



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/WG8J/8/5
11 September 2013**

ORIGINAL: ENGLISH

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

Eighth meeting

Montreal, 7-11 October 2013

Item 6(b) of the provisional agenda*

**DEVELOPMENT OF BEST-PRACTICE GUIDELINES FOR THE REPATRIATION OF
TRADITIONAL KNOWLEDGE RELEVANT TO THE CONSERVATION AND SUSTAINABLE
USE OF BIOLOGICAL DIVERSITY**

Note by the Executive Secretary

INTRODUCTION

1. In paragraph 8 of decision IX/13 A, the Conference of the Parties decided to initiate task 15¹ of the programme of work for Article 8(j) and related provisions, in order to facilitate the recovery of traditional knowledge of biological diversity. Further to this, in decision XI/14 D, the Conference of the Parties adopted the terms of reference and requested the Secretariat to compile and analyse submissions from Parties and other relevant organizations and to develop draft best-practice guidelines for the repatriation of traditional knowledge relevant for conservation and sustainable use of biological diversity for consideration by the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its eighth meeting. The Conference of the Parties also requested the Executive Secretary to seek the cooperation of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in analysing whether and how other different international legal instruments that address cultural property and heritage of indigenous and local communities contribute to repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity.

** Reissued on 11 September 2013 with a revised title.

* UNEP/CBD/WG8J/8/1.

¹ The Ad Hoc Working Group on Article 8(j) and Related Provisions to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity in order to facilitate the recovery of traditional knowledge of biological diversity. (decision V/16, section III, task 15).

/...

2. Based on these requests, the Secretariat has prepared the current document to facilitate the discussions. Section I contains background information and also responds to the request in paragraph 5 of the terms of reference² regarding how task 15 might usefully complement the effective implementation of the Nagoya Protocol (when in force); Section II provides information on repatriation of traditional knowledge within the context of the Convention on Biological Diversity, as well as information on this issue from other relevant international processes and standards; Section III includes information on related processes pertaining to cultural heritage and cultural property under UNESCO; Section IV contains a summary of submissions received;³ Section V contains a sampling of best practices; Section VI considers some lessons learned; and finally Section VII contains draft recommendations for the consideration of the Working Group, including, as an annex, the draft best-practice guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity.

I. BACKGROUND

The Convention on Biological Diversity

3. Within the context of the Convention on Biological Diversity, traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. As such, it is a component of intangible cultural heritage. Sometimes it is referred to as an oral traditional for it is practiced, sung, danced, painted, carved, chanted and performed down through millennia. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, animal husbandry, fisheries, health, horticulture, forestry and environmental management in general.⁴ There is today a growing appreciation of the value of traditional knowledge and the importance of exchange of information, including the repatriation of traditional knowledge and related information to indigenous and local communities for knowledge and cultural restoration.

4. Many government departments, universities, museums, herbaria, botanical and zoological gardens and other entities may house collections containing information on the knowledge, innovations and practices of indigenous and local communities relevant to conservation and sustainable use.

Development of best-practice guidelines that would facilitate enhancement of the repatriation of indigenous and traditional knowledge

5. The revised programme of work on Article 8(j) and related provisions (decision X/43), includes task 15, which requests the Working Group to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with paragraph 2 of Article 17 of the Convention on Biological Diversity in order to facilitate the recovery of traditional knowledge of biological diversity”. Further to this, the eleventh meeting of the Conference of the Parties, in its decision XI/14 D, adopted the terms of reference to advance task 15 of the programme of work on Article 8(j) and related provisions. In doing so the Conference of the Parties has clarified that “the purpose of task 15 is to

² Decision XI/14 D, annex

³ Views were received from Australia, Brasil, Bolivia, EU and its member States, Finland, Mexico, Peru, Sweden, Rede Indigena de Turismo de México A.C., Consejo Regional Otomí del Alto Lerma de México, Red de Mujeres Indigenas y Biodiversidad de Guatemala, Asociacion Ixacavaa de Desarrollo e information de Costa Rica, INBRAPI de Brasil, Plataforma Dominicana de Afrodescendientes y EcoHaina de Republica Dominicana; Universidad Autonoma Metropolitana Unidad Lerma; Red de Mujeres Indigenas sobre Biodiversidad de America Latina y el Caribe; and are made available in document UNEP/CBD/WG8J/8/INF/8.

⁴ See <http://www.cbd.int/traditional/intro.shtml>

develop best-practice guidelines that would facilitate enhancement of the repatriation of indigenous and traditional knowledge relevant to the conservation and sustainable use of biological diversity, including of indigenous and traditional knowledge associated with cultural property, in accordance with Article 8(j) and Article 17, paragraph 2, of the Convention, in order to facilitate the recovery of traditional knowledge of biological diversity”. The terms of reference also mention that “task 15 is intended to build on and enhance repatriation undertaken by Parties, other Governments and other entities, including international organizations, museums, herbaria and botanical and zoological gardens, databases, registers, gene banks, etc.”

How work on Task 15 might usefully complement the effective implementation of the Nagoya Protocol

6. Paragraph 5 of the terms of reference contained in the annex to decision XI/14 D requests the Working Group on Article 8(j) to advise the Conference of the Parties on how work on task 15 might usefully complement the effective implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (decision X/2). The Protocol contains significant provisions relating to traditional knowledge associated with genetic resources held by indigenous and local communities, as well as to genetic resources held by indigenous and local communities where the rights of these communities over these genetic resources have been recognized. It does not, however, address repatriation of traditional knowledge.

7. Although the Nagoya Protocol does not specifically call for the protection of traditional knowledge, it incorporates a series of provisions addressing traditional knowledge which contribute to the protection of traditional knowledge. Its general provisions offer in practice, tools and mechanisms which are driven by this underlying objective. The Nagoya Protocol provides, among other principles, that access to and use of traditional knowledge should be subject to the prior informed consent or approval and involvement of the relevant indigenous and local communities (knowledge holders) and furthermore participate in the equitable sharing of benefits derived thereof and that this is based upon mutually agreed terms.

8. For the purpose of the Nagoya Protocol, it may be useful to consider at least two scenarios regarding the repatriation of traditional knowledge. Firstly the knowledge may not be related or associated with genetic resources and would therefore fall outside of the scope of the Protocol. In such cases repatriation of knowledge and related information may assist in cultural restoration and social/community cohesion but would not directly impact on the implementation of the Nagoya Protocol.

9. The second scenario considers the repatriation of knowledge associated with genetic resources. In such cases, associated knowledge falling within the scope of the Protocol, after being returned to indigenous and local communities, could require prior informed consent or approval and involvement, mutually agreed terms and benefit-sharing arrangements, if the knowledge is subsequently accessed from the community.

10. Further to this matter, the review of the draft principles and guidelines on the heritage of indigenous peoples⁵ considers in its chapter on public domain, that due consideration should be given to the interest of third parties that had acquired such elements in good faith. Continued use of indigenous and local community traditional knowledge already readily available to the general public, in a manner that is fair and equitable, paying particular attention to the rights and interests of those from whom the elements originated, could thus be excluded from the obligation to obtain prior informed consent, but may give rise to expectations of equitable sharing of benefits. The issue on instances in which it is not possible to grant or obtain prior informed consent is taken up under Article 10 of the Nagoya Protocol on a Global Multilateral Benefit-sharing Mechanism and will be discussed at the Expert Meeting on Article 10 of the

⁵ E/CN.4/Sub.2/AC.4/2005/3, 21 June 2005 submitted by Yozo Yokota and the Saami Council on the substantive proposals on the draft principles and guidelines on the heritage of indigenous peoples

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from its Utilization, scheduled to take place from 17 to 19 September 2013, and the third meeting of the Inter-governmental Committee on the Nagoya Protocol (ICNP-3), when it meets in the Republic of Korea from 24-28 February 2014.

11. A number of Parties have stated in their submissions that knowledge should be restored to indigenous and local communities, but that repatriated knowledge that is publicly available or in the public domain, should remain freely available, including to the repatriating entity. Repatriation on these terms would assist with knowledge and cultural restoration and facilitate the recovery of traditional knowledge which is the aim of task 15, but may limit future possibilities of (monetary) benefits for communities arising from the effective implementation of the Nagoya Protocol concerning use of traditional knowledge associated with genetic resources, which has been returned to them. At the same time, a careful balance is required to ensure that a disincentive is not created by placing unreasonable expectations on repatriating entities.

12. Taking all this into account, the Working Group may wish to pass on a summary of views on this matter, annexed to the draft decision, for the consideration of Conference of the Parties and the Nagoya Protocol process. To assist Parties, a draft recommendation is prepared in section VII for this purpose.

II. REPATRIATION OF TRADITIONAL KNOWLEDGE

The Convention on Biological Diversity

13. Article 17 (Exchange of Information) refers to the following two points: in paragraph 1, the Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries; and in paragraph 2, such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.” As such the implementation of Article 17 regarding traditional knowledge can be advanced, at least in part, through task 15 on repatriation.

14. “**Repatriation**” in the context of traditional knowledge means the return of knowledge, innovations and practices of indigenous and local communities and related information, after a considerable period of time, to where it originated or was obtained for the recovery of knowledge on biological diversity.

The Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities

15. The Tkarihwaí:ri Code of Ethical Conduct (decision X/42) provides guidance to Parties, Governments, researchers and others interacting with indigenous and local community on procedures and principles to consider when working with indigenous and local communities. The issue of repatriation is taken up in paragraph 23, which states: “Repatriation efforts ought to be made to facilitate the repatriation of information in order to facilitate the recovery of traditional knowledge of biological diversity.”

United Nations Declaration of the Rights of Indigenous Peoples (UN DRIP)

16. Article 12 of UN DRIP refers to repatriation of ceremonial objects and human remains: “1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. 2. States shall seek to enable the access and/or repatriation of

ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned”⁶

17. Although the UN DRIP does not explicitly mention repatriation of traditional knowledge it does state in Article 31 that: “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions”.

Draft Principles and Guidelines on the Protection of the Heritage of Indigenous Peoples

18. The Draft Principles and Guidelines on the Protection of the Heritage of Indigenous Peoples was elaborated by the Special Rapporteur, Mrs Erica-Irene A. Daes in 1997 and reviewed at a seminar on the draft principles and guidelines for the protection of the heritage of indigenous peoples in 2000 and also reviewed and updated in the review of the draft principles and guidelines on the heritage of indigenous peoples in 2005⁷. It recognizes that the heritage of indigenous peoples has a collective character and is comprised of all objects, sites and knowledge including languages, and has been transmitted from generation to generation, and pertains to a particular people or its territory. The heritage of indigenous peoples also includes the objects, sites, knowledge and literary or artistic creation of that people, which may be created or rediscovered in the future based upon their heritage.⁸ It also notes that the heritage of indigenous peoples includes all moveable cultural property as defined by the relevant Conventions of the United Nations Educational, Scientific and Cultural Organization (UNESCO); all kinds of literature and artistic creation such as music, dance, song, ceremonies, symbols and designs, narratives and poetry and all forms of documentation of ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immoveable cultural property such as sacred sites of cultural, natural and historical significance and burials⁹. This draft guideline has a section on recovery which states that: “whenever possible, indigenous peoples shall be entitled to restitution of control and possession of moveable elements of their cultural heritage, including from across international borders.”

III. REPATRIATION AND CULTURAL PROPERTY

UNESCO

Repatriation of cultural property

19. UNESCO and its Conventions hold the mandate for the protection cultural property, including return of cultural property within the United Nations system. UNESCO was created in 1945 with a mandate which includes culture. Under UNESCO are some international conventions and mechanism related to cultural property including: The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970; The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation. UNESCO is also responsible for the Convention for the Safeguarding of the Intangible Cultural

⁶ See http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁷ Commission on Human Rights (2005), Review of the draft principles and guidelines on the heritage of indigenous people. Expanded working paper submitted by Yozo Yokota and the Saami Council on the substantive proposals on the draft principles and guidelines on the heritage of indigenous peoples E/CN.4/Sub.2/AC.4/2005/3, 21 June 2005.

⁸ Commission on Human Rights (2000). Report of the seminar on the draft principles and guidelines for the protection of the heritage of indigenous peoples. E/CN.4/Sub.2/2000/26, para 12.

⁹ Commission on Human Rights (2000). Report of the seminar on the draft principles and guidelines for the protection of the heritage of indigenous peoples. E/CN.4/Sub.2/2000/26, para 13.

Heritage¹⁰ 2003. These Conventions refer to cultural property, including intangible cultural heritage which may include traditional knowledge such as through archives and data-bases but do not deal explicitly with repatriation. None of the conventions studied have worked on or are planning to work on the repatriation of traditional knowledge however, it is important to recall that future work and the interpretation of these legal obligations remain the prerogative of the member State Parties.

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970

20. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, defines “**cultural property**” in its Article 1 as property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories: (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest, such as: (i) picture, painting and drawing produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original work of statuary art and sculpture in any material; (iii) original engraving, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; (i) postage, revenue and similar stamps, singly or in collections; (j) archives, including sound, photographic and cinematographic archives; and (k) articles of furniture more than one hundred years old and old musical instruments.

21. This Convention addresses cultural property which in its definition may include traditional knowledge and related information (in the form of archives, documents, etc.¹¹) and requires its States Parties to cooperate to facilitate the return of cultural property. However, whilst noting it is the prerogative of States Parties to interpret the Convention (or eventually the International Court of Justice if it were asked to adjudicate a dispute related to the interpretation of that Convention), the Convention has not worked on traditional knowledge to date.

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

22. The UNIDROIT¹² Convention on Stolen or Illegally Exported Cultural Objects¹³ was adopted in 1995. This Convention is intended to facilitate the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all. Its preamble mentioned also that “The States Parties to this Convention... Deeply Concerned by the illicit trade in cultural objects and irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of national, tribal, indigenous and/or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information”. The Convention defines “cultural objects” those which, on religious or secular grounds, are of importance for

¹⁰ Intangible cultural heritage includes traditional knowledge, innovations and practices.

¹¹ See Article 1(j)

¹² UNIDROIT is an independent intergovernmental organisation with its headquarters in the Villa Aldobrandini in Rome. Its purpose is to study needs and methods for modernising, harmonising and coordinating private and, in particular, commercial law between States and groups of States

¹³ <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.pdf>

archaeology, prehistory, history, literature, art or science (Article 2), such as objects of ethnological interest (Article 2 and annex (f)), archives, including sound, photographic and cinematographic archives (Article 2, annex (j)). Chapter III on Return of Illegally Exported Cultural Objects contains provisions which apply where a cultural object was made by a member or members of a tribal or indigenous and local community person or persons, for traditional or ritual use by that community, as well as for the return of such object to that community (Article 7).

23. For return of illegally exported cultural objects, a Contracting State may request the court or other competent authorities of another Contracting State, to order the return of a cultural object illegally exported from the territory of the requesting State (Article 5.1). The court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more interests, such as the physical preservation of the object or of its context; the preservation of information of, for example, a scientific or historical character; and the traditional or ritual use of the object by a tribal or indigenous and local community; or establishes that the object is of significant cultural importance for the requesting State (Article 5.3)

Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation

24. In 1978, UNESCO set up the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. This Committee is an intergovernmental body with an advisory role. It facilitates the restitution of important cultural objects and provides a framework for discussion and negotiation, but its recommendations concerning inter-State disputes are not legally binding. Essentially, this Committee seeks ways and means of facilitating bilateral negotiations, promoting multilateral and bilateral cooperation with a view to the restitution or return of cultural property as well as fostering a public information campaign on the issue, and promoting exchanges of cultural property. The Intergovernmental committee comprises 22 member States, which are from the UNESCO Member States.¹⁴

25. In cases where international conventions cannot be applied, UNESCO Member States who have lost certain cultural objects of fundamental significance and who are calling for their restitution or return can use the process under this Intergovernmental Committee.

Convention on Safeguarding Intangible Cultural Heritage (2003)

26. The term ‘cultural heritage’ has changed content considerably in recent decades, partially owing to the instruments developed by UNESCO. Cultural heritage does not end at monuments and collections of objects. It also includes traditions or living expressions inherited from previous generations and passed on to new generations, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts.

27. While fragile, intangible cultural heritage is an important factor in maintaining cultural diversity in the face of growing globalization. An understanding of the intangible cultural heritage of different communities helps with intercultural dialogue, and encourages mutual respect for other ways of life.

28. The importance of intangible cultural heritage is not the cultural manifestation itself but rather the wealth of knowledge and skills that is transmitted through it from one generation to the next. The social and economic value of this transmission of knowledge is relevant for indigenous and local communities, minority groups and for mainstream social groups within a State, and is as important for developing States as for developed ones.

¹⁴ See <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/>

29. The Convention for the Safeguarding of Intangible Cultural Heritage recognizes traditional knowledge as a form of intangible cultural heritage and focusses on safeguarding heritage and has not to date included in its scope consideration of repatriation of such knowledge. Therefore, strictly speaking, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage does not deal with the 'repatriation of traditional knowledge'. However, regarding '**information associated with the traditional knowledge**' there is a paragraph of the Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (http://www.unesco.org/culture/ich/doc/src/ICH-Operational_Directives-4.GA-EN.doc) that could be of interest. It is the **Operational Directive No 87** which foresees that "States Parties that possess **documentation** concerning an element of intangible cultural heritage present on the territory of another State Party are encouraged to share such documentation with that other State, which shall make that information available to the communities, groups and, where applicable, individuals concerned, as well as to experts, centres of expertise and research institutes". As documentation may constitute information associated with traditional knowledge, it is documentation that could be expatriated and/or repatriated more than traditional knowledge as such.

IV. SUBMISSIONS RECEIVED

30. **Australia** suggested in its submission that task 15 should focus on matters relating to biological diversity and it should recognize the importance of maintaining free access to publicly available knowledge relating to biological diversity. For example, if a particular aspect of knowledge has become widely known since it was originally accessed, in such cases that it is repatriated, it should also remain publicly available. Publicly available knowledge is an important resource for innovation and education (e.g. traditional knowledge recorded in scholarly articles) and it would not be practical to take repatriated knowledge from the public domain.

31. Australia goes on to explain its Indigenous Repatriation Policy (2011) and its supporting programme aiming to work in partnership with Indigenous peoples to facilitate the return of ancestral remains held in overseas collections, and ancestral remains and secret sacred objects held in major government funded museums, to their communities of origin. This policy includes the appointment of an all Indigenous Advisory Committee and funding the employment of Aboriginal or Torres Strait Islander liaison officers to work on repatriation within the major Australian Museums. The Australian Government also informed that it continues to recognize that repatriation is a key step towards reconciliation for all Australians and works collaboratively with all stakeholders to facilitate repatriation, including indigenous communities, Australian museums, state, territory and local governments, collecting institutions and overseas governments and institutions.

32. Australia mentioned that over the past twelve months ancestral remains have been repatriated from the USA and the Czech Republic, to communities in New South Wales and the Northern Territory. At the domestic level some ancestral remains and/or secret sacred objects are being returned from the collection of six major Australian museums (Australian Museum, Western Australian Museum, Museum and Art Gallery of the Northern Territory, Museum Victoria, Queensland Museum and South Australian Museum).

33. **Brazil** expressed concern about how to establish guidelines to facilitate enhancement of repatriation in consistency with *sui generis* systems of protection of traditional knowledge, taking also into account the discussions on this matter under the World Intellectual Property Organization (WIPO).

34. **EU and its Member States** suggested that the repatriation of information related to indigenous and local communities and traditional knowledge should facilitate the exchange of such information, rather than limit or restrict it, and that this goal should also be reflected in the best-practice guidelines to be developed. The repatriation of information should not impede the continued use of such information in the Party that decides to repatriate it.

35. **Peru**, in its submission, noted the importance of a definition of repatriation of traditional knowledge, as it may be interpreted as the devolution of intangible or immaterial goods to another originating country.

36. Peru considered that repatriation of traditional knowledge would be the devolution of information under any existing form, such as in texts, database, passport date (in case of collection examples), records, videos, etc., that has been accumulated and distributed around the world since colonial times. This information would be useful for indigenous and local communities who have lost their traditional knowledge.

37. Peru proposes that the guidelines for repatriation should facilitate access to traditional knowledge that left the country of origin, through collection missions conducted before the entry into force of the CBD, as well as the repatriation of data held by herbaria and museums.

38. Peru proposes the creation of various mechanisms, such as framework agreements with research institutions (university, museums etc.), which includes the issue of repatriation. Also, Peru recognizes that it may be very difficult to return knowledge, and also notes the importance of analyzing the potential development of mechanisms for equitable sharing of benefits from knowledge that was collected and used for a specific or ongoing period.

39. Peru mentions some experiences related to repatriation of traditional knowledge. The National Institute for Agricultural Research INIA has a project called “Discovering the potential of diversity of forgotten crops for the differential of products of high value and income generation for the Poor: The case of peppers in their center of origin (Capsicum Project). This project is coordinated by Biodiversity International for repatriation of genetic material of peppers deposited in three foreign gene banks as follows: 1) National Germplasm Resources Laboratory – Agricultural Research-United States Department of Agriculture – USA: 71 accessions; 2) Centre for Genetic Resources (CGN)-Wageningen University and Research Centre: 3 accessions; 3) Genebank Department- Leibniz Institute of Plant Genetics and Crop Plant Research (IPK): 13 accessions. Peru notes their positive experiences regarding the willingness of gene banks to repatriate. Peru also noted that repatriation should include the passport date of the samples, which is expected to contain information on the uses and other aspects of traditional knowledge.

40. **Sweden** mentioned that since 2006 Naptek – the Swedish National Programme for Local and Traditional Knowledge – and the Swedish Sami Parliament have been collaborating in several projects concerning revitalization and repatriation of Sami traditional knowledge in a broad sense. In that revitalization process the repatriation of information from academia and museums is a valuable tool. It can also be worthwhile for the process to form a management structure such as the structure used for the Laponia World Heritage Site.

41. **Bolivia** explained that they have some, programmes and projects related to repatriation of biologic resources associated to traditional knowledge, such as the repatriation of Paraba Barba Azul (*Ara glaucogularis*). Bolivia mentioned that the Paraba Barba Azul is a very rare bird species which only exist in Bolivia. Bolivia has repatriated six birds from London with the view to save the species.

42. **Mexico** considered that the issue of repatriation of traditional knowledge pertinent for conservation and sustainable use of biodiversity is a complex issue and difficult to implement, because of the diffusion of knowledge and the difficulties in identifying origins. Rather than repatriation, Mexico preferred the recognition of traditional knowledge and the contribution of indigenous and local communities in the conservation of biodiversity. Mexico prefers more emphasis on the protection of traditional knowledge that remains in possession of indigenous and local communities. At the same time Mexico considers that a mechanism for benefit-sharing for the utilization of traditional knowledge is important.

43. **Finland** has advised that the Sami people's traditional uses of natural resources and related language terminology have been saved in various public archives and in archives of universities in written, pictorial and audio form for the purposes of anthropological research and reports. However, Finland mentioned that traditional knowledge is not collected systematically. The pictorial archives contain photographs of traditional land-use practices and natural resource use. Audio archives in Finland and abroad include recording of joiks, traditional Sámi songs. Most of the recorded joiks have been digitized. Finnish legislation on copyright gives the person who created a work the exclusive right to control it by reproducing it and making it available and also promotes returning copyright control of joiks to the Sámi community. Photographs of the utilization of nature by Sami have not been digitized. Finland's National Board of Antiquities is the nation's specialist, service provider, developer and authority in material cultural heritage and the cultural environment field. The Board collects, manages and presents the national heritage of cultural history and records, in addition to producing and disseminating knowledge. The Board of Antiquities has some photographs of the Sámi People which can be used and repatriated, but the Sámi community is also charged for these services.

44. Finland mentions that it would be possible to make the material about the Sámi People and related biodiversity information accessible to the Sámi community and to return it to them through digitization. A Sámi archive has been established in Inari, at the Sámi Cultural Centre Sajos. In the future, Sámi traditional knowledge will be digitized and categorized and made available to the Sámi community; it will also be published and stored.

45. **RITA and other organization from LAC region** note that the traditional knowledge, innovation and practices of indigenous and local communities are usually held collectively and associated to their land and resources, including the diversity of genes, species and ecosystems. RITA reaffirms that repatriation is important because it allows for historical equity and recovery of traditional knowledge for cultural restoration. For indigenous and local communities, traditional knowledge and biological and genetic resources are inseparable. RITA poses an interesting example in the work of the Association ANDES, with its experience of repatriating traditional varieties potato collected by the International Potato Centre during the 60s. Association Andes argues that traditional knowledge and natural resources cannot be separated, therefore, repatriation is necessary to protect and restore traditional knowledge. Another example is the work of Development Association and Information Ixacavaa in Costa Rica, where the leaders of the indigenous peoples of Bajo Chirripo Cabécar requested the repatriation of eight products, which were lost to these communities, successfully arguing that such products would contribute to food security and restoration of their traditional knowledge.

46. **Otomi Regional Council of Upper Lerma**, recommends that codes of ethics, such as the code of ethics of the International Society of Ethnobiology, the Guidelines of Professional Ethics Society for Economic Botany and the code of ethics of the Brazilian Association of Anthropology should be considered as useful guides or tools for repatriation processes concerning traditional knowledge relevant for the conservation and sustainable use of biological diversity.

47. **Indigenous Women's Biodiversity Network Latin America and Caribbean Region (IWNB-LAC)** recommends that the repatriation process has to consider the customary laws of indigenous and/or local communities, before, during and after the repatriation process. Furthermore, the IWNB-LAC mentioned the importance of established protocols between institutions involved in the repatriation process, as well as adequate resources for communities to be prepared to accept the return on traditional knowledge.

V. BEST PRACTICES

48. The Conference of the Parties, in its decision XI/14 D, requested the Executive Secretary to develop draft best practice guidelines for the repatriation of traditional knowledge. The terms of reference further clarified that task 15 is intended to build on and enhance repatriation undertaken by

Parties, other Governments and other entities, including international organizations, museums, herbaria and botanical and zoological gardens, databases, registers, gene banks, etc. Further to these requests the Secretariat analysed submissions received and researched good practices, with a focus on the repatriation of traditional knowledge and related information, but also considered related issues, under the guidance of UNESCO and relevant bodies, in related areas such as the return cultural property, genetic materials and human remains to learn lessons and to establish good practices.

49. Many interesting models exist and serve various purposes, including the repatriation of human remains, artefacts and cultural property. However, there are few models which focus on the repatriation of traditional knowledge and related information. Australia provides interesting good practices concerning the management of indigenous and local community knowledge, as does Finland. In particular, the Australian Institute on Aboriginal and Islander Studies (AIATSIS), Finland's National Board of Antiquities and the Sámi Cultural Centre Sajos provide practical working models from which lessons can be learned.

Australian Institute of Indigenous and local community Studies (AIATSIS)

50. The Australian Institute of Indigenous and local community Studies (AIATSIS) is the leading institution for information and research about the cultures and lifestyles of indigenous peoples, past and present. The Institute undertakes and encourages scholarly, ethical community-based research, holds a priceless collection of films, photographs, video and audio recordings and the world's largest collections of printed materials and other resource for Australian indigenous studies, and has its own publishing house. Its activities affirm and raise awareness among all Australians, and people of other nations, of the richness and diversity of Australian indigenous cultures and histories. AIATSIS is a Commonwealth statutory authority within the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education portfolio. In AIATSIS, indigenous Australians are appointed to the management board and chair it. Indigenous Australians are employed at AIATSIS and interface with indigenous communities seeking information, including access to or return of knowledge and related information such as documented or recorded traditional languages.

51. The functions of AIATSIS include:

- To undertake and promote indigenous studies
- To publish the results of indigenous studies and to assist in the publication of the results of such studies
- To conduct research in fields relevant to indigenous and local community studies and to encourage other persons or bodies to conduct such research
- To assist in training persons, particularly indigenous Australians, as research workers in fields relevant to indigenous studies
- To establish and maintain a cultural resource collection consisting of materials relating to indigenous and local community studies
- To encourage understanding, in the general community, of indigenous societies,

52. In its multifaceted work, AIATSIS also provides access for indigenous Australians to information, including traditional knowledge and indigenous languages, through its indigenous and local community protocols for libraries, archives and information services. AIATSIS also employs indigenous staff, who liaise with indigenous individuals and communities searching for information about themselves (which may include recorded traditional knowledge and languages) and provides them with access to culturally appropriate information in cultural sensitive ways. Such practices aid in cultural and knowledge restoration and improved social cohesion. In effect, AIATSIS amongst many other responsibilities acts as a national clearing-house for information about indigenous peoples, where indigenous Australians can assess information that may have been collected in the past that is relevant to them. Examining AIATSIS's protocols for libraries, archives and information services provides interesting lessons, for possible guidelines for repatriation.

Lessons learned from good practices/models such as AIATSIS

53. Some broad lessons on repatriation include:

- (a) It is desirable that repatriation initiative can be funded and supported by Government;
- (b) Establishing a facilitating organization such as a national institution can operate as a clearing-house for traditional knowledge held nationally or internationally;
- (c) As a statutory authority, such an institution could be considered quasi-governmental and is autonomous;
- (d) Indigenous and local community representatives should effectively participate in such an organization and its work;¹⁵
- (e) All staff in centres holding traditional knowledge receive training on cultural sensitivities and appropriateness;
- (f) Scope of repatriation may include recorded traditional knowledge and related information and may take many forms, such as photographs, film, video, tape, etc.; may be solid or in electronic form, taking into account that traditional knowledge may be an oral tradition which has been recorded (in diverse formats);
- (g) Digitalization of traditional knowledge may assist in repatriation of held traditional knowledge and related information, and also allows return to communities with (-out?) risk of loss of the information by the repatriating organization;
- (h) Preparedness of indigenous and local communities to receive repatriated knowledge ensures that capacity-building is provided for indigenous and local communities in requesting repatriation and in receiving and safe-keeping of repatriated knowledge and related information (i.e. digitalized information may need to be stored in a secure data-base or copies of old books and records may need a secure dehumidified environment);
- (i) The institution may liaise with a variety of national, subnational and private entities which hold information about traditional knowledge with a view of promoting access for indigenous and local communities;
- (j) The institution may liaise with foreign governments and institutions and entities to promote access to traditional knowledge and related information for indigenous peoples;
- (k) Encourages indigenous and local communities to establish community protocols as guidance for places which may hold traditional knowledge and related information such as government departments, libraries, archives and information services.

PIMA Code of Ethics for Pacific Museums and Cultural Centres

54. The Pacific Islands Museums Association (PIMA)¹⁶ is a regional not-for-profit heritage organization whose aim is to safeguard, preserve and promote the heritage of the peoples of the Pacific Islands. PIMA's mission is to: support Pacific museums and cultural centers to preserve the heritage of the Pacific Islands; involve local communities in heritage management; and develop regional cultural resource management policies and practices.¹⁷

55. PIMA has developed a regional-specific Code of Ethics for Pacific Museums and Cultural Centers¹⁸. It includes, among other things, guiding principles such as "4. Support the reconnection of *ex-situ* cultural resources, located domestically or internationally, with their creator communities"; and "8. Encourages museums from outside the Pacific to support the repatriation of cultural resources to the countries and communities of origin".

¹⁵ Indigenous and local community managed and staffed.

¹⁶ See <http://www.pima-museum.com/>

¹⁷ World Intellectual Property Organization (2010). *Intellectual Property and the Safeguarding of Traditional Cultures. Legal Issues and Practical Options for Museums, Libraries and Archives*. Available from http://www.wipo.int/freepublications/en/tk/1023/wipo_pub_1023.pdf.

¹⁸ See http://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/pima_code_ethics.pdf

ICOM Code of Ethics for museums (2013)

56. ICOM Code of Ethics for Museums was adopted by the International Council of Museums (ICOM) in 1986 and revised in 2004 and 2013.¹⁹ It establishes the values and principles shared by ICOM and the international museum community. Principle 6.1 of the code refers to “Cooperation. Museums should promote the sharing of knowledge, documentation and collection with museums and cultural organizations in the countries and communities of origin. The possibility of developing partnership with museums in countries or areas that have lost a significant part of their heritage should be explored”. In line with this: “6.2 Return of Cultural Property Museums should be prepared to initiate dialogue for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.” Further to this, Principle 6.3 Restitution of Cultural Property states: “When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country’s or people’s cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to cooperate in its return.”

World Archaeological Congress Codes of Ethics

57. The World Archaeological Congress (WAC) was funded in 1985 as a representative international organization of practicing archaeologists. WAC Congresses discuss archaeological policy, practice and politics.²⁰ The WAC Council adopted a Code of Ethics in 1990²¹ at WAC-2, in Barquisimeto, Venezuela. Some related principles include: “1. To acknowledge the importance of indigenous cultural heritage, including sites, places, objects, artifacts, human remains, to the survival of indigenous cultures; 2. To acknowledge the importance of protecting indigenous cultural heritage to the well-being of indigenous peoples; 3. To acknowledge the special importance of indigenous ancestral human remains, and sites containing and/or associated with such remains, to indigenous peoples.”

Code of Ethics of the International Society of Ethnobiology (ISE)

58. The Code of Ethics of the International Society of Ethnobiology²² (ISE) was adopted by the ISE membership at the 10th International Congress of Ethnobiology, in Chiang Rai, Thailand, on 8 November 2006, subject to the addition of an Executive Summary and Glossary of Terms. The two additions were adopted at the 11th International Congress of Ethnobiology, Cusco, Peru (26 June 2008). This constitutes the complete and most current version of the ISE Code of Ethics.²³

59. The Code of Ethics of the International Society of Ethnobiology (ISE) provides a framework for decision-making and conduct for ethnobiological research and related activities.²⁴ One purpose of this Code of Ethics is to facilitate establishing ethical and equitable relationships: “ii. to provide a set of principles and practices to govern the conduct of all Members of the ISE who are involved in or proposing to be involved in research in all its forms, especially that concerning collation and use of traditional knowledge or collections of flora, fauna, or any other element of biocultural heritage found on community lands or territories”. Also this Code, under Practical Guidelines on “Treatment of existing project materials” refers to “All existing project materials in the possession, custody or control of an ISE

¹⁹ See http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf

²⁰ See http://www.worldarchaeologicalcongress.org/site/about_faq.php

²¹ See http://www.worldarchaeologicalcongress.org/site/about_ethi.php#code1

²² See International Society of Ethnobiology (2006). International Society of Ethnobiology Code of Ethics (with 2008 additions). <http://ethnobiology.net/code-of-ethics/>

²³ See <http://ethnobiology.net/code-of-ethics/>

²⁴ See <http://ethnobiology.net/code-of-ethics/>

member or affiliated organization shall be treated in a manner consistent with this Code of Ethics. All affected communities shall be notified, to the extent possible, of the existence of such materials, and their right to equitable sharing, compensation, remedial action, ownership, **and repatriation** or other entitlements, as appropriate. Prior informed consent shall not be presumed for uses of biocultural information in the “public domain” and diligence shall be used to ensure that provenance or original source(s) of knowledge and associated resources are included and traceable, to the degree possible, in further publications, uses and other means of dissemination.”

Principles on Access to Genetic Resources and Benefit-sharing for Participating Institutions (Botanic Gardens and herbaria)

60. The Principles on Access to Genetic Resource and Benefit-sharing for Participating Institutions²⁵ was developed by 28 botanic gardens and herbaria from 21 countries. The Principles promote the sharing of benefits arising from the use of genetic resources acquired prior to the entry into force of the Convention, in the same manner as for those acquired thereafter. The principles honour the letter and spirit of the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and laws relating to access and benefit-sharing, including those relating to traditional knowledge.

Guidelines and Procedures for repatriation, National Museums of Natural History, Smithsonian Institution

61. The National Museum of Natural History Repatriation Office has developed detailed policy, guidelines and procedures²⁶ for the implementation of the National Museum of the American Indian Act. The Museum encourages indigenous and local communities’ representatives to become actively involved in all aspects of the process, provides access to museum collections and documentation, and assist in the use of museum records²⁷

VI. LESSONS LEARNED

62. Parties may wish to further consider lessons learned in this section and import elements, if needed and as appropriate, into the annex on draft guidelines to promote and enhance the repatriation of traditional knowledge and related information relevant to the conservation and sustainable use of biological diversity in order to facilitate the recovery of traditional knowledge of biological diversity, for further consideration of the Working Group.

Recovery/Repatriation

63. Whenever possible, indigenous and local communities should be entitled to repatriation of their traditional knowledge, including from across international borders to assist them with the recovery of traditional knowledge relevant to biological diversity. For meaningful repatriation to take place, the guidelines for repatriation should facilitate access to traditional knowledge that left the country or community of origin, (through collection missions conducted) before the entry into force of the Convention on Biological Diversity.²⁸

Mutual Respect

64. States should ensure respect for the principles of legality, transparency and mutual respect and understanding in relations between indigenous and local communities, on one hand, and academic, private sector, educational, governmental and other users of elements of indigenous and local community traditional knowledge, on the other.

²⁵ See <http://www.kew.org/conservation/principles.html>

²⁶ See <http://anthropology.si.edu/repatriation/pdf/NMNH%20Repatriation%20Guidelines%20and%20Procedures%202012.pdf>

²⁷ See <http://anthropology.si.edu/repatriation/consult/process.htm>

²⁸ Submission from Peru.

The Public Domain

65. Prior informed consent may also apply to elements of indigenous and local community traditional knowledge and associated information that are already readily available to the general public (that is, already in the so-called “public domain”). Thus, as a general rule, where feasible, use of elements of indigenous and local community traditional knowledge, that conventional intellectual property laws regard as being in the so-called public domain, that had been placed there without the prior informed consent of the relevant indigenous and local communities or individuals should be discontinued if prior informed consent for their continued use cannot be obtained. In instances where prior and informed consent may not be possible, users of traditional knowledge may, in the spirit of equity and fairness, consider entering into benefit-sharing arrangements with originating communities.

66. States should seek to curtail the grant, as well as the continued exercise and enforcement of already granted intellectual property rights over elements of indigenous and local communities’ traditional knowledge, already readily available to the general public, if prior informed consent for the grant or continued exercise of those intellectual property rights cannot be obtained.

67. Users of elements of indigenous and local communities’ traditional knowledge beyond its traditional context should make every endeavour to identify the source and origin of the elements and seek to return them to the indigenous and local communities concerned. Pending such return, the user should, in any continued use, acknowledge the source of the elements in a manner that respects the indigenous and local communities and acknowledges the cultural value of their cultural heritage.

Prior and Informed Consent/Approval and Involvement

68. Indigenous and local communities have the right to own, control and manage their cultural heritage (in this case intangible cultural heritage in the form of traditional knowledge), and because of this elements of their traditional knowledge should only be accessed, transmitted, used, displayed and managed by others subject to securing the prior informed consent of the relevant indigenous and local communities. The formulation used to date under the Convention on Biological Diversity and specifically under the Nagoya Protocol regarding access to traditional knowledge is “prior and informed consent or approval and involvement” of indigenous and local communities.

69. Mechanisms for obtaining prior informed consent or approval and involvement should respect the relevant customary laws of the indigenous and local communities concerned, ensure legality and clarity, and shall not create burdens for indigenous and local communities and individuals or authorized users of elements of their traditional knowledge.

70. Communities should be encouraged to develop community protocols or procedures to ensure clarity of procedures for obtaining prior informed consent, which may also include mutually agreed terms and arrangements for the equitable sharing of benefits arising from the use of their knowledge.

71. Repatriation of indigenous and local community traditional knowledge should reflect the need for an equitable balance between the rights and interests of those who develop, preserve and sustain elements of traditional knowledge, and the interests of the general public, as well as users of such knowledge. Thus, due consideration should be given to the interest of third parties that had acquired traditional knowledge in good faith. Continued use of indigenous and local community traditional knowledge already readily available to the general public, in a manner that is fair and equitable, paying particular attention to the rights and interests of those from whom the elements originated, shall thus be excluded from the obligation to obtain prior and informed consent.

Benefit-sharing

72. In particular, in case of continued utilization of indigenous and local community traditional knowledge already readily available to the general public, for commercial purposes, users of traditional knowledge should be encouraged to enter into equitable benefit-sharing arrangements with the relevant indigenous and local communities, where this is feasible. In such instances, benefits should to the largest extent possible be appropriate to the cultural and social context and the needs and aspirations of the indigenous and local communities concerned. Equitable benefit-sharing should also be encouraged whenever traditional knowledge has been accessed and are used for non-commercial purposes.

Disclosure and Inventories

73. Researchers, scholarly institutions and museums should not publish information obtained from indigenous or local communities or the results of research conducted on flora, fauna, microbes or materials discovered through the assistance of indigenous and local communities and their traditional knowledge without obtaining their prior informed consent or approval and involvement to the citation or publication. Any benefit generated by such information should be shared equitably.

74. Government departments, international and regional organizations, museums, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services, researchers, scholarly institutions, museums and other places and other entities storing or housing traditional knowledge and related information, are encouraged to make available to indigenous and local communities comprehensive inventories of the elements of their traditional knowledge and related information, which they may have in their custody, including any elements loaned to other institutions, and describe, where possible, the manner in which each element was acquired.

Capacity-building and awareness-raising

75. Parties, Governments and entities storing or housing traditional knowledge should, through capacity-building activities, assist indigenous and local communities to recover, maintain, control, safeguard and protect their traditional knowledge (for example, by fostering the creation or strengthening of institutions for training in the management of their traditional knowledge, and/or identify a national institution to act as a clearing-house for the repatriation of traditional knowledge).

76. Parties and Governments and entities working with indigenous and local communities and their traditional knowledge should further ensure recognition of, and respect for, indigenous and local communities traditional knowledge through educational, awareness-raising and information programmes aimed at the general public, in particular young people.

VII. DRAFT RECOMMENDATION FOR THE CONSIDERATION OF THE WORKING GROUP

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions may wish to recommend that the Conference of the Parties adopt a decision along the following lines:

Recalling that Parties to the Convention on Biological Diversity have, subject to their respective national legislation, undertaken, pursuant to Article 8(j) of the Convention, 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 its 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,

Recalling that Parties to the Convention on Biological Diversity, according Article 17, shall facilitate the exchange of information on traditional knowledge and in Article 18, promote scientific cooperation to develop methods of cooperation for the development and use of technologies, including indigenous and traditional knowledge,

Bearing in mind the importance of international cooperation for the repatriation of traditional knowledge including of providing access to traditional knowledge and related information for indigenous and local communities to facilitate the recovery of traditional knowledge of biological diversity,

Further taking into account the various international bodies, instruments, programmes, strategies, standards, guidelines reports and processes of relevance and the importance of their harmonization and complementarity and effective implementation,

1. *Decides* to organize a regionally balanced technical expert meeting on repatriation of traditional knowledge, including with the adequate participation of indigenous and local community representatives and relevant organizations and experts, to consider the draft guidelines to promote and enhance the repatriation of traditional knowledge and related information relevant to the conservation and sustainable use of biological diversity, annexed to this decision, among other relevant issues and to provide a revised version along with other relevant advice to the ninth meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions for its consideration;

2. *Invites* Parties, other Governments, relevant international organizations, non-governmental organizations and indigenous and local community organizations to submit information on national and/or international best practices relevant to task 15, along with their views on the draft guidelines to promote and enhance the repatriation of traditional knowledge and related information relevant to the conservation and sustainable use of biological diversity (annex), as well as other issues relevant to the repatriation of traditional knowledge and related information to the Executive Secretary;

3. *Requests* the Executive Secretary to compile the information received and make the compilation available to the technical expert group meeting and to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, at its ninth meeting, for its consideration;

4. *Requests* the Executive Secretary to include in the Traditional Knowledge Portal a web page dedicated to information on the repatriation of traditional knowledge, as a tool to assist indigenous and local communities and potential repatriating entities of traditional knowledge and related information in their efforts to restore traditional knowledge relevant to biological diversity;

5. *Decides* to transmit a summary of views on how work on task 15 might usefully complement the effective implementation of the Nagoya Protocol to the third meeting of the Intergovernmental Committee on the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From its Utilization, or to the first meeting of the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From its Utilization (COP-MOP) for their consideration, as appropriate.

Annex

**DRAFT GUIDELINES TO PROMOTE AND ENHANCE THE REPATRIATION OF
TRADITIONAL KNOWLEDGE AND RELATED INFORMATION RELEVANT TO THE
CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY IN ORDER TO
FACILITATE THE RECOVERY OF TRADITIONAL KNOWLEDGE OF BIOLOGICAL
DIVERSITY**

A. Scope of the subject matter

These guidelines apply to the knowledge, innovations and practices (hereafter referred to as traditional knowledge) of indigenous and local communities, embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including related information and traditional knowledge associated with cultural property.

The guidelines are intended to be practical guidance to Parties, Governments,²⁹ international and regional organizations, museums, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services and other entities storing or housing traditional knowledge and related information, including, in appropriate ways to interact with indigenous and local communities in efforts to repatriate traditional knowledge and related information, and in handling such materials with indigenous and local community content.

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

The guidelines address:

- (a) The recognition of the moral rights of indigenous and local communities as the owners of their knowledge;
- (b) Other important issues arising from indigenous and local community content and perspectives in documentary materials, media and associated information related to traditional cultural property;
- (c) Issues in access to places where traditional knowledge and associated information may be held such as government departments, international organizations, museums, herbaria and botanical and zoological gardens, data-based, registers, gene-banks, libraries, archives and information services;
- (d) Encouragement for both the involvement and the participation of indigenous and local community persons in the governance and operation of relevant government departments, international organizations, museums, herbaria and botanical and zoological gardens, data-based, registers, gene-banks, libraries, archives and information services, etc.; and
- (e) Appropriate representation of indigenous and local communities and their cultures in places where traditional knowledge and associated information may be held such as government departments, international organizations, museums, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services.

The guidelines are not prescriptive or definitive.

Given the political, legal and cultural diversity of States and indigenous and local communities, it is unlikely these guidelines will cover all the issues that may arise in professional practice. However, they

²⁹ Including governments departments which may hold indigenous and/or local community traditional knowledge and related information relevant conservation and sustainable use of biological diversity.

should provide a starting point for solving problems, and seek to put practitioners who are working through similar scenarios in contact with each other.

The guidelines do not promote censorship - materials now considered offensive or inappropriate still form part of the historical record and as such may possess a contextual contribution or value.

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

B. Guiding Principles for Repatriation

1. Governance and management

Places where traditional knowledge and associated information may be held such as government departments, international organizations, museums, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services and which serve indigenous and local communities and/or hold materials with indigenous and local community content or perspectives, should ensure the involvement and participation of indigenous and local communities in governance, management and operation.

Such institutions should:

- 1.1** Recognize indigenous and local communities as the traditional custodians of their traditional territories.
- 1.2** Ensure appropriate indigenous and local membership of governing and advisory bodies including boards, councils and committees.
- 1.3** Ensure meaningful indigenous and local community participation in effective development, adoption and implementation of relevant policies.
- 1.4** Develop mechanisms to ensure effective monitoring and review of policy implementation.
- 1.5** Facilitate organizational change to accommodate indigenous and local community perspectives.

2. Content and perspectives

Many of the records, books, images and other materials held by government departments, international organizations, museums, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services include depictions of indigenous and local communities, culture and experience presented from a variety of perspectives. Major institutions have a responsibility to ensure that their collections are comprehensive, inclusive and reflective of all perspectives. Smaller institutions may have a more specialised collecting focus. In order to respond appropriately to indigenous and local communities and issues, organizations should consider the following strategies:

- 2.1** Consult in an appropriate and ongoing manner with relevant indigenous and local communities in regard to the development and management of the collections.
- 2.2** Seek to balance collections by acquiring material by and about indigenous and local communities.
- 2.3** In the case of government archives, consult through the relevant government agency. Agencies should be advised of indigenous and local community content of materials and appropriate access policies.
- 2.4** Promote the existence and availability of collections and provide clients with an explanation for any conditions governing access.
- 2.5** Facilitate the development of indigenous and local community knowledge centres.

3. *Intellectual Property*

The interests of the authors and publishers of records, books and other documentary material are protected by copyright law but the interests of those whose culture is described are not. The primary rights of the owners of a culture should be recognized.

Organizations will:

- 3.1 Raise awareness of the issues surrounding cultural documentation and the need for cultural awareness training.
- 3.2 Develop professional recognition of cultural and intellectual property rights of indigenous and local communities and consult with appropriate representatives of indigenous and local communities on their application.
- 3.3 Develop ways, including the recognition of moral rights, to protect indigenous and local community cultural and intellectual property.

4. *Accessibility and use*

Indigenous and local communities who have written about libraries and other resource centres have invariably mentioned how important it is to feel comfortable in them. Friendly staff will mean that indigenous and local communities do not feel intimidated by an alien cultural system or inadvertently made to feel inferior, if they do not know how to find information.

Organizations will:

- 4.1 Develop and implement clear statements of the types of resources and services indigenous and local community want by initiating consultation to determine appropriate resources and services.
- 4.2 Employ indigenous and local communities in as many roles as possible, but especially visibly at service points.³⁰
- 4.3 Employ indigenous and local community persons, as liaison officers to work with indigenous and local community persons and/or communities served by the organization, on an ongoing basis.
- 4.4 Ensure accessibility by encouraging and fostering positive relationships between staff members and clients.
- 4.5 Promote libraries, knowledge centres, archives and information services in indigenous and local communities.
- 4.6 Encourage the use of the organization's facilities as meeting places and resources for indigenous and local communities.
- 4.7 Involve indigenous and local communities in the planning, design and layout of places where traditional knowledge and associated information is stored, such as libraries, archives and information services to create welcoming and suitable environments.

5. *Description and classification*

Indexing terminology, subject headings and classification systems are designed to provide easy access to materials in libraries, archives and information services. However, the use of outdated, inaccurate or value laden terms actually obstructs access.

To improve access, organizations will:

- 5.1 Use national indigenous and local communities' thesauri/glossary for describing documentation relating to indigenous and local communities and issues.
- 5.2 Promote appropriate changes to standard descriptive tools and metadata, schemas with the aim of retrospectively re-cataloguing items recorded with unsuitable subject headings.
- 5.3 Improve access by the introduction of classificatory systems which describe items by their geographic, language and cultural identifiers.

³⁰ Of government departments, international organizations, museums, herbaria and botanical and zoological gardens, data-based, registers, gene-banks, libraries, archives and information services

- 5.4** Consult with indigenous and local communities at local, state/territory and national levels in relation to the description, cataloguing and classification of materials in places where traditional knowledge and associated information is stored, such as libraries, archives and information services.
- 5.5** Provide opportunities for indigenous and local communities to describe and annotate material that relates to themselves and their communities.

6. Secret or sacred or gender specific or sensitive materials

Some of the materials in libraries, archives and information services are confidential or sensitive which may require certain restrictions on access for regulatory, commercial, security or community reasons. Secret or sacred or sensitive indigenous and local community information should not be confused with material that may be considered offensive to indigenous and local communities. Guidance on the handling of potentially offensive material should be provided to staff. Suitable management practices will depend on both the materials and the communities served by the organizations. Gender specific traditional knowledge and related information should be accessed by only culturally appropriate persons.

In implementing the processes through which such materials are managed, organizations will:

- 6.1** Consult in the identification of such materials and the development of suitable management practices with the most appropriate representatives of the particular indigenous and local communities involved, including indigenous and local community women.
- 6.2** Facilitate the process of consultation and implementation by developing effective mechanisms including liaison with reference groups at local, state and national levels.
- 6.3** Participate in the establishment of reference groups consisting of senior information services staff and indigenous and local community representatives.
- 6.4** Seek actively to identify the existence of secret or sacred and sensitive materials by retrospectively surveying holdings and by monitoring current materials.
- 6.5** Each appoints specific, designated indigenous and local community liaison officer/s to serve as the specific point/s of contact between their institution and the relevant reference group/s.
- 6.6** Provide suitable storage and viewing facilities with limited access as may be required.
- 6.7** Ensure that any conditions on access are understood by staff and users and are fully implemented.
- 6.8** Ensure that secret, sacred, gender specific and/or sensitive materials are managed appropriately in the Digital Environment.

7. Offensive materials

Libraries, archives and information services need to recognize that their collections may contain materials that are offensive to indigenous and local communities. Such materials may be racist, sexist, derogatory, abusive or offensively wrong. Many examples are of a historical nature but some are contemporary. Libraries, archives and information services have a responsibility to preserve and make accessible the documentary record but must also respond appropriately to the existence of offensive materials.

Within the context of the communities they serve, organizations will:

- 7.1** Develop an awareness of the extent to which their collections may contain materials which will be offensive to indigenous and local communities.
- 7.2** Take advice from and develop effective consultation strategies with indigenous and local communities in relation to sensitive materials.
- 7.3** Develop strategies to deal appropriately with offensive materials in consultation with indigenous and local communities.

8. Staffing

The inclusion of indigenous and local community staff within organizations can change organizational culture for the benefit of all.

Organizations should:

- 8.1** Aim to reflect the composition of the client/community population in each organization's staffing profile.
- 8.2** Take affirmative action to recruit and promote indigenous and local communities, including woman. This responsibility will require employers, educational institutions and professional bodies to be proactive in developing employment and promotional pathways.
- 8.3** Recognize the value and/or relevance of prior learning and/or qualifications in other fields and/or cultural expertise, when appointing of indigenous and local community person.
- 8.4** Involve members of the indigenous and local community in the selection of staff when it is appropriate.
- 8.5** Ensure that indigenous and local community staff members are suitably trained and supported.
- 8.6** Facilitate the entry of Indigenous and local community staff members into management positions through support strategies such as mentoring and training.
- 8.7** Recognize and respond to the cultural needs of indigenous and local community staff members.
- 8.8** Develop and implement cross cultural awareness programmes which ensure that all staff is approachable and sensitive to cultural diversity.

9. Developing Professional Practice

Libraries, archives and information services and other places which store traditional knowledge and associated information should ensure their staff are appropriately prepared to deal with indigenous and local community materials, and indigenous and local community clients and staff.

Places which store traditional knowledge and associated information such as Libraries, archives and information services, educational institutions and professional bodies should:

- 9.1** Ensure that information services, library and archive education and training courses at all levels adequately cover issues relating to indigenous and local community materials, clients and staff.
- 9.2** Provide cultural awareness training for every staff member and particularly all who deal with the public.
- 9.3** Provide appropriate models for professional practice in cataloguing, acquisition, reformatting, collection management and other areas on matters of concern to indigenous and local communities.
- 9.4** Ensure that education and training programs involve indigenous and local communities in both design and delivery.
- 9.5** Support indigenous and local community students in information services, archive and library education and training through such means as positive encouragement, mentoring and study leave.

10. Awareness of indigenous and local communities and issues

Libraries, archives and information services can contribute to greater understanding between indigenous and local communities and non-indigenous and local communities. In pursuing this aim, organizations will:

- 10.1** Be proactive in the role of educator, promoting awareness of indigenous and local communities and their cultures and issues among non-indigenous and local communities.
- 10.2** Actively acquire materials produced by indigenous and local communities and their organizations.
- 10.3** Highlight indigenous and local community content and perspectives through such means as oral history, indexing, record copying projects and online.
- 10.4** Promote awareness and use of indigenous and local community related holdings, by such means as targeted guides, finding aids, tours, websites and exhibitions.

11. Copying and repatriation of records to indigenous and local communities

Archives and libraries often hold original records which were created by, about or with the input of particular indigenous and local communities. A community may place tremendous importance on particular records and request copies for use and retention within the community. Some records may have

been taken from the control of the community or created by theft or deception. In addressing this issue, organizations will:

- 11.1** Respond sympathetically and co-operatively to any request from an indigenous and local community for copies of records of specific relevance to the community for its use and retention.
- 11.2** Agree to the repatriation of original records or the provision of copies to indigenous and local communities as may be determined through consultations.
- 11.3** Seek permission to hold copies of repatriated records but refrain from copying such records should permission be denied.
- 11.4** Assist indigenous and local communities in planning, providing and maintaining knowledge centres for repatriated records.

12. The Digital Environment

Increasingly indigenous and local community collections are or include digital collections created through digitization programmes, for preservation and to increase access to collections, or are 'born digital'.

In addition, digitization is an enabling technology that permits virtual repatriation without institutional relinquishment of heritage materials.

Digitization of indigenous and local community materials poses some complex issues for organizations. Challenges include the need for institutions to accommodate different access conditions for materials that contain sensitive indigenous and local community traditional knowledge and the need for institutions and communities to deal with conflicts around different concepts of intellectual property associated with indigenous and local community and other knowledge systems.

In addressing these issues, organizations will:

- 12.1** Ensure sustainable choices of formats, descriptive methods and access and preservation strategies for indigenous and local communities' knowledge, creativity and experience.
- 12.2** Pursue digitization and digital access as a means of facilitating repatriation to indigenous and local communities, and preserving material for future generations.
- 12.3** Consult with indigenous and local communities about relevant digital content made available via their websites.
- 12.4** Avoid providing access to items deemed secret, sacred or sensitive via their websites and online catalogues.
- 12.5** Ensure that material is digitized and stored electronically, in a manner consistent with and respectful to indigenous and local community cultural protocols.
- 12.6** Work cooperatively with indigenous and local communities to promote the creation, collection and management of digital materials.
- 12.7** Educate users of their collections about the potential benefits and risks of sharing digital content in an online environment.
