

Ref.: SCBD/SEL/HM/jh

30 August 2000

Madam/Sir,

**Re: Decision V/16 on Article 8 (j) and related provisions**

The purpose of this notification is to invite Parties and Governments to contribute to the preparatory work on elements of decision V/16 of the Conference of the Parties (COP) to the Convention on Biological Diversity, concerning the implementation of article 8 (j) and related provisions.

A copy of decision V/16 is attached herewith. Issues for which Parties and Governments are invited to contribute are addressed below.

**A. Case-studies to assess the effectiveness of existing legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities**

In paragraph 13 of decision V/16, the COP emphasized once again the need for case-studies requested in decisions IV/9, paragraphs 10(b) and 15, to enable a meaningful assessment of the effectiveness of existing legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities.

The following format for the presentation of case studies is suggested to facilitate the preparation of a synthesis report of the information submitted.

The deadline for the submission of case-studies is 31 March 2001 to enable the Secretariat to incorporate this information in the documentation for consideration at the second meeting of the Ad-Hoc Open-Ended Working Group on Article 8 (j).

Indicative format/outline for case studies and relevant information

To the extent possible, case studies should be short, succinct summaries of examples/experiences not exceeding 20-25 pages. A reasonable amount of footnotes is welcomed, to the extent they provide useful sources for further information. A hard copy and an electronic version (by floppy disk or via e-mail), in Word/Windows format would be appreciated.

In preparing the case studies, authors are recommended to follow the outline as far as possible. However, if authors of case studies feel it useful to include information not covered by the outline, they are encouraged to do so.

To: All CBD National Focal Points

1. Overview

Summary of the case studies/information.

2. The influence of international instruments, intellectual property rights, current laws and policies on knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

- International instruments
  - a) Identify international instruments (including regional and bilateral agreements) of relevance. These instruments may relate to such areas as environment and conservation, trade, aid, human rights, food and agriculture, and health.
- Intellectual Property Rights
  - a) what IPRs have been used to protect traditional knowledge, innovations and practices of indigenous and local communities;
  - b) has there been any attempts to review IPRs with regard to implementation of Article 8(j);
  - c) what were the outcomes/major findings of the review?
- Current Laws and Policies (These should include laws and policies, which operate at both national and sub-national levels. This may require some brief analysis as to how national and sub-national responsibilities are dealt with under the national constitution).
  - a) what current mechanisms are in place to protect traditional knowledge, innovations and practices of indigenous and local communities;
  - b) existence of *sui generis* legislation;
  - c) other non-IPR laws (environment/natural resource/community self-governance/cultural heritage) which are being/could be used to protect traditional knowledge;
  - d) indigenous and local community use of common law remedies;
  - e) give examples of the way in which indigenous and local communities have used/attempted to use current laws/mechanisms.

3. Analysis and Assessment of the success of current laws, policies and other instruments or mechanisms implemented for the protection of traditional knowledge on the achievement of the objectives of Article 8(j).

4. Possible policy advice for implementation.

5. Conclusion and recommendations to be drawn from the case studies.

**B. Outline of a composite report on the status and trends in relation to Article 8 (j) and related provisions**

One of the priority tasks of the programme of work, listed in paragraph 2 of the decision, is task 5 on the status and trends in relation to Article 8 (j) and related provisions. In this connection, the Executive Secretary is to prepare, for the next meeting of the Ad Hoc Working Group, an outline of a composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities, a plan and a timetable for its preparation. The outline is to be based on advice submitted by Parties, Governments, indigenous and local communities and other relevant organizations regarding sources and availability of information on these matters. These entities are requested to submit the information and advice addressing the requirements of this task.

As part of this task, Parties are also asked to include in their national reports the current state of implementation of Article 8(j) and related provisions.

In considering the elements of an outline for the composite report on the current status and trends regarding the knowledge, innovations and practices of indigenous and local communities, Parties may wish to consider, *inter alia*, the following:

- a) The state of retention of traditional biodiversity-related knowledge and its application in the conservation and sustainable use of biodiversity in each of the major sectors of biodiversity, namely, human health, Arctic, agricultural, forest, dryland, marine and coastal, inland water and mountains;
- b) The identification and an assessment of factors, including gender and familial factors, which cause loss of traditional biodiversity-related knowledge and associated language and customary practices;
- c) The identification of activities, actions, policies, and legislative and administrative constraints that particularly discourage the respect, preservation and maintenance of traditional biodiversity-related knowledge;
- d) The identification and assessment of a range of measures, including policy, legal, legislative and administrative measures, and incentive and capacity-building measures, which could be implemented to reverse the loss of traditional biodiversity-related knowledge and promote its retention, preservation and maintenance;
- e) Trends regarding the implementation of Article 8(j) taking into account national contexts and any constraints affecting its implementation, and the effectiveness of such trend; and
- f) Timetable for the preparation of the composite report.

Parties are invited to submit information on the above elements, as well as any other relevant information, to the Secretariat by 31 December 2000.

**C. Guidelines or recommendations regarding developments proposed to take place on sacred sites and on lands and waters occupied or used by indigenous and local communities**

Task 9, another priority task identified in the decision, provides that the Open-Ended Working Group is to develop, in cooperation with indigenous and local communities, guidelines or recommendations for the conduct of cultural, environmental and social impact assessments regarding any development proposed to take place on sacred sites and on lands or waters occupied or used by indigenous and local communities. Task 9 further provides that the guidelines and recommendations should ensure the participation of indigenous and local communities in the assessment and review.

To assist the Executive Secretary in the preparation of a background document concerning draft guidelines or recommendations for the consideration of the Open-Ended Working Group on Article 8 (j), Parties are requested to submit their detailed information relevant to this issue, including specific suggestions regarding the content of guidelines or recommendations by 28 February 2001.

Thank you for your cooperation and continued support to the work of the Convention.

Yours sincerely,

Hamdallah Zedan  
Executive Secretary

V/16. Article 8(j) and related provisions

The Conference of Parties,

Recalling its decision IV/9,

Recognizing the need 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 biological diversity and promote their wider application,

Noting the need for a long-term approach to the programme of work on implementation of Article 8(j) and related provisions of the Convention on Biological Diversity, within a vision to be elaborated progressively, in line with the overall objectives set out in Article 8(j) and related provisions,

Emphasizing the fundamental importance of ensuring the full and effective participation of indigenous and local communities in the implementation of Article 8(j) and related provisions,

Noting the importance of integrating with the full and effective participation of indigenous and local communities the work on Article 8(j) and related provisions into national, regional and international strategies, policies and action plans,

Recognizing the vital role that women play in the conservation and sustainable use of biodiversity, and emphasizing that greater attention should be given to strengthening this role and the participation of women of indigenous and local communities in the programme of work,

Further noting the linguistic and cultural diversity among indigenous and local communities as well as differences in their capacities,

Noting existing declarations by indigenous and local communities to the extent they relate to the conservation and sustainable use of biodiversity, including, *inter alia*, the Kari Oca Declaration, the Mataatua Declaration, the Santa Cruz Declaration, the Leticia Declaration and Plan of Action, the Treaty for Life Forms Patent Free Pacific, the Ukupseni Kuna Yala Declaration, the Heart of the Peoples Declaration on Biodiversity and Biological Ethics, the Jovel Declaration on Indigenous Communities, Indigenous Knowledge and Biodiversity, the Chiapas Declaration, other relevant declarations and statements of Indigenous Forums, as well as Convention 169 of the International Labour Organization, Agenda 21 and other relevant international conventions,

Recognizing the role that the International Indigenous Forum on Biodiversity has played since the third meeting of the Conference of the Parties in addressing the Conference of the Parties on the implementation of Article 8(j) and related provisions,

To: All CBD National Focal Points

Reaffirming the importance of making Article 8(j) and related provisions of the Convention and provisions of international agreements related to intellectual property rights mutually supportive,

Further noting that there are existing international agreements, intellectual property rights, current laws and policies that may have influence on the implementation of Article 8(j) and its related provisions,

Noting also that the methods of implementation of Article 8(j) and related provisions differ among regions and countries in approach and capacity,

1. Endorses the programme of work as contained in the annex to the present decision, which shall be subject to periodic review during its implementation;

2. Decides to implement the programme of work giving priority to tasks 1, 2, 4, 5, 8, 9 and 11, as well as 7 and 12, which shall be initiated following completion of tasks 5, 9 and 11;

3. Urges Parties and Governments in collaboration with relevant organizations, subject to their national legislation, to promote and implement this programme of work, and to integrate the tasks identified into their ongoing programmes as appropriate to national circumstances, taking into account the identified collaboration opportunities;

4. Requests Parties, Governments and relevant organizations to take full account of existing instruments, guidelines, codes and other relevant activities in the implementation of the programme of work;

5. Encourages the participation of indigenous and local communities in the work of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing on the development of guidelines and other approaches to ensure the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;

6. Takes into account the importance of the proposals for action on traditional forest-related knowledge of the Intergovernmental Panel on Forests/Intergovernmental Forum on Forests as an important part of this programme of work;

7. Requests Parties, Governments, and international, regional and national organizations to provide appropriate financial support for the implementation of the programme of work;

8. Requests the Executive Secretary to facilitate the integration of the relevant tasks of the programme of work in the future elaboration of the thematic programmes of the Convention on Biological Diversity and provide a report on the progress of the thematic programmes to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity;

9. Decides to extend the mandate of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity to review progress in the implementation of the priority tasks of its programme of work according to reports provided by the Executive Secretary, and the

Parties to the meeting of the Working Group and recommend further action on the basis of this review. The Working Group should further explore ways for increased participation by indigenous and local communities in the thematic programmes of work of the Convention on Biological Diversity. The Working Group should report to the Conference of the Parties at its sixth meeting;

10. Requests Parties, Governments, subsidiary bodies of the Convention, the Executive Secretary and relevant organizations, including indigenous and local communities, when implementing the programme of work contained in the annex to the present decision and other relevant activities under the Convention, to fully incorporate women and women's organizations in the activities;

11. Invites Parties and Governments to support the participation of the International Indigenous Forum on Biodiversity, as well as relevant organizations representing indigenous and local communities, in advising the Conference of the Parties on the implementation of Article 8(j) and related provisions;

12. Urges Parties and Governments and, as appropriate, international organizations, and organizations representing indigenous and local communities, to facilitate the full and effective participation of indigenous and local communities in the implementation of the Convention and, to this end:

(a) Provide opportunities for indigenous and local communities to identify their capacity needs, with the assistance of Governments and others, if they so require;

(b) Include, in proposals and plans for projects carried out in indigenous and local communities, funding requirements to build the communications capacity of indigenous and local communities to facilitate dissemination and exchange of information on issues related to traditional knowledge, innovations and practices;

(c) Provide for sufficient capacity in national institutions to respond to the needs of indigenous and local communities related to Article 8(j) and related provisions;

(d) Strengthen and build capacity for communication among indigenous and local communities, and between indigenous and local communities and Governments, at local, national, regional and international levels, including with the Secretariat of the Convention on Biological Diversity, with direct participation and responsibility of indigenous and local communities through their appropriate focal points;

(e) Use other means of communication in addition to the Internet, such as newspapers, bulletins, and radio, and increasing the use of local languages;

(f) Provide case-studies on methods and approaches that contribute to the preservation of traditional knowledge, innovations and practices, including through their recording where appropriate, and that support control and decision-making by indigenous and local communities over the sharing of such knowledge, innovation and practices;

13. Emphasizes once again the need for case-studies developed in conjunction with indigenous and local communities requested in paragraphs 10 (b) and 15 of its decision IV/9, to enable a meaningful assessment of the effectiveness of existing legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities;

14. Recognizes the potential importance of sui generis and other appropriate systems for the protection of traditional knowledge of indigenous and local communities and the equitable sharing of benefits arising from its use to meet the provisions of the Convention on Biological Diversity, taking into account the ongoing work on Article 8(j) and related provisions, and transmits its findings to the World Trade Organization and the World Intellectual Property Organization, as suggested in paragraph 6 (b) of recommendation 3 of the Inter-Sessional Meeting on the Operations of the Convention (UNEP/CBD/COP/5/4, annex);

15. Invites Parties and Governments to exchange information and share experiences regarding national legislation and other measures for the protection of the knowledge, innovations and practices of indigenous and local communities;

16. Recognizes that the maintenance of knowledge, innovations, and practices of indigenous and local communities is dependent on the maintenance of cultural identities and the material base that sustains them and invites Parties and Governments to take measures to promote the conservation and maintenance of such identities;

17. Requests Parties to support the development of registers of traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity through participatory programmes and consultations with indigenous and local communities, taking into account strengthening legislation, customary practices and traditional systems of resource management, such as the protection of traditional knowledge against unauthorized use;

18. Invites Parties and Governments to increase the participation of representatives of indigenous and local community organizations in official delegations to meetings held under the Convention on Biological Diversity;

19. Emphasizes the need for arrangements controlled and determined by indigenous and local communities, to facilitate cooperation and information exchange among indigenous and local communities, for the purposes of, inter alia, helping to ensure that such communities are in a position to make informed decisions on whether or not to consent to the release of their knowledge, and, in this respect:

(a) Requests the Executive Secretary, to fully utilize the clearing-house mechanism, to cooperate closely with indigenous and local communities to explore ways in which such needs may best be addressed;

(b) Invites Parties to consider ways and means of providing the necessary resources to enable the Secretariat to undertake the above-mentioned tasks;

20. Further requests Parties and international financial institutions to explore ways of providing the necessary funding for these activities.

Annex



# PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY

## Objectives

The objective of this programme of work is to promote within the framework of the Convention a just implementation of Article 8(j) and related provisions, at local, national, regional and international levels and to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation.

### I. GENERAL PRINCIPLES

1. Full and effective participation of indigenous and local communities in all stages of the identification and implementation of the elements of the programme of work. Full and effective participation of women of indigenous and local communities in all activities of the programme of work.

2. Traditional knowledge should be valued, given the same respect and considered as useful and necessary as other forms of knowledge.

3. A holistic approach consistent with the spiritual and cultural values and customary practices of the indigenous and local communities and their rights to have control over their traditional knowledge, innovations and practices.

4. The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use of biological diversity in an equitable way.

5. Access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices.

### II. TASKS OF THE FIRST PHASE OF THE PROGRAMME OF WORK

#### Element 1. Participatory mechanisms for indigenous and local communities

Task 1. Parties to take measures to enhance and strengthen the capacity of indigenous and local communities to be effectively involved in decision-making related to the use of their traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity subject to their prior informed approval and effective involvement.

Task 2. Parties to develop appropriate mechanisms, guidelines, legislation or other initiatives to foster and promote the effective participation of indigenous and local communities in decision-making, policy planning and development and implementation of the conservation and sustainable use of biological diversity at international, regional, subregional, national and local levels, including access and benefit-sharing and the designation and management of protected areas, taking into account the ecosystem approach.

Task 4. Parties to develop, as appropriate, mechanisms for promoting the full and effective participation of indigenous and local communities with specific provisions for the full, active and effective participation of women in all elements of the programme of work, taking into account the need to:

- (a) Build on the basis of their knowledge,
- (b) Strengthen their access to biological diversity;
- (c) Strengthen their capacity on matters pertaining to the conservation, maintenance and protection of biological diversity;
- (d) Promote the exchange of experiences and knowledge;
- (e) Promote culturally appropriate and gender specific ways in which to document and preserve women's knowledge of biological diversity

#### Element 2. Status and trends in relation to Article 8(j) and related provisions

Task 5. The Executive Secretary to prepare, for the next meeting of the Ad Hoc Working Group, an outline of a composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities, a plan and a timetable for its preparation, based, inter alia, on advice submitted by Parties, Governments, indigenous and local communities and other relevant organizations regarding sources and availability of information on these matters. Parties, Governments and indigenous and local communities and other relevant organizations to submit the information and advice to address the requirements of this task and to Parties include in their national reports the current state of implementation of Article 8(j).

#### Element 4. Equitable sharing of benefits

Task 7. Based on tasks 1, 2 and 4, the Working Group 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.

#### Element 5. Exchange and dissemination of information

Task 8. Identification of a focal point within the clearing-house mechanism to liaise with indigenous and local communities.

#### Element 6. Monitoring elements

Task 9. The Working Group to develop, in cooperation with indigenous and local communities, guidelines or recommendations for the conduct of cultural, environmental and social impact assessments regarding any development proposed to take place on sacred sites and on lands or waters occupied or used by indigenous and local communities. The guidelines and recommendations should ensure the participation of indigenous and local communities in the assessment and review.

## Element 7. Legal elements

Task 11. The Working Group to assess existing subnational, as appropriate, national and international instruments, particularly intellectual property rights instruments, that may have implications on the protection of the knowledge, innovations and practices of indigenous and local communities with a view to identifying synergies between these instruments and the objectives of Article 8(j).

Task 12. The Working Group 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 (which could include sui generis systems), and definitions of relevant key terms and concepts in Article 8(j) and related provisions at international, regional and national levels, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention.

### III. TASKS OF THE SECOND PHASE OF THE PROGRAMME OF WORK

## Element 1. Participatory mechanisms for indigenous and local communities

Task 3. On the request of the Executive Secretary, Parties and Governments, with the full participation of indigenous and local communities, would establish a roster of experts based on the methodologies used by the Conference of Parties, to allow the experts to support the implementation of this programme of work.

## Element 3. Traditional cultural practices for conservation and sustainable use

Task 6. The Ad Hoc Working Group to develop guidelines for the respect, preservation and maintenance of traditional knowledge, innovations and practices and their wider application in accordance with Article 8(j).

Task 13. The Ad Hoc Working Group to develop a set of guiding principles and standards to strengthen the use of traditional knowledge and other forms of knowledge for the conservation and sustainable use of biological diversity, taking into account the role that traditional knowledge can play with respect to the ecosystem approach, in situ conservation, taxonomy, biodiversity monitoring and environmental impact assessments in all biodiversity sectors.

Task 14. The Ad Hoc Working Group to develop guidelines and proposals for the establishment of national incentive schemes for indigenous and local communities to preserve and maintain their traditional knowledge, innovations and practices and for the application of such knowledge, innovations and practices in national strategies and programmes for the conservation and sustainable use of biological diversity.

Task 15. The Ad Hoc Working Group 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.

## Element 5. Exchange and dissemination of information

Task 16. The Executive Secretary to identify, compile and analyse, with the participation of indigenous and local communities, existing and customary codes of ethical conduct to guide the development of models for codes of ethical conduct for

research, access to, use, exchange and management of information concerning traditional knowledge, innovations and practices for the conservation and sustainable use of biological diversity.

#### Element 6. Monitoring elements

Task 10. The Ad Hoc Working Group to develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.

Task 17. The Executive Secretary to develop, in cooperation with Governments and indigenous and local communities, methods and criteria to assist in assessing the implementation of Article 8(j) and related provisions at the international, regional, national and local levels, and reporting of such in national reports in conformity with Article 26.

### IV. WAYS AND MEANS

In developing and implementing the programme of work, the Executive Secretary shall solicit information from Parties, Governments, indigenous and local communities and other relevant organizations, and consult with the liaison group on Article 8(j) and related provisions.

The Executive Secretary to develop, in consultation with indigenous and local communities, Parties, Governments, and relevant international organizations, a questionnaire, as a basis for the provision of information concerning: (i) existing instruments and activities relevant to the tasks of the programme of work; (ii) gaps and needs concerning the guidelines referred to in task 6 above; and (iii) priorities for the further development of the programme of work.

The Executive Secretary to consult with and invite relevant international organizations to contribute to the implementation of this programme of work, also with a view to avoiding duplication and to encouraging synergies.

This programme of work shall, as relevant, take into account the work of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, and, as far as possible, be carried out in collaboration with other relevant organizations, including the World Intellectual Property Organization (WIPO).

Parties, Governments, and international, regional and national organizations to provide appropriate financial support for the implementation of the programme of work.