



Convention on Biological Diversity

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EXPERT GROUP MEETING OF LOCAL COMMUNITY
REPRESENTATIVES WITHIN THE CONTEXT OF
ARTICLE 8(j) AND RELATED PROVISIONS OF THE
CONVENTION ON BIOLOGICAL DIVERSITY
Montreal, 14–16 July 2011

GUIDANCE FOR THE DISCUSSIONS CONCERNING LOCAL COMMUNITIES WITHIN THE CONTEXT OF THE CONVENTION ON BIOLOGICAL DIVERSITY

INTRODUCTION

1. At its tenth meeting, the Conference of the Parties, in paragraph 21 of decision X/43, noted that the involvement of local communities in accordance with Article 8(j) has been limited for various reasons, and requested the Secretariat to convene an ad hoc expert group meeting of local community representatives, bearing in mind geographic and gender balance, with a view to identifying common characteristics of local communities, and gathering advice on how local communities can more effectively participate in Convention processes, including at the national level, as well as how to develop targeted outreach in order to assist in the implementation of the Convention and the achievement of its goals, for consideration at the seventh meeting of the Working Group on Article 8(j) and Related Provisions, which will be held in Montreal from 31 October to 4 November 2011.

2. To assist the discussions, section I of the present document provides background information regarding the terminology with reference to local communities, as well as an overview of local communities within the mandate of the Convention on Biological Diversity. Section II considers future directions of the programme of work for Article 8(j), and section III proposes suggestions of possible recommendations for the consideration of the participants in the meeting in order to fulfil its mandate, which is to provide advice to the seventh meeting of the Working Group on Article 8(j) and Related Provisions.

I. USE OF THE TERM “INDIGENOUS AND LOCAL COMMUNITIES” IN THE CONVENTION ON BIOLOGICAL DIVERSITY

3. The Convention on Biological Diversity uses the term “indigenous and local communities” with reference to communities that have a long association with, and depend on, the lands and waters that they have traditionally live on or used. Sometimes such communities are also referred to as “traditional communities”. Because of this long association and reliance upon local resources, local communities have accumulated knowledge, innovations and practices regarding the sustainable management and development of these territories including useful environmental knowledge.

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4. Although there is no set definition of “local communities”, in order to address paragraph 21 of decision X/43, it may be useful for the meeting to explore the concept of local communities within the mandate of the Convention on Biological Diversity, which may assist the meeting to identify some common characteristics.

5. Many communities may be considered local and may also be described as traditional communities. Some local communities may include peoples of indigenous descent. They are culturally diverse and occur on all inhabited continents. For example, small farming communities in France, who have occupied and farmed their lands for many generations acquiring useful environmental knowledge including specialist knowledge about a variety of activities including sustainable agriculture, cheese making and wine making or even animal husbandry may represent a local or traditional community. Long term established rice and fish farmers in Asia may represent another type of local community. In Brazil, local and traditional communities are an important segment of the national population and are a legal entity in the national constitution.

6. However, “Local community” remains, to some extent, an ambiguous term. It can refer to a group of people which have a legal personality and collective legal rights and this is considered a community in the strict sense. Alternatively, a “local community” can refer to a group of individuals with shared interests (but not collective rights) represented by a non-governmental community-based organization (NGO). For example, many traditional communities act through NGOs, which are social rather than community organizations.

7. The issue of cultural identity remains a multidimensional and complex issue. Self-identification is the most appropriate way to establish who may be indigenous and/or a local and/or a traditional community representative

II. THE CONVENTION AND LOCAL COMMUNITIES

8. The international community has recognized the close and traditional dependence of many 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.

9. In Article 8(j) of the Convention, Parties have undertaken to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such traditional knowledge and encourage the equitable sharing of the benefits arising from its utilization. The Conference of the Parties has established a Ad Hoc Open-ended Working Group specifically to address the implementation of Article 8(j) and related provisions of the Convention. This working group is open to all Parties and, indigenous and local community representatives play a full and active role in its work. Traditional knowledge is considered a “cross-cutting” issue that affects many aspects of biological diversity, so it will continue to be addressed by the Conference of the Parties and by other working groups as well.

Engaging local communities

10. Given the commitment by Parties to the Convention to respect, preserve, maintain and promote the wider use of traditional knowledge with the approval and involvement of the users of such knowledge, local communities have a direct interest in the work of the Convention. Consequently, their representatives have been invited to participate fully in the working group on traditional knowledge, including in the group's decision-making. Local community representatives also participate in other meetings of the Convention of relevance to them.

National measures

11. As a result of the Convention's adoption and the work being conducted under its auspices, Governments have already undertaken to facilitate the participation of local communities in developing policies for the conservation and sustainable use of resources, access to genetic resources and the sharing of benefits, and the designation and management of protected areas. Many Governments are now in the process of implementing Article 8(j) of the Convention through their national biodiversity action plans, strategies and programmes. Some Governments are now implementing the Nagoya Protocol which will require engagement of traditional knowledge holders such as local communities. A number of Governments have adopted specific laws, policies and administrative arrangements for protecting traditional knowledge, emphasizing that the prior informed consent of knowledge-holders must be attained before their knowledge can be used by others.

12. A growing respect for traditional knowledge has led modern science to adapt its procedures for assessing the impact of development projects on biological diversity; for monitoring of ecosystems, species, particular genetic resources and species at risk; for controlling alien species; and for promoting the *in-situ* conservation and sustainable management of biological diversity generally to identify but a few examples. Governments are also seeking to involve indigenous and local communities more actively, and to apply their knowledge and technologies, in the conservation and sustainable use of forests, agricultural biodiversity, inland waters, coastal and marine ecosystems, rangelands and eco-tourism.

Future directions

13. As part of a programme of work addressing the commitments embodied in Article 8(j) and other provisions of the Convention dealing with traditional knowledge, Governments and Contracting Parties have undertaken:

(a) To establish mechanisms to ensure the effective participation of indigenous and local communities in decision-making and policy planning;

(b) To respect, preserve and maintain traditional knowledge relevant to the conservation and sustainable use of biological diversity;

(c) To promote its wider application with the approval and involvement of the indigenous and local communities concerned; and

(d) To encourage the equitable sharing of the benefits arising from the utilization of such traditional knowledge.

14. While these elements are equally important, the last one has taken on a special significance for local communities with the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which includes legal obligations to ensure that indigenous and local communities receive a fair and equitable share of the benefits that may derive from the utilization of their traditional knowledge associated with genetic resources or for the use of genetic resources held by indigenous and local communities.

15. Within the current programme of work, the Ad Hoc Open ended Working Group on Article 8(j) and Related Provisions' main tasks include, *inter alia*:

(a) Mechanisms to promote the effective participation of indigenous and local communities in the work of the Convention:

(i) Capacity-building;

- (ii) Development of communications, mechanisms and tools;
 - (iii) Participation of indigenous and local communities in the work of the Convention;
 - (iv) Other initiatives.
- (b) The development of elements of *sui generis* systems for the protection of traditional knowledge;
- (c) Indicators:
 - (i) Operationalizing the three indicators for the retention of traditional knowledge and methods and measures to address the underlying causes of the loss of such knowledge;
 - (ii) Developing indicators for customary sustainable use;
- (d) The ongoing promotion of the Akwe:Kon Guidelines and the ethical code of 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;
- (e) Tasks 7, 10 and/or 12 of the revised programme of work (which may contribute to the effective implementation of the Nagoya Protocol);
- (f) Task 15 on the repatriation of traditional knowledge and associated cultural property;
- (g) Strategy to integrate Article 10, with a focus on Article 10(c), as a cross-cutting issue into the programmes of work and thematic areas of the Convention.

16. The Secretariat has invited Parties, other Governments, indigenous and local communities and non-governmental organizations to submit views on the aforementioned matters. The contribution of indigenous and local communities will be crucial for the success of the seventh meeting of the Working Group on Article 8(j) and Related Provisions and to the overall success of the Convention.

The Nagoya Protocol on Access and Benefit-sharing

17. A major accomplishment of the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity was the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Utilization of Genetic Resources following more than six years of negotiations.

18. The Protocol will advance one of the three core objectives of the Convention: the fair and equitable sharing of benefits arising from the utilization of genetic resources (ABS). It builds on the access and benefit-sharing provisions of the Convention.

19. The preamble to the Protocol provides a context for the interpretation of the text of the Protocol. The preamble contains seven paragraphs of specific relevance to indigenous peoples and local communities and their traditional knowledge. These paragraphs include references to Article 8(j), the interrelationship between genetic resources and traditional knowledge and their inseparable nature, the diversity of circumstances in which traditional knowledge is owned or held (including by countries), the identification of the rightful holders of traditional knowledge, the Declaration on the Rights of Indigenous Peoples and existing rights.

20. At the core of the Protocol are obligations related to access to genetic resources, to the fair and equitable sharing of benefits arising out of genetic resources as well as to compliance with national ABS legislation and mutually agreed terms.

21. In addition, in order to support compliance, Parties have the obligation to take measures to monitor the utilization of genetic resources, including through the designation of check points and reporting requirements. In addition, to serve as evidence that genetic resources have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, an internationally recognized certificate of compliance awarded by providers of genetic resources is to be made available to the ABS Clearing-house of the Protocol.

22. The Protocol also contains important developments for local communities. These relate more specifically to traditional knowledge associated with genetic resources that is held by indigenous and local communities as well as to genetic resources that are held by local communities where the rights of these communities over these resources have been recognized.

23. The Protocol sets out clear obligations to seek the prior informed consent of indigenous peoples in these situations. It also provides for the sharing of benefits arising from the use of traditional knowledge associated with genetic resources as well as benefits arising from the use of genetic resources in accordance with domestic legislation.

24. It also requires that benefit-sharing is based on mutually agreed terms. In addition, the Protocol sets out the obligation for Parties to comply with domestic legislation or regulatory requirements of provider countries related to access and benefit-sharing of traditional knowledge associated with genetic resources.

Relevance of the Nagoya Protocol for local communities

25. Local communities who require prior informed consent for access to their traditional knowledge associated with genetic resources and/or associated traditional knowledge will need to designate a competent authority to grant prior and informed consent to potential users of traditional knowledge and to interface with the national competent authority. This will also apply to genetic resources that are held by indigenous and local communities in accordance with domestic legislation regarding established rights of these communities over these genetic resources. Local communities will need to consider their processes for granting prior informed consent.

26. Parties to the Nagoya Protocol are requested to consider indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources. ILCs may need to consider to what extent these customary laws, community protocols and procedures should be revealed and made available to the Government and potential users of traditional knowledge.

27. The Protocol requires Parties to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge.

(b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and

(c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

28. It is important to note that the obligation to develop the above rests with participating indigenous and local communities.

III. POSSIBLE RECOMMENDATIONS FOR THE CONSIDERATION OF THE WORKING GROUP ON ARTICLE 8(j) AND RELATED PROVISIONS

Following are some possible suggestions of recommendations to the seventh meeting of the Working Group on Article 8(j) and Related Provisions, which, among others, experts may wish to discuss:

- (a) The identification of the characteristics of local communities;
- (b) Advice on how local communities can more effectively participate in Convention processes, including at the national level;
- (c) Targeted outreach to local communities in order to assist in the implementation of the Convention and achievement of its goals
- (d) The appointment of representatives of local communities to the selection committee for the Voluntary Fund to support the participation of indigenous and local community representatives in meetings held under the Convention;
- (e) The provision of equitable access for local community representatives to the resources of the Voluntary Fund for ILCs;
- (f) The availability of separate facilities for local and traditional communities if possible at relevant meetings held under the Convention;
- (g) The development of communications, education and public awareness tools, including products for the United Nations Decade on Biodiversity, with the effective participation of local community representatives with a view of increasingly targeted outreach to local communities and engaging them more fully in the work of the Convention.
