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DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS
Division for Social Policy and Development
Secretariat of the Permanent Forum on Indigenous Issues

INTERNATIONAL WORKSHOP ON TRADITIONAL KNOWLEDGE

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The Convention on Biological Diversity and Traditional Knowledge

Conference Room Paper for The Working Group on Indigenous Populations
23rd session (18-22 July 2005)

Contribution of the Secretariat of the Convention on Biological Diversity

1. The Secretariat of the Convention on Biological Diversity, presents its compliments to the distinguished members of the WGIP and noting that the theme of the 23rd session of the WGIP is “Indigenous peoples and the international and domestic protection of traditional knowledge”, offers the following information to assist in informed discussions and to raise awareness of the role of the CBD plays in the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity
2. The Convention on Biological Diversity was opened for signature in 1992 and entered into force in December 1993. To date 188 parties have ratified the Convention.
3. In the Convention on Biological Diversity (CBD), the international community acknowledged the close and traditional dependence of many indigenous and local communities on biological resources, the vital role that these resources play in their lives and livelihoods, and the important contribution that traditional knowledge can make to the conservation and sustainable use of biological diversity.
4. The Conference of Parties has recognized that the Convention on Biological Diversity is the primary international instrument with the mandate to address issues regarding the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity (Decision VI/10, preambular paragraph 8).
5. The Parties to the CBD have taken steps to comply with these commitments. The Conferences of the Parties (COP), established a subsidiary body - the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions- to address these issues and to develop an ambitious programme of work, which was adopted by the COP in 2000 and provides the basis for action on traditional knowledge within the framework of the Convention.

The Work of the Convention on Biological Diversity on traditional-biodiversity related knowledge and the Ad Hoc Open-Ended Working Group on Article 8(j) and relevant provisions.

6. The 188 Parties to the CBD are “conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.” Therefore, the interdependent relationship between biological and cultural diversity constitutes an integral part of the work of the Convention.

7. The CBD contains a number of provisions of particular importance to indigenous peoples. The main provision is Article 8(j) in which Parties undertake to respect, preserve and maintain the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity. They also undertake to promote the wider application of such knowledge, innovations and practices with the approval and involvement of the indigenous peoples concerned. Article 8(j) also requires that benefits arising from the application of traditional knowledge, innovations and practices should be shared equitably with the indigenous communities concerned.

8. The Parties to the CBD have taken steps to comply with these commitments. The Conferences of the Parties (COP)- the Convention's supreme decision-making body, composed of all the governments that have ratified the convention-¹ established a subsidiary body - the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions- to address these issues and to develop an ambitious programme of work, which was adopted by the Conference of the Parties in 2000 and provides the basis for action on traditional knowledge within the framework of the Convention.²

9. The Working Group was mandated to oversee the implementation of the programme of work, which focuses on the following issues:

- The effective participation and involvement of indigenous and local communities in policy development and decision-making relating to the use of their traditional knowledge and practices relevant to the conservation and sustainable use of biological diversity;
- The development of mechanisms and legislation to foster the effective participation of indigenous and local communities in decision-making policy, policy planning and development and implementation of the conservation and sustainable use of biological diversity at all levels;
- The preparation of a composite report on the status and trends regarding traditional knowledge of indigenous and local communities;
- The development of guidelines on environmental, cultural and social impact assessment for developments proposed to take place on sacred sites and on lands and waters occupied by indigenous and local communities; and
- The development of guidelines on the sharing of benefits arising from the utilization of traditional biodiversity-related knowledge and innovations.

¹ There have been seven COP meetings to date. The last COP meeting (Seventh Ordinary Meeting of the Conference of the Parties to the CBD) was held in Kuala Lumpur, Malaysia, from 9-20 February 2004. The next meeting of the Conference of the Parties will take place in Brazil (8-19 May 2006).

² The Programme of Work on Article 8(j) and related provisions is contained in the Annex to decision V/16. Decisions VI/10 and VII/16 further develop the work program. All are available at <http://www.biodiv.org/decisions/>

- The development of elements of *sui generis* systems for the protection of traditional knowledge;
 - In addition, traditional knowledge is an important component of the thematic programmes of work on agricultural biodiversity, forest biological diversity, marine and coastal ecosystems, inland waters, and dry and sub-humid lands established by the Conference of the Parties to the Convention.
10. The Working Group on Article 8(j) has held three meetings, made preliminary assessments of the status of traditional knowledge protections and taken steps to involve members of indigenous and local communities in the CBD process.

Below is a brief summary of our ongoing work:

Akwé: Kon Voluntary Guidelines

11. The COP has been actively considering the question of the preservation of sacred sites and lands and waters occupied by indigenous and local communities. In February 2004, COP 7 adopted 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 on lands and waters traditionally occupied or used by indigenous and local communities, known as the “Akwé: Kon Guidelines.”

12. The Akwé: Kon Voluntary Guidelines provide guidance to Governments on the incorporation of cultural, environmental and social considerations of indigenous and local communities into new or existing impact assessment procedures. The COP requested governments to use these guidelines whenever developments are proposed to take place on, or are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.

International Regime on Access and Benefit –Sharing and Indigenous Participation

13. The Working Group on Access and Benefit Sharing has been mandated, to elaborate and negotiate with the collaboration of the Working Group on Article 8(j), an international regime on access and benefit-sharing to effectively implement the concepts of prior informed consent for access to genetic resources and of arrangement for the fair and equitable sharing of the benefits derived from the utilisation of genetic resources.

14. The results of the deliberations of the Working Group at its meetings, in February 2005 and February 2006, will be submitted for consideration by the COP at its eight meeting, to be held in Brazil in March 2006. Noting the importance of indigenous participation, the CBD has secured funding to ensure an adequate level of participation by indigenous representatives in these meetings, until the established Voluntary Fund is operational after COP 8.

Composite Report on the status and trends regarding the knowledge, innovation and practices of indigenous and local communities

15. The work programme provides for the preparation of a composite report on the status and trends of traditional knowledge. The main objective is to identify the status and trends regarding the retention or loss of traditional knowledge, as well as the causal factors that underpin these trends.

16. The first phase of the composite report dealing with status and trends (and its regional components Latin America, Asia, Europe, North America and Africa) were submitted to the third meeting of the Ad Hoc Working Group on article 8 (J) and related provisions and, subsequently, to the seventh meeting of the Conference of the Parties, in February 2004 (these reports are available on the Secretariat website)³.

17. In general the reports acknowledge the loss of traditional knowledge and emphasize the relative scarcity of examples of measures and initiatives specifically designed to protect, promote and facilitate the use of traditional knowledge.

18. In February 2004, the Conference of the Parties requested that work be initiated immediately on phase II of the composite report, laying emphasis on the identification of national processes and processes at the local community level that may threaten the maintenance, preservation and application of traditional knowledge, innovations and practices, through national focal points and in consultation with the indigenous and local communities.⁴ The Secretariat has recruited consultants to prepare phase II of the composite report, and its components, which include regional reports and a review of the usefulness of registries. The composite report will be complemented by a draft programme of action to promote and protect traditional knowledge, which will include possible indicators for traditional knowledge retention. This document will be submitted to the 4th meeting of the Ad Hoc Open-ended working group on Article 8(j) in January 2006. It is envisaged that the Working Group for Article 8 (j), will use this submission as a basis for making recommendations for consideration by the 8th Meeting of the Conference of the Parties (March 2006), regarding the establishment of indicators.

19. Indigenous and local communities were invited (Notification 2004-049) to undertake field studies and to communicate their views to the Secretariat on the above-mentioned issues not later than 31 May 2005 to ensure that their views are adequately reflected in phase two of the composite report.

20. The CBD is committed to working with indigenous and local communities and contribute to capacity-building for indigenous peoples. Indigenous and local communities are involved in the formulation and review of our studies through consultancies and now also through the Advisory Group/Steering group that was recently

³ Website: www.biodiv.org

⁴ See Decision VII/16 E, Working Group on Article 8(j) and Related Provisions. Available at <http://biodiv.org/decisions/>

created. This body, in which indigenous and local communities are represented will assist in the completion of the composite report and undertake a peer review of the revised version, in consultation with indigenous peoples and local community organizations that have participated in the work of the Convention.

Sui generis systems of protection based on customary laws of indigenous peoples

21. The Working Group on Article 8(j) will consider the issue of *sui generis* systems at its next meeting in the first quarter of 2006. To prepare for this, the Secretariat is in the initial phase of reviewing relevant material regarding *sui generis* systems and in relation to the other topics above-mentioned. Indigenous and local communities and relevant organizations were invited (Notification 2004-049) to communicate to the Secretariat any relevant information on existing *sui generis* systems, as well as their views and suggestions on the issues mentioned above no later than 31 May 2005 to ensure they are taken into account in the preparation of documentation regarding *sui generis* systems of protection for the next meeting of the Working Group on Article 8(j).

Workshop “Indigenous women, traditional knowledge and the Convention on Biological Diversity” and Mainstreaming of Gender Issues⁵

22. This request of the UNPFII will be submitted to the Working Group on Article 8(j) at its next meeting (January 2006), which is expected to make recommendations to COP 8. However, one of the general principles of the Programme of Work on Article 8(j) and Related Provisions includes the “Full and effective participation of women of indigenous and local communities in all activities of the programme of work”. Consequently it is important that indigenous women be active participants in developing and implementing the programmes of work and decisions of the CBD.

23. As part of the work on the composite report, COP-7 requested (decision VI/10 C, paragraph 11, reaffirmed in decision VII/16 E) that regional workshops be held to ensure the full participation of indigenous and local communities, particularly women, in the preparation of the report on status and trends of traditional knowledge relevant to biological diversity. The Secretariat organized regional workshops in the first half of 2005 for Africa, Asia, and Latin America, Central America, and the Caribbean, paying particular attention to the participation of indigenous women.

24. The SCBD also participated in a training and capacity-building workshop for indigenous women in partnership with the UNPFII, Tebtebba Foundation and the Asia Indigenous Peoples Pact, prior to the 3rd Session of the UNPFII in 2004 and tentative plans are in place to hold other training and capacity building workshops for indigenous peoples and specifically for indigenous women as part of the ongoing programme of work for Article 8(j).

⁵ Recommendation 1, Indigenous Women, paragraph 11 and Recommendation 6, Environment, paragraph 75 (PFII Report on the Third Session, 10-21 May 2004).

Workshop on Cultural, Environmental and Social Impact assessments based on the Akwé: Kon Voluntary Guidelines aimed at further strengthening the understanding of the link between environment and cultural diversity⁶:

25. At its second session, the Permanent Forum on Indigenous Issues (PFII) recommended, *inter alia*, “that United Nations bodies, in particular the Convention on Biological Diversity, in coordination with the World Bank, UNDP, FAO, IFAD and UNEP, organize a workshop on protecting sacred places and ceremonial sites of indigenous peoples with a view to identifying protective mechanism and instituting a legal framework that make cultural, environmental and social impact assessments studies mandatory and ensure the environmental accountability of economic, social and environmental projects that are proposed on sacred sites and on lands, territories and waters traditionally occupied or used by indigenous peoples.”

26. This workshop was requested by COP-7 (decision VII/16 I) acting upon the request from the Permanent Forum on Indigenous Issues (UNPFII). The workshop was organized in close cooperation with UNESCO, UNU, IUCN, UNPFII and the SCBD. The workshop was held as part of the high profile, public Symposium “Conserving Cultural and Biological Diversity: the Role of Sacred Natural Sites and Cultural Landscapes”, 30 May to 2 June, an activity of the World Expo 2005, in Aichi, Japan.

Elements for an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities⁷

27. Following up on a recommendation of the Permanent Forum on Indigenous Issues, the Conference of the Parties requested the Working Group on Article 8(j) and Related Provisions to develop elements of an ethical code of conduct to ensure respect for the cultural heritage of indigenous and local communities for the conservation and sustainable use of biological diversity, taking into account task 16 of the programme of work on Article 8(j) and related provisions.⁸

28. The Secretariat has already started researching examples of codes of ethics and conduct governing research as used by such bodies as research institutions, business and indigenous and local communities and is also working on a draft version of the above-mentioned ethical code of conduct for consideration of the Advisory Group (July 2005), the WG8j (January 2006) and eventually COP 8 (March 2006).

29. Furthermore, indigenous and local communities were invited (Notification 2004-049) to communicate to the Executive Secretary relevant information and views

⁶ Recommendation 8, Environmental Impact Assessment and Cultural Diversity, paragraphs 55 & 56, Report of the Second Session of the Permanent Forum on Indigenous Issues (E/2003/43-E.c19/2003/22);

⁷ Recommendation 3, Culture, paragraphs 37 & 38 (E/2004/43 Report on the Third Session UNPFII).

⁸ See Decision VII/16 I, Working Group on Article 8(j) and Related Provisions. Available at <http://www.biodiv.org/decisions/>

regarding the elements for an ethical code of conduct, as outlined above, no later than 31 May 2005 to ensure that is taken into account in the documentation in preparation.

30. Additionally, when the second phase of the Composite Report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities is concluded, it shall include elements for a programme of action, which in turn, will include possible codes of ethics and conduct as strategies to protect and promote traditional knowledge. Furthermore, the CBD has a Memorandum of Understanding with WIPO whose objective is to enhance cooperation between our organizations on intellectual property issues concerning access to genetic resources and benefit-sharing and the protection of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

Other significant information regarding recent policies, programmes, budgetary allocations or activities regarding indigenous issues within the CBD and the international system

31. Over the past decade, traditional knowledge has gained a growing interest from international community. More than eleven UN agencies have been dealing with traditional knowledge (including CBD/UNEP, WIPO, UNCTAD, UNPFII, FAO, IFAD, UNESCO, OHCHR/WGIP, the UN Forum on Forests/DESA, UNDP, GEF, UNFCCC and WHO). Based on the mandate given by their constituencies and the areas of competences, each agency has been devoting its efforts on traditional knowledge covering a wide range of activities. These include such initiatives as standard-setting including protection through the system of patent and copyrights to trade negotiations, from technical assistance programmes on the protection and preservation of traditional knowledge for cultural and biological diversity to capacity-building activities targeting indigenous communities, from the promotion of the sustainable use and the establishment of mechanism for equitable benefit-sharing of traditional knowledge to exchange and analyse of national and local experiences and development of indicators.

32. In view of the above, the United Nations Permanent Forum on Indigenous Issues (UNPFII) recommended at its Fourth Session in May 2005 that “the Inter-agency Support Group on Indigenous Issues (IASG) convene a technical workshop on indigenous traditional knowledge, in collaboration with United Nations agencies dealing with this issue, with the participation of indigenous experts, with a view to promoting a collaborative, complementary and holistic approach to traditional knowledge in order to enhance better understanding of indigenous concerns and their possible solution and requests the workshop to submit its report to the fifth session of the Forum”.⁹

33. The CBD welcomes this initiative to promote better coordination regarding traditional knowledge throughout the international system whilst respecting the mandates of the various agencies engaged in this work. Such a broad lateral effort will more likely lead to the sort of holistic protection sought by indigenous and local communities.

⁹ E/C.19/005/L.6

34. The proposed objectives of this inter-agency effort is:
- a. To have a better understanding of current programmes, processes and activities on traditional knowledge undertaken by various UN entities with a view to integrating indigenous holistic approaches in work relating to traditional knowledge;
 - b. To identify indigenous perspectives including their needs, aspirations and concerns in respect of the protection, preservation and promotion of traditional knowledge;
 - c. To formulate recommendations for UN agencies dealing with traditional knowledge with a view to enhancing mechanisms within UN system for the meaningful and effective participation of indigenous peoples regarding traditional knowledge.

The IASG workshop is proposed for 20-23 September 2005, Panama at the country office of UNICEF.

35. In finishing, it is clear that there is much to do to ensure the protection and promotion of traditional knowledge is adequately and holistically addressed and there is also a vast amount of activity throughout the international system on this issue. Though a strategic inter-agency effort, the international system can enhance the various mandates of the agencies to achieve better outcomes. The CBD has considerably advanced our preliminary work of the promotion and protection of traditional knowledge. In distilling our work into outcomes, we are seeking and encouraging the active involvement of indigenous and local communities in the work programme of Article 8 (j) and related provisions. Please familiarize yourself with our webpage and the notification process, so that you can follow and actively participate in our work.

Thank you.

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CBD List of Conferences and another meetings regarding indigenous issues in 2005-2006 can be found at <http://www.biodiv.org/meetings/>

CBD Notification regarding upcoming events and funding opportunities:

<http://www.biodiv.org/notifications.aspx?page=ntf>

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