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WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE CONVENTION
ON BIOLOGICAL DIVERSITY

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Item 5 of the provisional agenda

**VOLUNTARY GUIDELINES FOR THE REPATRIATION OF TRADITIONAL KNOWLEDGE
RELEVANT TO THE CONSERVATION AND SUSTAINABLE USE OF
BIOLOGICAL DIVERSITY**

Note by the Executive Secretary

I. INTRODUCTION

1. The Conference of the Parties to the Convention on Biological Diversity tasked the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention with developing guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention in order to facilitate the recovery of traditional knowledge relevant to the conservation and sustainable use of biological diversity (task 15 of the programme of work on the implementation of Article 8(j) and related provisions of the Convention contained in the annex to decision V/16).
2. In this context, the Conference of the Parties, in its decision XII/12 C, paragraph 1, decided to convene a technical expert group meeting to develop draft voluntary guidelines for promoting and enhancing the repatriation of traditional knowledge of relevance to the 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 ninth meeting and with a view to consideration by the Conference of the Parties at its thirteenth meeting.
3. The Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biodiversity was held in Panajachel, Guatemala, on 14 and 15 June 2015. The report of the meeting is contained in UNEP/CBD/WG8J/9/INF/4.
4. Section I of the present document contains background information on task 15 of the programme of work on the implementation of Article 8(j) and related provisions of the Convention, including the terms of reference adopted for the task (decision XI/14 D, annex), as well as background information related to other relevant decisions taken by the Conference of the Parties. Section II contains the advice of the expert group concerning general principles of the draft voluntary guidelines for the repatriation of traditional knowledge of indigenous peoples and local communities relevant for the conservation and sustainable use of biological diversity, as well as recommendations for a possible way forward.

A. Background

5. In the present document, “repatriation” in the context of traditional knowledge means the return of knowledge, innovations and practices of indigenous peoples 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”.¹

B. Terms of reference

6. In decision XI/14 D, the Conference of the Parties adopted the following terms of reference to advance task 15 of the programme of work on Article 8(j) and related provisions:

7. The purpose of task 15 is to 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;

8. Task 15 is to be interpreted in accordance with the provisions of the Convention, in particular Article 8(j) and related provisions and Article 17, paragraph 2;

9. 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.;

10. Stakeholders may include, inter alia:

(a) Parties and other Governments;

(b) Museums, herbaria, botanical and zoological gardens and other collections containing information on the knowledge, innovations and practices of indigenous and local communities relevant for conservation and sustainable use;

(c) Relevant international organizations, in particular the United Nations Educational, Scientific and Cultural Organization, as well as its relevant treaties and programmes, the Food and Agriculture Organization of the United Nations, the International Labour Organization, the United Nations Permanent Forum on Indigenous Issues, and the World Intellectual Property Organization;

(d) The International Indigenous Forum on Biodiversity;

(e) Indigenous and local communities;

(f) Relevant non-governmental and indigenous and local community organizations;

(g) Academic societies and research scientists;

(h) The private sector;

(i) Individuals.

11. The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions will further determine 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 the Benefits Arising from their Utilization when in force, for consideration by the Conference of the Parties.

C. Documentation of traditional knowledge

12. The documentation, recording and/or digitalization of traditional knowledge are very relevant to advancing work on repatriation of traditional knowledge and related information. A number of concerns

¹ Refer to the note by the Executive Secretary on development of best-practice guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity (UNEP/CBD/WG8J/8/5), available at: <https://www.cbd.int/doc/?meeting=WG8J-08>.

and questions have been raised under the Convention with regard to the documentation of traditional knowledge, including its challenges and opportunities. The Conference of the Parties discussed the use of databases and registers for recording traditional knowledge and recognized in the preamble of decision VII/16 that, while in some cases databases and registers may play a role in the protection of traditional knowledge, innovations and practices, such databases and registers are only one approach in the effective protection of traditional knowledge, innovations and practices and their establishment should be voluntary, not a requirement for protection, and established with the prior informed consent of indigenous and local communities.

13. The Traditional Knowledge Documentation Toolkit of the World Intellectual Property Organization (WIPO)² may also be relevant in this context. It provides essential information, including possible benefits and challenges, for indigenous peoples to consider when deciding whether or not they wish to pursue documentation of their knowledge. The WIPO Traditional Knowledge Documentation Toolkit aims to empower indigenous peoples and local communities to decide for themselves whether they wish to have their traditional knowledge documented or not, as well as provides diverse options for recording information, and assists them in making appropriate and informed decisions regarding how to safeguard their interests and keep control of their intellectual property rights, interests and options.

II. ADVICE OF THE EXPERT GROUP CONCERNING GENERAL PRINCIPLES OF THE DRAFT VOLUNTARY GUIDELINES FOR THE REPATRIATION OF TRADITIONAL KNOWLEDGE

14. The Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biodiversity was held in Panajachel, Guatemala, on 14 and 15 June 2015.

15. The Expert Meeting had before it an information document compiling the information and views received in response to notification SCBD/MPO/AF/JS/VF/84296 (2015-012). In addition, taking into account the information and views received, the Executive Secretary had also prepared draft elements of voluntary guidelines for consideration by the Expert Meeting. These draft elements also took into account submissions in response to a previous notification³ compiled in document UNEP/CBD/WG8J/8/INF/7, as well as the best practices summarized in section V of the note by the Executive Secretary on the development of best-practice guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity that was made available to the eighth meeting of the Working Group (see UNEP/CBD/WG8J/8/5).

16. Guided by the Co-Chairpersons, the experts and observers developed general guiding principles for the draft Rutzolijirisaxik⁴ voluntary guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity, presented in the annex to the present document. The expert group also provided advice on the way forward in order to complete the guidelines.

17. The Working Group will be invited to use the following draft recommendation to the Conference of the Parties as a framework for its negotiations, and to draw on the report of the expert meeting for further principles and concepts, as needed and appropriate.

² Available at http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_toolkit_draft.pdf.

³ See SCBD/MPO/AF/JS/VF/84296 (2015-012) dated 5 February 2015.

⁴ This traditional Mayan title was provided by the local indigenous peoples in honour of the guidelines being advanced on their traditional territories. It means, in the local traditional language, Maya Kaqchikel, “the significance of returning to the place of origin”.

Draft recommendation

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, Having considered the note by the Executive Secretary,⁵

Recommends that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

The Conference of the Parties,

1. *Takes note* of the progress made in the development of the Rutzolijirisaxik⁶ Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity, in particular their objective, purpose, scope and guiding principles for repatriation, annexed to this decision;

2. *Requests* the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, at its tenth meeting, to complete a draft of the guidelines for consideration by the Conference of the Parties at its fourteenth meeting;

3. *Invites* Parties, other Governments, relevant organizations and entities,⁷ and organizations of indigenous peoples and local communities, interested or involved in repatriation of traditional knowledge to make use of the advice and guiding principles for repatriation contained in the annex to the present decision, and to submit to the Executive Secretary information on good practice actions undertaken at various levels, including through community-to-community exchanges, to repatriate, receive and restore traditional knowledge relevant for the conservation and sustainable use of biological diversity;

4. *Requests* the Executive Secretary to compile the information received on good practice actions undertaken at various levels as referred to in paragraph 3 above and to make the compilation available for the consideration of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its tenth meeting;

5. *Also requests* the Executive Secretary to prepare a full draft of the Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity, based on an analysis of the information received on actions undertaken at various levels as referred to in paragraph 3 above, and containing the objective, purpose, scope and guiding principles for repatriation included in the annex to the present decision, for consideration by the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its tenth meeting, with a view to their adoption at the fourteenth meeting of the Conference of the Parties.

⁵ UNEP/CBD/WG8J/9/3.

⁶ In the local traditional language, Maya Kaqchikel, this expression means “the significance of returning to the place of origin”.

⁷ May include international and regional organizations, museums, universities, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services, public or private collections and other entities storing or housing traditional knowledge and related information, as well as IPLCs.

*Annex***PROGRESS IN THE DEVELOPMENT OF THE RUTZOLIJIRISAXIK VOLUNTARY GUIDELINES FOR THE REPATRIATION OF TRADITIONAL KNOWLEDGE OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES RELEVANT FOR THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY****Introduction**

1. The international community has recognized the close and traditional dependence of many indigenous peoples and local communities on biological resources, notably in the preamble to the Convention on Biological Diversity. There is also a broad recognition of the contribution that traditional knowledge can make to both the conservation and the sustainable use of biological diversity — two fundamental objectives of the Convention — and of the need to ensure the equitable sharing of benefits arising from the utilization of traditional knowledge. For this reason, Parties to the Convention undertook, in Article 8(j), to respect, preserve and maintain the knowledge, innovations and practices (hereinafter referred to as traditional knowledge) relevant for the conservation and sustainable use of biological diversity, and to promote its wider application.

2. To address the effective implementation of Article 8(j) and related provisions, in decision V/16, the Conference of the Parties to the Convention on Biological Diversity adopted the programme of work on Article 8(j) and related provisions, including task 15, which it requested the Ad Hoc Open-ended 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.

3. The Conference of the Parties further considered the task at hand in its decision X/43, paragraph 6, and in its decision XI/14 D, annex, and adopted terms of reference to advance the task clarifying:

“The purpose of task 15 is to 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.”

4. The guidelines for repatriation of traditional knowledge, builds on relevant decisions of the Conference of the Parties, including paragraph 23 of the Tkarihiwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity,⁸ as well as decision VII/16 with regard to registries and databases.

5. The guidelines take 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, including the United Nations Declaration on the Rights of Indigenous Peoples,⁹ especially Article 31, as well as other relevant articles; and in particular the mandate of United Nations Educational, Scientific and Cultural Organization concerning cultural property, as well as the mandate of the

⁸ Decision X/42, annex.

⁹ General Assembly resolution 61/295, annex.

World Intellectual Property Organization, which deals with intellectual property issues. As such, they highlight the importance of international cooperation for the repatriation of traditional knowledge, including by providing access to traditional knowledge and related information for indigenous peoples and local communities, to facilitate the repatriation of traditional knowledge relevant to conservation and sustainable use, in order to assist these communities in knowledge and cultural restoration.

Objectives

6. The objective of these guidelines is to facilitate the repatriation of knowledge, innovations and practices (hereafter referred to as traditional knowledge) of indigenous peoples and local communities (IPLCs) embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including related information, in accordance with Article 8(j) and Article 17, paragraph 2, of the Convention, in order to facilitate the recovery of traditional knowledge relevant for the conservation and sustainable use of biological diversity.

7. The guidelines may also assist in the effective implementation of the global Plan of Action on Customary Sustainable Use of Biological Diversity, endorsed by the Conference of the Parties in decision XII/12 B.

Purpose

8. The guidelines are intended to be practical guidance to Parties, Governments,¹⁰ international and regional organizations, museums, universities, herbaria and botanical and zoological gardens, databases, registers, gene banks, libraries, archives and information services, private collections and other entities storing or housing traditional knowledge and related information, and IPLCs, in efforts to repatriate traditional knowledge and related information.

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

10. The guidelines are not prescriptive or definitive.

11. Given the political, legal, economic and cultural diversity of States and IPLCs, it is unlikely that these guidelines will cover all the issues that may arise in professional practice. However, they should provide a starting point for those wishing to pursue repatriation.

12. 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.

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

14. Assist IPLCs in strengthening and revitalization of their traditional knowledge related to conservation and sustainable use of biological diversity.

¹⁰ Including subnational governments and government departments, which may hold indigenous and/or local community traditional knowledge and related information relevant to the conservation and sustainable use of biological diversity.

Scope

15. These guidelines apply to the knowledge, innovations and practices of IPLCs, embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including related information.¹¹

Guiding principles for repatriation

16. Repatriation is best facilitated building on the following principles and considerations:

(a) Developing ongoing relationships with IPLCs in order to build trust, good relations, mutual understanding, intercultural spaces, knowledge exchanges and reconciliation;

(b) Recognition and respect for IPLCs' world views, cosmologies, values, practices, customary laws, community protocols, laws, rights and interests;

(c) Preparedness of institutions holding traditional knowledge and related information relevant for conservation and sustainable use to repatriate;

(d) Assisting IPLCs in preparedness to receive and keep safe repatriated traditional knowledge and related information in culturally appropriate ways;

(e) Considering measures to address the repatriation of traditional knowledge that is already publicly available and widespread;

(f) Recognition of the importance of repatriating secret or sacred, gender-specific or sensitive traditional knowledge and related information as a priority for IPLCs;

(g) Repatriation can be enhanced by developing the awareness and professional practice of those working on repatriation, including information professionals on IPLCs, in accordance with best practice ethical standards, including the Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity;¹²

(h) Repatriation includes recognition and support of community-to-community efforts to restore traditional knowledge relevant to conservation and sustainable use of biological diversity.

¹¹ Related information could include information on where, when and from whom the traditional knowledge was collected and for what purpose.

¹² See Conference of the Parties decision X/42, available at <https://www.cbd.int/decision/cop/default.shtml?id=12308>.