



Convention on Biological Diversity

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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

Sixth meeting

Montreal, 2-6 November 2009

**COMPILATION OF VIEWS CONCERNING THE DRAFT CODE OF ETHICAL CONDUCT TO
ENSURE RESPECT FOR THE CULTURAL AND INTELLECTUAL HERITAGE OF
INDIGENOUS AND LOCAL COMMUNITIES**

Addendum

SUBMISSION BY THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

Note by the Executive Secretary

1. In addition to the compilation of views and comments circulated for the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions (UNEP/CBD/WG8J/6/INF/2), concerning the draft code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities, the Executive Secretary is pleased to circulate herewith, an additional submission by the European Community and its member States. This information document is provided to assist in the consideration of the draft elements of a code of ethical conduct (UNEP/CBD/WG8J/6/4).

2. The submission is being reproduced in the form and language in which it was provided to the Secretariat.

EU SUBMISSION IN RESPONSE TO CBD NOTIFICATION 2009/003 – CODE OF ETHICAL CONDUCT

DRAFT ELEMENTS OF A 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

Purpose

1. The aim of these elements of a code of ethical conduct is to contribute to ensure the full respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity. For the purposes of these elements “cultural and intellectual heritage” is interpreted within the context of the Convention on Biological Diversity, as the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.
2. While voluntary in nature, these elements are intended to provide guidance to, inter alia, government departments and agencies, academic institutions, private sector developers, potential stakeholders in development and research projects, extractive industries, forestry and any other actors eventually involved in activities/interactions with indigenous and local communities and for the development of local, national, or regional codes of ethical conduct or other national legal or policy frameworks as related to the conservation and sustainable use of biological diversity, with the aim of promoting respect, preservation and maintenance of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biodiversity.
3. These elements should promote the implementation of the Convention on Biological Diversity, and in particular of Article 8(j) according to which Parties to the Convention have subject to their respective national legislation, 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 biodiversity (hereafter referred to as “traditional knowledge”), and to promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.
4. These elements should furthermore contribute to the acknowledgement of the rights of indigenous and local communities in accordance with international obligations, in particular to enjoy, protect and pass on to future generations, their cultural and intellectual heritage relevant for the conservation and sustainable use of biodiversity.
5. These elements should not be interpreted as in any way altering existing national and international obligations.

6. These elements fully take account of existing various international bodies, instruments, programmes, strategies, standards, reports and processes of relevance and aim at complementarities, effective implementation and synergies, in particular and where applicable of:

- a) Universal Declaration on Human Rights (1948)
- b) International Covenant on Civil and Political Rights (1966);
- c) Convention on the Elimination of All Forms of Racial Discrimination (1965)
- d) The Convention on Biological Diversity (1992);
- e) International Labour Organization Convention No.169 on Indigenous and Tribal Peoples, (1989);
- f) The Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted on 20 October 2005,
- g) The Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2003)
- h) United Nations Declaration on the Rights of Indigenous Peoples;^{1/}
- i) Universal Declaration On Bioethics And Human Rights (UNESCO 2005);
- j) Universal Declaration on Cultural Diversity (UNESCO, 2001);
- k) The Second International Decade of the World's Indigenous Peoples (2005-2014);
- l) Bonn Guidelines
- m) Akwe: Kon Guidelines

Principles

Non-discrimination

7. All activities/interactions should be non-discriminatory, taking into account affirmative action particularly in relation to gender, disadvantaged groups and representation.

Respect, preserve, maintain and strengthen traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity.

8. Based on the appreciation that traditional knowledge is of significant importance for the conservation and sustainable use of biodiversity, this knowledge must be respected as a legitimate expression of the culture, traditions, and experience of relevant indigenous and local communities., . Respect for cultural heritage, ceremonial and sacred sites, as well as sacred species and secret and sacred knowledge and associated knowledge management systems or processes ought to be given specific consideration in any activities/interactions.

9. Activities/interactions including research relationships ought to be based on full respect for indigenous and local communities' knowledge systems, decision-making processes and timeframes, their diversity, their distinctive spiritual and material relationship with their sacred sites and lands and waters traditionally occupied or used by them, and their cultural identities. This may require that traditional knowledge is valued equally with and complementary to western scientific knowledge. The holistic concept of traditional knowledge and its multidimensional characteristics, including spatial, cultural and temporal qualities, should be considered in this respect. Proponents should be sensitive to and respect secrets and sacred knowledge, sacred species and sacred places/sites related to biological diversity and associated knowledge management systems or processes by which indigenous and local communities manage the open knowledge, sacred knowledge and secret knowledge interface. Furthermore, proponents should respect the cultural property of indigenous and local communities relevant for biological diversity, conservation and sustainable use because of the inalienable linkage between indigenous and local

^{1/} As adopted by the United Nations General Assembly on 13 September 2007.

communities, biodiversity, their knowledge and the associated knowledge systems and processes. Ethical conduct ought to acknowledge that it may be legitimate for indigenous and local communities in certain instances to restrict access to traditional knowledge and associated biological diversity and genetic resources, based on ethical, cultural or other grounds.

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

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

Prior and informed consent of the knowledge holders.

12. Any activities/interactions related to biological diversity, including its conservation and sustainable use, occurring on or likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities and impacting upon specific groups, should be carried out with the prior and informed consent of those indigenous and local communities concerned, and in accordance with existing national and international obligations.

While acknowledging the wide range and diversity of national and regional circumstances and implementation modalities in this context, as well as the consequently evolving nature of the concept, prior and informed consent of the knowledge holder should encompass the principles that

- a) such consent should not be coerced, forced or manipulated;
- b) such consent should be sought in advance of any relevant activities/interactions, respecting time requirements of consultation processes;
- c) necessary transparency and information is provided in an adequate, timely and effective manner to allow for an informed decision, including information about the nature, scope and purpose of any proposed activities/interactions that may involve the use of their traditional knowledge, innovations and practices of indigenous and local communities and related to the conservation and sustainable use of biodiversity, occurring on or likely to impact on, their sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. For the purpose of assessing potential biological and cultural harms local criteria and indicators, where they so exist, should be applied, taking into account the Akwé:Kon Guidelines, and should fully involve the relevant indigenous and local communities.

Fair and equitable sharing of the benefits

13. In accordance with article 8j, indigenous and local communities ought to receive fair, and equitable benefits for their contribution to any activities/interactions related to biodiversity and associated traditional knowledge proposed to take place on, or which are likely to impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities. Benefit sharing should be regarded as a way of strengthening indigenous and local communities as well as their traditional knowledge and promoting the objectives of the Convention on Biological Diversity and ought to be equitable within and among relevant groups, taking into account relevant community-level procedures.

Conduct

Negotiations in good faith

14. Those employing the elements of this code are encouraged to interact, and to commit formally to a process of negotiation, in good faith, taking into account equitable benefit-sharing requirements, where so relevant, and requirements for confidentiality where established in national law or desired by indigenous and local communities.

Partnership and cooperation

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

16. Information imparted by the indigenous and local communities should not be used or disclosed for purposes other than those for which it was consented to and cannot be passed on to a third party without the consent of the knowledge holder/s. In particular, confidentiality ought to be applied to sacred and/or secret information.

Subsidiarity and decision-making

17. All decisions regarding activities/interactions related to biological diversity including research impacting on sacred sites, sacred species and lands and waters traditionally occupied or used by indigenous and local communities, should be made at the appropriate level, respecting individual indigenous and local community decision-making structures, and with the prior informed consent of those concerned to ensure community empowerment and full and effective participation and the recognition of indigenous and local community institutions, governance and management systems. Specific consideration should be given to the following:

- a) Indigenous and local communities may regard resources to be subject to ownership by the entire community and determine access to these resources through their community-level procedures or according to their customary law/s. Activities/interactions should be conducted with due respect to these procedures and customary law/s.

- b) For indigenous and local communities most activities/interactions, take place in a social context based on interrelationships. Extended “families” are often the chief vehicles for cultural dissemination and the role and relationship of Elders and youth is paramount in this cultural/successional process, which depends upon intergenerational transfer of knowledge, innovation and practices. Therefore the societal structure/s of indigenous and local communities should be respected depending on its compatibility with international law.
- c) Methodologies should take into account the vital role that indigenous and local community women play in the conservation and sustainable use of biological diversity, affirming the need for the full and effective participation of women at all levels of policy-making and implementation for biological diversity conservation, as appropriate.
- d) Indigenous and local communities are inalienably connected to their sacred and culturally significant sites, as well as to lands and waters traditionally occupied or used by them. Hence, access to these lands and waters is paramount for the retention of traditional knowledge, and the development of innovations and practices relevant for the conservation and sustainable use of biological diversity. Sparsely populated lands and waters ought not to be presumed to be empty or unoccupied but may in fact be lands and waters traditionally occupied or used by indigenous and/or local communities.

Full and effective participation/participatory approach

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

- a) Active involvement of indigenous and local communities in domestic policy setting and in the development of domestic legislation related to biological diversity, in order to respect and to retain established rights to the cultural and intellectual property of indigenous and local community members, in relation to knowledge, ideas, cultural expressions and cultural materials relevant to biological diversity, conservation and sustainable use.
- b) Active involvement of indigenous and local communities, where relevant, in the management of lands and waters traditionally occupied or used by them, including sacred sites and protected areas, to preserve and maintain their traditional role as traditional guardians and custodians of ecosystems and biodiversity through the maintenance of their cultures, spiritual beliefs and customary practices. This may include management strategies to mitigate for potential adverse consequences.
- c) In accordance with national and international law, acknowledgement and taking into account of community and individual concerns over, and claims, to intellectual property relevant to traditional knowledge, innovations and practices related to the conservation and sustainable use of biodiversity.
- d) Sharing of benefits, including through a range of outcomes such as building of cooperation, capacity and competence.
- e) The languages used by indigenous and local communities are rich sources of traditional knowledge regarding various components of biological diversity and measures that preserve and strengthen the languages should be encouraged.

Mutually agreed settlements and arrangements in case of adverse consequences arising from activities/interactions with indigenous and local communities, while giving due consideration to mitigation strategies relevant for the conservation and sustainable use of biological diversity
Mutually agreed settlements and arrangements may include a range of outcomes such as restitution, compensation or other measures.
