



## Convention on Biological Diversity

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CONFERENCE OF THE PARTIES TO THE  
CONVENTION ON BIOLOGICAL DIVERSITY

Seventh meeting  
Kuala Lumpur, 9-20 and 27 February 2004  
Agenda item 19.8

**DECISION ADOPTED BY THE CONFERENCE OF THE PARTIES TO THE CONVENTION  
ON BIOLOGICAL DIVERSITY AT ITS SEVENTH MEETING**

*VII/16. Article 8(j) and related provisions*

**A. *Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j)  
and Related Provisions***

*The Conference of the Parties*

*Decides* that one meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, financed from the core (BY) budget, be organized prior to the eighth meeting of the Conference of the Parties in order to ensure further advancement of the implementation of the work programme on Article 8(j) and related provisions.

**B. *Progress report on the integration of the relevant tasks of the  
programme of work on Article 8(j) into the thematic areas of the  
Convention***

*The Conference of the Parties*

1. *Notes* the progress made in the integration of the relevant tasks of the programme of work in the thematic programmes of the Convention;

2. *Requests* the Executive Secretary to prepare a progress report on the integration of the relevant tasks of the programme of work on Article 8(j) into each of the thematic areas for the consideration of the Ad Hoc Working Group on Article 8(j) and Related Provisions at its fourth meeting.

**C. *Review of progress in the implementation of the priority tasks of the  
programme of work on Article 8(j) and related provisions***

*The Conference of the Parties*

1. *Notes* the progress made in the implementation of the priority tasks of the programme of work on Article 8(j) and related provisions;

2. *Urges* Parties, where they have not already done so, to include information in their national reports on the status and trends in relation to knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and on progress made in the implementation of the priority tasks of the programme of work at the international, national, subnational and local levels;

3. *Requests* the Executive Secretary to prepare a report on progress on the implementation of the programme of work on Article 8(j) and related provisions based on information submitted in national reports, and other relevant information, for the next meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions.

#### **D. Genetic use restriction technologies**

*The Conference of the Parties*

*Recalling* decisions V/5, paragraph 23, and VI/5, paragraph 21, of the Conference of the Parties;

*Noting* the report of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies (UNEP/CBD/WG8J/3/INF/2),

*Noting also* the potential socio-economic impacts of genetic use restriction technologies on small holder farmers and indigenous and local communities,

*Noting further* recommendation IX/2 of the Subsidiary Body on Scientific, Technical and Technological Advice adopted at its ninth meeting,

*Aware* of the need, expressed by a number of Parties and representatives of indigenous and local communities, to address this issue as a matter of urgency and priority,

1. *Invites* Parties and Governments, in collaboration with relevant organizations, to urgently create and develop, in accordance with identified needs and priorities, capacity-building programmes including the promotion of information and awareness campaigns, to involve and enable smallholder farmers, indigenous and local communities, and other relevant stakeholders to effectively participate in decision-making processes related to genetic use restriction technologies;

2. *Urges* the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, to consider the potential socio-economic impacts of genetic use restriction technologies on indigenous and local communities, at its next meeting, on the basis of the report of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies, the outcome of the deliberations of the tenth meeting of the Subsidiary Body on Scientific Technical and Technological Advice on this issue, and the study undertaken by the Food and Agriculture Organization of the United Nations, pursuant to decision V/5, on potential impacts of genetic use restriction technologies on agricultural biodiversity and agricultural production systems;

3. *Invites* Parties and indigenous and local communities to review the recommendations of the Ad Hoc Technical Expert Group on Genetic Use Restriction Technologies, as they relate to Article 8(j) and related provisions of the Convention, and provide comments thereon to the Executive Secretary, for consideration at the fourth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention. The Parties as well as the indigenous communities may consult with other stakeholders for this purpose;

4. *Requests* the Executive Secretary to compile information provided by Parties and indigenous and local communities pursuant to paragraph 3 above and submit the compilation to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention at its fourth meeting.

***E. Composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biodiversity***

*The Conference of the Parties,*

*Mindful* that any information-gathering exercise pertaining to knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity should be conducted with the prior informed consent of the holders of such knowledge, innovations and practices,

*Taking note* of the report of the Ad Hoc Technical Expert Group on Biodiversity and Climate Change, which stresses the special impact of climate change on Arctic biodiversity and indigenous and local communities depending on such biodiversity,

*Recalling* that, by decision VI/10, the Conference of the Parties decided to adopt the outline of the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and to request the Executive Secretary to undertake the first phase of the composite report based on elements 1 and 2 of the outline,

*Having considered* the report on the first phase of the composite report on the status and trends of knowledge, innovations and practices, of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

*Recalling* that phase I of the composite report is intended to provide an accurate and comprehensive assessment of the state of retention of traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and identify and assess measures and initiatives to protect and promote the use of traditional knowledge, innovations and practices,

*Recognizing* the conceptual and methodological challenges and financial and time constraints faced in preparing the composite report as foreseen in decision VI/10,

*Acknowledging* that further activities are necessary in phase one of the preparation of the composite report in order to address gaps and deficiencies,

*Also acknowledging* the desirability of ongoing information-gathering and sharing of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, particularly for the purpose of judging the collective success at reversing the decline of such knowledge, innovations and practices,

*Emphasizing* that any further activity needed under the first phase of the composite report should not prevent immediate initiation of activities under a second phase of the composite report, based upon sections 3 to 7 of the outline of the composite report (decision VI/10, annex I),

***Phase one***

1. *Takes note* with appreciation of the information prepared for the third meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (UNEP/CBD/WG8J/3/INF/1);

2. *Decides* to undertake further activities to complete phase one of the composite report by the next meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions,

3. *Urges* Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders to provide information, through the clearing-house mechanism of the Convention and other feasible means/media, to the Executive Secretary to support the completion of phase one of the composite report,

4. *Requests* the Executive Secretary to continue work on phase one of the composite report in order to produce a revised version of it, in consultation with and with input from Parties, Governments, relevant organizations, all relevant stakeholders as appropriate, and from indigenous and local communities through the national focal points in consultation with and after approval of indigenous and local communities, taking into account the following elements, *inter alia*:

- (a) Organization of regional workshops;
- (b) Gathering at national level and inclusion in phase I of the report of additional information in particular on:
  - (i) Assessment, particularly by indigenous and local communities, of the success of measures and initiatives to support the retention and use of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including the advantages and limitations of registers as a measure to protect traditional knowledge, innovations and practices, as well as approaches used for the implementation of registers, and of incentives and disincentives for the retention and use of traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity;
  - (ii) Examples of measures to protect traditional knowledge, innovations and practices;
  - (iii) Recent field studies undertaken with the full involvement of indigenous and local communities which demonstrate the state of knowledge, innovations and practices;
- (c) Preparation of a regional report focusing on the Arctic region;
- (d) Action on decision VI/10, annex I, paragraph 28 (b), to create an advisory group/steering committee in which indigenous and local communities will be represented to assist in the completion of the report and undertake a peer review of the revised version, in consultation with indigenous peoples and local community organizations that have participated in the work on the Convention.

***Phase two***

5. *Requests* the Executive Secretary, through the national focal points in consultation with and after approval of indigenous and local communities and in consultation with and with input from Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders as appropriate, to immediately start work on a second phase of the composite report, laying emphasis on sections 4 and 5 of the outline of the composite report, foreseeing respectively the identification of national processes that may threaten the maintenance, preservation and application of traditional knowledge, innovations and practices and the identification of processes at the local community level that may threaten the maintenance, preservation and application of traditional knowledge, innovations and practices (decision VI/10, annex I);

6. *Encourages* Parties, Governments and competent organizations to support the efforts of indigenous and local communities to undertake field studies to determine the status, trends and threats related to the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, with the full involvement and approval of these communities. In undertaking these studies, the general principles of the programme of work on Article 8(j) and related provisions should be respected and followed, as should paragraph 28 (d) of annex I to decision VI/10, which states that codes of ethics/guidelines which entail permission and/or consent of indigenous and local communities to enter the communities and conduct the research, will be respected and followed;

***Financial support***

7. *Urges* Parties, Governments and relevant organizations to provide financial assistance for the completion of phase one and activities under phase two of the preparation of the composite report, in particular in order to support the full involvement and participation of indigenous and local communities in this work;

***Development of a plan of action***

8. *Requests* the Executive Secretary, through the national focal points in consultation with and after approval of indigenous and local communities, to further develop the draft elements for an action plan contained in the annex to the present recommendation, in particular with a view to identifying actors and timeframes, taking fully into account ongoing work under the Convention and relevant international organizations. The action plan would aim to:

(a) Facilitate synergy between existing initiatives aimed at halting the loss of and encouraging the retention and use of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;

(b) Provide further practical guidance, respectful of indigenous and local communities' perspectives, for the implementation of the programme of work on the implementation of Article 8(j) and related provisions as it relates to the retention of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

9. *Invites* Parties, Governments and relevant organizations to take the elements identified in the annex into consideration when deciding upon activities to protect traditional knowledge, innovations and practices.

*Annex*

**ELEMENTS OF A PLAN OF ACTION FOR THE RETENTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES EMBODYING TRADITIONAL LIFESTYLES RELEVANT FOR THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY**

*A. Improved monitoring and reporting process*

1. National reports on Article 8(j) should be compiled by Parties in consultation with indigenous and local communities, based on a questionnaire to be produced by the Secretariat.
2. Reporting periods should be agreed upon and reviews of the status and trends of traditional knowledge, innovations and practices should be pursued on a regular basis.
3. Mobilization of resources to undertake regular review should be promoted.
4. Mechanisms should be established to encourage representatives of indigenous groups and local communities to present information under the Convention on Biological Diversity, including capacity building and incentive measures.
5. Mechanisms should be developed to ensure input from overseas territories and autonomous or semi-autonomous regions. <sup>1/</sup>
6. The thematic focal point on Article 8(j) under the clearing-house mechanism should be utilized to catalogue and share best.
7. A survey of current activities of international organizations relevant to Article 8(j) should be undertaken with view to developing synergy.

*B. Indicators*

8. Indicators on the state of retention of traditional knowledge, innovations and practices should be established with the active involvement of indigenous and local communities, in consultation with relevant organizations, in connection with the ongoing work on indicators under the Convention.
9. Indicators to assess the success or failure of measures to promote or preserve traditional knowledge, innovations and practices should be established, with the active involvement of indigenous and local communities, in connection with the ongoing work on indicators under the Convention.
10. Information on legislative measures to protect traditional knowledge, innovations and practices as drawn from regional and national reports, should be kept up to date.

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<sup>1/</sup> The provisions contained in this decision relating to territories under sovereignty disputes recognized by the United Nations shall only be implemented with the consent of all parties involved in the dispute.

*C. Research ethics*

11. Examples of codes of ethics and conduct governing research as used by such bodies as research institutions, business and indigenous and local communities, should be gathered with a view to assisting in future possible development of codes of ethics or conduct, and to guide further research on the retention and use of traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity.
12. Parties, Governments, international organizations, research institutions and business should respect and promote existing codes of ethics or conduct governing research, and Parties, Governments and relevant organizations should facilitate the development of additional codes by indigenous and local communities where none exist.

*D. Research on and implementation of mechanisms and measures to address the underlying causes of the decline of traditional knowledge, innovations and practices*

13. Research should be undertaken on existing and new threats to the retention and use of traditional knowledge, innovations and practices.
14. Mechanisms to promote cooperation in order to address the cause of decline should be identified in cooperation with the Permanent Forum on Indigenous Issues of the United Nations and other relevant initiatives and organizations.
15. Parties should be encouraged, in accordance with national domestic law and international obligations, to recognize land tenure of indigenous and local communities, as recognized rights and access to land are fundamental to the retention of traditional knowledge, innovations and practices.
16. Subject to national legislation and international obligations, Parties should be encouraged to pursue the fair and equitable resolution of land claims as an essential element of efforts to facilitate the retention and use of traditional knowledge, innovations and practices.
17. Indigenous and local communities should, where relevant, be actively involved in the management of protected areas.
18. The rights of indigenous and local communities should given due respect when establishing new protected areas.
19. Parties should establish measures to ensure respect for the rights of unprotected or voluntarily isolated communities.
20. Restrictions on use of and access to sacred sites or otherwise culturally significant sites should be incorporated into appropriate local or national legislation, in consultation with and with full involvement of indigenous and local communities.
21. Legislation intended to protect, promote the use of traditional knowledge, innovations and practices should be consistent with the needs and views of indigenous and local communities, comprehensive and enforceable.



22. Parties should be encouraged to work with indigenous and local communities to develop measures and mechanisms to mitigate the consequences of actions arising from perverse incentives leading to the decline of knowledge, innovations and practices embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.
23. Parties should share their experiences with incentive measures as well as other mechanisms and measures to support the retention and use of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity.
24. Mobilization of financial and technical resources should be promoted to support the design and implementation of mechanisms and measures to support retention of knowledge, innovations and practices embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

*E. Capacity-building, education and training*

25. Parties, Governments and relevant organizations should be encouraged to facilitate strengthening existing indigenous organizational structures and organizations representing local communities.
26. Specific capacity-building activities should be targeted at indigenous women and women in rural or otherwise marginal communities, and at traditional knowledge, innovations and practices.
27. Where appropriate, traditional knowledge, innovations and practices should be integrated into formal, local, subnational or national systems of education, which are directed towards local or indigenous communities.
28. Education and training should be offered to indigenous and local communities with special attention to the future role of young people so as to enable sustainable development, while being compatible with their traditions.
29. Parties, Governments and relevant stakeholders should be encouraged to learn about knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and to incorporate it in decision-making processes.

***F. Akwé: Kon <sup>2/</sup> 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***

*The Conference of the Parties*

*Recalling* that, in decision VI/10, the Conference of the Parties requested the Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions to carry out further work on 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, and that such work should complement and be in conjunction with the guidelines for incorporating biodiversity-related issues into environmental assessment legislation and/or processes and in strategic environmental assessment endorsed by the Conference of the Parties in decision VI/7 A,

*Recognizing* that the long-term negative impacts of many developments 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 in particular the loss of these communities' traditional knowledge, innovations and practices, <sup>3/</sup> continue to be a source of great concern,

*Further recognizing* that adequate impact assessment procedures and methodologies play a key role in providing information on the cultural, environmental and social impacts of proposed developments,

*Recognizing also* that developments should not include incentives and mitigation measures that adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations,

*Recognizing also* the importance of giving appropriate recognition to species considered to be sacred,

*Bearing in mind* that cultural, social and environmental impact assessment processes should enable assessment of the alternative of not proceeding with the proposed development, and that the wishes of indigenous and local communities to live in isolation should be respected,

*Emphasizing* that the conduct of impact assessments within an integrated process will increase the effectiveness of the involvement of indigenous and local communities,

*Emphasizing also* that the effective participation, involvement and approval of indigenous and local communities will require close cooperation among these communities, as well as between all relevant actors, and the design of appropriate mechanisms,

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<sup>2/</sup> Pronounced {agway-goo}. A holistic Mohawk term meaning "everything in creation" provided by the Kahnawake community located near Montreal, where the guidelines were negotiated.

<sup>3/</sup> Throughout the recommendation the expression "traditional knowledge, innovations and practices" shall be understood to mean the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, as contained in Article 8(j) of the Convention on Biological Diversity.

1. *Endorses* 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, as contained in the annex to the present decision;

2. *Encourages* Parties and Governments to initiate a legal and institutional review of matters related to cultural, environmental and social impact assessment, with a view to exploring options for incorporation of these guidelines into national legislation, policies, and procedures, bearing in mind that nothing in these guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations;

3. *Requests* Parties and Governments to use these guidelines, as appropriate, in conjunction with the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment endorsed by the Conference of the Parties at its sixth meeting bearing in mind that nothing in these guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations;

4. *Requests* the Executive Secretary to publish these guidelines as a booklet in the official languages of the United Nations, and *further invites* Parties and Governments, in collaboration with indigenous and local communities, to also make the guidelines available in local languages in relevant circumstances;

5. *Also requests* Parties and Governments to conduct public education and awareness campaigns and develop strategies to ensure that relevant government departments and agencies, indigenous and local communities and their organizations, private sector developers, civil society organizations and potential stakeholders in developments, and the public at large, are made aware of the existence of these guidelines and the need for their application when developments are proposed to take place on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities;

6. *Invites* intergovernmental organizations, Parties to intergovernmental agreements and civil society organizations active in development and biodiversity conservation, to take into consideration the guidelines for cultural, environmental and social impact assessment regarding developments proposed to take place on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities;

7. *Requests* the Executive Secretary to continue to liaise with relevant international organizations, multilateral environmental agreements and processes on impact assessment with a view to developing or enhancing synergies between, and ensuring coherence of, assessment methodologies and guidelines;

8. *Invites* international funding and development agencies that provide funding and other forms of assistance to Governments to undertake developments, within the framework of bilateral and multilateral cooperation efforts, or to assist in the formulation of development policies, as well as policies, plans and guidelines for strategic environmental assessment, to take into consideration the need to incorporate and implement the guidelines within such developments and policies, and plans, guidelines and policies for strategic environmental assessment, and to provide funds, as appropriate, for the prevention and mitigation of negative impacts and risk factors of proposed projects and policies, such as, for example, the implementation of waste-management policies;

9. *Encourages* Parties and Governments, regarding developments proposed to take place on, or which are likely to impact on, sacred sites and land and waters traditionally occupied or used by indigenous and local communities, to:

(a) Promote the participation of indigenous and local communities in any bodies established by Governments at national, subnational and local levels, and in consultation with indigenous and local communities, in the assessment of proposed developments in which such communities have an interest;

(b) Take appropriate steps to ensure full transparency of the assessment process, including, but not limited to, the allocation of a sufficient amount of time to conduct a complete assessment of proposed developments prior to their implementation;

(c) Facilitate the exchange of information among relevant national agencies, developers, indigenous and local communities and all stakeholders on matters of relevance to the conduct of impact assessments of proposed developments;

(d) Provide, the necessary capacity and funding to ensure these measures can be put into effect, taking into account the views of indigenous and local communities as to their needs;

10. *Calls upon* Parties and Governments to support, financially and otherwise, indigenous and local communities, where they have not already done so, in formulating their own community development and biodiversity conservation plans that will enable such communities to adopt a culturally appropriate strategic, integrated and phased approach to their development needs in line with community goals and objectives. These plans should include a strategic environmental assessment policy or plan to provide a systematic process with the participation of indigenous and/or local communities for integrating cultural, environmental, and social considerations in planning and decision-making;

11. *Also calls upon* the international community to provide the necessary means to Parties to assist in the formulation and development of strategic plans for the building or enhancement of the capacity of indigenous and local communities to conduct of cultural, environmental and social impact assessments, giving full recognition to community development and biodiversity conservation plans;

12. *Invites* indigenous and local communities to take note of the guidelines and to request their application in the case of 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;

13. *Calls upon* Parties for full transparency when developments are 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;

14. *Requests* Parties to include in their national reports information on practices, systems, mechanisms and experiences in the area of strategic environment assessment and cultural, environmental and social impact assessment and any measures adopted to formalize these guidelines in any policies, plans or programmes.

*Annex*

**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**

**I. PURPOSE AND APPROACH**

1. The present Guidelines are voluntary and intended to serve as guidance for Parties and Governments, subject to their national legislation, in the development and implementation of their impact-assessment regimes. The guidelines should be taken into consideration whenever developments are 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.

2. The objective of these Guidelines is to provide general advice on the incorporation of cultural, environmental, including biodiversity-related, and social considerations of indigenous and local communities into new or existing impact-assessment procedures, noting that some existing procedures may take these concerns into consideration in different ways. The Guidelines should be applied in conjunction with the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment endorsed by the Conference of the Parties in paragraph 1 of decision VI/7 A, and contained in the annex to that decision.

3. More specifically, the purpose of these Guidelines is to provide a collaborative framework within which Governments, indigenous and local communities, decision makers and managers of developments can:

(a) Support the full and effective participation and involvement of indigenous and local communities in screening, scoping and development planning exercises;

(b) Properly take into account the cultural, environmental and social concerns and interests of indigenous and local communities, especially of women who often bear a disproportionately large share of negative development impacts;

(c) Take into account the traditional knowledge, innovations and practices of indigenous and local communities as part of environmental, social and cultural impact-assessment processes, with due regard to the ownership of and the need for the protection and safeguarding of traditional knowledge, innovations and practices;

(d) Promote the use of appropriate technologies;

(e) Identify and implement appropriate measures to prevent or mitigate any negative impacts of proposed developments;

(f) Take into consideration the interrelationships among cultural, environmental and social elements.

4. The Guidelines recognize that developments vary enormously in nature, scale and complexity with respect to such aspects as their scope, size and duration; strategic and economic importance; and the nature of impacts. The Guidelines therefore should be adapted to suit the appropriate circumstances of

each development. Individual countries may redefine the steps in the cultural, environmental and social impact assessment procedure to their needs and requirements, taking into account the needs and concerns of indigenous and local communities and their national legislative, administrative and policy framework, bearing in mind that nothing in these Guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations.

5. Cultural, environmental and social impact assessment procedures should refer to other relevant domestic legislation, regulations, guidelines and international and multilateral environmental agreements and protocols that have been ratified by the Party and have come into force, bearing in mind that nothing in these Guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations.

## II. USE OF TERMS

6. For the purpose of the Guidelines:

(a) *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;

(b) *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;

(c) *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; <sup>4/</sup>

(d) *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 socio-economic, cultural and human health impacts, both beneficial and adverse;

(e) *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;

(f) *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;

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<sup>4/</sup> See definition contained in *Black's Law Dictionary* (7th edition), 2000.

(g) *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; <sup>5/</sup>

(h) *Traditional knowledge* – refers to the traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

### III. PROCEDURAL CONSIDERATIONS

7. Noting that the actors involved in the assessment process may include the proponent of the development, one or more governmental agencies, indigenous and local communities, stakeholders, and technical experts conducting the assessment; noting further the desirability of integrating cultural, environmental, and social impacts within a single assessment process, and taking into account the fundamental components of an environmental impact assessment as described in the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment, an integrated assessment should involve the following stages:

(a) *Preparatory stage:*

- (i) Screening;
- (ii) Scoping;

(b) *Main stage:*

- (i) Impact analysis and assessment;
  - (ii) Consideration of mitigation measures (including not proceeding with the development, finding alternatives which avoid the impacts, incorporating safeguards in the design of the development, or providing compensation – monetary and/or non-monetary – for adverse impacts);

(c) *Reporting and decision-making stage:*

- (i) Reporting of the impact assessment study;
- (ii) Review of the impact assessment study;
- (iii) Decision-making; and
- (iv) Devising management and monitoring plans, including roles and responsibilities, alternative proposals and mitigation requirements and conditions;

(d) *Monitoring and auditing stage:* Monitoring and environmental auditing.

8. As part of the above stages, the following steps may also be considered in carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:

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<sup>5/</sup> Term derived from the definition contained in paragraph 1(b) of the Guidelines for Incorporating Biodiversity-related Issues into Environmental Impact Assessment Legislation and/or Process and in Strategic Environmental Assessment, contained in the annex to decision VI/7 A.

- (a) Notification and public consultation of the proposed development by the proponent;
- (b) Identification of indigenous and local communities and relevant stakeholders likely to be affected by the proposed development;
- (c) Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups, in the impact assessment processes;
- (d) Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development;
- (e) Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community;
- (f) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures;
- (g) Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development;
- (h) Identification of actors responsible for liability, redress, insurance and compensation;
- (i) Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development;
- (j) Establishment of a review and appeals process.

9. While the focus of environmental, cultural and social impact assessments is necessarily different, it is assumed, however, that the steps or phases for carrying out all three kinds of assessment will be the same for the most part. However, in the case of small-scale locally-based and initiated development, it may be possible to omit some of these steps.

***A. Notification and public consultation of proposed development by the proponent***

10. The proponent of a development proposal or the responsible government authority should engage in a process of notification and public consultation of intention to carry out a development. Such notification should use all normal public means of notification (print, electronic and personal media, including newspapers, radio, television, mailings, village/town meetings, etc.), take into account the situation of remote or isolated and largely non-literate communities, and ensure that such notification and consultation take place in the language(s) of the communities and region that will be affected. Such notification should clearly identify the proponent, contain a brief summary of the proposal, the sites and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, as well as possible cultural and social impacts, arrangements for public consultation, contact details, key dates in the life of the project, including those regarding impact assessment procedures, and identify obligations under national and subnational laws as well subregional, regional and international agreements.



11. The development proposal and impact assessment should be made available to organizations representing affected indigenous and local communities and relevant stakeholders for the purposes of public scrutiny and consultation. It should include all details relevant to the proposal. Notification and public consultation of the proposed development should allow for sufficient time to allow the affected indigenous or local community to prepare its response. An opportunity to present its response should be allowed for full and fair consideration by the proponent.

***B. Identification of indigenous and local communities and stakeholders likely to be affected by the proposed development***

12. In any development proposed to take place on, or likely to have an impact on, sacred sites and lands and waters traditionally occupied or used by them, indigenous and local communities should be invited to participate in and are to be accorded full respect at all stages of the assessment and development process, including planning and implementation;

13. A formal process to identify the indigenous and local community members, experts and organizations, and relevant stakeholders should be engaged, including local and open consultations. Once all parties have been identified, it is appropriate that a committee representative of the parties be formally established and its mandate defined to advise on the impact assessment processes, particularly in relation to screening and scoping phases, and for the establishment of any environmental management and monitoring plan, as well as cultural and social contingency plans. In establishing this committee, special consideration should be given to ensuring the adequate representation of indigenous and local communities.

***C. Establishment of mechanisms for indigenous and local community participation***

14. Affected indigenous and local communities should be invited to participate on any body appointed to advise on the screening and scoping phases or should be consulted on an impact assessment process for a development proposal, and should be involved in the establishment of the terms of reference for the conduct of the impact assessments, subject to national legislation. The screening and scoping phases should also take into account any community development plans and any mechanisms for strategic environmental assessment that have been formulated by an affected community.

15. In addition to representation on any body established to advise on the other impact assessment process phases, the full and effective participation and involvement of affected indigenous and local communities should contemplate using participatory models of community engagement during the conduct of the impact assessments, including in decision-making. The proponent should also provide regular feedback to the affected community throughout all stages of the impact assessment and development processes.

16. In order to facilitate the involvement and participation of the affected indigenous and local communities, local experts should be identified and their expertise recognized and engaged at the earliest opportunity.

***D. Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development***

17. The proponent and members of the affected indigenous or local community should establish a process by which community views and concerns can be properly recorded, as community members may

not be in a position to attend public meetings because of, for example, remoteness of the community, or poor health. While written statements may be preferred, the views of the community members could also be recorded on video or audio tape, or any other appropriate way, subject to the consent of communities.

***E. Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures***

18. Early identification by the State and affected indigenous and local communities and, as circumstances warrant, provision of necessary human, financial, technical and legal resources, particularly to those indigenous and local communities, to support indigenous and local expertise, will facilitate effective indigenous and local community participation in the impact assessment process. In general, the larger the proposed development, the greater and more widespread the potential impacts and therefore potentially greater are the requirements for support and capacity-building.

***F. Establishment of an environmental management or monitoring plan, including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development***

19. In order to maximize benefits and minimize adverse impacts, it will be necessary in most instances to establish an environmental management or monitoring plan to provide a framework within which the development can take place. Formulation of the environmental management or monitoring plan should be guided by an affected community's development plan and/or measures for strategic environmental assessment, where such plans exist, and should also include contingency plans for possible adverse cultural and social impacts.

***G. Identification of actors responsible for liability, redress, insurance and compensation***

20. In order to maintain the health, wellbeing and security of affected indigenous and local communities and the ecosystems that sustain them, and, to the extent that it is possible, in order to prevent adverse cultural, environmental and social impacts of any proposed developments, actors that should bear the responsibility for liability, redress, insurance and compensation should be clearly identified.

***H. Conclusion of agreements or action plans on mutually agreed terms between the proponents of the proposed development and the affected indigenous or local community***

21. In order to protect the interests of affected indigenous and local communities, an agreement, could be negotiated between the community and the proponent of the development. The terms of such an agreement, subject to national legislation and regulations, could cover the procedural aspects of impact assessments, including the option of a no-action alternative, setting out the rights, duties and responsibilities of all parties, and also address measures to prevent or mitigate any negative impacts of the proposed development.

***I. Establishment of a review and appeal process***

22. Parties, if they have not already done so, should seek to ensure the full participation of affected indigenous and local communities, in accordance with national legislation, in the decision-making

process for of any development proposal, including the review and appeal process, taking into account methods of mediation and dispute resolution, which may include customary methods.

#### **IV. INTEGRATION OF CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS AS A SINGLE PROCESS**

23. Bearing in mind the unique relationship between indigenous and local communities and the environment, the Guidelines allow for the consideration of the integration of cultural, environmental, social impact assessments as a single process. The conduct of impact assessments should meet the requirements of the Convention on Biological Diversity as defined in its Articles 14 and 8(j), and take into account the general principles guiding the programme of work on Article 8(j) and related provisions. The Guidelines should take into account work on integration of biodiversity issues into the environmental impact assessment and strategic impact assessment in accordance with Article 14 of the Convention, and give special attention to incorporating cultural and social considerations within any environmental impact assessment legislation or policies.

##### **A. *Cultural impact assessments***

24. Through the cultural impact assessment process, and particularly during the screening and scoping phases, the issues that are of particular cultural concern should be identified, such as cultural heritage, religions, beliefs and sacred teachings, customary practices, forms of social organization, systems of natural resource use, including patterns of land use, places of cultural significance, economic valuation of cultural resources, sacred sites, ceremonies, languages, customary law systems, and political structures, roles and customs. The possible impacts on all aspects of culture, including sacred sites, should therefore be taken into consideration while developing cultural impact assessments.

25. Cultural heritage impact assessment is concerned with the likely impacts of a proposed development on the physical manifestations of a community's cultural heritage and is frequently subject to national heritage laws. A cultural heritage impact assessment will need to take into account, as the circumstances warrant, international, national and local heritage values.

26. In the event that sites or objects of potential heritage significance are uncovered during earthworks associated with a development, then all activities in and around the area of discovery should cease until a proper archaeological or heritage assessment has been completed.

27. In determining the scope of a cultural impact assessment, the following should be considered:

- (a) Possible impacts on continued customary use of biological resources;
- (b) Possible impacts on the respect, preservation, protection and maintenance of traditional knowledge, innovations and practices;
- (c) Protocols;
- (d) Possible impacts on sacred sites and associated ritual or ceremonial activities;
- (e) Respect for the need for cultural privacy; and
- (f) Possible impacts on the exercise of customary laws.

1. *Possible impacts on continued customary use of biological resources*

28. The assessment should take the customary uses of biological resources that meet the requirements of the Convention, particularly in relation to Article 10(c), fully into consideration, as the diminution of the genetic diversity maintained and fostered by such customary use may lead to a loss of associated traditional knowledge, innovations and practices;

2. *Possible impacts on the respect, preservation, protection and maintenance of traditional knowledge, innovations and practices*

29. In the conduct of cultural impact assessments, due consideration should be given to the holders of traditional knowledge, innovations and practices and the knowledge itself. Customary laws governing ownership, access, control, use and dissemination of traditional knowledge, innovations and practices should be observed. Protocols with regard to indigenous and local communities should be followed with regard to the disclosure of secret and or sacred knowledge, including those that may involve public hearings and judicial processes in the courts. In the event of the disclosure of secret and or sacred knowledge, prior informed consent and proper protection measures should be ensured.

3. *Protocols*

30. As part of possible agreements or action plans to be concluded by the proponent of the development and the concerned communities, protocols could be established in order to facilitate the proper conduct of the development, and personnel associated with it, on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Specific protocols may need to be established for particular kinds of development activity (for example, adventure tourism, mining) and may need to take into account the behaviour to be observed when visiting local communities, particular sites or when dealing with members of indigenous and local communities. Protocols should respect regulations already existing under relevant national, sub national or community self-government legislation.

4. *Possible impacts on sacred sites and associated ritual or ceremonial activities*

31. When developments are 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, personnel associated with such developments should recognize that many sacred sites, and areas or places of other cultural significance may have important functions with respect to the conservation and sustainable use of biological diversity and, by extension, the maintenance of the natural resources upon which such communities rely for their well-being.

32. If it is necessary to assess the potential impact of a proposed development on a sacred site, the assessment process should also include the selection of an alternate site for development in consultation with the site custodians and the affected community as a whole. Where a sacred site is to be affected by a proposed development, and in cases where no law exists to protect the site, the concerned indigenous and local community may wish to develop protocols regarding the site in the context of the proposed development.

5. *Respect for the need for cultural privacy*

33. Proponents of development and personnel associated with the development should respect the cultural sensitivities and needs of indigenous and local communities for privacy, especially with regard to important rituals and ceremonies such as those associated with rites-of-passage and death, and also ensure their activities do not interfere with the daily routines and other activities of such communities.

6. *Possible impacts on the exercise of customary laws*

34. Development proposals should be assessed for possible impacts on the customary laws of an affected community. If a development requires the introduction of an outside work-force, or requires changes in local customary systems (e.g. regarding land tenure, distribution of resources and benefits) conflicts may result. It may therefore be necessary to codify certain parts of customary law, clarify matters of jurisdiction, and negotiate ways to minimize breaches of local laws.

**B. *Environmental impact assessments***

35. In the conduct of the environmental component of an impact assessment regarding a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment, should be taken into account. National environmental impact assessment legislation and processes should respect existing inherent land and treaty rights as well as legally established rights of indigenous and local communities. As information gathering processes, environmental impact assessments can contribute to the protection of the rights of indigenous and local communities by recognizing the distinct activities, customs and beliefs of the affected indigenous and local communities.

36. The direct impacts of the development proposal on local biodiversity at the ecosystem, species and genetic levels should be assessed, and particularly in terms of those components of biological diversity that the affected indigenous or local community and its members rely upon for their livelihood, well-being, and other needs. Indirect impacts should be carefully assessed and monitored over the long term. The development proposal should be rigorously assessed with respect to the introduction of invasive species.

*1. Baseline studies*

37. In order to effectively undertake an environmental impact assessment for a proposed development, it is desirable to carry out a baseline study, in consultation with the affected indigenous and local communities, to ascertain those components of biological diversity of particular significance to the affected indigenous or local community. Detailed knowledge of biological resources (ecosystems, species and genetic diversity), including valuation of these resources, is essential to the protection of both biodiversity and cultural values. Such baseline study should include whether, for example, habitat types to be affected by the proposed development are represented elsewhere in existing conservation reserves (under national reserve systems), and whether particular crop species (and varieties) for food and agriculture are represented in *ex situ* collections. Baseline studies should collect information with respect to:

(a) Species inventories (including identification of 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);

(b) Identification of endangered species, species at risk, etc (possibly referenced to the World Conservation Union (IUCN) Red Data Book, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and national inventories);

(c) Identification of particularly significant habitat (as breeding/spawning grounds, remnant native vegetation, wild-life refuge areas including buffer zones and corridors, habitats and routes for migratory species) and crucial breeding seasons for endangered and critical species;

(d) Identification of areas of particular economic significance (as hunting areas and trapping sites, fishing grounds, gathering areas, grazing lands, timber harvesting sites and other harvesting areas);

(e) Identification of particularly significant physical features and other natural factors which provide for biodiversity and ecosystems (e.g. watercourses, springs, lakes, mines/quarries that supply local needs); and

(f) Identification of sites of religious, spiritual, ceremonial and sacred significance (such as sacred groves and totemic sites).

38. Consistent with principle 11 of the ecosystem approach, endorsed by the Conference of the Parties in paragraph 1 of decision V/6, traditional knowledge, innovations and practices should be considered an important and integral component of baseline studies, particularly the traditional knowledge, innovations and practices of those who have a long association with the particular area for which the development is proposed. Traditional knowledge, innovations and practices can be cross-referenced by old photographs, newspaper articles, known historical events, archaeological records, anthropological reports, and other records contained in archival collections.

### *C. Social impact assessments*

39. In order to effectively undertake a social impact assessment with respect to an indigenous or local community that is or is likely to be affected by a proposed development, the screening and scoping phases should take into account gender and demographic factors, housing and accommodation, employment, infrastructure and services, income and asset distribution, traditional systems and means of production, as well as educational needs, technical skills and financial implications.

40. Proposed developments should be evaluated in relation to tangible benefits to such communities, such as non-hazardous job creation, viable revenue from the levying of appropriate fees from beneficiaries of such developments, access to markets and diversification of income opportunities. Evaluation of changes to traditional economies could involve economic valuation of negative social impacts, such as crime and sexually transmitted diseases.

41. Developments involving changes to traditional practices for food production, or involving the introduction of commercial cultivation and harvesting of a particular wild species, should have those changes and introductions assessed.

42. In social impact assessments, social development indicators consistent with the views of indigenous and local communities should be developed and should include gender, generational considerations, health, safety, food and livelihood security aspects and the possible effects on social cohesion and mobilization.

43. In determining the scope of a social impact assessment, the following should be considered:

- (a) Baseline studies;
- (b) Economic considerations;
- (c) Possible impacts on traditional systems of land tenure and other uses of natural resources;
- (d) Gender considerations;
- (e) Generational considerations;

- (f) Health and safety aspects;
- (g) Effects on social cohesion;
- (h) Traditional lifestyles; and
- (i) The possible impact on access to biological resources for livelihoods.

1. *Baseline studies*

44. In the conduct of baseline studies, the following areas should, *inter alia*, be addressed:

- (a) Demographic factors (number and age structure of population, ethnic grouping, population distribution and movement - including seasonal movements);
- (b) Housing and human settlements, including involuntary resettlement, expulsion of indigenous peoples from lands and involuntary sedentarization of mobile peoples;
- (c) Health status of the community (particular health problems/issues - availability of clean water - infectious and endemic diseases, nutritional deficiencies, life expectancy, use of traditional medicine, etc);
- (d) Levels of employment, areas of employment, skills (particularly traditional skills), education levels (including levels attained through informal and formal education processes), training, capacity-building requirements;
- (e) Level of infrastructure and services (medical services, transport, waste disposal, water supply, social amenities (or lack of) for recreation, etc);
- (f) Level and distribution of income (including traditional systems of distribution of goods and services based on reciprocity, barter and exchange);
- (g) Asset distribution (e.g. land tenure arrangements, natural resource rights, ownership of other assets in terms of who has rights to income and other benefits);
- (h) Traditional systems of production (food, medicine, artefacts), including gender roles in such systems; and
- (i) Views of indigenous and local communities regarding their future and ways to bring about future aspirations

45. In particular, in relation to subsistence-based indigenous and local communities, the following additional social factors should also be taken into consideration, including impacts thereon:

- (a) Traditional non-monetary systems of exchange such as hunting, barter and other forms of trade, including labour exchange;
- (b) Related economic and social relations;
- (c) Importance of gender roles and relations;
- (d) Traditional responsibilities and concepts of equity and equality in society; and

(e) Traditional systems of sharing natural resources, including resources that have been hunted, collected or harvested.

## 2. *Economic considerations*

46. Proposed developments on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities should ensure that tangible benefits accrue to such communities, such as payment for environmental services, job creation within safe and hazard-free working environments, viable revenue from the levying of appropriate fees, access to markets and diversification of income-generating (economic) opportunities for small and medium-sized businesses. In accordance with national legislation or relevant national regulations, indigenous and local communities should be involved in the financial auditing processes of the developments in which they participate to ensure that the resources invested are used effectively.

## 3. *Possible impacts on traditional systems of land tenure and other uses of natural resources*

47. Developments that particularly involve changes to traditional practices for food production, or involve the introduction of commercial cultivation and harvesting of a particular wild species (e.g. to supply market demands for particular herbs, spices, medicinal plants, fish, fur or leather) may lead to pressures to restructure traditional systems of land tenure or expropriate land, and to pressures on the sustainable use of biological diversity, in order to accommodate new scales of production. The ramifications of these kinds of changes can be far-reaching and need to be properly assessed, taking into account the value systems of indigenous and local communities. Likely impacts associated with the cultivation and/or commercial harvesting of wild species should also be assessed and addressed.

## 4. *Gender considerations*

48. In social impact assessments, there is a particular need to examine the potential impacts of a proposed development on women in the affected community with due regard to their role as providers of food and nurturers of family, community decision-makers and heads of households, as well as custodians of biodiversity and holders of particular elements of (gender-specific) traditional knowledge, innovations and practices.

## 5. *Generational considerations*

49. In any social impact assessment, the potential impact of a proposed development on all generations within a community should be examined. Of particular concern are the impacts that may potentially interfere with opportunities for elders to pass on their knowledge to youth, or which might render certain skills and traditional knowledge, innovations and practices redundant.

## 6. *Health and safety aspects*

50. In the impact assessment process, the health and safety aspects of the proposed development should be scrutinized. Safety aspects should include such risks as physical injury during construction, and health risks resulting from various forms of pollution, sexual exploitation, social disturbance, disruption to habitats of medicinal species, and use of chemicals, such as pesticides. Foreign workers should be screened for any infectious diseases for which local populations may have no immunity, or for which there is no evidence of infection within their communities.



7. *Effects on social cohesion*

51. The impact assessment process should take into consideration the possible effects that a proposed development might have on the affected community and its people as a whole by ensuring that particular individuals or groups are not unjustly advantaged or disadvantaged to the detriment of the community as a result of the development.

**V. GENERAL CONSIDERATIONS**

52. The following general considerations should also be taken into account when carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:

- (a) Prior informed consent of the affected indigenous and local communities;
- (b) Gender considerations;
- (c) Impact assessments and community development plans;
- (d) Legal considerations;
- (e) Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes;
- (f) Mitigation and threat-abatement measures;
- (g) Need for transparency; and
- (h) Establishment of review and dispute resolution procedures.

**A. *Prior informed consent of the affected indigenous and local communities***

53. Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities.

**B. *Gender considerations***

54. The vital role that women and youth play, in particular women and youth within indigenous and local communities, in the conservation and sustainable use of biological diversity and the need for the full and effective participation of women in policy-making and implementation for biological diversity conservation should be fully taken into consideration.

**C. *Impact assessments and community development plans***

55. Indigenous and local communities should be encouraged, and provided with the necessary support and capacity to formulate their own community development plans. Such plans should include and should develop mechanisms for strategic environmental assessment that are commensurate with the

goals and objectives of the development plans and appropriate poverty eradication programmes as defined by the indigenous and local communities.

56. Any 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 should maintain a balance between economic, social, cultural and environmental concerns, on the one hand, while, on the other hand, maximizing opportunities for the conservation and sustainable use of biological diversity, the access and equitable sharing of benefits and the recognition of traditional knowledge, innovations and practices in accordance with Article 8(j) of the Convention, and should seek to minimize risks to biological diversity. The cultural, environmental and social impact assessment processes should reflect this.

#### ***D. Legal considerations***

57. In any assessment procedure, subject to national legislation consistent with international obligations, Governments, their agencies and development proponents should take into account the rights of indigenous and local communities over lands and waters traditionally occupied or used by them and the associated biological diversity.

58. There is a need for clarification of legal responsibilities, particularly with regard to matters that may arise during the conduct of cultural, environmental and social impact assessments, including enforcement, liability and redress measures.

#### ***E. Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes***

59. Consistent with the ecosystem approach, proponents of development proposals should recognize the importance of understanding and applying the values and knowledge, where relevant, of use of biological diversity held by indigenous and local communities and their application for sustainable development.

60. In all circumstances related to the proposed development, the customary laws and intellectual property rights of the indigenous and local communities with respect to their traditional knowledge, innovations and practices, should be respected. Such knowledge should only be used with the prior informed consent of the owners of that traditional knowledge. In order to safeguard their rights, indigenous and local communities should establish, or be assisted to establish, protocols consistent with relevant national legislation for access to and use of traditional knowledge, innovations and practices in the cultural, environmental and social impact assessment processes. Assistance in establishing such protocols should be provided if so requested.

#### ***F. Mitigation and threat-abatement measures***

61. In the context of impact assessments, and particularly with respect to mitigation measures associated with the development, where there is a threat of significant reduction or loss of biodiversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

#### ***G. Need for transparency***

62. Transparency and public accountability should be maintained regarding the conduct of all phases of the cultural, environmental and social impact assessments, and in any decision-making processes,

except in cases of national security and where confidentiality regarding the handling of secret/sacred traditional knowledge, innovations and practices is required. A clause on non-disclosure of information gathered through the impact assessment process of baseline studies related to traditional knowledge, innovations and practices should be ensured.

#### ***H. Establishment of review and dispute resolution procedures***

63. In order to manage any disputes that may arise in relation to a development proposal and in the ensuing impact assessment processes, dispute resolution means or mechanisms should be available or be established.

### **VI. WAYS AND MEANS**

#### ***A. Strengthening and rebuilding of capacity***

64. Any activity aimed at the incorporation of cultural and social considerations, and the biodiversity-related considerations of indigenous and local communities, into national environmental impact assessment systems should be accompanied by appropriate strengthening and rebuilding of capacities. Expertise in traditional knowledge, innovations and practices is required within the agencies responsible for impact assessment. At the same time, indigenous and local community expertise is required in impact assessment methodologies, techniques and procedures. Environmental impact assessments should include in the assessment team experts, including indigenous experts, in the traditional knowledge, innovations and practices related to the relevant ecosystems.

65. Training workshops on cultural, social and biodiversity-related aspects of environmental impact/strategic assessment and on economic valuation of cultural social and biodiversity resources for both assessment practitioners and representatives of indigenous and local communities would facilitate the emergence of a cross-cultural understanding of the issues.

66. Governments should encourage and support indigenous and local communities, where they have not already done so, to formulate their own community-development plans that will enable such communities to adopt a more culturally appropriate strategic, integrated and phased approach to their development needs in line with community goals and objectives. These plans should include a strategic environment assessment policy or aim to provide a systematic process for integrating social, environmental and cultural considerations in planning and decision-making, for the application of impact assessments to development proposals.

#### ***B. Legislative authority***

67. If cultural, environmental and social impact assessment processes relevant to indigenous and local communities are made an integral part of environmental impact assessment and strategic environmental assessment procedures and incorporated into legislation, and the requirements for project/policy developers to find the most culturally, environmentally and socially sound, efficient options that avoid, reduce or mitigate adverse impacts are made explicit, this will prompt developers, at a very early stage, to use cultural, environmental and social impact assessment tools to improve the development process prior to the project application or consent stage or in some cases prior to screening procedures.

#### ***C. Exchange of information***

68. Web-based resources, such as the clearing-house mechanism of the Convention on Biological Diversity and other means of exchanging experiences and information, including traditional means of

communication, may help to raise awareness about best available methods and useful sources of information and experience concerning both the conduct and integration of cultural, social and biodiversity-related concerns of indigenous and local communities in environmental impact assessment processes and in strategic environmental assessment, and should be developed and used for the provision and exchange of information on environmental impact assessment.

69. Communication between assessment practitioners and indigenous and local community members with experience in cultural, environmental and social impact assessment is in urgent need of improvement and should be enhanced through workshops, case-study assessments and through the sharing of experiences through, for example, the focal point on Article 8(j) and related provisions of the clearing-house mechanism of the Convention on Biological Diversity.

#### ***D. Resources***

70. Resources, including financial, technical and legal support, should be made available to indigenous and local communities and relevant national organizations to enable them to participate fully in all aspects of national impact assessments. This support may be provided by national Governments, where possible, or, in developing countries and countries with economies in transition, by appropriate donor agencies.

#### ***G. Participatory mechanisms for indigenous and local communities***

##### *The Conference of the Parties*

*Recalling* decisions VI/10 and VI/18 of the Conference of the Parties,

*Recognizing* the importance of the full and effective participation of indigenous and local communities in the Convention process and in decision-making processes and the implementation of the Convention at the national level,

*Recognizing also* the need to strengthen and develop mechanisms to further promote the full and effective participation of indigenous and local communities in the Convention process, particularly in matters related to the objectives of Article 8(j) and related provisions,

*Recognizing further* the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation, as recognized in the preamble of the Convention,

*Noting* the work of the Ad Hoc Technical Expert Group on Traditional Knowledge and the Clearing-House Mechanism at its meeting in Santa Cruz de la Sierra, Bolivia, from 24 to 26 February 2003,

*Noting* the need to ensure adequate financial support for the participation of indigenous and local communities in meetings organized under the Convention,

*Noting further* that a number of Parties have put in place measures to facilitate the involvement and participation of indigenous and local communities in decision-making processes and the implementation of the Convention at the national level,

*Emphasizing* the need to strengthen the capacity of indigenous and local communities, in particular at the local level, in order to ensure full and effective involvement and participation in Convention-related matters,

1. *Reiterates* its invitation, contained in paragraph 18 of decision V/16, to Parties and Governments to increase the participation of representatives of indigenous and local communities in official delegations to meetings held under the Convention and *urges* them to further enhance such participation;

2. *Requests* the Executive Secretary to compile information on the participation of indigenous and local communities in the Convention process, and in decision-making processes and the implementation of the Convention at the national level, making it available through the clearing-house mechanism;

3. *Requests* the Executive Secretary to incorporate practical measures to enhance the participation of indigenous and local communities, where appropriate, in the working groups of the Convention on Biological Diversity, Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties, in accordance with the rules of procedure, where appropriate;

4. *Requests* the Executive Secretary, in consultation with the Bureau of the Conference of the Parties, with regard to meetings held under the Convention, to consider the spacing of such meetings, particularly with regard to those of the Ad Hoc Working Group on Article 8(j) and Related Provisions, *vis-à-vis* meetings of the Open-ended Ad Hoc Working Group on Access and Benefit-sharing and of the Conference of the Parties, in order to allow sufficient time and opportunity for indigenous and local community representatives to contribute to and analyse documents prepared for such meetings, and to secure financial support for attendance;

5. *Requests* the Executive Secretary to continue to promote synergies between international environmental instruments, in particular through the joint liaison group of the secretariats of the Convention on Biological Diversity, the United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change on issues of relevance to Article 8(j) and related provisions of the Convention;

6. *Invites* Parties and Governments, in consultation with indigenous and local communities, where they have not already done so, to:

(a) Promote the effective participation of indigenous and local communities in the development of national mechanisms for participation in decision-making and implementation;

(b) Establish national, subregional and/or regional indigenous and local community biodiversity advisory committees, taking into account gender equity at all levels;

(c) Enhance the capacity of national institutions, governmental and civil organizations and organizations of indigenous and local communities to take into account the requirements of Article 8(j) and related provisions and to facilitate its implementation; and

(d) Build sufficient capacity to ensure that the national biodiversity focal point, in accordance with domestic law, is able to make information available to indigenous and local communities with regard to the circulation of documents and outcomes of meetings held under the Convention, with particular emphasis on providing the documents in appropriate and accessible languages of indigenous and local communities;

(e) Enhance the capacity of indigenous and local communities to collaborate with national research organizations and universities in order to identify research and training needs in relation to the conservation and sustainable use of biological diversity;

7. *Mindful* of the particular constraints of developing countries, in particular small island developing States amongst them, *urges* Parties, Governments and international organizations, when

providing financial or other support for *in situ* conservation, in accordance with Article 8(m) and Article 20, paragraphs 2 and 3, of the Convention, to pay particular attention to the establishment and implementation of participatory mechanisms;

8. *Encourages* Parties and Governments to assist indigenous and local community organizations in their regions to hold regional meetings to discuss the outcomes of the decisions of the Conference of the Parties and to prepare for meetings under the Convention, in particular the meetings of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions and the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;

9. *Invites* Parties to include information regarding the level of participation of indigenous and local communities in their national reports, as well as the measures and approaches used to encourage the participation of indigenous and local communities;

10. *Decides* to establish a voluntary funding mechanism under the Convention to facilitate the participation of indigenous and local communities, giving special priority to those from developing countries and countries with economies in transition and small island developing States in meetings under the Convention, including meetings of the indigenous and local community liaison group and relevant meetings of ad hoc technical expert groups. The funding mechanism for the participation of indigenous and local communities established herein shall operate according to criteria to be developed by the Conference of the Parties in consultation with indigenous and local communities and taking into account any United Nations practice in this field;

11. *Requests* the Executive Secretary to further develop the role of the thematic focal point on Article 8(j) and related provisions of the Convention under the clearing-house mechanism with a view to:

(a) Assisting national focal points, as appropriate and subject to available resources, to more effectively disseminate and make accessible Convention-related information to indigenous and local communities with particular emphasis on providing information in appropriate and accessible languages of indigenous and local communities;

(b) Assisting indigenous and local communities, as appropriate and subject to available resources, in the use of information and communication technologies through the organization of capacity-building and training workshops at the local, national, and subregional levels;

(c) Compiling information on existing networks, experts, tools, and resources relevant to meeting the needs of indigenous and local communities;

12. *Requests* the Executive Secretary, in consultation with indigenous and local communities, through the national focal points, to further assist in the development of communication networks and tools for use by indigenous and local communities, *inter alia*, by:

(a) Publishing information through the clearing-house mechanism toolkit on formats, protocols, and standards for use by indigenous and local communities and assist in the further development of communication networks;

(b) Publishing information through the clearing-house mechanism toolkit on electronic communication tools appropriate for use by indigenous and local communities;

(c) Making available through the thematic focal point electronic forums and other communication tools to promote the further development of communications networks by indigenous and local communities;

(d) Publishing information on network architecture and custodianship of data through the clearing-house mechanism toolkit to assist indigenous and local communities in the further development of communication networks by indigenous and local communities;

(e) Identifying other traditional, alternative and non-electronic communication tools to ensure full and effective participation in the communication network by indigenous and local communities.

**H. *Development of elements of sui generis systems for the protection of traditional knowledge, innovations and practices***

*The Conference of the Parties*

*Recalling* decision VI/10 in which the Conference of the Parties recognized that the Convention on Biological Diversity is the primary international instrument with the mandate to address issues regarding the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

*Recalling* paragraph 34 of decision VI/10,

*Recalling also* paragraph 11 of decision V/26 A, by which the Conference of the Parties decided that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing shall maintain communication and exchange of information with the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention,

*Recognizing* that the preservation and maintenance of knowledge, innovations and practices of indigenous communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity are linked to the continued stewardship by indigenous and local communities of biological resources on lands and waters traditionally occupied or used by them,

*Also recognizing* that indigenous and local communities have their own systems, as part of their customary laws, for preserving and maintaining traditional knowledge, innovations and practices as well as for the protection and transmission of traditional knowledge,

*Recognizing* the transboundary distribution of some biological and genetic resources and associated traditional knowledge,

*Recognizing also* the collective and inter-generational nature of traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

*Recognizing also* the need to halt the misuse and misappropriation of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and related genetic resources through effective mechanisms that will protect the rights of indigenous and local communities,

*Recognizing* the importance of access and benefit-sharing arrangements in the conservation of genetic resources and the preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

*Noting* that a mix of defensive and positive measures, taking into account both proprietary and non-proprietary aspects, may be necessary for the protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity,

*Recognizing* that a *sui generis* system for the protection of traditional knowledge at the international level may enable indigenous and local communities to effectively protect their knowledge against misuse and misappropriation and that such a system should be flexible and respect the interests and rights of indigenous and local communities,



*Recognizing* that while in some cases databases and registers may play a role in the protection of traditional knowledge, innovations and practices, such databases and registers are only one approach in the effective protection of traditional knowledge, innovations and practices and their establishment should be voluntary, not a requirement for protection, and established with the prior informed consent of indigenous and local communities, and *further recognizing*, if indigenous and local communities decide to use such databases and registers, the need for funding and capacity-building for indigenous and local communities regarding the establishment and maintenance of such databases and registers,

*Emphasizing* that any *sui generis* system for the protection of traditional knowledge, innovations and practices needs to be developed taking into consideration customary law and practices with the full and effective involvement and participation of concerned indigenous and local communities,

*Recognizing* that traditional knowledge, innovations and practices are sometimes accessed without the consent of indigenous and local communities and that these communities have a right to grant or refuse such access as well as to determine the level of such access, subject to Article 8(j),

*Concerned* that some traditional knowledge, innovations and practices have been accessed without the prior informed consent of indigenous and local communities and *recognizing* that necessary steps should be taken to ensure the respect of prior informed consent for any future use of traditional knowledge, subject to Article 8(j),

*Aware* of the need for further work by the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, on a number of issues relating to the protection of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

*Recognizing* the need for continued collaboration with other relevant organizations working on issues related to the protection of traditional knowledge, innovations and practices, such as the World Intellectual Property Organization (WIPO), the Permanent Forum on Indigenous Issues (PFII), the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) to ensure mutual supportiveness and avoid duplication of efforts,

1. *Requests* the Executive Secretary to continue gathering and analysing information on the issues set out in paragraphs 34 (b) to (e) of decision VI/10 and disseminate this information through the clearing house mechanism;

2. *Invites* Parties, Governments, indigenous and local communities, and relevant international organizations to communicate to the Executive Secretary any relevant information on existing indigenous, local, national and regional *sui generis* systems for the protection of the knowledge, innovations and practices of indigenous communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and any relevant information on innovative policy, administrative and legislative measures that are supportive of customary law and practices;

3. *Requests* the Executive Secretary to compile information on issues identified in paragraph 2 above, and on the nature of customary laws and traditional protocols of indigenous and local communities relating to customary uses and the conservation and sustainable use of biological diversity, in cooperation with indigenous and local communities, for consideration by the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention;

4. *Requests* the Executive Secretary, based on submissions by Parties, Governments, indigenous and local communities and relevant international organizations, to develop, in cooperation with the ongoing work on the use of terms in the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing and in consultation with Parties, indigenous and local communities and relevant international organizations, a glossary of terms relevant to Article 8(j) and related provisions for the consideration by the fourth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention;

5. *Decides* on appropriate mechanisms for better cooperation between the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing and the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention in order to ensure the participation and involvement of indigenous and local communities in the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing;

6. *Requests* the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, with the collaboration of relevant international organizations and bodies such as the United Nations Permanent Forum on Indigenous Issues to:

(a) Consider non-intellectual-property-based *sui generis* forms of protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biodiversity;

(b) Further develop, as a priority issue, elements for *sui generis* systems, listed in the annex to the present decision, for protection of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and ensure benefit-sharing arrangements for these communities when their traditional knowledge and associated genetic resources are accessed;

(c) Review the relevance and applicability of the Bonn Guidelines to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention in accordance with decision VI/24 A of the Conference of the Parties;

(d) Review and, if appropriate, make recommendations regarding the international regime on access and benefit-sharing with a view to including *sui generis* systems and measures for the protection of knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;

(e) Assess the role of databases and registers in the protection of traditional knowledge, innovations and practices embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;

(f) Explore, taking into account the work of the World Intellectual Property Organization and the United Nations Permanent Forum on Indigenous Issues, the potential of and conditions under which the use of existing as well as new forms of intellectual property rights can contribute to achieving the objectives of Article 8(j) and related provisions of the Convention;

7. *Invites* Parties and Governments to consider appropriate measures, with the full and effective participation of indigenous and local communities, to implement at local, national, subregional, regional and international levels *sui generis* systems and other new innovative mechanisms that ensure the protection of traditional knowledge, innovations and practices taking into consideration customary law and traditional practices;

8. *Requests* the Executive Secretary, with the cooperation of Parties, indigenous and local communities and relevant international organizations, to collect information on the role of databases and registers in the protection of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;

9. *Invites* Parties, Governments and international organizations to strengthen the capacity of indigenous and local communities to protect, use, preserve, maintain and promote their traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;

10. *Invites* both Parties and indigenous and local communities to share national experiences amongst themselves on local and national approaches, as well as international approaches, for the protection of traditional knowledge and to consider the harmonization of approaches at the regional level;

11. *Invites* the World Intellectual Property Organization to make available to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, the results of its work on issues relevant to the implementation of Article 8(j) and related provisions of the Convention, in particular in relation to the protection of traditional knowledge and its recognition as prior art.

*Annex*

**SOME POTENTIAL ELEMENTS TO BE CONSIDERED IN THE  
DEVELOPMENT OF *SUI GENERIS* SYSTEMS FOR THE  
PROTECTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS  
AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES**

1. Statement of purpose, objectives and scope.
2. Clarity with regard to ownership of traditional knowledge associated with biological and genetic resources.
3. Set of relevant definitions.
4. Recognition of elements of customary law relevant to the conservation and sustainable use of biological diversity with respect to: (i) customary rights in indigenous/traditional/local knowledge; (ii) customary rights regarding biological resources; and (iii) customary procedures governing access to and consent to use traditional knowledge, biological and genetic resources.
5. A process and set of requirements governing prior informed consent, mutually agreed terms and equitable sharing of benefits with respect to traditional knowledge, innovations and practices associated with genetic resources and relevant for the conservation and sustainable use of biological diversity.
6. Rights of traditional knowledge holders and conditions for the grant of rights.
7. The rights conferred.
8. A system for the registration of indigenous/local knowledge/Systems for the protection and preservation of indigenous/local knowledge.

9. The competent authority to manage relevant procedural/administrative matters with regard to the protection of traditional knowledge and benefit-sharing arrangements.
10. Provisions regarding enforcement and remedies.
11. Relationship to other laws, including international law.
12. Extra-territorial protections.

**I. Recommendations of the Permanent Forum on Indigenous Issues to the Convention on Biological Diversity**

*The Conference of the Parties*

*Stressing the need* for a better understanding among United Nations agencies on issues pertaining to indigenous and local communities and their traditional knowledge,

*Noting* recommendations 1, 8 and 9 of the Permanent Forum on Indigenous Issues contained in the report of the second session of the Forum, which are addressed to the Convention on Biological Diversity (UNEP/CBD/WG8J/3/8),

1. *Welcomes* the increasing collaboration between the Convention process and the Permanent Forum on Indigenous Issues on matters pertaining to indigenous and local communities and their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity;

2. *Requests* the Executive Secretary to contribute as appropriate to the preparation of the report of the Secretary General to the Forum on Indigenous Issues on the implementation of chapter 26 of Agenda 21 and other relevant chapters, such as chapters 36 and 15;

3. *Requests* the Executive Secretary to transmit to the Permanent Forum on Indigenous Issues at its third session 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;

4. *Further requests* the Executive Secretary to consult and coordinate with the Secretariat of the Forum and to collaborate with United Nations agencies and relevant international organizations with a view to organizing a workshop on cultural, environmental and social impact assessments based on the Akwé: Kon Voluntary Guidelines and aimed at the further strengthening of the understanding of the link between environment and cultural diversity, with the participation of representatives of indigenous and local communities, and *urges* Parties and Governments to provide financial resources in support of the organization of the workshop;

5. *Requests* the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions to develop elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity, taking into account task 16 of the programme of work on Article 8(j) and related provisions.

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