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CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Ninth meeting
Bonn, 19–30 May 2008
Agenda item 4.2

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

IX/13. Article 8(j) and related provisions

Bearing in mind that for the purposes of this decision, protection of traditional knowledge, innovations and practices should be interpreted in accordance with the Convention and in particular with the provisions of Article 8(j),

Taking note of the International Expert Meeting on responses to Climate Change for Indigenous and Local Communities and the Impact on Their Traditional Knowledge Related to Biological Diversity – Arctic Region, held in Helsinki, 25 to 28 March 2008,

Also taking note of the United Nations Declaration on the Rights of Indigenous Peoples,^{1/}

A. *Progress report on the implementation of the programme of work on Article 8(j) and related provisions*

The Conference of the Parties

1. *Encourages* further progress in the integration of the objectives of Article 8(j) and related provisions, including Articles 10(c), 17, paragraph 2 and 18, paragraph 4, into the thematic programmes of the Convention and other important scientific and cross-sectional issues and notes the progress made in integrating Article 8(j) tasks as reflected through the national reports;

2. *Requests* the Executive Secretary to continue to report on progress in the implementation of Article 8(j) and related provisions based on information submitted in national reports and on the integration of the objectives of Article 8(j) and related provisions, including Article 10(c), into the thematic areas, for the sixth meeting of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions;

3. *Requests* Parties, and especially Parties that have not yet submitted information regarding the implementation of the programme of work for Article 8(j) and related provisions, including information on national participation of indigenous and local communities to do so through, *inter alia*,

^{1/} General Assembly resolution 61/295 of 13 September 2007, annex.

the fourth national reports, where possible, and in time for the sixth meeting of the Working Group on Article 8(j) and *requests* the Executive Secretary to summarize and compile this information in a framework of best conservation and sustainable-use practices at the national, regional and community levels and make it available to the Working Group on Article 8(j) and Related Provisions at its sixth meeting;

4. *Requests* the Executive Secretary to continue to compile case-studies, analyse and report on work concerning related provisions, focusing on Article 10(c), and to provide advice to the Working Group at its sixth meeting on how this related provision may be further advanced and implemented as a priority;

5. *Decides* that one meeting of the Working Group on Article 8(j) and Related Provisions be organized back to back with an appropriate meeting, prior to the eighth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;

6. *Decides* to continue work on the tasks of the first phase of the programme of work that have not yet been completed or are ongoing, namely tasks 1, 2, and 4;

7. *Decides* to initiate tasks 7, 10 and 12 and for that purpose invites Parties, Governments, indigenous peoples and local communities, and other relevant organizations to provide submissions on how to take these tasks forward, identifying the effective contribution of the Working Group on Article 8(j) and Related Provisions to ongoing work, in particular concerning *sui generis* systems, the code of ethical conduct and the international regime on access and benefit-sharing, and *requests* the Executive Secretary to compile these views and make them available to the sixth meeting of the Working Group on Article 8(j) and Related Provisions for its consideration;

8. *Decides* to initiate task 15 of the programme of work for Article 8(j) and related provisions, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity in order to facilitate the recovery of traditional knowledge of biological diversity; and *invites* Parties, Governments and international organizations, indigenous peoples and local communities and other stakeholders to provide to the Secretariat their views and requests the Executive Secretary to compile these views and make them available to the Working Group on Article 8(j) and Related Provisions at its sixth meeting for its consideration and the development of terms of reference in order to address this issue;

9. *Requests* the Executive Secretary for the purpose of initiating task 15 to cooperate with the United Nations Educational, Scientific and Cultural Organization and other relevant organizations in order to enhance synergies, avoid duplication, and respect the work of these organizations;

10. *Encourages* Parties, indigenous and local communities to provide submissions on the desirability and the potential elements of a strategy for conservation and sustainable use, including customary use, of biodiversity by indigenous and local communities aimed at empowering and strengthening the role of indigenous peoples and local communities in decision-making processes at local, national and international levels, and requests the Executive Secretary to compile these submissions and make them available to of the Working Group on Article 8(j) at its sixth meeting for its consideration;

11. *Decides* to undertake at its tenth meeting an in-depth review of the tasks in the programme of work of Article 8(j) and related provisions of the Convention on Biological Diversity with the purpose of continuing the work of the Working Group on Article 8(j), and with a view to placing greater focus on the interlinkages between the protection of traditional knowledge, innovations and practices and the conservation and sustainable use of biological diversity and, the fair and equitable sharing of the benefits arising from the utilization of traditional knowledge, innovations and practices;

12. *Requests* that the Ad Hoc Open-ended Working Group on Article 8(j) to continue to collaborate and contribute to the fulfilment of the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing by providing views on the elaboration and negotiation of the international regime on access and benefit-sharing relevant to traditional knowledge, innovations and practices associated with genetic resources and to the fair and equitable sharing of benefits arising from their utilization.

B. 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: (i) revised regional reports – identification of obstacles for traditional knowledge; (ii) indigenous and local communities highly vulnerable to climate change; (iii) protecting the rights of indigenous and local communities living in voluntary isolation

The Conference of the Parties,

Recalling the mandate of the Convention on Biological Diversity, while *being mindful* of the mandate of the United Nations Framework Convention on Climate Change,

Recognizing the need to respect, preserve and maintain the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity and to promote their wider application with the approval and involvement of holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices,

Concerned by the impacts of climate change and adaptation and mitigation activities on indigenous and local communities and their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity,

Mindful of the cultural diversity of indigenous and local communities, including those in voluntary isolation, and the role played by their knowledge, innovations and practices in the conservation and sustainable use of biological diversity,

Noting the research made available by the Secretariat, concerning: guidelines for documenting traditional knowledge; indigenous and local communities highly vulnerable to climate change; and protecting the rights of indigenous and local communities living in voluntary isolation,

1. *Takes note with appreciation* of the completion of phase two of the composite report concerning the identification of national processes that may threaten the maintenance, preservation and application of traditional knowledge and the identification of processes at the local-community level that may threaten the maintenance, preservation and application of traditional knowledge;

2. *Invites* Parties and Governments and relevant international organizations to assist indigenous and local communities to address the underlying and community-specific causes of the decline of traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity through capacity-building and practical measures to develop community action plans for its preservation, maintenance and respect;

3. *Notes with concern* the specific vulnerabilities of indigenous and local communities to the impacts of climate change and of activities aimed at the mitigation and adaptation to the impacts of climate change, including resulting accelerated threats to traditional knowledge;

4. *Notes also* the unique value of biodiversity related traditional knowledge, innovations and practices of indigenous and local communities, especially those of women, in contributing to the understanding and evaluation of impacts of climate change, including vulnerabilities and adaptation options and other forms of environmental degradation, and encourages Parties, Governments, and relevant international organizations, with the full and effective participation and prior informed consent of indigenous and local communities, to document, analyse and apply, as far as possible and where appropriate, and in accordance with Article 8(j) of the Convention, such knowledge in ways that complement science-based knowledge;

5. *Invites* the Conference of the Parties to the United Nations Framework Convention on Climate Change to take note of the implications of climate change on biodiversity-related traditional knowledge, innovations and practices of indigenous and local communities;

6. *Encourages* Parties to the Convention to consider, as far as possible and as appropriate, introducing necessary measures, administrative as well as legislative, for ensuring the full and effective participation of indigenous and local communities in formulating, implementing and monitoring of activities aimed at mitigation and adaptation to the impacts of climate change where this could effect biological diversity and biodiversity-related traditional knowledge, innovations and practices of indigenous and local communities;

7. *Further encourages* Parties to make such information available to the Executive Secretary for dissemination through the most appropriate mechanism for exchange of information and sharing of experiences and *requests* the Executive Secretary to explore the usefulness of the Convention's clearing-house mechanism and the Traditional Knowledge Information Portal in this respect, as well as opportunities for cooperation with the United Nations Framework Convention on Climate Change;

8. *Notes* the report on possible measures to ensure respect for the rights of unprotected and voluntarily isolated communities taking into account their traditional knowledge (UNEP/CBD/WG8J/5/INF/17);

9. *Invites* Parties to develop appropriate policies that ensure the respect for the rights of voluntarily isolated peoples living within the protected areas, reserves and parks, and proposed areas for protection, including their choice to live in isolation.

C. *Considerations for guidelines for documenting traditional knowledge*

The Conference of the Parties,

Recalling decision VIII/5 B, paragraph 5, in which it requested the Working Group on Article 8(j) and Related Provisions to explore the possibility of developing technical guidelines for recording and documenting traditional knowledge, innovations and practices, and to analyse the potential threats of documentation to the rights of the holders of traditional knowledge, innovations and practices, with the full and effective participation of indigenous and local communities,

Affirming the central role of traditional knowledge in the cultures of indigenous and local communities and rights of indigenous and local communities to their knowledge, innovations and practices,

Recognizing that the documentation and recording of traditional knowledge should primarily benefit indigenous and local communities and that their participation in such schemes should be voluntary and not a prerequisite for the protection of traditional knowledge,

1. *Urges* Parties and Governments and international organizations to support and assist indigenous and local communities to retain control and ownership of their traditional knowledge, innovations and practices including through:

(a) The repatriation of traditional knowledge, innovations and practices, in databases, as appropriate; and

(b) Supporting capacity-building and the development of necessary infrastructure and resources;

With the aim of ensuring that:

(c) Documentation of traditional knowledge, innovations and practices, is subject to the prior informed consent of indigenous and local communities; and

(d) Indigenous and local communities can make informed decisions regarding the documentation of their traditional knowledge, innovations and practices;

2. *Recalling* decision VI/10 F, paragraphs 35-38,^{2/} *requests* the Executive Secretary to collaborate with the United Nations Forum on Indigenous Issues, the United Nations Educational, Scientific and Cultural Organization, and the World Intellectual Property Organization, to address both the potential benefits and threats of the documentation of traditional knowledge to make the results available to the Working Group on Article 8(j) and Related Provisions at its sixth meeting.

D. Plan of action for the retention of traditional knowledge: measures and mechanisms to address the underlying causes for the decline of traditional knowledge

The Conference of the Parties

1. *Notes with appreciation* the advancement of the elements of the plan of action for the retention of traditional knowledge and, in particular, elements B and D, and *decides* that the priority for future work on the plan of action should focus on section E, on capacity-building;

2. *Urges* Parties and Governments to develop their own toolkit of measures and mechanisms to address the underlying causes for the decline of traditional knowledge, innovations and practices based on their own unique national circumstances and diversity of indigenous and local communities, with the full and effective participation of indigenous and local communities and to report on experiences, emphasising positive measures, through the national reporting process and through the clearing-house mechanism and the Traditional Knowledge Information Portal;

3. *Invites* the financial mechanism of the Convention and other possible donors to provide funding for the development of national action plans for the retention of traditional knowledge relevant to the conservation and sustainable use of biological diversity;

4. *Invites* Parties and Governments, with the input of indigenous and local communities, to report on positive measures for the retention of traditional knowledge in areas relevant for the conservation and the sustainable use of biological diversity, such as those contained in but not limited to the annex hereto.

^{2/} In decision VI/10 F, paragraphs 35-38, the Conference of the Parties requested that the World Intellectual Property Organization make relevant information on the protection of traditional knowledge available through the clearing-house mechanism of the Convention.

Annex

- (a) Strengthening traditional health-care systems based on biodiversity.
- (b) Strengthening opportunities to learn and speak indigenous and local languages.
- (c) Culturally appropriate sport and tourism policies.
- (d) Research on indigenous and local communities way of life and their environment.
- (e) Building of culturally appropriate business structures within indigenous and local communities (such as cooperatives).
- (f) Developing technologies that focus on traditional methods of cultivation, harvesting and post-harvesting activities (i.e., storage and seed preparation activities).
- (g) Re-establishment of traditional spiritual/religious institutions.
- (h) Creation of media, such as radio, newspapers and television stations controlled by indigenous and local communities and with traditional content, according to national law.
- (i) Creation of protected areas, nature parks and others, in consultation with indigenous and local communities and also involving them in their management, consistent with national law.
- (j) Initiatives bringing together women, youth and elders.
- (k) Promotion of the creation of businesses offering traditional products and services.
- (l) Strengthening institutions that foster traditional collection and distribution of food, traditional medicine and other resources.
- (m) Culturally appropriate education-curriculum development and implementation initiatives, in indigenous and local communities.
- (n) Initiatives of indigenous and local communities for culturally appropriate and sustainable development.

E. Participatory mechanisms for indigenous and local communities in the Convention*The Conference of the Parties*

1. *Welcomes* the convening of the Capacity-building Workshop on Networking and Information Exchange for National Focal Points and Indigenous and Local Communities in the Latin America and the Caribbean Region, held in Quito from 14 to 16 December 2006, with the generous support of the Governments of Spain and the Netherlands;
2. *Notes with appreciation* the work of the International Indigenous Forum on Biodiversity and other indigenous and local community organizations to promote the understanding of the work of the Convention among indigenous and local communities, and to promote their participation in the meetings of the Convention;
3. *Notes* the need for the translation, into the six official languages of the United Nations, of notifications and other information resources for indigenous and local communities, as appropriate;
4. *Invites* Parties, Governments and relevant funding institutions and mechanisms to donate to the General Trust Fund for Voluntary Contributions to Facilitate the Participation of Indigenous and Local Communities in the Work of the Convention on Biological Diversity, in accordance with the criteria for the operation of the voluntary funding mechanism as adopted by the Conference of the Parties at its eighth meeting in decision VIII/5 D, in order to enable the continuation of this important initiative;

5. *Encourages* Parties, Governments and relevant international organizations, as appropriate, in collaboration with the Executive Secretary, *inter alia* through the Global Initiative on Communication, Education and Public Awareness (CEPA) and the clearing-house mechanism, to develop, including in local languages, as appropriate, alternative means of communicating public information on traditional knowledge related to the conservation and sustainable use of biodiversity, in plain language and diverse community-friendly formats, such as video, including television, audio for community radio, songs, posters, theatre/drama, and film, in order to ensure the full and effective participation of indigenous and local communities, including women and youth, at local, national and international levels, while supporting the development by indigenous and local communities of their own media tools;

6. *Notes with appreciation* the revitalization of the Article 8(j) homepage on the website of the Secretariat and the creation of the Traditional Knowledge Information Portal, and *welcomes* the development of related initiatives including a number of less-technology intensive communication and information exchange tools for use by indigenous and local communities by the Executive Secretary;

7. *Requests* the Executive Secretary to:

(a) Convene, subject to the availability of financial resources, further regional and subregional workshops on community-friendly communication tools on traditional knowledge related to the conservation and sustainable use of biodiversity, to assist local and indigenous communities in their use and to facilitate the establishment of communication networks, noting the need for adapting them to local languages and for involving trainers from indigenous and local communities;

(b) Continue to develop and translate, subject to the availability of financial resources, the various electronic communication mechanisms, such as the Article 8(j) homepage and the Traditional Knowledge Information Portal, establish links to relevant existing, new and upcoming web-based initiatives such as Indigenousportal.com, and report on progress to the next meeting of the Working Group;

(c) Monitor the use of the Convention website and, in particular, the Article 8(j) homepage and the Traditional Knowledge Information Portal, and to consult with Parties, indigenous and local communities, and their organizations, including youth and women, and other relevant national and regional organizations that are participating in the work of the Convention, such as the International Indigenous Forum on Biodiversity, to identify any gaps or shortcomings, and to report to the next meeting of the Working Group on progress made in establishing networks with indigenous and local communities;

(d) Make available, through the Traditional Knowledge Information Portal and other means, information on possible opportunities and sources of funding that may offer support to indigenous and local communities in States Parties and the networks of those communities, to disseminate information, in appropriate and accessible languages, and through appropriate media, to indigenous and local communities on Article 8(j)-related issues including the issue of access and benefit-sharing;

(e) Provide to the national focal points, in a timely fashion, documentation for meetings under the Convention in the six United Nations languages, in order to facilitate the consultation process with, between and within indigenous and local communities;

(f) Intensify efforts to promote the General Trust Fund for Voluntary Contributions to Facilitate the Participation of Indigenous and Local Communities in the Work of the Convention on Biological Diversity;

8. *Reiterates* its request to the Executive Secretary, expressed in decision VIII/5 C, to endeavour to make documentation for the meetings of the Working Group on Article 8(j) and Related

Provisions and the Working Group on Access and Benefit-sharing available three months prior to those meetings, where possible, in accordance with the rules of procedure for the meetings under the Convention on Biological Diversity, to facilitate consultations with representatives of indigenous and local communities.

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

The Conference of the Parties,

Recalling the chapeau to decision VIII/5, which states that “for the purposes of this decision, protection of traditional knowledge, innovations and practices must be interpreted in accordance with the provisions of Article 8(j)”,

1. *Takes into account* the elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices as further developed in the note by the Executive Secretary on the subject (UNEP/CBD/WG8J/5/6) and, recognizes that they provide useful elements to consider as and when Parties and Governments develop *sui generis* systems to protect traditional knowledge, innovations and practices of indigenous and local communities;

2. *Invites* Parties and Governments to consider that the development, adoption or recognition of effective *sui generis* systems be local, national or regional in nature, taking into consideration the relevant customary law of the indigenous and local communities concerned, and recognized or created with the full and effective participation of those communities, in order to protect, respect, preserve, maintain and promote their knowledge, innovations and practices, while ensuring fair and equitable benefit-sharing;

3. *Invites* Parties, Governments, indigenous and local communities and relevant organizations to share their experience in the development, adoption or recognition of *sui generis* systems, and to submit to the Executive Secretary concise case-studies and other experiences that underpin the elements of *sui generis* systems relevant to the conservation and sustainable use of biodiversity contained in the note by the Executive Secretary on development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices (UNEP/CBD/WG8J/5/6), including means to ensure prior and informed consent;

4. *Requests* the Executive Secretary to make case-studies and experiences received available through the Traditional Knowledge Information Portal in the clearing-house mechanism of the Convention and other means;

5. *Further requests* the Executive Secretary to update his note on the subject (UNEP/CBD/WG8J/5/6) in light of case-studies and experiences received, for consideration by the Working Group on Article 8(j) and Related Provisions at its sixth meeting;

6. *Notes* the clear linkage in many countries between effective *sui generis* systems as may be developed adopted or recognized and the implementation of access and benefit-sharing provisions and the need to prevent the misuse and misappropriation of traditional knowledge, innovations and practices of indigenous and local communities, as stated in decision VII/6 H.

G. Elements of a code of ethical conduct

The Conference of the Parties

1. *Takes note* of the further revised draft elements of a code of ethical 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, as contained in the annex to the present decision;
2. *Requests* Parties and *invites* Governments, indigenous and local communities, relevant international organizations and other relevant stakeholders, after having undertaken, where appropriate, consultations, to submit written comments to the Executive Secretary on the revised draft elements, at least six months prior to the sixth meeting of the Ad Hoc Working Group on Article 8(j) and Related Provisions;
3. *Requests* the Executive Secretary to transmit the present decision to the United Nations Permanent Forum on Indigenous Issues and to seek collaboration in the development of the elements of a code of ethical conduct;
4. *Also requests* the Executive Secretary to compile views and comments provided and make the compilation available at least three months prior to the sixth meeting of the Ad Hoc Working Group on Article 8(j) and Related Provisions for its consideration;
5. *Requests* the Ad Hoc Working Group on Article 8(j) and Related Provisions to further develop the draft elements of a code of ethical conduct and to submit them to the Conference of the Parties at its tenth meeting for its consideration and possible adoption.

Annex

DRAFT ELEMENTS OF A CODE OF ETHICAL CONDUCT TO [PROMOTE] [ENSURE] RESPECT FOR THE CULTURAL AND INTELLECTUAL HERITAGE INDIGENOUS AND LOCAL COMMUNITIES RELEVANT TO THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

[Recalling [the request in] recommendations 1, 8 and 9 of the report of the second session of the United Nations Permanent Forum on Indigenous Issues endorsed by the Conference of Parties in decision VII/16, paragraph 5, and decision VIII/5 F, concerning elements of an code of ethical 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, and taking into account task 16 of the programme of work on Article 8(j) and related provisions,

Emphasizing, that for the purposes of this code “cultural and intellectual heritage” refers to the cultural heritage and intellectual property of indigenous and local communities and is interpreted within the context of the Convention, as the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

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

Recalling that Parties to the Convention on Biological Diversity have subject to their respective national legislation, undertaken, pursuant to Article 8(j) of the Convention, to[, as far as possible and as appropriate,] respect, preserve and maintain knowledge, innovations and practices of indigenous and

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local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity (hereafter referred to as “traditional knowledge”), and to promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices,

Recognizing that respect for traditional knowledge, requires that it is valued equally with and complementary to Western scientific knowledge, and that this is fundamental in order to promote full respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity,

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

Further recognizing the importance of implementing the Akwé:Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities,

[*Recalling* that access by indigenous and local communities to lands and waters traditionally occupied or used by indigenous and local communities, together with the opportunity to practice traditional knowledge on those lands and waters, is paramount for the retention of traditional knowledge, and the development of innovations and practices relevant for the conservation and sustainable use of biological diversity,]

Bearing in mind the importance of preserving [and developing] traditional languages used by indigenous and local communities as rich sources of traditional knowledge regarding medicines, traditional [farm] practices, including agricultural biodiversity and animal husbandry, lands, air, water and whole ecosystems that have been shared from one generation to the next,

Taking into account the holistic concept of traditional knowledge and its multi-dimensional characteristics which include but are not limited to spatial, ^{3/} cultural ^{4/}, [spiritual], and temporal qualities, ^{5/}

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

- (a) The International Bill of Human Rights (1966);
- (b) International Labour Organization Convention No.169 on Indigenous and Tribal Peoples, (1989);
- (c) The Convention on Biological Diversity (1992);
- (d) The Second International Decade of the World’s Indigenous Peoples (2005-2014);
- (e) United Nations Declaration on the Rights of Indigenous Peoples; ^{6/}
- (f) Universal Declaration On Bioethics And Human Rights (UNESCO 2005);

^{3/} Territorially-based/locally-based.

^{4/} Rooted in the broader cultural traditions of a peoples.

^{5/} Evolves, adapts and transforms dynamically over time

^{6/} As adopted by the United Nations General Assembly on 13 September 2007.

- (g) Universal Declaration on Cultural Diversity (UNESCO, 2001);
 - (h) The Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted on 20 October 2005,
 - (i) [The Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2003)]
- [Have agreed] [Proclaim] as follows:]

Section 1

[NATURE AND SCOPE] [INTRODUCTION]

1. The following [draft] elements of a code of ethical conduct are voluntary and are intended to provide guidance [in activities/interactions with indigenous and local communities and for the development of local, national, or regional codes of ethical conduct], with the aim of promoting respect, preservation and maintenance of traditional knowledge, innovations and practices [relevant for the conservation and sustainable use of biodiversity].

Section 2

RATIONALE

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

3. [These elements are intended to provide guidance to help Parties and Governments in establishing or improving national legal frameworks required for activities/interactions with indigenous and local communities [and in particular, for development or research on lands and waters traditionally occupied by indigenous and local communities] while enabling the indigenous and local communities to promote respect of their traditional knowledge and associated biological and genetic resources.]

Option A: delete para

Option B: new text:

These elements are intended to provide guidance to help Parties [to the Convention] and Governments in establishing or improving national legal frameworks required for [all] activities/interactions with indigenous and local communities [by *inter alia*, government departments and agencies, academic institutions, private sector developers, potential stakeholders in development and/or research projects, extractive industries, forestry and any other actors eventually involved] [and in particular, for development or research on lands and waters traditionally occupied by indigenous and local communities while enabling the indigenous and local communities to promote respect of their traditional knowledge and associated biological and genetic resources.]

4. [One of the aims of the elements of this code of ethical conduct is that all State Parties to the Convention on Biological Diversity, as well as relevant international organizations, whether governmental or non-governmental, actively cooperate in their promotion, understanding and

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implementation among those interacting with indigenous and local communities and in relevant research specifically involving traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity to [ensure] [promote] respect for that knowledge.]

Section 3

ETHICAL PRINCIPLES

5. [The following ethical principles apply to activities/interactions with indigenous and local communities, relevant to the conservation and sustainable use of biological diversity, including development and/or research proposed or being conducted on sacred sites, culturally significant sites [and lands and waters traditionally occupied or used by indigenous and local communities.]]

Option A

6. The ethical principles below are intended to [facilitate] [acknowledge] the rights of indigenous and local communities to enjoy, protect and pass on to future generations, their cultural and intellectual heritage [relevant for the conservation and sustainable use of biodiversity] and it is according to these principles that others should engage with indigenous and local communities.

Option B

6. The ethical principles below are intended to [facilitate] [acknowledge] the overarching principle, that indigenous and local communities have the right to enjoy, protect and pass on to future generations, their cultural and intellectual heritage [relevant for the conservation and sustainable use of biodiversity] and it is according to these principles that others should engage with indigenous and local communities.

Option C

6. The ethical principles below suggest the over-arching principle, that indigenous and local community members [are entitled to] to enjoy their culture ^{7/} and this implies the ability to, if they so desire, pass on their culture [relevant for the conservation and sustainable use of biodiversity] to future generations, and it is on this basis that others are encouraged to engage with indigenous and local communities.

It is highly desirable that activities/interactions with indigenous and local communities be based on the following:

A. *General ethical principles*

Respect for existing settlements

7. This principle recognizes the [predominance and] importance of mutually agreed settlements or agreements at national level which exists in many countries and that respect must be applied to such arrangements at all times.

Intellectual property

8. Community and individual concerns over, and claims to, intellectual property relevant to traditional knowledge, innovations and practices related to the conservation and sustainable use of biodiversity should be acknowledged and addressed in the negotiation with traditional knowledge holders

^{7/} The International Covenant on Civil and Political Rights, Article 27.

and/or indigenous and local communities, as appropriate, prior to starting activities/interactions . [Knowledge holders should be allowed to retain existing rights, including the determination of intellectual property rights, over their traditional knowledge.]

Non-discrimination

9. The ethics and guidelines for all activities/interactions should be non-discriminatory, taking into account affirmative action, particularly in relation to gender, disadvantaged groups and representation.

[Transparency/full disclosure]

10. Indigenous and local communities should be [fully] informed [to the fullest extent possible] about the nature, scope and purpose of any proposed activities/interactions carried out by others [that may involve the use of their traditional knowledge, innovations and practices related to the conservation and sustainable use of biodiversity] [, occurring on or likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities]. [Subject to national law,] this information should be provided in a manner that takes into consideration and actively engages with the body of knowledge and cultural practices of indigenous and local communities.

[Approval] [Free prior informed consent] of the knowledge holders

11.

Option A

Any activities/interactions related to biological diversity, conservation and sustainable use occurring on or likely to impact on [sacred sites and on lands and waters traditionally occupied or used by] indigenous and local communities and impacting upon specific groups, must be carried out [only] [as far as possible and as appropriate] with the [approval] [free prior informed consent] of those indigenous and local communities concerned [in accordance with existing national and international obligations].

Option B

Traditional knowledge should only be used with the approval of the knowledge holders.

Option C

Activities/interactions developed [in the lands and waters of indigenous and local communities] should gain the approval of these indigenous and local communities on sacred sites and culturally significant sites as well this should recognize and acknowledge that indigenous and local communities may be reluctant to provide information that would allow for the clear identification of sacred sites.

Respect

12. Traditional knowledge must be respected as a legitimate expression of the culture, traditions, and experience of relevant indigenous and local communities. It is highly desirable that those interacting with indigenous and local communities respect the integrity, morality and spirituality of the cultures, traditions and relationships of indigenous and local communities and avoid the imposition of external concepts, standards and value judgements in inter-cultural dialogue. Respect for cultural heritage, ceremonial and sacred sites, as well as sacred species and secret and sacred knowledge ought to be given specific consideration in any activities/interactions.

[Protection of] collective or individual ownership

13. The resources and knowledge of indigenous and local communities can be collectively or individually owned. Those interacting with indigenous and local communities should seek to understand the balance of collective and individual rights and obligations. [The right of indigenous and local communities to protect, collectively or otherwise, their cultural and intellectual heritage should be respected.]

Fair and equitable sharing of benefits

14. [Indigenous and local communities ought to receive fair and equitable benefits for their contribution to any activities/interactions related to biodiversity and associated traditional knowledge [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]. Benefit-sharing should be regarded as a way of strengthening indigenous and local communities and promoting the objectives of the Convention on Biological Diversity and ought to be equitable within and among relevant groups.]

Protection

15. Proposed activities/interactions within the mandate of the Convention should make reasonable efforts to protect and enhance the relationships of affected indigenous and local communities with the environment and thereby promote the objectives of the Convention.

[Precautionary approach [including the concept of “do no harm”]]

16. Reaffirming the precautionary approach contained in principle 15 of the Rio Declaration on Environment and Development ^{8/} and in the preamble to the Convention on Biological Diversity, the prediction and assessment of potential biological and cultural harms should include local criteria and indicators, and should fully involve the relevant indigenous and local communities.]

B. Specific considerations

17.

Option A

[Recognition of sacred sites, [culturally significant sites] and [lands and waters traditionally occupied or used by indigenous and local communities]] [9/] [in accordance with international standard ILO 169, part II, Land]

[This principle recognizes the inalienable connection of indigenous and local communities to their sacred sites, culturally significant sites [and lands and waters traditionally occupied or used by them] and associated traditional knowledge and that their cultures, lands and waters are inseparable.] Parties [to the Convention are] [ought to be] encouraged, in accordance with national [domestic] law and international obligations, [to recognize traditional land tenure of indigenous and local communities, as access to traditional lands and waters [and sacred sites]] is fundamental to the retention of traditional knowledge and associated biological diversity. Sparsely populated lands and waters ought not to be presumed to be

^{8/} Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

^{9/} Refer establish international standard ILO 169, part II, Land.
<http://www.ilo.org/ilolex/english/convdisp1.htm>.]

empty or unoccupied [but may in fact be lands and waters traditionally occupied or used by indigenous and/or local communities].

Option B

Recognition of [lands and waters traditionally occupied or used by indigenous and local communities]

[Identifying indigenous and local communities whose interests may be affected by activities/interactions within the mandate of the Convention requires the recognition of lands and waters traditionally occupied or used by indigenous and local communities.]

Recognition of sacred sites and culturally significant sites

Proponents of an activity/interaction should gain the approval of indigenous and local communities for activities/interactions on sacred sites and culturally significant sites. Proponents of an activity/interaction should recognize that indigenous and local communities may be reluctant to provide information that would allow for the clear identification of sacred sites.]

[Access to traditional resources

Option A:

18. Traditional resources are [often] collectively owned [but may include individual interests and obligations] and apply to traditional resources [occurring on lands and waters traditionally occupied or used by indigenous and local communities]. Indigenous and local communities ought to determine for themselves, the nature and scope of their respective traditional resource regime(s) according to their customary law(s). Access to traditional resources is crucial for the sustainable use of biological diversity and cultural survival.

Option B:

Research should not interfere with access to traditional resources except with the approval of the community concerned. Research should respect customary rules governing access to resources where this is required by the community concerned.]

Option C:

Traditional resource rights

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

Not being arbitrarily removed and relocated

19. [Activities/interactions related to biological diversity, and the objectives of the Convention, such as conservation, including related research, ought not to cause indigenous and local communities to be removed from lands and waters traditionally occupied or used by them, by force or coercion and without their approval. Where they consent to removal from lands and waters traditionally occupied or used by them with their agreement, they should be compensated and given assurance of the possibility to

return. ^{10/} It is highly desirable that any such activities/interactions ought not cause indigenous and local community members, especially the elderly, the disabled and children to be removed from their families by force or coercion.]

Traditional guardianship/custodianship

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

Restitution and/or compensation

21. [This consideration recognizes that] Every effort will be made to avoid any adverse consequences to indigenous and local communities and their cultures [and lands and waters traditionally occupied or used by them], their sacred sites and sacred species, and their traditional resources from all activities/interactions affecting or impacting on them related to biological diversity, conservation and sustainable use, including related research and its outcomes [and that, s] [. S]hould any such adverse consequences occur, consideration may be given to appropriate restitution or compensation , through mutually agreed terms[.] [, between indigenous and local communities and the proposer of such activities/interactions.]]

Repatriation

22. Repatriation efforts ought to be made to facilitate the repatriation of information in order to facilitate the recovery of traditional knowledge of biological diversity.

Peaceful relations

23. [The exacerbation of any tensions caused by conservation or sustainable use activities/interactions [, between indigenous and local communities and local or national governments] should be avoided. [Should this not be possible, national and culturally appropriate conflict resolution mechanisms should be put in place to resolve disputes and grievances, subject to national legislation.] Those interacting with indigenous and local communities, including researchers should also avoid involvement in intra-indigenous and local community disputes.]

[10/ See ILO 169: Article 16, paragraph 1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. 3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. 4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. 5. Persons thus relocated shall be fully compensated for any resulting loss or injury. Article 17.]

Supporting indigenous research initiatives

24. Indigenous and local communities should have the opportunity to actively participate in research that affects them or which makes use of their traditional knowledge related to the objectives of the Convention, and decide on their own research initiatives and priorities, conduct their own research, including building their own research institutions and promoting the building of cooperation, capacity and competence.

*Section 4***METHODS***Negotiations in good faith*

25. Those employing the elements of this code are encouraged to interact, and to commit formally to a process of negotiation in good faith.

Subsidiarity and decision-making

26.

Option A

[[All decisions regarding activities/interactions related to biological diversity including research impacting on sacred sites, sacred species and lands and waters traditionally occupied or used by indigenous and local communities, ought to [, where appropriate,] be made at the lowest possible level [in accordance with free and prior informed consent] to ensure community empowerment and [full and] effective participation and the recognition of indigenous and local community institutions, governance and management systems.]

Option B

Formal activities/interactions regarding activities related to the objectives of the Convention should be made at the appropriate level to ensure community empowerment and effective participation, bearing in mind that activities/interactions should reflect indigenous and local community decision-making structures.]

Partnership and cooperation

27. Partnership and cooperation should guide all activities/interactions in pursuit of the draft elements of the code of ethical conduct, in order to support, maintain and ensure the sustainable use of biodiversity and traditional knowledge.

Gender considerations

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

Full and effective participation/participatory approach

29. This principle recognizes the crucial importance of indigenous and local communities fully and effectively participating in activities/interactions related to biological diversity and conservation that may impact on them.

Confidentiality

30. [Confidentiality of information and resources should be respected, subject to national law. Information imparted by the indigenous and local communities should not be used or disclosed for purposes other than those for which it was [collected or] consented to and cannot be passed on to a third party without the consent of the knowledge holder/s and/or the collective, as appropriate.] In particular, confidentiality ought to be applied to sacred and/or secret information. Those working with indigenous and local communities should be aware that concepts such as “the public domain” may be foreign concepts that may not be within the cultural parameters of many indigenous and local communities.

Responsible research

31. [The ethics of interaction between researchers and others, and the people/s who are the source of traditional knowledge is not only a responsibility of the individual and the organization and/or professional society to which the individual belongs, but also of national Governments having jurisdiction over the activity/interaction, researcher and/or the territory. [The cultural and intellectual property of indigenous and local community members, in relation to knowledge, ideas, cultural expressions and cultural materials relevant to biological diversity, conservation and sustainable use should be respected] [Furthermore, all others should respect] the cultural [rights] and intellectual property [rights] of indigenous and local community members, in relation to knowledge, ideas, cultural expressions and cultural materials relevant to biological diversity, conservation and sustainable use].]

32. [This document is not legally binding under international law, and should not be construed as altering or interpreting the obligations of Parties to the Convention of Biological Diversity or any other international instrument.]

*Paragraphs for further checking against the principles:**[Inter-cultural respect*

33. Ethical activities/interactions including research relationships ought to be based on respect for indigenous and local communities’ equal but different knowledge systems, decision-making processes and timeframes, their diversity, their distinctive spiritual and material relationship with their sacred sites [and lands and waters traditionally occupied or used by them,] and their cultural identities. Proponents should always be sensitive to [and respect] secrets and sacred knowledge, sacred species and sacred places/sites [related to biological diversity]. Furthermore, proponents should respect the cultural property of indigenous and local communities relevant for biological diversity, conservation and sustainable use. Ethical conduct ought to acknowledge that it may be legitimate for indigenous and local communities in [specific] [some] instances to restrict access to traditional knowledge and associated biological diversity and genetic resources, based on ethical and cultural grounds.]

Reciprocity

34. [Indigenous and local communities should benefit from activities/interactions that affect them and/or involve them, their sacred sites [and lands and waters traditionally occupied or used by them,] and/or their resources, and traditional knowledge. [Most importantly,] Information obtained should be given back to them in an understandable and culturally appropriate format/manner. This should promote inter-cultural exchanges and access to each other’s knowledge to promote synergies and complementarity.]

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

35. For indigenous and local communities all activities/interactions, take place in a social context. Extended “families” are the chief vehicles for cultural dissemination and the role of elders and youth is paramount in this cultural process, which depends upon intergenerational transfer [of knowledge, innovation and practices]. Therefore, the societal structure/s of indigenous and local communities should be respected, including the right to pass on their cultures and knowledge in accordance with their traditions and customs. No activities/interactions should cause the removal by force or coercion and without the [approval] [free and prior informed consent] of indigenous and local community individuals, especially the elderly, the disabled and children, from their families and social structures.

H. Indicators for assessing progress towards the 2010 biodiversity target: status of traditional knowledge, innovations and practices

The Conference of the Parties,

Recognizing that the status and trends of linguistic diversity and numbers of speakers of indigenous languages is one useful indicator for the retention and use of traditional knowledge, if used along with other indicators, and that there is a need for additional indicators more specific for indigenous and local communities, traditional knowledge, and biological diversity,

Considering the framework provided by decision VIII/15 for the monitoring of implementation of the achievement of the 2010 target and integration of targets into the thematic programmes of work,

1. *Notes* the importance of both qualitative and quantitative indicators to provide a broad picture of the status and trends of traditional knowledge and capture indigenous and local community realities within the framework of the Strategic Plan and the 2010 biodiversity target;

2. *Welcomes* the work carried out under the auspices of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity and, in particular, the regional and international expert workshops organized by the Working Group on Indicators of the International Indigenous Forum on Biodiversity, to identify a limited number of meaningful, practical and measurable indicators on the status of traditional knowledge, innovations and practices, to assess progress towards achieving the Convention’s Strategic Plan and the 2010 biodiversity target;

3. *Recommends* that a maximum of two additional indicators on the status of traditional knowledge, innovations and practices should be selected for inclusion in the framework by the Ad Hoc Working Group on Article 8(j) and Related Provisions at its sixth meeting;

4. *Warmly thanks* the Governments of Norway, Spain, and Sweden for the generous financial support for this initiative;

5. *Takes note* of the proposed indicators contained in annex I to the report of the International Experts Seminar on Indicators Relevant for Indigenous Peoples, the Convention on Biological Diversity and the Millennium Development Goals, organized by the International Indigenous Forum on Biodiversity (IIFB) in Banaue, Philippines, from 5 to 9 March 2007 (UNEP/CBD/WG-8J/5/8);

6. *Invites* Parties, Governments and relevant organizations, in consultation with and, as requested, the active participation of, indigenous and local communities, to design and, as appropriate, test, indicators at the national level for status and trends of traditional knowledge, innovations and practices, in order to assess progress towards to 2010 biodiversity target, as well as to assess progress in the implementation of the Strategic Plan, *noting* that the annex referred to in paragraph 5 above could provide useful information for consideration in this work;

7. *Also invites* Parties, Governments and relevant organizations, in consultation with indigenous and local communities, to submit to the Executive Secretary information on experiences and lessons learned in designing and, as appropriate, testing, national indicators for status and trends of traditional knowledge, innovations and practices, in order to assess progress towards the 2010 biodiversity target, as well as to assess progress in the implementation of the Strategic Plan, and *also invites* Parties, in consultation with indigenous and local communities, to report thereon in the fourth national reports;

8. *Requests* the Executive Secretary to compile and assess data availability the information received, and to transmit the compilation and analysis to the sixth meeting of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions, as basis for further work;

9. *Requests* the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its sixth meeting to continue its work on the identification of a limited number of meaningful, practical and measurable indicators on the status of traditional knowledge, innovations and practices, for assessing progress towards achieving the Convention's Strategic Plan and the 2010 biodiversity target;

10. *Requests* the Executive Secretary to maintain coordination with the United Nations Permanent Forum on Indigenous Issues and the Inter-Agency Support Group on related work on indicators relevant for indigenous peoples, the Convention on Biological Diversity and the Millennium Development Goals.

I. Recommendations of the United Nations Permanent Forum on Indigenous Issues

The Conference of the Parties

1. *Welcomes* the continued close cooperation between the Convention process and the United Nations 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. *Notes with appreciation* the contribution of the United Nations Permanent Forum on Indigenous Issues to the work of the Convention and, in particular, its organization of the International Expert Group Meeting on the Convention on Biological Diversity's International Regime on Access and Benefit-sharing and Indigenous Peoples' Human Rights, held in New York from 17 to 19 January 2007 (UNEP/CBD/WG8J/5/INF/10), and the report on indigenous traditional knowledge prepared by the secretariat of the Permanent Forum (UNEP/CBD/WG8J/5/INF/12);

3. *Requests* the Executive Secretary to draw attention to the important role of indigenous and local communities in activities related to 2010 as the International Year of Biodiversity, and to cooperate closely with the United Nations Permanent Forum on Indigenous Issues, to explore opportunities for common activities as related to information exchange and awareness-raising under the guidance of the Bureau.