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CONVENTION ON BIOLOGICAL
DIVERSITY

Eighth meeting

Item 4(a) of the provisional agenda*

Montreal, 7-11 October 2013

COMPILATION OF VIEWS FOR THE DEVELOPMENT OF THE PLAN OF ACTION FOR CUSTOMARY SUSTAINABLE USE

Note by the Executive Secretary

INTRODUCTION

1. As requested by the Conference of the Parties in paragraphs 3 and 4 of decision XI/14 F, the Executive Secretary is circulating herewith, for the consideration of participants in the eighth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, a compilation of views and comments submitted to the Secretariat as one of the inputs for the deliberations on the development of the plan of action for customary sustainable use.
2. Submissions have been reproduced in the form and languages in which they were provided.

*UNEP/CBD/WG8J/8/1.

SUBMISSIONS

A. *Submissions from Parties*

Australia

Strengthening linkages with other MEAs

In developing the Plan of Action for customary sustainable use, a review of other conventions that impact on Traditional Ecological knowledge, such as the Intangible Cultural Heritage, could be undertaken to identify linkages and opportunities for working in collaboration across conventions. This could achieve positive action for customary sustainable land use contributing to the implementation of a range of conventions.

For example, the Pacific Heritage Hub (UNESCO) is working to incorporate the Aichi Biodiversity Targets in relation to Traditional Ecological Knowledge – there are also other synergies with implementation of the World Heritage Convention in terms of promoting customary land management.

The Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture (Pacific Islands Forum 2002) includes a Model Law for the protection of Traditional Knowledge and Expressions of Culture. This may be a valuable case study for the working group in reviewing the role of Traditional Ecological Knowledge in Small Island Developing States.

Case study: *Cooperative arrangements for sea country management*

The Great Barrier Reef Marine Park Authority and Traditional Owner groups along the Great Barrier Reef are working together to establish cooperative arrangements for sea country management. TUMRAs are being developed by Traditional Owner groups to describe formal management arrangements for a range of traditional use of marine resources activities within their sea country.

Traditional use of marine resources is the undertaking of activities as part of Aboriginal and Torres Strait Islander people's customs or traditions, for the purposes of satisfying personal, domestic or communal needs and may include: fishing, collecting (for example, shellfish), hunting, and looking after cultural and heritage sites.

Many Aboriginal and Torres Strait Islanders undertake traditional use of marine resources activities to educate younger generations about traditional and cultural rules, protocols and for activities in sea country; practice their 'living maritime culture'; and provide traditional food for families.

TUMRAs describe how Traditional Owner groups work with government to manage traditional use activities in sea country. A TUMRA may describe for example, how Traditional Owner groups wish to management or place limits on their take of turtle and dugong; their role in compliance; and in monitoring the condition of plants, and animals, and human activities in the Great Barrier Reef Marine Park. The TUMRA implementation plan may describe ways to educate the public about traditional connections to sea country, and to educate other members of a Traditional Owner groups about the conditions of their TUMRA and management arrangements for sea country.

Supporting community-based management of sea country: An example from Girringun and Lama Lama groups

The Great Barrier Reef Marine Park Authority is acknowledged as a leader in the area of multiple use marine park planning and management. The Authority continues to improve and work towards a best practice model of involving Great Barrier Reef Aboriginal and Torres Strait Islander Traditional Owners in holistic marine park management. Fundamental to this goal is recognition of Traditional Ownership and the rights and responsibilities that Traditional Owners have in being custodians of sea country, marine resources and their important maritime estates.

The Traditional Use of Marine Resources Agreement (TUMRA) is one particular sea country management tool available for Traditional Owners which recognises their Traditional Lore for managing sea country through a formal partnership arrangement with the Authority and Queensland's Department of National Parks, Recreation, Sport and Racing. This is developed by documenting the Traditional Owner groups structure, governance, history, lore, custom and their aspirations for managing sea country. The process is managed by Traditional Owners and it involves extensive consultation and negotiation within the Traditional Owner group with the support of the Authority.

The TUMRA program recognises customary rights and knowledge and uses a foundation of traditional ecological knowledge and sustainable management of marine resources to create formal sea country management arrangements. Traditional Owners and the Authority working together on TUMRAs are a demonstration of collaborative sea country management arrangements that seek to conserve biodiversity and protect the cultural and natural heritage values of the Region. The Authority also supports the implementation of the TUMRAs through assisting communities in developing their implementation and compliance plans. In some TUMRA Regions such as Girringun and Port Curtis Coral Coast, these plans have been incorporated into and implemented on country through federally-funded Indigenous ranger programs.

The Authority has developed partnerships with many Traditional Owner groups adjacent to the Region. The five currently accredited TUMRAs and Marine Indigenous Land Use Agreement represent over 14 groups and covers approximately 21% of the Queensland coastline that is within the Region.

Girringun

The Great Barrier Reef Marine Park Authority has a long term partnership with Girringun, who developed and implemented their first TUMRA in 2005. With support from the Authority, Girringun has been implementing their community-based TUMRAs on sea country for over eight years. Girringun see their TUMRA as an important tool to be used in conjunction with their Indigenous Ranger program in providing young people with something to aspire to in their home region. It is important that their young people go out on sea country and learn traditional practices and culture to ensure that knowledge can be retained and passed on for future generations.

Over the years, the TUMRA has been used to build upon and leverage new initiatives highlighting the importance of Traditional Owner sea country management. A turtle tagging project occurring in the Bowen region is a great example of this. In partnership with the Gudjuda Reference Group, James Cook University (JCU), World Wildlife Fund and the Authority, Girringun takes part in a turtle tagging project that not only records turtle numbers, but is studying the incidence of Fibro Papilloma disease in the Brisk Bay marine turtles.

As part of their TUMRA implementation plan, Girringun have conducted comprehensive cultural heritage surveys to inform management planning. Undertaking systematic cultural heritage surveys involves documenting previously unrecorded cultural heritage sites, providing recommendations on the management and protection of the sites, and providing baseline information about the natural and cultural landscape so that, for example, damage from cyclones such as Yasi and Larry, may be assessed. Girringun Rangers' participation was fundamental to the activity and it was seen as an opportunity to provide cultural and heritage training and empowerment to the Traditional Owners of the area.

Lama Lama

Lama Lama Traditional Owners represent one of the more recently formed partnerships, having recently completed a two year TUMRA planning and development phase with the Authority. Documents for the accreditation of their TUMRA are now lodged and undergoing assessment. The group looks forward to putting many of their plans into action with the partnership arrangement with the Authority.

During the development of their TUMRA, Lama Lama has outlined how they plan to manage sea

country resources such as turtle and dugong and has identified and documented culturally important areas of sea country. Community meetings have been an opportunity for all Lama Lama Traditional Owners to come together and find consensus and discuss aspirations for their sea country management and have discussions about topics such as hunting, future priorities and economic opportunities.

Meetings on sea country have been an important opportunity for the group as elders and children have been able to visit different culturally significant sites within Princess Charlotte Bay. Children were shown the Marrpa (Cliff Islands), shown rock art on Ronganhui, explored the islands and talked about custom and culture and how things were done in the past.

Establishing relationships with JCU researchers has also been identified as a priority for Lama Lama Traditional Owners. Investigating the possibility of researching in-shore dolphins (in particular snubfin, bottlenose and indo-pacific humpback dolphins) has already resulted in JCU providing dolphin identification training to the group, and later in the year, JCU will bring a research boat to Port Stewart to work with the Rangers to undertake research on Lama Lama sea country.

The Authority, through its partnerships with Traditional Owners, recognition of customary rights and responsibilities and value placed on Indigenous peoples knowledge about natural ecosystems will continue to achieve positive environmental and multi-use marine park management outcomes that underpin biodiversity conservation.

The greater the involvement of Traditional Owners in the conservation and protection of land and sea country in the areas of their interest through formal arrangements provided by TUMRAs, for example, the better the protection afforded to cultural heritage, ecological knowledge, social practices and sustainable traditional use of marine resources into the future.

Bolivia

La información relacionada a este ítem, se la viene trabajando junto a las entidades competentes en la temática, naciones y pueblos indígena originario campesinas y las comunidades interculturales y afrobolivianas y sociedad civil involucrada, por lo que dicha información será presentada en la octava reunión del Grupo intersecciones de trabajo especial de composición abierta sobre el artículo 8j) y disposiciones conexas programada para el próximo mes de octubre.

Brazil

XI/14/F - Development of a Plan of Action for Customary Sustainable Use

20. As for the plan of action for customary sustainable use and the initial tasks for the first phase of the major component of work on Article 10 with a focus on 10(c), Brazil is of the view that the plan shall take into account different perspectives and legal regimes.

21. With regard to the identification of best practices to promote the participation of indigenous and local communities in the establishment, expansion, governance and management of protected areas and to encourage the application of traditional knowledge and customary sustainable use in protected areas, Brazil is working on the consolidation of its National System of Conservation Units (NSCU) and on the recognition of other protected areas, such as indigenous lands and areas traditionally occupied by afro descendent communities (former quilombos).

22. Brazil is facing the challenge of expanding the protection of biomes and consolidating the existing protected areas (PA) through, *inter alia*, increasing social participation in the creation and management of conservation units and enhancing the social and cultural role of PA, by supporting the local communities directly or indirectly involved. A successful example of protected area program in

Brazil is “The Amazon Protected Areas Program” (ARPA). Since 2003, the protection of the Amazon rainforest is being supported by this project, which aims to preserve approximately 60 million hectares of forest through the creation and consolidation of protected areas. Its ultimate goal is to ensure that a significant and ecologically representative portion of the Brazilian Amazon biodiversity is preserved in interaction with local communities.

23. So far 64 conservation units (a total area of 32 million hectares) have been supported. The units were supplied with goods and services needed to carry out integration activities with the local communities, to build capacity, to develop management plans, to create local councils, to perform land tenure surveys, surveillance activities and other actions. Now in its second phase, the program is consolidating over 65 million hectares of protected areas on the Amazon Biome, and Brazil has high expectations of achieving long term sustainability of the implementation of these PA, offering ecosystem services and a new and innovative solution for the conservation of biodiversity.

24. As for the indigenous territories, Brazil has recently adopted through the Decree n. 7747 of 5 June 2012, a National Policy for Territorial and Environmental Management of Indigenous Lands (PNGATI) in order to ensure and promote the protection, restoration, conservation and sustainable use of natural resources from indigenous lands and territories, ensuring the integrity of indigenous heritage, improving the quality of life and the full conditions of physical and cultural reproduction of current and future generations of indigenous peoples, respecting their sociocultural autonomy, according the national legislation. This policy was developed with the full and effective participation of indigenous peoples of Brazil, gathered in intercultural dialogues organized by the National Indigenous Foundation (FUNAI).

25. The PNGATI is guided by, *inter alia*, the following principles: A) recognition and respect for the beliefs, customs, languages, traditions and specifics of each indigenous people; B) recognition and appreciation of the contribution of indigenous women and the use of their knowledge and practices for the protection, conservation, restoration and sustainable use of natural resources essential to the well-being and physical and cultural reproduction of indigenous peoples; C) contribution to the maintenance of ecosystems biomes of indigenous lands for the protection, conservation and restoration of natural resources essential to the physical and cultural reproduction of present and future generations of indigenous peoples; D) protection and strengthening of knowledge and practices of indigenous peoples and their systems of management and conservation of natural resources.

26. Amongst its tools for territorial and environmental management of indigenous lands, the PNGATI adopts the ethno mapping (participatory mapping of areas of environmental, social, cultural and productive significance for indigenous peoples, based on indigenous knowledge) and the ethno-zoning (participatory planning tool aimed at the categorization of areas of environmental, social, cultural and productive significance for indigenous peoples, developed from ethno mapping).

27. The PNGATI specific goals related to protected areas, conservation units and indigenous lands are: a) to carry out prior informed consultation to indigenous peoples in the process of creation of conservation units in areas that directly affect them; b) to develop and implement, with the participation of indigenous peoples and the FUNAI, joint plans of management of overlapping areas of indigenous lands with conservation areas, guaranteed by the environmental management and adhered to the customs and traditions of indigenous peoples; and c) to promote indigenous participation in managing councils of conservation units located in areas adjacent to indigenous lands.

Finland

The Sámi People’s traditional knowledge is rooted in Sámi values, social systems and customary law. Different Sámi livelihoods use natural resources in various ways. Traditional knowledge also varies according to geographical and natural conditions.

Reindeer herding needs a large geographical area. Most of the territory of the Sámi Homeland has been and still is used for reindeer herding. Reindeer herding requires the rotational use of pastures, which

follows yearly cycles, the natural habits of reindeer and the cultural habits of reindeer herders. Reindeer are pastured in different areas in summer and winter, and there are special areas for calving in spring and the rutting season in autumn. Reindeer are moved from one pasture to another along traditional migration routes that follow natural courses such as river banks, valleys, moraine ridges and eskers. Sámi families still gather every year at traditional summer and winter locations for calf marking, where a mark identifying each owner is notched into the edge of the ear, and for separating individuals for slaughter.

In the Inari area the traditional livelihoods depend on the seasons and include activities such as fishing and hunting. The Inari Sámi and Sámi fishermen in the Teno river valley use different areas during summer and winter. They have one permanent winter dwelling and one or two seasonal dwellings for fishing, hunting and cattle herding. The practice of agriculture came to the Sámi Homeland in the 1700s and it has been a part of the fishing and hunting culture in the Utsjoki and Inari areas. Lake Inari is important to the Inari Sámi, who often have a winter dwelling in the inland forests because of their need for reindeer pastures and firewood, but in summertime they stay near the lake for fishing.

The Sámi People have long inhabited the banks of the Teno River because of its importance for fishing. The marine climate conditions and nutrient rich soil have also made it possible to practice agriculture there. Fishing on the Teno River follows many traditional and sophisticated techniques. Additionally, life there is tied to the seasons of the year — fishing on the river in the summertime, reindeer herding on the fells and fishing on small fell lakes in the wintertime.

The Sámi livelihood of hunting follows the natural biological rhythms of game animals and is practiced over a large territory. Hunters typically follow natural routes of the game animals that pass close to the hunters' summer and winter dwellings.

The Skolt Sámi's traditional livelihoods include reindeer herding, fishing and hunting. Skolts employ a type of traditional seine fishing which is used in the Skolt rapids on the Näätämö River. Skolt communities have a flexible social system that enables members of the Suonikylä Sámi community to also use this traditional fishing practice. The traditional lands of the Skolts have been near the Russian border and also partly on the Russian side of the border. Skolts typically came together in a community for the winter and engaged in activities such as hunting large game and fishing. In the wintertime, the community held its annual meeting in the winter village where it decided on land use and other communal matters. Life in the winter village was also appropriate for maintaining social connections and helping to prevent stress. At the beginning of spring, people scattered to their own family areas for fishing and hunting. Nowadays, the Skolts live in villages near fishing waters in the municipality of Inari. Their activities have become more localised and consist of hunting, reindeer herding and gathering of natural resources near their villages. The customary system of the village meeting is still used for addressing common issues.

In the Sámi languages, place names reflect Sámi knowledge and livelihoods. For the Sámi People place names are a measure of how they perceive and connect to their environment. The place names describe their traditional cultural knowledge of their environment and their customary laws and conventional forms of utilisation of nature, and their traditional land use practices. Place names hold information about places to live, trade, burial places, buildings, work equipment and places of sacrifice. They also tell about hunting, depict historic events, and relate to the ancient Sámi religion and the natural world. Sámi place names and the oral tradition associated with them are part of the Sámi People's livelihoods and their traditional knowledge.

The Sámi People still use natural resources in ways that are functional and appropriate within the framework of their own environment. Their traditional land use practices are manifested concretely in the built environment of the Sámi Homeland. The buildings are rather new and most of the land areas under traditional use are still undeveloped. Historic land use is expressed in the landscape by dwelling places, migration routes, place names, and newer, more recent huts and cottages. The Sámi language has specific terms for landscape features, topography and places, and these reflect the relationship of the natural world to their culture and their traditional livelihoods. There are only a few places in the Sámi Homeland where a name does not reflect Sámi culture.

Finland aims to maintain and preserve the Sámi People's traditional livelihoods and culture and the subarctic biodiversity in the Sámi Homeland. The goals are to prevent threats to their traditional knowledge and customary use of biological resources, and to preserve the characteristic northern biodiversity in a culturally sustainable way for generations to come.

In the context of the conservation and sustainable use of biodiversity the Government will follow the guidelines concerning the traditional knowledge of indigenous peoples set out in the CBD and its decisions. The Government also emphasises that Finland has the potential to set an example in international cooperation on the implementation of Article 8(j) of the Convention.

Target 18 in Finland's National Biodiversity Strategy reads as follows:

(By 2020) "The traditional knowledge, innovations and practices of the indigenous Sámi community relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, restored and conserved, subject to national legislation and relevant international obligations, by developing legislation and administrative procedures related to the protection of this traditional knowledge. Finland's implementation of the CBD allows for the full and effective participation of the Sámi community at all relevant levels in line with decisions set out in the CBD and by COPs."

Finland's National Biodiversity Action Plan includes the following actions concerning traditional knowledge (*unofficial translation*):

84) In regard to also taking the traditional knowledge of the Sámi People into account when it comes to biodiversity, further preparations are made in order to clarify the conditions for ratifying the ILO's Convention on Indigenous and Tribal Peoples in accordance with the aim of the Government Programme. Moreover, the negotiations concerning the Nordic Sámi Convention will be finalised. The implementation of the proposed actions in the final report of the Article 8(j) Working Group will be continued. These actions can, for justified reasons, be amended and improved by the new Article 8(j) Working Group, and the proposals for actions will be submitted to the National Biodiversity Monitoring Group for adoption.

Measures to be taken by: Ministry of Justice, Ministry of the Environment, Ministry for Foreign Affairs, Ministry of Education and Culture, Ministry of Agriculture and Forestry, Sámi Parliament

2013–2015

85) Finland makes preparations in order to adopt the indicators accepted by the CBD Conference of Parties concerning language diversity, the status of and trends in land use and traditional livelihoods in the Sámi Homeland, and the status of and trends in traditional knowledge, innovations and customary use.

Measures to be taken by: Ministry of the Environment, Ministry for Foreign Affairs, Ministry of Education and Culture, Ministry of Agriculture and Forestry, Ministry of Employment and the Economy

2013–2015

Sweden

XI/14/F Development of a Plan of Action for Customary Sustainable Use

In the Swedish implementation work of article 8(j) a special effort has been made to have a broad approach to issues concerning article 8(j) and it has involved both indigenous peoples and local communities. The overarching question has been local and traditional knowledge in relation to biological diversity. Consequently issues related to customary use have been the focus rather than ethnicity. This way the work has dealt with both articles 8(j) and 10(c).

Protected Areas

Work in Sweden to implement the Programme on Work of Protected Areas is on-going, including the parts related to the full and effective participation of indigenous peoples and local communities and relevant stakeholders. In recent years, there has been an increasing focus on the involvement of local communities in the designation of protected areas in order to create acceptance for protection and also to find the best ways in how to manage the protected area while at the same time benefitting the people. This way of working has proven very successful and has several times turned an initial massive local opposition to plans for national parks into broad support. In order to facilitate the kinds of processes needed for this, the responsible authority (the Swedish EPA) has invested in education of conservation officers at all levels in the so-called Dialogue for nature conservation.

Also other forms of participative action to conserve landscape and nature have received increased attention in Sweden, for instance areas in the Man and Biosphere programme.

The process of developing a management system for the Laponia World Heritage Area is a very good example of a new way of working inclusively in protected areas, in this case with a focus on indigenous communities. Reindeer husbandry as well as hunting, fishing and farming practices of the Sami communities, have been and are part of shaping the ecosystems in the Laponia World Heritage Area in Sweden, an area of 9 400 km² with 9 Sami villages, 65 000 reindeer, 300 local enterprises, 4 national parks and 2 large nature reserves. The process to form a management structure for Laponia has been a genuinely participatory process. The outcome, in 2011, is a management structure where the Sami villages are in majority in the management board, Laponiatjuottjudus. Both the process and the outcome set a new precedent in Swedish protected area management. The following are some of the important achievements and underlying common values of the Laponia process, some of them shared with other work on protected areas, some more specific for this area:

- Decision making in the form of consensus.
- Understanding of nature and culture based on an understanding of the landscape as a whole.
- People who live and work in the land have valuable competence and experience for land management.
- Seeking knowledge and solutions from the indigenous, local culture and local perspectives.
- Development and renewal to ensure that development of norms build upon local and traditional knowledge.
- Language as an important part of the creation and development of culture.
- A time perspective.
- Searvelatnja – an arena and meeting place where all can participate and learn: different generations, different cultures, languages and peoples.

B. Submissions from relevant organizations

Forest Peoples Programme and Natural Justice supported by another 72 organizations and networks¹

XI/14/F: Development of a Plan of Action for Customary Sustainable Use

We have the following suggestions for the development of the plan of action for customary sustainable use (CSU):

1. The draft plan of action on customary sustainable use could include a set of principles/points of departure that provide insight in key conditions and considerations related to CSU. These could be based on the points of departure and key messages that were formulated by the experts attending the “international meeting on article 10 with a focus on article 10(c) as a major component of the programme of work on article 8(j) and related provisions of the Convention”, held in Montreal in June 2011.² These points of departure were derived from the experts’ presentations.³ In the draft plan of action, such key principles/considerations could be

¹ 1. ADeD-ONG, Benin; 2. Adivasi Socio Educational and Cultural Association (ASECA), Rairangpur, Odisha, India; 3. African Biodiversity Network, Kenya; 4. Alliance for Democratising Agricultural Research in South Asia (ADARSA), India; 5. Alliance for Food Sovereignty in South Asia (AFSSA), Hyderabad, Andhra Pradesh, India; 6. Andhra Pradesh Social Service Society (APSSS), Hyderabad, Andhra Pradesh, India; 7. Asia Indigenous Peoples Pact, Thailand; 8. Association des Femmes Peuples Autochtones du Tchad (AFPAT), Chad; 9. Asociacion ANDES, Cusco, Peru; 10. Asociacion Ixacavaa De Desarrollo E Informacion Indigena, Costa Rica; 11. Autochtones and Locales Communities of Hlanzoun Forest of Benin, Benin; 12. Baiga Mahasabha, Dindori, Madhya Pradesh, India; 13. Baikal Buryat Center for Indigenous Cultures, Russian Federation; 14. Bharat Munda Samaj, Baripada, Odisha, India; 15. Center for Research and Rural Economic Development (CRED), Burundi; 16. Centre for Sustainable Development (CENESTA), Iran; 17. Centro de Estudios Multidisciplinarios Aymara (CEM-Aymara), Bolivia; 18. Chibememe Earth Healing Association (CHIEHA), Zimbabwe; 19. Community Media Trust (CMT), Andhra Pradesh, India; 20. Confédération des Associations Amazighes du Maroc, Morocco; 21. Consejo Regional Otomi del Alto Lerma, México; 22. Conservation International, USA; 23. Deccan Development Society (DDS), Andhra Pradesh, India; 24. Dulal, Baripada, Odisha, India; 25. Forest Peoples Programme, United Kingdom; 26. Forum Biodiversité du Bénin, Benin; 27. Fundación para la Promoción del Conocimiento Indígena (FPCI), Panama; 28. Fuerza de Mujeres Wayuu, Colombia; 29. Gram Swaraj-Baripada, Odisha, India; 30. ICCA Consortium, Switzerland; 31. Innbrapi, Brazil; 32. Indigenous Knowledge and Peoples Foundation (IKAP), Thailand; 33. Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT), Thailand; 34. Indigenous Information Network, Kenya; 35. Jana Vikas, Kandhamal, Odisha, India; 36. Keonjhar Integrated Rural Development and Training Institute (KIRDTI), Odisha, India; 37. Kibale Association for Rural and Environmental Development (KAFRED), Uganda; 38. Organisation of Kalina and Lokono in Marowijne (KLIM), Suriname; 39. Ligue Nationale des associations Autochtones Pygmées du Congo (LINAPYCO), Congo; 40. LIVING FARMS, Bhubaneswar, Odisha; 41. Living Oceans Society, Canada; 42. Madhya Pradesh Samaj Seva Sanstha (MPSSS), Madhya Pradesh, India; 43. MELCA-Ethiopia, Ethiopia; 44. Millet Network of India (MINI), Hyderabad, Andhra Pradesh, India; 45. Naga Peoples movement For Human rights (NPMHR), Nagaland; 46. Nama Traditional Leaders Association, Namibia; 47. National Indigenous Women's Federation, Nepal; 48. Natural Justice: Lawyers for Communities and the Environment, South Africa; 49. NIRMAN-Sijhara, Madhya Pradesh, India; 50. Nirmanee development Foundation, Hettimulla, Sri Lanka; 51. Ogiek Peoples Development Program (OPDP), Kenya; 52. ORRISSA, Bhubaneswar, Odisha, India; 53. Pacari Network - Local Communities of the Savannas, Central Brazil; 54. Plenty Canada, Canada; 55. Programme d'Intégration et de développement du peuple Pygmée au Kivu (PIDP SHIRIKA LA BAMBUTI), Democratic Republic Congo; 56. Red de Mujeres Indígenas sobre Biodiversidad de America Latina y el Caribe (RMIB-LAC); 57. Red de Mujeres Indígenas y Biodiversidad de Guatemala, Guatemala; 58. Red Indígena de Turismo de México (RITA), Mexico; 59. Regional Centre for Development Cooperation (RCDC), Bhubaneswar, Odisha, India; 60. Saami Council, Finland; 61. Sahjeevan, India; 62. Samoa Umbrella for Non-Governmental Organisation Inc. (SUNGO), Samoa; 63. Shade: Local Communities for Biodiversity and Livelihood Improvements, Ethiopia; 64. Society for New Initiatives and Activities (SONIA), Italy; 65. Southern Action on Genetic Engineering (SAGE), South India; 66. Strong Roots Congo, Democratic Republic of Congo; 67. Sudhagad Pali Taluka (SOBTI), Rayghar, Maharashtra, India; 68. Tebtebba Foundation, Philippines; 69. Tewa Women United, USA; 70. Tulalip Tribes, USA; 71. Union of Indigenous Camel Herders of Iran (UNICAMEL), Iran; 72. Union of Indigenous Nomadic Tribes of Iran (UNINOMAD), Iran; 73. Unissons-nous pour la Promotion des Batwa (UNIPROBA), Burundi; 74. United Organisation for Batwa Development in Uganda (UOBDU), Uganda.

² UNEP/CBD/WG8j/7/5/Add.1, Annex 1 (Advice on the content and implementation of the new major component of work on Article 10 with a focus on article 10(c), paragraph 1.

³ Idem, paragraph 12-45.

presented at the beginning (similar to the 'general principles' of the Programme of Work (POW) on Article 8(j)) or a 'rationale' could be added to clarify the relevance of each task in the work plan, similar to the structure of the Addis Ababa principles and guidelines.

2. The draft plan of action should make clear who is to perform certain tasks, similar to the POW on 8(j). An attempt was made at WG8(j)-7 to allocate the draft tasks to Parties, the Working Group, the Executive Secretary, and others, but for the sake of moving forward, it was decided to keep the tasks open and general for the time being. However, once the draft plan of action becomes operational it would be useful to specify who should carry out the tasks.
3. Following the example of the POW on 8(j), which has two phases, the draft plan of action on CSU could be composed of a phased timeline. The tasks of the first phase could be the initial priority tasks agreed at COP11. The priorities for the second (and potentially subsequent) phases could be determined and formulated through a process to be discussed and agreed upon at WG8(j)-8.
4. Each task would benefit from some suggested guidance for implementing and accomplishing the task, somewhat similar to the section on 'ways and means' in the POW on 8(j). The approach to define a limited number of concrete activities under the tasks was also proposed by Canada at COP11, however, that was not in the mandate of the contact group. We would like to propose that the limited number of concrete activities should contribute as much as possible to the achievement of the targets of the 2011-2020 Strategic Plan, especially Target 18.
5. All actions related to the tasks in the Plan of Action should involve collaboration between indigenous peoples and local communities and their representative organisations, relevant government agencies (in particular, focal points for Article 8(j)), and natural resource sectors.⁴
6. The initial tasks for the first phase of the major component of work on 10(c) are strongly interlinked and could be addressed through combined or complementary efforts to ensure effective use of resources and time, particularly as all tasks require close consultation and collaboration with indigenous peoples and local communities and their representative organisations.
7. There is also a strong linkage between the agreed initial tasks for the first phase and the indicative tasks for future consideration, and therefore activities under the first three tasks may partially address issues under tasks for future phase(s).
8. A proposal/example based on the suggestions above is presented below:

TASKS OF THE FIRST PHASE OF THE PLAN OF ACTION

CSU in NBSAPs and national reports

⁴ See also proposal in bracketed Task 13 *quarter* (to promote collaboration between indigenous and local communities and relevant government agencies and stakeholders, in particular the natural resource sectors, for the practical implementation of Article 10(c)) and Task 13 *quinquies* (to request the Executive Secretary to explore opportunities for initiating dialogues on customary sustainable use and associated traditional knowledge between representatives of indigenous and local communities and natural resource sectors).

Task 1: [Parties]⁵ to incorporate customary sustainable use practices or policy, as appropriate, with the full and effective participation of indigenous and local communities, into national biodiversity strategies and action plans, as a strategic way to maintain biocultural values and achieve human well-being, and to report on this in national reports.

Suggested rationale/background:

Incorporating CSU into National Biodiversity Strategies and Action Plans (NBSAPs) is an important and strategic way to integrate Article 10(c) (and its implementation) as a cross-cutting issue in the Convention's various programmes of work and thematic areas, the importance of which was reiterated in Decision XI/14.⁶ If this is done in close collaboration and consultation with representatives of national and local organisations of indigenous peoples and local communities, the NBSAPs will reflect and address the actual local and national-level needs and requirements. This approach will also assist Parties in implementing paragraph 8 of Decision XI/14/F⁷ and in raising funds (including GEF funds) to support implementation of the Plan of Action on 10(c).

Guidance for implementing and accomplishing this task (activities/ways and means):

- The national focal point for 8(j), or the CBD focal point where the focal point for 8(j) has yet to be established, to organise a dialogue/working session(s) with representative national and local organisations of indigenous peoples and local communities to examine and discuss relevant CSU issues and how to address these in the NBSAP, potentially including barriers and obstacles caused by governance, policy or regulatory frameworks⁸ and ways and means to overcome them.
- Involve the representative indigenous peoples and local community organisations in the drafting of relevant sections of the NBSAP, based on relevant discussions and agreements.
- Engage the representative indigenous peoples and local community organisations in the national reporting process, in particular in relation to the CSU sections.

Community-based initiatives on 10(c)

Task 2: [Parties] to promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c) and enhance customary sustainable use; and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c).

Suggested rationale/background:

Many indigenous peoples and local communities are engaged in community-based initiatives to enhance implementation of Article 10(c) at the national and local levels. Such initiatives include research and documentation of traditional knowledge and customary practices, education projects to revitalize indigenous languages and traditional knowledge associated with CSU, community mapping, community-based sustainable resource management plans, and biodiversity and climate change (impacts, mitigation and adaptation) monitoring and research.

⁵ The text in brackets in Tasks 1, 2 and 3 has been added to the original COP11 decision to specify who is expected to take action.

⁶ UNEP/CBD/COP/DEC/XI/14, preamble.

⁷ *Invites* Parties to address customary sustainable use, in particular customary sustainable use policies, in their national biodiversity strategies and action plans, with the full and effective participation of indigenous and local communities.

⁸ Overlap with bracketed Task 2 *bis* (to examine any barriers and obstacles to the maintenance of community-based resource management and governance caused by existing governance, policy and regulatory frameworks) and also responds to bracketed Task 13 *septies* (to examine best practices for promoting the full and effective participation of representatives of indigenous and local communities in public policy-making and decision-making on sustainable use and conservation, and to explore potential challenges or constraints faced by governments and by indigenous and local communities).

An overview of such initiatives was presented at the 10(c) expert meeting⁹ and more detailed cases were presented at a *Philippine workshop on Community-based Monitoring and Information Systems* in February 2013.¹⁰ By supporting such initiatives, or by getting involved in collaborative on-the-ground projects and monitoring of relevant CBD indicators, Parties and conservation organisations gain better insights in CSU issues in their countries, can more appropriately respond to existing needs or challenges, and can become more effective in implementing Article 10(c) and in contributing to the achievement of Target 18 and other relevant targets of the Strategic Plan.

Guidance for implementing and accomplishing this task (activities/ways and means):

- The national 8(j) focal points (or CBD focal points where 8(j) focal points have yet to be established) to compile an inventory of relevant existing or planned community-based initiatives at the local and (sub-)national level through a two-step approach: a) a scoping research based on field visits, possibly by an indigenous researcher or team, to develop a report highlighting key aspects and issues; b) a workshop (or workshops) where the scoping research is presented and indigenous peoples and local community organisations share their views and data on the community initiatives and next steps. The workshop(s) should be attended by relevant organisations and agencies working in the country.
- Facilitate discussions on the value and contributions of these initiatives, as well as on existing obstacles and required actions to overcome them.
- Discuss and take action to address the needs and opportunities to support community initiatives and potential collaboration, e.g. tools, capacity building, networking, or financial assistance.¹¹

CSU and Protected Areas

Task 3: [Parties] to identify best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives) to:

- (i) Promote, in accordance with national legislation and applicable international obligations, the full and effective participation of indigenous and local communities, and also their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas, including marine protected areas, that may affect indigenous and local communities;
- (ii) Encourage the application of traditional knowledge and customary sustainable use in protected areas, including marine protected areas, as appropriate;
- (iii) Promote the use of community protocols in assisting indigenous and local communities to affirm and promote customary sustainable use in protected areas, including marine protected areas, in accordance with traditional cultural practices;¹²

Suggested rationale/background:

Protected areas established without the involvement and free, prior and informed consent of

⁹ See UNEP/CBD/WG8j/7/5/Add.1, para 33. This presentation was based on a synthesis paper on examples, challenges, community initiatives and recommendations relating to CBD Article 10(c) by the Forest Peoples Programme and partners (October 2011): <http://www.forestpeoples.org/customary-sustainable-use-studies>.

¹⁰ The report of the meeting is planned to be submitted to WG8(j)-8. A Global Technical Workshop on Community-based Monitoring and Information Systems is scheduled to take place in Bonn, Germany, from 26-28 April 2013.

¹¹ Overlap with bracketed Task 4 *bis* (to provide the tools, capacity-building and networks to enable indigenous peoples and local communities to map their customary use of biodiversity at the local level) and bracketed Task 13 *ter* (to support the capacity-building, networking, participatory documentation and research, and sharing of experiences and lessons learned on customary sustainable use among indigenous peoples and local communities and their representative governments and organizations, with particular attention to the important role of women, and according to community-defined priorities).

¹² Former task 14 of the list of indicative tasks.

indigenous peoples and local communities can restrict access and use of traditional areas and therefore undermine customary practices and knowledge associated with certain areas or natural resources. At the same time, conservation of biodiversity is vital for the protection and maintenance of CSU and associated traditional knowledge. CSU and traditional knowledge can provide important contributions to the effective conservation of important biodiversity sites, either through shared governance or joint management of official protected areas or through indigenous peoples' and community conserved territories and areas.¹³ Community protocols can be used by indigenous peoples and local communities to articulate their values, procedures and priorities and engage in dialogue and collaboration with external actors (such as government agencies and conservation organisations) towards shared aims, for example, appropriate ways to respect, recognise and support customary sustainable use and traditional cultural practices in protected areas.

Guidance for implementing and accomplishing this task (activities/ways and means):

- National focal points for 8(j) and for protected areas (or CBD focal points where national focal points for 8(j) and for protected areas have yet to be established) should identify obstacles, challenges, successes, and lessons in relation to this task and develop a joint analysis and plan for (sub-)national and local-level actions through a two-step approach: a) a scoping research based on field visits, possibly by an indigenous researcher or team, to develop a report highlighting key aspects and issues; b) a workshop (or workshops) or other forms of dialogue where the scoping research is presented and indigenous peoples and local community organisations, conservation organisations, and other relevant stakeholders share their views, experiences and develop an action-oriented working plan.
- In identifying best practices, Parties and other relevant stakeholders may draw on existing international initiatives, reference materials and tools for best practices in relation to protected areas and customary use, such as the CBD Technical Series No. 64: "Recognizing and Supporting Territories and Areas Conserved by Indigenous and Local Communities - Global Overview and National Case Studies" on indigenous peoples' and community conserved territories and areas, the Whakatane Mechanism (<http://whakatane-mechanism.org>),¹⁴ and community protocols (www.community-protocols.org).

¹³ Overlap with bracketed task 15 *bis*: To examine best practices (e.g. policy, legislation) to enable indigenous and local communities to voluntarily identify, designate, govern, manage and conserve protected areas and sacred sites, as a way to maintain their customary sustainable use.

¹⁴ This mechanism, which is an outcome of the 4th World Conservation Congress, aims to support conflict resolution and best practices in protected areas by ensuring that conservation practices respect the rights of indigenous peoples and local communities.

Assembly of First Nations (AFN)**XI/14/F - Development of a Plan of Action for Customary Sustainable Use*****General Comments on Customary and Sustainable Use:***

- First Nations have been conserving since time immemorial. First Nations have always recognized that humanity is part of the environment – we cannot conserve by failing to use resources any more than we can conserve by overusing them. Our shared prosperity depends on our ability to use environmental resources in a balanced fashion. This is not a unique consideration for First Nations; it is a common feature of all societies and, indeed all life on earth.
- Stewardship of biological resources often implicates a range of governmental actors within a Party. For example, Environment Canada, Parks Canada, the Department of Fisheries and Oceans, and the Department of Aboriginal Affairs and Northern Development Canada each have their own expertise, interests and mandates. In addition, sub-national governments often have a variety of responsibilities for implementing customary sustainable use. Yet the AFN is unaware of any situation in which a policy maker or a court has cited Article 10(c) of the CBD as supporting any particular decision on customary sustainable uses. For this reason, the AFN welcomes further definition of Article 10(c), through an international plan of action with full and effective participation of Indigenous Peoples.
- The experience of First Nations in Canada suggests that while legislation, regulation and policies may support customary sustainable uses of resources, most success stories are borne from partnerships, not regulation. In order for partnerships to be successful, Parties must be mindful of rights implications, whether they arise from constitutional rights, other domestic laws, international treaties such as ILO 169, or customary international law, as articulated in the UNDRIP.

Priority tasks for the first phase of the major component of work on Article 10c:

(a) To incorporate customary sustainable use practices or policy, as appropriate, with the full and effective participation of indigenous and local communities, into national biodiversity strategies and action plans, as a strategic way to maintain biocultural values and achieve human well-being, and to report on this in national reports:

- The provisions within Article 8(j) and 10(c) are mutually reinforcing. Whereas Article 8(j) calls for Parties to “respect, preserve and maintain knowledge, innovations and practices of indigenous and Local Communities embodying traditional lifestyles”; Article 10(c) calls for Parties to “[p]rotect and encourage customary use of biological resources in accordance with traditional cultural practices”. Preservation of traditional knowledge, innovations and practices; can only be achieved when First Nations inherent rights to their lands and resources are respected.
- For First Nations, preservation and promotion of traditional and cultural practices are closely linked to First Nations customary use of resources. Both are intimately connected to First Nations ability maintain, promote and preserve culture. A robust Article 10(c) work plan can facilitate advancement of ICCPR (1976) Article 27:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

- In Canada, the legislative framework for implementation of Article 8(j) derives, in part, from the text of the *Constitution Act, 1982*. Section 35 of that Act provides that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”. Courts have interpreted section 35 of the *Constitution Act, 1982*, as requiring a reconciliation of Aboriginal and non-Aboriginal perspectives, laws and customs¹⁵. First Nations traditional knowledge, then, must be protected, promoted and reconciled with Canadian perspectives on biological diversity pursuant to this piece of domestic legislation.
- Article 10(c), unlike Article 8(j), does not operate subject to national legislation. As a consequence, Canada is bound, under the law of nations, to implement and to report on its implementation of Article 10(c). The AFN strongly supports a work plan to implement Article 10(c) that includes a strong component to provide capacity assistance to Indigenous Peoples in developing countries, and that requires substantive action from all Parties, including Canada.
- Many treaties, modern land claims and other arrangements expressly contemplate the continued customary and sustainable use of resources by First Nations¹⁶. In addition, section 35 of the *Constitution Act, 1982*, provides a sound basis upon which Canada may develop a strategy to implement its obligations under Article 10(c) of the *Convention on Biological Diversity*.
- The AFN strongly supports the invitation to Parties to report on customary sustainable use in their National Biodiversity Strategies and Action Plans (NBSAPs), with the full and effective participation of Indigenous Peoples. The AFN regards customary sustainable use as the key to an effective biodiversity strategy and a cornerstone of any environmental management plan. In Canada, due to the interdepartmental and intergovernmental nature of customary sustainable use and biodiversity management, full and effective participation of First Nations in development and reporting through NBSAPs would provide an ‘on the ground’ perspective, which is capable of recognizing and assessing the effects of multiple departments and multiple governments attempts to coordinate efforts to preserve biological diversity.
- As per COP 10 decision X/2, Canada is required to implement the 2011-2020 Strategic Plan for Biodiversity, including the Aichi Biodiversity Targets; with the full and effective participation of Indigenous Peoples.
- The AFN recognizes that the Strategic Plan for Biodiversity 2011-2020 and its Aichi targets are to be utilized as a “flexible framework”, and sensitive to the distinct circumstances of each Party. However, this does not mean that key elements within the Aichi targets can be ignored, particularly where these elements are relevant to the circumstances of any given party. In Canada’s case for example, Articles 8(j) and 10(c) are highly relevant given the country’s substantial and growing number of Indigenous Peoples.
- The text of Aichi Target 18 requires Parties to report on what they are doing to support any “customary use”¹⁷ of biological resources by Indigenous Peoples. The reason is that the language of

¹⁵ See case *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511

¹⁶ Treaty 3 between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods with Adhesions (3 October 1873): <http://www.aadnc-aandc.gc.ca/eng/1100100028675>. See also *Keewatin v. Minister of Natural Resources*, 2011 ONSC 4801: <http://canlii.ca/t/fmzc4>.

See for example, Chapter 11 of the Maa-nulth First Nations Final Agreement (9 December 2006): http://www.bctreaty.net/nations/agreements/Maanulth_final_intial_Dec06.pdf.

¹⁷ *Aichi Biodiversity Targets*. Target 18:

“By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels”.

the target specifically omits to mention the term ‘sustainable’, when referring to customary use. This is a critical consideration in Canada, as the determination of whether a particular customary use is sustainable or not is often contentious. In the AFN’s view, the Parties, including Canada, have committed to reporting on all customary uses in order to avoid failure to report customary uses which may be sustainable, as defined by Indigenous Peoples own traditional knowledge, but not expressly so by scientists or policy advisors of parties¹⁸. The AFN welcomes Canada’s openness to include a biodiversity goal which reflects the distinction between “customary use” and “customary sustainable use”. In addition, AFN encourages Parties to report on all customary uses.

(b) To promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c) and enhance customary sustainable use; and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c):

- The AFN strongly supports efforts by developed country Parties to provide capacity assistance and support to Indigenous Peoples in developing countries, particularly with respect to Article 10(c). Customary and sustainable uses of biological diversity are closely linked to issues of health, food security¹⁹, cultural sustainability and linguistic diversity – in essence, community well-being. The AFN calls on Canada to join other Parties in providing capacity assistance to Indigenous Peoples and Local Communities (nationally and internationally) in order to implement Article 10(c) of the Convention.
- Similarly, the AFN notes that the lack of funding for community based conservation initiatives is consistently cited as a barrier by First Nations. For example, between 2005 and 2012, the Invasive Alien Species Partnership Program (IASP) provided many First Nations funding to support conservation efforts within their land. Unfortunately, funding for the IASP was terminated in March of 2012, posing a great barrier for these First Nations to continue existing conservation efforts. As a result, AFN recommends that Parties allocate sufficient funding from within its domestic funding envelopes to ensure Indigenous Peoples can engage in customary and sustainable uses of resources.
- Funding, however, is not enough. First Nations in Canada have yet to achieve the recognition of their inherent land rights, as per section 35 of the *Constitution Act*, 1982. The historic *William* case, to be heard by Canada’s Supreme Court this fall, may be the first time that the inherent land rights of First Nations are recognized in Canada.
- Where the government of Canada recognizes Indigenous Peoples’ rights, for example, through treaties; there remain major challenges to properly implement those rights²⁰. Specifically, the Land Claims Agreements Coalition states that there are ongoing challenges to fulfill modern treaties. Claims can take several years to negotiate, and once negotiated, Canada fails to implement the overall objectives of the claim; as it instead, focuses on fulfilling the narrow legal obligations stated in the agreement²¹. Similarly, these challenges have been recognized by Chiefs in Assembly, who passed resolution 40/2009, which states that “the federal Comprehensive

¹⁸ Aboriginal Affairs Secretariat. (2011). *Working Together: Our Stories*. Chapter 2.

¹⁹ Food insecurity may be associated with barriers to accessing traditional foods in Canada as shown by Chan et al. (2008/2009/2011) “*First Nations Food, Nutrition and Environment Study: Results from British Columbia*” and Chan et al. (2010/2012) “*First Nations Food, Nutrition and Environment Study: Results from Manitoba*”. These two reports illustrate how customary use of biologically diverse country foods provide a higher quality diet and can improve health for Indigenous Peoples in Canada.

²⁰ AFN (2013). *The Assembly of First Nations National Treaty Forum Report*.

²¹ *Second Universal Periodic Review of Canada: Submission of the Land Claims Agreements Coalition (LCAC) to the United Nations Human Rights Council* (2012), at par. 19

Claims policy must be reformed and made consistent with the Canadian Constitution; Supreme Court of Canada decisions and recognizes the human rights of Indigenous Peoples according to decisions of the human rights bodies of the UNDRIP²². Canada's failure to abide their commitment to recognize First Nations territorial rights is a substantial impediment to engage in customary use.

- Implementation of inherent rights is directly related to fulfilment of the CBD²³. Failure to implement decisions of the Supreme Court of Canada, to adhere to the terms of modern or historic treaties and the continuing non-recognition of First Nations rights to be a potential failure of the rule of law within Canada.
- These failures have direct effects on conservation, as well as on the ability of First Nations to engage in customary and sustainable uses of biological diversity, given that First Nations use Treaty rights to protect critical habitats and promote species recovery²⁴
- There is a path forward. AFN affirms that, although it is remarkably challenging, there are ways to work together to achieve mutual interests in such an environment. The AFN raises these issues not as complaints; rather, as legitimate barriers to achievement of Article 10(c) within Canada. Similarly, to the extent that such conditions are experienced by Indigenous Peoples elsewhere; these represent barriers for those peoples as well.
- Failure to recognize Indigenous Peoples rights is often driven by demands of resource development. The Canadian government is heavily focused and driven by resource development with high disregard for Indigenous Peoples inherent rights and environmental impacts²⁵. Canada and all Parties need to advance innovative strategies to implement Article 10(c) by supporting traditional occupations and traditional economies while respecting Indigenous Peoples inherent rights. The AFN recommends a rights based approach to the fulfilment of Parties obligations under Article 10(c).

(c) To identify best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives) to:

i. Promote, in accordance with national legislation and applicable international obligations, the full and effective participation of indigenous and local communities, and also their prior and informed consent to or approval of and involvement in the establishment, expansion, governance and management of protected areas, including marine protected areas, that may affect indigenous and local communities; ii. Encourage the application of traditional knowledge and customary sustainable use in protected areas, including marine protected areas, as appropriate; iii. Promote the use of community protocols in assisting indigenous and local communities to affirm and promote customary sustainable use in protected areas, including marine protected areas, in accordance with traditional cultural practice

²²AFN Special Chiefs Assembly (2009). *Resolution 40/2009- Comprehensive Land Claims Policy Reform*

²³AFN Special Chiefs Assembly (2010). *Resolution 67/2010-Establishment of a National Mechanism for the Negotiation and Implementation of Supreme Court Decisions regarding Fisheries.*

²⁴ For example: case *Saanichton Marina Ltd. v. Tsawout Indian Band*. (1989), and Environment Canada (2012). *Recovery Strategy for the Woodland Caribou, Boreal population (Rangifer tarandus caribou) in Canada.*

Also see: Assembly of First Nations (2012). *Submission to the House of Commons Standing Committee on Environment and Sustainable Development to provide Recommendations regarding the development of a National Conservation Plan.*

²⁵ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: "[Extractive industries operating within or near indigenous territories](#)", A/HRC/18/35, 18th session of the UN Human Rights Council, pp. 12, at paras. 46-47.

- Partnerships between First Nations, Canada and others do take place. In June 2010, Gwaii Haanas National Marine Conservation Area Reserve and Haida Heritage Site (3500 km²) was established under the Canada National Marine Conservation Areas Act. In this particular situation, the Government of Canada and the Council of the Haida Nation have agreed to disagree on many issues. However, they did agree to work together to maintain and restore healthy and productive ecosystems for the continuity of Haida culture, including traditional renewable resource harvesting and the protection of sites of spiritual-cultural significance to the Haida. The Gwaii Haanas Agreement took almost six years to negotiate. The agreement is administered through the Gwaii Haanas Archipelago Management Board (AMB) with equal representation from Haida and Parks Canada. The AMB is responsible for all aspects of planning, operation, and management of Gwaii Haanas. The agreement commits \$106 million toward the development of water and land-based national park and other activities.
- The Pimachiowin Aki World Heritage Project/Whitefeather Forest Initiative is collaboration between Bloodvein First Nation, Poplar River First Nation, Pauingassi First Nation, Little Grand Rapids First Nation, Pikangikum First Nation and the provinces of Manitoba and Ontario. The initiative seeks to designate the east side of Lake Winnipeg as a UNESCO World Heritage Site, while preserving the rights of partner First Nations to continue sustainable harvesting activities within Project lands.
- Under Species at Risk Act, the use of Agreements and Permits has led to creative recovery measures by Bamfield Huu-ay-aht Community Abalone Project, Gwa'sala-'Nakwaxda'xw Nation, Haida Gwaii Abalone Stewards, Kitasoo Abalone Stewardship Project, Malcolm Island Shellfish Cooperative, First Nations, coastal communities, and the public. Communities have combined commercial activities with conservation to find balance between socio-economic interests and the need to conserve biodiversity for future generations and the environment as a whole. The AFN is currently calling for a mainstreaming of this model beyond permits and agreements and into general legislative and policy measures.

Recommendations:

- Given that Canada is currently revisiting their position on the use of the term "Peoples" under the CBD, the AFN urges Canada to continue the outstanding work carried out during the *Minimata Convention on Mercury* negotiations, to promote and adopt the term "Indigenous Peoples". All Parties are urged to consistently, and without reservations, adopt the term "Indigenous Peoples", in accordance to international law mechanisms and the implementation of the UNDRIP, as well as to ensure consistency on COP decisions.
- It is recommended that Canada and all Parties develop a reporting strategy on Aichi target 18 that includes customary use. Specifically, incorporate elements that capture all forms of customary use, including but not limited to harvesting practices and relevant indicators such as traditional occupations and accessibility of traditional foods.
- The AFN urges Canada to renew funding for the IASP, as a way to reinitiate support for community based conservation initiatives that facilitate the proper implementation of Article 10(c). Respectively, all Parties should allocate domestic funding to support such initiatives, with the full and effective participation of Indigenous Peoples.
- It is recommended, that parties mobilize all the necessary resources to facilitate the proper implementation of Article 10(c). Proper implementation of Article 10c can be achieved by developing a work plan and a respective monitoring mechanism with full and effective participation of Indigenous Peoples.

- The AFN urges all parties to recognize that fulfilment of land rights is vital to enable the implementation of Article 10(c). As failure to fulfill these rights is a major barrier to Article 10c; parties and Indigenous Peoples should examine possible strategies to overcome this barrier.
- It is recommended that presented “best practices” are examined further to develop with full and effective participation of Indigenous Peoples, a framework that provides Canada with key elements that have been shown to ensure successful implementation of Article 10(c). In addition, this framework should be supported and implemented in the form of legislation to ensure its full application.

Inuit Circumpolar Canada

Article 10(c) Customary Sustainable Use – Development of a Plan of Action for Customary Sustainable Use

This decision invites Parties and ILCs to submit information for the development of a plan of action for customary sustainable use. Such information for the development of a plan of action may include the details of such an action plan so as to ensure the indigenous and local communities full and effective participation in the development of this action plan. This action plan therefore, requires a focus on the ILCs involvement and components of the action plan may include engagement of ILCs in the plan of action, the capacity of ILCs in the development of the plan of action at local and regional as well as sub - regional levels. Collaboration between ILCs and others stakeholders and Parties is necessary.

Community engagement is also seen as a necessary component in the implementation of the action plan and may include the identification of tools and resources, as well as, the identification of projects. The recognition and acknowledgement of the challenges for ILCs implementation of the action plan, as well as, the acknowledgement of opportunities and the examination of existing legislation, and other tools for implementation may be included in the framework of the action plan.

The cultural and traditional components of the communities in the customary sustainable use is worthy of consideration. Cultural heritage including traditional place names of ILCs are to be a key component of this action plan. Projects for the action plan may include the mapping of indigenous customary sustainable use locations, the documentation of traditional knowledge surrounding the respective customary sustainable use of biological diversity. In addition other projects could entail the gathering and collection of customary laws and indigenous legal traditions which apply to the customary sustainable use in the respective community, sub regional and regional levels of the customary sustainable use in question.

The information for the development of an action plan might involve:

- how the Aichi targets are to be integrated in the action plan, as well as case studies that address the best practices of indigenous communities; and,
- how the Aichi targets are applied their cultural practices in the customary use, as well as, the policy gaps that address the application of ILC traditional knowledge (TK) in the customary sustainable use and how their TK was applied in the activity.
