

Response by the Secretariat of the Convention on Biological Diversity

Summary of key issues for indigenous peoples under the Convention on Biological Diversity

The Secretariat is an international secretariat to a legally binding environmental convention with 194 Parties. The Secretariat is tasked under article 24 of the Convention, with arranging for and servicing meetings held under the Convention and preparing reports and documentation, as well as coordinating with other relevant international bodies and such functions as may be determined by the Conference of the Parties. The Secretariat also plays a role on assisting Parties to implement the Convention. The Secretariat does not have regional or country presences *per se*. Parties to the Convention may appoint national focal points for the Convention (NFP), its protocols and for various areas of work, including a NFP for traditional knowledge and customary sustainable use.

Worthy of note and most recently at the twelfth meeting of the Conference of the Parties, in Decision XII/12, F on *Terminology “indigenous peoples and local communities”*, in paragraph 1, the COP Decides to use the terminology “**indigenous peoples** and local communities” in future decisions and secondary documents under the Convention, as appropriate. COP 12 also adopted a global plan of action on the customary use of biological diversity.

The mandate established within the programme of work for Article 8(j) and related provisions (decision V/16, annex) on traditional knowledge and customary sustainable use is to develop standards, guidelines and principles for the effective implementation of articles 8(j), 10(c) and related provisions. Parties to the Convention provide regular reports to the Secretariat, which include actions taken regarding the implementation of Conference of the Parties decisions including on standards and guidelines of relevant to these provisions. As well as guidelines, the Convention also negotiates and adopted legally binding agreements such as the Nagoya Protocol. Through protocols, standards and guidelines the 194 parties to the Convention has agreed that:

A. Access and use of traditional knowledge should be based on prior informed consent

The Nagoya Protocol is a legally binding protocol that establishes that access to traditional knowledge associated with genetic resources is based on prior informed consent or approval and involvement. Of particular note, the COP/MOP NP (Governing body to the Nagoya Protocol) in October at its first meeting, agreed, amongst other things, to include two indigenous representatives of the compliance committee to the Nagoya Protocol.

The Bonn Guidelines which is a voluntary guideline requires the prior informed consent of indigenous and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices should be obtained, in accordance with their traditional practices, national access policies and subject to domestic laws.

The Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities requires that any activities/interactions related to traditional knowledge associated with the conservation and sustainable use of biological diversity, occurring on or likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities and impacting upon specific groups, should be carried out with the prior informed consent and/or approval and involvement of indigenous and local communities.

Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment 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 provide a collaborative framework ensuring the full involvement of indigenous and local

communities in the assessment of cultural, environmental and social impact of proposed developments on sacred sites and on lands and waters they have traditionally occupied. The Guidelines require prior and informed consent concerning developments proposed on traditional territories.

B. Mutually Agreed Terms

The Nagoya Protocol requires that equitable sharing of benefits arising from the use of TK is based on mutually agreed terms. The NP also requires (article 7) that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established. The Nagoya protocol also requires that - Parties shall support, the development by indigenous and local communities, including women within these communities, of minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources.

Bonn Guidelines in Paragraph 35 – states that Prior informed consent is linked to the requirement of mutually agreed terms. And *Paragraph 48* - Pursuant to mutually agreed terms established following prior informed consent, benefits should be shared fairly and equitably with all those who have been identified as having contributed to the resource management, scientific and/or commercial process. The latter may include governmental, non-governmental or academic institutions and indigenous and local communities. Benefits should be directed in such a way as to promote conservation and sustainable use of biological diversity.

C. Equitable Sharing of Benefits

The Working Group on Article 8(j) and related provisions continues to work on guidance concerning equitable sharing of benefits under task 7 of the revised programme of work which request: the **Working Group** to develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure: (i) that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices (ii) that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities (iii) advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices and the associated genetic resources are used.

D. Use of registers and databases for TK

A number of concerns and questions have been raised about the documentation of traditional knowledge including its challenges and opportunities. The Conference of the Parties of the Convention on Biological Diversity has discussed (in COP 7 Decision VII/16) the use of data-bases and registers for recording traditional knowledge and have decided that while in some cases databases and registers may play a role in the protection of traditional knowledge, innovations and practices, such databases and registers are only one approach in the effective protection of traditional knowledge, innovations and practices and their establishment should be voluntary, not a requirement for protection, and established with the prior informed consent of indigenous and local communities.

The Secretariat has assisted WIPO in the finalization of the WIPO TK TOOLKIT which provides all the information needed, by indigenous peoples, including possible benefits and challenges, to decide whether or not they wish to pursue documentation of their knowledge.

The World Intellectual Property Organization (WIPO) Traditional Knowledge Documentation Toolkit (available at <http://www.wipo.int/tk/en/resources/tkdocumentation.html>) aims to empower indigenous peoples and local communities to decide for themselves whether they wish to have their TK documented or not, and to make the right decisions regarding how to safeguard their interests and keep control of their IP rights, interests and options.

E. Community Protocols

The Convention is increasingly exploring the role of community protocols. The Nagoya Protocol (article 12) requires Parties to take into consideration and the support the development of community protocols and procedures by indigenous peoples, with respect to traditional knowledge. Community protocols have the potential to informed users of traditional knowledge about obligations arising from customary law, without necessarily revealing the communities customary laws.

Secretariat Response to Questionnaire

At its fourteenth session in 2015, the Permanent Forum will review the following:

- (a) Outcome of the high-level plenary also known as the World Conference on Indigenous Peoples;**
- (b) Post-2015 Development Agenda;**
- (c) Youth, self-harm and suicide.**

1. Please provide information on how your agency is working with these important issues in the seven socio-cultural regions of the Permanent Forum¹. Where possible, please include information on the situation of indigenous women in your responses.

Response: The Secretariat has:

- (a) Analysed the outcome document of the WCIPs and noted references to traditional knowledge in paragraphs 12, 15 and 22. Paragraph 22 acknowledges “the importance of the participation of indigenous peoples, wherever possible, in the benefits of their knowledge, innovations and practices”. The Parties to the Convention, through the Working Group on Article 8(j) are currently negotiating standards that go further than those alluded to in paragraph 22 of the WCIP outcomes document. The Convention is working towards guidelines for the national implementation of article 8(j) and related provisions, which shall include guidelines for prior, informed consent for access to traditional knowledge, and mutually agreed terms and the equitable sharing of benefits for use of traditional knowledge. As well as this, the Working Group is negotiating guidelines for the repatriation of traditional knowledge, as well as standards and guidelines to stop the unlawful appropriation of traditional knowledge. Regarding the numerous paragraphs of the outcome document which allude to effective participation, indigenous peoples and local communities enjoy enhanced participation mechanisms within the Working Group on Article 8(j) and ways and means of enhancing their participation in other subsidiary bodies are under consideration.
- (b) The Convention (the COP and its Secretariat) have identified influencing the post-2015 Development Agenda and its sustainable development goals as a major strategic priority. As such the Secretariat and the Parties to the Convention have sought to ensure biodiversity, and where possible traditional knowledge, is fully integrated into this new development paradigm. And extensive report is on the Convention and the Post-2015 Development Agenda is available at <http://www.cbd.int/doc/?Meeting=COP-12> in UNEP/CBD/COP/12/15, Progress report on the process of integrating biodiversity into the post-2015 framework for sustainable development.
- (c) Concerning the UNPFII theme in 2015 on (c) Youth, self-harm and suicide, the Secretariat remains committed to its mandate which includes the intergenerational transfer

¹ UNPFII’s seven socio-cultural regions are Africa; Asia; Central and South America and the Caribbean; the Arctic; Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific.

of traditional knowledge and promotes best practices. The Secretariat is also committed to the engagement of indigenous youth, local community youth and youth in general in the implementation of the Convention.

2. With respect to the implementation of the recommendations of the Permanent Forum addressed specifically to your agency:

- (i) **What are some of the obstacles your agency has encountered in implementing the recommendations of the Permanent Forum, including those addressed specifically to your agency?**

Response: Recommendations from the UNPFII can include recommendations to the Secretariat of the Convention, or the Convention's governing body, referred to as the Conference of the Parties. The largest obstacle in implementing recommendations directed to the CBD is receiving recommendations beyond the mandate of the Secretariat. Draft recommendations are often drafted by members during the annual sessions in isolation with no or little input or discussions with agencies on the receiving end of recommendations. Recommendations arising from the UNPFII need to take into account the differing mandates of the Secretariat (technical work) verses, the Governing body, which makes all politic decisions. The UNPFII also makes recommendations to clusters of agencies or the Inter-Agency Support Group on Indigenous Peoples Issues without nominating a lead agency and hence responses can be poor.

- (ii) **What are some of the factors that facilitate your agency's implementation of the recommendations of the Permanent Forum, including those addressed specifically to your agency?**

Response: Receiving recommendations that are informed by the mandate of the agency and its relevant bodies and building on existing work can be most helpful.

3. Given the Forum's recommendation for the adoption of policies on indigenous peoples' issues, please specify whether your agency has:

- (i) **A policy or other similar tool on indigenous peoples' issues;**

Response: The COP has adopted many tools and guidelines relevant to indigenous peoples and they are discussed at length on pages 1 and 2.

- (ii) **Recent programmes on indigenous peoples' issues;**

Response: The Working Group on Article 8(j) and related provisions (ninth meeting scheduled for October 2015) is:

- (a) Develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed consent or approval and involvement of the indigenous and local communities;
- (b) Develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices;

- (c) Develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge;
 - (d) Develop a glossary of relevant key terms and concepts to be used within the context of Article 8(j) and related provisions;
- (iii) Budgetary allocations for indigenous peoples' issues;**

Response: Many actions requested from the Secretariat require voluntary funding from Parties. Contributions in 2014 from the Government of Japan, allowed for the organization of four regional workshops with a train the trainer methodology, for the Latin American and Caribbean region, Africa, Asia, and Pacific during 2014. The Government of Sweden has also provided funds in 2014 for the further development of community based monitoring and information systems, as a contribution to indicators for traditional knowledge.

Furthermore, funds for ABS capacity building and the NB-Subs workshops will include the participation of indigenous and local community representatives in 2015-16 biennium. Three full-time staff positions remain dedicated to indigenous and local community issues, two of which are funded from the core budget.

- (iv) Projects/activities on indigenous peoples' issues** – see answer to 3(i), as well as annex I, which contains the current COP 12 decisions for action by the Working Group on Article 8(j) and related provisions.

In order to facilitate the quantification of data by the Forum, please indicate the number of programmes and projects/activities devoted to indigenous peoples issues in the past year.

A full report on programmes and projects/activities devoted to indigenous peoples during 2013-14 is available in document "Progress in the Implementation of Article 8(j) and Related Provisions and its Integration into the Various Areas of Work Under the Convention and Through the National Reports and Participation of Indigenous and Local Communities in the Work of the Convention (UNEP/CBD/WG8J/8/20), which is available at: <http://www.cbd.int/doc/?meeting=WG8J-08>.

In 2015, depending on the availability of resources, the Secretariat is planning four regional capacity development events for trainers from indigenous organizations and communities, as well as a global meeting of the international Indigenous forum on biodiversity, and the ninth meeting of the Working group on article 8(j) and related provisions (October 2015). Regional training events also include opportunities for at least four trainers from each of the regional events to apply for local training grants. As well as these indigenous specific events, the secretariat works towards the inclusion of indigenous representatives in all meetings held under the Convention.

4. Does your agency have regular or ad hoc capacity-building programmes on indigenous peoples' issues for staff, or a plan for capacity-building activities in this area, at headquarters or in the field?

The Secretariat's Article 8(j) team regularly assist colleagues in including traditional knowledge and customary sustainable use throughout their work as a cross-cutting issue. The article 8(j) training events and workshops regularly include Government National Focal points for TK and CSU.

5. Does your agency have a focal point on indigenous peoples' issues? If so, please provide the name and contact information of this person.

The Secretariat has three staff devoted to Article 8(j) and related provisions and indigenous peoples and local communities:

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6. Please provide a list of conferences and other meetings organized or supported by your agency on indigenous peoples' issues for 2014 and 2015.

The Secretariat is currently preparing its calendar of meetings for 2015. In due course the calendar will be available at: <http://www.cbd.int/meetings/>

Of note the ninth meeting of the Working Group on Article 8(j) is tentatively being planned for October 2015, in Montreal.

Annex I

XII/12. Article 8(j) and related provisions

A. Progress report on the implementation of the programme of work on Article 8(j) and related provisions and mechanisms to promote the effective participation of indigenous and local communities in the work of the Convention

The Conference of the Parties,

Recalling its decisions X/43 on the Multi-Year Programme of Work on the implementation of Article 8(j) and related provisions of the Convention and XI/14 on Article 8(j) and related provisions,

Progress and participation

1. *Acknowledges* the contribution that the World Indigenous Network, inaugurated by Australia and hosted by the Equator Initiative, can make to linking indigenous expertise and modern technology by developing enduring relationships for information-sharing and knowledge exchange;

2. *Encourages* participation by indigenous and local communities in the Network and *invites* donors to contribute to the ongoing implementation of the Network;

3. *Takes note with appreciation* of the outcome document² of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, held in New York in September 2014, which renewed the commitment for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;³

4. In the light of the outcomes of the mid-term review of the implementation of the Strategic Plan for Biodiversity 2011-2020,⁴ including of progress towards Aichi Biodiversity Target 18, *invites* Parties, other Governments, international organizations, indigenous and local communities and other relevant organizations to submit information on the implementation of Article 8(j) and related provisions, and *requests* the Executive Secretary to compile and analyse information received and to make it available for consideration by the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its ninth meeting and, as appropriate, during the period of implementation of the Strategic Plan for Biodiversity 2011-2020;

5. *Decides* that one meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions be organized prior to the thirteenth meeting of the Conference of the Parties, with the full and effective participation of indigenous and local communities;

Indicators relevant to traditional knowledge and customary sustainable use

6. *Welcomes* the work carried out under the Working Group on Indicators of the International Indigenous Forum on Biodiversity and other international organizations, in particular the Community-Based Monitoring and Information System approach, to operationalize the indicators on the status of traditional knowledge, innovations and practices and customary sustainable use of biological diversity, to assess progress towards implementing the Strategic Plan for Biodiversity 2011-2020 and achieving the Aichi Biodiversity Targets;

7. *Requests* the Executive Secretary, in collaboration with Parties, other Governments, relevant international organizations, the Working Group on Indicators of the International Indigenous Forum on Biodiversity, the Biodiversity Indicators Partnership and interested stakeholders, and subject to the availability of resources, to continue to organize and facilitate international technical workshops and regional workshops on indicators on the status of traditional knowledge, innovations and practices and

² See General Assembly resolution 69/2.

³ General Assembly resolution 61/295 (note reservations put forward by Parties).

⁴ See decision XII/1.

customary sustainable use and to further explore the added value of contributions from indigenous and local communities' Community-Based Monitoring and Information Systems and of applying a Multiple Evidence Base approach when monitoring indicators on the status of traditional knowledge, innovations and practices and customary sustainable use, in order to assess progress towards implementing the Strategic Plan for Biodiversity 2011-2020 and achieving the Aichi Biodiversity Targets, and to inform Parties, organizations and stakeholders of progress through the Traditional Knowledge Information Portal;

8. *Requests* the Executive Secretary to transmit information on Community-Based Monitoring and Information Systems, as well as the note by the Executive Secretary on indicators relevant for traditional knowledge and customary sustainable use⁵ to the Secretariat of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services;

9. *Encourages* Parties and indigenous and local communities to consider how indigenous and local communities might effectively participate in the development, collection and analysis of data, including through Community-Based Monitoring, and further explore how indigenous and local communities' Community-Based Monitoring and Information Systems can contribute to monitoring of Aichi Target indicators, and how a Multiple Evidence Base approach be applied for validation of such data generated from diverse knowledge systems on equal terms. These efforts might contribute to future national reports and the review of the implementation of the Strategic Plan for Biodiversity 2011-2020 and the achievement of the Aichi Biodiversity Targets, in particular Target 18;

10. *Invites* the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services to consider the potential contributions of Community-Based Monitoring and Information Systems in meeting the objectives of the Platform when implementing work programmes of relevance such as work by the Task Force on Indigenous and Local Knowledge;

11. *Invites* the Executive Secretary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services to inform the next meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions on the work of the Platform related to traditional knowledge;

12. *Invites* members of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services to consider the inclusion of indigenous and local community representatives, when making nominations to the Multidisciplinary Expert Panel and other processes under the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services;

13. *Invites* Parties, Governments, relevant international organizations, indigenous and local communities, and interested stakeholders to submit information and data on status and trends in traditional occupations related to conservation and sustainable use of biological diversity and *requests* the Executive Secretary to make a compilation of the information available for the consideration of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions at its ninth meeting;

In-depth dialogue on thematic areas and other cross-cutting issues

14. *Encourages* Parties, other Governments, relevant international organizations, indigenous and local communities and interested stakeholders, and *requests* the Executive Secretary to consider the advice and recommendations of the in-depth dialogue on: "*Connecting traditional knowledge systems and science, such as under IPBES, including gender dimensions*" when implementing the relevant areas of work of the Convention; and *further encourages* Parties to consider reporting on progress in future national reports;

15. *Requests* the Executive Secretary to transmit the summary of the in-depth dialogue to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, in order to contribute to its work on the development of guidelines to consider traditional knowledge in the process under the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services;

⁵ See UNEP/CBD/WG8J/8/9.

16. *Decides* that the topic of the third in-depth dialogue, to be held at the ninth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, shall be “Challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of three objectives of the Convention, in harmony with Nature/Mother Earth.”

B. Article 10, with a focus on Article 10(c), as major component of the programme of work on Article 8(j) and related provisions of the Convention

The Conference of the Parties

1. *Endorses* the plan of action on customary sustainable use of biological diversity, contained in the annex to this decision;

2. *Invites* Parties, other Governments, relevant organizations, indigenous and local communities and stakeholders to implement the plan of action on customary sustainable use of biological diversity, taking into account diverse national circumstances including legal and policy regimes, and to report on progress to the Executive Secretary as well as through the national reporting process;

3. *Decides* that the development and implementation of all activities of the plan of action on customary sustainable use of biological diversity should be undertaken with the full and effective participation of indigenous and local communities, in particular women and youth, taking into consideration the United Nations Declaration on the Rights of Indigenous Peoples;⁶

4. *Acknowledges* that other initiatives, such as the International Partnership for the Satoyama Initiative (IPSI), consistent with decisions X/32 and XI/25, and in accordance with other international obligations, are contributing to the facilitation of the customary sustainable use of biological diversity;

5. *Invites* Parties to include in requests to donors, support for indigenous and local communities to organize themselves to develop community plans and protocols to document, map, and register their community conservation areas, as well as to prepare, implement and monitor their community conservation plans and for support to countries to strengthen recognition of indigenous and local community conservation areas;

6. *Invites* Parties, other Governments, international organizations, programmes and funds to provide funds and technical support to developing country Parties and indigenous and local communities for implementation of programmes and projects that promote customary sustainable use of biological diversity;

7. *Requests* the Executive Secretary to compile and analyse the information received pursuant to paragraph 2 above and to make this information available to the next meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions and through the Traditional Knowledge Information Portal of the Convention;

8. *Also requests* the Executive Secretary, in partnership with relevant organizations and subject to the availability of funding, to support implementation of the plan of action on customary sustainable use of biological diversity through organization of regional and subregional workshops and other capacity-building activities involving indigenous and local communities.

Annex

PLAN OF ACTION ON CUSTOMARY SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

I. OBJECTIVE

⁶ General Assembly resolution 61/295 (note reservations put forward by Parties).

1. The objective of this plan of action is to promote, within the framework of the Convention, a just implementation of Article 10(c) at local, national, regional and international levels and to ensure the full and effective participation of indigenous and local communities at all stages and levels of implementation.

II. GENERAL PRINCIPLES

2. The development and implementation of all activities under the plan of action on customary sustainable use of biological diversity should be undertaken with the full and effective participation of indigenous and local communities, particularly women and youth.

3. Traditional knowledge should be valued, respected and considered as useful and necessary for biodiversity conservation and sustainable use as other forms of knowledge.

4. The ecosystem approach, 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, is consistent with the spiritual and cultural values as well as customary practices of many indigenous and local communities and their traditional knowledge, innovations and practices.

5. Recognizing that indigenous and local communities are the holders of their traditional knowledge, innovations and practices, access to their traditional knowledge, innovations and practices should be subject to their prior informed consent or approval and involvement.

III. CONSIDERATIONS OF SPECIAL RELEVANCE

6. Special considerations for this action plan include the following:

(a) Biodiversity, customary sustainable use and traditional knowledge are intrinsically linked. Indigenous and local communities, through customary sustainable use of biological diversity, constantly shape and reshape social and ecological systems, landscapes, seascapes, plants and animal populations, genetic resources and related management practices, and are therefore well placed to adapt to changing conditions such as climate change, and to contribute to the maintenance of biodiversity and ecosystem services, and the strengthening of the resilience of the social and ecological systems. Indigenous and local communities and holders of traditional knowledge related to customary sustainable use of biological diversity also contribute to the generation of new knowledge for the benefit not only of indigenous and local communities but of human well-being at large;

(b) Indigenous and local communities depend directly on biodiversity and its customary sustainable use and management for their livelihoods, resilience and cultures and are therefore well placed, through their collective actions, to efficiently and economically manage ecosystems using the ecosystem approach;

(c) Cultural and spiritual values and practices of indigenous and local communities play an important role in the conservation and sustainable use of biological diversity and transmitting its importance to the next generation;

(d) The full and effective participation of indigenous and local communities, in particular women, is of primary importance for the successful development and implementation of policies and programmes for customary sustainable use of biological diversity;

(e) The development and implementation of policies and programmes for customary sustainable use of biological diversity should take fully into account Aichi Biodiversity Targets 14 (ecosystem services) and 18 (traditional knowledge and customary sustainable use), the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and the programme of work on Article 8(j) and related provisions, with a view to avoiding duplication and ensuring complementarities;

(f) Cultural, social, economic and ecological elements associated with the traditional management systems of lands, waters and territories of indigenous and local communities and their

involvement in the management of these areas should be recognized, secured and protected, as they contribute to customary sustainable use of biological diversity;

(g) Traditional knowledge and customary sustainable use of biological diversity are central to the full implementation of the ecosystem approach, which provides an important tool to strengthen the capacity of indigenous and local communities to fully practice customary sustainable use of biological diversity, as appropriate;

(h) Customary sustainable use of biological diversity is useful in facilitating learning of socio-ecological systems and possible innovations for productive ecosystems and continued human well-being;

(i) Measures should be taken to address unsustainable use of biological diversity and revitalize and restore degraded ecosystems.

IV. RATIONALE

7. Incorporating customary sustainable use of biological diversity with the effective participation of indigenous and local communities into national biodiversity strategies and action plans is an important and strategic way to integrate Article 10(c) and its implementation as a cross-cutting issue in the Strategic Plan for Biodiversity 2011-2020 and efforts to achieve the Aichi Biodiversity Targets, the importance of which was reiterated in decision XI/14.⁷

8. Many indigenous and local communities are engaged in community-based initiatives to enhance implementation of Article 10(c) at the national and local levels. Such initiatives include research and documentation of traditional knowledge and customary practices, education projects to revitalize indigenous languages and traditional knowledge associated with customary sustainable use of biological diversity, community mapping, community-based sustainable resource management plans, and biodiversity and climate change monitoring and research. An overview of such initiatives was presented at the meeting on Article 10, with a focus on Article 10(c) as a major component of the programme of work on Article 8(j) and related provisions⁸ and more detailed cases were presented at a Workshop on Community-based Monitoring and Information Systems held in the Philippines in February 2013.⁹ By supporting such initiatives, or by getting involved in collaborative on-the-ground projects and monitoring of relevant indicators under the Convention on Biological Diversity, Parties and conservation organizations gain better insights into customary sustainable use of biological diversity issues in their countries. They can also more appropriately respond to existing needs or challenges, and become more effective in implementing Article 10(c) and in contributing to the achievement of Target 18 and other relevant targets of the Strategic Plan for Biodiversity 2011-2020.

9. Protected areas established without the prior informed consent or approval and involvement of indigenous and local communities can restrict access to and use of traditional areas and therefore undermine customary practices and knowledge associated with certain areas or biological resources. At the same time, conservation of biodiversity is vital for the protection and maintenance of customary sustainable use of biological diversity and associated traditional knowledge. Customary sustainable use of biological diversity and traditional knowledge can contribute to the effective conservation of important biodiversity sites, either through shared governance or joint management of official protected areas or through indigenous and community conserved territories and areas. Community protocols and other community procedures can be used by indigenous and local communities to articulate their values, procedures and priorities and engage in dialogue and collaboration with external actors (such as

⁷ UNEP/CBD/COP/DEC/XI/14, F, preamble.

⁸ See UNEP/CBD/WG8J/7/5/Add.1, para. 33. This presentation was based on a synthesis paper on examples, challenges, community initiatives and recommendations relating to CBD Article 10(c) by the Forest Peoples Programme and partners (October 2011): <http://www.forestpeoples.org/customary-sustainable-use-studies>.

⁹ The report of the Global Workshop on Community-based Monitoring and Information Systems, which was held in Bonn, Germany, from 26 to 28 April 2013 is made available as UNEP/CBD/WG8J/8/INF/11.

government agencies and conservation organizations) towards shared aims, for example, appropriate ways to respect, recognize and support customary sustainable use of biological diversity and traditional cultural practices in protected areas.

V. ELEMENTS OF THE FIRST PHASE OF THE DRAFT PLAN OF ACTION ON CUSTOMARY SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

Tasks	Main actors	Possible actions ¹⁰	Timeframes for phased implementation	Possible indicators and means of verification
<p>1. To incorporate customary sustainable use practices or policies, as appropriate, with the full and effective participation of indigenous and local communities, into national biodiversity strategies and action plans (NBSAPs), as a strategic way to maintain biocultural values and achieve human well-being, and to report on this in national reports;</p>	<p>Parties with the full and effective participation of indigenous and local communities</p>	<p>Revision of the NBSAPs to incorporate customary sustainable use of biological diversity</p>	<p>Through the revision and implementation of NBSAPs 2014-2015 and reported through future national reports, commencing with the fifth national reports, where feasible and to the Working Group on Article 8(j) and Related Provisions, in time for the mid-decade review</p>	<p><i>Indicator:</i> Customary sustainable use of biological diversity incorporated by Parties, with the full and effective participation of indigenous and local communities, into NBSAPs</p> <p><i>Means of verification:</i> Future national reports, commencing with the fifth national report, where feasible</p>
<p>2. 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; and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c);</p>	<p>Parties, other Governments, the Secretariat of the Convention on Biological Diversity, relevant international organizations, donors, funders, academic and research institutions and indigenous and local communities</p>	<p>Mobilization of funds and other forms of support to promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c) and promote good practices</p> <p>Collation of case studies, experiences and approaches and making them available through the Traditional Knowledge Information Portal and the information portal of the International Indigenous Forum</p>	<p>Reported through future national reports, commencing with the fifth national reports, where feasible</p>	<p><i>Indicator:</i> Inclusion of diverse examples of community-based initiatives that support and contribute to the implementation of Article 10(c) in the national reports and the Traditional Knowledge Information Portal</p> <p><i>Means of verification:</i> Progress report for the Working Group on Article 8(j) and related provisions,</p>

¹⁰ Refer to section VI on guidance for possible actions.

Tasks	Main actors	Possible actions ¹⁰	Timeframes for phased implementation	Possible indicators and means of verification
		<p>on Biodiversity (IIFB)</p> <p>Strengthening collaboration with other international agreements relevant to customary sustainable use of biological diversity, including with the International Treaty on Plant Genetic Resources for Food and Agriculture, for reinforcing mechanisms for community-based initiatives</p>		from ninth meeting onwards
<p>3. To identify best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives) to:</p> <p>(i) Promote, in accordance with national legislation and applicable international obligations, the full and effective participation of indigenous and local communities, and also their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas, including marine protected areas, that may affect</p>	<p>Parties, other Governments, indigenous and local communities and the Secretariat of the Convention on Biological Diversity and other relevant organizations, programmes and funds</p> <p>(i) The Working Group on Article 8(j), Parties and other Governments, with the full and effective participation of indigenous and local communities</p>	<p>Reporting on best practices (case studies, mechanisms, legislation and other appropriate initiatives) that support customary sustainable use of biological diversity as an input to a compilation to be published as a CBD Technical Series</p> <p>Compilation of best practices and existing guidelines on prior informed consent or approval and involvement of indigenous and local communities in the establishment, expansion, governance and management of protected areas and operationalize them by making them available</p>	<p>Reported through future national reports, commencing with the fifth national reports, where feasible</p> <p>Compilation of best practices and existing guidelines on prior informed consent or approval and involvement of indigenous and local communities could be considered by the ninth meeting of the Working</p>	<p><i>Indicator:</i> Publication and dissemination of a CBD Technical Series on best practices, case studies, mechanisms, legislation and other appropriate initiatives that support customary sustainable use of biological diversity</p> <p><i>Indicator:</i> Actions that support the tasks of the plan of action for the customary sustainable use of biological diversity</p> <p>Best practices and guidelines are available</p> <p><i>Means of verification:</i></p>

Tasks	Main actors	Possible actions ¹⁰	Timeframes for phased implementation	Possible indicators and means of verification
<p>indigenous and local communities;</p> <p>(ii) Encourage the application of traditional knowledge and customary sustainable use of biological diversity in protected areas, including marine protected areas, as appropriate and in accordance with national legislation;</p> <p>(iii) Promote the use of community protocols in assisting indigenous and local communities to affirm and promote customary sustainable use of biological diversity in protected areas, including marine protected areas, in accordance with traditional cultural practices and national legislation.</p>		<p>through e-learning modules and tools for protected areas.</p> <p>Fostering the full and effective participation of indigenous and local communities through consultations and advisory relations</p>	<p>Group on Article 8(j) and Related Provisions</p>	<p>Future national reports commencing with the fifth national reports, where feasible</p> <p>A compilation of best practices and existing guidelines</p>
	<p>(ii) Parties and other Governments, with the effective participation of indigenous and local communities</p>	<p>Revision of the NBSAPs to incorporate customary sustainable use of biological diversity and traditional knowledge</p> <p>Active involvement and effective participation of relevant indigenous and local communities in the planning, establishment and management of protected areas and the wider landscapes and seascapes</p>	<p>Revision of NBSAPs 2014-15</p> <p>Reported in future national reports, commencing with the fifth national reports, where feasible</p>	<p><i>Indicator:</i> Revised NBSAPs include promotion of traditional knowledge and customary sustainable use of biological diversity</p> <p><i>Means of verification:</i> Future national reports, commencing with the fifth national reports, where feasible</p>
	<p>(iii) Parties, other Governments, Secretariat of the Convention on Biological Diversity, other relevant organizations, programmes and funds, ILC organizations and NGOs</p>	<p>Development of community protocols by indigenous and local communities</p> <p>Active promotion by Parties of the development and use of, and respect for, community protocols and other mechanisms that affirm customary sustainable use of biological diversity and traditional knowledge</p>	<p>Ongoing and reported through future national reports, commencing with the fifth national reports, where feasible</p>	<p><i>Indicator:</i> Parties recognize and support, and indigenous and local communities develop community protocols and other mechanisms, as appropriate, that affirm traditional knowledge and customary sustainable use of biological diversity</p> <p><i>Means of verification:</i> Future national reports, commencing with the fifth</p>

Tasks	Main actors	Possible actions¹⁰	Timeframes for phased implementation	Possible indicators and means of verification
				national reports, where feasible

VI. GUIDANCE FOR POSSIBLE ACTIONS

Task 1: To incorporate customary sustainable use practices or policies, as appropriate, with the full and effective participation of indigenous and local communities, into national biodiversity strategies and action plans, as a strategic way to maintain biocultural values and achieve human well-being, and to report on this in national reports.

Guidance

- Consider the establishment of and potential role for the national focal point for Article 8(j) (or the CBD national focal point) in promoting dialogue and creating bridges with indigenous and local communities to promote the incorporation of customary sustainable use practices and traditional knowledge into national biodiversity strategies and action plans.
- Promote the effective participation of representatives of indigenous and local communities in the revision of the national biodiversity strategies and action plans and in drafting the relevant sections of national reports.

Task 2: 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; and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c).

Guidance

- Parties, through the national focal point for Article 8(j), may wish to facilitate discussions with the relevant indigenous and local communities and compile an inventory of relevant existing or planned community-based initiatives at the local and subnational levels, in order to assist in the revision of national biodiversity strategies and action plans and for inclusion in the national reports.
- Parties, through the national focal point for Article 8(j), may wish to facilitate discussions with the relevant indigenous and local communities regarding the value and contributions of these initiatives to customary sustainable use of biological diversity, as well as on existing and perceived obstacles and possible actions to overcome them.
- Parties, through the national focal point for Article 8(j) may wish to facilitate discussions with the relevant indigenous and local communities to support community initiatives and potential collaboration.

Task 3: To identify best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives).

Guidance

- Parties, through the national focal points for Article 8(j) and for protected areas (or CBD focal points where national focal points for Article 8(j) and for protected areas have yet to be established), with the effective participation of indigenous and local communities, may wish to scope and compile existing guidelines, and develop an inventory of best practices for promotion and operationalization.
- In identifying best practices, Parties and other relevant stakeholders may wish to draw on existing international initiatives, reference materials and tools for best practices in relation to protected areas and customary use of biological diversity, such as the CBD Technical Series No. 64: *Recognizing and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities - Global Overview and National Case Studies* on indigenous peoples and community conserved territories and areas, the Whakatane Mechanism,¹¹ and community protocols.¹²

¹¹ This mechanism, which is an outcome of the 4th World Conservation Congress, aims to support conflict resolution and best practices in protected areas by ensuring that conservation practices respect the rights of indigenous and local communities. (See <http://whakatane-mechanism.org>)

¹² See www.community-protocols.org.

C. Development of best-practice guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity

The Conference of the Parties,

Recalling that, according to Article 8(j) of the Convention, Parties to the Convention shall, as far as possible and as appropriate, and subject to their respective national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles (hereafter referred to as “traditional knowledge”) relevant for the conservation and sustainable use of biodiversity, and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the fair and equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices,

Also recalling that, according to Article 17 of the Convention, Parties to the Convention shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries, and that such exchange of information shall include, inter alia, traditional knowledge. Exchange of information could also include the repatriation of information from gene banks and other ex-situ storages of biological resources and materials,

Acknowledging that the repatriation of traditional knowledge of indigenous and local communities through the sharing and exchange of information should be consistent with international agreements relevant to the conservation and sustainable use of biodiversity and national legislation,

Bearing in mind the importance of international cooperation in providing access to traditional knowledge for indigenous and local communities, in order to facilitate the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity,

Mindful of the various international bodies, instruments, programmes, strategies, standards, guidelines, reports and processes of relevance and the importance of their harmonization and complementarity, and effective implementation,

1. *Decides*, subject to the availability of resources, to convene a meeting of a regionally balanced group of government-nominated experts on the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity, including a proportionate number of observers, with at least seven¹³ observers from indigenous and local communities, nominated by them, and other observers from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), the United Nations Permanent Forum on Indigenous Issues (UNPFII) as well as other relevant organizations, reflecting the expertise of the broad range of actors involved in the repatriation of traditional knowledge of relevance to the conservation and sustainable use of biodiversity, with a view to developing draft voluntary guidelines to promote and enhance the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity, for consideration by the ninth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions;

2. *Invites* Parties, other Governments, UNESCO, WIPO, UNPFII, other relevant organizations as well as indigenous and local community organizations, to submit relevant information, including on best practices, and their views on the development of the draft voluntary guidelines to promote and enhance the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity to the Executive Secretary, having regard to the submissions already compiled in document UNEP/CBD/WG8J/8/INF/7, as well as the best practices summarized in section V of the note by the Executive Secretary on development of best-practice guidelines for the

¹³ The number is based on the seven geo-cultural regions recognized by the United Nations Permanent Forum on Indigenous Issues which are: Africa, Arctic (Europe), Asia, Latin America and the Caribbean, Central and Eastern European Countries (CEEC), North America, and the Pacific.

repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity (UNEP/CBD/WG8J/8/5);

3. *Requests* the Executive Secretary, in order to assist the technical expert group in its work:

(a) To compile the information and views received and make the compilation available to the meeting of the technical expert group;

(b) Taking into account the information and views received, to prepare draft elements of voluntary guidelines, for consideration by the meeting of the technical expert group;

(c) To transmit the result of the work of the technical expert group on the draft voluntary guidelines as well as the compilation of information and views referred to in paragraph 3 (a) above, to the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its ninth meeting, for its consideration, and with a view to consideration by the Conference of the Parties at its thirteenth meeting;

4. *Requests* the Executive Secretary to make the information and views submitted as well as their compilation available on a dedicated web page of the Traditional Knowledge Information Portal of the Convention as a tool to assist indigenous and local communities and potential entities repatriating traditional knowledge, in their efforts to repatriate traditional knowledge relevant to the conservation and sustainable use of biological diversity;

5. *Requests* Governments, to the extent possible, to translate information and best practices to facilitate repatriation of traditional knowledge relevant to the conservation and sustainable use of biodiversity into principal local languages.

D. How tasks 7, 10 and 12 could best contribute to work under the Convention and to the Nagoya Protocol

The Conference of the Parties,

Taking note of the Expert Study on how the implementation of tasks 7, 10 and 12 of the revised Multi-Year Programme of Work could best contribute to the work under the Convention and the Nagoya Protocol,

Noting the desirability for consistency throughout the programme of work on Article 8(j) and related provisions, and between the Convention and the Nagoya Protocol,

Recalling decision IX/13 C on considerations for guidelines for documenting traditional knowledge,

Also noting that at this time there is no centralized mechanism for indigenous and local communities to report unauthorized access of their traditional knowledge,

Further noting the need to advance tasks 7, 10 and 12 in a manner that avoids any inconsistencies with the Nagoya Protocol, avoids duplication and overlap of work undertaken in other international fora, and takes into account relevant developments, including under the Nagoya Protocol, the United Nations Permanent Forum on Indigenous Issues and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO), and the United Nations Declaration on the Rights of Indigenous Peoples,

Also noting that the Nagoya Protocol applies to traditional knowledge associated with genetic resources,

Recalling also the Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity,

Noting that the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions contributes positively to the implementation of the Nagoya Protocol,

Recognizing that the development of guidelines for tasks 7, 10 and 12 will contribute to capacity-building for the implementation of the Convention and the Nagoya Protocol,

1. *Decides* to implement tasks 7, 10 and 12 in an integrated manner that is mutually supportive of the Nagoya Protocol and of the work undertaken in other international fora through the development of voluntary guidelines with the full and effective participation of indigenous and local communities that will assist Parties and Governments in the development of legislation or other mechanisms, including national action plans and *sui generis* systems, as appropriate, for an effective implementation of Article 8(j) and related provisions, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their knowledge, innovations and practices, within the context of the Convention;

2. *Decides* to include the following sub-tasks in priority order:

Phase I

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (“Working Group”) is to:

- (i) Develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed consent or approval and involvement of the indigenous and local communities;
- (ii) Develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices;
- (iii) Develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge;
- (iv) Develop a glossary of relevant key terms and concepts to be used within the context of Article 8(j) and related provisions;

Phase II

The Working Group may consider further work on the following sub-task, in light of progress made on priorities (i), (ii), (iii) and (iv) above, including:

- (i) Advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices are used;

3. To ensure that advances made can contribute in a timely fashion to the effective implementation of the Convention, the Strategic Plan for Biodiversity 2011-2020 and the achievement of the Aichi Biodiversity Targets, as well as the implementation of the Nagoya Protocol, *decides* that the Conference of the Parties at its thirteen meeting will consider for adoption the voluntary guidance developed under each sub-task as a stand-alone but complementary element of the overarching task;

4. *Invites* Parties, Governments, relevant international organizations and indigenous and local communities to submit their views, including information on community protocols, model clauses, best practices, experiences and practical examples for the prior informed consent or approval and involvement processes for access to the knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity and for the sharing of benefits arising from the use of this knowledge with those communities, and their complementarity with the Nagoya Protocol, on the sub-tasks (i), (ii), (iii) and (iv) referred to in paragraph 2, Phase I, above to the Executive Secretary;

5. *Requests* the Executive Secretary to compile and analyse these views taking into account relevant work in related international processes and to draft guidelines for sub-tasks (i), (ii) and (iii) and, following a gap analysis, draft a glossary for sub-task (iv) and to make them available to the ninth meeting of the Working Group on Article 8(j) and Related Provisions for its consideration;

6. *Noting* the relevance of the elements of *sui generis* systems as well as the draft glossary of terms to the revised tasks 7, 10 and 12, *invites* the Working Group to use the elements of *sui generis* systems¹⁴ as appropriate, in its work on those tasks.

E. Sui generis systems for the protection, preservation and promotion of traditional knowledge, innovations and practices

The Conference of the Parties

1. *Acknowledges* the contribution of *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities to the achievement of Aichi Biodiversity Target 18;

2. *Takes note* of the revised elements for *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities as contained in the note by the Executive Secretary on the subject and *invites* Parties to make use of them as may be appropriate in their particular circumstances and in accordance with national legislation;

3. *Recognizing* the relevance of the possible elements of *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities as well as the draft glossary of terms as contained in the note by the Executive Secretary on the subject to tasks 7, 10 and 12, and taking into account the need to further refine the glossary of terms, *invites* the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions to use the possible elements and draft glossary, as appropriate, in its work on those tasks;

4. *Invites* Parties, other Governments, international organizations, non-governmental organizations and indigenous and local communities to submit views on possible elements of *sui generis* systems as contained in the note by the Executive Secretary¹⁵ and experiences regarding *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities, including community protocols and other forms of legal provisions, to the Secretariat;

5. *Requests* the Executive Secretary to produce a technical series publication that draws from a geographically balanced set of existing case studies and examples related to the possible elements of *sui generis* systems taking into account the information submitted and experience gathered on a broad range of *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities with a view to informing the work of Parties, other Governments and indigenous and local communities on the development of *sui generis* systems, including on future priority work on implementation of tasks 7, 10 and 12, and to provide for a peer-review of the final draft;

6. *Urges* Parties and other Governments to recognize, support and encourage the development of local *sui generis* systems by indigenous and local communities, including through the development of community protocols, as part of national action plans for the protection, preservation and promotion of traditional knowledge, innovations and practices within national biodiversity strategies and action plans, and *invites* Parties and other Governments to report on these initiatives through the national

¹⁴ See UNEP/CBD/WG8J/8/6/Add.1.

¹⁵ See UNEP/CBD/WG8J/8/6/Add.1.

reporting process, the Working Group on Article 8(j) and Related Provisions, and through the Traditional Knowledge Information Portal of the Convention;

7. *Encourages* Parties and other Governments to develop mechanisms to promote compliance with *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities at national level, as well as tools to promote international cooperation in this regard;

8. *Requests* the Executive Secretary to continue to inform the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) of the World Intellectual Property Organization on the work carried out regarding *sui generis* systems for the protection, preservation and promotion of traditional knowledge, innovations and practices of indigenous and local communities, including working modalities for future consideration of this item, and other matters of mutual interest, and to continue engaging with the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore with a view to ensuring complementarity and avoiding overlaps.

F. Terminology “indigenous peoples and local communities”

The Conference of the Parties,

Recalling paragraph 2 of decision XI/14 G, in which it requested the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions to consider the recommendations of the United Nations Permanent Forum on Indigenous Issues concerning the use of the terminology “indigenous peoples and local communities” and all its implications for the Convention,

Noting recommendation 8/6 of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions,

Emphasizing that the subject matter of Article 8(j) is traditional knowledge, which is subject to national legislation, and related provisions, including Article 10(c), which is customary sustainable use, within the scope of the Convention, and that each Contracting Party is expected to implement these provisions as far as possible, as appropriate,

Recognizing the advice of the United Nations Office of Legal Affairs,¹⁶ which was given on an informal basis that “... in order for the Parties to ensure that the use of different terminology in a decision would not be construed as a “subsequent agreement”, they should make clear in their decision that the use of different terminology was on an exceptional basis and without prejudice to the terminology used in the Convention and should not be taken into account for purposes of interpreting or applying the Convention”,

Affirming that this decision to use the terminology “indigenous peoples and local communities” in future decisions and secondary documents is made on an exceptional basis acknowledging that the terminology used in the Convention is “indigenous and local communities”,

Also affirming that any change to the legal meaning of the terminology “indigenous and local communities” should be done only using the amendment procedure set out in Article 29 of the Convention on Biological Diversity,

1. *Decides* to use the terminology “indigenous peoples and local communities” in future decisions and secondary documents under the Convention, as appropriate;

2. *Also decides:*

(a) That the use of the terminology “indigenous peoples and local communities” in any future decisions and secondary documents shall not affect in any way the legal meaning of Article 8(j) and related provisions of the Convention;

¹⁶ See UNEP/CBD/COP/12/5/Add.1, para. 16.

(b) That the use of the terminology “indigenous peoples and local communities” may not be interpreted as implying for any Party a change in rights or obligations under the Convention;

(c) That the use of the terminology “indigenous peoples and local communities” in future decisions and secondary documents shall not constitute a context for the purpose of interpretation of the Convention on Biological Diversity as provided for in article 31, paragraph 2, of the Vienna Convention on the Law of Treaties¹⁷ or a subsequent agreement or subsequent practice among Parties to the Convention on Biological Diversity as provided for in article 31, paragraph 3 (a) and (b) or special meaning as provided for in article 31, paragraph 4, of the Vienna Convention the Law of Treaties. This is without prejudice to the interpretation or application of the Convention in accordance with Article 31, paragraph 3(c) of the Vienna Convention on the Law of Treaties;

3. *Notes* the recommendations arising from the eleventh¹⁸ and twelfth¹⁹ sessions of the Permanent Forum on Indigenous Issues, and *requests* the Executive Secretary to continue to inform the United Nations Permanent Forum on Indigenous Issues on developments of mutual interest.

¹⁷ United Nations, *Treaty Series*, vol. 1155.

¹⁸ See *Official Records of the Economic and Social Council, 2012, Supplement No. 23* (E/2012/43-E/C.19/2012/13).

¹⁹ See *ibid.*, 2013, *Supplement No. 23* (E/2013/43-E/C.19/2013/25).

