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**AD HOC OPEN-ENDED WORKING GROUP ON  
ACCESS AND BENEFIT-SHARING**

Fifth meeting

Montreal, 8-12 October 2007

Items 3 and 4 of the provisional agenda\*

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

Fifth meeting

Montreal, 15-19 October 2007

Item 6 of the provisional agenda\*\*

**REPORT OF THE INTERNATIONAL INDIGENOUS AND LOCAL COMMUNITY  
CONSULTATION ON ACCESS AND BENEFIT SHARING AND THE DEVELOPMENT OF AN  
INTERNATIONAL REGIME**

*Note by the Executive Secretary*

1. The Executive Secretary is circulating herewith, for the information of participants in the fifth meetings of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and the Ad Hoc Open-ended International Working Group on Article 8(j) and Related Provisions, the report of the International Indigenous and Local Community Consultation on Access and Benefit-sharing and the Development of an International Regime, which may assist in discussions related to the development of an international regime on access and benefit-sharing and in addressing the traditional knowledge related elements.

2. The report is being circulated in the form and language in which it was received by the Secretariat. To assist discussions the report is also made available in Spanish and French, as well as the original English.

\* UNEP/CBD/WG-ABS/5/1.

\*\* UNEP/CBD/WG8J/5/1.

## **REPORT OF THE INTERNATIONAL INDIGENOUS AND LOCAL COMMUNITY CONSULTATION ON ACCESS AND BENEFIT SHARING AND THE DEVELOPMENT OF AN INTERNATIONAL REGIME**

### **I. INTRODUCTION**

1. The International Indigenous and Local Community Consultation on Access and Benefit-sharing and the Development of an International Regime was facilitated by the Secretariat of the Convention on Biological Diversity thanks to the generosity of the Government of Spain. The indigenous peoples and local community representatives, together with the Executive Secretary of the Convention, expressed their deep gratitude for the ongoing support of the Government of Spain for the programme of work for Article 8(j) and related provisions and for their commitment to the effective participation of indigenous and local community representatives in Convention processes.
2. Representatives from the following United Nations agencies were invited to participate as observers to provide advice in a technical capacity: the Institute of Advanced Studies of the United Nations University (UNU) IAS, the Office of United Nations High Commissioner for Human Rights (OHCHR), the International Fund for Agricultural Development (IFAD), the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), UN High Commission for Refugees, the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Convention on Biological Diversity.
3. The following members of the United Nations Permanent Forum on Indigenous Issues also participated in the meeting: Victoria Tauli-Corpuz (Chair) and Hassan Id Balkassm.
4. Representatives from twenty indigenous peoples and local community organizations from the seven geo-cultural regions identified by the United Nations Permanent Forum on Indigenous Issues participated in the expert seminar (the full participants list attached as annex II).
5. The present report highlights the main conclusions and recommendations reached by the participants, grouped according to items on the programme of work.
6. The meeting was opened by the Executive Secretary of the Convention on Biological Diversity, Dr. Ahmed Djoghlaif. The staff of the Convention on Biological Diversity, along with the members of the United Nations Inter-Agency Support Group on Indigenous Issues, and indigenous peoples and local community representatives were together for the opening session. The Co-Chairs, Joji Carino and Mindahi Bastida and the Rapporteur Mattias Åhrén also provided opening remarks. Ms. Liselote Naniki Reyes Ocasio provided an indigenous welcome and blessing to the meeting and acknowledged respectfully that the meeting was taking place of the traditional territories of the Mohawk people.
7. Participants thanked Dr. Djoghlaif and the Convention staff for the substantive nature and high quality preparations of the meeting as well as the efficient and friendly organizational arrangements.
8. After the opening of the meeting, session I commenced with an introduction and update to the process of access and benefit-sharing by Valerie Normand, the programme officer for access and benefit-sharing at the Secretariat of the Convention on Biological Diversity. This was followed by a question and answer period.
9. Presentations at the meeting also included the observer from UNESCO providing an overview of UNESCO standards relevant to the current discussions including the UNESCO Declaration and Convention concerning cultural diversity which provides some advice on traditional knowledge and cultural diversity. Also, the WIPO representatives provided an update on work at WIPO's work of interest to indigenous and local communities, including on the inclusive approach to intellectual property being promoted and explored by WIPO. WIPO further acknowledged that traditional knowledge should be considered under a human rights framework. Finally, the Chair of the UNPFII presented the outcomes

of the United Nations General Assembly's 61<sup>st</sup> session, at which the United Nations adopted the United Nations Declaration on the Rights of Indigenous Peoples (DECRIPS), as well as the results of the UNPFII International Expert Meeting on Free Prior and Informed Consent (FPIC).

10. Section I of this report includes general recommendations. Section II provides specific conclusions and recommendations for the consideration of both the Working Group on Access and Benefit-sharing and the Working Group on Article 8(j) and Related Provisions regarding indigenous perspectives on the development of an international regime on access and benefit-sharing. Annex I contains the Declaration on the Rights of Indigenous Peoples (DECRIPS) and annex II contains the list of participants.

## II. GENERAL RECOMMENDATIONS

### **The United Nations Declaration on the Rights of Indigenous Peoples (DECRIPS)**

11. The meeting welcomed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, (DECRIPS) adopted by the United Nations General Assembly on 13 September 2007, as a universal standard on the rights of indigenous peoples. DECRIPS has substantive provisions which are highly relevant to the Convention on Biodiversity, and an international regime on access and benefit-sharing. Indeed, DECRIPS must be viewed as integral part of the International Regime on Access and Benefit-sharing.

12. Given that numerous provisions in the DECRIPS have relevance to the access and benefit-sharing regime, the Expert Participants decided that it would be useful to annex the adopted Declaration to this report and to recommend the elaboration a matrix bringing together relevant standards of the DECRIPS together with the elements of a regime on access and benefit-sharing to provide an overview of minimal standards concerning indigenous peoples and the construction on an international regime. Potentially, the Secretariat of the Convention on Biological Diversity, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Permanent Forum on Indigenous Issues, could contribute to the elaboration on the matrix. An analysis of the UN DECRIPS concerning the access and benefit-sharing regime should also include other relevant instruments and developing standards, taking on board the work of other relevant bodies including the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), etc.

## III. SPECIFIC RECOMMENDATIONS

### **A. Key substantive elements of an international regime**

(v) *Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources*

13. Benefit-sharing arrangements should take into account the enduring benefits to human civilization and national prosperity that indigenous peoples have contributed in the past and continue to provide in the present. These contributions amount to a vast bequest of heritage value to the present generation, and the benefit-sharing should not be limited to contractual arrangements for access to genetic resources and associated traditional knowledge. Governments should bear in mind the contributions indigenous peoples have made to the development and maintenance of e.g. agricultural biodiversity and the conservation of and sustainable use of species, amongst other things. Support for the preservation of cultural diversity and traditional knowledge are required to secure the continued sustainable use of the maintenance of these broad benefits, which must be subject to their free, prior and informed consent.

14. The Expert meeting stressed that any discussions on benefit-sharing arrangements must be mindful of the fact that past injustices have left most indigenous peoples in poverty and marginalization. Indigenous peoples therefore find themselves in a position where states and private actors are "offering"

unfavourable and culturally inappropriate benefit-sharing arrangements to them, utilizing their vulnerable position, claiming that accepting these agreements are indigenous peoples' only way out of poverty. <sup>1/</sup>

15. The Expert meeting called for a stop to such strategies and actions. The main avenue for addressing indigenous peoples' poverty and marginalization must be through recognition of their rights, cultures and ways of life. Unless values such as customary sustainable customary use of resources are secured, no access and benefit-sharing regime can be of relevance to indigenous peoples. Any access and benefit-sharing regime should hence be additional to, and cannot and should not substitute other obligations that governments have towards indigenous peoples within their state. Benefit-sharing arrangements are always merely complementary to general services to and protection of indigenous peoples' cultures, societies and particular life-styles.

16. Indigenous peoples have not initiated or called for the elaboration of an international regime on access and benefit-sharing. However, should there be such a regime, there can be no benefit-sharing without an effective implementation of the concept of free, prior and informed consent (FPIC) of indigenous peoples. Any agreed terms for benefit-sharing can only be developed through a functioning FPIC process. In the same vein, any benefit-sharing arrangement must respect indigenous peoples' rights to lands, territories, resources and traditional knowledge.

### ***B. Other dimensions of benefit-sharing***

17. Benefit-sharing does not necessarily need to take the form of monetary compensation. Rather, for indigenous peoples, it might be more culturally appropriate that sharing takes the form of social and cultural support. Today, monetary benefits tend to be over-emphasized on the expense of socio-cultural elements. Benefit-sharing mechanisms should predominantly be used to support traditional lifestyles, land security, food security, cultural revitalization, restoration of lands and waters, etc., because that will safe-guard the preservation of traditional knowledge and in turn biodiversity.

18. Benefit-sharing arrangements relevant to indigenous peoples need to be formulated in a flexible framework. It is further important that monitoring-mechanisms are put in place to oversee the implementation of benefit-sharing schemes with the full, effective and ongoing participation of indigenous peoples.

19. Indigenous peoples may in some cases be confronted with a situation where they may be unable to afford access to medicines, agricultural products or other innovations developed from their genetic resources and traditional knowledge. Access and benefit-sharing arrangements should also address the ability of indigenous peoples to access products based on the use of their genetic resources and traditional knowledge. Access and benefit-sharing regimes should contain elements that allow for the preferential access and the ability of national government to apply compulsory licensing that increase indigenous access to products and technology that derive from their cultural heritage.

20. The Expert meeting concluded that indigenous peoples must be involved at all stages of the development on an international regime and determine the form of benefit-sharing. This should include in particular strong participatory rights in any national, regional or sub-regional bodies established for the implementation of any access and benefit-sharing regime. Alternatively, indigenous institutions could be established or where they exist, strengthened, for the same purposes. Consultations processes should in particular serve to identify indigenous priorities with regard to benefit-sharing.

21. The Expert meeting underlined that capacity-building is a pre-requisite for indigenous peoples being able to enjoy the right to benefit-sharing, taking language issues into account.

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<sup>1/</sup> For instance some benefit-sharing arrangements have indicated that basic civil services/infrastructure which should be supplied by the State and are enjoyed by the rest of the population, such as education, health services and sealed roads and sewerage, etc. could result from agreements.

22. Whatever contracts are agreed should be interpreted strictly to the terms of the contract, and there needs to be check-points and regular review to monitor the implementation of the contracts, to make sure that one does not go beyond the terms of such contracts.

(xiii) *Internationally recognized certificate of origin/source of legal provenance of genetic resources and associated traditional knowledge*, and (xiv) *Disclosure of origin/source/ legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights*

23. The Expert meeting saw potential benefits in certificates of compliance, as they may be an aide to protect indigenous genetic resources and traditional knowledge. Certificates of compliance should however, include not only a certificate of compliance with national law, but also include reference to indigenous peoples' customary laws pertaining to genetic resources and traditional knowledge. Furthermore, a certificate of compliance should also identify the right-holders to genetic resources and traditional knowledge, and serve to implement rights of indigenous peoples pertaining to genetic resources and traditional knowledge, e.g., by including evidence of whether free, prior and informed consent has been obtained from the relevant indigenous peoples. The meeting recommended that even though the option of Certificates of compliance has been recommended by the meeting of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance, the location of access should still be identified in such certificates.

24. Similarly, geographic indicators may provide some protection for indigenous and local community knowledge and genetic resources. Similar to certificate of compliance, certificates of origin must not only include the country of origin, but also of origin of the knowledge holders (indigenous peoples) and region of origin with the country (indigenous territory).

25. It was noted that most genetic resources have associated traditional knowledge. In most such instances, it is the traditional knowledge that renders the genetic resource identifiable and valuable. Hence, a certificate of origin and/or compliance must include not only the genetic resource but also the associated traditional knowledge.

26. The Expert meeting recognized that indigenous people may share joint title or have co-rights to common genetic resources and traditional knowledge by possessing a common heritage. Hence, measures for obtaining FPIC must support indigenous peoples in establishing their own institutions or maintaining and strengthening existing institutions to resolve joint title conflicts (and shared rights), and FPIC arrangements should not move forward until such conflicts are resolved. Where indigenous peoples occupy multiple nation states, governments should cooperate to ensure that indigenous peoples can choose their own institutions to resolve their conflicts.

(x) *Measures to ensure compliance with prior and informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j)*

27. The Expert meeting noted that well established international human rights – including international customary law - undisputedly affirms that indigenous peoples hold rights to genetic resources and traditional knowledge. As such, the concept of free, prior and informed consent is not merely a procedural right, but a right linked to indigenous peoples' material rights to lands, territories and resources, property, culture and self-determination. Consequently, any access and benefit-sharing regime must recognize indigenous peoples' right to FPIC pertaining to their genetic resources and traditional knowledge, in accordance with the DECRIPS and other sources of international law. Clearly, the right to FPIC encompasses a right to say "no". Participants also emphasized that human rights are not subject to national legislation.

28. FPIC measures should be developed to apply to all components and products of the process of negotiating FPIC in order to ensure the control of indigenous peoples over all sensitive information that may be generated in negotiations.

29. Indigenous peoples shall themselves decide who gives the consent on their behalf, in accordance with their own laws and protocols, customary or otherwise. Consequently, if not agreed to by the relevant indigenous people, it would be inappropriate of government authorities to replace the indigenous people's own decision making mechanism with government created mechanisms, as the provider of FPIC.

30. The Expert meeting recalled the International Expert Meeting on Prior and Informed Consent facilitated by UNPFII, and recommend the report <sup>2/</sup> as a useful guide as to have the concept of FPIC can be implemented with regard to indigenous peoples in a potential access and benefit-sharing -regime.

*(xv) Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located*

31. Participants reflected on the implications of the United Nations General Assembly's adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and concluded that the Convention on Biological Diversity and the development of an international regime on access and benefit-sharing must be understood against the background of these recent developments within international law<sup>3</sup>. The participants concluded that DECRIPS should be an integral part of the regime on access and benefit-sharing, since DESCRIPS reaffirms that peoples, including indigenous peoples, hold rights over their natural resources as well as offer guidance as to the scope of the principle of State Sovereignty over natural resources.

32. The expert meeting acknowledged that under the Convention on Biological Diversity, states have sovereign rights to natural resources vis-à-vis external actors such as other states and foreign entities, such as multinational corporations. However, the Expert Meeting further stressed that the principle of state sovereignty over natural resources cannot be invoked against indigenous peoples residing within the state. In practical terms, this implies that State Sovereignty is not absolute power and is subject to international law including human rights law. Sovereignty is a principle of international law that in essence provides that no state may interfere in another state's internal affairs. As a consequence, states are essentially free to determine and apply laws and policies within its jurisdiction. This right is, however, subject to any limitations prescribed by international law. This principle is repeated in a modified form in Article 3 of the Convention on Biological Diversity, which, in pertinent part, reads that, "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies ...." As can be seen from both of these definitions, state sovereignty does not amount to absolute political or legal freedom; it is limited by the Charter of the United Nations and by other principles of international law. This is very clear in the case of human rights law, which limits and conditions state sovereignty in connection with a state's treatment of persons and peoples subject to its jurisdiction.

33. The Expert meeting also recognized the priority that the Convention on Biological Diversity gives to national legislation and noted that, in line with the limitations on State Sovereignty, domestic legislation has to be in conformity with the human rights of indigenous peoples.

34. As stated above, the DECRIPS is annexed to this report. In the context of recognition of rights of indigenous peoples, the Expert meeting still deemed it appropriate to highlight some of the provisions in the DECRIPS, that are particularly relevant in the elaboration of a regime on access and benefit-sharing.

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<sup>2/</sup> E/C.19/2005/3

<sup>3/</sup> GA resolution 41/120 of 4 December 1986 entitled "Setting international standards ... states that guidelines in developing international instruments ... should be: "a) be consistent with the existing body of international human rights law" (i.e. not fall below existing international standards); b) be of fundamental character and derive from the inherent dignity and worth of the human person; c) be sufficiently precise to give rise to identifiable and practical rights and obligations; d) provide, where appropriate, realistic and effective implementation machinery including reporting systems; e) attract broad international support."

35. Article 3 of DECRIPS confirms that indigenous peoples have the right to self-determination. The right to self-determination encompasses a resource dimension, under which peoples have the right to determine over natural resources in their territory. In other words, peoples, including indigenous peoples, enjoy sovereign rights over their natural resources.

36. Similarly, Articles 26.2 of the DECRIPS proclaims that “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources, that they possess by reason of ... traditional occupation or use...” Article 28.1 stipulates that “Indigenous peoples have the right to ... restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally ... occupied or used, and which have been ... taken ... without their free, prior and informed consent.” Constituting human rights, these rights cannot be set aside by national legislation or a regime on access and benefit-sharing.

37. Article 31 of the DECRIPS proclaims that indigenous peoples:

*1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*

*and*

*2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.*

This must be reflected in any regime on access and benefit-sharing pertaining to indigenous peoples.

38. Pursuant to Article 34 of the DECRIPS, indigenous peoples “*have the right to ... maintain their ... juridical systems or customs*”. Article 40 of the Declaration proclaims that indigenous peoples “*have the right to ... effective remedies for all infringements of their ... rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned...*” Finally, pursuant to Article 27, states shall, when implementing indigenous peoples’ land and resource rights, “*give due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems...*” This underlines that any regime on access and benefit-sharing and *sui generis* protection of genetic resources and associated traditional knowledge must be compliant with the relevant indigenous peoples’ customary laws and protocols, which provide the traditional legal basis for protection of genetic resources and traditional knowledge. This further implies that genetic resources and traditional knowledge protected by indigenous customary legal systems, do not fall into the so-called public domain, for the purposes of intellectual property.

39. The Expert meeting further emphasised that the DECRIPS provides clear guidance on the right of FPIC of indigenous peoples, in line with the above mentioned report of the UNPFII on the expert meeting on FPIC and indigenous peoples (E/C.19/2005/3) which in turn provides useful guidance as to how FPIC processes can be operationalized and implemented within a context of the Convention on Biological Diversity.

(xvi) *Customary law and traditional cultural practices of indigenous and local communities*

40. The Expert meeting expressed its support for existing indigenous customary legal systems, which are paramount to the protection of traditional knowledge.

41. Indigenous peoples’ customary legal systems pertaining to traditional knowledge and genetic resources existed prior to the emergence of the conventional Intellectual Property Rights (IPR) system. Traditional knowledge and genetic resources were hence not unregulated areas before the coming into

being of the IPR system. Subsequently IPR-system has not set aside indigenous peoples' customary legal systems. Indigenous customary laws continue to exist parallel to conventional Intellectual Property Rights, and, as far as indigenous rights are concerned, take precedent over conventional Intellectual Property Rights. To the extent indigenous peoples' customary laws and protocols provide protection of genetic resources and traditional knowledge, therefore such elements do not fall into the so called public domain, even though conventional IPR-systems fail to protect the genetic resource or traditional knowledge in question. While these are our laws, the Expert meeting acknowledged that from a conventional IPR perspective, indigenous peoples' various customary legal systems could be labelled *sui generis* system for the protection of GR and TK.

42. Any ABS regime shall reflect the obligation of states to recognize indigenous peoples' customary legal systems pertaining to genetic resources and traditional knowledge.

43. The Expert meeting noted the usefulness of the expert paper on Traditional Knowledge <sup>4/</sup> by Dr. Michael Dodson (Independent Indigenous Expert of the UNPFII) – concerning *sui generis* systems based on customary laws of indigenous peoples as a basis for the protection of TK, which has been made available as an information document for the fifth meeting of the Ad Hoc Open-ended Working Group on Article 8(j), and supported Dr. Dodson's work to finalize this work.

(xviii) *Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities*

44. The Expert meeting viewed the revised Code of ethical conduct to protect indigenous intellectual and cultural property as a useful starting point for future discussions. A strong code of ethics may assist the development of an international regime and the protection of traditional knowledge. Still, the draft revised Code (to be discussed at the 5<sup>th</sup> meeting of the WG 8j), is in need of considerable improvement and must be in line with current minimal standards if it is to be of any value to indigenous peoples (refer footnote 1).

### C. Other matters

*Tasks of Article 8(j) not yet commences that may assist the development of an international regime on access and benefit-sharing*

45. The issue of repatriation of traditional knowledge is of considerable importance to indigenous and local communities and participants urged the commencement and rapid advancement of task 15 (repatriation of traditional knowledge) of the 8(j) programme of work and also noted that the commencement and advancement of tasks 7 (benefit-sharing, prior informed approval and identification of obligations of countries of origin), 12 (guidelines for legislation to implement 8(j)), 10 standards and guidelines for reporting and prevention of unlawful appropriation of TK and GR), in line and parallel to the development of an international regime of access and benefit-sharing should be consider were necessary tasks in the development of the regime. <sup>5/</sup>

*Indigenous peoples' participation in the processes of the Convention on Biological Diversity*

46. The Expert meeting acknowledged the vital role the International Indigenous Forum on Biodiversity (IIFB) has played in advancing participation of indigenous and local community representatives in the work of the Convention on Biological Diversity, in particular in the working group on access and benefit-sharing and the working group on Article 8(j). To the extent possible, indigenous and local communities should continue to aspire to develop joint positions in the ABS processes.

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<sup>4/</sup> E/C.19/2007/10.

<sup>5/</sup> Refer decision V/16, annex, programme of work on the implementation of article 8(j) and related provisions.



47. At the same time, the Expert meeting concluded that there is also room for complementary and diverse views and opinions, because distinct indigenous peoples exercise their own choices and their right to self-determination on this matter. Increasing the number of speakers from among indigenous peoples' and local communities in the processes of the Convention on Biological Diversity will also only serve to increase their concrete proposals for consideration within the negotiations. The Expert meeting consequently called for participatory mechanisms that ensure that diverse regional views of indigenous peoples from at least the seven geo-cultural regions identified by the PFII, are reflected in the discussions within the working groups on access and benefit-sharing and 8(j) and where possible sub-regional views. In particular, the Chairpersons of the working groups and parties are encouraged to facilitate full, effective and appropriate opportunities for indigenous peoples and local community representatives to express their views. This will be particular relevant in the negotiations on an ABS-regime, where it will be necessary for indigenous peoples to respond to text proposals on the floor. Furthermore, indigenous peoples and local community representatives should be given opportunities to address every item of the Agenda, and not be confined to the agenda item on Traditional knowledge, recognizing that traditional knowledge is a cross-cutting issue.

#### *Scope*

48. The Expert Meeting noted that it is likely that the ABS-regime will require multiple instruments and noted that at this time, it is not clear whether those instruments will be binding or non-binding. It was also noted that the protection and promotion of traditional knowledge can be addressed through a range of policy and legal instruments applicable at appropriate local, national, regional and international levels. Parties may choose to adopt broad and comprehensive protection measures which are complementary and additional to provisions agreed within instrument/s related to the International regime on access and benefit-sharing. The regime on access and benefit-sharing can both include a specific chapter on traditional knowledge, as well as recognize the specific rights of indigenous peoples and the interests of indigenous peoples and local communities throughout.

#### *Capacity-Building and tech transfer <sup>6/</sup>*

49. The Expert meeting noted that the discussions on the regime on access and benefit-sharing are extremely complex, in particular to indigenous peoples and local communities since many of the central elements in the discussions, such as IPRs, are very unfamiliar, or even contrary, to their world views and cosmo-visions. At the same time, indigenous peoples and local communities are central rights and stake holders in any regime on access and benefit-sharing. Particular attention must therefore be given to capacity building for indigenous peoples and local communities enabling them to participate effectively in the elaborations of a regime on access and benefit-sharing .

50. Their should be capacity-building for states and other actors involved on the DECRIPS to facilitate an understanding among the state parties as to the relevance of the Declaration to the processes of the Convention on Biological Diversity.

51. Sustainable financial processes need to be developed to provide broad support to indigenous and local communities in developing capacities to understand, negotiate and implement agreements regarding access and benefit-sharing. Contractual arrangements regarding access and benefit-sharing should contain provisions for such funding. Appropriate national and international measures need to be developed for support, including but not limited to, trust funds from bio-prospecting fees, taxes on value added to products developed from genetic resources and traditional knowledge.

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<sup>6/</sup> In paragraph 45, participants urged the commencement and advancement of task 15 (repatriation of traditional knowledge) in accordance with Article 17 of the Convention, in relation to technology transfer.

52. Capacity-building should be on the terms defined by indigenous peoples, and be sensitive to their cultures, laws and aspirations. Training must be neutral and not designed to bias indigenous peoples and local communities towards a regime on access and benefit-sharing or certain aspects of it.

53. The Expert meeting further noted the relationship between capacity building and access to financial resources. More resources are needed for capacity-building and for adequate indigenous and local community participation in the elaboration of the regime on access and benefit-sharing. The right to control and form capacity building efforts should to the largest extent possible be brought down on a community level and their institutions.

54. The Expert meeting identified the need to conduct a gap-analysis as to existing initiatives for capacity-building and funding available for indigenous and local communities.

55. The example of the IIFB Working Group on Indicators was viewed as an example of good practice for increasing the capacity of indigenous peoples to participate effectively in the processes of the Convention on Biological Diversity. On the focal area of access and benefit-sharing, the following indicator was proposed by the International Expert Seminar on Indicators Relevant for Indigenous Peoples, the Convention on Biological Diversity and the MDGs: ***Number of Parties with national legislation, policies and measures to promote FPIC and benefit-sharing with indigenous and local communities.***

*Annex I*

**UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

*The General Assembly,*

*Guided by* the purposes and principles of the Charter of the United Nations, and good faith in the fulfillment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights<sup>1</sup> and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of

Action,<sup>2</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing also* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

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*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

*Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>3</sup> and international human rights law.

*Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

*Article 3*

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

*Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

*Article 6*

Every indigenous individual has the right to a nationality.

*Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

*Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

*Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

*Article 11*

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

*Article 12*

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

*Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

*Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

*Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

*Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

*Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

*Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

*Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

*Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

*Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

*Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure

systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

*Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

*Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

*Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

*Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

*Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

*Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

*Article 35*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

*Article 36*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

*Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

*Article 38*

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



*Annex II*

**LIST OF PARTICIPANTS**

United Nations and Specialized Agencies

1. International Fund for Agricultural Development (IFAD);
2. United Nations Convention on Biological Diversity (CBD);
3. United Nations University (UNU);
4. Office of the United Nations High Commission for Human Rights (OHCHR, Geneva and New York Offices);
5. UN-High Commission for Refugees (UN-HCR);
6. World Intellectual Property Organization (WIPO, Geneva and New York Offices);
7. United Nations Educational, Scientific and Cultural Organization (UNESCO);
8. United Nations Permanent Forum on Indigenous Issues (UNPFII).

Indigenous and Local Community Organizations

1. Andes Chinchasuyo;
2. Indigenous Peoples of African Coordinating Council;
3. Asociación Ixácavaä de Desarrollo e Información Indígena;
4. Association pour le développement social & culturel des Mbororo du Cameroun ;
5. Association Tamaynut;
6. Caribbean Antilles Indigenous Peoples Caucus & The Diaspora;
7. Chibememe Earth Healing Association;
8. Comité Intertribal;
9. Consejo Mexicano para el Desarrollo Sustentable;
10. Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica;
11. International Alliance of Indigenous and Tribal Peoples of the Tropical Forests;
12. Dena Kayeh Institute;
13. Kanuri Development Association;
14. Kummara Association;
15. Indian Confederation of Indigenous and Tribal Peoples North- East Zone;
16. SAAMI Council;
17. Tebtebba Foundation;
18. Tulalip Tribes;
19. United Confederation of Taíno People;
20. Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation.

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