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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

Ninth meeting

Montreal, Canada, 4-7 November 2015

Item 4 of the provisional agenda*

A GLOSSARY OF RELEVANT KEY TERMS AND CONCEPTS TO BE USED WITHIN THE CONTEXT OF ARTICLE 8 (j) AND RELATED PROVISIONS

Note by the Executive Secretary

INTRODUCTION

1. In decision V/16, the Conference of the Parties (COP) adopted the programme of work on the implementation of Article 8(j) and related provisions.
2. The programme of work sets forth seventeen tasks grouped under seven elements, which includes:

“Task 12: The Working Group is 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.”
3. In the light of the adoption of the Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets, and specifically Aichi Biodiversity Target 18 on traditional knowledge and Aichi Biodiversity Target 16 on the Nagoya Protocol, the programme of work for Article 8(j) was reviewed and revised by the Conference of the Parties at its tenth meeting, in decision X/43, to prioritize task 12, among other work,
4. Furthermore, the Conference of the Parties, in decision XII/12 D, paragraph 1, decided to advance tasks 7, 10 and 12 in an integrated manner that is mutually supportive of the Nagoya Protocol and further decided, in paragraph 2, to address the development of definitions required by task 12 through sub-task (iv), which requests the Working Group to “develop a glossary of key terms and concepts to be used within the context of Article 8(j) and related provisions.”

* UNEP/CBD/WG8J/9/1.

5. To assist the Working Group, the Conference of the Parties, in decision XII/12 D, paragraph 4, invited Parties, Governments, relevant international organizations and indigenous and local communities to submit their views,¹ on, inter alia, sub-task (iv). A compilation of views is made available as information document UNEP/CBD/WG8J/9/INF/1. However, few of the submissions received referred to, or proposed, any terms and concepts for use within Article 8(j) and related provisions.
6. In paragraph 5 of the same decision, the Conference of the Parties requested the Executive Secretary, following a gap analysis, to draft a glossary for sub-task (iv).
7. Also to assist the Working Group with tasks 7, 10 and 12, the Conference of the Parties, in decisions XII/12 D, paragraph 6 and XII/12 E, paragraph 3, recognized the relevance of the possible elements of sui generis systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities and invited the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions to use the possible elements and draft glossary, as appropriate, in its work on those tasks. This refers to work done for the eighth meeting of this Working Group, particularly document UNEP/CBD/WG8J/8/6/Add.1 on possible elements of sui generis systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities. Section I of the annex to document UNEP/CBD/WG8J/8/6/Add.1, contains a list of the definitions adopted under the Convention, the Nagoya Protocol and the Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities. Section II of the annex contains a collated draft glossary of terms for use within the context of Article 8(j) and related provisions.
8. Based on these decisions, the Executive Secretary has prepared this document in order to assist the Working Group in its discussions. Section I undertakes a gap analysis by considering relevant terms adopted under the Convention, the Nagoya Protocol and the Akwé: Kon Guidelines, as well as terms proposed, but not yet considered, by the Working Group as contained in section II of the annex to document UNEP/CBD/WG8J/8/6/Add.1. The result of the gap analysis is the draft glossary of key terms and concepts as contained in the annex to this document. Section II of this document proposes a draft recommendation for the consideration of the Working Group.

I. GAP ANALYSIS

9. In order to conduct a gap analysis, the Secretariat has considered terms and concepts adopted under the Convention, the Nagoya Protocol and the Akwé: Kon Guidelines that may be of relevance to Article 8(j) and related provisions, as a starting point and context for the discussions.
10. Relevant terms defined in the Convention include: ‘biological diversity’; ‘biological resources’; ‘genetic resources’; ‘protected area’; and ‘sustainable use’.
11. The terms defined in Article 2 of the Nagoya Protocol may also be relevant.
12. Relevant terms defined in the Akwé: Kon Guidelines include: ‘customary law’; ‘sacred site’; and ‘traditional knowledge’.
13. These terms and concepts require no further action by the Working Group.

¹ Including information on community protocols, model clauses, best practices, experiences and practical examples on the sharing of benefits arising from the use of this knowledge with those communities, and their complementarity with the Nagoya Protocol. Refer to notification SCBD/MPO/AF/JS/VF/84296 (2015-012), dated 5 February 2015.

14. The Secretariat has also considered the terms in section II of the annex to document UNEP/CBD/WG8J/8/6/Add.1. These terms were proposals from various sources² that were previously submitted to the Working Group at its eighth and prior meetings but have not yet been considered. These terms were compared to the terms and concepts already adopted under the Convention, the Nagoya Protocol and the Akwé: Kon Guidelines, as well as terms and concepts currently in use in the official documentation for the Working Group.

15. Terms and concepts not in current use in the context of work on Article 8(j) and related provisions of the Convention include: ‘bioprospecting’; ‘biocultural heritage’; ‘innovation’ and ‘research’.

16. Furthermore, the draft guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the prior informed consent or approval and involvement of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices, and for reporting and preventing unauthorized access of such knowledge, in document UNEP/CBD/WG8J/9/2, address the understanding of prior informed consent or approval and involvement.

17. Accordingly, the draft glossary proposed in the annex below does not include these terms or terms that have already been defined in the Convention, the Nagoya Protocol and the Akwé: Kon Guidelines or terms that are no in current use in the official documentation of the Working Group. The glossary is intended as a concise collection of key terms and concepts relevant to Article 8(j) and related provisions of the Convention.

II. DRAFT RECOMMENDATION

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions may wish to recommend that the Conference of the Parties adopt a decision along the following lines:

The Conference of the Parties,

Noting that clarity in terms and concepts within the context of Article 8(j) and related provisions can assist in the effective and consistent implementation of Article 8(j) and related provisions, in order to achieve Aichi Biodiversity Target 18, by 2020,

1. *Agrees* to the glossary of key terms and concepts to be used within the context of Article 8(j) and related provisions as contained in the annex to this decision;
2. *Invites* Parties and other Governments to use the glossary in their development and implementation of relevant national measures;
3. *Requests* the Working Group to keep the glossary in mind in its future work.

² Including the United Nations Permanent Forum on Indigenous Issues, the World Intellectual Property Organization, the International Institute (the International Institute for Environment and Development), and submissions received from Kechua-Aymara Association for Nature and Sustainable Development (ANDES, Peru), Fundacion Dobbo Yala (Panama), University of Panama, Ecoserve (India), Centre for Indigenous Farming Systems (India), Herbal and Folklore Research Centre (India), Centre for Chinese Agricultural Policy (CCAP, China), Southern Environmental and Agricultural Policy Research Institute (ICIPE, Kenya), the Pacific Island Countries Regional Framework for the Protection of Traditional knowledge and Expressions of Culture, the Kenya Forestry Research Institute and the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, and Natural Justice.

*Annex***A GLOSSARY OF KEY TERMS AND CONCEPTS TO BE USED WITHIN THE CONTEXT OF ARTICLE 8(j) AND RELATED PROVISIONS**

Application/use/utilization of traditional knowledge: the acts of making, using, offering for sale, selling, or importing for these purposes the protected traditional product, or, where the subject matter of protection is a process, the acts of using the processes as well as the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by the traditional process.

Community protocols: Community protocols cover a broad array of documents generated by communities to set out how they expect other stakeholders to engage with them. They may reference customary as well as national or international laws to affirm their rights to be approached according to a certain set of standards. Articulating information, relevant factors, and details of customary laws and traditional authorities helps other stakeholders³ to better understand the community's values and customary laws. Community protocols provide communities an opportunity to focus on their development.⁴

Cultural heritage (tangible and intangible): The physical and/or non-physical manifestation of indigenous peoples' and local communities' cultural heritage includes, but is not limited to, cultural landscapes, sites, structures, and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological or aesthetic value or significance, human remains, and traditional cultural expressions including but not limited to songs, dances, artistic expressions, stories and histories.

Customary use of biological diversity: Use in relation to local traditions and customary norms/laws, while allowing for innovation.

Sacred species: A particular species important to the affected indigenous or local community as food, medicine, fuel, fodder, construction, artefact production, clothing, and for religious and ceremonial purposes, etc.);⁵

Traditional custodian: The group, clan or community or people, or an individual who is recognized by a group, clan or community of people as the individual who, in whom the custody or protection of the expressions of culture are entrusted in accordance with the customary law and practices of that group, clan or community.

Traditional resources: are tangible or intangible assets of biological, spiritual, aesthetic, cultural and economic value used traditionally by an indigenous and local community.

Traditional territories: lands, and waters traditionally occupied, or used by indigenous and local communities.

³ Such as potential traditional knowledge users.

⁴ Refer to <http://www.unep.org/communityprotocols/protocol.asp> and http://www.unep.org/delc/Portals/119/publications/Community_Protocols_Guide_Policymakers.pdf

⁵ Drawn from paragraph 37(a) of the Akwé:Kon Guidelines, which refers to "species inventories" and "particular species".