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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

Eleventh meeting
Montreal, Canada, 20-22 November 2019
Agenda item 5

RECOMMENDATION ADOPTED BY THE WORKING GROUP

11/2. Development of a new programme of work and institutional arrangements on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities

The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions

1. *Recommends* that the Co-Chairs of the Ad Hoc Open-ended Working Group on the Post-2020 Global Biodiversity Framework take note of the outcomes of the Global Thematic Dialogue for Indigenous Peoples and Local Communities on the Post-2020 Global Biodiversity Framework¹ in the development of the post-2020 global biodiversity framework;
2. *Requests* the Executive Secretary to make annex II available for peer review, and to make the results of the peer review available to the ad hoc technical expert group envisaged in paragraph 7 of the draft decision that appears below, should it be established;
3. *Recommends* that the Conference of the Parties at its fifteenth meeting adopt the draft decision that appears below.

DEVELOPMENT OF A NEW PROGRAMME OF WORK AND INSTITUTIONAL ARRANGEMENTS ON ARTICLE 8(J) AND OTHER PROVISIONS OF THE CONVENTION RELATED TO INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

A. Ways and instruments for achieving full integration of Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities in the work of the Convention and its Protocols, with full and effective participation of indigenous peoples and local communities and aiming at enhancing efficiencies, coherence and coordination

The Conference of the Parties,

Recalling decision V/16, in which it established the programme of work on Article 8(j) and related provisions, and decision X/43,² in which it revised the multi-year programme of work for 2010-2020,

¹ See CBD/POST2020/WS/2019/12/2, annexes I and II.

² In [decision X/43](#), the Conference of the Parties adopted a revised multi-year programme of work on Article 8(j), retiring completed or superseded tasks 3, 5, 8, 9 and 16.

Recognizing the need for a more holistic, forward-looking and integrated programme of work, taking into account the Sustainable Development Goals,³ the Paris Agreement⁴ and the post-2020 arrangements for the Convention,

Building on the composite report on the status and trends of traditional knowledge and the voluntary guidelines, standards and other tools already developed by the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions and adopted by the Conference of the Parties,⁵

Emphasizing the need for the effective implementation in accordance with national legislation and circumstances and international obligations, as appropriate, of the voluntary guidelines and standards related to Article 8(j) and related provisions at the national level in order to build on the progress made towards Aichi Biodiversity Target 18 of the Strategic Plan for Biodiversity 2011-2020, and to contribute to the corresponding elements in the post-2020 global biodiversity framework,

1. *Decides* to develop a new programme of work on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities aligned with the post-2020 global biodiversity framework, with the full and effective participation of indigenous peoples and local communities, on the basis of annex I and annex II⁶ to the present decision;

2. *Also decides* to keep under review the programme of work on Article 8(j) and related provisions as needed, and reprioritize elements and tasks, in order to ensure a programme of work, supportive of a human rights approach and coherent with the priorities of the post-2020 global biodiversity framework, which takes into account developments in other relevant international forums and organizations;

3. *Encourages* Parties, according to national legislation, to increase efforts to facilitate the full and effective participation of indigenous peoples and local communities as on-the-ground partners in the implementation of the Convention, including by recognizing, supporting and valuing their customary laws, collective actions, including their efforts to protect and conserve lands and waters that they traditionally occupy or use towards the goals of the Convention, and engaging them, as appropriate, in the preparation of national reports, in the revision and implementation of national biodiversity strategies and action plans, and in the process for implementing the post-2020 global biodiversity framework for the Convention;

4. *Requests* Parties and other Governments to report on the implementation of the new programme of work on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities, including the application of the various voluntary guidelines and standards developed under the aegis of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions and adopted by the Conference of the Parties, as appropriate, through national reports, and to relevant subsidiary bodies, in order to determine progress made;

5. *Invites* Parties, as per decision X/40 B, paragraph 7, to consider designating national focal points for Article 8(j) and related provisions in support of existing national focal points, to facilitate and disseminate culturally appropriate communications with indigenous peoples and local community organizations, and to promote the effective development and implementation of the programme of work on Article 8(j) and related provisions;⁷

³ See General Assembly resolution [70/1](#), entitled “Transforming our world: the 2030 Agenda for Sustainable Development”.

⁴ See United Nations Framework Convention on Climate Change, Conference of the Parties, twenty-first session, decision 1/CP.21 ([FCCC/CP/2015/10/Add.1](#)).

⁵ See [decision VII/16](#).

⁶ As requested by the Working Group, annex II will be peer reviewed, and the results will be made available to the ad hoc technical expert group established by paragraph 7 of the present draft decision.

⁷ As of June 2019, 38 countries have designated a national focal point on traditional knowledge.

6. *Requests* the Executive Secretary, subject to the availability of resources, to strengthen and support the network of national focal points on traditional knowledge and on the post-2020 global biodiversity framework, enabling them to play a key role at the national level in such areas as (a) national and subnational arrangements for the full and effective participation of indigenous peoples and local communities, (b) national arrangements for the protection, preservation and promotion of traditional knowledge and customary sustainable use, with the “prior informed consent”, “free, prior and informed consent” or “approval and involvement” of the holders of that knowledge, (c) facilitating the input of indigenous peoples and local communities into the drafting of national reports, and (d) promoting capacity-building for indigenous peoples and local communities at the national and local levels, on issues related to the Convention;

B. Institutional arrangements for indigenous peoples and local communities

7. [*Recalling* decision 14/17, requests the Executive Secretary to convene an ad hoc technical expert group on indigenous peoples and local communities and the post-2020 global biodiversity framework, subject to availability of financial resources, which shall meet prior to the twelfth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, with terms of reference as contained in annex III to the present decision, to provide advice on the further elaboration of the new programme of work and the mandate and modus operandi of the [working group] [subsidiary body] [integration into the subsidiary bodies] on Article 8(j) and related provisions;]

8. *Requests* the Executive Secretary, in consultation with relevant organizations, to support the work of the Ad Hoc Technical Expert Group as outlined in paragraph 7;

9. *Decides* to continue the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions until the sixteenth meeting of the Conference of the Parties [with the intention to establish a permanent institutional arrangement on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities to be decided on at the sixteenth meeting of the Conference of the Parties];

10. *Requests* the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its twelfth meeting to further elaborate the new programme of work on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities, taking into account the recommendations of the ad hoc technical expert group.

Annex I

**DRAFT OBJECTIVES, GENERAL PRINCIPLES, AND ELEMENTS OF WORK FOR THE
NEW PROGRAMME OF WORK ON ARTICLE 8(J) AND OTHER PROVISIONS OF THE
CONVENTION RELATED TO INDIGENOUS PEOPLES AND LOCAL COMMUNITIES
2020-2050**

I. OBJECTIVE

1. The objective of this programme of work is to promote, within the framework of the Convention, a just implementation of Article 8(j) and related provisions at the local, national, regional and international levels and to ensure the full and effective participation of indigenous peoples and local communities at all stages and levels of its implementation, ensuring an ongoing recognition of the unique association that indigenous peoples and local communities have with the Convention and its Protocols.

II. GENERAL PRINCIPLES

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

3. Traditional knowledge, innovations and practices should be valued, given the same respect and considered as useful and necessary as other forms of knowledge. **[Genuine collaborations and co-production of knowledge in ways that respect the knowledge generation processes and the integrity of each knowledge system should be promoted. The inclusion of knowledge from the diversity of knowledge systems and practices should be mainstreamed in the development and implementation of biodiversity policies.]**

4. A holistic approach consistent with the spiritual and cultural values and customary practices of the indigenous peoples and local communities **recognizing the connection to [their territories]** and their rights, in accordance with relevant national legislation, to have control over their traditional knowledge, innovations and practices.

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

6. Access to traditional knowledge, innovations and practices held by indigenous peoples and local communities should be subject to “prior and informed consent”, “free, prior and informed consent” or “approval and involvement” of indigenous peoples and local communities, depending on national circumstances, and on a fair and equitable share of benefits arising from the use and application of such knowledge, innovations and practise based on mutually agreed terms and in accordance with domestic law.

7. The implementation of the new programme of work on Article 8(j) will be monitored continuously through the indicators for status and trends in traditional knowledge,⁸ adopted under the earlier programme of work, and their further operationalization will also be continued under the renewed joint programme of work on the links between biological and cultural diversity, in partnership with the United Nations Educational, Scientific and Cultural Organization and other relevant bodies.

⁸ The adopted indicators for traditional knowledge are: trends in land-use change and land tenure in the traditional territories of indigenous and local communities (decision X/43); trends in linguistic diversity and numbers of speakers of indigenous languages (decisions VII/30 and VIII/15); trends in the practice of traditional occupations (decision X/43); trends in which traditional knowledge and practices are respected through their full integration, safeguards and full and effective participation of indigenous and local communities in the national implementation of the Strategic Plan.

*Annex II***DRAFT POSSIBLE ELEMENTS OF THE NEW PROGRAMME OF WORK ON ARTICLE 8(J)
AND OTHER PROVISIONS OF THE CONVENTION RELATED TO INDIGENOUS PEOPLES
AND LOCAL COMMUNITIES****I. SUSTAINABLE USE**

[To promote the sustainable use of biological diversity, including the customary sustainable use of wildlife and traditional food production practices and agriculture systems

Suggested activities:

- 1.1 Develop voluntary guidelines to incorporate customary sustainable use practices or policies, with the full and effective participation of indigenous peoples and local communities as appropriate, into national biodiversity strategies and action plans.
- 1.2 Develop voluntary guidelines to promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c) and enhance customary sustainable use of biological diversity.
- 1.3 Identify and promote best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives).
- 1.4 Develop proposals to support indigenous peoples and local communities in on-farm and in situ conservation.
- 1.5 Develop communication, education and public awareness materials on the value and contributions of indigenous, local and traditional food systems, and on these systems and their products and their advantages for human health and biodiversity.
- 1.6 In accordance with national legislation and international obligations, encourage indigenous peoples and local communities to register their existing practices with the appropriate international mechanisms and initiatives, such as the Globally Important Agricultural Heritage Systems (GIAHS) of the Food and Agriculture Organization of the United Nations (FAO), as well as the programmes implemented by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the Satoyama Initiative, to assist in transmission to future generations in appropriate and respectful ways.
- 1.7 Develop guidance to promote indigenous concepts of diverse agroforestry systems in areas adjacent to protected areas.]

II. CONSERVATION AND RESTORATION

[To promote and support the conservation, protection and restoration of biological diversity by indigenous peoples and local communities

Suggested activities:

- 2.1 Develop voluntary guidelines, with the full and effective participation of indigenous peoples and local communities to strengthen the policy framework for community-based conservation, protection and restoration practices led by indigenous peoples and local communities, such as indigenous and community conserved areas (ICCAs) or traditional sacred sites.
- 2.2 Develop voluntary guidelines to facilitate, as appropriate, the integration of ICCAs into national networks of protected areas by appropriately recognizing ICCA territories and strive for the full and effective participation of indigenous peoples and local communities in protected area management.
- 2.3 Develop voluntary guidelines to promote and support, subject to national legislation, traditional land-use change and land tenure by indigenous peoples and local communities and identify and promote

best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives) and their implementation.

- 2.4 Promote indigenous peoples and local communities, without formal access to land, to partner in the conservation, protection and restoration of biodiversity.
- 2.5 Develop voluntary guidelines to operationalize the indicator on land-use change and land tenure⁹ in the lands and waters of indigenous peoples and local communities, traditionally used or occupied as appropriate, including by mapping existing ICCAs, documenting legislation and recognition of indigenous peoples land tenure rights and collective actions of indigenous peoples and local communities contributing to the protection of biodiversity, and report on progress made.]

III. SHARING OF BENEFITS FROM GENETIC RESOURCES

[To promote the fair and equitable sharing of benefits arising from the use of genetic resources associated with traditional knowledge

Suggested activities:

- 3.1 Develop voluntary guidelines and mechanisms to support Parties as appropriate, in the implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, regarding the traditional knowledge of indigenous peoples and local communities through capacity-building (regarding prior and informed consent (PIC), mutually agreed terms (MAT), and equitable sharing of benefits and biocultural community protocols as well as through legal, policy, or technical assistance, in accordance with national legislation.
- 3.2 Promote and strengthen programmes aimed at valorization of genetic resources associated with traditional knowledge.
- 3.3. Promote and support programmes aimed at ensuring the development of databanks/databases on the use of genetic resources associated with traditional knowledge.
- 3.4 Promote programmes that encourage collaboration and partnerships between indigenous peoples and local communities and the users of genetic resources associated with traditional knowledge.
- 3.5 Identify opportunities for capacity development for indigenous peoples and local communities and for dialogue with external stakeholders, taking into account the cultural and organizational contexts, and adjusted to *sui generis* governance structures.
- 3.6 Identify opportunities for capacity development for indigenous peoples and local communities, and create platforms for information exchange between indigenous peoples and local communities and Parties, as well as for dialogue with external stakeholders.]

IV. KNOWLEDGE AND CULTURE

[To support the transmission of traditional knowledge and ensure that traditional knowledge and other knowledge systems are valued equally

Suggested activities:

- 4.1 Develop proposals to support indigenous peoples and local communities, to strengthen the transmission and use of traditional knowledge, including by enabling them to explore collection, recording, documentation, storage and ways and means for the dissemination of indigenous and local knowledge, through secure indigenous knowledge systems' documentation centres, and strengthen the use and transmission of traditional knowledge to future generations, including for the goals of the

⁹ References to "land" include both lands and waters traditionally occupied or used by indigenous peoples and local communities.

Convention and to contribute to other international processes, with “prior and informed consent”, “free, prior and informed consent”, or “approval and involvement” of indigenous peoples and local communities depending on national circumstances.

- 4.2 Promote the Joint Programme of Work (CBD, UNESCO, IUCN and partners) on the Links Between Biological and Cultural Diversity (nature and cultures).
- 4.3 Promote the inclusion of traditional knowledge and indigenous and local knowledge systems as equally valid in the work of the Subsidiary Body on Scientific, Technical and Technological Advice.
- 4.4 Develop voluntary guidelines to promote the mainstreaming of inclusion of traditional knowledge, as an equally valid part of the broader mainstreaming of biodiversity across society and sectors of production, as well as other relevant global processes, including the Sustainable Development Goals.]

V. PROTECTION OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES AND TRADITIONAL KNOWLEDGE INNOVATIONS AND PRACTICES, INCLUDING THROUGH APPLICATION OF GUIDELINES AND STANDARDS, AND FURTHER ADVANCEMENT OF ARTICLE 8(J) AND RELATED PROVISIONS

- [5.1 In accordance with national legislation and with the full and effective participation of indigenous peoples and local communities to promote the application, and monitoring of the following:
- (a) The Akwé: Kon Voluntary Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities;¹⁰
 - (b) The Tkarihwaïé: ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities;¹¹
 - (c) The Global Plan of Action on the Customary Sustainable Use of Biological Diversity;¹²
 - (d) The Mo’otz kuxtal¹³ Voluntary Guidelines for the development of mechanisms, legislation, or other appropriate initiatives to ensure the “prior and informed consent”, “free, prior and informed consent” or “approval and involvement”, depending on national circumstances, of indigenous peoples and local communities¹⁴ for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge;¹⁵
 - (e) The Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge Relevant for the Conservation and Sustainable Use of Biological Diversity.¹⁶

¹⁰ Adopted in [decision VII/16](#).

¹¹ Adopted in [decision X/42](#).

¹² Adopted in decision XII/12 [B](#), contained in the annex.

¹³ Meaning “roots of life” in the Mayan language.

¹⁴ The use and interpretation of the term “indigenous peoples and local communities” in these Guidelines should refer to [decision XII/12 F](#), paragraphs 2 (a), (b) and (c).

¹⁵ Adopted in [decision XIII/18](#). The adoption of the Mo’otz kuxtal voluntary Guidelines has also advanced the work being pursued by the Working Group on *sui generis* systems for the protection of traditional knowledge, innovations and practices of indigenous peoples and local communities by highlighting the potential role of community protocols and procedures for access to traditional knowledge.

¹⁶ Adopted in decision 14/2.

Consider the promotion of other principles, standards and guidelines within the context of the Convention on Biological Diversity.

- 5.2 Promote the implementation of the Gender Plan of Action, as appropriate, emphasizing the effective participation of indigenous peoples and local communities, and taking into account the special role of gender in the generation, transmission and protection of traditional knowledge, in accordance with national realities, circumstances and capacities.¹⁷
- 5.3 Explore, in collaboration with the United Nations Inter-Agency Support Group on Indigenous Peoples' Issues and appropriate agencies, ways to recognize, support and promote, as appropriate, traditional land tenure and secure land tenure for indigenous peoples and local communities.¹⁸
- 5.4 Explore, in collaboration with the United Nations Inter-Agency Support Group on Indigenous Peoples' Issues and appropriate agencies, ways to promote a human rights-based approach in conservation efforts.
- 5.5 Explore, in collaboration with the United Nations Inter-Agency Support Group on Indigenous Peoples' Issues and appropriate agencies, ways to protect environmental defenders from arbitrary persecution, through appropriate mechanisms at the national and international levels.¹⁹
- 5.6 Building on the guidelines and standards²⁰ aimed at the national level, the previous work on *sui generis* systems, and taking into account the safeguards framework, the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions, to develop a comprehensive safeguards framework (decisions XII/3 and 14/15) for indigenous peoples and local communities and the promotion and management of their traditional knowledge, innovations and practices related to the conservation of biological diversity and the sustainable use of its components with the effective participation of indigenous peoples and local communities.]

VI. FULL AND EFFECTIVE PARTICIPATION OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

- [6.1 Facilitate the full and effective participation of indigenous peoples and local communities in the work of the Convention on Biological Diversity, regarding their traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity including through implementing the enhanced participation mechanisms used by the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions and by maintaining the voluntary fund funding mechanism to support their effective participation in meetings held under the Convention and its Protocols.
- 6.2 Parties, according to the national legislation, to promote full and effective participation and engagement of indigenous peoples and local communities in the development of national reports, and in the development, revision and implementation of national biodiversity strategies and action plans (NBSAPs), and to strengthen partnerships with indigenous peoples and local communities, recognizing their collective actions, for implementation of the Convention.
- 6.3 Collaborate with other relevant global processes, including but not limited to the United Nations Permanent Forum on Indigenous Issues (UNPFII), the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), the Intergovernmental

¹⁷ See decision XII/7.

¹⁸ References to "traditional tenure" include lands and waters.

¹⁹ See Office of the United Nations High Commissioner for Human Rights:
<https://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx>

²⁰ List of adopted guidelines and standards.

Panel on Climate Change (IPCC), and the United Nations Framework Convention on Climate Change (UNFCCC) with its recently established Local Communities and Indigenous Peoples Platform, as well as the International Union for Conservation of Nature (IUCN).

- 6.4 Report to the Secretary-General of the United Nations on matters falling within the mandate of the Convention on Biological Diversity in accordance with the [system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples](#).
- 6.5 Explore, in collaboration with Parties and indigenous peoples and local communities and other engaged actors, how the methodological guidance for identifying, monitoring and assessing the contribution of the collective actions of indigenous peoples and local communities, through the resource mobilization reporting framework, can best be applied, including the use of qualitative values and methods as requested by the Conference of the Parties in [decision 14/16](#);
- 6.6 Explore ways and means, partnerships and opportunities to mobilize financial resources for on-the-ground implementation of the Convention by indigenous peoples and local communities, as well as to contribute to other international processes.]

[Annex III]

TERMS OF REFERENCE FOR THE AD HOC TECHNICAL EXPERT GROUP ON THE POST-2020 NEW PROGRAMME OF WORK AND INSTITUTIONAL ARRANGEMENTS ON ARTICLE 8(J) AND OTHER PROVISIONS OF THE CONVENTION RELATED TO INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

1. The ad hoc technical expert group on the post-2020 new programme of work and institutional arrangements on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities shall:

(a) Further elaborate possible elements, tasks and actors of a new post-2020 programme of work on Article 8(j) and other provisions related to indigenous peoples and local communities based on annexes I and II of the present recommendation, as well as the results of the peer review referred to in recommendation 11/2 of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions ensuring alignment with the post-2020 global biodiversity framework;²¹

(b) Elaborate options for institutional arrangements and their modus operandi that would allow for the full and effective participation of indigenous peoples and local communities in the work of the Convention, including information on legal, organizational, and financial implications of each option and taking into consideration the rules of procedure of the Convention;

(c) Prepare a report on the outcomes of its work for consideration by the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its twelfth meeting.

2. The ad hoc technical expert group will be constituted according to the modus operandi of the Subsidiary Body on Scientific, Technical and Technological Advice, adjusted to ensure full participation of indigenous peoples and local communities, including three experts per region nominated by Parties, two representatives of indigenous peoples and local communities from each of the seven geocultural regions recognized by the United Nations Permanent Forum on Indigenous Issues, as well no more than six other organizations.]²²

²¹ Expected to be adopted by the Conference of the Parties at its fifteenth meeting.

²² Annex III is bracketed pending resolution of paragraph 7 of the draft decision.