



Achieving the
2010
Biodiversity
Target

Secretariat of the Convention on Biological Diversity



CBD

Ref.: SCBD/SEL/OJ/SG/55098

27 June 2006

NOTIFICATION

Subject: Decision VIII/5 E on Article 8(j) and related provisions: Development of elements of *sui generis* systems for the protection of the knowledge, innovations and practices of indigenous and local communities

Dear Sir/Madam,

In decision VIII/5 E, on *sui generis* systems for the protection of traditional knowledge, the Conference of the Parties requested the Executive Secretary to continue gathering and analysing information, in consultation with Parties, Governments, indigenous and local communities, to further develop as a priority issue, the possible elements listed in the annex to decision VII/16 H (see copy attached) for consideration by the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related provisions at its fifth meeting, and further requested the Working Group on 8(j) to identify priority elements of *sui generis* systems.

In paragraph 8 of the same decision, the Conference of the Parties also invited Parties and Governments to communicate to the Secretariat their views on the definitions contained in document UNEP/CBD/WG8J/4/7, annex II (see copy attached) and requested the Executive Secretary to compile these views for consideration by the Working Group at its fifth meeting.

Parties and Governments are also requested to report on initiatives to adopt local and national *sui generis* models and to share experiences through the clearing-house mechanism **on an ongoing basis**.

In light of the above, Parties and Governments, indigenous and local communities, and non-governmental organizations are requested to communicate to the Executive Secretary information on existing *sui generis* systems and their views on the definitions contained in document UNEP/CBD/WG8J/4/7 annex II, no later than **30th June 2007** to ensure they are taken into account in the preparation of documentation for the next meeting of the Working Group on Article 8(j). Parties and Governments are also requested to report on initiatives to adopt local and national *sui generis* models and to share experiences through the clearing-house mechanism.

Accept, Madam/Sir, the assurance of my highest consideration.

Yours sincerely,

Ahmed Djoghlaif
Executive Secretary

To: CBD National Focal Points



Decision VII/16 H Annex

SOME POTENTIAL 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

1. Statement of purpose, objectives and scope.
2. Clarity with regard to ownership of traditional knowledge associated with biological and genetic resources.
3. Set of relevant definitions.
4. Recognition of elements of customary law relevant to the conservation and sustainable use of biological diversity with respect to: (i) customary rights in indigenous/traditional/local knowledge; (ii) customary rights regarding biological resources; and (iii) customary procedures governing access to and consent to use traditional knowledge, biological and genetic resources.
5. A process and set of requirements governing prior informed consent, mutually agreed terms and equitable sharing of benefits with respect to traditional knowledge, innovations and practices associated with genetic resources and relevant for the conservation and sustainable use of biological diversity.
6. Rights of traditional knowledge holders and conditions for the grant of rights.
7. The rights conferred.
8. A system for the registration of indigenous/local knowledge/Systems for the protection and preservation of indigenous/local knowledge.
9. The competent authority to manage relevant procedural/administrative matters with regard to the protection of traditional knowledge and benefit-sharing arrangements.
10. Provisions regarding enforcement and remedies.
11. Relationship to other laws, including international law.
12. Extra-territorial protections.

UNEP/CBD/WG8J/4/7 Annex II

SET OF RELEVANT DEFINITIONS/GLOSSARY OF TERMS FOR ARTICLE 8 (J) AND RELATED PROVISIONS

1. The following draft definitions have been collated from various sources including the United Nations Permanent Forum on Indigenous Issues, the World Intellectual Property Organization, the International Institute (the International Institute for Environment and Development), Kechua-Aymara Association for Nature and Sustainable Development (ANDES, Peru), Fundacion Dobbo Yala (Panama), University of Panama, Ecoserve (India), Centre for Indigenous Farming Systems (India), Herbal and Folklore Research Centre (India), Centre for Chinese Agricultural Policy (CCAP, China), Southern Environmental and Agricultural Policy Research Institute (ICIPE, Kenya), the Pacific Island Countries Regional Framework for the Protection of Traditional knowledge and Expressions of Culture, the Kenya Forestry Research Institute and the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources.

Application/use/utilization of traditional knowledge: the acts of making, using, offering for sale, selling, or importing for these purposes the protected traditional product, or, where the subject matter of protection is a process, the acts of using the processes as well as the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by the traditional process.

Bio-prospecting: The scientific research of biological resources for commercial or other purposes. Bio-prospecting may also include research into the traditional knowledge associated with the biological resources.

Bio-Cultural Heritage: the knowledge, innovations, practices of Indigenous and local communities which are often collectively held and inextricably linked to traditional resources and lands and waters traditionally occupied and used by indigenous and local communities; including the diversity of genes, varieties, species and ecosystems; cultural and spiritual values; and customary laws shaped within the socio-ecological context of communities. By emphasizing the collective rather than individual rights, and addressing biodiversity and culture together, this concept reflects the holistic approach of many indigenous and local communities. This concept also is linked to knowledge as ‘heritage’ as opposed to ‘property’, thereby reflecting its custodianship and intergenerational character.

Cultural Heritage (tangible and intangible): The physical and/or non-physical manifestation of an indigenous and local communities’ cultural heritage includes, but is not limited to, cultural landscapes, sites, structures, and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological or aesthetic value or significance, human remains, songs, dances artistic expressions, stores and histories.

Customary Law: Written and/or unwritten (including oral traditions) rules, usages, customs, practices and beliefs, traditionally and continually recognized and accepted as legal requirements or obligatory rules of conduct and consequently treated as if they were laws, by the group concerned.

Recognition of elements of customary law relevant to the conservation and sustainable use of biological diversity include:

- (i) Customary rights in Indigenous/traditional/local knowledge;
- (ii) Customary rights regarding biological resources (traditional resource rights); and
- (iii) Customary procedures governing access to and consent to use traditional knowledge, biological and genetic resources.

Customary Use of Biological Diversity: Use in relation to local traditions and customary laws, while allowing for innovation.

Innovation: In the context of traditional knowledge *sui generis* systems, innovation should be understood through the filter of tradition. In other words, tradition could act as a filter through which innovation occurs, that is, innovation and creation occur within a framework of tradition and culture.

[For further exploration of this definition of innovation, consider the African Model Law: “Any generation of a new, or an improvement of an existing, collective and /or cumulative knowledge or technology through alteration or modification, or the use of properties, values or processes of any biological material or any party thereof, whether documented, recorded, oral, written or in whatever manner otherwise existing.”^{1/}

As this concept gets further refined within the context of *sui generis* systems, it will be necessary to consider how this term relates to ideas of improvement or invention. There will also need to be consideration of whether *sui generis* systems will include innovations from traditional knowledge or whether traditional IP regimes cover innovations of traditional knowledge.]

Prior Informed Consent: the procedure through which national governments or the Indigenous or local communities, as the case may be, properly supplied with all the required information, allow or refuse access to their biological resources and traditional knowledge innovation and practices, under mutually agreed conditions of equality, respect and fair compensation.^{2/}

Protected Area: A geographically defined area, which is designated or regulated and managed, to achieve specific conservation objectives.

Research: includes but is not limited to collecting and/or analysing information, data and/or statistics concerning knowledge, innovations and practices of Indigenous and local communities relevant for the conservation and sustainable use of biological diversity.

Sacred Site: A site, object, structure, area or natural feature or area, held by national Governments or indigenous and local communities to be of particular importance in accordance with the custom of an indigenous or local community because of its religious and/or spiritual significance.

Sacred Species: A plant or animal held by Indigenous and local communities to be of particular importance in accordance with the traditions and/or customs because of its religious or spiritual significance.

^{1/} African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, Part II, Definitions and Scope, page 4.

^{2/} Refer to the Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples facilitated by the United Nations Permanent Forum on Indigenous Issues (E/C.19/2005/3).

Traditional knowledge: the knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

[The World Intellectual Property Organization also has a working definition of traditional knowledge: “tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. “Tradition-based” refers to knowledge systems, creations, innovations and cultural expressions which: have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and, are constantly evolving in response to a changing environment. Categories of traditional knowledge could include: agricultural knowledge; scientific knowledge; technical knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; biodiversity-related knowledge; “expressions of folklore” in the form of music, dance, song, handicrafts, designs, stories and artwork; elements of languages, such as names, geographical indications and symbols; and, movable cultural properties.^{3/}]

Traditional Owner: The group, clan or community or people, or an individual who is recognized by a group, clan or community of people as the individual who, in whom the custody or protection of the expressions of culture are entrusted in accordance with the customary law and practices of that group, clan or community.

Traditional Resources: are tangible or intangible assets of biological, spiritual, aesthetic, cultural and economic value used traditionally by an indigenous and local community.

Traditional Territories: lands, and waters traditionally occupied, or used by indigenous and local communities.

^{3/} *Intellectual Property Needs and Expectations of Traditional knowledge Holders*, WIPO Report on Fact-finding Missions on Intellectual Property and Traditional knowledge (1998-1999) (WIPO Publication 768E), at 25.