetic resources is part of the Brazilian cultural heritage and may be subject to registration. The English version of the Brazilian legislation can be found in the following address:

http://www.mma.gov.br/estruturas/sbf_dpg/arquivos/mp2186i.pdf

Item 3: “Methods for preventing unlawful appropriation of Traditional Knowledge” – (a) The authors of the study should clarify how “petty patents” or “utility models” could be effective to prevent unlawful appropriation of traditional knowledge given the difficulties for TK holders to apply for the registration in the IP system and the relation between IP protection and the public domain. (b) Besides the petty patents, the study should mention other mechanisms that could be used to prevent misappropriation of TK, including the provision for mandatory disclosure requirement in the patent system.

Item III. A, paragraph 18: “concept of traditional knowledge” - It may be added that the traditional knowledge was called “traditional” as opposed to scientific knowledge and it is based on other principles and perspectives.

(Brasília, July 2013.)

India

Comments:

- Considering the interlinkages among the tasks 7, 10 and 12, commissioning of a single study on the three tasks is a good decision.
- Language used in CBD, Nagoya Protocol or any of the decisions adopted under CBD, and may therefore be avoided. Elsewhere too, it is important to use only the terms agreed to under the CBD.

- In paragraph 11, there is a typo howler. In line 3, ‘....does lend...’ should read as ‘....does **not** lend...’.
- In para 11 and 12, reference is made to new and old knowledge. What needs to be emphasized is the diversity of forms in which TK is found, as oral traditions and in codified texts.
- In para 24, the text after ‘.....(TKDL).....’ in line 4 may be replaced by the following text:

‘.....(TKDL) contains information on traditional medicinal knowledge of Ayurveda, Unani and Siddha in 34 million pages in a patent application format, which is easily understandable by patent examiners in five International languages i.e. English, French, German, Japanese and Spanish on 0.270 million medicinal formations (Ayurveda - 96,375, Unani - 1, 54, 015, Siddha - 22,000, Yoga - 1,630 formulations) similar to Turmeric and Neem which can be retrieved digitally by Patent Examiners. It also contains 1500 yoga postures and 250 yoga videos.
- In the context of para 25 and 26, the following text may be added appropriately:

‘TKDL utilizes flexibilities of International Patent System concerning submission of evidences for prior art.

India has signed TKDL Access (Non-disclosure) Agreements with (i) European Patent Office (Feb 2009) (ii) United State Patent & Trademark Office (Nov 2009) (iii) Indian patent Office (July 2009), (iv) Canadian Intellectual Property Office (Sep 2010) (v) German Patent Office (Oct 2009) (vi) United Kingdom Patent Office (Feb 2010) (vii) Intellectual Property Australia (Jan 2011) and (viii) Japan Patent Office (April 2011). Under the agreement, examiners of patent office can extensively utilize TKDL for search and examination purposes only and cannot reveal the contents of TKDL to any third party unless it is necessary for the purposes of citation’.
- In para 33, line 2, it appears that ‘of’ is missing between ‘importance’ and traditional knowledge’.
- In para 49, the following text may be added at the end:

‘TKDL has also set up a Global Bio-piracy Watch System in respect of patent applications related to Indian System of Medicines and screened in last 3 years applications pertaining to traditional knowledge, genetic resources, medicinal plants etc. out of which it was found out that evidence existed in 1250 cases for which prior art evidence were submitted at various International Patent Offices. Success outcomes were realized in 149 cases by cancellations / withdrawal and amendment of claims in few weeks at no cost’.
- Para 56. The year of India’s Biological Diversity Act is wrongly given as 2004. It is 2002.
- Paragraph 56 needs redrafting in the context of the purpose, process and objectives of preparing People’s Biodiversity Registers (PBRs). The PBRs are prepared, maintained and validated by the local level. Biodiversity Management Committees representing the local communities. The purpose of preparing PBRs containing comprehensive information on availability and knowledge of local biological resources, or any other TK associated with them, is to identify and maintain records of the knowledge holders so that the benefits accrued through ABS mechanisms under the Biological Diversity Act are provided to the knowledge holders.
- Para 96. It is highly inappropriate to conclude, as the paper does in paragraph 96, that the knowledge held by the State may be beyond the scope of the CBD. Neither the CBD nor its Nagoya Protocol on ABS precludes this possibility. The case in point is the TK which is widely and publicly available, for example in the India’s ancient texts which has now been computerized as TKDL, for which it is not possible to identify the holders.

(17 July 2013)

Lithuania supported by EU Member States¹

Lithuania supported by EU Member States appreciates the Executive Secretary's efforts to further the implementation of the Programme of Work on the implementation of Article 8(j) and related provisions, and to put into practice COP Decision XI/14.

We welcome the decision to cover Tasks 7, 10 and 12 of the Programme of Work in a single study, since they are indeed closely related to each other. In our view, the draft study, as annexed to Notification 2013-046, provides useful and accurate information on a broad range of relevant concepts and policies. As such, the study can provide a good basis for discussions on how to advance these tasks at the upcoming meeting of the Working Group.

When it comes to the recommendations contained in paras. 106-112, however, we consider that these are partly unclear, not least with regard to their addressee(s), and not always sufficiently grounded in the preceding analysis. In particular:

- Para. 107 – It is not clear what is meant by "develop a framework" – presumably this refers to an analytical framework, which would help to relate different existing practices to each other, rather than a normative one. In any case, work to develop *sui generis* protection for traditional knowledge should avoid duplication of the work of the WIPO IGC process, which the study rightly acknowledges.
- Para. 108 – It should be clarified what the implications of this recommendation would be for traditional knowledge already in the public domain.

In addition, we note that, contrary to what Heading D preceding para. 89 suggests, the third part of Task 7, which refers to the "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", does not appear to have been addressed in the draft study.

Finally, we consider that it would be worth to mention in the study the work done under UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

(29 July, 2013)

B. Submission form international organizations

World Intellectual Property Organization (WIPO)

Please note that these are technical comments provided, as requested, by the WIPO Secretariat, and they are without prejudice to views and comments that our Member States may have. Our comments are based on a draft dated June 1, 2013.

As a general comment, we query the distinction made between a "rights based approach" and a "protection based approach", and especially the suggestion in the study that the WIPO IGC reflects only the "protection based approach" as defined in the study. We would be very happy to work with the authors of the study and your team to better explain and describe the negotiations underway in the WIPO IGC. We specifically suggest reconsideration of the first sentence of paragraph 98 of the draft study.

¹ EU Member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom

By way of some more specific comments:

- a. Regarding footnote 13: the publication that is mentioned (Intellectual Property and Traditional Knowledge, Booklet No. 2) has been replaced by the new booklet entitled “Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions”, available at: http://www.wipo.int/export/sites/www/freepublications/en/tk/933/wipo_pub_933.pdf.
- b. Regarding paragraph 13: the working definition that is referred to is not current, as it was last used in 1998 and 1999. It would be more appropriate to refer to the definition included in the Glossary of Key Terms related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=237902. Therefore, we would suggest the deletion of the third sentence of this paragraph.
- c. Regarding paragraph 21, reference should also be made (in addition to the novelty requirement) to the inventive step or non-obviousness requirement. Also, the reference to “public domain” in the 3rd sentence seems unnecessary and might be confusing. As the study rightly points out elsewhere, the term “public domain” is often misunderstood and used incorrectly.
- d. Regarding the first sentence of paragraph 22: “With the easy access to information resulting from digital and print media, claims of novelty for patents are increasingly suspect and open to abuse”, seems not to take into account that the patent system has remedies that may be and are indeed applied to refuse or invalidate patents when an invention is not novel and inventive, among other requirements. This is indeed recognized by the reference to the revocation of the patents in the turmeric and other cases. We would therefore propose the redrafting of the first sentence of that paragraph.
- e. Regarding paragraph 37, the latest version of “The Protection of Traditional Knowledge: Draft Articles” was developed at IGC 24, which took place in April 2013. The wording in the last sentence of this paragraph would no longer apply. Also, footnote 37 should refer to that document, available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=238182.
- f. Regarding paragraph 38, while it is true that the requirements for acquiring a petty patent or utility model are less stringent than for patents, the requirement of “novelty” still needs to be met. Therefore, publicly available TK will not be able to be protected through petty patents. Further, the fact that TK is generally held collectively by and shared between communities is hard to accommodate, since the patent system (including petty patents) requires owners (specific communities) to be identified.
- g. Para 43: in the first line, and at the beginning of the second sentence, the term “FPIC” should be replaced with the word “protection”. The para would then make more sense.
- h. Regarding footnote 60, while its last sentence is true and of paramount importance, its second sentence: “When the term ‘public domain’ is used, it seeks to clarify that the intent is mainly to establish ‘prior art’ and when the term ‘publicly available’ is used, it seeks to clarify that the intent is mainly to ensure rules of access and benefit sharing”, should be revisited. TK does not need to be in the public domain to be

considered prior art. On the contrary, TK needs to be publicly available to be considered prior art. For additional information, see document WIPO/GRTKF/IC/17/INF/8 (Note on the Meanings of the Term "Public Domain" in the Intellectual Property System with Special Reference to the Protection of Traditional Knowledge and Traditional Cultural Expressions/Expressions of Folklore), available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=149213. In footnote 63, it might be worth adding that the WIPO TK Documentation Toolkit is available at: <http://www.wipo.int/tk/en/resources/tkdocumentation.html>

- i. We welcome and appreciate the references to the Consultation Draft of the WIPO TK Documentation Toolkit in different paragraphs. However, in paragraph 56, we would appreciate it if you could make it clear that its first sentence is not included in the Toolkit (only its second sentence).
- j. In relation to paragraph 59, please note that the "Local Contexts" project receives some technical and financial assistance from WIPO and the paragraph could also make a reference to the project conducted by WIPO to help Indigenous Peoples and local communities manage their IP interests if they elect to document their rich cultural heritage. Further information may be found at: <http://www.wipo.int/tk/en/resources/training.html>.
- k. Regarding paragraph 68 and footnote 75, the booklet referred to has been replaced, as mentioned above. We would recommend you to refer to our new booklet: "Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions", available at: http://www.wipo.int/export/sites/www/freepublications/en/tk/933/wipo_pub_933.pdf.
- l. It would be advisable to make paragraph 70 more accurate by clarifying that the Nagoya Protocol is an international legal instrument which requires national legislation and other measures for it to be implemented and actionable. We also suggest adding "at an international level" after its third sentence. This paragraph, and in particular its third and fourth sentences, doesn't seem to acknowledge the fact that there are national and regional legislations in place for the protection of TK.
- m. As to paragraph 73, additional examples of sui generis laws may be found at: http://www.wipo.int/tk/en/legal_texts/.
- n. In the fourth sentence of paragraph 96: "Additionally, a single individual purportedly acting on behalf of a community can provide traditional knowledge to the database for copyright protection and documentation", the reference to copyright protection is not clear. It seems to imply that the individual would provide TK to the database for copyright protection. However, providing TK to a database does not grant copyright protection; copyright and sui generis database protection would protect the database as a whole and not necessarily the individualized data (the TK) in it. We would suggest ending the phrase after "database", deleting the reference to copyright protection.

Thank you again for the opportunity to comment, and we hope our comments are useful.

C. Submission from relevant organizations

Assembly of First Nations (AFN)

Background

The AFN is presenting this submission as a response to the invitation to review the draft study on “How tasks 7, 10 and 12 of the revised programme of work on Article 8(j) and related provisions could best contribute to work under the Convention and the Nagoya Protocol”.

The AFN is a national organization, based in Canada, dedicated to advancing the rights and interests of First Nations. First Nations Chiefs from across Canada meet in Assembly to coordinate on issues of common concern, facilitate discussions and develop plans of action.

The Implementing Rights Unit (IRU) of the AFN provides scientific, technical and policy to support First Nations on environmental and Treaty rights issues. The IRU works in a variety of program areas, including fisheries, species at risk, parks and forestry, and climate change. In addition, the unit is mandated to follow through on the activities of the National Strategy on Treaty Implementation, by facilitating and supporting the views of Treaty holders from all Treaty Nations to further engagement with the Crown.

The AFN is committed to the promotion of practices which support sustainable development, including the recognition of Aboriginal and Treaty rights. First Nations understand that the realization of sustainable development is complementary with the recognition and implementation of First Nations inherent, Treaty and Aboriginal rights.

General Comments

Article 8(j) calls for Parties to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.”

The objective of the programme of work on the implementation of Article 8(j) and related provisions of the Convention of Biological Diversity² (CBD) 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.”

Tasks 7, 10 & 12³ of the programme of work, specifically address equitable sharing of benefits, provision of guidelines to assist Parties in the development of legislation or other mechanisms to

² SCBD/SEL/OJ/JS/dm/81183

³ Revised Programme of Work for Article 8(j) and related provisions

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.

implement Article 8(j), and standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources, respectively.

Although protection of traditional knowledge is a key element of Tasks 7, 10 & 12, it is not the sole focus of these tasks. Implementation of Article 8(j) also includes maintaining and promoting traditional knowledge relevant for the conservation and sustainable use of biological diversity. Thus, Tasks 7, 10 & 12 as well as any relevant guidelines for their implementation must address all of these key components.

AFN states that promotion of traditional knowledge, including opportunities to apply such knowledge in conservation initiatives, including customary uses of biological resources, is just as critical for First Nations as protection of traditional knowledge.

The draft study on “How tasks 7, 10 and 12 of the revised programme of work on Article 8(j) and related provisions could best contribute to work under the Convention and the Nagoya Protocol”, examines traditional knowledge protection. Although important, challenges around the implementation of Article 8(j) are not exclusive to traditional knowledge protection. Our concern is that by focusing on intellectual property mechanisms, the objective of Tasks 7, 10 & 12 is not captured in its totality; which leaves the vital relationship between traditional knowledge and conservation of biological diversity unaddressed. Even in terms of protection, one challenge faced by First Nations is preventing misappropriation or misinterpretation of traditional knowledge which is shared in the context of conservation or regulatory approval processes.⁴

First Nations face greater challenges when it comes to accessing effective mechanisms through which traditional knowledge can actively and meaningfully inform scientific and policy processes relevant to conservation of biological diversity; as opposed to challenges related to intellectual property protection systems. In other words, protection of traditional knowledge is arguably less of a barrier in some circumstances, than absence of opportunities to apply traditional knowledge.

Challenges in promoting and using traditional knowledge are heightened given that the Canadian government heavily focuses on resource development with high disregard for Indigenous Peoples inherent rights and environmental impacts⁵. The challenge for First Nations and for Canada is creating and seizing opportunities to apply traditional knowledge in the policy and project approvals process.

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.

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.

⁴ This is an underexplored area in Canada. It is one reason why First Nations advocated for both an Aboriginal Traditional Knowledge Subcommittee and a National Aboriginal Council on Species at Risk (NACOSAR) under the federal *Species at Risk Act*. One possible role of the NACOSAR is to ensure that overall implementation of the Act does not result in misinterpretation (for example, overgeneralization) shared by the ATK Subcommittee in the administration of the Act. In the context of regulatory approvals processes, the greater challenge is the tendency for project proponents to rely on traditional knowledge ‘meta studies’ which attempt to apply ‘results’ from traditional knowledge shared in other processes to support a resource development project, or on interviews with individuals who may or may not be traditional knowledge holder. Such ‘meta studies’ might rely on traditional knowledge gathered in the Arctic in order to support a finding for a project located in the boreal forest.

⁵ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: “*Extractive industries operating within or near indigenous territories*”, A/HRC/18/35, 18th session of the UN Human Rights Council, pp. 12, at paras. 46-47.

First Nations seek opportunities to apply traditional knowledge through their own management and government frameworks. In such cases, recognition of our government frameworks creates opportunities for application and promotion of traditional knowledge.

There have been a number of initiatives that have successfully engaged Indigenous Peoples and utilized traditional knowledge to inform biological conservation processes.⁶ The mechanisms established in these initiatives and similar practices from other Parties or International Organizations, are worth examining further in detail to inform discussions aimed to develop guidelines to implement Article 8(j) as directed under Task 12.

Conclusion

While the draft study on Tasks 7, 10 & 12, thoroughly examines the issue of commercialization and protection of traditional knowledge; Parties are urged to focus discussions around Tasks 7, 10 & 12 issues of promotion and application of traditional knowledge; in addition to protection systems. Meaningful discussion should take place around the creation and implementation of mechanisms that effectively support the promotion and application of traditional knowledge in biological diversity conservation processes, with full and effective participation of Indigenous Peoples. Furthermore, discussions should revolve around current best practices and how to build upon them, implementation of biodiversity offsets including Indigenous rights safeguards, and application of traditional knowledge as the foundation of customary use of biological resources.

It is deeply concerning that discussions around Tasks 7, 10 & 12, focus solely on issues of intellectual property systems; given that promotion and application of traditional knowledge are more pressing implementation issues, and have a higher relevance and impact on the conservation of biological diversity; which is the original context in which Article 8(j) and related provisions were derived.

⁶ Prepared for Parks by Canada Mi'kmaq Alsumk Mowimsikik Koqoey Association. (2008). *Parks Canada - Newfoundland Mi'kmaq ATP Protocol A Guideline for Collection and Use of Mi'kmaq Traditional Knowledge in the Province of Newfoundland and Labrador*.

Prepared for Parks Canada by the Unama'ki Institute of Natural Resources. (2007). *Protocol for the collection and use of Aboriginal Traditional Knowledge (ATK) within Parks Canada sites of Unama'ki*.

Gulf Islands National Park Reserve. *First Nations Cooperative Planning & Management Committees*. Retrieved from: <http://www.pc.gc.ca/eng/pn-np/bc/gulf/plan/e.aspx>