



## Convention on Biological Diversity

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

Eighth meeting

Montreal, 7 October – 11 October 2013

Item 4 (d) of the provisional agenda\*

### **DEVELOPMENT OF ELEMENTS OF *SUI GENERIS* SYSTEMS FOR THE PROTECTION, PRESERVATION AND PROMOTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES RELATING TO BIOLOGICAL DIVERSITY**

*Note by the Executive Secretary*

#### **INTRODUCTION**

1. In paragraph 1 of decision XI/14 E on development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices, the Conference of the Parties decided to extend and broaden the dialogue regarding *sui generis* systems to include the preservation and promotion of traditional knowledge relating to biological diversity. Paragraph 2 of the same decision invited Parties, Governments, international organizations, non-governmental organizations and indigenous and local communities to communicate to the Secretariat their experiences, case studies and views regarding a broad range of *sui generis* systems and their mechanisms, including community protocols, policy, and administrative or legislative measures, which have contributed to respect for and protection, preservation and promotion of the wider application of traditional knowledge, in order to assist countries to evaluate which mechanisms may be applicable in their national context. The compilation of input received is available as an information document (UNEP/CBD/WG8J/8/INF/11).

2. Paragraph 3 of decision XI/14 E requested the Executive Secretary, in the light of the input received, to compile and analyse that input, and to revise and complement the present note on elements of *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices (UNEP/CBD/WG8J/8/6), for consideration by the eighth meeting of the Working Group on Article 8(j) and Related Provisions.

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\* UNEP/CBD/WG8J/8/1.

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3. Building on this, the Conference of the Parties, in paragraph 4, also invited Parties and Governments, in the light of the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, to report on any regional measures that have been taken to protect traditional knowledge, innovations and practices of indigenous and local communities relevant to biological diversity held across national and international boundaries, including *sui generis* systems that are being developed or have been developed. As also requested in paragraph 4, the Executive Secretary has analysed information received and included it, as a new element on regional measures in the revision of this note, for the consideration of the Working Group.

4. Also in decision XI/14 E, in paragraphs 5, 6, 7, and 8, the Executive Secretary was requested to carry out various activities, subject to the availability of funds. They include facilitating an electronic dialogue and organizing an ad hoc technical expert group with the participation of indigenous and local community experts, for the preparation of a report of *sui generis* systems in the CBD Technical Series, as well as support for exchanges and capacity-building initiatives concerning *sui generis* systems, however, to date, no funds were realised for these activities.

5. Finally, paragraph 10 of decision XI/14 invites Parties to consider the terms and definitions developed in response to paragraph 4 of decision VII/16 H, and to submit views, including additional terms and definitions for possible inclusion, to the Executive Secretary. The Executive Secretary, based on information received, has revised the terms and definitions and proposes a draft glossary of terms for consideration by the Working Group on Article 8(j) and Related Provisions, in the addendum to the present document (UNEP/CBD/WG8J/8/6/Add.1). Views of terms and definitions received are available in an information document (UNEP/CBD/WG/8/INF/11).

6. Furthermore, to avoid potential overlap or duplication, Parties may also wish to take into consideration agenda item 6 (c) (tasks 7, 10, 12 of the revised multi-year programme of work), in order to ensure coordination with the current work on *sui generis* systems for the protection, preservation and promotion of traditional knowledge and to ensure that these tasks remain complementary and avoid overlap or duplication with tasks 7, 10 and 12.

7. In order to better manage the issues at hand, the possible elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities is revised and made available as an addendum to this document (UNEP/CBD/WG8J/8/6/Add.1) and submissions received have been examined the present document, which also proposes recommendations for the consideration of the Working Group. Hence, the purpose of these revised documents (UNEP/CBD/WG8J/8/6 and Add.1<sup>1</sup>) is to examine the further development and prioritization of the twelve elements<sup>2</sup> based on input received, building on the note by the Executive Secretary on elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices (UNEP/CBD/WG8J/7/3). Hence, section I of UNEP/CBD/WG8J/8/6 contains some conclusions drawn from submissions received and section II provides draft recommendations for the consideration of the Working Group regarding *sui generis* systems in order to take this work forward in a coordinated manner, taking into account related work on tasks 7, 10 and 12.

8. Views regarding *sui generis* systems were received from Australia, Brazil, European Union and its member States, Germany, and Peru, as well as Red Indígena de Turismo de México A.C; Consejo Regional Otomí del Alto Lerma de México; Red de Mujeres Indígenas y Biodiversidad de Guatemala; Asociación IXACAVAA de Desarrollo e Información Indígena de Costa Rica; INBRAPI de Brasil; Plataforma Dominicana de Afrodescendientes y EcoHaina de Republica Dominicana, the Alliance for Democratising Agricultural Research in South Asia, Alliance for Food Sovereignty in South Asia,

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<sup>1</sup> The previous section II of UNEP/CBD/WG8J/7/3 on *further development of elements to be considered in the development of sui generis systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities*, is revised and made available as UNEP/CBD/WG8J/8/6/Add1.

<sup>2</sup> As per decision VII/16, H, annex.

Community Media Trust (India), Deccan Development Society (India), ICCA Consortium (Switzerland/International), League for Pastoral Peoples and Endogenous Livestock Development (Germany/ International), MELCA-Ethiopia (Ethiopia), Millet Network of India (India), Natural Justice: Lawyers for Communities and the Environment (South Africa/International), Sahjeevan (India), Southern Action on Genetic Engineering (South India). A summary of these submissions is available in section I and has also informed the further development of the elements contained in the addendum to this note (UNEP/CBD/WG8J/8/6/Add.1).

9. As no views were received regarding prioritization of the elements, the current order of elements remains unchanged and in no particular order of priority.

## I. SUMMARY OF SUBMISSIONS RECEIVED

10. Views regarding *sui generis* systems, received from the Parties and organizations listed above provide a useful basis for further developing the dialogue on *sui generis* elements for the protection, preservation and promotion of traditional knowledge.

11. **Australia** has included many examples of how principles of effective participation and partnership can provide a basis for developing a menu of programmes and projects developed in partnership with indigenous Australians, which include broad interconnected goals but focus on the promotion and use of traditional knowledge. Paramount to this are programmes which assist the intergenerational transfer of knowledge, innovations and practices, including indigenous language programmes, as well as programmes to assist indigenous peoples to remain connected to “country”.<sup>3</sup> The Australian submission also emphasizes the need for flexibility in national approaches concerning the implementation of *sui generis* systems and that such systems can be much broader than legal protection, fully reflecting the goals of Article 8(j) to respect, preserve and promote traditional knowledge. The menu of programmes and projects provided in the Australian submission would suggest that the current focus on *sui generis* systems for the legal protection of traditional knowledge within the Convention could be expanded or refocused to include *sui generis* systems for the preservation, maintenance and promotion of traditional knowledge. Australia along with the EU and its member States recall the mandate of the World Intellectual Property Organization (WIPO) regarding legal protection, particularly intellectual property protection and its recent work on developing a glossary of terms and the need for the Convention’s work to remain consistent and in harmony with the work of WIPO. Australia also notes that in the development of a glossary, it should be kept in mind that some terms have different meanings in different national contexts and do not have universally application definitions.

12. Australia has a number of government programmes developed in partnership with, and with the consent and participation of, indigenous Australians, which amongst other things support the recording, storage and transfer of traditional ecological and cultural knowledge, in culturally sensitive ways. Some of the highlights of these, noted in the Australian submission, include:

- Indigenous Advisory Committee
- Valuation of indigenous participation in the “Caring for our Country” programme
- Community Skills, Knowledge and Engagement (CSKE) – Traditional Ecological Knowledge
- Traditional Use of Marine Resource Agreements (TUMRA)
- Australian National Water Quality Management Strategy (NWQMS)
- Murray-Darling Basin Plan Recognition
- Murray Lower Darling Rivers Indigenous Nations and Northern Basin Aboriginal Nations
- Use-and-occupancy mapping

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<sup>3</sup> Aboriginal Australians refer to their traditional territories as their “country” and this is reflected in the national Australian programme: “Caring for Our Country”.

- Cultural flows research
- Protection of traditional cultural expressions
- Indigenous visual arts industry support
- Indigenous culture support
- Indigenous languages support programme
- Review of higher education access and outcomes for aboriginal and Torres Strait Islander People
- Maintenance of indigenous language and records programme
- Indigenous broadcasting programme
- International heritage
- Australian support for the establishment of the Pacific Heritage Hub
- Caring for our Country
- Joint management arrangements of Ramsar Wetlands

13. In particular, in pursuit of the effective participation of indigenous Australians, Australia has established an Indigenous Advisory Committee under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) to advise the Minister for the Department of Sustainability, Environment, Water, Population and Communities on the operation of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), taking into account the significance of indigenous people's knowledge of the management of land and the conservation and sustainable use of biodiversity; and indigenous protected areas. Further information on these programmes is available in the compilation of submissions (UNEP/CBD/WG8J/8/INF/11).

14. Australia's Biodiversity Conservation Strategy 2010-2030 calls for increased engagement of indigenous people, recognizing the significant role they play in biodiversity conservation in Australia. Indigenous people hold title over a large and increasing proportion of Australia's lands and waters, and are also the guardians of traditional ecological and cultural knowledge of Australia's natural environments. The strategy considers that increasing indigenous engagement through employment, partnership and participation and promoting the two-way transfer of knowledge will lead to both increased opportunities for indigenous peoples and improved outcomes for biodiversity.

15. Australia has also reported on *sui generis* programmes of a regional or international focus, including support for a Pacific Heritage Hub, which acts as a conduit information, brokering knowledge sharing, and linking projects within the region with donors. The Hub's strategic plan specifically notes the importance of the Aichi Biodiversity Targets and investing in projects that support Pacific Island through supporting cultural and natural heritage institutions to implement the Strategic Plan for Biodiversity 2011-2020, noting in particular the relevance of contributing to strategic goals and targets. Further to international dimensions of Australia's *sui generis* programme for the promotion of traditional knowledge are a wide range of twinning arrangements under the Kokoda Initiative and Activities under the Pacific Public Sector Linkages Program. These exchanges bring together indigenous rangers and resource managers from the Western Pacific (Papua New Guinea, Solomon Islands and Vanuatu) and link them with indigenous networks and projects in Australia, fostering knowledge sharing about land- and sea-scape management at the practitioner level.

16. **Brazil** has reported on its experience with a broad range of *sui generis* systems and their mechanisms, including community protocols, policy, and administrative or legislative measures, which have contributed to respect for and protection, preservation and promotion of the wider application of traditional knowledge. Brazil also advised regarding regional measures. Together with other countries in the Amazon region, it has begun to discuss how to address those issues under the Strategic Agenda of the Amazon Cooperation Treaty Organization.

17. **The European Union and its member States** emphasises the need for synergies with other relevant international organizations, including the World Intellectual Property Organization and its Intergovernmental Committee on Intellectual Property and Genetic Resources (WIPO-IGC), to be sought, as the EU continues to regard the WIPO-IGC, as the primary international forum and decision-making

body for any debate on the intellectual property law aspects of the protection of traditional knowledge, and complementarity should be ensured, in particular with the Nagoya Protocol under the Convention on Biological Diversity.

18. **Germany** has drawn attention to multi-donor ABS Capacity-building Initiative's<sup>4</sup> support for the development and dissemination of Biocultural Community Protocols (BCPs) in several partner countries. BCPs are *sui generis* in nature and are instruments that set out clear terms and conditions to the private, research, and non-profit sectors as well as government agencies for engaging with indigenous and local communities (ILCs) and accessing their local resources and traditional knowledge (TK). They are developed through culturally rooted, participatory decision-making processes within the communities and are based on communities' customary norms, values, and laws. As such, BCPs are locally adapted *sui generis* systems that contribute to the protection, preservation and promotion of traditional knowledge, innovations and practices. While they first emerged in the context of ABS, it has rapidly become clear that their application is much broader, and indeed BCPs can help to unify the interactions of communities with the various policy frameworks that impact their resources and TK.

19. **Peru** reports on *sui generis* laws, including Law 27811, which protects indigenous cultural knowledge. The law establishes, among other things, a National Competent Authority – Director of Inventions and New technologies to solve issues related to the protection of collective knowledge. Under the Law, and indigenous peoples have use a traditional knowledge portal to document 1235 records of knowledge related to over 400 biological resources. Since 2006, 1705 requests for knowledge registration from 23 indigenous and local communities have been sent, which has resulted in 1566 registrations for title over collective knowledge, 926 confidential registrations, 628 public registrations and 17 partial registrations (containing both confidential and publically available knowledge).

20. The related Law 28216 creates a National Commission for the protection of the access to biodiversity and collective knowledge and has identified 18 cases of biopiracy. Peru also recognizes traditional community agreements and supports and promotes the development and use community protocols.

21. In submissions from **indigenous peoples, local communities and non-governmental organizations**, community protocols are also taken up and promoted with enthusiasm. Community protocols are increasingly seen as local level *sui generis* systems, which can both protect and promote the knowledge, innovations and practice. There is a considerable body of literature and resources on community protocols that can assist both Parties and indigenous and local communities in exploring the full potential of these tools. The submission also recognizes the growing importance of community mapping and efforts to strengthen customary institutions and community organizations and other strategies and tools for community empowerment.

## II. RECOMMENDATIONS FOR FUTURE WORK REGARDING *SUI GENERIS* SYSTEMS

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:

### *The Conference of the Parties*

1. *Takes note* of the revised elements for *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices and *invites* Parties to make use of them as may be appropriate in their particular circumstances;

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<sup>4</sup> Jointly with the EU, Norway, Denmark and the IFDD)

2. *Noting* the relevance of the elements of *sui generis* systems, as well as the draft glossary of terms, to tasks 7, 10 and 12, *invites* the Ad Hoc Inter-sessional Open-ended Working Group on Article 8 (j) and Related Provisions to use the elements of *sui generis* systems and the draft glossary of terms (UNEP/CBD/WG8J/8/6/Add.1) as appropriate, in its work on those tasks;

3. *Requests* the Executive Secretary to revise and edit the note by the Executive Secretary on possible elements of *sui generis* systems (UNEP/CBD/WG8J/8/6/Add.1) and to provide for a peer-review of the final draft, with a view to producing a technical series as a tool that may assist Parties and Governments, as appropriate, in the development of *sui generis* systems for the protection, preservation and/or promotion of the knowledge, innovations and practices of indigenous and local communities;

4. *Invites* Parties, Governments, international organizations, non-governmental organizations and indigenous and local communities to communicate their experiences regarding a broad range of *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices, including community protocols and other forms of legal reform, which have or will contribute to the achievement of Target 18, to the Secretariat and *requests* the Executive Secretary to make available inputs received to the Working Group at its next meeting, as a contribution to future discussions on tasks 7, 10 and 12;

5. *Urges* Parties and Governments to recognize, support and encourage the development of local *sui generis* systems for the protection, preservation and promotion of traditional knowledge by indigenous and local communities, including through the development of community protocols, under national action plans for the protection, preservation and promotion of traditional knowledge, within national biodiversity strategies and action plans, taking into account the elements of *sui generis* systems, as set out in section II of the note by the Executive Secretary (UNEP/CBD/WG8J/8/6), in order to support these local initiatives, and to achieve Target 18, and to report on these initiatives through the national reporting process, the Working Group on Article 8(j) and through the Traditional Knowledge Information Portal;

6. *Requests* the Executive Secretary to continue to inform the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) of the World Intellectual Property Organization on the work carried out regarding *sui generis* systems, including working modalities for future consideration of this item, and other matters of mutual interest.

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