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

Eighth meeting

Item 4(c) of the provisional agenda*

Montreal, 7-11 October 2013

**COMPILATION OF VIEWS ON TASKS 7, 10, AND 12 OF THE PROGRAMME OF WORK ON
ARTICLE 8(j) AND RELATED PROVISIONS**

Note by the Executive Secretary

INTRODUCTION

1. As requested by the Conference of the Parties in paragraph 3 of decision XI/14, the Executive Secretary is circulating herewith, for the consideration of participants in the eighth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, a compilation of views and comments submitted to the Secretariat regarding tasks 7, 10 and 12 in the revised programme of work on Article 8(j) and related provisions, to assist the Working Group in its consideration of these tasks and related issues.

2. Submissions have been reproduced in the form and language in which they were provided to the Secretariat.

* UNEP/CBD/WG8J/8/1.

SUBMISSIONS

A. Submission from Parties

Australia

General comments on tasks 7, 10 and 12

There are an increasing number of positive and successful partnerships between Indigenous and local communities (ILCs), researchers and conservation and sustainable use practitioners, both Indigenous and non-Indigenous. A focus on examples with practical application, with existing partnerships and positive outcomes, would be very welcome in the studies to be commissioned by the Secretariat. It would be a very useful exercise therefore to identify case studies of successful agreements with ILCs on the use and application of their knowledge, particularly where the use of traditional knowledge associated with genetic resources would fall within the scope of the Nagoya Protocol. With a portfolio of successful examples, it would be a significant contribution of the Article 8(j) Working Group to distil the common elements of such agreements towards describing a current best-practice. Actual examples of such agreements would also be a useful resource for Parties working collaboratively with ILCs within their jurisdiction, and importantly, at the domestic level, in a developing workable and effective measures to implement their obligations under the Nagoya Protocol and build trust.

The Working Group should develop guidelines that focus on the specific subjects raised under Tasks 7, 10 and 12. These tasks deal with discrete subjects and could each be addressed in separate guidelines. If the Tasks are combined into a single guideline the Working Group should avoid losing focus on these specific subjects.

- Task 7 - the work under Task 7 should result in guidelines on enhancing participation of Indigenous and Local Communities in decisions regarding the use of genetic resources and associated knowledge, innovations and practices. The specific aims of this inclusive approach are ensuring both fair and equitable benefit sharing and that prior informed consent is obtained, as well as identifying the obligations of provider countries.
- Task 10 - the guidelines under this should focus on reporting mechanisms for exchange and dissemination of information regarding unlawful appropriation of traditional knowledge and genetic resources. While the aim of the reporting is preventing unlawful appropriation, the guidelines should be flexible to allow parties to determine what is 'unlawful appropriation'.
- Task 12 - Parties employ a wide range of policies and mechanisms to implement Article 8(j). The guidelines should focus on measures that strengthen Indigenous and Local Communities' capacity to maintain connections with the environment with which their knowledge, innovations and practices are associated. The guidelines should not focus on measures that confer exclusive property rights over such knowledge, innovations and practices.

Examples from the Great Barrier Reef Marine Park Authority (GBRMPA)

The Great Barrier Reef Marine Park Authority (GBRMPA), through partnership and delivery of a structured formal agreement making process (TUMRA), including multi-party accreditation (both Commonwealth and State through respective legislation) provides that Traditional Owners obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices. This is because these unique agreements are brokered locally amongst and between Traditional Owner Groups, who retain full authority over the process and the final product before negotiating accreditation under both Commonwealth and State legislation. These agreements then become a formal tool setting both the basis and relationship for cooperative management arrangements in Traditional sea country estates.

The GBRMPA have facilitated multi-partied agreements between Traditional Owners and research scientists to monitor various biodiversity assets within Traditional Owner sea country estates, including threatened and vulnerable species, habitats and biological processes. Any such arrangements between

Traditional Owners and other parties include data sharing agreements and are based on free, prior and informed consent and research standards set by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) (*Guidelines for Ethical Research in Australian Indigenous Studies*).

- Task 10 - The GBRMPA has identified, through the World Heritage Strategic Assessment process the requirement to develop standards and guidelines for the appropriate management of cultural values, including reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources. This will form part of the next 25 year work plan for the GBRMPA to protect and conserve the natural and cultural values of the Great Barrier Reef through an ecosystem approach.
- Task 12 - The GBRMPA has identified, through the World Heritage Strategic Assessment process the requirement to develop measures that recognize and safeguard the rights of Indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention. This will form part of the next 25 year work plan for the GBRMPA to protect and conserve the natural and cultural values of the Great Barrier Reef through an ecosystem approach.

Brazil

XI/14/C, Tasks 7, 10 and 12 of the revised multi-year programme of work

15. As for how tasks 7, 10 and 12 could best contribute to work under the Convention and its Nagoya Protocol, we are of the view that guidelines for the development of measures and initiatives to ensure the prior informed consent for the access of traditional knowledge and the fair and equitable sharing of benefits arising from its use with indigenous and local communities (task 7), as well for the development of the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources (task 10) could help Parties, particularly developing countries, to build capacity to foster the early entry into force of the Nagoya Protocol and its effective implementation. In this regard, the development of these guidelines should take into account the text of the Nagoya Protocol and the capacity-building and raising-awareness activities under the Intergovernmental Committee for the Nagoya Protocol (ICNP).

16. Guidelines that will assist Parties and Governments in the development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and its related provisions and definitions of relevant key terms and concepts in Article 8(j) at international, regional and national levels (task 12) could also be useful to help Parties to implement article 8(j) of the CBD, at the national and regional level.

China

Task 7, 10, and 12 of the revised multi-year programme of work are able to promote the implement of the Convention and its Nagoya Protocol, rather than conflict or overlap with it. The implement of task 7 and 10 can stimulate the development of the mechanism at regional and national levels, which will prevent traditional knowledge from improper access and misappropriation. Task 12 is a necessary complement of the Nagoya Protocol, specifically for the *sui generis* systems that are required to establish by it. Accordingly, even when the Nagoya Protocol goes into force in the future, these tasks should be pushed forward in order to coordinate and complement with its implement.

EU and its Member States

With regard to Tasks 7, 10 and 12 of the Programme of Work, the EU and its Member States are looking forward to the studies commissioned by the Executive Secretary, and we will submit our views on the draft studies when these become available.

B. Submission from relevant organizations**Communautés Autochtones et Locales de la forêt Hlanzoun- Benin**

Tâche 7. En se basant sur les tâches 1, 2 et 4, le Groupe de travail élabore des directives pour la mise en place de mécanismes, législation ou d'autres initiatives appropriées pour assurer: (i) que les communautés autochtones et locales obtiennent la part juste et équitable des avantages découlant de l'utilisation et de l'application de leurs connaissances, innovations et pratiques, (ii) que les institutions privées et publiques intéressées par l'utilisation de ces connaissances, pratiques et innovations obtiennent le consentement préalable, en connaissance de cause, des communautés autochtones et locales, (iii) la promotion de l'identification des obligations des pays d'origine, ainsi que des Parties et gouvernements où ces connaissances, innovations et pratiques ainsi que les ressources génétiques associées sont utilisées.

Tâche 12. Le Groupe de travail spécial élabore des directives pour aider les Parties et les autres gouvernements à établir des législations ou d'autres mécanismes, le cas échéant, en vue de l'application de l'article 8(j) et des dispositions connexes (qui pourraient inclure des systèmes sui generis) et des définitions des principaux termes et concepts pertinents, de l'article 8 j) et des dispositions connexes, aux échelons national, régional et international, qui reconnaissent, protègent et garantissent pleinement les droits des communautés autochtones et locales sur leurs connaissances traditionnelles, innovations et pratiques, dans le cadre de la Convention.

Tâche 10. Le Groupe de travail spécial élabore des normes et des directives visant à dénoncer et prévenir l'utilisation illicite des connaissances traditionnelles, des innovations et pratiques et des ressources génétiques

3 Décision XI/14, D, annexe, « Le but de la tâche 15 est d'élaborer des lignes directrices de bonnes pratiques qui faciliteraient le renforcement du rapatriement dans les pays d'origine, des connaissances autochtones et traditionnelles liées à la conservation et l'utilisation durable de la diversité biologique, y compris les connaissances autochtones et traditionnelles associées aux biens culturels, conformément à l'article 8(j) et au paragraphe 2 de l'Article 17 de la Convention, afin de faciliter la récupération des connaissances traditionnelles liées à la diversité biologique. »

RED DE MUJERES INDÍGENAS SOBRE BIODIVERSIDAD DE AMÉRICA LATINA Y EL CARIBE, RMIB- LAC

“Por qué estamos hablando de reparto de beneficios? He vivido más de 70 años y nunca les hemos puesto precio a nuestras plantitas, animales, agua...en estos tiempos modernos se oye cada cosa, ya no hay respeto por la *Pachamama* y por la humanidad...Mi corazón se niega a poner un valor con números a nuestros recursos y conocimientos...es mejor vivir según las leyes naturales...”
(Lideresa del Ecuador, Febrero 2012)

En Mayo del año 2000 mediante la decisión V/16 se adoptó las tareas 7,10 y 12 como parte del trabajo inicial del Artículo 8(j) y provisiones conexas. En su Sexta Reunión el Grupo de Trabajo sobre el Artículo

8(j) realizó una revisión profunda de su Programa de Trabajo. La X Conferencia de las Partes, mediante su Decisión X/43 decidió mantener estas tareas. Desde la adopción de este Programa de Trabajo, nuevos instrumentos han sido adoptados recientemente como el Protocolo de Nagoya y del nuevo Plan Estratégico para la Biodiversidad 2011-2020, que tienen una estrecha relación con las tareas 7, 10 y 12, por lo que éstas deberán ser desarrolladas e implementadas de manera integral y tomando en cuenta esta relación.

Los Pueblos Indígenas y comunidades locales del mundo hemos trabajado de manera ardua a fin de participar con nuestra propia voz en las distintas reuniones sobre biodiversidad, recursos genéticos y conocimiento tradicional. Tenemos formas diferentes de pensar y actuar, nuestra visión humanística difiere del punto de vista mercantilista, nuestras epistemologías funcionan por y para la vida y el bienestar colectivo de nuestros Pueblos y de nuestra Madre Tierra.

La implementación de las tareas 7,10 y 12, así como del Protocolo de Nagoya y del nuevo Plan Estratégico para la Biodiversidad 2011-2020 van a requerir de la convocatoria y participación de todos los sectores de la sociedad, del desarrollo de un diálogo abierto y sincero dentro de un marco de respeto, de comprensión y flexibilidad para poder entender e incluir los distintos puntos de vista y llegar a un acuerdo. La búsqueda de mecanismos y de alternativas implica el cambio de leyes y la creación de otras en atención a los nuevos temas de discusión y negociación. Las legislaciones nacionales deberán revisar sus articulados referentes a los Pueblos Indígenas y sus derechos humanos. Existen varias preguntas al respecto: hay una real protección para el conocimiento tradicional? En qué consiste dicha protección? Hay mecanismos interculturales y porcentajes y claros en el reparto de beneficios? Qué mecanismos de protección y defensa se crearán para los Pueblos Indígenas en caso de incumplimiento por parte de los usuarios? Están los estados y los Pueblos Indígenas capacitados y listos para implementar el Protocolo de Nagoya y el nuevo Plan Estratégico y las tareas del Programa de Trabajo del Artículo 8j? Existen los fondos económicos necesarios su implementación? Habrá voluntad política de los estados para trabajar mancomunadamente con todos los sectores de la sociedad, incluidos los Pueblos Indígenas y las mujeres Indígenas? Están los estados listos para aceptar y crear mecanismos interculturales en los cuales se consideren y se incluyan con respeto el derecho consuetudinario indígena, el rol de la gobernanza ancestral, la cosmovisión indígena, los recursos y conocimientos transfronterizos, los protocolos comunitarios, los códigos de ética comunitarios, los términos interculturales de mutuo acuerdo, etc?

El Artículo 8j y su Programa de Trabajo tienen que ver con la vida y sobrevivencia de nuestros Pueblos, por eso tenemos el compromiso de velar por su implementación transparente a través de la participación plena y efectiva de los Pueblos Indígenas y comunidades locales en el diseño, ejecución y monitoreo de las tareas 7, 10 y 12 y actividades relacionadas. Las mujeres indígenas tenemos un papel preponderante a cumplir, siendo las guardianas del conocimiento tradicional y los pilares culturales de nuestros Pueblos, nuestra misión es salvaguardar la Madre Tierra, sus recursos y nuestra sabiduría milenaria para las generaciones que vienen detrás de nosotros. Las tareas del Programa de Trabajo del Artículo 8j se deberán realizar de acuerdo con las necesidades reales de los Pueblos Indígenas, además este Programa deberá tener un enfoque holístico centrado en las prioridades de la Década Internacional de la Biodiversidad y en nuevo Plan Estratégico para la Biodiversidad 2011-2020. La implementación del Protocolo de Nagoya deberá ser gradual y contar con un fuerte involucramiento de todos los sectores interesados. Será necesario establecer un mecanismo sostenido para que el Grupo de Trabajo 8j continúe brindando directamente sus puntos de vista y asesoría al Comité Intergubernamental del Protocolo de Nagoya. Toda actividad relacionada con los Pueblos Indígenas deberá ir de la mano con la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas, la Convención 169, y otros instrumentos internacionales. Si queremos conservar nuestra vida y la de la *Pachamama*, Madre Tierra, todos debemos trabajar con responsabilidad y compromiso.

Inuit Circumpolar Canada**Tasks 7, 10 and 12 of the Revised Multi-year programme of work*****Task 7: Development of guidelines for benefit sharing.***

Based on tasks 1, 2 and 4, the Working Group is to develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure: (i) that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices; (ii) that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities; (iii) advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices and the associated genetic resources are used.

The ICC (Canada) general objective relating to ABS, is to secure the rights of Inuit over their biological and genetic resources and associated traditional knowledge. Specifically, ICC ABS objectives are to raise awareness of Inuit regarding the actual and potential value of their biological and genetic resources and traditional knowledge and to identify and strengthen the role of customary law and practices relevant for protection, management and control of biological and genetic resources and traditional knowledge. Further ICC promotes the development of local, national and Inuit wide community protocols to govern access to biological and genetic resources and traditional knowledge.

ICC emphasizes the necessity and importance of ensuring the capacity that is required for the indigenous and local communities (ILCs) to determine, when benefits are accruing, and other key components are received by the users. It is essential that this information is communicated to the indigenous and local communities impacted by these activities. The prior informed consent is not sufficient. What is emphasized by ICC is that the principle of *free and prior informed consent* is applied. This assertion is consistent with the *Declaration on the Rights of Indigenous Peoples* as noted in the Nagoya Protocol on Access and Benefit Sharing of Genetic Resources. It is important that this approach be carried out with the full and effective participation of ILCs, as well as, through a process of consultation with ILCs regarding the intended use of the knowledge by the institutions. ICC views the concepts of FPIC and the concept of consultation as separate steps, with the consultation process being more extensive.

The identification of origin of the TK, has to involve steps by the countries of origin on where the traditional knowledge originates within the country of origin, to ensure that the appropriate ILCs receives the benefits.

Task 10: Standards and guide lines for the reporting and prevention of unlawful appropriation

By the time Inuit are informed that unlawful appropriation has happened a great deal of (unlawful) appropriation has occurred. As such, it is a challenge to determine the tracking of the unlawful appropriation and the benefits received or how they have been received. Such standards and guidelines will have to be extensively detailed and involve a strong enforcement mechanism at the community and regional and international levels.

It is to be noted that any contractual arrangements requires capacity building within ILCs.

Task 12: The working group is to develop guidelines that will assist Parties and Governments in the development of legislation or other mechanisms as appropriate to implement article 8(j) and its related provisions and definitions of relevant key terms, and concepts that recognize and safeguard ...the rights of ILC over their traditional knowledge ...within the context of the CBD guidelines to implement article 8(j) including sui generis systems of protection of TK

Guidelines to assist Parties in the development of legislation should be created in collaboration and with the full and effective participation of indigenous and local communities. Guidelines may consider including approaches based on the incorporation and adherence to existing legal frameworks which are

focussed on the rights of indigenous peoples, including the Parties duty to consult indigenous people prior to the development of legislation and in accordance with ILCs cultural beliefs and values.

ARTICULAÇÃO PACARI

Contributions to the Project study on "How tasks 7, 10 and 12 of the revised program of work on Article 8 (j) and related provisions could best contribute to the work under the Convention and the Nagoya Protocol."

In view of the decision XI/14, C, paragraphs No. 1-4, the Conference of the Parties, which invites Parties, Governments, relevant international organizations and indigenous and local communities to present their opinions to the project study tasks 7, 10 and 12 could best contribute to the work under the Convention and the Nagoya Protocol;

In response to the Notification Ref: SCBD/SEL/OJ/JS/dm/81183, January 2013;

The members of the Pacari Network, we express our view on the tasks in question;

Considering:

- The community organizations that work with the genetic resource "medicinal plants" in primary health care in the Brazilian Cerrado region, consider that the link between biodiversity and health is an essential relation to the maintenance of our lives;
- The biodiversity and water sources are resources of our traditional knowledge, and as such, should be kept as a primordial form so that our knowledge is protected;
- Our traditional knowledge associated with genetic resources are not commodities, but rather a living cultural heritage, and that in this sense, should be passed on to our descendants as an inheritance, a cultural heritage. Our knowledge has no owner, but have heirs.
- Our traditional knowledge associated with the use of genetic resources, therefore, should not be handled or dealt within a system of intellectual property, but under a sui generis system of protection, which assigns values in non-rational, emotional and archetypal, cultural, spiritual, environmental, social and economic dimension and perspective in our customary rights and our own historical process;

We suggest the Eighth Meeting of the Working Group of Article 8j and related provisions:

- What local communities and indigenous peoples to design their own sui generis systems for the protection of traditional knowledge associated with genetic resources by building self-regulatory instruments:

1. Registration and publication of traditional knowledge associated with genetic resources, developed by the communities themselves (such as the Popular Pharmacopoeias), to obtain a fair and equitable sharing of benefits arising from the use and application of their knowledge, innovations and practices;

2. Drafting their own goals for a Strategic Plan for Biodiversity 2011-2020 (Goals raise biodiversity);

3. Mapping areas preserved in their traditional territories for conservation of priority species for the health and feeding, community management (conservation units in traditional territories), and for sustainable use (Community Extractive reserves);

4. Preparation of Community Protocols for use traditional and sustainable local biodiversity as a tool to be consulted in consultation procedures prior and informed consent and mutually agreed terms, PIC and MAT, (Healers Community Protocol for Self-Regulation of traditional and sustainable use of resources genetic Cerrado);

5. Red list of endemic / natural resources, coming from the country's biodiversity provider, indicated by traditional communities, for the purpose of negotiating patents way that ensures access to the product, free of charge in public, for the population of the country of origin resource by the end of the term of the patent.

- That a consultative and advisory body to local communities within the IPBES for purposes of technical advice to processes that require expertise, such as ABS and patents (held by a fund-specific GEF) and for purposes of establishing a dialogue of knowledge between scientific knowledge and traditional knowledge associated with genetic resources.
