



Convention on Biological Diversity

Distr.
LIMITED

CBD/WG8J/10/L.3
15 December 2017

ORIGINAL: ENGLISH

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

Tenth meeting

Montreal, Canada, 13-16 December 2017

Agenda item 4

GLOSSARY OF RELEVANT KEY TERMS AND CONCEPTS WITHIN THE CONTEXT OF ARTICLE 8(J) AND RELATED PROVISIONS

Draft recommendation submitted by the Chair

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions

Recommends that the Conference of the Parties adopt a decision along the following lines:

The Conference of the Parties,

Noting that clarity in the use of terms and concepts within the context of Article 8(j) and related provisions can contribute to a common understanding and assist in their implementation in order to achieve Aichi Biodiversity Target 18 by 2020,

Also noting that a common understanding of key terms and concepts within the context of Article 8(j) and related provisions in meetings held under the Convention may assist the Parties in achieving consensus in future decisions and directions taken under the Convention, including in developing post-2020 arrangements,

Emphasizing that the use of the glossary is without prejudice to the terminology used in the Convention and does not constitute an interpretation of the Convention or the application of its provisions in accordance with the Vienna Convention on the Law of Treaties,¹ and is without prejudice to further discussions on terminology under other international forums,

1. *[Adopts][Takes note of]* the voluntary glossary of key terms and concepts within the context of Article 8(j) and related provisions as contained in the annex to the present decision, taking into account that the terms and the concepts are subject to national legislation and the diverse national circumstances of each Party or Government, and that many Parties have specific understandings of terms and concepts that may already apply within their jurisdiction;

2. *Encourages* Parties, other Governments and observers, with the full and effective participation of indigenous peoples and local communities, to disseminate and make use of the glossary to support the implementation of Article 8(j) and related provisions, in accordance with national legislation and circumstances, as appropriate, and to take it into account in future work under the Convention;

¹ United Nations, *Treaty Series*, vol. 1155, No. 18232.

3. *Requests* the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions to keep the glossary in mind in its future work, as a living resource and reference, and to revisit and update the glossary at regular intervals, as may be appropriate as part of the post-2020 arrangement.

*Annex***VOLUNTARY GLOSSARY OF KEY TERMS AND CONCEPTS WITHIN THE CONTEXT OF ARTICLE 8(j) AND RELATED PROVISIONS**

The present glossary provides descriptions of a number of terms and concepts used in the context of Article 8(j) and related provisions. It is not intended to provide formal definitions, nor is it intended to be exhaustive. The glossary is intended for use on a voluntary basis.

The use of the glossary is without prejudice to the terminology used in the Convention and may not be interpreted as implying for any Party a change in rights or obligations under the Convention.

The glossary is intended to facilitate a common understanding of terms and concepts used in the context of Article 8(j) and related provisions, in meetings held under the Convention.

Concerning national use, terms and concepts are subject to national legislation and the diverse national circumstances of each Party or Government, noting that many Parties have specific understandings of terms and concepts that they may already apply within their jurisdiction.

Terms and concepts described below complement the terms contained in the Convention and the Nagoya Protocol.

Terms and concepts contained in 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, endorsed in decision VII/16 F, and the Mo'otzkuxtal Voluntary Guidelines adopted and welcomed in decision XIII/18 are included, as they are directly related to Article 8(j) and related provisions.

The glossary is made available as a resource to be considered and used, as appropriate, in the context of Article 8(j) and related provisions, in meetings held under the Convention.

The glossary is complementary to the Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, adopted in decision X/42.

| Section I | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Terms and concepts derived from the text of the Convention on Biological Diversity or decisions made under the Convention | |
| Term or concept | Understanding of the term or concept within the context of the Convention |
| Traditional knowledge | The knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. ² |
| Customary sustainable use | Uses of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. ³ |
| Indigenous and local communities or Indigenous peoples and local communities ⁴ | The Convention on Biological Diversity does not define the terms “indigenous and local communities” or “indigenous peoples and local communities.” The United Nations Declaration on the Rights of Indigenous Peoples does not adopt a universal definition for “indigenous peoples”, and a definition is not recommended. ^{5,6} |
| Section II | |
| Terms and concepts derived from outputs of the programme of work on Article 8(j) and related provisions and adopted or endorsed by the Conference of the Parties to the Convention on Biological Diversity | |
| A. 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 (Decision VII/16 F, annex) | |
| Term or concept | Understanding of the term or concept within the context of the Convention |
| | <i>*Note that the following terms and concepts were endorsed by the Conference of the Parties in decision VII/16 F on the Akwe: Kon Guidelines and should be applied also within the context of Article 14 of the Convention on Impact Assessment and Minimizing Adverse Impacts.⁷</i> |

² Derived from Article 8(j) and endorsed in paragraph 6(h) of the annex to [decision VII/16 F](#) on the Akwe: Kon Guidelines.

³ Derived from Article 10(c).

⁴ In [decision XII/12 F](#), the Conference of the Parties decided to use the term “indigenous peoples and local communities” in future decisions under the Convention, without affecting in any way the legal meaning of Article 8(j) and related provisions of the Convention. Similar decisions were subsequently made by the Parties to the Cartagena and Nagoya Protocols, in December 2016, in decisions [BS-VIII/19](#), and [NP-2/7](#), respectively.

⁵ Note: The [United Nations Declaration on the Rights of Indigenous Peoples](#) does not adopt a universal definition for “indigenous peoples”; therefore, a definition is not recommended. However, the United Nations Permanent Forum on Indigenous Issues, as an expert body, provides advice on the “concept of indigenous peoples” by referring to the report of the Special Rapporteur, Mr. José Martínez Cobo, on the study of the problem of discrimination against indigenous populations (E/CN.4/Sub.2/1982/2/Add.6), available at: http://www.un.org/esa/socdev/unpfi/documents/MCS_v_en.pdf

⁶ Advice on local communities is available in decision XI/14, paragraphs 17-21 on local communities, and the report of the Expert Group Meeting of Local Community Representatives within the Context of Article 8(j) and Related Provisions of the Convention on Biological Diversity ([UNEP/CBD/WG8J/7/8/Add.1](#)).

⁷ Article 14 of the Convention on Biological Diversity (“Impact Assessment and Minimizing Adverse Impacts”).

| | |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cultural impact assessment | Is a process of evaluating the likely impacts of a proposed development on the way of life of a particular group or community of people, with full involvement of this group or community of people and possibly undertaken by this group or community of people: a cultural impact assessment will generally address the impacts, both beneficial and adverse, of a proposed development that may affect, for example, the values, belief systems, customary laws, language(s), customs, economy, relationships with the local environment and particular species, social organization and traditions of the affected community. ⁸ |
| Cultural heritage impact assessment | Is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development on the physical manifestations of a community's cultural heritage including sites, structures, and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological or aesthetic value or significance. ⁹ |
| Customary law | Law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws. ¹⁰ |
| Environmental impact assessment | Is a process of evaluating the likely environmental impacts of, and proposing appropriate mitigation measures for, a proposed development, taking into account interrelated socioeconomic, cultural and human health impacts, both beneficial and adverse. ¹¹ |
| Sacred site | May refer to a site, object, structure, area or natural feature or area, held by national Governments or indigenous communities to be of particular importance in accordance with the customs of an indigenous or local community because of its religious and/or spiritual significance. ¹² |
| Social impact assessment | Is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development that may affect the rights, which have an economic, social, cultural, civic and political dimension, as well as the well-being, vitality and viability, of an affected community – that is, the quality of life of a community as measured in terms of various socio-economic indicators, such as income distribution, physical and social integrity and protection of individuals and communities, employment levels and opportunities, health and welfare, education, and availability and standards of housing and accommodation, infrastructure, services. ¹³ |
| Strategic environmental assessment | Is a process of evaluating the likely environmental impacts of proposed policies, plans or programmes to ensure that they are fully included and addressed at an early stage of decision-making, together with economic, social and cultural considerations. ¹⁴ |

⁸ Endorsed in paragraph 6(a) of the annex to [decision VII/16](#) F on the Akwe: Kon Guidelines.

⁹ Endorsed in paragraph 6(b) of the annex to [decision VII/16](#) F on the Akwe: Kon Guidelines. The definition of cultural heritage impact assessment and cultural heritage included in section 3 of this glossary should be considered in conjunction.

¹⁰ Endorsed in paragraph 6(c) of the annex to [decision VII/16](#) F on the Akwe: Kon Guidelines.

¹¹ Endorsed in paragraph 6(d) of the annex to [decision VII/16](#) F on the Akwe: Kon Guidelines.

¹² Endorsed in paragraph 6(e) of the annex to [decision VII/16](#) F on the Akwe: Kon Guidelines.

¹³ Endorsed in paragraph 6(f) of the annex to [decision VII/16](#) F on the Akwe: Kon Guidelines.

¹⁴ Endorsed in paragraph 6(g) of the annex to [decision VII/16](#) F on the Akwe: Kon Guidelines.

| B. Mo'otz Kuxtal Voluntary Guidelines (Decision XIII/18, annex)¹⁵ | |
|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Term or concept | Understanding of the term or concept within the context of Article 8(j) of the Convention |
| | <i>Note these terms are understood in the context of access to traditional knowledge within the mandate of the Convention on Biological Diversity</i> |
| “Prior and informed consent” or “free, prior and informed consent” or “approval and involvement” | <p>Free implies that indigenous peoples and local communities are not pressured, intimidated, manipulated or unduly influenced and that their consent is given, without coercion;</p> <p>Prior implies seeking consent or approval sufficiently in advance of any authorization to access traditional knowledge respecting the customary decision-making processes in accordance with national legislation and time requirements of indigenous peoples and local communities;</p> <p>Informed implies that information is provided that covers relevant aspects, such as: the intended purpose of the access; its duration and scope; a preliminary assessment of the likely economic, social, cultural and environmental impacts, including potential risks; personnel likely to be involved in the execution of the access; procedures the access may entail and benefit-sharing arrangements;</p> <p>Consent or approval is the agreement of the indigenous peoples and local communities who are holders of traditional knowledge or the competent authorities of those indigenous peoples and local communities, as appropriate, to grant access to their traditional knowledge to a potential user and includes the right not to grant consent or approval;</p> <p>Involvement refers to the full and effective participation of indigenous peoples and local communities, in decision-making processes related to access to their traditional knowledge. Consultation and full and effective participation of indigenous peoples and local communities are crucial components of a consent or approval process.¹⁶</p> |

¹⁵ Voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the “prior and informed consent”, “free, prior and informed consent” or “approval and involvement”, depending on national circumstances, 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 relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge.

¹⁶ Endorsed in paragraphs 7 and 8 of the annex to [decision XIII/18](#) on the Mo'otz Kuxtal Voluntary Guidelines.

| | |
|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Community protocols | Covers a broad array of expressions, articulations, rules and practices 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 stakeholders to better understand the community's values and customary laws. Community protocols provide communities an opportunity to focus on their development aspirations vis-à-vis their rights and to articulate for themselves and for users their understanding of their biocultural heritage and therefore on what basis they will engage with a variety of stakeholders. By considering the interconnections of their land rights, current socioeconomic situation, environmental concerns, customary laws and traditional knowledge, communities are better placed to determine for themselves how to negotiate with a variety of actors. ¹⁷ |
| Section III Terms and concepts developed by the Working Group¹⁸ | |
| Term or concept | Understanding of the term or concept within the context of the Convention |
| Biocultural diversity | <i>Biocultural diversity</i> is considered as biological diversity and cultural diversity and the links between them. |
| Biocultural heritage | <i>Biocultural heritage</i> reflects the holistic approach of many indigenous peoples and local communities. This holistic and collective conceptual approach also recognises knowledge as “heritage”, thereby reflecting its custodial and intergenerational character. The cultural landscapes inscribed under the World Heritage Convention are examples of biocultural heritage. |
| Cultural heritage | Includes the physical (tangible) and/or non-physical (intangible) manifestation of an indigenous peoples and local communities' cultural heritage, in accordance with the traditional inheritance and transmission. Tangible cultural heritage includes but is not limited to cultural landscapes, sites, structures, and remains of archaeological, architectural, historical, religious, spiritual, cultural, or aesthetic value or significance, human remains. Intangible cultural heritage includes but is not limited to traditional knowledge, including for medicine, traditional food preparation and diets, as well as species and ecosystem management, and traditional cultural expressions including songs, dances, artistic expressions, stories, beliefs, relationships and associated values and histories. These constitute both in oral and written form their traditional history, cosmology and culture. The concept can also include gender specific heritage values. |

¹⁷ Endorsed in paragraph 19 of the annex to [decision XIII/18](#) on the Mo'otz Kuxtal Voluntary Guidelines.

¹⁸ These terms and concepts are derived from a document on possible elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities issued for the eighth meeting of the Working Group ([UNEP/CBD/WG8J/8/6/Add.1](#), annex, section II).

| | |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sacred species | A plant or animal that indigenous peoples and local communities deem to be of particular importance in accordance with the traditions and/or customs because of its religious or spiritual significance. |
| Traditional custodian | The group, clan or community of people, or an individual who is recognized by a group, clan or community of people, in whom the custody or protection of traditional knowledge and the expressions of culture are entrusted in accordance with the customary law and practices of that group, clan or community. |
| Traditional biological resources | Biological resources as defined by Article 2 of the Convention and used traditionally by indigenous peoples and local communities, in accordance with national legislation, as appropriate. |
| Traditional territories | Lands and waters traditionally occupied or used by indigenous peoples and local communities. ¹⁹ |
| Section IV. Other relevant terms and concepts | |
| Term or concept | Understanding of the term or concept within the context of the Convention |
| Indigenous peoples' and community conserved territories and areas (ICCAs) | Indigenous peoples' and community conserved territories and areas are natural and/or modified ecosystems containing significant biodiversity values, ecological services and cultural values, voluntarily conserved by indigenous peoples and local communities, both sedentary and mobile, through customary laws or other effective means. ²⁰ Areas conserved by indigenous peoples and local communities could potentially be recognized as protected or conserved areas, subject to their "prior informed consent" or "free prior informed consent" or "approval and involvement" or request, according to the national circumstances. |

¹⁹ This language is commonly used in the Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, which was adopted by the Conference of the Parties to the Convention on Biological Diversity in [decision X/42](#).

²⁰ As per the ICCA Consortium at <https://www.iccaconsortium.org/index.php/discover/>