

**RECOMMENDATIONS ARISING FROM THE NINTH AND TENTH SESSIONS OF THE  
UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES TO THE  
CONVENTION ON BIOLOGICAL DIVERSITY  
A CONCISE SUMMARY OF ACTIONS TAKEN**

*Note by the Executive Secretary*

**INTRODUCTION**

Recommendations to the Convention on Biological Diversity arising from both the seventh session in 2008 and the eighth session in 2009 of the United Nations Permanent Forum on Indigenous Issues (UNPFII) were considered by the sixth meeting of the Working Group on Article 8(j) and related provisions, in November, 2009 and subsequently by the tenth meeting of the Conference of the Parties, held in Nagoya, Japan, in October 2010. Recommendations arising from the ninth and tenth sessions of the UNPFII were considered by the seventh meeting of Working Group on Article 8(j) and Related Provisions (30 October to 4 November, 2011), and draft recommendations are forwarded to the eleventh meeting of the Conference of the Parties, which will meet in Hyderabad, India, 8 to 10 October 2012.

Since recommendations arising from the reports of the UNPFII at its previous sessions have been or are being addressed, a quick update on these current or ongoing recommendations is provided in section I of the present document. Section II draws attention to new recommendations arising from the ninth and tenth sessions of the UNPFII, and provides the recommendations of the seventh meeting of the Working Group on Article 8(j) and related provisions, which will be considered for adoption by the Conference of the parties (COP) at its eleventh meeting, in October 2012.

Following the adoption of a new method of work by the UNPFII whereby each year up to six agencies may self-nominate to participate in an in-depth dialogue with the members of the Forum, the Secretariat of the Convention on Biological Diversity committed to an in-depth dialogue at the ninth session of the UNPFII in 2010. The in-depth dialogue led to increased interest in the work of the Convention, reflected in a large number of recommendations directed to the Secretariat of the Convention on Biological Diversity (12 specific recommendations and 3 general recommendations) from the ninth session of the UNPFII.

**I. UPDATE ON DEVELOPMENTS IN RESPONSE TO RECOMMENDATIONS  
MADE BY THE UNPFII AT ITS SEVENTH SESSION**

*21 April – 2 May 2009*

*E/2008/43 and E/C.19/2008/14*

Paragraph 81. *The Permanent Forum requests the Secretariat of the Convention on Biological Diversity to complete its work on the draft code of ethical conduct for the recognition and protection of indigenous intellectual property and cultural heritage, taking into account the Declaration on the Rights of Indigenous Peoples, as a minimum standard, with a view to adopting the code at the tenth meeting of the Conference of the Parties in 2010, the International Year of Biodiversity.*

1. The tenth meeting of the Conference of the Parties finalized the negotiations of, and adopted the “The Tkarihwaié:ri<sup>1</sup> Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity”<sup>2</sup>, inviting Parties and governments to make use of the code and to undertake education and awareness-raising and to develop communication strategies that assist relevant Government departments and agencies, academic institutions, private sector developers, potential stakeholders in development and/or research projects, extractive industries, forestry and the public at large, to be made aware of elements of the code of ethical conduct, for incorporation, as appropriate, into policies and processes at the transnational, national and local level governing interactions with indigenous and local communities (ILCs).
2. The Conference of the Parties also invited those Secretariats of intergovernmental agreements, as well as agencies, organizations and processes whose mandates and activities are related to biological diversity to take into consideration and implement in their work the elements of the code of ethical conduct and finally invited the Global Environment Facility (GEF), international funding institutions and development agencies and relevant non-governmental organizations, where requested, and in accordance with their mandates and responsibilities, to consider providing assistance to indigenous and local communities, particularly women, to raise their awareness and to build capacity and understanding of the elements of the code of ethical conduct. A side event was conducted at the tenth session of the UNPFII by the Secretariat of the Convention on Biological Diversity to draw attention to the outcomes of the tenth meeting of the Conference of the Parties, including the adoption of the code of ethical conduct.
3. Copies of the Tkarihwaié:ri Code of Ethical Conduct will be made available at future sessions of the UNPFII in the six United Nations official languages and through the web pages of the Secretariat of the Convention on Biological Diversity.

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<sup>1</sup> Pronounced {Tga-ree-wa-yie-ree}, a Mohawk term meaning “the proper way”.

<sup>2</sup> Decision X/42.

**Paragraph 7.** *The Permanent Forum welcomes such initiatives as the indigenous and local community, business and biodiversity consultation, held at United Nations Headquarters in New York on 12 and 13 May 2009, as a useful dialogue between the private sector and indigenous peoples, and encourages further discussions with a view to ensuring the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples while stimulating community-level businesses based on the sustainable use of biodiversity through such creative partnerships.*

4. In its decision X/40, the tenth meeting of the Conference of the Parties welcomed creative initiatives and partnerships between private-sector representatives and indigenous and local community representatives, taking note of the Indigenous and Local Communities, Business and Biodiversity Consultation and requested the Executive Secretary to report on such continuing efforts at the seventh meeting of the Working Group on Article 8(j) and Related Provisions.

5. Further to this, the private sector and in particular the aromatic, flavorings, cosmetic and perfumery industrial sector (referred to as the Natural Resource Stewardship Circle), has expressed interest in building their capacity to adhere to 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 and opportunities will be provided to the private sector as well as ILCs for capacity-building on the Protocol in this biennium. The Members of the Natural Resources Stewardship Circle (NRSC) also adopted at their annual meeting in October 2010 and presented at the tenth meeting of the Conference of the Parties, the NRSC Guidelines, which are self-regulatory guidance based on the previously mentioned consultations facilitated by the Secretariat of the Convention on Biological Diversity with indigenous and local community representatives, which aim to ensure that the industry adheres to goals of the Convention on Biological Diversity, as well as other international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP) and relevant International Labour Organization's (ILO) conventions.

## **II RECOMMENDATIONS ARISING FROM NINTH AND TENTH SESSIONS OF THE UNPFII FOR CONSIDERATION BY THE WORKING GROUP**

*(Refer to E/2010/43 AND E/C.19/2010/15)*

6. The following recommendations were submitted on behalf of the UNPFII to the seventh meeting of the Working Group on Article 8(j) and related provisions. Relevant complementary information is provided, as appropriate, where the work has been on-going and/or builds on previous recommendations.

### *Ninth session UNPFII 2010<sup>3</sup>*

#### *A. General recommendations*

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<sup>3</sup> Extracts taken from E/2010/43-E/C.19/2010/15.

*Recommendation paragraph 13: The Permanent Forum recognizes the importance of indigenous peoples knowledge systems as the basis of their development with culture and identity and therefore recommends that ongoing international processes, such as negotiations on the international regime on access and benefit-sharing of the Convention on Biological Diversity, the Ad Hoc Working Group on Long-term Cooperative Action of the United Nations Framework Convention on Climate Change, and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, should recognize and integrate the crucial role and relevance of indigenous knowledge systems in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.*

7. The Nagoya Protocol on Access and Benefit Sharing, adopted at COP 10, recognizes the importance of traditional knowledge systems. The purpose of the Protocol is to effectively implement one of the three core objectives of the Convention: the fair and equitable sharing of benefits arising from the utilization of genetic resources. It applies to genetic resources and associated traditional knowledge.

8. The preamble contains a number of provisions relevant to indigenous and local communities and traditional knowledge, including references to: Article 8(j) and the interrelationship between genetic resources (GR) and traditional knowledge (TK) and their inseparable nature, the diversity of circumstances in which traditional knowledge is owned or held (including by countries), the identification of the rightful holders, the Declaration on the Rights of Indigenous Peoples and the non-extinguishment of existing rights.

9. The Protocol also contains significant provisions relating to traditional knowledge associated with genetic resources held by indigenous and local communities, as well as to genetic resources held by indigenous and local communities where the rights of these communities over these resources have been recognized. The Protocol establishes clear obligations to seek the prior informed consent of indigenous and local communities in these situations. It also provides for the sharing of benefits arising from the use of traditional knowledge associated with genetic resources, as well as benefits arising from the use of genetic resources in accordance with domestic legislation. Benefit-sharing must be based on mutually agreed terms.

10. In addition, Parties to the Protocol must ensure that their nationals comply with the domestic legislation and regulatory requirements of provider countries related to access and benefit-sharing of traditional knowledge associated with genetic resources.

*Recommendation paragraph 23: The Permanent Forum welcomes the “International Conference on Biological and Cultural Diversity: Diversity for Development – Development for Diversity” (8-10 June 2010, Montreal, Canada) as a useful dialogue on the interface of diversities and development and notes its goal to consider a future collaborative programme of work between the Secretariat of the Conference on Biological Diversity, the United Nations Educational, Scientific and Cultural Organization (UNESCO), other relevant agencies, including the Forum and relevant indigenous organizations and non-governmental organizations, and decides to send the Chair of the Forum to report on the outcomes of the ninth session of the Permanent Forum regarding the theme.*

11. The “International Conference on Biological and Cultural Diversity: Diversity for Development – Development for Diversity” produced a report and recommendations which were considered by the tenth meeting of the Conference of the Parties, in October 2010. In paragraph 16 of decision X/20, the Conference of the Parties welcomed the adoption of the programme of work between the Secretariat of the Convention on Biological Diversity and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Indigenous and local communities are key partners in the implementation of the joint programme of work.

*Recommendation paragraph 24: The Permanent Forum calls upon UNESCO, the Secretariat of the Convention on Biological Diversity, UNDP, the United Nations Children's Fund (UNICEF), the United Nations Population Fund, the World Intellectual Property Organization and the United Nations Development Group to support indigenous peoples in their process of cultural heritage restoration and strengthening. This process should be guided by indigenous peoples in order to avoid the misuse and distortion of indigenous peoples' culture, practices and knowledge and to respect their perspectives and aspirations.*

12. In paragraph 6 of decision X/43, the Conference of the Parties decided to initiate task 15 of the programme of work for Article 8(j) and related provisions concerning the development of guidelines that would facilitate repatriation of information, including cultural property, in accordance with paragraph 2 of article 17 of the Convention, in order to facilitate the recovery of traditional knowledge of biological diversity. At its seventh meeting, the Working Group considered the terms of reference proposed in order to advance work based on best practice guidelines and recommended that the Conference of the Parties consider the terms of reference for possible adoption at its eleventh meeting.

*Recommendation paragraph 29: The Permanent Forum recommends that UNESCO, the Convention on Biological Diversity, UNICEF and other relevant United Nations agencies convene an expert meeting, in conjunction with the Forum, comprising intercultural and educational experts and United Nations agencies to explore themes and concepts related to bilingual, intercultural and multilingual education in the context of teaching in mother tongue indigenous languages.*

13. Although the Convention works on community, education and public awareness, as well as capacity-building, the pursuit of bilingual, intercultural and multilingual education in the context of teaching in mother tongue indigenous languages is beyond the scope of the Convention. However, many Parties to the Convention have reported on such initiatives in their efforts to respect, promote, and protect traditional knowledge. Hence the Secretariat will be pleased to contribute to discussions on this issue lead by the relevant agencies, and in particular with UNESCO, which is mandated to deal with education.

#### **B. Recommendations directed specifically to the Convention or its Secretariat**

*Recommendation paragraph 106: The Permanent Forum notes with concern the slow progress made in the negotiations on the final protocol on access and benefit-sharing. The Permanent Forum reiterates its requests to the parties to the Convention to take into account the United Nations Declaration on the Rights of Indigenous Peoples in the negotiation, adoption and implementation of the access and benefit-sharing protocol.*

14. 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 (Nagoya Protocol) was adopted by the Conference of the Parties at its tenth meeting.

15. In the penultimate preambular paragraphs of the Nagoya Protocol, the Parties to the Protocol:

“Noting the United Nations Declaration on the Rights of Indigenous Peoples, and

Affirming that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities”

16. The Protocol also contains significant provisions relating to traditional knowledge associated with genetic resources held by indigenous and local communities, as well as to genetic resources held by indigenous and local communities where the rights of these communities over these resources have been recognized.

17. The Protocol establishes clear obligations to seek the prior informed consent of indigenous and local communities in these situations. It also provides for the sharing of benefits arising from the use of traditional knowledge associated with genetic resources, as well as benefits arising from the use of genetic resources in accordance with domestic legislation. Benefit-sharing must be based on mutually agreed terms.

18. In addition, Parties to the Protocol must ensure that their nationals comply with the domestic legislation and regulatory requirements of provider countries related to access and benefit-sharing of traditional knowledge associated with genetic resources.

*Recommendation paragraph 107: The Permanent Forum congratulates the Secretariat of the Convention on Biological Diversity for considering the important role of indigenous peoples in its activities related to the International Year of Biodiversity in 2010 and recommends that it fund and organize a workshop on indigenous peoples and biological diversity as part of its celebration of the Year.*

19. Although no specific funding was received for this purpose, the Secretariat organized many meetings and events during the international Year, many of which were organized and facilitated with indigenous and local community partners. A complete report of the various meetings and events is available in document UNEP/CBD/WG8J/7/9, which is available through the CBD website at: <http://www.cbd.int/doc/?meeting=WG8J-07>

*Recommendation paragraph 108: The Permanent Forum welcomes the initiative of the Secretariat of the Convention on Biological Diversity and the United Nations Educational, Scientific and Cultural Organization to host the International Conference on Biological and Cultural Diversity: Diversity for Development (8-10 June 2010, Montreal, Canada) to develop a joint programme of work on biological and cultural diversity, and requests that future work include broad partnerships with the Permanent Forum, other relevant agencies, indigenous peoples' organizations and non-governmental organizations.*

20. As reported above, the Conference of the Parties at its tenth meeting welcomed the adoption of the programme of work between the Secretariat of the Convention on Biological Diversity and UNESCO in paragraph 16 of decision X/20. Indigenous and local communities are key partners in the implementation of the joint programme of work. An informal steering committee is expected to meet in early 2012 to consider work progressed and to provide advice concerning up-coming and future work and indigenous and local community representatives will participate.

*Recommendation paragraph 110: The Permanent Forum welcomes the capacity-building efforts being carried out by the Secretariat of the Convention on Biological Diversity with the Indigenous Women's Biodiversity Network for the Latin American and Caribbean Region, thanks to the patronage of the Government of Spain, and encourages other donor Governments to consider sponsoring similar efforts in other regions, in particular in Africa and in the Pacific region.*

21. In addition to the workshops referred to in the recommendation and held with the generous support of Spain, the Secretariat has secured additional funds for capacity-building in connection with the recently adopted Nagoya Protocol and is endeavoring to ensure that indigenous and local communities are represented in these events. The Governments of Japan and Spain have provided funding in 2012 for further Article 8(j) capacity-building efforts. Furthermore, the Government of Japan has provided funding

for a significant number of regional and sub-regional NBSAPs workshops and Protected Areas workshops and indigenous and local community representatives are being included, to build their capacity and to assist them to participate in the revision of national biodiversity strategies and national reporting processes. Regional workshops focused on preparation for COP 11 for LAC, Africa and Asia/Pacific regions are being prepared for 2012.

*Recommendation paragraph 111: The Permanent Forum notes the general capacity-building efforts on access and benefit-sharing in the African region carried out under Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) of Germany and encourages further efforts to bolster indigenous participation in those workshops and also in developing workshops specifically for indigenous peoples and local communities.*

22. The Secretariat works closely with Deutsche Gesellschaft für International Zusammenarbeit (GIZ) in their capacity-building initiatives, which have largely focused on the African region. In May and September 2010, in Nairobi, and in Cape Town, respectively, the Secretariat made presentations at GIZ workshops focusing on ABS negotiations (at that time) and developments concerning Article 8(j). The Secretariat also presented at the capacity-building workshop for indigenous and local community women which was held in partnership with GIZ and the Indigenous Information Network during the tenth session of the UNPFII from 21 to 22 May 2011, with a focus on the Nagoya Protocol. During the intersessional period – between the sixth and seventh meetings of the Working Group on Article 8(j) – the Secretariat presented on issues concerning Article 8(j), 10(c) and the Nagoya Protocol at four university seminars (Lucerne University, Switzerland; Colombia University, New York; Dalhousie University, Halifax; and Southern Cross University, Australia), and two GIZ workshops (Nairobi and Cape Town), amongst others. As previously mentioned the secretariat is preparing regional workshops for the 2012 period with a focus on LAC, Africa and the Asia/pacific regions.

*Recommendation paragraph 112: The Permanent Forum calls upon the parties to the Convention on Biological Diversity to adopt the terminology “indigenous peoples and local communities” as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago.*

23. This matter has been raised from time to time during meetings of the Convention, both in the Working Group on Article 8(j) and related provisions and during meetings of the Conference of the Parties. The phrase “indigenous and local communities” is the phrase utilized in the text of the Convention (1992) and has been used consistently in decisions of the Conference of the Parties and its subsidiary bodies. However, the wording suggested by the UNPFII has been used in Conference of the Parties decisions in a few instances, notably in paragraphs 7, 8 and 10 of decision IX/13. The Working Group on Article 8(j) considered this request and maintained its existing practice of using the phrase “indigenous and local communities”.

*Recommendation paragraph 113: The Permanent Forum reiterates to the parties to the Convention on Biological Diversity that, consistent with international human rights law, States have an obligation to recognize and protect the rights of indigenous peoples to control access to the genetic resources that originate in their lands and waters and any associated indigenous traditional knowledge. Such recognition must be a key element of the proposed international regime on access and benefit-sharing, consistent with the United Nations Declaration on the Rights of Indigenous Peoples*

24. The Nagoya Protocol provides that access to traditional knowledge associated with genetic resources requires the prior and informed consent of indigenous and local communities concerned and where they retain rights to genetic resources in accordance with domestic legislation, prior and informed consent is also required for access to genetic resources.<sup>4</sup> The Nagoya Protocol affirms in its final preambular paragraph that nothing in the Protocol “shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities”.

*Recommendation paragraph 116: The Permanent Forum recommends that the Ad Hoc Working Group on Access and Benefit-sharing consider at its next meeting the report of the international indigenous and local community consultation on access and benefit-sharing and the development of an international regime.*

25. This was made available to the Working Group on Access and Benefit-sharing as requested (e.g., document UNEP/CBD/WG-ABS/5/INF/9).

### ***Tenth session UNPFII 2011<sup>5</sup>***

#### ***A. General recommendations***

*Recommendation 31. The Permanent Forum recognizes the right to participate in decision-making and the importance of mechanisms and procedures for the full and effective participation of indigenous peoples in relation to article 18 of the United Nations Declaration on the Rights of Indigenous Peoples. The Forum reiterates that the United Nations Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the World Intellectual Property Organization and the International Maritime Organization should facilitate indigenous peoples' participation in their processes.*

26. Parties to the Convention on Biological Diversity remain committed to the participation of indigenous and local community representatives in the work of the Convention, as is evidenced in a substantial report on ILC participation submitted to the UNPFII at its ninth session in 2010, under the agenda item *In-depth dialogue with the SCBD*, and also in an extensive report submitted in December 2009 to the Office of the High Commissioner for Human Rights (OHCHR) Contribution from the Secretariat of the Convention on Biological Diversity as a contribution to the OHCHR Expert Study on "indigenous peoples and the right to participate in decision-making", undertaken by the Expert Mechanism on the Rights of Indigenous Peoples. The Convention on Biological Diversity remains the only Multi-lateral Environmental Agreement to have established a voluntary fund to facilitate the participation of indigenous and local community representatives in meetings held under the Convention<sup>6</sup>. The Conference of the Parties has established the Ad Hoc Open-ended Working Group on Article 8 (j) and related provisions which is responsible for the development and implementation of the work programme with the full participation of indigenous and local communities (ILCs). The Working Group on Article 8(j) includes enhanced participation mechanism for ILCs including the nomination of an indigenous co-chair to assist the Chairperson of the meeting, as well as an indigenous and local community bureau, and co-chairs for sub-working groups and contact groups, and enhanced opportunities to make interventions on all agenda items.

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<sup>4</sup> 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, article 5, paragraph 2.

<sup>5</sup> Extracts taken from E/2011/43-E/C.19/2011/14.

<sup>6</sup> Refer Decision VIII/5, D, paragraph I

## **B. Recommendations directed specifically to the Convention or its Secretariat**

*Recommendation 22. The Permanent Forum welcomes the adoption by the Conference of the Parties to the Convention on Biological Diversity at its 10th meeting of the 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 (the Tkarihwaié:ri code of ethical conduct), which arose from a Forum recommendation made at its second session, and invites parties and Governments, international agencies and all those working with indigenous communities to make use of the code for research and access to, use, exchange and management of information concerning traditional knowledge.*

27. At its tenth meeting, the Conference of the Parties also finalized the negotiation of, and adopted, the Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity (the Tkarihwaié:ri code of ethical conduct) and invited Parties and Governments to make use of its elements to guide the developments of models of codes of ethical conduct for research, access to, use, exchange and management of information concerning traditional knowledge. The code provides for prior informed consent and/or approval and involvement of indigenous and local communities. The code was developed and negotiated as the result of recommendations 1, 8 and 9 of the report of the second session of the United Nations Permanent Forum on Indigenous Issues endorsed by the Conference of Parties in paragraph 5 of decision VII/16/I, and decision VIII/5 F, concerning elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity, and taking into account task 16 of the programme of work on Article 8(j) and related provisions.

*Recommendation 23. However, elements of the Tkarihwaié:ri code of ethical conduct are voluntary. The Permanent Forum is concerned that paragraph one of the code is restrictive as it includes the following: “They should not be construed as altering or interpreting the obligations of Parties to the Convention of Biological Diversity or any other international instrument. They should not be interpreted as altering domestic laws, treaties, agreements or other constructive arrangements that may already exist.”*

28. The mandate established within the programme of work for Article 8(j) and related provisions (decision V/16, annex) is to develop guidelines and principles and to that extent it is common practice that such guidelines remain voluntary. However, although voluntary, such guidelines are adopted by the consensus of the Parties to the Convention and carry an ethical and moral weight and can over time become established standards in customary international law. Parties to the Convention provide regular reports to the Secretariat, which include actions taken regarding the implementation of Conference of the Parties decisions including voluntary standards and guidelines.

*Recommendation 24. The Permanent Forum welcomes the adoption by the Conference of the Parties to the Convention on Biological Diversity of two additional indicators for traditional knowledge: (a) status and trends in land use change and land tenure in the traditional territories of indigenous and local communities, and (b) status and trends in the practice of traditional occupations, to complement the adopted indicator on status and trends in traditional languages. The Forum urges the Secretariat of the Convention and agencies working on these issues, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), ILO, FAO, IFAD and the International Land Coalition, to collaborate with a view to fully operationalizing those indicators.*

29. The Secretariat is currently focusing on the operationalizing of the three indicators adopted for traditional knowledge and is also exploring the development of indicators for Article 10(c) ,customary sustainable use, as per decision X/43 in coordination with the indicators work for the Strategic Plan for Biodiversity 2011-20. The inter-agency coordination is provided by the United Nations Inter-Agency Support Group on Indigenous Peoples’ Issues and the indicators focal point within the Secretariat of the

UNPFII. The Convention is the first agency to commence operationalizing indicators relevant to indigenous and local communities.

*Recommendation 26. Affirmation of the status of indigenous peoples as “peoples” is important in fully respecting and protecting their human rights. Consistent with its 2010 report (E/2010/43 and E/C.19/2010/15), the Permanent Forum calls upon the parties to the Convention on Biological Diversity, and especially including the Nagoya Protocol, to adopt the terminology “indigenous peoples and local communities” as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago.*

30. This recommendation reaffirmed similar recommendations made by the UNPFII at its ninth meeting, It was considered by the parties which decided to maintain existing practice

31. The following two recommendations, which are more general in nature, will be made available for the consideration of parties at COP 11.

*Recommendation 25. In regard to the rights of indigenous peoples, the Permanent Forum reiterates its long-standing position of encouraging the United Nations, its organs and specialized agencies, as well as all States, to adopt a human rights-based approach. At the international, regional and national level, the human rights of indigenous peoples are always relevant if such rights are at risk of being undermined. Human rights are indivisible, interdependent, and interrelated. They must be respected in any context specifically concerning indigenous peoples, from environment to development, to peace and security, and many other issues.*

32. Recommendation 25 refers to the human rights based approach to service delivery which is adopted by all United Nations entities. The human rights based approach to service delivery is implemented by the Secretariat through the practical commitment of ensuring the effective participation of indigenous and local communities in all meetings of interest to them. The CBD is the only MEA which has established a voluntary fund for the participation of ILCs in its meetings. Furthermore, participation mechanisms previously reported upon for ILCs at the WG8j are unprecedented in the UN system. However, it is important to differentiate between the secretariat and the Parties to the Convention. Because of the diversity of cultural, political, legal and economic circumstances under which indigenous and local communities may live, matters concerning the enjoyment and exercise of rights, whilst acknowledge by governments, remain the subject of national negotiations, particularly where shared landscapes are involved.

*Recommendation 27. The Permanent Forum reiterates to the parties to the Convention on Biological Diversity, and especially to the parties to the Nagoya Protocol, the importance of respecting and protecting indigenous peoples’ rights to genetic resources consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Consistent with the objective of “fair and equitable” benefit sharing in the Convention and Protocol, all rights based on customary use must be safeguarded and not only “established” rights. The Committee on the Elimination of Racial Discrimination has concluded that such kinds of distinctions would be discriminatory.<sup>2\</sup>*

33. Recommendation 27 is a reiteration of previous recommendations which were addressed by the Parties during the negotiation of the Nagoya Protocol. Rights to genetic resources are recognized in the protocol however the matter of access is deferred to the national level (in accordance with domestic legislation). This should not be surprising given the diversity of political and legal situations under which indigenous and local communities live and the non-exclusivity of rights over genetic resources which occur across boundaries and landscapes. The Nagoya Protocol is fully consistent with the equitable

sharing provisions of the Convention and safeguards customary use and exchange of both genetic resources and associated traditional knowledge in article 12, paragraph 4. The protocol also contains seven paragraphs directly relevant to indigenous and local communities which include a final paragraph which affirms: *that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities.* In regards to the comment above that, *all rights based on customary use must be safeguarded and not only “established” rights,* it is clear by the results of the negotiations, that Parties were unwilling or unable to address issues concerning future non-established claims to rights.

### In Conclusion

The Secretariat remains a committed partner to the UNPFII, as is evidence by our eleven year partnership and participation at every session of the UNPFII, including the in-depth dialogue held in 2010. The Secretariat has offered opportunities for both the members of the Forum and the participants to receive capacity building on the Convention and its protocols and actively encourages broad participation in the work of the Convention.

However, obstacles remain including the formulation of UNPFII recommendations which are beyond the scope of the Working Group on Article 8(j) and the Convention. This would indicate that the members may benefit from information sharing, capacity building opportunities and participation in CBD meetings. The secretariat of the UNPFII or the programme officer for Article 8(j) who attends the annual sessions of the UNPFII may also assist Members by providing practical advice on request, to members in the drafting of future recommendations to international agencies to ensure they are within the mandates of the intended bodies and can thus be operationalized. The secretariat would encourage members to actively seek the broad views of indigenous peoples from all world regions, who follow the work of the Convention on Biological Diversity in formulating future recommendations to ensure that recommendations enjoy the broad support of indigenous peoples from all seven regions, who follow the CBD.