



**CONVENTION ON
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AD HOC OPEN-ENDED INTER-SESSIONAL
WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE
CONVENTION ON BIOLOGICAL
DIVERSITY

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Item 6 of the provisional agenda*

**INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING: COLLABORATION
WITH THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-
SHARING AND PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES.**

Note by the Executive Secretary

I. INTRODUCTION

1. The present document provides background information with respect to the negotiation of an international regime on access and benefit-sharing and its relationship to the issue of traditional knowledge in light of decisions VIII/4 and VIII/5 of the Conference of the Parties, as well as previous decisions of the Conference of the Parties.

II. BACKGROUND

2. In its decision VII/19 D, the Conference of the Parties, at its seventh meeting, decided:

“[T]o mandate the Ad Hoc Open-ended Working Group on Access and Benefit-sharing with the collaboration of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, ensuring the participation of indigenous and local communities, non-governmental organizations, industry and scientific and academic institutions, as well as intergovernmental organizations, to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing with the aim of adopting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and the three objectives of the Convention.” (emphasis added)

* UNEP/CBD/WG8J/5/1.

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3. In paragraph 6 of the same decision, the Conference of the Parties encouraged “Parties, Governments, international organizations and all relevant stakeholders to provide the ways and means to allow for sufficient preparation and to facilitate effective participation of indigenous and local communities in the process of the negotiation and elaboration of an international regime” and also recommended “the promotion of the participation of all relevant stakeholders, including non-governmental organizations and the private sector, and indigenous and local communities”.

4. In paragraph 2 of the same decision, the Conference of the Parties also recommended that the Working Group on Access and Benefit-sharing should operate in accordance with the terms of reference contained in the annex to the decision. These terms of reference address the process, nature, scope and elements to be considered for inclusion in the international regime.

5. The scope includes “traditional knowledge, innovations and practices in accordance with Article 8(j)”.

6. In addition, among the elements to be considered for inclusion in the international regime listed in section (d) of the terms of reference, the following relate to traditional knowledge:

- (x) Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j);
- (xiii) Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge;
- (xiv) Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights
- (xv) Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located.
- (xvi) Customary law and traditional cultural practices of indigenous and local communities;
- (xviii) Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities;”

7. At its eighth meeting, the Conference of the Parties considered the issue of collaboration between the Working Group on Article 8(j) and Related Provisions and the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, as well as the participation of indigenous and local communities with respect to the international regime on access and benefit-sharing, and adopted decision VIII/5 C on the subject.

8. In paragraph 1 of this decision, the Conference of the Parties requested “the collaboration and contribution of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions to the fulfilment of the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing by providing views on the elaboration and negotiation of an international regime on access and benefit-sharing relevant to traditional knowledge, innovations and practices associated with genetic resources and to the fair and equitable sharing of benefits arising from their utilization”. It further requested “the Executive Secretary to compile these views and make them available to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing before its sixth meeting”.

9. In light of the above, the Working Group on Article 8(j) and Related Provisions, at its fifth meeting, is invited to provide views on the elaboration and negotiation of the international regime on access and benefit-sharing as it relates to traditional knowledge. The views expressed will then be transmitted to the Working Group on Access and Benefit-sharing for consideration at its sixth meeting.

10. To assist in the deliberations, the Working Group may wish to take into consideration a number of initiatives regarding indigenous and local communities and access to genetic resources and benefit sharing. These include the report of the international expert group meeting on the international regime on access and benefit-sharing and indigenous peoples' human rights of the Convention on Biological Diversity (E/C.19/2007/8), organized by the United Nations Permanent Forum on Indigenous Issues (reproduced as information document UNEP/CBD/WG8J/5/INF/9), ^{1/} the report of the second meeting of the Advisory Group on Article 8(j) and related provisions (UNEP/CBD/WG8J/5/INF/11) and the most recent recommendations made by the sixth session of the United Nations Permanent Forum on Indigenous Issues (UNEP/CBD/WG8J/5/12).

11. In particular, the report of the Permanent Forum's International Expert Group Meeting on the Convention on Biological Diversity's International Regime on Access and Benefit-Sharing and Indigenous Peoples' Human Rights, held in New York from 17 to 19 January 2007 (UNEP/CBD/WG8J/5/INF/10) provides an overview of the issues discussed at the meeting including elements of customary law vested in traditional knowledge, indigenous peoples' participation in decision-making, relevant human rights treaties, existing and other emerging instruments that are applicable to traditional knowledge, and comments on the proposed certificate of origin, source or legal provenance for genetic resources. The report also provides both general and specific recommendations to assist in the development of an international regime.

12. The report of the second meeting of the Advisory Group on Article 8(j) recommends that task 7 of the programme of work for Article 8(j) regarding the equitable sharing of benefits (decision V/16, annex II), be addressed as part of the discussions on access and benefit-sharing and notes that a decision on commencing this task is yet to be made by the Conference of the Parties. Addressing this task would provide the Working Group with an opportunity for in-depth discussions related to access and benefit-sharing (linked to tasks 1, 2 and 4). The report also notes that, among other things, as a general principle "the 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" is a necessary requirement for achieving the objectives ^{2/} of the programme of work and notes that this applies equally to the Article 8(j) issues related to the negotiations and development of an international regime on access and benefit sharing.

13. Recommendations made to the Convention by the sixth session of the United Nations Permanent Forum on Indigenous Issues are taken up in a separate note by the Executive Secretary (UNEP/CBD/WG8J/5/12). In particular, the Forum recommendations specifically address the issues of access and benefit sharing of genetic resources, as well as the protection of traditional knowledge and the development of *sui generis* systems. The advice of the Permanent Forum may be a useful aid in addressing indigenous and local community issues in the negotiation and development of an international regime.

^{1/} This report E/C.19/2007/8 is available in all six United Nations languages at <http://www.un.org/esa/socdev/unpfii/index.html>

^{2/} Decision V/16, annex, Objectives: "The objective of the programme of the programme of work is to promote within a framework of the Convention, a just implementation of Article 8(j) and related provisions, at local, national and regional levels and to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation."