



Achieving the  
**2010**  
Biodiversity  
Target

# Secretariat of the Convention on Biological Diversity

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CBD

Ref.: SCBD/SEL/OJ/SG/55100

27 June 2006

## NOTIFICATION

**Subject: Decision VIII/5 F on Article 8(j) and related provisions: Elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities**

Dear Sir/Madam,

In decision VIII/5 F, paragraph 2, on elements of an ethical code of 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, the Conference of the Parties invited Parties, Governments, indigenous and local communities, relevant international organizations and other relevant stakeholders, after having undertaken, where appropriate, consultations, to submit written comments to the Executive Secretary, on the draft elements (contained in Annex I of document UNEP/CBD/WG8J/4/8 and attached for ease of reference), at least six months prior to the fifth meeting of the Ad Hoc Working Group on Article 8(j) and Related provisions.

In paragraph 4 of the same decision, the Conference of the Parties requested the Executive Secretary to compile these views and comments and make the compilation as well as a revised draft on elements of an ethical code of conduct, available at least three months prior to the fifth meeting of the Ad Hoc Working Group on Article 8(j) and Related Provisions for its consideration.

In light of the above, Parties and governments are invited to provide their views and comments to the Executive Secretary on the draft elements of an ethical code of conduct, as soon as practicable but no later than **30 May 2007**.

Accept, Madam/Sir, the assurance of my highest consideration.

Yours sincerely,

Ahmed Djoghlaif  
Executive Secretary

To: CBD National Focal Points



*Annex I*

**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 OF BIOLOGICAL  
DIVERSITY**

**A. Preamble**

The Parties:

*Recalling* the request recommendations 1, 8 and 9 of the report of the second session of the United Nations Permanent Forum on Indigenous Issues endorsed by the Conference of Parties in decision VII/16/I, paragraph 5, 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,

*Aiming* to ensure full respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity,

*Recalling* that Parties to the Convention on Biological Diversity have undertaken, pursuant to Article 8(j) of the Convention 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 biodiversity (hereafter referred to as “traditional knowledge”), and to 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,

*Recognizing* that respect and support for cultural diversity and the treatment of traditional knowledge, as coequal and complementary to western scientific knowledge, are fundamental in order to ensure full respect for the cultural and intellectual heritage of indigenous and local communities,

*Recognizing* that any measure to respect, preserve and maintain the use of traditional knowledge will stand a much greater chance of success if it has the support of indigenous and local communities and is designed and presented in terms that are comprehensible, and enforceable,

*Recognizing* the importance of implementing the Akwé:Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments 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,

*Recalling* the need to ensure access by indigenous and local communities to lands and waters traditionally occupied or used by indigenous and local communities upon which traditional knowledge is based, together with the opportunity to practice it, is paramount for the retention of traditional knowledge,

*Bearing in mind* the importance of preserving languages used by indigenous and local communities as rich sources of traditional knowledge regarding medicines, traditional farm

practices, including agricultural diversity and animal husbandry, lands, air, water and whole ecosystems that have been shared from one generation to the next,

*Taking into account* the holistic concept of traditional knowledge and its multi-dimensional contexts which include but are not limited to spatial (territorially-based/locally-based); cultural (rooted in the broader cultural traditions of a peoples), and temporal (evolves, adapts and transforms dynamically over time) qualities,

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

- (a) The International Bill of Human Rights (1966);
- (b) International Labour Organization Convention No.169 on Indigenous and Tribal Peoples, (1989);
- (c) The Convention on Biological Diversity (1992);
- (d) The Second International Decade of the World's Indigenous Peoples (2005-2014);
- (e) United Nations Draft Declaration on the Rights of Indigenous Peoples, as adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-sixth session (Sub-Commission resolution 1994/45);
- (f) Universal Declaration On Bioethics And Human Rights (UNESCO 2005);
- (g) Universal Declaration on Cultural Diversity (UNESCO, 2001).

*Have agreed as follows,*

### ***Section 1***

#### **NATURE AND SCOPE**

1. The following elements of an ethical code of conduct are voluntary and are intended to provide guidance to Governments, researchers, the tourism industry, extractive industries, developers and others interacting with indigenous and local communities to ensure respect for the cultural and intellectual heritage of indigenous and local communities.

2. These elements are without prejudice to the outcomes of discussions regarding access and benefit sharing of genetic resources and associated knowledge, innovations and practices in the framework of the Convention and other relevant forums, nor are they intended to preclude the development of other forms of protection.

3. For the purpose of the elements of this ethical code of conduct, a broad definition of both “interactions” and “research” should be applied to allow for the widest possible circumstances. In particular it provides principles and methodologies applicable to conduct that should be observed whilst doing biodiversity-based research and related activities. It applies to all interactions and in particular to researchers whether indigenous, non-indigenous, foreign and/or nationals. The chief value of these elements is as working-level tool. It is particularly relevant for research proposed to take place on, or which are likely to impact on, indigenous and local communities, their sacred sites, sacred species and/or on lands and waters traditionally occupied

and/or used by them; and is to be undertaken by a researcher, acting on his/her own, or as part of a team or as representative of any public or private entity.

4. Parties to the Convention on Biological Diversity and Governments are encouraged to examine and develop mechanisms for monitoring interactions with indigenous and local communities and in particular, researcher compliance with the elements of this ethical code of conduct through corresponding national legal and regulatory frameworks, reflecting each country's own economic, social, legal and cultural circumstances and by the indigenous and local communities themselves, as they embark on their own practices within the principles stipulated in this document and according to their own customary laws.

5. Parties to the Convention on Biological Diversity and Governments, as well as relevant international organizations, whether governmental or non-governmental, should actively cooperate with the promotion and implementation of the elements of the code of ethical conduct, among all those interacting with indigenous and local communities.

### *Section 2*

#### **RATIONALE**

6. These elements of an ethical code of conduct aim to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity. In doing so, they contribute to the achievement of the objectives of Article 8(j) of the Convention on Biological Diversity and its Plan of Action for the retention and use of traditional knowledge, innovations and practices of indigenous and local communities.

7. They attempt to provide guidance to help Parties and Governments in establishing or improving national legal frameworks required for interactions with indigenous and local communities and in particular, for research on lands and waters traditionally occupied by indigenous and local communities while enabling the indigenous and local communities to protect their traditional knowledge and associated biological and genetic resources.

8. One of the aims of the elements of this ethical code of conduct is that all State Parties to the Convention on Biological Diversity, as well as relevant international organizations, whether governmental or non-governmental, actively cooperate with the promotion, understanding and implementation of these elements among those interacting with indigenous and local communities and in relevant research involving traditional knowledge, including bio-prospecting activities.

### *Section 3*

#### **ETHICAL PRINCIPLES**

9. The following ethical principles apply to interactions with indigenous and local communities, including research proposed or being conducted on sacred sites and lands and waters traditionally occupied or used by indigenous and local communities.

10. The principles below suggest the over-arching principle, that indigenous and local communities have the right to enjoy, protect and pass on to future generations, their cultural and intellectual heritage and it is on this basis that others should be engaged with indigenous and local communities.

**Interactions with indigenous and local communities should be based on:**

## ***General principles***

### Non-Discrimination

11. The ethics and rules for all activities should be non-discriminatory (with the exception of positive discriminations measures, including affirmative action particularly in relation to gender, disadvantage groups and representation).

### *Full disclosure*

12. Indigenous and local communities should be fully informed about the nature, scope and purpose of any proposed activities carried out by others, occurring on or likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (including research, methodology, data collection, and the dissemination and application of results). This information should be provided in a manner that takes into consideration and actively engages with the body of knowledge and cultural preferences of indigenous and local communities.

### *Prior informed consent*

13. Any activities occurring on or likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities should be carried out only with the prior informed consent of the indigenous and local communities concerned.

## ***RESPECT***

14. Respect is paramount to the implementation of Article 8(j) of the Convention on Biological Diversity. This principle recognizes the necessity of those interacting with indigenous and local communities to respect the integrity, morality and spirituality of the cultures, traditions and relationships of indigenous and local communities, and to avoid the imposition of external concepts, standards and value judgements. Respect for cultural heritage, ceremonial and sacred sites, as well as sacred species and secret and sacred knowledge should be given specific consideration in any interactions including research. Restrictions on use of, and access to, sacred sites or otherwise culturally significant sites and species, should be incorporated into appropriate local or national legislation, in consultation with and with the full involvement of indigenous and local communities.

### *Acknowledgement of collective rights*

15. Interactions, including undertaking research related to biodiversity, should respect the collective rights of indigenous and local communities to their cultural and intellectual property, including knowledge, innovations and practices and associated biological diversity and genetic materials. This should include their participation in the management of any activities including research proposed to take place on, or which are likely to impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities, as well as equitable and fair sharing of benefits that derive from them.

### *Equitable sharing of benefits*

16. Indigenous and local communities should receive fair, and equitable benefits for their contribution to any activities (including research) and outcomes proposed to take place on, or which are likely to impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities and/or involving their knowledge and culture. Benefit sharing

should be regarded as a way of strengthening indigenous and local communities and should be equitable within and among relevant groups.

#### *Protection*

17. All interactions with indigenous and local communities should include active measures to protect and to enhance the relationships of indigenous and local communities with their environment and thereby promote the maintenance of cultural and biological diversity.

#### *Precautionary approach*

18. Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development and in the preamble to the Convention on Biological Diversity. This approach acknowledges the complexity of interactions between human activities, cultural and biological communities, and thus the inherent uncertain effects of various activities, including genetic, ethno-biological and other research. The precautionary approach advocates taking proactive, anticipatory action to identify and prevent harm that may result from activities, even if cause-and-effect relationships have not yet been scientifically proven. The prediction and assessment of potential biological and cultural harms should include local criteria and indicators, and should fully involve the relevant indigenous and local communities. Every phase of any activity, including research undertakings, such as collecting, screening, sourcing, production and manufacturing, should be developed taking into account to ecological and cultural concerns of the indigenous and local communities involved.

#### **Specific considerations**

#### *Recognition of sacred sites and lands and waters traditionally occupied or used by indigenous and local communities <sup>1/</sup>*

19. This principle recognizes the inalienable rights of indigenous and local communities to their sacred sites and lands and waters traditionally occupied or used by them and associated traditional knowledge and that their cultures, lands and waters are inseparable. Parties should be encouraged, in accordance with national domestic law and international obligations, to recognize traditional land tenure of indigenous and local communities, as recognized rights and access to land and water as fundamental to the retention of traditional knowledge and associated biological diversity. Sparsely populated lands and waters should not be presumed to be empty but may in fact be lands and waters traditionally occupied or used by indigenous and/or local communities.

#### *Traditional resource rights*

20. These rights are collective in nature but can include individual rights and apply to natural and/or traditional resources occurring on lands and waters traditionally occupied or used by indigenous and local communities. Indigenous and local communities should determine for themselves, the nature and scope of their respective resource rights regime according to their customary law/s. Recognition of traditional resource rights is crucial for the sustainable use of biological diversity and cultural survival.

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<sup>1/</sup> Refer establish international standard ILO 169, Part II, Land.  
<http://www.ilo.org/ilolex/english/convdisp1.htm> .

*Not being arbitrarily removed and relocated*

21. Activities, including research, should not cause indigenous and local communities to be removed from lands and waters traditionally occupied or used by them, by force or coercion and without their prior and informed consent. Where they agree to removal from lands and waters traditionally occupied or used by them with their prior and informed consent, they should be given compensation and the possibility to return. Nor should any activities cause indigenous and local community members, especially the elderly, the disabled and children to be removed from their families by force or coercion.

*Traditional guardianship/custodianship*

22. Traditional Guardianship/Custodianship recognizes the holistic interconnectedness of humanity with ecosystems and obligations and responsibilities of indigenous and local communities, to preserve and maintain their traditional role as traditional guardians and custodians of these ecosystems through the maintenance of their cultures, spiritual beliefs and customary practices. Because of this, cultural diversity, including linguistic diversity, is a key to the preservation of biological diversity. Therefore, indigenous and local communities should, where relevant, be actively involved in the management of lands and waters traditionally occupied or used by them, including sacred sites and protected areas. Indigenous and local communities may also view certain species of plants and animals as sacred and as custodians of biological diversity have responsibilities for their well-being and sustainability and this should be respected and taken into account in all activities, including research.

*Restitution and/or compensation*

23. This consideration recognizes that every effort will be made to avoid any adverse consequences to indigenous and local communities and their cultures and lands and waters traditionally occupied or used by them, their sacred sites and sacred species, and their traditional resources from all activities affecting or impacting on them, including research and its outcomes and that, should any such adverse consequences occur, appropriate restitution or compensation shall be determined through mutually agreed terms.

*Peaceful relations*

24. The exacerbation of any tensions between indigenous and local communities and local or national Governments should be avoided and culturally appropriate dispute resolution mechanisms should be put in place to resolve disputes and grievances. Those interacting with indigenous and local communities, including researchers should also avoid, involvement in intra-indigenous and local community disputes.

*Supporting indigenous research initiatives*

25. This consideration promotes indigenous and local communities' right to decide on their own research initiatives and priorities, conduct their own research, including building their own research institutions and promoting the building of cooperation, capacity and competence.

**Section 4**

**METHODOLOGIES**

*Subsidiarity and decision-making*

26. All decisions regarding activities including research, impacting on sacred sites and lands and waters traditionally occupied or used by indigenous and local communities, should be made

at the lowest possible level to ensure community empowerment and effective participation and the recognition of indigenous and local community institutions, governance and management systems.

#### *Equal partnership*

27. Equal partnership, cooperation and fair compensation and equitable sharing of benefits should guide all activities, including research undertakings before activities, and field-work in order to support, maintain and ensure the sustainable use of biodiversity and traditional knowledge.

#### *Gender considerations*

28. Methodologies should take into account the vital role that indigenous and local community women play in the conservation and sustainable use of biological diversity affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation, as appropriate.

#### *Active participation*

29. This principle recognizes the crucial importance of indigenous and local communities actively participating in all phases of planning and development of activities including research (including the identification of priorities and projects) that may impact on their respective cultural lives, their sacred sites and on lands and waters traditionally occupied or used by them, and to benefit from the results.

#### ***INTER-CULTURAL RESPECT***

30. Ethical interactions including research relationships are based on respect for indigenous and local communities' knowledge systems, decision-making processes and timeframes, their diversity, their distinctive spiritual and material relationship with their sacred sites and lands and waters traditionally occupied or used by them, and their cultural identities. Researchers and others should always be sensitive to secrets and sacred knowledge, sacred species and sacred places/sites. Furthermore, researchers and others should respect the cultural property rights of indigenous and local communities in relation to knowledge, ideas, cultural expressions and cultural materials. Ethical conduct should acknowledge that it would be legitimate for indigenous and local communities in some instances to restrict access to traditional knowledge and associated biological diversity and genetic resources, based on ethical and cultural grounds.

#### ***CONFIDENTIALITY***

31. Confidentiality of information and resources should be respected in all instances, meaning that information imparted by the indigenous and local communities to the researcher should not be used or disclosed for purposes other than those for which it was collected or consented to and cannot be passed on to a third party without the consent of the knowledge holder and the collective to which the knowledge belongs. In particular, confidentiality must be applied to sacred and/or secret information. Those working with indigenous and local communities should be aware the concepts such as "the public domain" are foreign imposed concepts that are not within the cultural parameters of indigenous and local communities.

#### *Reciprocity*

32. Indigenous and local communities should benefit from activities, including research that impacts upon them and/or involves them, their sacred sites and lands and waters traditionally

occupied or used by them, and /or their resources, and traditional knowledge. Most importantly information obtained should be given back to them in an understandable and culturally appropriate format/manner. This should promote inter-cultural exchanges and access to each other's knowledge to promote synergies and complementarity.

*Responsible research*

33. The ethics of interaction between researchers and others, and the people who are the source of traditional knowledge is not only a responsibility of the individual and the organization and/or professional society to which the individual belongs, but also of national Governments having jurisdiction over the activity, researcher and/or the territory. Furthermore, all others should respect the cultural property rights of indigenous and local communities in relation to knowledge, ideas, cultural expressions and cultural materials.

*Recognition of indigenous and local community social structures -Extended families, communities and indigenous nations*

34. For indigenous and local communities all activities, including research take place in a social context. Extended 'Families' are the chief vehicles for cultural dissemination and the role of Elders and youth is paramount in this cultural process (which depends upon intergenerational transfer). Therefore the societal structure/s of indigenous and local communities should be respected, including the right to pass on their cultures and knowledge in accordance with their traditions and customs. No activities should cause the removal by force or coercion and without their prior informed consent, of indigenous and local community individuals, especially the elderly, the disabled and children from their families and social structures. Extended families should be recognized as the chief unit of support for indigenous and local communities and their dependants as well as the chief vehicle for the intergenerational transfer of knowledge innovations and practices.