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

Ninth meeting

Montreal, Canada, 4-7 November 2015

CONFERENCE OF THE PARTIES TO THE  
CONVENTION ON BIOLOGICAL  
DIVERSITY

Thirteenth meeting

Cancun, Mexico, 4-17 December 2016

Item 14 of the provisional agenda \*\*

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

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity held its ninth meeting in Montreal, Canada, from 4 to 7 November 2015. It adopted five recommendations concerning (a) voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the [free,] prior informed consent [or approval and involvement] of indigenous peoples and local communities for accessing their knowledge, innovations and practices, the fair and equitable sharing of benefits arising from the use and application of such knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge; (b) task 15 of the multi-year programme of work on the implementation of Article 8(j) and related provisions: best-practice guidelines for the repatriation of indigenous and traditional knowledge; (c) a glossary of relevant key terms and concepts to be used within the context of Article 8(j) and related provisions; (d) recommendations from the United Nations Permanent Forum on Indigenous Issues to the Convention on Biological Diversity; and (e) an in-depth dialogue on thematic areas and other cross-cutting issues. The draft decisions contained within the recommendations will be submitted to the Conference of the Parties to the Convention on Biological Diversity for consideration at its thirteenth meeting.

A summary of the in-depth dialogue on the cross-cutting issue of “challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of three objectives of the Convention in harmony with Nature/Mother Earth” is provided as an annex to the present report.

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

- 9/1. Voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the [free,] prior informed consent [or approval and involvement] of indigenous peoples and local communities for accessing their knowledge, innovations and practices, the fair and equitable sharing of benefits arising from the use and application of such knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge**

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity *recommends* that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

*The Conference of the Parties,*

*Recalling* the programme of work on the implementation of Article 8(j) and related provisions in decision V/16, as well as subsequent relevant decisions, including decision XII/12 D,

*Noting* the relevance of the *Tkarihwaié:ri Code of Ethical Conduct* and the *Akwe:Kon Guidelines*,

*Recalling* Aichi Biodiversity Target 18, which calls, inter alia, for traditional knowledge to be respected at all relevant levels by 2020, and *also recalling* Aichi Targets 11 and 16,

*Noting* that the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization also applies to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such traditional knowledge, and *recognizing* the contribution that guidance can make to the implementation of the Convention on Biological Diversity and the Nagoya Protocol,

*Stressing* the need to enhance synergies among international processes and organizations addressing issues related to traditional knowledge, innovations and practices of indigenous peoples and local communities in order to ensure consistency with work undertaken under these processes and organizations and to prevent diminishment of the rights of indigenous peoples and local communities to their traditional knowledge,

1. *Adopts* the Voluntary Guidelines as contained in the annex to the present decision;
2. *Invites* Parties and other Governments to use the Voluntary Guidelines, as appropriate;
3. *Invites* Parties, other Governments, relevant organizations and indigenous peoples and local communities to promote the guidelines through appropriate educational and awareness-raising activities;
4. *Also invites* Parties, other Governments, relevant organizations and indigenous peoples and local communities to make available through the clearing-house mechanism, where appropriate, best practices, lessons learned and good examples of community protocols relevant to access and benefit-sharing arising from the use of traditional knowledge;

5. *Invites* Parties to report on experiences gained by using the Voluntary Guidelines through the national reports;

6. *Invites* Parties, other Governments, relevant organizations and indigenous peoples and local communities to promote regional cooperation and share experiences and best practices on relevant measures, including approaches and measures relating to traditional knowledge shared across borders, where they exist;

7. *Also invites* Parties, other Governments, relevant organizations and indigenous peoples and local communities to submit their views concerning measures to address publicly available traditional knowledge to the Executive Secretary, and *requests* the Executive Secretary to compile the measures and views received and make the results available for the consideration of the Working Group on Article 8(j) and Related Provisions at its tenth meeting, in order to contribute to the finalization of Tasks 7 and 12 of the revised multi-year programme of work on Article 8(j) and related provisions, as appropriate;

8. *Invites* relevant international agreements, agencies, and organizations to take into consideration the guidance contained in the annex to the present decision in the implementation of their work;

9. *Invites* the Global Environment Facility, international funding institutions and development agencies and relevant non-governmental organizations, to consider, in accordance with their mandates, providing financial and technical assistance to developing country Parties and indigenous peoples and local communities, particularly women within these communities, to raise their awareness and to build their capacity relevant to the implementation of the guidelines, and to develop, as appropriate, community protocols or processes for [free,] prior informed consent and fair and equitable benefit-sharing.

#### *Annex*

### **DRAFT VOLUNTARY GUIDELINES FOR THE DEVELOPMENT OF MECHANISMS, LEGISLATION OR OTHER APPROPRIATE INITIATIVES TO ENSURE THE [FREE,] PRIOR INFORMED CONSENT [OR APPROVAL AND INVOLVEMENT] OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES<sup>1</sup> FOR ACCESSING THEIR KNOWLEDGE, INNOVATIONS AND PRACTICES, FOR FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THE USE OF THEIR KNOWLEDGE, INNOVATIONS AND PRACTICES RELEVANT FOR THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY, AND FOR REPORTING AND PREVENTING UNLAWFUL APPROPRIATION OF TRADITIONAL KNOWLEDGE**

#### **I. PURPOSE AND APPROACH**

1. The present guidelines are voluntary and are intended to provide guidance for the development of mechanisms, legislation, administrative and policy measures or other appropriate initiatives to ensure that potential users of knowledge, innovations and practices that are held by indigenous peoples and local communities (hereinafter “traditional knowledge”) obtain the [free,] prior informed consent [or approval and involvement] of these indigenous peoples and local communities, that these indigenous peoples and local communities obtain a fair and equitable share of benefits arising from the use and application of such traditional knowledge, and for reporting and preventing unlawful appropriation of traditional knowledge relevant for the conservation and sustainable use of biological diversity.

2. These guidelines have been developed pursuant to decision XII/12 D on how tasks 7, 10 and 12 of the multi-year programme of work on the implementation of Article 8(j) and related provisions could best

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<sup>1</sup> The use and interpretation of the term “indigenous peoples and local communities” in these Guidelines should refer to decision XII/12 F, paragraph 2 (a), (b) and (c).

contribute to work under the Convention on Biological Diversity (hereinafter “the Convention”) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (hereinafter “the Nagoya Protocol”).

3. Nothing in these guidelines should be construed as changing the rights or obligations of Parties under the Convention or under the Nagoya Protocol.

4. The guidelines should be applied in a manner that ensures consistency with domestic law, gives due importance to the customary laws and community protocols of indigenous peoples and local communities, and seeks consistency when applied to traditional knowledge associated with genetic resources under the Nagoya Protocol.

## **II. GENERAL PRINCIPLES**

### **A. Access to traditional knowledge**

5. Access to traditional knowledge of indigenous peoples and local communities should be subject to [free,] prior informed consent [or approval and involvement] of the owners or holders of such traditional knowledge. [Free,] prior informed consent includes the right to say no.

6. [Free,] prior informed consent [or approval and involvement] should be understood as a continual process building mutually beneficial, ongoing arrangements between users of traditional knowledge and indigenous peoples and local communities, in order to build trust, good relations, mutual understanding, intercultural spaces, knowledge exchanges, create new knowledge and reconciliation and should include the full and effective participation of indigenous peoples and local communities, including customary laws and community protocols of indigenous peoples and local communities.

7. It is not practical to propose a “one-size-fits-all” approach for [free,] prior informed consent [or approval and involvement] of indigenous peoples and local communities as regards access to the traditional knowledge they own or hold; and, therefore, these guidelines are intended to be used taking into account national and local circumstances of the indigenous peoples and local communities concerned.

8. The customary laws, community protocols and customary decision-making processes of indigenous peoples and local communities should be given due importance in relation to the procedural and substantive aspects of the consent process.

9. Granting [free,] prior informed consent to users of traditional knowledge, unless otherwise mutually agreed, does not transfer ownership but merely allows temporary use. In such cases, ownership is retained by the indigenous peoples and local communities.

### **B. Fair and equitable sharing of benefits**

10. Indigenous peoples and local communities should receive fair and equitable benefits based on mutually agreed terms from the use of the traditional knowledge that they own or hold.

11. Benefit-sharing should be regarded as a way of recognizing and strengthening the contribution of indigenous peoples and local communities to the conservation and sustainable use of biological diversity, including by supporting the intergenerational transmission of traditional knowledge.

12. Benefit-sharing should be fair and equitable within and among relevant groups, taking into account relevant community level procedures, and gender and age/intergenerational considerations.

### **C. Reporting and preventing unlawful appropriation**

13. Important tools against unauthorized use of traditional knowledge include, among others:

(a) The implementation of measures to ensure that traditional knowledge that is owned or held by indigenous peoples and local communities is accessed with their [free,] prior informed consent [or approval and involvement] and that mutually agreed terms for sharing benefits arising from the use of that traditional knowledge are established;

- (b) Measures subject to national legislation.

### **III. UNDERSTANDING OF [FREE,] PRIOR INFORMED CONSENT [OR APPROVAL AND INVOLVEMENT]**

14. [*Free* implies that indigenous peoples and local communities are not coerced, pressured, intimidated or manipulated and that their consent is voluntarily given, consistent with national law and with due regard to customary laws, community protocols and customary decision-making processes, prior to the access, unencumbered by expectations and timelines that are externally imposed.]

15. *Prior* implies that consent is to be sought sufficiently in advance of any authorization to access traditional knowledge respecting the customary decision-making processes and time requirements of indigenous peoples and local communities.

16. *Informed* implies that information is provided that covers relevant aspects, inter alia: the intended purpose of the access, its duration and scope; a preliminary assessment of the likely economic, social, cultural and environmental impacts, including potential risks; personnel likely to be involved in the execution of the access; and procedures the access may entail. This process may include the option of withholding consent. Consultation and effective participation by indigenous peoples and local communities are crucial components of a consent [or approval] process.

17. *Consent* [or *Approval*] is the agreement of the traditional knowledge owners or holders to provide a potential user with access to the traditional knowledge in question. Consent [or approval] shall be obtained in good faith with no coercion, intimidation or manipulation.

18. [*Involvement* refers to the effective participation of indigenous peoples and local communities, as traditional knowledge owners, holders or providers, in decision-making processes related to access.]

### **IV. PROCEDURAL CONSIDERATIONS FOR [FREE,] PRIOR INFORMED CONSENT [OR APPROVAL AND INVOLVEMENT,] AND MUTUALLY AGREED TERMS FOR BENEFIT-SHARING**

#### **A. Relevant authorities and other elements**

19. Consent [or approval] processes and establishment of mutually agreed terms for fair and equitable benefit-sharing may be required at different levels depending on national circumstances and the diverse internal organization of various indigenous peoples and local communities, and may include the following elements:

- (a) A competent authority at the national or subnational level;
- (b) The competent authorities of indigenous peoples and local communities;
- (c) Elements of a consent [or approval] process including:
  - (i) Written application in a manner and language comprehensible to the traditional knowledge owner or holder;
  - (ii) Legitimate and culturally appropriate process and decision-making, including possible social, cultural and economic impacts;
  - (iii) Adequate and balanced information from a variety of sources that is made available in indigenous or local languages using terms understood by indigenous peoples and local communities and including safeguards to ensure that all parties to an agreement have the same understanding of the information and terms provided;
  - (iv) Culturally appropriate timing and deadlines;
  - (v) Specification of use with clause to address change of use and transfer to third parties;

- (vi) Implementation and monitoring;
- (d) A template taking into account the possible actions required by potential users of traditional knowledge;
- (e) [Free,] prior informed consent [or approval and involvement] granted/established on the basis of mutually agreed terms ensuring the fair and equitable sharing of benefits;
- (f) Consultation process with indigenous peoples and local communities;
- (g) Procedures consistent with customary laws, community protocols and customary decision-making processes.

## **B. Community protocols and customary law**

20. In line with Article 12 of the Nagoya Protocol, community protocols and customary law can play a role in processes for access to traditional knowledge and the fair and equitable sharing of benefits arising from the use of such knowledge. They can contribute to legal certainty, transparency and predictability concerning processes for obtaining [free,] prior informed consent [or approval and involvement] of indigenous peoples and local communities and for establishing mutually agreed terms for benefit-sharing.

21. *Community protocols* is a term that covers a broad array of documents generated by communities to set out how they expect other stakeholders to engage with them. They may reference customary as well as national or international laws to affirm their rights to be approached according to a certain set of standards. Articulating information, relevant factors, and details of customary laws and traditional authorities helps other stakeholders to better understand the community's values and customary laws. Community protocols provide communities an opportunity to focus on their development aspirations vis-à-vis their rights and to articulate for themselves and for users their understanding of their bio-cultural heritage and therefore on what basis they will engage with a variety of stakeholders. By considering the interconnections of their land rights, current socio-economic situation, environmental concerns, customary laws and traditional knowledge, communities are better placed to determine for themselves how to negotiate with a variety of actors.<sup>2</sup>

22. Community protocols can be produced in a range of formats including through documentation or other media such as video, and may contain but are not limited to information about:

- (a) Community identity;
- (b) Community history;
- (c) Community territoriality;
- (d) Resources used (mainly biological and may include seasonality and management practices);
- (e) Information about their traditional knowledge (but not the traditional knowledge itself);
- (f) Social organization and decision making processes (which are often collective decision-making procedures at community level);
- (g) Relations with other institutions relevant to the agreement.

23. Community protocols can help address any number of community issues. They can articulate a number of concerns important to communities, relevant to biological diversity, such as how they intend to:

- (a) Conserve biodiversity;
- (b) Sustainably use plants and animal biological resources;

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<sup>2</sup> Refer to <http://www.unep.org/communityprotocols/protocol.asp> and [http://www.unep.org/delc/Portals/119/publications/Community\\_Protocols\\_Guide\\_Policymakers.pdf](http://www.unep.org/delc/Portals/119/publications/Community_Protocols_Guide_Policymakers.pdf)

- (c) Manage and benefit from local biodiversity;
  - (d) Use, protect and benefit from traditional knowledge;
  - (e) Provide [free,] prior informed consent [or approval and involvement] to access traditional knowledge for any number of reasons including commercial and non-commercial research and by the media;
  - (f) Ensure environmental and other laws are implemented according to customary laws;
  - (g) Oppose unsustainable development on their lands;
  - (h) Engage with governmental or other support.
24. Indigenous peoples and local communities may wish to include special measures in their community protocols or other procedures for encouraging non-commercial research, participatory research and joint research for conservation and sustainable use of biological diversity.

#### **V. FAIR AND EQUITABLE SHARING OF BENEFITS**

25. In order to achieve a fair and equitable sharing of benefits, Parties, other Governments and users of traditional knowledge should take the following into account:
- (a) Partnership and cooperation should guide the process of establishing mutually agreed terms to ensure the fair and equitable sharing of the benefits arising from the utilization of traditional knowledge with and among the owners or holders of that traditional knowledge;
  - (b) Community protocols, which may provide guidance from the community perspective on the fair and equitable sharing of benefits;
  - (c) The benefits obtained from the use of traditional knowledge, innovations and practices, including results of research, should, as far as possible, be shared where appropriate and in line with mutually agreed terms with the relevant owners or holders of the traditional knowledge in understandable and culturally appropriate formats, with a view to building enduring relationships, promoting intercultural exchanges, knowledge and technology transfer, synergies, complementarity and respect;
  - (d) In developing mutually agreed terms, Parties, other Governments, and others seeking access to traditional knowledge should make efforts to ensure that the owners or holders of that traditional knowledge can negotiate on a fair and equal basis and are fully informed about any proposals including potential opportunities and challenges in order to make informed decisions;
  - (e) The [free,] prior informed consent and mutually agreed terms should constitute a legal contract between the indigenous peoples and local communities and the corresponding parties to the contract;
  - (f) In developing mutually agreed terms, those seeking to use traditional knowledge could undertake to renegotiate if the use varies significantly from the original purpose, including on possible commercialization of the traditional knowledge within national legislation and/or contract requirements;
  - (g) The [free,] prior informed consent and mutually agreed terms should contain agreed grievance and redress mechanisms to address non-compliance with its provisions.

#### **A. Possible mechanisms for benefit-sharing**

26. Mechanisms for benefit-sharing may vary depending upon the type of benefits, the specific conditions in the country and the stakeholders involved. The benefit-sharing mechanism should be flexible as it should be determined by the partners involved in benefit-sharing and will vary on a case-by-case basis.<sup>3</sup>

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<sup>3</sup> Adapted from paragraph 49 of the Bonn Guidelines.



27. Benefits to be shared may be influenced by numerous factors including to what extent traditional knowledge is used in final product development.

28. Parties, other Governments and relevant regional organizations may wish to consider, taking into account regional arrangements and model laws, the need for the establishment of regional trust funds or other forms of transboundary cooperation, as appropriate, for traditional knowledge held across borders, for traditional knowledge held in several countries or where the traditional knowledge is unattributed.<sup>4</sup>

### **B. Types of benefits**

29. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising from their Utilization.

## **VI. REPORTING AND PREVENTING UNLAWFUL APPROPRIATION**

30. These guidelines are voluntary by their nature; however, Parties and other Governments may wish to consider incentives or other ways to ensure compliance, in their consideration of the use of the guidelines in the development of mechanisms, legislation or other appropriate initiatives to ensure that private and public institutions, interested in using traditional knowledge obtain the [free,] prior informed consent [or approval and involvement] of the indigenous peoples and local communities that hold the traditional knowledge and establish mutually agreed terms for benefit-sharing.

31. Compliance measures that also support the [free,] prior informed consent [or approval and involvement] of indigenous peoples and local communities for access to the traditional knowledge that they hold, and benefit-sharing with indigenous peoples and local communities for use of the traditional knowledge that they hold, could include:

- (a) Capacity-building, awareness-raising and information-sharing within indigenous peoples and local communities;
- (b) Codes of conduct and best practice codes of users;
- (c) Model contractual clauses for mutually agreed terms to promote equity between the negotiating positions of the parties;
- (d) Minimum standards for access and benefit-sharing agreements.

32. Parties and other Governments may wish to consider:

(a) The complex nature of traditional knowledge and evidentiary issues in customary legal traditions mean that customary law may be appropriate to settle disputes arising over traditional knowledge, to the extent it does not contravene national law;

(b) That a competent national authority, established according to national law, should engage users and providers of traditional knowledge early in the access process, and may need to revisit its approval of an application upon the complaint by a concerned indigenous peoples and local community;

(c) In cases such as disputes about ownership of traditional knowledge, indigenous peoples and local communities should be encouraged to resolve difference internally according to customary law or alternate dispute resolution processes as agreed to by the entities in dispute. The results of the customary or alternative dispute settlement may then, if appropriate, be approved by a competent national authority. Additionally, the competent national authority could play a facilitating role in alternative dispute resolution.

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<sup>4</sup>The knowledge owners or holders are no longer identifiable.

**9/2. Task 15 of the multi-year programme of work on the implementation of Article 8(j) and related provisions: best-practice guidelines for the repatriation of indigenous and traditional knowledge**

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity *recommends* that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

*The Conference of the Parties,*

1. *Takes note* of the progress made in the development of the Rutzolijirisaxik<sup>5</sup> Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity, annexed to the present decision, in particular their objective, purpose, scope and guiding principles for repatriation;

2. *Invites* Parties, other Governments, indigenous peoples and local communities, and relevant organizations<sup>6</sup> interested or involved in repatriation of traditional knowledge to submit to the Executive Secretary information on good practices and actions undertaken at various levels, including through community-to-community exchanges, to repatriate, receive and restore traditional knowledge relevant for the conservation and sustainable use of biological diversity;

3. *Requests* the Executive Secretary to:

(a) Compile the information received on good practices and actions, as referred to in paragraph 2 above, and to make the compilation available for the consideration of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its tenth meeting;

(b) Prepare a revised draft of the Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity, taking into account developments in various international bodies, instruments, programmes, strategies, standards, guidelines, reports and processes of relevance as referred to in paragraph 5 of the annex, and based on: (i) an analysis of the information received as referred to in paragraph 2 above; (ii) the report of the Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biodiversity;<sup>7</sup> and (iii) the annex to the present decision containing the objective, purpose, scope and guiding principles for repatriation;

4. *Requests* the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its tenth meeting to complete a draft of the guidelines for consideration and adoption by the Conference of the Parties at its fourteenth meeting.

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<sup>5</sup> In the local traditional language, Maya Kaqchikel, this expression means “the significance of returning to the place of origin”.

<sup>6</sup> May include entities such as museums, universities, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services, public or private collections and other entities storing or housing traditional knowledge and related information.

<sup>7</sup> UNEP/CBD/WG8J/9/INF/4.

*Annex***PROGRESS IN THE DEVELOPMENT OF THE RUTZOLIJIRISAXIK VOLUNTARY GUIDELINES FOR THE REPATRIATION OF TRADITIONAL KNOWLEDGE OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES RELEVANT FOR THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY****Introduction**

1. The international community has recognized the close and traditional dependence of many indigenous peoples and local communities on biological resources, notably in the preamble to the Convention on Biological Diversity. There is also a broad recognition of the contribution that traditional knowledge can make to both the conservation and the sustainable use of biological diversity — two fundamental objectives of the Convention — and of the need to ensure the equitable sharing of benefits arising from the utilization of traditional knowledge. For this reason, Parties to the Convention undertook, in Article 8(j), to respect, preserve and maintain the knowledge, innovations and practices (hereinafter referred to as traditional knowledge) relevant for the conservation and sustainable use of biological diversity, and to promote its wider application.

2. To address the effective implementation of Article 8(j) and related provisions, in decision V/16, the Conference of the Parties to the Convention on Biological Diversity adopted the programme of work on Article 8(j) and related provisions, including task 15, which it requested the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions to develop guidelines that would facilitate repatriation of information, including cultural property, 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.

3. The Conference of the Parties further considered the task at hand in its decision X/43, paragraph 6, and in its decision XI/14 D, annex, and adopted terms of reference to advance the task clarifying:

“The purpose of task 15 is to develop best-practice guidelines that would facilitate enhancement of the repatriation of indigenous and traditional knowledge relevant to the conservation and sustainable use of biological diversity, including of indigenous and traditional knowledge associated with cultural property, in accordance with Article 8(j) and Article 17, paragraph 2, of the Convention, in order to facilitate the recovery of traditional knowledge of biological diversity.”

4. The guidelines for repatriation of traditional knowledge, builds on relevant decisions of the Conference of the Parties, including paragraph 23 of the Tkarhiwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity,<sup>8</sup> as well as decision VII/16 with regard to registries and databases.

5. The guidelines take into account the various international bodies, instruments, programmes, strategies, standards, guidelines, reports and processes of relevance and the importance of their harmonization and complementarity and effective implementation, including the United Nations Declaration on the Rights of Indigenous Peoples,<sup>9</sup> especially Article 31, as well as other relevant articles; and in particular the mandate of United Nations Educational, Scientific and Cultural Organization concerning cultural property, as well as the mandate of the World Intellectual Property Organization, which deals with intellectual property issues. As such, they highlight the importance of international cooperation for the repatriation of traditional knowledge,

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<sup>8</sup> Decision X/42, annex.

<sup>9</sup> General Assembly resolution 61/295, annex.

including by providing access to traditional knowledge and related information for indigenous peoples and local communities, to facilitate the repatriation of traditional knowledge relevant to conservation and sustainable use, in order to assist these communities in knowledge and cultural restoration.

### **Objectives**

6. The objective of these guidelines is to facilitate the repatriation of the traditional knowledge of indigenous peoples and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including related information in accordance with Article 8(j) and Article 17, paragraph 2, of the Convention, in order to facilitate the recovery of traditional knowledge relevant for the conservation and sustainable use of biological diversity, and without limiting or restricting its continued use and access.

7. The guidelines may also assist in the effective implementation of the global Plan of Action on Customary Sustainable Use of Biological Diversity, endorsed by the Conference of the Parties in decision XII/12 B.

### **Purpose**

8. The guidelines are intended to be practical guidance to Parties, Governments,<sup>10</sup> international and regional organizations, museums, universities, herbaria and botanical and zoological gardens, databases, registers, gene banks, libraries, archives and information services, private collections and other entities storing or housing traditional knowledge and related information, and indigenous peoples and local communities, in efforts to repatriate traditional knowledge and related information.

9. They are a guide to good practice which will need to be interpreted taking into account the political, legal, economic, environmental and cultural diversity, as appropriate, of each Party, entity and indigenous peoples and local communities, and applied in the context of each organization's mission, collections and the relevant communities, taking into account community protocols and other relevant procedures.

10. The guidelines are not prescriptive or definitive.

11. Given the political, legal, economic, environmental and cultural diversity of States and indigenous peoples and local communities, it is unlikely that these guidelines will cover all the issues that may arise in professional practice. However, they should provide guidance for those wishing to pursue repatriation.

12. The guidelines should enable those working on repatriation, including information professionals to make sound judgments regarding appropriate responses to any issues, or provide some ideas about where to go for assistance if more expertise is required.

13. The guidelines should assist indigenous peoples and local communities in the recovery and revitalization of their traditional knowledge related to conservation and sustainable use of biological diversity.

### **Scope**

14. These guidelines apply to the traditional knowledge of indigenous peoples and local communities, embodying traditional lifestyles relevant for the conservation and sustainable use of

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<sup>10</sup> Including subnational governments and government departments, which may hold indigenous and/or local community traditional knowledge and related information relevant to the conservation and sustainable use of biological diversity.

biological diversity, including related information,<sup>11</sup> within the scope of the Convention on Biological Diversity.

### **Guiding principles for repatriation**

15. Repatriation is best facilitated building on the following principles and considerations:

(a) Developing ongoing relationships with indigenous peoples and local communities in order to build trust, good relations, mutual understanding, intercultural spaces, knowledge exchanges and reconciliation;

(b) Recognition and respect for indigenous peoples and local communities' world views, cosmologies, values, practices, customary laws, community protocols, rights and interests; with due respect for international norms;

(c) Preparedness of institutions holding traditional knowledge and related information relevant for conservation and sustainable use to repatriate, including preparedness to cooperate with indigenous peoples and local communities to develop appropriate measures;

(d) Assisting indigenous peoples and local communities in preparedness to receive and keep safe, repatriated traditional knowledge and related information in culturally appropriate ways as specified by them;

(e) Considering measures to address the repatriation of traditional knowledge that is already publicly available and widespread;

(f) Recognition of the importance of repatriating secret or sacred, gender-specific or sensitive traditional knowledge and related information as a priority for indigenous peoples and local communities and as identified by them;

(g) Repatriation can be enhanced by developing the awareness and professional practice of those working on repatriation, including information professionals and indigenous peoples and local communities, in accordance with best practice ethical standards, including the Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity;<sup>12</sup>

(h) Repatriation includes recognition and support of community-to-community efforts to restore traditional knowledge relevant to conservation and sustainable use of biological diversity.

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<sup>11</sup> Related information could include information on where, when and from whom the traditional knowledge was collected and for what purpose, when it is not confidential.

<sup>12</sup> See Conference of the Parties decision X/42, available at <https://www.cbd.int/decision/cop/default.shtml?id=12308>.

**9/3. A glossary of relevant key terms and concepts to be used within the context of Article 8(j) and related provisions**

*The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity*

1. *Requests* the Executive Secretary to revise the glossary of key terms and concepts to be used within the context of Article 8(j) and related provisions contained in the annex to the note by the Executive Secretary,<sup>13</sup> and to develop a comprehensive glossary, taking into account the comments made at its ninth meeting, as well as relevant terms used in other agreements and by other international organizations, and to submit the revised glossary to the Conference of the Parties at its thirteenth meeting for its consideration;

2. *Recommends* that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

*The Conference of the Parties,*

*Noting* that clarity in terms and concepts within the context of Article 8(j) and related provisions can assist in the effective and consistent implementation of Article 8(j) and related provisions, in order to achieve Aichi Biodiversity Target 18, by 2020,

1. *Welcomes* the glossary of key terms and concepts to be used as working definitions within the context of Article 8(j) and related provisions as contained in the note by the Executive Secretary;<sup>13</sup>

[2. *Invites* Parties and other Governments to use the glossary in their development and implementation of relevant national measures, as appropriate;]

[3. *Requests* the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions to use the glossary as a reference in its future work.]

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<sup>13</sup> UNEP/CBD/WG8J/9/2/Add.1.

**9/4. Recommendations from the United Nations Permanent Forum on Indigenous Issues to the Convention on Biological Diversity**

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions recommends that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

*The Conference of the Parties,*

*Recalling* decision XII/12 F on the terminology “indigenous peoples and local communities”,

*Noting also* the recommendations contained in paragraphs 26 and 27 of the report of the United Nations Permanent Forum on Indigenous Issues on its tenth session;<sup>14</sup>

1. *Invites* the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to consider taking a decision to apply, *mutatis mutandis*, decision XII/12 F of the Conference of the Parties;

2. *Notes* the recommendations of the United Nations Permanent Forum on Indigenous Issues made at its thirteenth<sup>15</sup> and fourteenth<sup>16</sup> sessions, and *requests* the Executive Secretary to continue to inform the Permanent Forum on developments of mutual interest.

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<sup>14</sup> See *Official Records of the Economic and Social Council, 2011, Supplement No. 23* (E/2011/43-E/C.19/2011/14), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=E/C.19/2011/14>, and Corr.1, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=E/C.19/2011/14/Corr.1>.

<sup>15</sup> *Ibid.*, 2014, *Supplement No. 23* (E/2014/43-E/C.19/2014/11), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=E/C.19/2014/11>, and Corr.1, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=E/2014/43/Corr.1>.

<sup>16</sup> *Ibid.*, 2015, *Supplement No. 23* (E/2015/43-E/C.19/2015/10), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=E/2015/43>.

**9/5. In-depth dialogue on thematic areas and other cross-cutting issues**

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity *recommends* that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

*The Conference of the Parties,*

*Noting* that the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its ninth meeting conducted an in-depth dialogue on the topic “challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of three objectives of the Convention, in harmony with Nature/Mother Earth”,

1. *Encourages* Parties, other Governments, indigenous peoples and local communities and relevant organizations, and *requests* the Executive Secretary, to consider the advice and recommendations emanating from the dialogue, annexed to the report of the Working Group,<sup>17</sup> when implementing the relevant areas of work of the Convention, including tasks 7, 10, 12 and 15 of the programme of work for Article 8(j) and related provisions;

2. *Decides* that the topic for the in-depth dialogue to be held, subject to the agenda of the meeting and the time available, at the tenth meeting of the Working Group on Article 8(j) and Related Provisions, should be:

“Contribution of the traditional knowledge of indigenous peoples and local communities to the implementation of the 2030 Agenda for Sustainable Development with particular emphasis on conservation and sustainable use of biodiversity.”

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<sup>17</sup> UNEP/CBD/COP/13/3.



## II. ACCOUNT OF PROCEEDINGS

### Introduction

#### 1. *Background*

1. The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity was established by decision IV/9 of the Conference of the Parties. In its decision XII/12 A, paragraph 5, the Conference of the Parties decided that one meeting of the Working Group would be held prior to the thirteenth meeting of the Conference of the Parties to advance the implementation of the work programme. Accordingly, the ninth meeting of the Working Group was held in Montreal at the headquarters of the International Civil Aviation Organization (ICAO) from 4 to 7 November 2015.

#### 2. *Attendance*

2. The meeting was attended by representatives of the following Parties and other Governments: Albania; Antigua and Barbuda; Argentina; Australia; Austria; Azerbaijan; Barbados; Belarus; Belgium; Benin; Bhutan; Bolivia (Plurinational State of); Bosnia and Herzegovina; Brazil; Burkina Faso; Burundi; Cabo Verde; Cambodia; Cameroon; Canada; Central African Republic; Chad; China; Colombia; Comoros; Cuba; Czech Republic; Democratic Republic of the Congo; Denmark; Dominica; Ecuador; Egypt; Estonia; Ethiopia; Finland; France; Gambia; Germany; Grenada; Guatemala; Guinea; Guinea-Bissau; Iceland; India; Indonesia; Japan; Kuwait; Lebanon; Luxembourg;<sup>18</sup> Madagascar; Malawi; Malaysia; Maldives; Mali; Marshall Islands; Mauritania; Mexico; Morocco; Mozambique; Namibia; New Zealand; Niger; Nigeria; Norway; Pakistan; Palau; Peru; Philippines; Republic of Korea; Republic of Moldova; Saint Lucia; Sao Tome and Principe; Saudi Arabia; Senegal; Serbia; Slovakia; Solomon Islands; South Africa; Sri Lanka; Sudan; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; Thailand; Timor-Leste; Togo; Tonga; Uganda; Ukraine; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; Uruguay; Viet Nam; and United States of America.

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations (FAO); Global Environment Facility (GEF); International Treaty on Plant Genetic Resources for Food and Agriculture; United Nations Environment Programme (UNEP); United Nations Office for Project Services (UNOPS); United Nations Permanent Forum on Indigenous Issues; United Nations University Institute for Advanced Study of Sustainability; and World Intellectual Property Organization (WIPO).

4. The following organizations were also represented by observers:

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<sup>18</sup> On behalf of the European Union.

Articulacao Pacari  
Asia Indigenous Peoples Pact Foundation  
Asociación Ixacavaa De Desarrollo e  
Información Indígena  
Assembly of First Nations  
Association TUNFA  
Biodiversity International  
CBD Alliance  
Center for Support of Indigenous Peoples of the  
North/Russian Indigenous Training Centre  
Centre for International Sustainable  
Development Law  
CEPA Japan  
Chibememe Earth Healing Association  
Community Development Centre  
Conservation International  
Coordinadora de las Organizaciones Indígenas de  
la Cuenca Amazónica - COICA  
Deutsche Forschungsgemeinschaft (DFG) -  
University of Bonn  
ECOROPA  
ETC Group  
Federation of German Scientists  
Forest Peoples Programme  
Friends of the Earth International  
Fundación para la Promoción del Conocimiento  
Indígena  
Global Biodiversity Information Facility  
Global Forest Coalition  
Global Youth Project  
Indigenous Information Network  
Indonesian Institute of Sciences  
Institute for Biodiversity Network  
Institute for Global Environmental Strategies  
International Indigenous Forum on Biodiversity  
International University Network on Cultural and  
Biological Diversity  
International Union for Conservation of Nature  
Japan Committee for IUCN  
Japan Wildlife Research Center  
McGill University  
Mohawk Nation  
Mundo Afro  
Namibia- Nama Traditional Leaders Association  
Natural Justice (Lawyers for Communities and  
the Environment)  
Network of the Indigenous Peoples of Solomons  
Red de Mujeres Indígenas sobre Biodiversidad  
de América Latina y el Caribe  
Saami Council  
SOTZIL (Centro para la Investigación y  
Planificación del Desarrollo Maya-SOTZ'IL)  
South Asia Co-operative Environment  
Programme  
State University of New York at Plattsburgh  
Te Runanga o Ngati Hine (NZ tribe Ngati Hine)  
Tebtebba Foundation  
Tulalip Tribes  
Union of Indigenous Nomadic Tribes of Iran  
United Organization of Batwa Development in  
Uganda  
Université de Montréal  
Université de Sherbrooke  
University of Edinburgh - School of Law  
WWF International

#### **ITEM 1. OPENING OF THE MEETING**

5. The meeting was opened at 10.10 a.m. on Wednesday, 4 November 2015, by Ms. Tia Stevens, the Bureau Member from Australia who had been designated to chair the session by the representative of the President of the twelfth meeting of the Conference of the Parties to the Convention on Biological Diversity. She invited Mr. Kenneth Deer, Mr. Charles Patton and Mr. Alex Diabo, Elders of the Mohawk Community from Kahnawake, Canada, to give a traditional blessing. Mr. Patton performed a ceremonial prayer of welcome during which he spoke “the words that come before all things” and said in closing that it was important to go beyond bureaucratic words and show Mother Earth that she was loved and not just used and abused by humanity.

6. Opening statements were made by Mr. Balakrishna Pisupati, on behalf of the Executive Director of UNEP, Mr. Achim Steiner, and by Mr. Braulio Ferreira de Souza Dias, Executive Secretary of the Convention on Biological Diversity.

7. Mr. Pisupati said that the present meeting would discuss legislation and other mechanisms to implement Article 8(j) at the national level, focusing on issues that were not only relevant to work under Article 8(j) but were also linked with the provisions of the Nagoya Protocol on Access to Genetic

Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. The outcomes of the World Conference on Indigenous Peoples<sup>19</sup> and the work under the United Nations system-wide action plan aimed at ensuring a coherent approach to implement the United Nations Declaration on the Rights of Indigenous Peoples<sup>20</sup> would guide the work programme under Article 8(j). Regional and international cooperation in the protection of shared traditional knowledge would further the interests of both Article 8(j) and the Nagoya Protocol.

8. He added that Article 12 of the Nagoya Protocol called for the development of community protocols and requested Parties not to place restrictions on the use and exchange of traditional practices and customary law. The discussions on the development of guidelines on issues related to traditional knowledge were expected to move forward the implementation of Article 8(j) and to provide greater clarity for countries that had been developing national access and benefit sharing frameworks. The outcomes of the present meeting would benefit those discussions, especially in situations of transboundary use of traditional knowledge associated with genetic resources. UNEP, in its work supporting and promoting community protocols related to resource management and traditional knowledge, had called for the recognition of general principles of international law that were also relevant to the deliberations of the Working Group. Those included the principles of good faith, equity, self-determination and other principles of international environmental law, such as sustainable development.

9. In closing, he said that he hoped the outcomes of the meeting would provide an opportunity for Parties to consolidate efforts to protect traditional knowledge and the rights of indigenous peoples and local communities and promote their appropriate use for conservation, sustainable use and the sharing of benefits.

10. The Executive Secretary welcomed the participants and thanked the elders of the Mohawk community for sharing the rich cultural knowledge of their people. He also commended the Mohawk community's continuing efforts to restore their traditional language, which was helping to strengthen the intergenerational transfer of traditional knowledge and thus contributed to the achievement of Aichi Target 18. The traditional blessing served as a reminder that much was to be gained from recognizing convergences, rather than focusing on differences. Pope Francis, in his Encyclical on "care for our common home", had noted that respect for different cultural riches and the use of all branches of the sciences and all forms of wisdom were crucial to developing an ecology capable of remedying the damage done. He noted the importance of indigenous peoples and local communities as stewards of biodiversity.

11. He also noted that the current meeting coincided with harvest time, which was a reminder of the benefits that nature's biological diversity generously bestows on humanity. It should also be a reminder of the need to respect and preserve that diversity and share the benefits equally among all. Those were fitting themes as the Working Group set out to consider the development of guidelines that would assist Parties and Governments in the development of national measures to implement Article 8(j) and related provisions, and best practice guidelines for the repatriation of indigenous and traditional knowledge. Those matters were of utmost importance for the implementation of national measures to achieve Aichi Target 18 on schedule.

12. Further, he noted that, in the interest of efficiency, the streamlined agenda of the current meeting focused on key issues relevant to the achievement of Aichi Target 18 by 2020, which would also contribute to the effective implementation of the Nagoya Protocol. At the same time, the Working Group was invited to refer items addressed previously that were at the implementation stage to the newly established Subsidiary Body on Implementation. The draft guidelines prepared by the Secretariat, with input from Parties, built on existing work and aimed at avoiding overlap and duplication. Time was of the essence and he urged the Working Group to progress the guidance with a view to adoption at the thirteenth meeting of

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<sup>19</sup> See General Assembly resolution 69/2.

<sup>20</sup> General Assembly resolution 61/295, annex.

the Conference of the Parties to the Convention. The draft best practice guidelines could help restore the knowledge and culture of indigenous peoples and traditional communities, support and promote good practices, and help remedy historical injustice.

13. The efforts of the Convention and the Working Group to ensure the effective participation of indigenous peoples and local communities, and to respect, protect and promote traditional knowledge and customary sustainable use, were part of a United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples. The Secretariat had contributed to the development of that plan, whose reporting framework would allow for recording the progress made by the Convention with regard to traditional knowledge, customary sustainable use and effective participation of indigenous peoples. Such recognition would facilitate further progress and collaboration with other relevant actors within the international system.

14. He thanked the Governments of Australia, Finland, Germany, New Zealand, Norway and Sweden for their generous contributions, which had facilitated the participation of representatives of indigenous peoples and local communities in the present meeting. He also thanked the Governments of Canada, Finland, Germany, Norway and Sweden for their contributions towards the participation of representatives of developing countries, and the Government of Guatemala for hosting three back-to-back workshops in preparation for the present meeting.

## **ITEM 2. ORGANIZATIONAL MATTERS**

### **2.1. Election of officers**

15. In accordance with established practice, the Bureau of the Conference of the Parties acted as the Bureau of the Working Group. The Bureau designated Ms. Natalya Minchenko, the Bureau member from Belarus, to act as Rapporteur.

16. In keeping with past practice, indigenous and local community representatives were also invited to designate seven “Friends of the Bureau” to participate in Bureau meetings as well as to act as co-chairs of possible contact groups. On the proposal of the International Indigenous Forum on Biodiversity (IIFB), the following were elected by acclamation, from the regional groupings used by the Forum, as “Friends of the Bureau”:

*Africa:*

Ms. Lucy Mullenkei

*Arctic:*

Ms. Gunn-Britt Retter

*Asia:*

Mr. Hewadhura Gedera Nimalasiri Hewanila

*Central and Eastern Europe and the Caucasus:*

Ms. Polina Shulbaeva

*Latin America and Caribbean:*

Mr. Onel Masardule Arias

*North America:*

Ms. Myrle Ballard

*Pacific:*

Ms. Christine Teresa Grant

At the same time, it was also agreed that Mr. Arias would serve as Co-Chair of the Working Group.

## **2.2. Adoption of the agenda**

17. At its 1st session, on 4 November 2015, the Working Group adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/WG8J/9/1):

1. Opening of the meeting.
2. Organizational matters:
  - 2.1. Election of officers;
  - 2.2. Adoption of the agenda;
  - 2.3. Organization of work.
3. Review of the implementation of specific items, including indicators related to Article 8(j) and related provisions.
4. Task 12 of the Multi-Year Programme of Work on the implementation of Article 8(j) and related provisions:
  - (i) Develop guidelines for obtaining the prior informed consent or approval and involvement of the indigenous peoples and local communities for the use of their traditional knowledge;
  - (ii) Develop guidelines to ensure that indigenous peoples and local communities obtain a fair and equitable share of benefits arising from the use of their knowledge;
  - (iii) Develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge;
  - (iv) Develop a glossary of relevant key terms and concepts in Article 8(j) and related provisions.
5. Task 15 of the Multi-Year Programme of Work on the implementation of Article 8(j) and related provisions: best-practice guidelines for the repatriation of indigenous and traditional knowledge.
6. Recommendations of the United Nations Permanent Forum on Indigenous Issues.
7. In-depth dialogue on thematic areas and other cross-cutting issues.
8. Other matters.
9. Adoption of the report.
10. Closure of the meeting.

## **2.3. Organization of work**

18. At the 1st session of the meeting, the Working Group approved the organization of work for the meeting on the basis of the proposal contained in annex I to the revised annotations to the provisional agenda (UNEP/CBD/WG8J/9/1/Add.1/Rev.1).

19. To ensure the full participation of delegates and observers in the deliberations of the Working Group, and consistent with the streamlined agenda, it was decided that the Working Group would work in plenary on the understanding that, where necessary and appropriate, contact groups could be established to examine specific issues.

## **2.4. Opening statements and general comments**

20. The representative of IIFB thanked the Executive Secretary and the Parties, especially Australia, Finland, Germany, New Zealand, Norway, and Sweden for facilitating the participation of representatives of indigenous peoples and local communities through the Voluntary Fund. The change in the organization

of work and, in particular, the shortening of the number of meeting days, made the work of the present meeting more challenging. Some matters traditionally addressed by the Working Group would be moved to the Subsidiary Body on Implementation, which should adopt modalities for ensuring the full and effective participation of indigenous peoples and local communities. IIFB welcomed the draft guidelines under tasks 7, 10 and 12 of the multi-year programme of work and looked forward to strong guidelines containing core principles that built on, and did not diminish, provisions on free, prior and informed consent. The guidelines must respect fully the rights of indigenous peoples, especially indigenous women, as owners and holders of traditional knowledge. She welcomed the progress under Task 15 on guidelines for the repatriation of traditional knowledge. While much work remained to be done, the report of the expert group contained in UNEP/CBD/WG8J/9/INF/4 contained a rich record which could have been more fully reflected in the annex to UNEP/CBD/WG8J/9/3. She requested the Executive Secretary to produce a technical series publication on the matter. IIFB strongly supported the recommendation of the United Nations Permanent Forum on Indigenous Issues inviting the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to take action to adopt the terminology “indigenous peoples and local communities” and to safeguard all rights of indigenous peoples and local communities. The in-depth dialogue had the potential to shed light on key issues and challenges relevant to traditional knowledge of indigenous peoples and local communities; IIFB was currently consulting on the topic for the next in-depth dialogue.

21. The representative of Luxembourg, speaking on behalf of the European Union and its 28 member States, encouraged Governments, indigenous peoples and local communities, scientists and intergovernmental and non-governmental organizations to work together in contributing to the recommendations arising from the meeting and to the in-depth dialogue on challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders. Active, meaningful participation by indigenous peoples and local communities that held traditional knowledge was crucial for the effectiveness of the Convention’s work. They played a significant role in the achievement of sustainable development at all levels, including in policy and programmatic decision-making, planning, implementation and monitoring.

22. The representative of Canada said that, as a result of a recent federal election, there would be a change of Government in Canada which would take place during the present meeting. Consequently, the Canadian delegation would not intervene during the meeting unless exceptional circumstances so warranted. However, that silence should be taken as neither agreement nor disagreement with any of the decisions the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) might recommend to the Conference of the Parties. His delegation would continue to pay close attention to deliberations at those meetings, participate actively in the side events and respond, informally, to any questions or comments from other participants. Canada remained an enthusiastic supporter of the Convention and its three objectives.

23. The representative of Bosnia and Herzegovina, speaking on behalf of the countries of the Central and Eastern European region, said that the countries of her region were proud of the biodiversity of their region, which ranged from Mediterranean Sea to the tundra of the Russian Federation, and the cultures associated with those diverse landscapes and ecosystems. That diversity had always been seen, across the region, as essential to human well-being. Diversity of practices in the use of biodiversity was one of the pillars of Central and Eastern European regional identity, but, in recent decades, the region, which was also experiencing a transition of its economy, had seen a transition in lifestyles that had an impact on the status of traditional knowledge in local communities. Many parts of the region were affected by rural-urban migration, and traditional knowledge was being lost before it could be documented properly. The conservation of traditional knowledge was at a pioneering stage, but the revision of national biodiversity strategies and action plans by countries of the region provided an opportunity to further address that and organize the work around Aichi Target 18.

24. The representative of Senegal, speaking on behalf of the African Group, thanked the Mohawk people for their warm welcome and hospitality and welcomed the organization of the meeting, which was

of particular importance for the whole continent, particularly indigenous peoples and local communities. Holders of traditional knowledge had rendered all of humanity an enormous service for millennia through their rich and varied knowledge. The world had, therefore, an obligation to do everything possible to preserve traditional knowledge and give it its rightful place alongside other knowledge. In Africa, traditional knowledge suffered from several ills, including little to no documentation, inadequate means of transmission and protection, piracy of all kinds and a lack of mechanisms for sharing the benefits arising from its use. The African Group had great hopes for the outcome of the meeting, in particular with regard to the issues addressed under item 4. He thanked the donor countries for enabling representatives of the indigenous peoples and local communities of Africa to take part in the work conducted under Article 8(j), but expressed the hope that additional efforts would be made so they could be better represented in the work of the Convention and, in particular, that conducted under Article 8(j). Africa stood ready to participate actively and constructively in the current work in a spirit of compromise.

25. The representative of Australia said that his Government undertook a range of activities in support of the implementation of Article 8(j) and related provisions. It provided support for indigenous communities to manage the country's 71 Indigenous Protected Areas, which accounted for over 40 per cent of its National Reserve System, for land conservation. It also supported enterprise development and job creation in remote locations with limited employment opportunities. In the framework of a comprehensive national indigenous ranger programme, 775 full-time equivalent indigenous rangers were funded in 108 ranger teams across the country. The Government was also engaged in the joint management of national parks where traditional owners and the Government worked together, sharing decision-making, knowledge, skills and information.

26. The representative of Mexico thanked the donor countries for supporting the participation of developing countries and the Mohawk people for their warm welcome. Recalling that Mexico was a mega-diverse, multicultural country and the host of the thirteenth meeting of the Conference of the Parties, he expressed his country's continued commitment to the Working Group's efforts to achieve a system that protected traditional knowledge, innovations and practices and the rights of those who generated and maintained them. It was therefore important to promote the participation of indigenous peoples and local communities, and in particular the fair and equitable sharing of benefits arising from the use of those resources. In order to achieve effective implementation at the national level, the objectives of the Working Group should take into account work being carried out under other international instruments, with due consideration for the sovereignty of the Parties.

27. The representative of Japan, speaking on behalf of the Asia-Pacific region, expressed the region's deep appreciation to the Executive Secretary, the host country and the donors for organizing the meeting. The Asia-Pacific region had a rich biodiversity, which had been sustained partly through the knowledge, innovations and practices of its indigenous peoples and local communities. With its history and tradition of living in harmony with nature, the region considered the implementation of the programme of work on Article 8(j) and related provisions as essential for achieving three objectives of Convention. The activities of the Working Group and those undertaken under the Nagoya Protocol should be complementary and avoid duplication of effort.

28. The representative of Peru, speaking on behalf of the Group of Latin American and Caribbean countries, thanked the Mohawk people for their profound, wise words. The Latin American and Caribbean countries had great biological diversity that had been preserved and kept alive largely thanks to their broad cultural diversity, and were prepared to participate actively in the current meeting and contribute to a positive outcome.

**ITEM 3. REVIEW OF THE IMPLEMENTATION OF SPECIFIC ITEMS, INCLUDING INDICATORS RELATED TO ARTICLE 8(J) AND RELATED PROVISIONS**

29. The Ad Hoc Open-ended Working Group took up item 3 at the 1st session of the meeting, on 4 November 2015. In considering the item, the Working Group had before it a compilation of views concerning traditional occupations (UNEP/CBD/WG8J/9/INF/3).

30. Following the introduction by the representative of the Secretariat, the Co-Chair proposed, taking into account the fact that the Conference of the Parties at its twelfth meeting had established a subsidiary body on implementation with a mandate to review progress in the implementation of the Convention and to identify and develop recommendations to overcome obstacles encountered and recommendations on how to strengthen mechanisms to support implementation, and that the ninth meeting of the Working Group was to be held in six sessions, or three working days, over four days, with a very full agenda, that the following items be referred to the Subsidiary Body on Implementation for consideration at its first meeting and at subsequent meetings, as appropriate:

(a) Progress in implementing Article 8(j) and related provisions, at the national level, including the participation of indigenous peoples and local communities;

(b) Progress in mainstreaming Article 8(j) and related provisions across the areas of work of the Convention, including capacity-building and participation of indigenous peoples and local communities in the work of the Secretariat;

(c) Implementation of the plan of action on customary sustainable use of biological diversity (Article 10(c)).

31. A statement was made by the representative of Luxembourg (on behalf of the European Union and its 28 member States).

32. A statement was also made by the representatives of the United Nations Permanent Forum on Indigenous Issues.

33. A further statement was made by the representative of Articulaci3n Pacari.

34. In the absence of objections to the proposal, the Co-Chair asked the Executive Secretary to convey the agreement to the Subsidiary Body on Implementation, including by placing the items in question on the provisional agenda for its first meeting, in May 2016.

**ITEM 4. TASK 12 OF THE MULTI-YEAR PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS**

35. The Ad Hoc Open-ended Working Group took up item 4 at the 1st session of the meeting, on 4 November 2015. In considering the item, the Working Group had before it a note by the Executive Secretary on proposed guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the prior informed consent or approval and involvement of indigenous peoples and local communities for accessing their knowledge, innovations and practices, the fair and equitable sharing of benefits from the use and application of such knowledge, innovations and practices, and for reporting and preventing unauthorized access to such knowledge, innovations and practices (UNEP/CBD/WG8J/9/2); a draft glossary of relevant key terms and concepts in Article 8(j) and related provisions (UNEP/CBD/WG8J/9/2/Add.1); a compilation of views and information received for subtasks (i), (ii), (iii) and (iv) (UNEP/CBD/WG8J/9/INF/1); and an analysis of the submissions received (UNEP/CBD/WG8J/9/INF/1/Add.1); as well as a note by the Executive Secretary on possible elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities (UNEP/CBD/WG8J/8/6/Add.1), which had been issued for the eighth meeting of the Working Group.

36. Following the introduction by the representative of the Secretariat, the Co-chair invited the Working Group to discuss the development of guidelines that would assist Parties and Governments in the



development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and related provisions.

37. Statements were made by the representatives of Australia, Bolivia (Plurinational State of), Guatemala (on behalf of the Like-minded Megadiverse Countries), India, Indonesia, Luxembourg (on behalf of the European Union and its 28 member States), Mexico, New Zealand, Norway, the Philippines, the Republic of Korea, Sudan (on behalf of the African Group) and Switzerland.

38. Statements were also made by the representative of Articulaci3n Pacari and IIFB.

39. The representative of the Plurinational State of Bolivia informed the Working Group that the World People's Conference on Climate Change and the Defense of Life had been held in Bolivia in October 2015 with the participation of more than 60 countries. The Declaration adopted by the Conference was the result of work conducted in a constructive spirit based on dialogue that had made it possible to join voices and vision on biodiversity, forests, climate change, science, technology and to develop the people's agenda for life.

40. At the 2nd session of the meeting, on 5 November 2015, the Working Group continued consideration of the item.

41. Statements were made by the representatives of Argentina, Belarus, Brazil, China, Colombia, Guatemala, Japan, Pakistan, Saudi Arabia and Uruguay.

42. Statements were also made by the representative of the Local Communities of Latin America and the Caribbean and the secretariat of WIPO. Following the exchange of views, at the suggestion of the Co-chair, the Working Group agreed to form a contact group, co-chaired by Mr. Johan Bodeg3rd (Sweden) and Ms. Christine Teresa Grant (IIFB), to discuss the proposed guidelines further.

43. The Co-chair also said that he would prepare a revised draft recommendation for the consideration of the Working Group on the draft glossary.

44. A contact group was formed to consider the proposed guidelines.

*Proposed guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the prior informed consent or approval and involvement of indigenous peoples and local communities for accessing their knowledge, innovations and practices, the fair and equitable sharing of benefits from the use and application of such knowledge, innovations and practices, and for reporting and preventing unauthorized access to such knowledge, innovations and practices*

45. At the 3rd session of the meeting, on 6 November 2015, the Working Group heard a progress report from the contact group. Ms. Grant, co-chair of the contact group, reported that the group had made progress but required more time to conclude its discussions under the item.

46. At the 4th session of the meeting, on 7 November 2015, Ms. Grant introduced a revised draft recommendation as proposed by the contact group (UNEP/CBD/WG8J/9/L.5).

47. Following an exchange of views, the Working Group approved the revised draft recommendation, as orally amended, and adopted it as recommendation 9/1. The text of the recommendation, as adopted, is contained in section I of the present report.

*Draft glossary of relevant key terms and concepts in Article 8(j) and related provisions*

48. At the 3rd session of the meeting, on 6 November 2015, the Working Group considered a revised draft recommendation on a glossary of relevant key terms and concepts to be used within the context of Article 8(j) and related provisions (UNEP/CBD/WG8J/9/L.2).

49. Following an exchange of views, the Working Group approved the revised draft recommendation, as orally amended, and adopted it as recommendation 9/3. The text of the recommendation, as adopted, is contained in section I of the present report.

**ITEM 5. TASK 15 OF THE MULTI-YEAR PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS: BEST-PRACTICE GUIDELINES FOR THE REPATRIATION OF INDIGENOUS AND TRADITIONAL KNOWLEDGE**

50. The Ad Hoc Open-ended Working Group took up item 5 at the 2nd session of the meeting, on 5 November 2015. In considering the item the Working Group had before it a note by the Executive Secretary on voluntary guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity (UNEP/CBD/WG8J/9/3); the report of the Expert Group on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biological Diversity for the information of the Working Group (UNEP/CBD/WG8J/9/INF/4); a compilation of views on Task 15 of the programme of work on Article 8(j) and related provisions (UNEP/CBD/WG8J/8/INF/7); and a compilation of views and information received on Task 15 compiled for the Expert Meeting on the Repatriation of Traditional Knowledge and the ninth meeting of the Working Group (UNEP/CBD/A8J/EM/2015/1/INF/1).

51. At the Chair's request, Ms. Pernilla Malmer (Sweden), the co-chair of the Expert Group on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biological Diversity, presented the report of the meeting of the Expert Group held in Panajachel, Guatemala, on 14 and 15 June 2015.

52. Following the presentation by Ms. Malmer, statements were made by the representatives of Belarus, Guatemala (on behalf of the Like-minded Megadiverse Countries), Guatemala, Ethiopia (on behalf of the African Group), Luxembourg (on behalf of the European Union and its 28 member States), India, Morocco, Mexico, Philippines and the Republic of Korea.

53. Statements were also made by the representatives of IIFB and Red de Mujeres Indígenas sobre Biodiversidad.

54. Following the exchange of views, the Co-Chair said that he would prepare a revised draft recommendation for the consideration of the Working Group.

55. At the 3rd session of the meeting, on 6 November 2015, the Working Group considered the revised draft recommendation (UNEP/CBD/WG8J/9/L.4).

56. At the 4th session of the meeting, on 7 November 2015, the Working Group approved the revised draft recommendation, and adopted it as recommendation 9/2. The text of the recommendation, as adopted, is contained in section I of the present report.

**ITEM 6. RECOMMENDATIONS OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES**

57. The Ad Hoc Open-ended Working Group took up item 6 at the 2nd session of the meeting, on 5 November 2015. In considering the item, the Working Group had before it a note by the Executive Secretary on recommendations of the United Nations Permanent Forum on Indigenous Issues to the Convention on Biological Diversity (UNEP/CBD/WG8J/9/4).

58. The Co-Chair also invited the Working Group to consider the draft recommendations on best-practice guidelines that would facilitate enhancement of the repatriation of traditional knowledge (task 15).

59. Statements were made by the representatives of Bolivia (Plurinational State of), Brazil, Indonesia, Japan, Luxembourg (on behalf of the European Union and its 28 member States) and Mexico.

60. A statement was also made by the representative of the United Nations Permanent Forum on Indigenous Issues.

61. Following the exchange of views, the Co-Chair said that he would prepare a revised draft recommendation for the consideration of the Working Group.

62. Mr. Arias, speaking in his capacity as Co-chair of the meeting, thanked participants on behalf of the indigenous peoples for the good spirit that reigned throughout the discussions. It was heartening to see indigenous peoples' contribution to the conservation of biodiversity being recognized. He was hopeful that the deliberations would yield good, concrete results that would be implemented in the same good spirit.

63. At the 3rd session of the meeting, on 6 November 2015, the Working Group continued consideration of the item.

64. Following an exchange of views, the Co-Chair said that he would prepare a revised draft recommendation for the consideration of the Working Group, which was subsequently circulated as draft recommendation UNEP/CBD/WG8J/9/L.3. The Working Group approved the revised draft recommendation, as orally amended, and adopted it as recommendation 9/4. The text of the recommendation, as adopted, is contained in section I of the present report.

#### **ITEM 7. IN-DEPTH DIALOGUE ON THEMATIC AREAS AND OTHER CROSS-CUTTING ISSUES**

65. The Ad Hoc Open-ended Working Group took up item 7 at the third session of the meeting, on 6 November 2015. In considering the item, the Working Group had before it a note by the Executive Secretary on the in-depth dialogue on thematic areas and other cross-cutting issues: "Challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of the three objectives of the Convention, in harmony with nature/Mother Earth" (UNEP/CBD/WG8J/9/5); a compilation of views concerning this topic (UNEP/CBD/WG8J/9/INF/2) and additional information concerning the in-depth dialogue (UNEP/CBD/WG8J/9/INF/2/Add.1).

66. The Co-Chair asked the Working Group for its views regarding possible future topics for the in-depth dialogue to be held at its next meeting.

67. Statements were made by the representatives of Brazil, Colombia, Luxembourg (on behalf of the European Union and its 28 member States), India, New Zealand, Norway, and the Philippines.

68. Statements were also made by the representatives of IIFB and Mundo Afro.

69. Following the exchange of views, the Co-Chair said that he would prepare a revised draft recommendation for the consideration of the Working Group.

70. At the 4th session of the meeting, on 7 November 2015, the Working Group considered the revised draft recommendation (UNEP/CBD/WG8J/9/CRP.4).

71. Following an exchange of views, the Working Group approved the revised draft recommendation, as orally amended, and adopted it as recommendation 9/5. The text of the recommendation, as adopted, is contained in section I of the present report.

#### **In-depth dialogue**

72. At the 4th session of the meeting, on 7 November 2015, the Working Group also engaged in an in-depth dialogue on the cross-cutting issue of "challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of three objectives of the Convention in harmony with Nature/Mother Earth."

73. Panel presentations were made by: Ms. Beth Tui Shortland (Programme Manager Nga Tirairaka o Ngati Hine), Mr. Onel Marsadule Arias (Director, Foundation for the promotion of Indigenous knowledge) and Ms. Begoña Venero Aguirre (Senior Counsellor, Traditional Knowledge Division, WIPO).

74. A summary of the panel presentations, and the statements made after the presentations, is contained the annex to the present report.

**ITEM 8. OTHER MATTERS**

75. No other matters were raised.

**ITEM 9. ADOPTION OF THE REPORT**

76. The present report was adopted, as orally amended, at the 4th session of the meeting, on 7 November 2015, on the basis of the draft prepared by the Rapporteur (UNEP/CBD/WG8J/9/L.1).

**ITEM 10. CLOSURE OF THE MEETING**

77. Following the customary exchange of courtesies, the Chair declared the ninth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions closed at 1.20 p.m. on Saturday, 7 November 2015.

*Annex*

**IN-DEPTH DIALOGUE ON THE CROSS-CUTTING ISSUE OF “CHALLENGES AND OPPORTUNITIES FOR INTERNATIONAL AND REGIONAL COOPERATION IN THE PROTECTION OF SHARED TRADITIONAL KNOWLEDGE ACROSS BORDERS FOR THE STRENGTHENING OF TRADITIONAL KNOWLEDGE AND THE FULFILMENT OF THREE OBJECTIVES OF THE CONVENTION IN HARMONY WITH NATURE/MOTHER EARTH”**

**Panel presentations**

Ms. Begoña Venero Aguirre, Senior Counsellor, Traditional Knowledge Division, World Intellectual Property Organization (WIPO), said that WIPO provided technical assistance and legislative and policy advice, at the request of Member States, for the development of regional frameworks for the protection of traditional knowledge and genetic resources. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was currently negotiating draft articles on transboundary measures for the protection of shared traditional knowledge.

In the Caribbean region, WIPO had supported work on the development of a regional framework for the protection of traditional knowledge since 2006. A working group had been tasked with collecting information and conducting research in different countries in the region which had been used as a basis for the subsequent drafting of legislative provisions. The draft document contained elements of a possible regional framework for the protection of traditional knowledge, traditional cultural expressions and genetic resources. It was yet to be decided whether the matter would be regulated through national legislation or the adoption of a regional instrument.

WIPO-supported work on transboundary cooperation for the protection of shared knowledge in the Pacific region had commenced in 1999 and resulted in the adoption of two model laws in 2002. The model laws provided for two regional frameworks on the protection of traditional knowledge, cultural expression and genetic resources, and on the protection of biological resources, innovations and practices. Two Pacific island States had already adopted national legislation on the basis of the model laws. The Traditional Knowledge Action Plan developed under the auspices of the Pacific Islands Forum Secretariat was at the implementation stage. WIPO had provided technical and financial assistance in the context of a two-year programme, whose possible extension for another two years was currently being discussed. The involvement of WIPO was aimed mainly at assisting Pacific island States in the development of national legislative protection systems for traditional knowledge and traditional cultural expressions, building on the relevant work done in different forums, including the evolving international framework being negotiated in the Intergovernmental Committee.

Ms. Tui Shortland, Programme Manager, Nga Tirairaka o Ngati Hine, New Zealand, shared her experiences with the sharing and protection of traditional knowledge among indigenous communities in the Pacific. One example was the Pasifika Indigenous Network, which sought to harness the voices of indigenous peoples working across the Rio conventions and other environmental agreements. The Maori had been a voyaging people for over a millennium and there was considerable overlap in the traditional knowledge of indigenous peoples of the Pacific. One of the main challenges to knowledge sharing was the remoteness of many communities, which made it difficult to reach traditional knowledge holders. Regional traditional knowledge centres of excellence were being developed in order to facilitate outreach. Another obstacle was indigenous peoples' distrust of researchers. Many island communities had been subjected to excessive research, and the knowledge obtained had often been used in ways that were disrespectful of its owners. In order to build trust, non-disclosure agreements and community protocols on traditional knowledge relating to medicinal uses of plants and biological control, among others, were being implemented.

Mr. Onel Masardule Arias, Director, Foundation for the Promotion of Indigenous Knowledge, Panama, said that indigenous peoples in Mesoamerica shared traditional knowledge across national borders and tribes, and work was being undertaken in several countries towards transboundary protection of that knowledge. In Panama, indigenous peoples had developed a protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their use. In Honduras, a biocultural protocol had been developed for the Miskit, and the Government of Mexico had provided structural support for the development of biocultural protocols in Tutotepec, Hidalgo, and Naha, Chiapas. Biocultural protocols were crucial to ensuring that the holders of traditional knowledge received an equitable share in the benefits arising from the use of such knowledge, which they had historically been denied. In order to illustrate the importance of biocultural protocols, he shared the example of the CocoaWell® Company, which had used the image and knowledge of the Kuna people in the marketing of its products. By developing a biocultural protocol, the Kuna had managed to obtain a share of the proceeds derived from the sale of the products.

Given the importance of biocultural protocols to the equitable sharing of benefits arising from the use of traditional knowledge, efforts focused on developing community protocols for all indigenous peoples in the region, to the extent possible, and on identifying principles and mechanisms for their implementation. Regional protocols for Mesoamerica could serve as guidance for good relationships between the indigenous peoples of the region. In indigenous culture, knowledge was traditionally shared in good faith within and among tribes for the benefit of all. He said that the concept of using knowledge for personal enrichment was alien to the spirit of his peoples. Biocultural protocols should contain key elements relating to: the scope of application; objectives; general principles; free, prior and informed consent; conditions for requesting permission; equal sharing of benefits; and environmental and cultural protection.

In addition to Mexico and Honduras, the Governments of Ecuador, El Salvador and Panama had taken steps towards supporting indigenous peoples in the development of community protocols, which illustrated that governments and indigenous peoples could work together to preserve the genetic resources that were crucial to humanity. Although funding was an issue, the indigenous peoples in his region were firmly committed to the implementation of the Nagoya Protocol.

## **Discussion**

Following the presentations by panellists, a number of Parties and representatives of indigenous peoples and local communities spoke about their experiences with respect to transboundary protection of traditional knowledge.

In East Africa, where a substantial number of communities in neighbouring countries shared languages, traditions and customary laws, protocols were being developed to protect traditional knowledge. That work had indicated the importance of recognizing and following the traditions of the Elders despite a lack of written models.

In North America, tribes in the Pacific North-west were developing agreements to deal with transboundary traditional knowledge issues. The local indigenous peoples tended to focus on the appropriate use of traditional knowledge; it was important that the customs should remain attached to the knowledge and not expire. Cooperation was needed between legal systems to ensure that traditional knowledge continued to be protected when it crossed borders, whether community or national.

The experience of the Kuna people in Panama had highlighted the issue of intellectual property law only protecting knowledge at the national level, and not covering biodiversity or genetic resources. It was important to involve women and to have a shared legal framework with other countries.

A representative of the Aymara indigenous peoples of Bolivia, who was also the member in the United Nations Permanent Forum on Indigenous Issues representing the Latin American region, described how the Aymara, who were spread across four countries, shared traditional knowledge in the context of llama breeding for food security and clothing.

The indigenous peoples and local communities of the Cerrado region of Brazil, with the support of the Secretariat in the form of information and workshops, had developed regional protocols that had subsequently been incorporated into national instruments for access and benefit sharing and prior informed consent.

One representative stressed the difficulty of determining whether traditional knowledge was the “same” within the meaning of Article 11 of the Nagoya Protocol, in addition to wondering how to deal with countries that were not parties to the Nagoya Protocol in dealing with the protection of shared traditional knowledge across borders.

A representative of Asia Indigenous Peoples Pact (AIPP) described the Regional Adaptation Learning Highway, a regional knowledge exchange meeting of participants from seven Asian countries aimed at promoting the use of traditional knowledge, techniques and innovations in combating climate change. She stressed that the main issue was the exclusion of indigenous peoples in the decision-making process.

A representative of Guatemala described how his country, having ratified the Nagoya Protocol, was now developing the political, legal and administrative tools for access to technical knowledge and equitable benefit sharing, and would soon share its experience and lessons learned through the Convention’s clearing-house mechanism.

A representative of the Caribbean island of Antigua and Barbuda shared what her country was doing to involve local communities in planning, policy development and decision making. The country’s new Environmental Protection and Management Act had been developed in consultation with local communities and contained many sections relating to the rights and contributions of local communities. She noted that small islands were particularly vulnerable to planning and policy mistakes, and the input of local communities was essential to building resilience.

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