

Draft for peer review

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

Note by the Executive Secretary

INTRODUCTION

1. In decision XIII/19, paragraph 3, the Conference of the Parties requested the Executive Secretary to prepare a revised draft of the Rutzolijirixaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity, taking into account developments in various international bodies, instruments, programmes, strategies, standards, guidelines, reports and processes of relevance as referred to in paragraph 5 of the annex,¹ and based on: (i) an analysis of the information received on good practices and 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; (ii) the report of the Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biological Diversity;² and (iii) the annex to the decision XIII/19, containing the objective, purpose, scope and guiding principles for repatriation.

2. Paragraph 2 of decision XIII/19, also invited Parties, other Governments, relevant organizations, Indigenous Peoples and Local Communities (IPLCs) and stakeholders interested or involved in repatriation to submit to the Executive Secretary good practices and 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.

3. In accordance with this decision, the Executive Secretary in notification SCBD/SPS/DC/VN/JS/DM/86220 (2017-006) dated 27 January 2017, invited submissions from Parties, other Governments, relevant organisations, indigenous peoples and local communities and relevant stakeholders. Submissions were received from Australia, Bolivia, Brazil, Canada, European Union (on behalf of its Member States, with national contributions from Denmark including Greenland, Finland, Sweden), Mexico, Peru, Venezuela, the Great Barrier Reef Marine Park Authority (Australia), the Indigenous Women's Biodiversity Network Latin America and Caribbean Region, and the Secretariat of the United Nations Framework Convention on Climate Change. This information is compiled in document **CBD/WG8J/10/INF³**.

4. As requested, a revised draft of the guidelines has been prepared for the consideration of the Working Group at its tenth meeting. 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) and information related to other relevant decisions taken by the Conference of the Parties, as well as the advice of the expert group on the repatriation of traditional knowledge relevant for the conservation and sustainable use of biological diversity.⁴ Section II clarifies the methodology used in order to analyse the information received and revise the guidelines in the light of the submissions received.

¹ Developments in various international bodies, instruments, programmes, strategies, standards, guidelines, reports and processes of relevance to repatriation of traditional knowledge were considered in the first stage of work on the repatriation guidelines and are made available in document UNEP/CBD/ WG8J/8/5 (2013).

² UNEP/CBD/WG8J/9/INF/4

³ Document number to be specified

5. Finally, draft recommendations to the Conference of the Parties are contained in Section III and the Annex contains a revised draft of the Rutzolijirisaxik voluntary guidelines, for consideration by the Working Group. The draft guidelines completed by the Working Group will then be submitted for consideration and adoption by COP 14.

I. BACKGROUND

6. The Conference of the Parties at its tenth meeting, in decision X/43 paragraph 6,⁵ tasked the Working Group with developing guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2,⁶ of the Convention, in order to facilitate the recovery of traditional knowledge relevant to the conservation and sustainable use of biological diversity.⁷

7. In order to assist the Working Group with this task, the Conference of the Parties at its eleventh meeting in decision XI/14 D, adopted the following terms of reference, emphasising that task 15 is to be interpreted in accordance with the provisions of the Convention, in particular Article 8(j)⁸ and related provisions and Article 17, paragraph 2⁹, and is intended to build on, and enhance repatriation undertaken by Parties, Governments and other entities, including international organizations, museums, herbaria, botanical, and zoological gardens, databases, registers, gene-banks, etc.:

Terms of Reference

8. 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.

9. 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.

10. Task 15 is intended to build on and enhance repatriation undertaken by Parties, other Governments and other entities, including international organizations, museums, herbaria, botanical, and zoological gardens, databases, registers, gene-banks, etc..

11. Stakeholders may include, inter alia:

- a. Parties and other Governments;

5 Decision X/43, paragraph 6, *Requests* that the Secretariat continue to compile and analyse submissions from Parties and other relevant organizations on national and international approaches for repatriation relevant to task 15, in accordance with Article 17, paragraph 2, of the Convention for the consideration by the Working Group on Article 8(j) in order to establish best practice guidelines.

6 Article 17 Exchange of Information, paragraph 2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

7 Task 15 of the programme of work on the implementation of Article 8(j) and related provisions of the Convention, as contained in the annex to decision V/16, requests The Ad Hoc 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.

8 Article 8(j) Subject to its national legislation, 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 with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

9 Article 17 Exchange of Information, paragraph 2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

- 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.

The Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biological Diversity

12. As requested in decision XI/14 D, the Working Group on Article 8(j) at its eight meeting, guided by the terms of reference, considered an initial draft of the guidelines¹⁰ and recommended that the Conference of the Parties at its twelfth meeting¹¹ request the Executive Secretary to convene a technical expert group meeting to further develop the draft voluntary guidelines, for consideration by the Working Group at its ninth meeting and the Conference of the Parties at its thirteenth meeting. In accordance with decision XII/12 C, an Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biological Diversity was convened in Panajachel, Guatemala, on 14 and 15 June 2015. The report of the meeting is contained in UNEP/CBD/WG8J/9/INF/4.

13. As requested by the Conference of the Parties in Decision XII/12 C, the Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biological Diversity further developed the draft voluntary guidelines. In particular, the expert group agreed upon objectives, purpose, scope, and general guiding principles for the draft Rutzolijirisaxik¹² voluntary guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity, as presented in the annex to decision XIII/19 D.

14. The expert group also provided advice on a way forward by suggesting possible measures and actions to promote and enhance repatriation, as contained under items 5 and 6 of its report UNEP/CBD/WG8J/9/INF/4. These measures and actions, along with submissions received have informed a revision of the guidelines and the development of section VI of the draft guidelines contained in the annex to this present document entitled “Good practices and 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”.

¹⁰ Decision XI/14 D, 6 *requests* the Executive Secretary, based on an analysis of the information received ... and on the analysis prepared in cooperation with the United Nations Educational, Scientific and Cultural Organization, to develop draft best-practice guidelines for the repatriation of indigenous and traditional knowledge relevant to the conservation and sustainable use of biological diversity.

¹¹ The Conference of the Parties adopted this recommendation from the Working Group, in Decision XII/12 C.

¹² 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”.

15. Finally, as the expert group met on the traditional territories of the indigenous Mayan peoples, in Panajachel, Guatemala, and as is the custom of the Convention, the local indigenous peoples were invited to propose a traditional indigenous name for the guidelines. The title provided is “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”. This traditional Mayan title was provided by the local indigenous peoples in honour of the guidelines being advanced on their traditional territories and in the local traditional language, Maya Kaqchikel, “Rutzolijirisaxik” means “the significance of returning to the place of origin”.

Related work of relevance to the Repatriation Guidelines

16. The documentation, recording and/or digitalization of traditional knowledge are very relevant to advancing work on repatriation of traditional knowledge and related or complementary information. However a number of issues have been raised under the Convention with regard to the documentation of traditional knowledge, including its challenges and opportunities. When considering the protection of traditional knowledge, the Conference of the Parties in *Decision VIII/5 B recommends* to Parties and Governments to bear in mind that *registers are only one approach to the protection of traditional knowledge, innovations and practices, and as such their establishment should be voluntary, not a prerequisite for protection. Registers should only be established with the prior informed consent of indigenous and local communities*. For consistency across the Convention, Parties, institutions and entities interested in repatriation, and indigenous peoples and local communities may wish to take into account both the benefits and challenges of documenting traditional knowledge¹³ in the context of the digitalization of collections to assist in repatriation. Additionally the Traditional Knowledge Documentation Toolkit of the World Intellectual Property Organization (WIPO)¹⁴ may also be relevant in this context. It provides essential information, including possible benefits and challenges, for indigenous peoples and local communities to consider when deciding whether or not they wish to pursue documentation of their knowledge.

II. AN ANALYSIS OF THE INFORMATION RECEIVED

17. As requested by the thirteenth meeting of the Conference of the Parties in decision XIII/19 D, the Executive Secretary has compiled the information and views received and has made 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 in **CBD/WG8J/10/INF/15**.

18. Building on the expert meeting’s report¹⁶ and the draft guidelines contained in annex to decision XIII/19, the views and information received were analysed with a view to revising the guidelines¹⁷ as needed, and to identify key elements for inclusion in section VI of the guidelines on good practices and actions undertaken at various levels, to repatriate, receive and restore traditional knowledge relevant for the conservation and sustainable use of biological diversity.

19. The key elements for inclusion in the guidelines were identified based on actions recommended in the submissions received and were arranged in a sequential order in section VI of the revised guidelines. Additionally some submissions provided views on other elements of the guidelines¹⁸ and these suggestions have been accommodated, where possible. Concerning section VI of the guidelines on good practices and actions undertaken at various levels, the actions identified fall into three categories – *procedural, special considerations, and mechanisms that may aid in the repatriation of traditional knowledge*.

¹³ Including Decision VIII/5 on registers for traditional knowledge

¹⁴ Available at: http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_toolkit_draft.pdf.

¹⁵ Document number to be specified

¹⁶ UNEP/CBD/WG8J/9/INF/4

¹⁷ As they appear in Annex to the decision XIII/19

¹⁸ Other elements include objectives, purpose, scope, and guiding principles.

Procedural Elements

20. In general there is much convergence in the submissions received on the need for clear and practical steps in repatriation processes. Procedural elements identified in the information received including such practical actions as creating a multi-stakeholder team¹⁹ to guide a repatriation process, training the various actors, identifying collections of traditional knowledge for repatriation, as well as identifying the origins of the traditional knowledge in question and the original knowledge holders, developing agreements for repatriation, and ensuring both the repatriating institutions and entities and the receiving indigenous peoples and local communities are prepared to engage in repatriation, as well as considerations of formats that may enable repatriation.

Special Considerations

21. Some submissions received suggested that in the context of repatriation, there should special considerations for publically available traditional knowledge and an encouragement for the equitable sharing of benefits arising from ongoing use. However, other submissions emphasised that repatriation should not impede the ongoing use of such publically available information in the Party, institution or entity that decides to repatriate it.

22. Some submissions have also suggested there should be special considerations for secret, sacred or gender specific knowledge.

Mechanisms that may aid in the repatriation of traditional knowledge

23. Some submissions from Parties and international organizations took a broad view of repatriation by focussing on the ultimate goal of repatriation, which is knowledge restoration for conservation and sustainable use, and identified various mechanisms at different levels and scales that may assist in knowledge restoration. Mechanisms suggested cover a broad range of possibilities from local level community protocols or customary procedures to regional and international knowledge sharing platforms. These submissions suggest that the guidelines should take a broad view of repatriation that takes into account mechanisms for knowledge restoration. On this basis consideration of “community to community exchanges” as well as the use of “knowledge sharing platforms”, as mechanisms to aid in the repatriation of traditional knowledge, have been included in the guidelines.

24. Based on this methodology, a revised draft of the Rutzolijirisaxik Voluntary Guidelines for the Repatriation of traditional knowledge is proposed in the annex to this document for consideration by the Working Group.

III. DRAFT RECOMMENDATION FOR THE CONSIDERATION OF THE WORKING GROUP

25. In the context of the information provided in the previous sections, the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions may wish to recommend that the Conference of the Parties adopt a decision along the following lines:

Recalling that Parties to the Convention on Biological Diversity, according Article 17, shall facilitate the exchange of information on traditional knowledge, including, where feasible, the repatriation of information, and in Article 18, promote scientific cooperation to develop methods of cooperation for the development and use of technologies, including indigenous and traditional knowledge,

Bearing in mind the importance of international cooperation for the repatriation of traditional knowledge including by providing access to traditional knowledge and related and/or complementary

¹⁹ Including with the effective participation of the relevant indigenous peoples and local communities

1 information for Indigenous Peoples and Local Communities to facilitate the recovery of traditional
2 knowledge of biological diversity,

3 *Further taking into account* the various international bodies, instruments, programmes, strategies,
4 standards, guidelines reports and processes of relevance and the importance of their harmonization and
5 complementarity and effective implementation, and

6 *Respecting* the principles of legality, transparency and mutual respect and understanding in
7 relations between Indigenous Peoples and Local Communities, on the one hand, and academic, private
8 sector, educational, governmental and other users of elements of indigenous and local community
9 traditional knowledge, on the other.

10 1. *Welcomes and adopts* the Voluntary Guidelines for Repatriation, as contained in the
11 annex to the present decision;

12 2. *Invites* Parties and other Governments, relevant organizations, institutions and entities
13 holding collections of traditional knowledge and related or complementary information and Indigenous
14 Peoples and Local Communities to use the Voluntary Guidelines, as appropriate, in efforts to repatriate
15 and restore traditional knowledge relevant for conservation and sustainable use of biological diversity;

16 3. *Invites* Parties, other Governments, relevant organizations, institutes and entities, and
17 Indigenous Peoples and Local Communities to promote the guidelines through appropriate educational
18 and awareness-raising activities, as appropriate;

19 4. *Also invites* Parties, other Governments, relevant organizations, institutes and entities,
20 and Indigenous Peoples and Local Communities to make available through the Traditional Knowledge
21 Portal, where appropriate, best practices, lessons learned and good examples and benefits of repatriation
22 of traditional knowledge relevant for conservation and sustainable use of biological diversity, including
23 community-to-community exchanges and where appropriate, knowledge sharing platforms;

24 5. *Invites* Parties, other Governments, relevant organizations and Indigenous Peoples and
25 Local Communities to report on experiences gained by using the Voluntary Guidelines for Repatriation, to
26 promote international, regional and national cooperation, and to share experiences and best practices on
27 relevant measures, relating to repatriation of traditional knowledge shared across borders, where they
28 exist or held outside of the country of origin, through the national reports and directly to the Executive
29 Secretary in order to contribute to reporting on progress in the implementation of Article 8(j) and related
30 provisions to the next meetings of the Subsidiary Body on Implementation and the Working Group on
31 Article 8(j) and related provisions.

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Annex

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 have undertaken in Article 8(j), subject to its national legislation, 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 with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

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, in 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 a terms of reference to advance the task clarifying the task:

“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, build 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,²⁰ as well as decision VII/16 with regard to registries and databases, and is complementary to other tools developed by the Working Group on Article 8(j) and related provisions and adopted by the Conference of the Parties to the Convention on Biological Diversity.

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,²¹ 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 World Intellectual Property Organization, which deals with intellectual property issues.

²⁰ Decision X/42, annex Tkarihiwaié:ri Code of Ethical Conduct, paragraph 23: Repatriation efforts ought to be made to facilitate the repatriation of information in order to facilitate the recovery of traditional knowledge of biological diversity.

²¹ General Assembly resolution 61/295, annex.

6. As such, they highlight the importance of international cooperation for the repatriation of traditional knowledge, including by providing access to traditional knowledge and related or complementary 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.

THE RUTZOLIJIRISAXIK VOLUNTARY GUIDELINES FOR THE REPATRIATION OF TRADITIONAL KNOWLEDGE²²

I. Objectives

7. The objective of these guidelines is to facilitate the repatriation of the traditional knowledge of indigenous peoples and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including related or complementary 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,²³ and without limiting or restricting its continued use and access.

8. 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.

II. Purpose

9. For the purposes of the voluntary guidelines, “repatriation” in the context of traditional knowledge relevant for conservation and sustainable use of biological diversity, means the return of knowledge, innovations and practices of indigenous peoples and local communities²⁴ after a considerable period of time, to where it originated or was obtained for the recovery of knowledge on biological diversity”.²⁵

10. The guidelines are intended to be practical guidance to Parties, Governments,²⁶ international and regional organizations, museums, universities, herbaria, 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 or complementary information, and Indigenous Peoples and Local Communities, in efforts to repatriate traditional knowledge.

11. They are a guide to good practice which will need to be interpreted taking into account the political, legal, economic, environmental and cultural diversity, as appropriate, of each Party, Government, institution, entity and Indigenous Peoples and Local Communities, and applied in the context of each organization’s mission, collections and the relevant communities, taking into account community protocols and other relevant procedures.

12. The guidelines are not prescriptive or definitive.

²² ... of indigenous peoples and local communities relevant for the conservation and sustainable use of biological diversity
²³ XI/14 D, annex, terms of reference for repatriation.

²⁴ The traditional knowledge in question, may include related or complementary information

²⁵ 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, paragraph 13), available at: <https://www.cbd.int/doc/?meeting=WG8J-08>.

²⁶ Including subnational governments and government departments, which may hold indigenous and/or local community traditional knowledge and related or complementary information relevant to the conservation and sustainable use of biological diversity.

13. Given the political, legal, economic, environmental and cultural diversity of States, institutions and entities, and Indigenous Peoples and Local Communities that may be involved in repatriation, it is unlikely that these guidelines will cover all the issues that may arise in professional practice. However, they should provide practical guidance for those wishing to pursue repatriation.

14. The guidelines should enable those working on repatriation, including information professionals²⁷, 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.

15. The guidelines should assist Indigenous Peoples and Local Communities in the recovery and revitalization of their traditional knowledge related to conservation and sustainable use of biological diversity.

III. Scope

16. 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 apply to the knowledge, innovations and practices of Indigenous Peoples and Local Communities, relevant for the conservation and sustainable use of biological diversity.

IV. Guiding Principles for Repatriation

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

(a) Whenever possible, Indigenous Peoples and Local Communities should be entitled to repatriation of their traditional knowledge, including from across international borders, to assist them with the recovery of traditional knowledge relevant to biological diversity.

(b) Underpinning successful repatriation efforts is the concept embedded in article 8(j) of “respect” for traditional knowledge, taking into account the United Nations Declaration on the Rights of Indigenous Peoples, including Article 31 and other relevant articles and instruments;²⁸

(c) Respect for traditional knowledge implies respect for the values, practices, world views, cosmologies, customary laws, community protocols, rights and interests of Indigenous Peoples and Local Communities, with due respect for international norms;

(d) Repatriation requires the development of ongoing relationships with Indigenous Peoples and Local Communities, in order to build trust, good relations, mutual understanding, intercultural spaces, knowledge exchanges and reconciliation;

(e) Repatriation efforts should be forward-looking, should foster the building of relationships, and should encourage the creation of intercultural spaces and the co-sharing of knowledge, including producing new knowledge;

²⁷ An **information professional** is someone who collects, records, organizes, stores, preserves, retrieves, and disseminates printed or digital information. The term is most frequently used interchangeably with the term ‘[librarian](#)’,^[2] or as a progression of it. Librarians traditionally managed information contained in books or other paper records. Nowadays, however, libraries make extensive use of modern media and technology hence the role of librarians has been enhanced. The versatile term ‘information professional’ is also used to describe other similar professions, such as [archivists](#), information managers, information systems specialists, and [records managers](#).^[3] Information professionals work in a variety of private, public, and academic institutions (refer to https://en.wikipedia.org/wiki/Information_professional).

²⁸ Article 8(j) calls on Parties, subject to its national legislation, 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 with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

(f) Preparedness of institutions holding traditional knowledge and related or complementary information relevant for conservation and sustainable use, to repatriate, including preparedness to cooperate with Indigenous Peoples and Local Communities to develop appropriate measures, is essential for a successful process;

(g) Equally as important, repatriation may require assisting Indigenous Peoples and Local Communities to be prepared to receive and keep safe, repatriated traditional knowledge and related information, in culturally appropriate ways, as specified by them;

(h) Parties, repatriating institutions and entities should recognise the importance of repatriating secret or sacred, gender-specific or sensitive traditional knowledge²⁹ as identified by the relevant indigenous peoples and local communities, as a priority for Indigenous Peoples and Local Communities;

(i) Repatriation can be enhanced by developing the awareness and professional practice of those working on repatriation, including information professionals and Indigenous Peoples and Local Communities, 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;³⁰

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

(k) Repatriation of traditional knowledge and related information should facilitate the exchange of information, rather than limit or restrict it, while respecting the rights of the holder of such knowledge.

(l) The repatriation of traditional knowledge and related or complementary information should not impede the continued use of such publically available information in the Party, institution or entity that decides to repatriate it.

VI. Good Practices and 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;

18. The following good practices and actions to repatriate traditional knowledge aim to provide advice to institutions and entities where traditional knowledge and related information may be held and which serve Indigenous Peoples and Local Communities and/or hold materials with Indigenous Peoples and Local Community content or perspectives. These may include but are not limited to: government departments, international organizations, museums, herbaria, botanical, and zoological gardens, databases, registers, gene-banks, libraries, archives and information services. These good practices and actions cover such areas as governance, management and cooperation.

19. The following elements are arranged in a sequential order, however Parties and others using the guidelines may wish to consider these, as they see fit, taking into account each Parties', institution's or entities' unique circumstances.

²⁹ and related or complementary information

³⁰ See decision X/42, available at <https://www.cbd.int/decision/cop/default.shtml?id=12308>.

A. PROCEDURAL CONSIDERATIONS

1. Establish a Team

20. Depending on the repatriating institution, consider the establishment of a team with technical expertise, guided by a multi-stakeholder committee, in order to build relationships between the relevant Indigenous Peoples and Local Communities and institutions and other entities holding traditional knowledge. Indigenous Peoples and Local Communities should effectively participate in such arrangements.

21. Indigenous Peoples and Local Communities participating in multi-stakeholder committees for repatriation may be best placed to identify whether there are community protocols and/or customary processes in place for the return of traditional knowledge.

2. Training the Actors in the Repatriation Process

22. The various actors involved in repatriation, including staff of repatriating institutions and entities, representatives of relevant indigenous peoples or local communities may require training on repatriation. Training can equip Indigenous Peoples and Local Communities with the knowledge and skills needed to effectively participate in a repatriation process. Training may assist the various actors involved in agreeing on common understandings of terms used in the repatriation process. Training can also assist staff of repatriating institutions and entities to be aware of issues such as Indigenous Peoples and Local Communities rights to their traditional knowledge, as well as assist in the development of agreements for a repatriation process.

23. Indigenous Peoples and Local Communities who have written about libraries and other resource centres have invariably mentioned how important it is to feel comfortable in them. Friendly staff will mean that Indigenous Peoples and Local Communities do not feel intimidated by an alien cultural system or inadvertently made to feel inferior, if they do not know how to find information.

24. Training could take into account experiences gained and lessons learned in other repatriation processes such as return of artefacts and/or human remains, as appropriate.³¹

3. Identification of Collections of Traditional Knowledge and Related or Complementary Information for Possible Repatriation

25. After creating a multi stakeholder team and training the participants, the initial concrete step in a repatriation process is to identify collections and content³² for possible repatriation.

26. It is for each institution or entity holding traditional knowledge and related information to identify content in collections for possible repatriation and to make decisions regarding repatriation. This may include content held in other countries.

27. At the same time Indigenous Peoples and Local Communities may wish to work with such institutions or entities holding traditional knowledge to assist in identifying content for possible repatriation, and initiate requests to examine collections in order to identify content, possibly leading to requests to repatriate.

28. Representatives of Indigenous Peoples and Local Communities should effectively participate in the screening of collections and the identification of traditional knowledge and related or complementary information that may be suitable for repatriation.

³¹ Note that tangible cultural heritage, such as artefacts, as well as human remains, fall under the mandate of UNESCO.

³² Traditional knowledge and related or complementary information

29. The identification of elements of traditional knowledge for possible repatriation may require regional or international cooperation as envisaged under the Convention's Article 17 on Exchange of Information. Article 17 requires contracting Parties to facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, including specialized knowledge, indigenous and traditional knowledge. It shall also, where feasible, include repatriation of information.

30. *Related or complementary information* to be taken into account when repatriating traditional knowledge could include, but is not limited to, information about when, where and from whom the knowledge in question was first accessed or collected, the arrival of the knowledge in institutions and entities holding traditional knowledge (such as place and date) and initial contacts in those places, and/or indigenous and traditional knowledge associated with cultural property.³³ Such information may assist in identifying the rightful or original knowledge holders.

31. Related or complementary information could also include information in gene-banks, geo-referenced species level data and related information, and other types of information held in collections or databases that may be useful to supplement repatriated traditional knowledge for the conservation and sustainable use of biological diversity.

4. Identification of the Origin of the Traditional Knowledge and Related or Complementary Information for Possible Repatriation

32. Identification of the origin of the traditional knowledge in question may depend upon access to related information, such as when the traditional knowledge in question was acquired, where, from whom and in what form.

33. Indigenous Peoples and Local Communities should effectively participate in identifying origins of the traditional knowledge in question and in some case may be guided by oral histories and other forms of information.

34. Parties and Governments may wish to consider proactive arrangements in order to avoid situations where the traditional knowledge holders and their knowledge are separated in the first place. Such arrangements could include requirements in national law for authors to state the origin of access to traditional knowledge in all publications, uses, developments and other disseminations or the adoption of national laws that require the return of tangible and intangible cultural heritage removed from its country of origin.

5. Identification of the Rightful Traditional Knowledge Holders

35. Paramount to successful repatriation of traditional knowledge is the identification of the rightful and original traditional knowledge holders.

36. In order to identify the rightful and original traditional knowledge holders, firstly the origin of the traditional knowledge in question, including when it was acquired, where, from whom and in what form, should be established.³⁴

37. Indigenous and local community processes for the repatriation of traditional knowledge may include drawing on their oral histories and traditions to identify where traditional knowledge may be held;

³³ The terms of reference adopted in COP Decision XI/14 D states: 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.

³⁴ May include traditional knowledge held in other countries (such as loans or collections), or in transboundary situations.

1 when, where and from whom the knowledge in question was collected and in what form; as well as
2 information about the arrival of the knowledge in those places including dates, and initial staff contacts in
3 those places storing traditional knowledge.

4 38. Oral histories combined with efforts by institutions to make their collections publically available
5 may assist in identifying the rightful and original holders for potential repatriation.

6 39. Government departments, institutions and entities holding traditional knowledge should work in
7 partnership with the relevant Indigenous Peoples and Local Communities and ensure their effective
8 participation in identifying the rightful and original knowledge holders.³⁵

9 **6. *Agreements for Repatriation***

10 40. In order to clarify a repatriation process, Indigenous Peoples and Local Communities may wish to
11 identify customary procedures or develop community protocols that address repatriation of traditional
12 knowledge.³⁶

13 41. In general, agreements to repatriate should respect the traditional knowledge holders' rights to
14 consent to the repatriation process for the traditional knowledge in question, and aim to develop mutually
15 agreed terms for a repatriation process.

16 42. Institutions and entities³⁷ interested in repatriating traditional knowledge may be able to adapt
17 standard framework agreements such as memorandums of understanding or cooperation to include
18 repatriation of traditional knowledge. These framework agreements may be useful mechanisms to guide
19 repatriation especially from the institution's perspective.

20 43. If the repatriation process builds on framework agreements combined with community protocols
21 or customary procedures, the process is more likely to meet the needs of the different actors involved in a
22 repatriation process.

23 44. Additionally, in order to facilitate repatriation processes, it is advisable that administrative
24 measures and costs are kept to a minimal.

25 **7. *Preparedness to Receive***

26 44. From an indigenous and local community perspective "preparedness to receive" includes the
27 ability of the relevant Indigenous Peoples and Local Communities to receive, store, restore and transmit
28 traditional knowledge and the development of local mechanisms for the protection and promotion
29 (including intergenerational transfer) of traditional knowledge and safeguard strategy.

30 45. Thus, indigenous Peoples and Local Communities seeking the repatriation of traditional
31 knowledge and/or related or complementary information should be prepared to receive returned
32 traditional knowledge and consider infrastructure³⁸ for holding and safe-keeping of returned traditional
33 knowledge.

35 This can be achieved through step one "Establish a team, inclusive of representatives of the relevant indigenous peoples and local communities".

36 The traditional knowledge being repatriated may include "related or complementary information"

37 These may include Parties, other Governments and other entities, including international organizations, museums, herbaria, botanical, and zoological gardens, databases, registers, gene-banks, etc.

38 Such as secure databases

46. Those Parties, governments, institutions and entities interested or engaged in repatriation are encouraged to support indigenous peoples and local communities to be prepared to receive traditional knowledge and related or complementary information that is returned to them.

8. *Recording, Documenting or Digitalizing Traditional Knowledge – Consideration of formats that Enable Repatriation*

47. Some institutions working with traditional knowledge and related or complementary information recommend the digitalization of collections, in order to facilitate repatriation whilst also allowing for retention of the information by the repatriating institution, as a back-up for safe keeping.³⁹

48. Good practices for repatriation may also include making collections and data freely available on-line, as well as facilitating access to collections not in digital format. Many entities holding traditional knowledge, such as museums, routinely provides for the free access to publically available traditional knowledge related to biodiversity.

49. While digitalisation may be useful, a number of issues have been raised under the Convention⁴⁰ with regard to the documentation of traditional knowledge, including its potential challenges and opportunities. Taking this into account, institutions and entities considering the digitalization of collections as an aid to repatriation, should do so with the effective participation of Indigenous Peoples and Local Communities, fully cognizant of both the challenges and benefits of documenting traditional knowledge.

50. Additionally, the Traditional Knowledge Documentation Toolkit of the World Intellectual Property Organization (WIPO)⁴¹ may also be relevant in this context as it provides essential information, including possible benefits and challenges, for Indigenous Peoples and Local Communities to consider when deciding whether or not they wish to pursue documentation of their knowledge.

B. SPECIAL CONSIDERATIONS

9. *Publicly Available Traditional Knowledge and Ongoing Use*

51. Repatriation of traditional knowledge and related or complementary information should facilitate the exchange of information, rather than limit or restrict it, while respecting the rights of the holders of such knowledge. Repatriation of traditional knowledge and related or complementary information should not impede the continued use of such publically available information by the Party, institution or entity that decides to repatriate it.

52. At the same time, where there is ongoing use of traditional knowledge, the user may wish to consider special measures to address benefit sharing, where this is feasible. These measures may include: compensation or benefit-sharing for ongoing use; encouragement for ongoing users to enter into mutually agreed terms for the equitable sharing on benefits and/or the return of copyright to the original knowledge holders; or the development of mechanisms for equitable sharing of benefits from traditional knowledge that was collected and used for a specific or ongoing period. In such instances, benefits should, to the largest extent possible, be appropriate to the cultural and social context and the needs and aspirations of the Indigenous Peoples and Local Communities concerned. Equitable benefit-sharing should also be

³⁹ For example, see: <http://aiatsis.gov.au/about-us>

⁴⁰ Refer to Decision VIII/5 B, which recommends to Parties and Governments to bear in mind that registers are only one approach to the protection of traditional knowledge, innovations and practices, and as such their establishment should be voluntary, not a prerequisite for protection. Registers should only be established with the prior informed consent of indigenous and local communities.

⁴¹ Available at: http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_toolkit_draft.pdf.

encouraged whenever traditional knowledge has been accessed and is used for either commercial or non-commercial purposes.⁴²

53. Further to the issue of benefit-sharing, the Conference of the Parties in its decision XIII/18 adopted the Mo'otz Kuxtal⁴³ **Voluntary Guidelines for Traditional Knowledge** which contains advice regarding benefit-sharing, which may be applicable also in the context of repatriation and continuing use.

54. Recalling that the nature of these guidelines is to enhance repatriation of traditional knowledge with the ultimate goal to repatriate and restore traditional knowledge relevant for conservation and sustainable use to the original knowledge holders, it is important that any discussions concerning benefit-sharing in the context of these guidelines does not detract from the overall benefit of repatriating and restoring knowledge, relevant for the conservation and sustainable use of biological diversity.

10. Secret or Sacred or Gender Specific Knowledge

55. Special considerations are needed for secret or sacred or gender specific knowledge by both repatriating institutions and entities and receiving communities. For instance, some materials in libraries, archives and information services are confidential or sensitive which may require certain restrictions on access for regulatory, commercial, security or community reasons.⁴⁴ Suitable management practices will depend on both the materials and the communities served by the organizations. Gender specific traditional knowledge and related information should be accessed by culturally appropriate persons and advice can be provided about this from the receiving communities.⁴⁵

C. MECHANISMS THAT MAY AID IN THE REPATRIATION OF TRADITIONAL KNOWLEDGE

11. Community-to-community exchanges

56. Commonly, *community-to-community exchanges* allow for communities who have retained their traditional knowledge to share it with other communities who have lost their traditional knowledge, and to do so in culturally appropriate ways.

57. Community-to-community exchanges for knowledge restoration are growing in popularity and success and can cover such issues as fire management, water management, community conservation areas, in situ- conservation (for traditional diets, human health and well-being), community resource mapping and monitoring, sustainable hunting management systems, cultural heritage activities, monitoring the health of species and habitats, compliance patrols and training and advising land and sea managers on strategies to strengthen the protection and management of protected areas.

58. Through community-to-community exchanges, communities with their traditional knowledge intact are encouraged to share and assist other communities in restoring their traditional knowledge, including in transboundary situations, and to do so in culturally appropriate ways.

59. Community-to-community exchanges to repatriate receive and restore traditional knowledge relevant to the conservation and sustainable use of biological diversity, are regarded as a best practice for repatriation and knowledge restoration. Those interested or engaged in repatriation are encouraged take this into consideration and where possible and appropriate, support such community driven initiatives.

⁴² Refer section on Lessons Learned section in UNEP/CBD/WG8J/8/5, paragraph 72

⁴³ Meaning “*roots of life*” in the Maya language

⁴⁴ Secret or sacred or sensitive indigenous and local community information should not be confused with material that may be considered offensive to indigenous and local communities.

⁴⁵ For instance, it may be culturally appropriate that women’s knowledge is only accessible to women.

60. Complimentary to community-to-community exchanges, are *traditional use agreements* between communities sharing common resources or ecosystems. Traditional use agreements can assist in ensuring a common understanding of customary laws, including related traditional knowledge, rights and obligations across different groups occupying a common area or ecosystem and/or sharing common natural or biological resources and by doing so assist in restoring traditional knowledge about sustainable use of common natural or biological resources and shared ecosystems. These agreements describe how each group will manage their natural resources, as well as their roles in compliance activities and monitoring environmental conditions. As such, traditional use agreements can contribute to the repatriation of traditional knowledge by communities themselves, with the goal to the restoration of knowledge systems across common ecosystems.

12. Knowledge Sharing Platforms

61. Parties, institutions and entities interested in repatriating knowledge and Indigenous Peoples and Local Communities may wish to consider *the establishment of national or local Knowledge Sharing Platforms* at relevant levels and scales, including community-based observation programmes aimed at improving the sustainable management of natural resources. These can assist communities who share common ecosystems and natural and biological resources, to have a common understanding of the relevant customary laws and traditional knowledge in order to ensure sustainable use.

62. Traditional knowledge along with community observations can inform management actions, such as changes to hunting and fishing seasons for certain species, changes to quotas for taking plants and animals to ensure sustainable use and amendments to local laws and by-laws such as imposing restrictions on fishing methods and allowable equipment.

63. Similarly international knowledge sharing platforms can contribute to sharing of traditional knowledge, innovations, practices and observations, allowing communities who may have lost the relevant knowledge to restore and use it in practical ways, contributing to the effective management and sustainable use of biological resources.

64. Knowledge sharing platforms at relevant scales developed with the effective participation of Indigenous Peoples and Local Communities can assist communities to exchange knowledge and information aimed at restoring traditional knowledge across shared ecosystems for the conservation and sustainable use of natural resources.
