



# Secretariat of the Convention on Biological Diversity



## Article 10(c): Customary and Sustainable Use

Prepared for Online Consultation with Indigenous Peoples and Local Communities  
6 February 2009

### *Introduction*

The Convention on Biological Diversity acknowledges the interconnectedness of traditional knowledge and customary practice both in its preamble and in article 8(j). Furthermore, related provision article 10(c) of the Convention on Biological Diversity calls on Parties to: “Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.”

In its most recent decision IX 13, A, paragraph 4, the Parties requested the Executive Secretary to continue to compile case studies, analyze and report on work concerning related provisions, focusing on Article 10(c), and to provide advice to the Working Group at its sixth meeting on how this related provision may be further advanced and implemented as a priority.

Hence, with this in mind, the Secretariat has analyzed case studies and prepared a short abstract (below) as a stimulus to this electronic forum. This forum is thus an initial attempt by the Secretariat to stimulate a dialogue that will inform the development of a working document for the consideration of the Working Group on Article 8(j) and related provisions at its 6<sup>th</sup> meeting (2-6 November, 2009).

This forum will be guided by this framing question:

**How can Parties to the Convention ensure that obligations arising from article 10(c), to protect and encourage the customary use of biological resources (in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements), are further advanced and implemented as a priority?**

### *Methodology*

This electronic forum will run over 4 weeks during the months of February and March, 2009. The forum will commence with an abstract and questions on customary sustainable use in English, Spanish and French designed to stimulate discussions. Potential participants will be emailed the abstract in advance and information about how to enroll and use the forum.

At the end of each week, the views presented will be summarized and the summary will be made available in English, Spanish and French, the following week. This process will repeat itself for three weeks. In the final week (week 4) participants will receive a draft working paper based on the various views provided throughout the course the forum for final comment.



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The paper resulting from this forum will form the basis of the working document requested by decision COP IX 13 A, to provide advice on how article 10(c) regarding customary sustainable use can be further advanced and implemented as a priority.

### *Abstract*

Indigenous peoples and local communities (ILCs) relying on fishing, horticulture, subsistence agriculture, and/or hunting and gathering have accumulated substantial knowledge relevant to sustainable resource use and management and the conservation of biodiversity in their traditional territories. The interdependence of indigenous and local communities and biodiversity means that protecting and encouraging the vitality of biological diversity requires protecting and encouraging the vitality of local and indigenous communities on those territories.

Case studies suggest that customary use practices are maintained by a diversity of ILCs living in diverse ecosystems with diverse customary laws guiding access and management of resources. Furthermore, these practices often occur under a wide variety of national legal systems. As such, it may be useful to explore a full spectrum of possible approaches through which Parties could promote access to and management of biological resources by indigenous peoples and local communities for the purpose of customary and sustainable use.

### **Relationship between customary use and access to resources**

In order to maintain traditional cultural practices and sustainable use of biological resources, indigenous peoples and local communities must have ongoing access to such resources. Access to biological resources could be provided according to a spectrum of possible mechanisms, including (but not limited to):

#### ACCESS

- 1) *Land tenure.* Because the customary and sustainable use of biological resources by indigenous peoples and local communities is rooted in longstanding and intimate familiarity with a particular place, secure land tenure is an important mechanism for providing access, enhancing local management and supporting customary use. In some cases, recognizing customary tenure has directly improved the health of animal and plant species by way of revitalized customary use practices.<sup>1</sup> The *United Nations Declaration on the Rights on Indigenous Peoples*<sup>2</sup> provides a framework for respecting the fundamental human rights of indigenous peoples, and provides a legal and environmental basis for protecting and encouraging customary sustainable use. Because of this the Declaration may be viewed as a supporting document for the full and effective implementation of article 10(c) of the Convention.
- 2) *Access to resources, particularly traditional resources.* The cultural survival of indigenous peoples and local communities, as distinct peoples relies on their cultural

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<sup>1</sup> For example, recognition of Cree land tenure rights led to the re-adoption of customary use practices and an increase of beaver populations in Cree territory. See Berkes, "Rediscovery of TEK" *supra* note 1 at 1257

<sup>2</sup> (A/61/L.67) *United Nation Declaration on the Rights of Indigenous Peoples* [UNDRIP]

vitality and their ability to continue to practice and pass on their unique knowledge, innovations and practices to future generations. Access to resources upon which their culture is based is necessary for their very survival.

- 3) *General Access.* As a minimal standard to promote the implementation of article 10(c), governments should ensure that indigenous peoples and local communities have access to natural resources, sacred sites and places of cultural significance on lands and waters traditionally occupied or used by them, for the purposes of customary practices (customary sustainable use). States may recognize rights to access and may grant access to indigenous peoples and local communities to state lands (i.e. protected areas, state forest and water-shed areas) for such purposes as customary sustainable use and cultural practices. In some countries, private land owners have entered into bilateral agreements to provide access to lease-hold lands (i.e. pastoral and mining leases) to traditional resources and for cultural practices, where this is compatible with existing uses such as grazing of livestock. Such arrangements can be enhanced and promoted with government support. Examples of state recognition of rights to customary use often enhances the viability of parks and protected areas because it contributes to subsistence of indigenous peoples and local communities and helps prevent illegal use of these resources by third parties.

### **Relationship between customary use and management**

Customary use of biological resources is guided by local understandings of stewardship and ecological relationship. Customary use should be recognized as a form of traditional, local management. As such, customary use and the effective participation of indigenous peoples and local communities in the management of resources form two sides of the same coin. Customary use can be incorporated into a variety of management practices, but the involvement of local people in planning, implementing and monitoring environmental management is a necessary prerequisite for success.

### **MANAGEMENT**

Specific management arrangements that could support customary use practices include:

- 1) Local control over environmental management through recognition of land tenure (see above);
- 2) Co-management systems in which governments and indigenous peoples and local communities work together to identify and agree on goals and practices for use of biological resources, as well as collaborating on ongoing monitoring practices. A co-management approach has the potential to provide a means of enhancing sustainability by combining the intimate local knowledge of indigenous peoples and local communities with conservation tools and approaches rooted in biological and ecological science.<sup>3</sup>
- 3) State-led management with the effective participation of indigenous peoples and local communities that takes into account the needs of these communities for ongoing

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<sup>3</sup> Berkes, *Sacred Ecology*, *supra* note 8 at 156

customary and sustainable use, as well as knowledge, innovations and practices useful in local environmental management.

## Other substantive issues

- 1. Sustainability:** Customary use of biological resources by indigenous peoples and local communities can support the long-term sustainability of biological diversity. Case studies suggest that customary use practices such as plant collecting and cultivating diverse local varieties of food crops supports flourishing ecosystems and enhances biological diversity. Customary use practices of indigenous and local communities tend to make holistic use of environmental resources consistent with an ecosystem approach to biological diversity. Such diverse practices draw on different ecosystem products and services and minimize risk of depleting a single resource. The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity offer a framework for assisting Governments, indigenous and local communities, resource managers, the private sector and other stakeholders, in ensuring that their uses of biological diversity will not lead to its long-term decline.<sup>4</sup>
- 2. Customary law:** Customary laws governing the traditional use of biological resources commonly require resource users to abide by norms consistent with a contemporary understanding of the ethics surrounding sustainable use. These customary norms include, for example, causing the least amount of possible damage to the environment and ensuring that resource harvesting does not prohibit future generations from meeting their needs.<sup>5</sup> Because subsistence work is often gendered, women's roles in customary use practices – for example through harvesting local plant resources for medicinal, food, or craft use – deserves special consideration and may require special forms of recognition and legal protection. Recognition of “on the ground” sui generis systems based on the customary laws of indigenous peoples and local communities can be an important strategy to ensure biological resources are both sustainably used and managed. Case studies suggest that recognizing and supporting customary legal systems, with particular attention to protecting women's customary use practices, can be an effective way of promoting customary use of biological resources.
- 3. The right to sustainable development:** Customary use of biological resources provides an important component of indigenous and local communities' livelihoods. However, indigenous peoples and local communities also have the right to practice sustainable development, drawing on innovations and best practices that may not fall under conventional definitions of “traditional” or “customary” use. For example, commercial use of biological resources often plays an important role in supporting the customary and sustainable use of biological resources in indigenous and local communities. Commercial use of local products, such as non-timber based forest products, can provide access to income that supplements other livelihood strategies such as hunting or agriculture. In some cases, commercial use of local resources provides a critical role in supplying local people with the cash needed to continue their subsistence activities. In

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<sup>4</sup> *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity* (Montreal: Secretariat for the Convention on Biological Diversity, 2004) at para 1 [*Addis Ababa*]

<sup>5</sup> UNEP/CBD/WG8J/5/6, 2007, “Development of Elements of *Sui Generis* systems for the Protection of Traditional Knowledge, Innovations and Practices to Identify Priority Elements” at para 50

addition to supporting access of indigenous peoples and local communities to biological resources for the purpose of sustainable use, indigenous peoples and local communities' right to pursue their aspirations for sustainable development should be supported and upheld.

**Some guiding questions for the electronic discussion:**

1. What methods to promote access to biological resources for indigenous peoples and local communities are missing from this abstract?
2. What options for management of biological resources that would support customary use are missing from this abstract?
3. What examples and case studies are you familiar with that would best highlight each of the options for access and management mentioned above, as we build a case for the importance of customary sustainable use?
4. Are there any potential negative impacts of recognizing and documenting rights to customary use (for example, on the ability of indigenous peoples and local communities to adapt practices to changes in environmental and social conditions over time)?
5. What is the relationship between customary use and customary law?
6. What is the relationship between customary use and the right to development?
7. Should 'customary use' guidelines support the use of biological resources for commercial purposes on a case by case basis? Should the Addis Ababa Guidelines be further developed with this in mind?
8. Are there cases where commercial activities such as sport hunting<sup>6</sup> should be considered as within the parameters of sustainable customary use, as a means of revenue generation for indigenous peoples and local communities?
9. What draft recommendations should the 6<sup>th</sup> meeting of the Working group on Article 8(j) and eventually the CBD COP consider to ensure that article 10(c) may be further advanced and implemented as a priority ?

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<sup>6</sup> For instance, in Namibia, foreign hunters can pay high prices to shoot an elephant that has already been marked for culling as part of local management strategy.