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Agenda item 6.7

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

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INTRODUCTION

A. *Background*

1. The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity was established by decision IV/9 of the Conference of the Parties to the Convention on Biological Diversity. It held its first meeting in Seville, Spain, from 27 to 31 March 2000, and its second and third meetings in Montreal, from 4 to 8 February 2002, and from 8 to 12 December 2003, respectively. The fourth meeting was held in Granada, Spain, at the kind invitation of the Government of the Kingdom of Spain, from 23 to 27 January 2006, while the fifth meeting was held in Montreal, from 15 to 19 October 2008. In paragraph 5 of its decision IX/13 A, the Conference of the Parties decided that an additional meeting of the Working Group should be organized prior to the tenth meeting of the Conference of the Parties. Accordingly, the sixth meeting of the Working Group was held from 2 to 6 November 2009, in Montreal, at the headquarters of the International Civil Aviation Organization (ICAO), back-to-back with the eighth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

B. *Attendance*

2. The meeting was attended by representatives of the following Parties and other Governments: Algeria, Angola, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Bhutan, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Comoros, Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, Ethiopia, European Community, Finland, France, Georgia, Germany, Ghana, Grenada, Guatemala, Guinea-Bissau, Haiti, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kenya, Kiribati, Kyrgyzstan, Lesotho, Liberia, Madagascar, Malawi, Malaysia, Mauritania, Mexico, Micronesia (Federated States of), Mozambique, Namibia, Nauru, Nepal, New Zealand, Niger, Nigeria, Norway, Pakistan, Papua New Guinea, Peru, Portugal, Republic of Korea, Republic of Moldova, Rwanda, Saint Lucia, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Solomon Islands, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Tunisia, Uganda, Ukraine, United States of America, Venezuela, Viet Nam, Yemen, Zambia,

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Global Environment Facility (GEF), United Nations Environment Programme (UNEP), World Intellectual Property Organization (WIPO).

4. The following organizations were also represented by observers:

African Indigenous Women Organisation	Canadian Environmental Network
ALMACIGA-Grupo de Trabajo Intercultural	Canadian observers
American Bird Conservancy	CBD Alliance and Kalpavriksh
Andes Chinchasyo	Center for International Sustainable
Asia Indigenous Peoples Pact Foundation	Development Law
Asociacion Ak'Tenamit	Centre d'accompagnement des autochtones
Asociación de Investigación y Desarrollo Integral	pygmees et minoritaires vulnérables
Rex We	Centre for Economic and Social Aspects of
Asociacion de la Juventud Indígena Argentina	Genomics
Asociación Ixacavaa De Desarrollo e	Centro de Culturas Indígenas del Perú
Información Indígena	Centro de Estudios Multidisciplinarios Aymara
Assembly of First Nations	Centro para la Autonomía de los Pueblos
Association OKANI	Indígenas
Azad University	CIHR Team in Aboriginal Anti-Diabetic
Baikal Buryat Center for Indigenous Cultures	Medicines
Biofuelwatch	Commission for Environmental Cooperation
Call of the Earth Llamado de la Tierra	

Commission on Land Rights of Indigenous Peoples in Lower Marowijne	Japan Forum for Biodiversity
Comunidad Indígena Ancestral Lago Chungara	Kobe University
Consejo Autonomo Aymara	League for Pastoral Peoples and Endogenous Livestock Development
Consejo Regional Otomí del Alto Lerma	L'Unissons-nous pour la Promotion des Batwa
Cooperativa Ecologica das Mulheres	Mohawk Nation
Extrativistas do Marajo	National Aboriginal Health Organization
Cooperativa Ecológica de las Mujeres	Natural Justice (Lawyers for Communities and the Environment)
Colectoras de la Isla de Marajó	Nepal Indigenous Nationalities Preservation Association (NINPA)
Dena Kayeh Institute	North West Territories Protected Areas Strategy (PAS)
ECOROPA	Organizacion del Pueblo Guarani
ETC Group	Pastoralists' Survival Options (Naadutaro)
Femmes Autochtones du Québec Inc./Quebec	Plenty Canada
Native Women Inc.	Queensland University of Technology
Forest Peoples Programme	Red de Cooperacion Amazonica
Foundation for Aboriginal and Islander Research Action	Red Indigena de Turismo de Mexico (RITA)
Fuerza de Mujeres Wayuu	Rural Development Fund
Fundación Intercultural Alitasia	Russian Association of Indigenous Peoples of the North (RAIPON)
Fundación Ngäbe-Buglé	Saami Council
Fundacion Para la Promocion del Conocimiento Indigena	South Central Peoples Development Association
Hutchins, Caron & Associes	State University of New York/Plattsburgh
INBRAPI	Tebtebba Foundation
Indigenous Information Network	The Christensen Fund
Indigenous Knowledge and Peoples Network	The Nature Conservation Society of Japan
Indigenous World Association	Tulalip Tribes
Instituto para el rescate ancestral indigena salvadoreno	United Confederation of Taino People
Inter Mountain Peoples Education and Culture in Thailand Association	Université Laval
International Development Law Organization	University of Manitoba
Japan Bioindustry Association	University of Rome Sapienza
Japan Civil Network for Convention on Biological Diversity	USC - Canada
Japan Committee for IUCN	Waikiki Hawaiian Civic Club
	Yanapanakuy

ITEM 1. OPENING OF THE MEETING

5. The meeting was opened at 10.10 a.m. on Monday, 2 November 2009, with a ceremonial prayer and song by Mr. Charlie Patton and Mr. Kenneth Deer, Elders of the Mohawk Community of Kahnawake.

6. Opening statements were made by Ms. Nicola Breier, representative of the President of the Conference of the Parties of the Convention on Biological Diversity, Mr. Balakrishna Pisupaty, speaking of behalf of Mr. Achim Steiner, Executive Director of the United Nations Environment Programme, and Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity.

7. Ms. Breier welcomed participants and thanked the leaders of the Mohawk community for their ceremonial opening and prayer. She noted that more than 100 representatives of indigenous and local communities were participating in the meeting, 48 of whom had been funded through the Voluntary Fund to Facilitate the Participation of Indigenous and Local Communities in the Work of the Convention on Biological Diversity. It was important to take stock of the progress made in the programme of work and to re-image Article 8(j) and its possible contributions to an international regime on access and benefit-

sharing, as well as its broader contribution in addressing the global environmental issues. To that end, the Working Group would consider a new multi-year programme of work that might also include a focus on Article 10(c), of the Convention. She said that, as a result of the work of the Working Group, there was a better understanding of the contribution that traditional knowledge could make to the success of the Convention. However, further work was needed to complete the work on a code of ethical conduct that ensured respect for the cultural heritage and intellectual property of indigenous and local communities. A consensus outcome on the code would be a welcome addition to the products of the Working Group, which could be reported to the ninth session of the United Nations Permanent Forum on Indigenous Issues, to be held in New York during the International Year of Biodiversity.

8. Mr. Pisupaty conveyed to the participants the best wishes of Mr. Achim Steiner, Executive Director of the United Nations Environment Programme (UNEP), and Mr. Bakary Kante, Director of the UNEP Division of Environmental Law and Conventions. He also thanked the Executive Secretary of the Convention for all the preparatory work that had been undertaken in developing the agenda for the meeting. He said that UNEP was pleased that the meeting was taking place at a time when discussions on the finalization of the negotiations for an international regime on access and benefit-sharing and on the Strategic Plan for the Convention on Biological Diversity were ongoing. The Working Group would be focusing on a few key elements of the international regime related to traditional knowledge and its contribution to furthering the implementation of the Convention. He expressed the hope that the outcomes of the meetings of the Group of Technical and Legal Experts on Traditional Knowledge Associated with Genetic Resources, held in Hyderabad, India, from 16 to 19 June 2009, and the Group of Legal and Technical Experts on Compliance, held in Tokyo from 27 to 30 January 2009, would form a good basis for moving the discussions forward.

9. Mr. Ahmed Djoghlaif said that the ceremony performed by the representatives of the Mohawk Nation was a clear demonstration of the intrinsic link between culture and nature and the unique contribution of Indigenous Peoples and local communities in protecting life on Earth. He expressed his appreciation to the Governments of Austria, Denmark, Norway and Spain for supporting the participation of 48 indigenous and local community representatives in the current meeting and the eighth meeting of the Working Group on Access and Benefit-sharing to be held the following week as well as other donors that have supported the participation of 88 eligible Parties to the Convention. Noting that biodiversity had been protected, maintained and even increased over time through the application of their traditional knowledge, he said that it was no coincidence that the Working Group had been mandated to provide views to the Working Group on Access and Benefit-sharing, on an essential component of the International Regime on Access to Genetic Resources and Benefit-sharing, namely, "associated traditional knowledge". He encouraged a strong partnership between Parties to the Convention and indigenous and local communities to celebrate the International Year of Biodiversity in 2010 and to highlight their contributions to maintaining biodiversity and providing solutions to the climate-change crisis. In conclusion, he informed the Working Group that, on 26 October 2009, Iraq had become the 192nd Party to the Convention on Biological Diversity. On 10 December, Somalia would become the 193rd Party. He congratulated the representatives of Iraq and Somalia and invited to the two remaining countries to join the biodiversity family at the occasion of the 2010 celebration of the International Year of Biodiversity. Andorra would soon become the 194th Party, and he sincerely hoped that the United States of America would be present in Nagoya as the 195th Party.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. *Officers*

10. The Bureau of the Conference of the Parties acted as the Bureau of the Working Group. In keeping with past practice indigenous and local community representatives were also invited to designate six "friends of the Bureau" to participate in Bureau meetings. On the proposal of the International Indigenous Forum on Biodiversity, Mr. Merle Alexander (Dena Kayeh Institute), Ms. Neva Collings (Foundation for Aboriginal and Islander Research Action), Mr. Shimreichon Luithui-Erni (Indigenous

Knowledge and Peoples Network), Ms. Lucy Mulenkei (Indigenous Women's Network on Biodiversity), Ms. Victoria Esther Camac Ramirez (Asociación Ixacavaa De Desarrollo e Información Indígena) and Ms. Gunn-Britt Retter (Saami Council) were elected by acclamation as "friends of the Bureau". At the same time, Ms. Lucy Mulenkei was also elected, to serve together with Ms. Breier, as Co-Chair of the Working Group.

11. On the proposal of the Bureau, Ms. Somaly Chan (Cambodia) served as Rapporteur.

2.2. Adoption of the agenda

12. At its 1st session, on 2 November 2009, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG8J/6/1):

1. Opening of the meeting.
2. Organizational matters.
3. Mechanisms to promote the effective participation of indigenous and local communities in matters related to the objectives of Article 8(j) and related provisions of the Convention on Biological Diversity.
4. Development of elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices.
5. Elements of a code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities.
6. International regime on access and benefit-sharing: provision of views to the Ad Hoc Working Group on Access and Benefit-sharing.
7. Multi-year programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity.
8. Other matters.
9. Adoption of the report.
10. Closure of the meeting.

2.3. Organization of work

13. At the 1st session of the meeting, on 2 November 2009, the Working Group approved the organization of work for the meeting on the basis of the proposal contained in annex II to the revised annotations to the provisional agenda (UNEP/CBD/WG8J/6/1/Add.1/Rev.1).

14. To ensure the full participation of delegates and observers in the deliberations of the Working Group, and consistent with the streamlined agenda, it was decided that the Working Group would work in plenary on the understanding that, where necessary and appropriate, contact groups could be established to examine specific issues.

15. In accordance with decision VIII/31 of the Conference of the Parties, at the 6th session of the meeting, on 5 November 2009, the Executive Secretary provided the Working Group with an indication of the potential administrative and financial implications of the draft recommendations being referred by the Working Group to the Conference of the Parties for adoption that might not be met from the core budget.

2.4. Opening statements and general comments

16. At the 1st session of the meeting, on 2 November 2009, the representative of the International Indigenous Forum on Biodiversity thanked the Executive Secretary and the Parties for facilitating the participation of indigenous representatives through the Voluntary Fund and through the support of various non-governmental organizations and donors. The Working Group had increased the respect and mutual

understanding between indigenous peoples and the Parties through a joint learning experience. Several developments had taken place since the adoption of the programme of work, and among the emerging problems were the effects of climate change, which threatened to unravel much of the work of the Convention on Biological Diversity. Climate change threatened the survival of indigenous peoples both directly because of its immediate impacts and indirectly through the negative effects of mitigation and adaptation actions. There was a critical need to revise the programme of work of the Working Group, and traditional knowledge had to be incorporated into a new vision that also addressed developments in international law. The international regime had to include binding elements that recognized and protected traditional knowledge, innovations and practices and genetic resources of indigenous peoples in accordance with relevant international instruments that affirmed indigenous peoples' rights. The elements of the ethical code of conduct needed to respect indigenous authority, autonomy and sovereignty and provide guidance to institutions, researchers and others that sought to engage with indigenous peoples and local communities, while *sui generis* systems needed to provide broad protection for the traditional knowledge, innovations and practices of indigenous peoples and not simply protective measures for misappropriation as was being pursued under the international regime for access and benefit-sharing.

17. The representative of Quebec Native Women Inc., speaking on behalf of a number of Canadian indigenous communities and human-rights and non-governmental organizations, expressed support for the work undertaken under Article 8(j). She said that the Working Group was a beacon in the United Nations system for the protection of the traditional knowledge of indigenous and local communities. The Working Group had to develop a revised multi-year programme of work, as well as an ethical code of conduct to protect the human rights of indigenous peoples and ensure the free prior informed consent of indigenous peoples with regard to activities that might affect them. She also called upon the Government of Canada to follow the lead of the Government of Australia and recognize the rights of the holders of traditional knowledge.

18. The representative of International Forum of Local Communities said that the Working Group on Article 8(j) played a fundamental role in the implementation of the three objectives of the Convention on biological Diversity and called upon the Parties to guarantee the wide and equitable participation of representatives from indigenous peoples and local communities in the work of intersessional workshops. The traditional knowledge of indigenous peoples and local communities was directly related to their natural resources and for that reason there was also a need to revise the programme of work of the Working Group to include issues related to climate change and a mechanism to finance climate-change mitigation and adaptation activities.

19. The representative of the Indigenous Women's Biodiversity Network thanked the Government of Spain and the Secretariat of the Convention on Biological Diversity for their assistance in furthering the participation of indigenous women from Latin America and the Caribbean Region in the Working Group, and she hoped that such assistance could be extended to indigenous women from other regions as well. Indigenous women had a fundamental role in the transmission of traditional knowledge from one generation to another. She expressed concern that there had been few developments in the programme of work of the Working Group over the previous ten years said that future work needed to ensure the effective participation of women from indigenous peoples and local communities. Any indicators developed needed to reflect the fact that genetic resources were the property of indigenous peoples, and any international regime on access and benefit-sharing had to ensure that the benefits derived from the use of traditional knowledge were shared fairly and equitably with indigenous peoples and local communities, and in particular indigenous women,. The ethical code of conduct needed to be based on the restitution, preservation, conservation and maintenance of traditional knowledge and indigenous women had to be treated as co-partners in, rather than the objects of, the various levels of research.

20. The representative of Iraq reminded the Working Group that Iraq had recently become the 192nd Party to the Convention on Biological Diversity and that the Government of Iraq believed in the valuable work being undertaken under the United Nations Environment Programme. He informed the meeting that Iraq had also become a Party to the United Nations Framework Convention on Climate Change and the

United Nations Convention to Combat Desertification. He thanked the Executive Secretary of the Convention Biological Diversity for the help that Iraq had received from the Secretariat and called upon the Parties to the Convention on Biological Diversity to help Iraq during a difficult time of transition to address the environmental problems posed by the process of desertification.

ITEM 3. MECHANISMS TO PROMOTE THE EFFECTIVE PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES IN MATTERS RELATED TO THE OBJECTIVES OF ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY

21. The Ad Hoc Open-ended Working Group took up agenda item 3 at the 1st session of the meeting, on 2 November 2009. In considering the item, the Working Group had before it a note by the Executive Secretary on participatory mechanisms for indigenous and local communities in the work of the Convention (UNEP/CBD/WG8J/6/3).

22. Introducing the item, the Co-Chair of the Working Group welcomed further discussion of mechanisms to promote indigenous and local community participation, including capacity-building, but asked the participants to comment specifically on the draft recommendation contained in the document.

23. Statements were made by: Brazil, Canada, Guatemala, Haiti, India, Japan, Jordan, Lesotho, Malawi, Mexico, Niger, Norway, Peru, Saint Lucia, Senegal, Sweden (on behalf of the European Community and its member States), the Syrian Arab Republic, Thailand, and Uganda.

24. Statements were also made by the International Forum of Local Communities, the International Indigenous Forum on Biodiversity, and Quebec Native Women Inc.

25. Following the statements, the Co-Chair undertook to revise the draft recommendations contained in the note by the Executive Secretary in light of the comments that had been made and to prepare a Co-Chairs' text of revisions for consideration by the Working Group.

26. At the 5th session of the meeting, on 4 November 2009, the Working Group took up the text prepared by the Co-Chairs..

27. Following an exchange of views, the Co-Chair said that she would prepare a revised draft recommendation for the consideration of the Working Group, which was subsequently circulated as draft recommendation UNEP/CBD/WG8J/6/L.2.

Action by the Working Group

28. At the 7th session of the meeting, on 6 November 2009, the Working Group took up draft recommendation UNEP/CBD/WG8J/6/L.2 and adopted it as recommendation 6/1. The text of the recommendation, as adopted, is contained in annex I to the present report.

ITEM 4. DEVELOPMENT OF ELEMENTS OF SUI GENERIS SYSTEMS FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES

29. The Ad Hoc Open-ended Working Group took up agenda item 4 at the 1st session of the meeting, on 2 November 2009. In considering the item, the Working Group had before it an update by the Executive Secretary on elements of sui generis systems for the protection of traditional knowledge, innovations and practices to identify priority elements (UNEP/CBD/WG8J/6/5).

30. Introducing the item, the Co-Chair invited participants to further discuss sui generis systems for the protection of traditional knowledge and asked participants to comment specifically on the draft recommendations contained in section III of the note by the Executive Secretary.

31. Statements were made by the representatives of Australia, Brazil, Canada, China, Costa Rica, Egypt, India, Indonesia, New Zealand, Malaysia, Mexico, South Africa, Sweden (on behalf of the European Community and its member States), Tunisia, Uganda, and Yemen.
32. Statements were also made by: the International Forum of Local Communities, the International Indigenous Forum on Biodiversity and the International Women Biodiversity Network, and Quebec Native Women Inc.
33. Following the statements, the Co-Chair undertook to revise the draft recommendations in light of the comments that had been made and to prepare a Co-Chairs' text of revisions for consideration by the meeting.
34. The Co-Chairs' text was submitted to Working Group at its 6th plenary session, on 5 November 2009.
35. Following an exchange of views, the Co-Chair said that she would prepare a revised draft recommendation for the consideration of the Working Group, which was subsequently circulated as draft recommendation UNEP/CBD/WG8J/6/L.3.

Action by the Working Group

36. At the 7th session of the meeting, on 6 November 2009, the Working Group took up draft recommendation UNEP/CBD/WG8J/6/L.3 and adopted it, as orally amended, as recommendation 6/2. The text of the recommendation, as adopted, is contained in annex I to the present report.

ITEM 5. ETHICAL CODE OF CONDUCT TO ENSURE RESPECT FOR THE CULTURAL AND INTELLECTUAL HERITAGE OF INDIGENOUS AND LOCAL COMMUNITIES

37. The Ad Hoc Open-ended Working Group took up agenda item 5 at the 2nd session of the meeting, on 2 November 2009. In considering the item, the Working Group had before it the draft code of ethical conduct, as transmitted from the ninth meeting of the Conference of the Parties in the annex to decision IX/13 G (UNEP/CBD/WG8J/6/4) and a compilation of views concerning the draft code of ethical conduct (UNEP/CBD/WG8J/6/INF/2 and Add.1).
38. Introducing the item, Co-Chair reminded participants that the development of the draft elements of a code of ethical conduct had been an item for consideration by the Working Group for some time and in view of its advanced stage, proposed to establish a contact group mandated to negotiate with a view to removing the remaining brackets from the draft code of ethical conduct. The Co-Chair invited participants to make general remarks regarding the draft code of ethical conduct.
39. Statements were made by: Algeria, Argentina, Brazil, Canada, Egypt, India, Japan, Liberia (on behalf of the African Group), Malaysia, Mexico, New Zealand, Norway, Peru, and Sweden (on behalf of the European Community and its member States).
40. Following the exchange of views, the Co-Chair asked Ms. Susanna Chung (South Africa) and Ms. Neva Collings (Foundation for Aboriginal and Islander Research Action) to co-chair a contact group to further discuss the elements of the draft code of ethical conduct and to report back to the subsequent plenary session of the meeting.
41. At the 4th session of the meeting, on 3 November 2009, Ms. Chung reported that the contact group had met twice and had discussed most of the recommendations. However, more work had to be done, and she requested that the contact group be granted another session to complete its work.
42. The Co-Chair thanked the co-chairs of the contact group and said that the contact group should continue its work for another session. She asked that the co-chairs report again at the subsequent plenary session of the Working Group.

43. At the 5th session of the meeting, on 4 November 2009, Ms. Chung reported that the contact group had completed its work and she submitted the text of a revised draft recommendation for consideration by the Working Group.

44. The Co-Chair said that the Working Group would take up the text of the contact group at its next plenary session.

45. The text of the contact group was taken up by the Working Group at the 6th session of the meeting, on 5 November 2009.

46. Following an exchange of views, the Co-Chair said that she would prepare a draft recommendation for consideration by the Working Group, which was subsequently circulated as draft recommendation UNEP/CBD/WG8J/6/L.4.

47. The Working Group also agreed to recommend that the ethical code of conduct should be entitled the “Tkarihwaí:ri Ethical Code of Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biodiversity”.*

Action by the Working Group

48. At the 7th session of the meeting, on 6 November 2009, the Working Group took up draft recommendation UNEP/CBD/WG8J/6/L.4 and adopted it, as orally amended, as recommendation 6/3. The text of the recommendation, as adopted, is contained in annex I to the present report.

**ITEM 6. INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING:
PROVISION OF VIEWS ON THE ELABORATION AND NEGOTIATION
OF THE INTERNATIONAL REGIME**

49. The Ad Hoc Open-ended Working Group took up agenda item 6 at the 3rd session of the meeting, on 3 November 2009. In considering the item, the Working Group had before it a note by the Executive Secretary on the negotiations of the International Regime on Access and Benefit-sharing (UNEP/CBD/WG8J/6/6/Rev.1); a compilation of views on tasks 7, 10, 12 and 15 and views on the desirability and the potential elements of a strategy for conservation and sustainable use, as well as views on the in-depth review of the programme of work on Article 8(j) and related provisions (UNEP/CBD/WG8J/6/INF/1); the compilation of views concerning the draft code of ethical conduct (UNEP/CBD/WG8J/6/INF/2 and Add.1); the report of the Vienna Workshop on Matters Related to Traditional Knowledge with Genetic Resources and the International Regime on Access and Benefit-sharing (UNEP/CBD/WG8J/6/INF/13); the report of the Vilm Workshop on matters related to traditional knowledge associated with genetic resources and the International Regime on Access and Benefit-sharing (UNEP/CBD/WG8J/6/INF/14). Also available were the reports of the meetings of the Group of Legal and Technical Experts on Compliance in the Context of the International Regime on Access And Benefit-Sharing, held in India from 16 to 19 June 2009 (UNEP/CBD/WG-ABS/8/2) and the Group of Technical and Legal Experts on Traditional Knowledge Associated with Genetic Resources in the Context of the International Regime on Access and Benefit-Sharing, held in Japan from 27 to 30 January 2009 (UNEP/CBD/WG-ABS/7/3).

50. Introducing the item, the Co-Chair reminded participants that their consensus views on the item were crucial to advance the negotiation of the international regime on access and benefit-sharing, and in particular to how the international regime would address associated traditional knowledge. The Co-Chair invited participants to make comments regarding the contribution of the Working Group on Article 8(j) to the Working Group on Access and Benefit-sharing.

51. Statements were made by Algeria, Argentina, Australia, Brazil, Canada, Guatemala, India, Indonesia, Jordan, Malawi, Malaysia, Mexico, Nepal, Norway, Sweden (on behalf of the European

* Tkarihwaí:ri, (pronounced “Tga-ree-wa-yieree”) is a Mohawk term meaning “the proper way”.

Community and its member States), Thailand, Uganda (on behalf on the African Group), and Ukraine (on behalf of the Central and East European Group).

52. Statements were also made by the Indigenous Women's Biodiversity Network, the International Indigenous Forum on Biodiversity, the League for Pastoral People and Endogenous Livestock Development, and the Quebec Native Women Inc.

53. During the discussion, a number of participants expressed the view that the reports of the expert group meetings on compliance and on traditional knowledge associated with genetic resources in the context of the international regime on access and benefit-sharing (see para. 49 above) were of particular importance when considering the agenda item. Several participants thanked the Governments of India and Japan for facilitating those meetings.

54. Following the exchange of views, the Co-Chair said that she would consult with the Bureau on how to proceed with further discussion under the agenda item.

55. At the 4th session of the meeting, on 3 November 2009, the Co-Chair said that following consultations with the Bureau the Co-Chairs had decided to form a contact group to further discuss the agenda item. The Co-Chair asked Mr. Damaso Luna (Mexico) and Mr. Merle Alexander (Dena Kayeh Institute) to co-chair the contact group. She said that to promote efficiency the contact group should take as its point of reference the reports of the expert group meetings on compliance and on traditional knowledge associated with genetic resources in the context of the international regime on access and benefit-sharing (see para. 49 above).

56. The representatives of Brazil and Uganda asked for clarification as to what additional elements could be introduced and whether the comments that had been made at the 3rd session of the meeting could be circulated to the contact group.

57. The Co-Chair explained that while the two reports would serve as a basis for discussion the participants were free to introduce other issues that had already been discussed. To that end, the Secretariat would provide a summary of the interventions that had been made during the 3rd session of the meeting and to make that summary available to the participants in the contact group.

58. At the 5th session of the meeting, on 4 November 2009, Mr. Damaso Luna, co-chair of the contact group, reported that the group had met twice and had reviewed the reports of the technical experts as well as the summary of the discussion that had been prepared by the Secretariat. The contact group had identified those areas which had received the broadest support from the experts attending the expert groups and would endeavour to draw up a list of recommendations.

59. The Co-Chair of the Working Group thanked the co-chairs and asked the contact group to continue its work for another session. She also asked the co-chairs to report again at the subsequent plenary session of the Working Group.

Action by the Working Group

60. The revised draft text of the co-chairs of the contact group (UNEP/CBD/WG8J/6/L.5) was subsequently taken up by the Working Group at the 7th session of the meeting, on 6 November 2009. The Working Group adopted it, as orally amended, for transmission to the eighth meeting of the Ad Hoc Working Group on Access and Benefit-sharing. The text as adopted is contained in annex II to the present report.

61. During the discussion leading to the adoption of the text, the representative of Cuba suggested that the words "received the broadest support from the experts attending the expert groups", at the end of paragraph 2, be replaced with "were the most relevant". Following an explanation from the co-chair of the contact group, the representative of Cuba said that the Cuban delegation would not insist on the change, provided that its comments were reflected in the report.

62. The representative of Burkina Faso suggested that the words “the International Regime could suggest the inclusion of”, contained in subparagraph (xxiv) of paragraph 3, be replaced with the words “the International Regime could include clear”. It was agreed that the proposal of Burkina Faso would be reflected in the report.

63. The representative of Namibia suggested that subparagraphs 3 (xviii) and (xxvii) (b) should include a reference that the suggestions were subject to national legislation. It was agreed that the proposal of Namibia would be reflected in the report.

64. The representative of Sweden, speaking on behalf of the European Community and its member States, wished it reflected in the report that that Sweden had refrained from commenting on the proposals that had been made to orally amend the subparagraphs of paragraph 3 of the document as that document was not a negotiated text.

**ITEM 7. MULTI-YEAR PROGRAMME OF WORK ON THE
IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS
OF THE CONVENTION ON BIOLOGICAL DIVERSITY**

65. The Ad Hoc Open-ended Working Group took up agenda item 7 at its 3rd session, on 3 November 2009. In considering the item, the Working Group had before it the progress report on the implementation of Article 8(j) and related provisions (UNEP/CBD/WG8J/6/2); an analysis of case-studies and advice on how Article 10(c) can be further advanced and implemented as a priority (UNEP/CBD/WG8J/6/2/Add.1); a research paper addressing the potential benefits and threats of documenting traditional knowledge (UNEP/CBD/WG8J/6/2/Add.3); an analysis of the information available on proposed indicators (UNEP/CBD/WG8J/6/2/Add.4); the recommendations of the United Nations Permanent Forum on Indigenous Issues (UNPFII) to the Convention on Biological Diversity concerning new recommendations arising from the seventh and eighth sessions of the UNPFII (UNEP/CBD/WG8J/6/2/Add.5); an in-depth review of the tasks in the programme of work on Article 8(j) and related provisions (UNEP/CBD/WG8J/6/2/Add.6); a compilation of the views on tasks 7, 10, 12 and 15 and views on the desirability and the potential elements of a strategy for conservation and sustainable use, as well as views on the in-depth review of the programme of work on Article 8(j) (UNEP/CBD/WG8J/6/INF/1); a compilation of information/case-studies regarding the national testing and use of indicators (UNEP/CBD/WG8J/6/INF/3); the report of the International Technical Workshop on Indicators relevant for Indigenous People held in Baguio City, Philippines from 17-19 November 2008 (UNEP/CBD/WG8J/6/INF/4); the report of the workshop on Indigenous Peoples’ Well-being and Sustainable Development Focussing on Traditional Knowledge (UNEP/CBD/WG8J/6/INF/5); the programme of work for Article 8(j) (decision V/16) (UNEP/CBD/WG8J/6/INF/10) and a summary of the WIPO traditional knowledge toolkit (UNEP/CBD/WG8J/6/INF/12).

66. Introducing the item Co-Chair reminded the Working Group that agenda item was made up of eight sub-items. Given the complexity of that task she requested the participants to make general statements regarding the future work of the Working Group in the post 2010 period before making comments on any one of the sub-items.

67. Statements were made by, Argentina, Brazil, Canada, India, Japan, Malaysia, New Zealand, Norway, Sweden (on behalf of the European Community and its member States).

68. Statements were made by the Indigenous Women’s Biodiversity Network, the International Indigenous Forum on Biodiversity, and the Tulalip Tribes of Washington.

69. Following the exchange of views the Co-Chair said that she would consult with the Bureau on how to proceed with further discussion under the agenda item.

70. At the 4th session of the meeting, on 3 November 2009, the Co-Chair said that following consultations with the Bureau the Co-Chairs had decided to form a contact group to further discuss the agenda item. The Co-Chair asked Ms. Tone Solhaug (Norway) and Ms. Gunn-Britt Retter (Saami

Council) to co-chair the contact group. She also asked the contact group to use documents UNEP/CBD/WG8J/6/2/Add.2 and Add.6 as the basis for its deliberations and to look at the other documents when considering the recommendations to be made.

71. The representative of Brazil asked for clarification as to how the documents and the recommendations were to be merged as different aspects of the programme of work had been addressed in the different documents and there was sometimes some overlap between them.

72. The Co-Chair acknowledged that the process before the contact group presented a challenge as there were quite a few documents. However, it was important to produce a single document with a single set of merged recommendations, and she asked the contact group to undertake that task.

73. At the 5th session of the meeting, Ms. Tone Solhaug, reported that the contact group had met twice and had been able to merge the text into a single document. However, while the co-chairs had been able to produce a draft text, some challenges remained to be addressed and she requested that the contact group be allowed another session to complete its work of drafting a revised text. The contact group had been unable to address the terms of reference for task 15 of the programme of work which was consequently attached as an annex to the merged document.

74. The Co-Chair of the Working Group thanked the co-chairs and said that the contact group should continue its work for another session. She asked that the co-chairs present the contact group's revised text at the subsequent plenary session of the Working Group.

75. The Co-Chair presented the revised text of the contact group to the Working Group at its 6th session, on 5 November 2009.

76. Statements were made by Argentina, Australia, Brazil, Canada, Cuba, Malawi (on behalf of the African Group), Norway, Senegal, Sweden, (on behalf of the European Community and its member States), and Venezuela.

77. A statement was also made by the representative of the International Indigenous Forum on Biodiversity.

78. The representative of Norway stated that she wished the report of the meeting to reflect her delegation's understanding that the wording "Article 10 of the Convention with a focus on Article 10(c)" in the draft multi-year programme of work that was not to be construed as precluding further consideration of other elements of Article 10 by the Working Group.

79. Following the discussion, the Co-Chair said that she would prepare a revised draft recommendation for consideration by the Working Group, which was subsequently circulated as draft recommendation UNEP/CBD/WG8J/6/L.6.

Action by the Working Group

80. At the 7th session of the meeting, on 6 November 2009, the Working Group took up the draft recommendation and adopted it, as orally amended, as recommendation 6/4. The text of the recommendation, as adopted, is contained in annex I to the present report.

ITEM 8. OTHER MATTERS

Observance of moment of silence in memory of Mr. Claude Lévi-Strauss

81. At the 5th session of the meeting, on 4 November 2009, the representative of Brazil presented his condolences to the Government of France on the recent death of the eminent anthropologist, Mr. Claude Lévi-Strauss.

82. The Working Group observed a minute of silence in memory of Mr. Lévi-Strauss.

Issuance of entry visas to Canada for participants in meetings under the Convention on Biological Diversity

83. At the 8th session of the meeting, on 6 November 2009, the representative of Malawi, speaking on behalf of the African Group, expressed his serious concern over the difficulty that many African delegates had encountered when seeking to obtain visas to attend the meeting. It had not been the first time that the visa problem had arisen and Canada appeared to have inconsistent policies for both the issuance of Visas and the fees that were charged for them. He requested that Canada address the concerns of the African Group and reserved the right of the African region to revisit the seat of the Secretariat of the Convention of Biological Diversity at the next Conference of the Parties if the African delegates continued to be prevented from attending the meetings of the Convention on Biological Diversity in Canada.

84. In response, the representative of Canada stressed that Canada was fully committed to the Convention on Biological Diversity and said that the concerns expressed by the African Group would be conveyed to the appropriate authorities in her capital.

ITEM 9. ADOPTION OF THE REPORT

85. The present report was adopted, as orally amended, at the 8th session of the meeting, on 6 November 2009, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG8J/6/L.1).

ITEM 10. CLOSURE OF THE MEETING

86. The representative of Malawi, speaking on behalf of the African Group, thanked the Voluntary Fund for aiding the participation of developing countries in the meeting. In particular he thanked the Governments of Denmark, Finland, Germany, Ireland, Italy, Norway, Spain and the United Kingdom, as well as UNEP, for their financial and material support. He urged other Governments to contribute generously to the Voluntary and related funds of the Convention on Biological Diversity.

87. The representative of the International Indigenous Forum on Biodiversity wished the report to include its statement that indigenous peoples had emphasized to the Parties of the Convention on Biological Diversity that their rights in the context of the international regime on access and benefit-sharing was not limited to their right to prior informed consent and benefit-sharing when their knowledge was being accessed and utilized. As indigenous peoples, they had a right to self-determination and that applied to their rights regarding access to their traditional knowledge and genetic resources.

88. The representative Venezuela wished the report to reflect the fact that Venezuela had a range of laws protecting the cultural heritage of indigenous and local communities. In particular a registry had been established and the Ministry of the Environment had created a national council that included representatives from indigenous and local communities. Venezuela was also of the opinion that the work of the World Intellectual Property Organisation (WIPO) needed to be incorporated into the work of the Convention on Biological Diversity, on the understanding that the work of WIPO did not cover human rights issues. Venezuela expressed its support for the adoption of an international regime on access and benefit-sharing during 2010, the International Year of Biodiversity.

89. Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity, expressed his regret for the death of Mr. Lévi-Strauss, describing him as a great anthropologist who had taught respect for diversity and cultural differences and that those who were different are not necessarily inferior and that diversity did not justify inequality. Today, the barbarians were those who continued to deny the umbilical relationship between nature, mankind, his culture and traditions and the heritage of civilisation. Mr. Djoghlaif also reminded the Working Group that it was unique within the United Nations system as it was first and foremost a partnership between the 193 Parties to the Convention and the indigenous and local communities. He congratulated the Working Group on its accomplishments during the week, which had included the Tkarihwaí:ri Code of Ethical Conduct. He also thanked the Government of India for its kind offer to host the eleventh meeting of the Conference of the Parties.

90. Following the customary exchange of courtesies, the Chair declared the sixth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions closed at 5 p.m. on Friday, 6 November 2009.

Annex I

**RECOMMENDATIONS ADOPTED BY THE AD HOC OPEN-ENDED INTER-SESSIONAL
WORKING GROUP ON ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION
ON BIOLOGICAL DIVERSITY AT ITS SIXTH MEETING**

Montreal, 2-6 November 2009

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6/1. Mechanisms to promote the effective participation of indigenous and local communities in the work of the Convention

The Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions recommends that the Conference of the Parties adopts decisions along the following lines:

A. Capacity-building efforts

The Conference of the Parties

1. Welcomes with appreciation the capacity-building efforts for indigenous and local communities by the Secretariat, in partnership with the Government of Spain and the Indigenous Women's Biodiversity Network of the Latin American and Caribbean region, on issues relevant to Article 8(j) and related provisions and Article 15 on access and benefit-sharing, especially in anticipation of the adoption and post-2010 implementation of the international regime on access and benefit-sharing; and encourages Parties to continue such efforts;

2. Welcomes the series of regional and subregional workshops aimed at capacity-building for indigenous and local communities carried out by the Secretariat in partnership with Parties, in support of the enhanced implementation through web-based technologies of the Guidelines on Biodiversity and Tourism Development developed under the Convention on Biological Diversity;^{1*}

3. Encourages the Secretariat to continue its efforts to facilitate the effective implementation of decisions regarding capacity-building² through workshops using a train-the-trainer methodology and extending opportunities to all regions, with a view to increasing the number of indigenous and local community representatives, particularly women, who are familiar with and participate in the work of the Convention, including its implementation at the national and local level;

4. Invites Parties, Governments and relevant organizations, including indigenous and local community organizations, to consider collaborating with the Secretariat to establish similar initiatives in other regions, with the view to build and strengthen the capacity of indigenous and local community representatives, particularly women to effectively participate in the work of the Convention;

5. Requests the Executive Secretary to continue to convene, subject to the availability of financial resources, regional and subregional capacity-building workshops and exchange of experience on issues relevant to Article 8(j), Article 10(c) and Article 15, to assist indigenous and local communities in their effective participation in the work of the Convention, with the view of strengthening their capacity;*

6. Also requests the Executive Secretary to continue to convene, subject to the availability of financial resources, regional and sub-regional workshops aimed at capacity-building for indigenous and local communities in support of the enhanced implementation of the Guidelines on Biodiversity and Tourism Development under the Convention on Biological Diversity through enhanced marketing strategies and web-based technologies, for dry and sub-humid lands and for mountains and to report the results to the next meeting of the Working Group on Article 8(j) and Related Provisions for its consideration.*

¹ Decision VII/14, annex.

* This paragraph has budgetary implications.

² See decisions IX/13 D, and E, as well as VIII/5 B, and C and VII/16 annex, and V/16, annex II, task 4.

* This paragraph has budgetary implications.

B. *Development of communications, mechanisms and tools to facilitate the effective participation of indigenous and local communities in the work of the Convention*

The Conference of the Parties

1. *Notes* the ongoing work concerning electronic mechanisms, such as the Article 8(j) homepage, the Traditional Knowledge Information Portal, and related initiatives and *requests* the Executive Secretary to monitor the use of these initiatives and consult with indigenous and local communities that are participating in the work of the Convention on gaps and short-comings and report the findings to next meeting of the Working Group on Article 8(j) and Related Provisions;*

2. *Invites* the Executive Secretary to consult with Parties and indigenous and local communities to determine how the Traditional Knowledge Portal may continue to evolve to increase its effectiveness in assisting Parties and in particular national focal points, in their work regarding Article 8(j) and related provisions;

3. *Invites* Parties and Governments to submit national laws, legislation, policies, programme and other relevant information regarding the protection of traditional knowledge to the Secretariat to be publicized through the Traditional Knowledge Portal;

4. *Welcomes and encourages* the further development of the various non-electronic mechanisms, tools, products, to raise awareness about the role of traditional knowledge in attaining the goals of the Convention, and encourages their promotion during and after the International Year of Biodiversity;*

5. *Requests* the Secretariat to continue to develop both electronic and traditional and other means of community-education and public-awareness materials, and other means of communication, including in indigenous languages, and invites Parties to publicize such materials through community radio and other diverse media, in collaboration with international organizations, indigenous and local communities, and other stakeholders;*

6. *Requests* the Executive Secretary to continue to develop, update and translate the various electronic communication mechanisms, including the Article 8(j) homepage and the Traditional Knowledge Information Portal and to report on progress to the next meeting of the Working Group on Article 8(j) and Related Provisions;*

7. *Invites* Parties to consider designating national focal points (NFPs) for Article 8(j) and related provisions in support of national focal points, to facilitate communications with indigenous and local community organizations and to promote the effective development and implementation of the programme of work on Article 8(j) and related provisions.*

C. *Participation of indigenous and local communities in the work of the Convention, including through the Voluntary Fund for Facilitating the Participation of Indigenous and Local Communities in the Convention Process*

The Conference of the Parties

1. *Notes with appreciation* the ongoing efforts by the Secretariat to promote the Voluntary Fund for Facilitating the Participation of Indigenous and Local Communities in the Convention Process (VB Trust Fund), and *requests* the Executive Secretary to continue efforts and to report on the advancement of this work, along with the relevant statistics concerning the participation of indigenous and local communities, at the next meeting of the Working Group on Article 8(j) and Related Provisions;

* This paragraph has budgetary implications.

* This paragraph has budgetary implications.

2. Invites Parties, Governments and relevant funding institutions and mechanisms to contribute generously to the Voluntary Fund, noting that the effective participation of indigenous and local communities is essential to the work of the Convention and in achieving its three goals;

3. *Invites* Parties to make efforts to include indigenous and local-community organizations who are mandated by their community to represent them in processes under the Convention and to be provided with opportunities to effectively participate in the Convention processes.

D. Other initiatives

The Conference of the Parties

Welcomes 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 *requests* the Executive Secretary to report on such efforts at the next meeting of the Working Group on Article 8(j) and Related Provisions.

6/2. Elements of *sui generis* systems for the protection of traditional knowledge

The Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity *recommends* that the Conference of the Parties at its tenth meeting adopts a decision along the following lines:

The Conference of the Parties

1. *Notes* that elements of *sui generis* systems, as set out in section II of the updated note by the Executive Secretary (UNEP/CBD/WG8J/6/5), include useful elements to consider as and when Parties and Governments develop *sui generis* systems for the protection of traditional knowledge, innovations and practices at local, national, regional and international levels;

2. *Also notes* that *sui generis* systems for the protection of the knowledge, innovations and practices of indigenous and local communities, should be developed taking into account customary laws, practices and community protocols, as appropriate, with the effective participation and approval and involvement of those communities;

3. *Encourages* Parties who have not yet considered or developed *sui generis* systems for the protection of traditional knowledge to take steps to do so, as appropriate;

4. *Invites* Parties to submit to the Executive Secretary information regarding elements of *sui generis* systems relevant to the protection of traditional knowledge they have adopted, including assessments of the effectiveness of such measures, whether they are local, subnational, national or regional in focus;

5. *Invites* Parties and Governments to report on any regional measures that have been taken to protect traditional knowledge, innovations and practices of indigenous and local communities relevant to biological diversity that is held across national boundaries, including *sui generis* systems that are being developed or have been developed and/or implemented, including evidence regarding the effectiveness of such measures;

6. *Requests* the Executive Secretary to continue to compile and make available through the clearing-house mechanism of the Convention, information on measures taken by Parties for the development of *sui generis* systems for the protection of traditional knowledge, at various levels, including local, national, regional and international;

7. *Invites* Parties, indigenous and local communities and other relevant organizations to provide views through case-studies on how statutory laws and customary laws interact in regards to the protection of traditional knowledge, innovations and practices and for the results to be made available through the traditional knowledge portal of the clearing-house mechanism of the Convention and to the next meeting of the Working Group for its consideration;

8. *Further requests* the Executive Secretary to update his note on the subject (UNEP/CBD/WG8J/6/5), in light of case-studies and experiences received, indicating what changes have been made in relation to case-studies submitted, for consideration by the Working Group on Article 8(j) and Related Provisions at its seventh meeting;

9. *Notes* the clear relationship between effective *sui generis* systems as may be developed adopted or recognized at various levels, implementation of access and benefit-sharing provisions and the need to prevent the misuse and misappropriation of traditional knowledge, innovations and practices of indigenous and local communities, as stated in decision VII/16 H;

10. *Notes* the decision of the General Assembly of the World Intellectual Property Organization (WIPO) at its thirty-eighth (nineteenth ordinary) session, held in Geneva from 22 September to 1 October 2009 to continue its work without prejudice to the work pursued in other forums, and “undertake text-based negotiations with the objective of reaching agreement on a text of an international

legal instrument (or instruments), which will ensure the effective protection of genetic resources, traditional knowledge, and traditional cultural expressions”;^{*}

11. Further notes, in particular, the work of the Convention on Biological Diversity, in relation to *sui generis* systems for the protection of the knowledge innovations and practices of indigenous and local communities;

12. *Requests* the Executive Secretary to continue to inform the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) on the work undertaken under paragraph 6 above and to continue to positively contribute to the work of the Intergovernmental Committee.

*

This paragraph has budgetary implications.

6/3. Elements of a code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities

The Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions *recommends* that the Conference of the Parties at its tenth meeting:

(a) *Considers* the elements of the 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, as contained in the annex hereto, with a view to their possible adoption;

(b) *Decides* to entitle the elements of the code of ethical conduct “the Tkarihwaié:ri³ 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”;

(c) *Invites* Parties and Governments to make use of the elements of the code of ethical conduct as a model to “guide the development of models of codes of ethical conduct for research, access to, use, exchange and management of information concerning traditional knowledge, innovations and practices for the conservation and sustainable use of biological diversity”⁴ that are developed according to each Party’s unique national circumstances and needs and recognizing the rich cultural diversity of indigenous and local communities;

(d) *Invites* Parties and Governments to undertake education and awareness-raising and develop communication strategies that assists 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 level and local level governing interactions with indigenous and local communities;

(e) *Invites* 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;

(f) *Further invites* the Global Environment Facility, 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.

Annex

ELEMENTS OF A 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 Conference of the Parties,

Recalling recommendations 1, 8 and 9 of the report of the second session of the United Nations Permanent Forum on Indigenous Issues noted by the Conference of Parties in decision VII/16, paragraph 5, and decision VIII/5 F of the Conference of the Parties, concerning elements of an code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities

³ Pronounced {Tga-ree-wa-yie-ree}, a Mohawk term meaning “the proper way”.

⁴ Decision V/16, annex, programme of work on the implementation of Article 8(j), element 5, task 16.

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,

Emphasizing that, for the purposes of this code, “cultural and intellectual heritage” refers to the cultural heritage and intellectual property of indigenous and local communities and is interpreted within the context of the Convention, as the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

Aiming to promote full respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity,

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

Recognizing that respect for traditional knowledge requires that it is valued equally with and complementary to Western scientific knowledge, and that this is fundamental in order to promote full respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity,

Recognizing also that any measure to respect, preserve and maintain the use of traditional knowledge, such as codes of ethical conduct, will stand a much greater chance of success if it has the support of indigenous and local communities and is designed and presented in terms that are comprehensible,

Further recognizing the importance of implementing the Akwé:Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities,

Recalling that access by indigenous and local communities to [their] lands and waters [traditionally occupied or used by indigenous and local communities], together with the opportunity to practice traditional knowledge on those lands and waters, is paramount for the retention of traditional knowledge, and the development of innovations and practices relevant for the conservation and sustainable use of biological diversity,

Bearing in mind the importance of preserving and developing traditional languages used by indigenous and local communities as rich sources of traditional knowledge regarding medicines, traditional farm practices, including agricultural biodiversity and animal husbandry, lands, air, water and whole ecosystems that have been shared from one generation to the next,

Taking into account the holistic concept of traditional knowledge and its multi-dimensional characteristics which include but are not limited to spatial,^{5/} cultural^{6/}, spiritual, and temporal qualities,^{7/}

⁵ Territorially-based/locally-based.

⁶ Rooted in the broader cultural traditions of a peoples.

⁷ Evolves, adapts and transforms dynamically over time

Further taking into account the various international bodies, instruments, programmes, strategies, standards, reports and processes of relevance and the importance of their harmonization and complementarity and effective implementation, in particular and where applicable:

- (a) The Convention on the Elimination of all Forms of Racial Discrimination (1965);
- (b) The Convention No.169 on Indigenous and Tribal Peoples, (ILO 1989);
- (c) The Convention on Biological Diversity (1992);
- (d) The Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2003);
- (e) The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005);
- (f) The Universal Declaration on Human Rights (1948);
- (g) The International Covenant on Civil and Political Rights (1966);
- (h) The International Covenant on Economic, Social and Cultural Rights (1966);
- (i) The United Nations Second International Decade of the World's Indigenous Peoples (2005-2014);
- (j) The Universal Declaration on Cultural Diversity (UNESCO 2001);
- (k) The Universal Declaration on Bioethics and Human Rights (UNESCO 2005);
- (l) The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (CBD 2002);
- (m) The Akwe: Kon Guidelines (CBD 2004);
- (n) The United Nations Declaration on the Rights of Indigenous Peoples (2007),

Agrees as follows:

Section 1

RATIONALE

1. The following elements of a code of ethical conduct are voluntary and are intended to provide guidance in activities/interactions with indigenous and local communities and for the development of local, national, or regional codes of ethical conduct, with the aim of promoting respect, preservation and maintenance of traditional knowledge, innovations and practices relevant for the conservation and sustainable use of biodiversity. They should not be construed as altering or interpreting the obligations of Parties to the Convention of Biological Diversity or any other international instrument.

2. These elements of a code of ethical conduct aim to promote respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity. In this way, they contribute to the achievement of the objectives of Article 8(j) of the Convention on Biological Diversity and its Plan of Action for the retention and use of traditional knowledge, innovations and practices of indigenous and local communities.

3. These elements are intended to provide guidance in establishing or improving national frameworks required for activities/interactions with indigenous and local communities by, *inter alia*, government departments and agencies, academic institutions, private sector developers, potential stakeholders in development and/or research projects, extractive industries, forestry and any other actors eventually involved, and in particular for development of activities/interactions [on lands and waters traditionally occupied by indigenous and local communities] while enabling the indigenous and local

communities to promote respect of their traditional knowledge and associated biological and genetic resources.

4. Where consent or authority of indigenous and local communities is required with respect to traditional knowledge associated with the conservation and sustainable use of biodiversity, it is the right of indigenous and local communities, according to their customary law and procedures, to identify the relevant holders of their knowledge.

Section 2

ETHICAL PRINCIPLES

4. The ethical principles below are intended to promote respect for the rights of indigenous and local communities to enjoy, protect, and pass on to future generations, their cultural and intellectual heritage, including traditional knowledge, innovation and practices relevant for the conservation and sustainable use of biodiversity and it is according to these principles that others should engage with indigenous and local communities.

It is highly desirable that activities/interactions with indigenous and local communities be based on the following:

A. *General ethical principles*

Respect for existing settlements

5. This principle recognizes the importance of mutually agreed settlements or agreements at national level which exists in many countries, and that respect should be applied to such arrangements at all times.

Intellectual property

6. Community and individual concerns over, and claims to, cultural and intellectual property relevant to traditional knowledge, innovations and practices related to the conservation and sustainable use of biodiversity should be acknowledged and addressed in the negotiation with indigenous and local communities, prior to starting activities/interactions.

Non-discrimination

7. The ethics and guidelines for all activities/interactions should be non-discriminatory, taking into account affirmative action, particularly in relation to gender, disadvantaged groups and representation.

Transparency/full disclosure

8. Indigenous and local communities should be adequately informed in advance, about the nature, scope and purpose of any proposed activities/interactions carried out by others that may involve the use of their traditional knowledge, innovations and practices related to the conservation and sustainable use of biodiversity, occurring on or likely to impact on, sacred sites [and on lands and waters traditionally occupied or used by] indigenous and local communities. This information should be provided in a manner that takes into consideration and actively engages with the body of knowledge and cultural practices of indigenous and local communities.

[Approval] [prior informed consent]

9. 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 [approval and involvement] [prior informed consent] of indigenous and local communities. Such [approval] [consent] should not be coerced, forced or manipulated.

Inter-cultural respect

10. Traditional knowledge should be respected as a legitimate expression of the culture, traditions, and experience of indigenous and local communities and as part of the plurality of existing knowledge systems. It is highly desirable that those interacting with indigenous and local communities respect the integrity, morality and spirituality of the cultures, traditions and relationships of indigenous and local communities and avoid the imposition of external concepts, standards and value judgments in inter-cultural dialogue. Respect for cultural heritage, ceremonial and sacred sites, as well as sacred species and secret and sacred knowledge ought to be given specific consideration in any activities/interactions.

Safeguarding collective or individual ownership

11. The resources and knowledge of indigenous and local communities can be collectively or individually owned. Those interacting with indigenous and local communities should seek to understand the balance of collective and individual rights and obligations. The right of indigenous and local communities to safeguard, collectively or otherwise, their cultural and intellectual heritage, tangible and intangible, should be respected.

Fair and equitable sharing of benefits

12. Indigenous and local communities ought to receive fair and equitable benefits for their contribution to any activities/interactions related to biodiversity and associated traditional knowledge proposed to take place on, or which are likely to impact on, sacred sites [and lands and waters traditionally occupied or used by] indigenous and local communities. Benefit-sharing should be regarded as a way of strengthening indigenous and local communities and promoting the objectives of the Convention on Biological Diversity and ought to be equitable within and among relevant groups, taking into account relevant community-level procedures.

Protection

13. Proposed activities/interactions within the mandate of the Convention should make reasonable efforts to protect and enhance the relationships of affected indigenous and local communities with the environment and thereby promote the objectives of the Convention.

Precautionary approach

14. This principle reaffirms the precautionary approach contained in principle 15 of the Rio Declaration on Environment and Development^{8/} and in the preamble to the Convention on Biological Diversity. The prediction and assessment of potential harms to biological diversity should include local criteria and indicators, and should fully involve the relevant indigenous and local communities.

B. Specific considerations

Recognition of sacred sites, culturally significant sites [and lands and waters traditionally occupied or used by indigenous and local communities]

15. This principle recognizes the integral connection of indigenous and local communities to their sacred sites, culturally significant sites [and lands and waters traditionally occupied or used by them] and associated traditional knowledge and that their cultures, lands and waters are interrelated. In accordance with national domestic law and international obligations, in this context, traditional land tenure of indigenous and local communities should be recognized, as access to traditional lands and waters and sacred sites is fundamental to the retention of traditional knowledge and associated biological diversity. Sparsely populated lands and waters ought not to be presumed to be empty or unoccupied [but may in fact be lands and waters traditionally occupied or used by indigenous and/or local communities].

⁸ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

Access to traditional resources

16. Traditional resource rights are collective in nature but may include individual interests and obligations and apply to traditional resources [occurring on lands and waters traditionally occupied or used by indigenous and local communities]. [Indigenous and local communities ought to determine for themselves, the nature and scope of their respective traditional resource regime(s) according to their customary law(s).] Access of indigenous and local communities to traditional resources is crucial for the sustainable use of biological diversity and cultural survival. Activities/interactions should not interfere with access to traditional resources except with the approval of the community concerned. Activities/interactions should respect customary rules governing access to resources where this is required by the community concerned.

Not being arbitrarily removed and relocated

17. Activities/interactions related to biological diversity, and the objectives of the Convention, such as conservation, ought not to cause indigenous and local communities to be removed [from lands and waters traditionally occupied or used by them,] by force or coercion and without their consent. Where they consent to removal [from lands and waters traditionally occupied or used by them], they should be compensated. Whenever possible, these indigenous and local communities should have the right to return to their traditional lands. Such activities/interactions should not cause indigenous and local community members, especially the elderly, the disabled and children to be removed from their families by force or coercion.

Traditional guardianship/custodianship

18. Traditional guardianship/custodianship recognizes the holistic interconnectedness of humanity with ecosystems and obligations and responsibilities of indigenous and local communities, to preserve and maintain their traditional role as traditional guardians and custodians of these ecosystems through the maintenance of their cultures, spiritual beliefs and customary practices. Because of this, cultural diversity, including linguistic diversity, ought to be recognized as keys to the conservation and sustainable use of biological diversity. Therefore, indigenous and local communities should, where relevant, be actively involved in the management of [lands and waters traditionally occupied or used by them, including] sacred sites and protected areas. Indigenous and local communities may also view certain species of plants and animals as sacred and, as custodians of biological diversity, have responsibilities for their well-being and sustainability, and this should be respected and taken into account in all activities/interactions.

Recognition of indigenous and local community social structures -Extended families, communities and indigenous nations

19. For indigenous and local communities all activities/interactions, take place in a social context. The role of elders, women, and youth is paramount in the process of cultural dissemination, which depends upon intergenerational transfer of knowledge, innovation and practices. Therefore, the societal structure/s of indigenous and local communities should be respected, including the right to pass on their knowledge in accordance with their traditions and customs.

Restitution and/or compensation

20. Every effort should be made to avoid any adverse consequences to indigenous and local communities and their cultures [and lands and waters traditionally occupied or used by them], their sacred sites and sacred species, and their traditional resources from all activities/interactions affecting or impacting on them related to biological diversity, conservation and sustainable use. Should any such adverse consequences occur, appropriate restitution or compensation should be provided, through mutually agreed terms between indigenous and local communities and those undertaking such activities/interactions.

Repatriation

21. Repatriation efforts ought to be made to facilitate the repatriation of information in order to facilitate the recovery of traditional knowledge of biological diversity.

Peaceful relations

22. Conflicts caused by activities/interactions related to the conservation or sustainable use of biological diversity, between indigenous and local communities and local or national governments should be avoided. Should this not be possible, national and culturally appropriate conflict resolution mechanisms should be put in place to resolve disputes and grievances. Those interacting with indigenous and local communities, should also avoid involvement in intra-indigenous and local community disputes.

Supporting indigenous research initiatives

23. Indigenous and local communities should have the opportunity to actively participate in research that affects them or which makes use of their traditional knowledge related to the objectives of the Convention, and decide on their own research initiatives and priorities, conduct their own research, including building their own research institutions and promoting the building of cooperation, capacity and competence.

Section 3

METHODS

Negotiations in good faith

24. Those employing the elements of this code are encouraged to interact, and to commit formally to a process of negotiation in good faith.

Subsidiarity and decision-making

25. All decisions regarding activities/interactions with indigenous and local communities related to the objectives of the Convention should be developed and elaborated at the appropriate level to ensure indigenous and local community empowerment and effective participation, bearing in mind that such activities/interactions should respect indigenous and local community decision-making structures.

Partnership and cooperation

26. Partnership and cooperation should guide all activities/interactions in pursuit of the elements of the code of ethical conduct, in order to support, maintain and ensure the sustainable use of biodiversity and traditional knowledge.

Gender considerations

27. Methodologies should take into account the vital role that indigenous and local community women play in the conservation and sustainable use of biological diversity, affirming the need for the full and effective participation of women at all levels of policy-making and implementation for biological diversity conservation, as appropriate.

Full and effective participation/participatory approach

28. This principle recognizes the crucial importance of indigenous and local communities fully and effectively participating in activities/interactions related to biological diversity and conservation that may impact on them, and of respecting their decision-making processes and time frames for such decision-making. Ethical conduct should acknowledge that there are some legitimate circumstances for indigenous and local communities to restrict access to their traditional knowledge.

Confidentiality

29. Confidentiality of information should be respected, subject to national law. Information imparted by the indigenous and local communities should not be used or disclosed for purposes other than those for which it was consented to, and cannot be passed on to a third party without the consent of the indigenous and local community. In particular, confidentiality ought to be applied to sacred and/or secret information. Those working with indigenous and local communities should be aware that concepts such as “the public domain” may not adequately reflect the cultural parameters of many indigenous and local communities.

Reciprocity

30. Information obtained from activities/interactions with indigenous and local communities should be shared with them in understandable and culturally appropriate formats, with a view to promote inter-cultural exchanges, knowledge and technology transfer, synergies and complementarity.

6/4. Multi-year programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions *recommends* that the Conference of the Parties at its tenth meeting adopt a decision along the following lines:

The Conference of the Parties

Progress reports

1. *Notes* the progress made in the integration of the relevant tasks of the programme of work in the thematic programmes of the Convention and through the national reports;
2. *Requests* the Executive Secretary to report on progress on the implementation of Article 8(j) and related provisions to the seventh meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions;
3. *Urges* Parties, that have not yet submitted information regarding the implementation of the programme of work for Article 8(j) and related provisions, including on national participation of indigenous and local communities, to do so in consultation with indigenous and local communities, through the fourth national reports where possible, and in time for the seventh meeting of the Working Group on Article 8(j) and requests the Executive Secretary to analyse and summarize this information and make it available to the Working Group on Article 8(j) and Related Provisions at its seventh meeting;
4. *Decides* that the seventh meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions be organized prior to the eleventh meeting of the Conference of the Parties, preferably back-to-back with another meeting under the Convention on Biological Diversity, to further advance the implementation of the work programme on Article 8(j) and related provisions;

In-depth review and the revised multi-year programme of work

Recognizing the need for a more holistic and forward-looking programme of work, taking into account recent developments, including the negotiation, adoption and implementation of the international regime on access and benefit-sharing,

Recalling paragraph 11 of decision IX/13 A, in which the Conference of the Parties decided to undertake at its tenth meeting an in-depth review of the tasks of the programme of work on Article 8(j) and related provisions,

5. *Decides* to revise the programme of work as adopted by decision V/16, as follows:
 - (a) To retire completed or superseded tasks 3, 5, 8, 9 and 16;
 - (b) To maintain ongoing tasks including 1, 2, 4, 7, 10 and 12 and based on the results of the work, identify any further activities needed to fulfill these tasks and *requests* Parties, Governments, relevant international organizations and indigenous and local communities to submit national approaches to facilitate these tasks, and furthermore requests the Executive Secretary to compile and analyse this information with a view to identifying minimum standards, best practices, gaps and lessons learned, for the consideration of the seventh meeting of the Working Group on Article 8(j) and Related Provisions;
6. *Requests* that the Secretariat continue to compile and analyse submissions from Parties and other relevant organizations on national and international approaches for repatriation relevant to

task 15, in accordance with Article 17, paragraph 2, of the Convention for the consideration by the Working Group on Article 8(j) in order to establish best practice guidelines.⁹

7.. *Decides* to postpone the consideration and commencement of other uninitiated tasks of the programme of work, pending the completion of current tasks, and in the light of ongoing developments, namely tasks 11, 6, 13, 14 and 17;

Article 10

8. *Decides* to include a new major component on Article 10 with a focus on Articles 10(c) in the revised programme of work on Article 8(j) and Related Provisions and requests the Ad Hoc Working Group on Article 8(j) and Related Provisions, building on the Addis Ababa Principles and Guidelines, to develop further guidance on sustainable use and related incentive measures for indigenous and local communities and also consider measures to increase the engagement of indigenous and local communities and governments at national and local level in the implementation of Article 10 and the ecosystem approach;

9. *Requests* Parties, indigenous and local communities and non-governmental organizations to submit information to the Executive Secretary regarding the implementation of Article 10 of the Convention, with a focus on Articles 10(c), and requests the Executive Secretary to compile and analyse the information provided and to provide advice on how this component could be implemented to the seventh meeting of the Working Group on Article 8(j) and Related Provisions, to assist the Working Group in taking this task forward;

10. *Authorizes* the Secretariat to convene, subject to the availability of funds, an international meeting on Article 10 with a focus on Articles 10(c), with the participation of Parties, Governments and international organizations, and representatives of indigenous and local communities, to provide advice on the content and implementation of the new major component for consideration at the seventh meeting of the Working Group on Article 8(j) and Related Provisions to assist the Working Group in taking this component forward;

11. *Requests* the Ad Hoc Working Group on Article 8(j) and Related Provisions, at its seventh meeting, to develop a strategy to integrate Article 10, with a focus on 10(c), as a cross-cutting issue into the Convention's various programmes of work and thematic areas, beginning with the programme of work on protected areas;

Revised agenda for the Working Group on Article 8(j) and Related Provisions

12. *Decides* to include a new agenda item on future meetings of the Working Group on Article 8(j) and Related Provisions, commencing at its seventh meeting, entitled: "In-depth dialogue on thematic areas and other cross-cutting issues";

13. *Decides* to have an in-depth dialogue at its seventh meeting on one of the following theme: [Benefit sharing modalities / Protected areas / Biodiversity and climate change];

Indicators

Recognizing that the status and trends of linguistic diversity and numbers of speakers of indigenous languages is a useful indicator for the retention and use of traditional knowledge, if used along with other indicators,

Noting the importance of both qualitative and quantitative indicators to provide a broad picture of the status and trends of traditional knowledge and capture indigenous and local community realities within the framework of the Strategic Plan and the 2010 biodiversity target,

⁹ The Working Group also wishes to recommend that the Conference of the Parties consider the draft terms of reference set out in annex to UNEP/CBD/WG8J/6/2/Add.2.

Taking note of the work carried out under the auspices of the Ad Hoc Open-Ended Working Group on Article 8(j) and Related Provisions, and including the regional and international technical workshops organized by the Working Group on Indicators of the International Indigenous Forum on Biodiversity, to identify a limited number of meaningful and practical indicators on the status of traditional knowledge, innovations and practices and in other focal areas, to assess progress towards achieving the Strategic Plan of the Convention and the 2010 biodiversity target,

Expressing its warm gratitude to the Spanish Agency for International Cooperation (AECI), the Government of Norway and the Swedish International Biodiversity Programme (Swedbio) for the generous financial support for this initiative,

14. *Adopts* the following proposed indicators:

(a) Status and trends in land-use change in the traditional territories of indigenous and local communities;

(b) Status and trends in the practice of traditional occupations;

to complement the adopted indicator^{**}, focal area - protection of traditional knowledge, innovations and practices, in order to assess progress towards the post-2010 biodiversity target, as well as to assess progress in the implementation of the revised Strategic Plan;

15. *Invites* the International Labour Organization to explore the possibility of compiling data concerning the practice of traditional occupations and to provide advice on the use of this indicator for the consideration of the Working Group on Article 8(j) and Related Provisions at its seventh meeting;

16. *Further invites* the relevant agencies, including the Food and Agriculture Organization of the United Nations, the International Fund for Agricultural Development and the International Land Coalition, to provide advice on the use on the indicator “Status and trends in land-use change in the traditional territories of indigenous and local communities” for the consideration of the Working Group on Article 8(j) and Related Provisions at its seventh meeting;

17. *Requests* the Executive Secretary, in collaboration with Parties, Governments, international agencies, the Working Group on Indicators of the International Indigenous Forum on Biodiversity and interested parties, including the 2010 biodiversity indicators partnership, to pursue the ongoing refinement and use of the proposed indicators, also bearing in mind the implementation of Article 10 and the post 2010 revised Strategic Plan, including through further technical workshops, to consider availability of data, methodologies and coordinating organizations, and to report to the Working Group on Article 8(j) and Related Provisions at its seventh meeting to take these matters forward; *

18. *Considering* the new emphasis being placed by Parties on the implementation of Article 10, requests the Executive Secretary, subject to the availability of funding, in collaboration with Parties, Governments, international agencies including the United Nations Permanent Forum on Indigenous Issues, the Working Group on Indicators of the International Indigenous Forum on Biodiversity, relevant NGOs, and the 2010 biodiversity indicators partnership, to explore, through further technical workshops, the development of appropriate indicators for customary sustainable use and to report on this matter to the Working Group on Article 8(j) and Related Provisions at its seventh meeting, so that this matter can be advanced within the framework of post 2010 targets and the revised Strategic Plan;*

19. *Further invites* Parties, international organizations, indigenous and local communities organisations and relevant stakeholders to provide views on the development of indicators on secure land tenure and requests the Executive Security to prepare an information note for the Working Group at its seventh meeting.

** On status and trends of linguistic diversity and numbers of speakers of indigenous languages.

* This paragraph has budgetary implications.

Participation

(a) *Voluntary Fund*

19. *Requests* the Secretariat, through the Voluntary Trust Fund to Facilitate the Participation of Indigenous and Local Communities in the Work of the Convention, to strengthen, where possible and subject to the availability of funding, the participation of indigenous and local communities in capacity-building workshops under the Convention, as appropriate;

(b) *Local communities*

20. *Noting* that the involvement of local communities in accordance with Article 8(j) has been limited for various reasons, *decides* to convene an ad hoc expert group meeting of local-community representatives, bearing in mind geographic and gender balance, with a view to identify common characteristics of local communities, and to gather advice on how local communities can more effectively participate in Convention processes, including at the national level, as well as how to develop targeted outreach, in order to assist in the implementation the Convention and achievement of its goals;*

Capacity-building, community education and public awareness

21. *Requests* the Executive Secretary to continue to work with donors and partners, with a view to increasing capacity-building efforts for indigenous and local communities, and in particular, where possible, and subject to the availability of funding, develop medium and long-term strategies, to raise awareness of and facilitate their effective participation in Convention processes, taking into account the negotiation, elaboration and implementation of the international regime on access and benefit-sharing;

22. *Further requests* the Executive Secretary to continue to develop communication, education and public awareness activities and products, including with the contributions of indigenous and local communities, to assist in the community education of indigenous and local communities about the work of the Convention and also raising awareness of the general public about the role of indigenous and local communities, especially the role of indigenous and local community women, and their traditional knowledge in conservation, sustainable use of biodiversity and other global issues, including climate change;*

Technical guidelines for recording and documenting traditional knowledge, innovations and practices

Recognizing that the documentation and recording of traditional knowledge should primarily benefit indigenous and local communities and that their participation in such schemes should be voluntary and not a prerequisite for the protection of traditional knowledge,

Noting the lead role the Convention on Biological Diversity plays regarding traditional knowledge, innovations and practices on biological diversity, and

Further noting the work of other organizations concerning guidelines for documentation of traditional knowledge, such as the development of a toolkit for the documentation of traditional knowledge by the World Intellectual Property Organization, and documentation and traditional knowledge projects proposed by the United Nations Educational, Scientific and Cultural Organization and the desirability of harmonization of this work within the international system,

Emphasizing that the developing of guidelines should not prejudice the development of other forms of protections,

Further noting that documentation of the traditional knowledge, innovations and practices of indigenous and local communities for the purpose of safeguarding traditional knowledge should, be conducted by indigenous and local communities, with their prior and informed consent and remain under their ownership,

* This paragraph has budgetary implications.

23. *Invites* Parties and Governments and international organizations to support and assist indigenous and local communities to maintain, control, protect and develop their traditional knowledge, innovations and practices, and by supporting capacity building and the development of necessary infrastructure and resources with the aim of enabling indigenous and local communities to make informed decisions regarding the documentation of traditional knowledge;

24. *Requests* the Executive Secretary to continue to collaborate with United Nations Permanent Forum on Indigenous Issues, the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization, to assist the World Intellectual Property Organization in completing its work on the development of the WIPO toolkit on the documentation of traditional knowledge, addressing both the potential benefits and threats of the documentation of traditional knowledge and, in collaboration with the World Intellectual Property Organization, to make the toolkit available through the clearing-house mechanism and the Traditional Knowledge Information Portal;

Recommendations of the United Nations Permanent Forum Indigenous Issues

25. *Takes note* of the United Nations Permanent Forum Indigenous Issues recommendation which “requests Parties to consider, in the development, negotiation and adoption 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, that the standard established in the code adequately reflect relevant international standards, including the Declaration on the Rights of Indigenous Peoples”;

26. *Takes note also* of the report of the Indigenous and Local Community, Business and Biodiversity Consultation (UNEP/CBD/WG8J/6/INF/11), held at United Nations Headquarters in New York on 12-13 May 2009, and encourages further discussions with a view to ensuring the effective implementation of the Convention on Biological Diversity, through creative partnerships between stakeholders, while stimulating community-level businesses based on the sustainable use of biodiversity;

27. *Requests* the Executive Secretary to inform the United Nations Forum on Indigenous Issues at its next session of progress made on 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.*

Annex to recommendation 6/4

**DRAFT TERMS OF REFERENCE FOR TASK 15 OF THE PROGRAMME OF WORK ON
ARTICLE 8(j) AND RELATED PROVISIONS AS PRESENTED IN
UNEP/CBD/WG8J/6/2/ADD.2**

1. The purpose of task 15 is to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity.
2. Task 15 is to be interpreted in accordance with the provisions of the Convention and, in particular in light of Article 8(j) and related provisions.
3. Task 15 is intended to build on, and enhance, existing repatriation activities undertaken by Parties, Governments and other entities including museums, herbaria and botanical gardens, data-bases, registers, gene-banks, etc.
4. Stakeholders include, *inter alia*:
 - (a) Parties and Governments;

(b) Museums, herbaria, botanical gardens and other collections containing information on the knowledge, innovations and practices of indigenous and local communities relevant for conservation and sustainable use;

(c) Relevant international organizations (and in particular UNPFII, UNESCO, WIPO);

(d) Representatives of indigenous and local communities;

(e) Relevant NGOs and IPOs with expertise on these issues.

5. The Secretariat shall:

(a) Compile and analyse submissions by Parties and other relevant organizations on national and/or international approaches for repatriation relevant to task 15, for consideration by the Working Group on Article 8(j) and Related Provisions at its seventh meeting, in order to establish best practices learned;

(b) Based on best practices, and advice from the Working Group, the Secretariat may develop for the consideration of the Working Group on Article 8(j) and Related Provisions:

(i) Best-practice guidelines for the initiation of national repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity; and

(ii) Best-practice guidelines or a framework for the initiation of international repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity.

6. Parties, Governments, international organizations, indigenous and local community organizations and non-Governmental organizations shall communicate to the Secretariat information on best practices for the repatriation of information and cultural property relevant to task 15.

7. The Working Group on Article 8(j) and Related Provisions:

(a) Based on information received, will consider, at its seventh meeting, how this task can be taken forward in both the domestic and international contexts, taking into account information and advice received, the in-depth review of the programme of work for Article 8(j) and related provisions and the international regime on access and benefit sharing; and

(b) Further determine how task 15 should be considered within the in-depth review of Article 8(j) and incorporated in the multi-year programme of work, and also how work on this task might usefully complement the effective implementation of the international regime on access and benefit-sharing.

*Annex II***INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING: PROVISION OF VIEWS TO THE AD HOC WORKING GROUP ON ACCESS AND BENEFIT-SHARING**

1. In accordance with the mandate expressed in paragraph 12 of decision IX/13 A and paragraph 20 of decision IX/12, the Working Group on Article 8(j) reviewed the reports of the Expert Group on traditional knowledge associated with genetic resources and the Expert Group on compliance and provides a range of detailed and focused views as input to the Working Group on Access and Benefit-sharing in order to assist with the further elaboration and negotiation of the International Regime on Access and Benefit-sharing on issues related to traditional knowledge associated with genetic resources.

2. In elaborating the views below, the sixth meeting of the Working Group on Article 8(j) applied the following methodology: Parties and observers were invited to submit elements and concepts in the reports of the Expert Group on traditional knowledge associated with genetic resources and the Expert Group on compliance, that they considered as particularly important, focusing on those elements and concepts that in their view received the broadest support from the experts attending the expert groups.

3. The Working Group on Article 8(j) agreed to convey the paragraphs below to the Working Group on Access and Benefit-sharing, being concepts and elements that should be considered as input to the work of the Working Group on Access and Benefit-sharing in the further elaboration and negotiation of the International Regime on Access and Benefit-sharing on issues related to traditional knowledge associated with genetic resources:¹⁰

- (i) Article 15 and 8(j) are mutually supportive. The development of the International Regime should support Article 8(j) in respecting, preserving and maintaining the knowledge, innovations and practices of indigenous and local communities and encouraging the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices. It was further emphasized that Article 8(j) as a stand alone provision protects traditional knowledge relevant for the conservation and sustainable use of biological diversity within the mandate of the Convention on Biological Diversity, including traditional knowledge associated with genetic resources;
- (ii) In situations where traditional knowledge is associated with genetic resources, it was highlighted by many experts that traditional knowledge and genetic resources are inseparable;
- (iii) In essence, traditional knowledge that sparks the process or provides the lead to the properties of a genetic resource although it may not be reflected in the end-product remains associated to that product;

¹⁰

Neither the concepts, elements nor the specific wording of the following paragraphs were negotiated

- (iv) There is not always a relationship between the owners of genetic resources accessed and the holders of traditional knowledge. It was noted that the relationship between access and use may vary depending on the nature of State sovereignty;
- (v) Biological resources is an umbrella term used by some countries and communities in addressing access and benefit-sharing in order to encompass not only genetic resources, but also biochemical properties, organic extracts and others;
- (vi) Even though further work is needed to determine the exact relationship between genetic resources and associated traditional knowledge, given that most traditional knowledge is intrinsically linked to a genetic resource, the International Regime should embrace traditional knowledge;
- (vii) There is also a need to address not only traditional knowledge associated with genetic resources that is accessed *in situ* but also traditional knowledge and genetic resources accessed *ex situ*, including in databases, or libraries and the potential sharing of benefits;
- (viii) Some common characteristics of traditional knowledge associated with genetic resources include:
 - (a) A link to a particular culture or people – knowledge is created in a cultural context;
 - (b) A long period of development, often through an oral tradition, by unspecified creators;
 - (c) A dynamic and evolving nature;
 - (d) Existence in codified or uncodified (oral) forms;
 - (e) Passed on from generation to generation – intergenerational in nature;
 - (f) Local in nature and often imbedded in local languages;
 - (g) Unique manner of creation – (innovations and practices);
 - (h) It may be difficult to identify original creators;
- (ix) The development, adoption and implementation of the International Regime should not restrict the exchange of genetic resources and traditional knowledge among indigenous and local communities for traditional purposes;
- (x) There exists a wide diversity of community level procedures, which address access to natural, biological and genetic resources. When indigenous and local communities have customary laws and community level procedures pertaining to traditional knowledge associated with genetic resources, these laws and procedures are relevant to the International Regime;
- (xi) When indigenous and local communities have well defined structures and have established indigenous or local community authorities, national regulations can directly rely on these. In cases where such structures do not exist, their establishment would be desirable. It was suggested that community protocols may provide a useful approach;
- (xii) Community level procedures are in constant evolution and may not be well known to non-members. Therefore, although customary laws and practices may not provide specific procedures for access to genetic resources at this time, these may evolve in response to the development of the International Regime and national legislation. Due to the diversity of community-level procedures there is no one-size-fits-all approach to address access to genetic resources and associated traditional knowledge at the community level;
- (xiii) The International Regime needs to address the issue of the ownership of traditional knowledge which is already documented in databases and scientific publications;
- (xiv) The International Regime should provide basic principles to ensure respect for customary laws and community level procedures;

- (xv) Competent national authorities and focal points for access and benefit-sharing would have the responsibility to inform applicants on access granting procedures and rights of indigenous and local communities. They should also direct applicants to relevant authorities established by indigenous and local communities when access to traditional knowledge associated with genetic resources was concerned. These authorities could ensure respect for customary laws and procedures;
- (xvi) Capacity-building at the community level is required in order to develop clear procedures for access to traditional knowledge associated with genetic resources, such as community protocols;
- (xvii) Mechanisms are needed at the national level for governments to empower indigenous and local communities to make decisions that are informed and clearly understood. Indigenous and local communities also need to have the ability to engage on their own terms and therefore would need to be involved in the development of these mechanisms;
- (xviii) Some suggested that the International Regime should contain specific language that speaks to the rights of indigenous and local communities over their traditional knowledge and associated genetic resources;
- (xix) The International Regime should call on state legislation to recognize rights of indigenous and local communities to prior informed consent and benefit-sharing when their knowledge is accessed and utilized;
- (xx) The International Regime could consider the inclusion of a legal aid body, such as an ombudsperson, that includes representatives of indigenous and local communities that could assist in addressing imbalances in legal capacity between providers and users of genetic resources and associated traditional knowledge in order to create a level playing field;
- (xxi) The International Regime could require that national law builds upon the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization;
- (xxii) Essential to the access regime established by domestic law is the creation of a Competent National Authority (CNA) and a national access point. At minimum, a CNA is needed to promote certainty over the domestic process governing prior informed consent of indigenous and local communities when access to associated traditional knowledge is sought. In this regard, the CNA will be guided by the customary laws, community procedures or community protocols where they exist;
- (xxiii) A Competent National Authority would significantly contribute to promote compliance and to ensure that prior informed consent of indigenous and local communities was freely and properly given;
- (xxiv) To enhance legal certainty, clarity and transparency, the International Regime could suggest the inclusion of provisions for obtaining prior informed consent of indigenous and local communities when accessing traditional knowledge associated with genetic resources in national access and benefit-sharing frameworks;
- (xxv) Compliance measures that support the prior informed consent of indigenous and local communities regarding the use of their traditional knowledge associated with genetic resources, could include disclosure requirements concerning the origin or source of genetic resources and associated traditional knowledge to which access is granted;
- (xxvi) Existing international instruments and processes as well as a growing body of individual State and regional practice demonstrate a progressive trend towards international law mandating a requirement for the prior informed consent of indigenous and local communities for traditional knowledge associated with genetic resources. There is hence a clear trend that provides a basis in international law for the International Regime to require such prior informed consent;

- (xxvii) The following are desirable elements for the prior informed consent of indigenous and local communities:
- (a) Competent national authority;
 - (b) Competent authority at the level of indigenous and local communities with a statutory authorization/mandate established by indigenous and local community authorities;
 - (c) Elements of process, including:
 - Written application;
 - Wide notification of applications sought;
 - Applications to be widely accessible;
 - Legitimate process;
 - Adequate timing and deadlines;
 - Specification of use with clause to address change of use and transfer to third parties;
 - (d) Prior informed consent granted on the basis of mutually agreed terms;
 - (e) Consultation process with indigenous and local communities;
 - (f) Procedures consistent with customary practices;
- (xxviii) In cases where associated traditional knowledge is accessed *ex situ*, benefit-sharing arrangements should be negotiated;
- (xxix) Recognizing that many countries have not yet established competent national authorities as well as appropriate prior informed consent procedures for the full inclusion of indigenous and local communities, the International Regime could provide incentives or even require Parties to establish such institutions and to develop relevant procedures;
- (xxx) In transboundary situations, to the extent possible, the prior informed consent procedures of countries concerned should be required from all entitled communities. The same applies to benefit-sharing. Dispute-resolution mechanisms, if established, should be used in case of conflict. Benefit-sharing trust funds may be appropriate if common traditional knowledge is accessed and used;
- (xxxi) Internationally recognized certificates could provide evidence that prior informed consent from indigenous and local communities has been achieved in relation to traditional knowledge associated with genetic resources;
- (xxxii) A competent domestic authority would issue an internationally recognised certificate. The law establishing a country's access and benefit-sharing framework would identify who acts as the domestic competent authority;
- (xxxiii) Certificates could also include information on whether or not traditional knowledge associated with genetic resources has been accessed and whether prior informed consent and mutually agreed terms obligations have been fulfilled;
- (xxxiv) The work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO/IGC) was noted and its general conclusion that *sui generis* solutions may be required to truly and substantively protect traditional knowledge. That is, the WIPO/IGC has developed *sui generis* draft provisions for the protection of traditional knowledge in light of the increasing recognition that existing intellectual property tools are not fully adequate in protecting traditional knowledge;

- (xxxv) A critical distinction between traditional knowledge associated with genetic resources being in the “public domain” versus being “publicly available” was recognized;
- (xxxvi) Traditional knowledge has often been judged to be in the public domain and hence freely available once it has been accessed and removed from its particular cultural context and disseminated. It cannot be assumed that traditional knowledge associated with genetic resources that has been made available publicly does not belong to somebody. Within the concept of public availability, prior informed consent from a traditional knowledge holder that is identifiable, could still be required, as well as provisions of benefit-sharing made applicable including when a change in use is discernible from any earlier prior informed consent provided. When a holder is not identifiable, beneficiaries could still be decided for example by the State;
- (xxxvii) The phrase “public domain” in the context of traditional knowledge needs to be more correctly re-phrased as “publicly available”;
- (xxxviii) Customary laws of indigenous and local communities generally also address natural resources, including genetic resources and associated traditional knowledge. These laws vary between indigenous and local communities in different countries and within countries. Their level of incorporation into national laws also varies between countries and within countries;
- (xxxix) The respect of the rights of indigenous and local communities will constitute the basis for prior informed consent and mutually agreed terms. In particular, the involvement of indigenous and local communities representatives in the negotiation of mutually agreed terms would enable customary laws regarding genetic resources and associated traditional knowledge to be taken into account. The resulting agreement would then govern the relationship between indigenous and local communities and the user;
- (xl) Specific measures to promote compliance could include:
 - (a) Establishment or recognition of indigenous competent authorities to advise on applicable processes for prior informed consent of indigenous and local communities, respecting the rights of the indigenous and local communities;
 - (b) An internationally recognized certificate of compliance could contain minimum information related to indigenous and local communities;
 - (c) Recognition of existing rights of indigenous and local communities in minimum and standard contractual terms for access and benefit-sharing arrangements;
 - (d) Monitoring of the use of traditional knowledge through checkpoints;
 - (e) Capacity-building of indigenous and local community representatives to facilitate their participation in prior informed consent and mutually agreed terms.
