



# CONVENTION ON BIOLOGICAL DIVERSITY

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

Second meeting  
Montreal, 4–8 February 2002

### REPORT ON PROGRESS ON THE INTEGRATION OF RELEVANT TASKS OF THE PROGRAMME OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS IN THE CROSS-CUTTING AREAS OF THE CONVENTION ON BIOLOGICAL DIVERSITY

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. In paragraph 8 of decision V/16, the COP requested the Executive Secretary to facilitate the integration of the relevant tasks of the programme of work in the future elaboration of the thematic programmes of the Convention and provide a report of the progress of the thematic programmes to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions (the Working Group on Article 8(j)).
2. The purpose of this document is to provide additional information concerning the implementation of the priority tasks of the programme of work on Article 8(j) in the cross-cutting areas dealt with under the Convention to complement the information provided in relation to the thematic areas in document UNEP/CBD/WG8J/2/2.

#### II. CROSS-CUTTING AREAS

##### A. *Ecosystem approach*

3. The ecosystem approach has been adopted by the COP as a primary framework for any action to be taken under the Convention. <sup>1/</sup> In paragraph 1 of decision IV/1 B, the COP took note of the report of the workshop on the ecosystem approach (document UNEP/CBD/COP/4/Inf.9), and in decision V/6 endorsed the description of the ecosystem approach and operational guidance in Sections A and C of the

<sup>1</sup> Decision II/8, paragraph 1.

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annex to that decision, and recommended the application of the principles contained in section B of the annex, as reflecting the present level of common understanding.

4. Of the 12 complementary and interlinked principles that together comprise the ecosystem approach, principles 1, 2, 7 and 11 are of particular relevance to the implementation of Article 8(j).

5. Principle 1 states that the objectives of management of land, water and living resources are a matter of societal choice. This principle recognizes that different sectors of society view ecosystems in terms of their own economic, cultural and societal needs. Indigenous peoples and other local communities living on the land are important stakeholders and their rights and interests should be recognized. Both cultural and biological diversity are central components of the ecosystem approach, and management should take this into account.

6. Principle 2 states that management should be decentralized to the lowest appropriate level. The rationale for this is that decentralized systems may lead to greater efficiency, effectiveness and equity. Management should involve all stakeholders and balance local interests with the wider public interest. The closer management is to the ecosystem, the greater the responsibility, ownership, accountability, participation and use of local knowledge.

7. According to Principle 7, the ecosystem approach should be undertaken at the appropriate spational and temporal scales. Thus the approach should be bounded by spatial and temporal scales that are appropriate to the objectives of the Convention, and boundaries for management will be defined operationally by users, managers, scientists and indigenous and local peoples.<sup>2</sup> Principle 11 states that the ecosystem approach should consider all forms of relevant information, including scientific and indigenous and local knowledge, innovations and practices.

8. The COP, in paragraph 2 of decision V/6, has called upon Parties, other Governments and international organizations to apply, as appropriate, the ecosystem approach, giving consideration to the principles and guidance contained in the annex to the decision, and to develop practical expressions of the approach for national policies and legislation and for appropriate implementation activities, with adaptation to local, national, and, as appropriate, regional conditions, in particular in the context of activities developed within the thematic areas of the Convention.

9. In paragraph 3 of decision V/6, the COP invited Parties, other Governments and relevant bodies to identify case studies and implement pilot projects, and to organize, as appropriate, regional, national and local workshops, and consultations aiming to enhance awareness, share experiences, including through the clearing-house mechanism, and strengthen regional, national and local capacities on the ecosystem approach. A synthesis of the case studies and lessons learned is to be presented to SBSTTA prior to the seventh meeting of the COP. SBSTTA is also to review the principles and guidelines of the ecosystem approach, prepare guidelines for its implementation, and to review the incorporation of the ecosystem approach into various programmes of work of the Convention before COP 7.<sup>3</sup>

## ***B Sustainable tourism***

10. In para. 1 of decision V/25, the COP endorsed the assessment of the interlinkages between biological diversity and tourism contained in the annex to the decision, which includes: (a) the economic importance of tourism and its interrelationship with the conservation and sustainable use of biological diversity; and (b) the potential impacts of tourism on biological diversity, including economic, social and environmental impacts.

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<sup>2</sup> Decision V/6, Annex, B: Principles of the Ecosystem Approach, Principle 7, Rationale.

<sup>3</sup> Decision V/6, paragraph 5.

11. The COP, in paragraph 2, accepted "the invitation to participate in the international work programme on sustainable tourism development under the Commission on Sustainable Development process with regard to biological diversity, in particular, with a view to contributing to international guidelines for activities related to sustainable tourism development in vulnerable terrestrial, marine and coastal ecosystems and habitats of major importance for biological diversity and protected areas, including fragile riparian and mountain ecosystems".

12. To develop the international guidelines contemplated in decision V/25, para. 2, a Workshop on Biological Diversity and Tourism was convened in Santo Domingo, June 2001. This resulted in the development of draft guidelines based on a suggested framework.<sup>4</sup>

13. The draft guidelines cover all forms and activities of tourism, in all geographic regions and include, but are not limited to, conventional mass tourism, ecotourism, nature- and culture-based tourism, cruise tourism, leisure and sports tourism. The draft guidelines will assist Parties to the Convention on Biological Diversity, public authorities and stakeholders at all levels, to apply the provisions of the Convention to the sustainable development and management of tourism activities. They will provide technical guidance to policymakers, decision makers and managers with responsibilities covering tourism and/or biodiversity, whether in national or local government, the private sector, indigenous and local communities, nongovernmental organizations or other organizations, on ways of working together with key stakeholders involved in tourism and biodiversity.<sup>5</sup> Participants in the workshop also noted that, while the draft guidelines were developed in accordance with the mandate of decision V/25, which focuses on vulnerable ecosystems and habitats, they are appropriate for tourism and biological diversity in all areas, and therefore recommended their application to all ecosystems, habitats and biodiversity, in general.<sup>6</sup>

14. The interests of indigenous and local communities, as stakeholders in tourism development projects and related activities, are taken into account in all the elements of the draft guidelines, namely: management process steps (of which there are nine); notification process and information requirements for notification; public education and awareness raising; and capacity-building.<sup>7</sup> As such they constitute a very thorough incorporation of the relevant tasks of the programme of work for the implementation of Article 8(j) and related provisions within the draft international guidelines.

15. At its seventh meeting, the SBSTTA, in recommendation VII/5, has requested, *inter alia*, the Executive Secretary to: (i) transmit the elements for guidelines on biological diversity and tourism contained in the annex to the report of the Santo Domingo Workshop on Biological Diversity and Tourism to the Commission on Sustainable Development serving as the preparatory Committee for the World Summit of Sustainable Development for consideration at its second meeting to be held in New York from 28 January to 8 February 2002; (ii) submit the elements for guidelines to the preparatory process for the World Summit on Ecotourism to be held in Quebec City, in May 2002; and (iii) present these elements for the consideration of the SBSTTA prior to the seventh meeting of the COP.<sup>8</sup>

### C. Access and benefit-sharing

16. In paragraph 11 of its decision V/26 A, the Conference of the Parties to the Convention on Biological Diversity established an Ad Hoc Open-ended Working Group, with the mandate to develop

<sup>4</sup> UNEP/CBD/WS-Tourism/2

<sup>5</sup> UNEP/CBD/SBSTTA/7/5, para. 8.

<sup>6</sup> UNEP/CBD/SBSTTA/7/5, para. 9.

<sup>7</sup> UNEP/CBD/WS-Tourism/4, Annex I, pages 6 -25

<sup>8</sup> UNEP/CBD/COP/6/4, Annex, Recommendation VII/5, paras (a), (c) and (d).

guidelines and other appropriate approaches for submission to the Conference of the Parties and to assist Parties and stakeholders in addressing the following elements as relevant to access to genetic resources and benefit-sharing, *inter alia*: terms for prior informed consent and mutually agreed terms; roles responsibilities and participation of stakeholders; relevant aspects relating *in situ* and *ex situ* conservation and sustainable use; mechanisms for benefit-sharing; and means to ensure the respect preservation and maintenance of knowledge, innovations and practices of indigenous and local communities.<sup>9</sup>

17. The Ad Hoc Working Group on Access and Benefit-Sharing (Working Group on ABS) met in Bonn, Germany, October 2001, and made recommendations for the consideration of the COP at its sixth meeting concerning:

(a) Draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization;

(b) Other approaches, including the development of an action plan for capacity-building

(i) Capacity-building

(ii) Other approaches

(c) Role of intellectual property rights in the implementation of access and benefit-sharing arrangements.

18. In relation to the draft Bonn Guidelines, the Working Group on ABS recommended that the COP, *inter alia*, finalize and adopt the draft Bonn Guidelines as contained in the annex to the recommendation.

19. The draft Bonn Guidelines cover all genetic resources and associated traditional knowledge, innovations and practices covered by the Convention on Biological Diversity and benefits arising from the use of such resources,<sup>10</sup> and contain a number of references to indigenous and local communities and Article 8(j) and related provisions. The guidelines may serve as inputs when developing and drafting legislative, administrative or policy measures on access and benefit-sharing with particular reference to provisions under Articles 8(j), 10(c), 15, 16, and 19; and contracts and other arrangements under mutually agreed terms for access and benefit-sharing.<sup>11</sup>

20. The objectives of the guidelines include *inter alia*, "To contribute to the development by Parties of mechanisms and access and benefit-sharing regimes that recognize the protection of traditional knowledge, innovations and practices of indigenous and local communities, in accordance with domestic laws and relevant international instruments."<sup>12</sup>

21. With regard to other approaches, including the development of an action plan for capacity-building, the Working Group on ABS, recalled paragraph 14 of decision V/26 A, by which the Conference of the Parties noted that further development of capacities regarding all aspects of access to genetic resources and benefit-sharing arrangements is required for all stakeholders including local governments, academic institutions and indigenous and local communities, and that key capacities include: (a) assessment and inventory of biological resources as well as information management; (b) contract negotiation skills; (c) legal drafting skills; and (d) means for the protection of traditional knowledge associated with genetic resources. The Working Group on ABS has requested the Executive

<sup>9</sup> UNEP/CBD/COP/6/6, para. 1.

<sup>10</sup> Ibid, pg. 15, para. 7.

<sup>11</sup> UNEP/CBD/COP/6/6, pg 14.

<sup>12</sup> Ibid, pp. 15-16, para. 9(j).

Secretary to convene an open-ended expert workshop on capacity-building for access to genetic resources and benefit-sharing, the workshop to be open to participation by, *inter alia*, representatives of indigenous and local communities. The workshop should further develop the draft elements for an Action Plan on Capacity-building for Access and Benefit-sharing annexed to the recommendation and submit its report to the sixth meeting of the Conference of the Parties.<sup>13</sup>

22. With respect to the draft elements for an Action Plan for Capacity-building for Access to Genetic Resources and Benefit-sharing (Action Plan), contained in the Annex to recommendation 2A, the objective of the Action Plan is to facilitate and support the development and strengthening of capacities for the effective implementation of the provisions of the Convention relating to access to genetic resources and benefit-sharing at the local, national, sub-regional, regional and international levels.<sup>14</sup>

23. Among the key areas requiring capacity building identified in the Action Plan are: (i) Assessment, inventory and monitoring of biological resources, and traditional knowledge, including taxonomic capacity, within the context of the Global Taxonomy Initiative; (ii) Inventory and case-studies of existing legislative measures and development of appropriate legislation, including *sui generis* systems; (iii) Development and strengthening capacities of indigenous and local communities for participation in decision making and implementation; (iv) Public education and awareness focusing on relevant stakeholders; (v) Human resources development and training at all levels, including legal drafting skills for development of access to genetic resources and benefit-sharing measures; (vi) Contract negotiation skills for all relevant stakeholders, in particular indigenous and local communities; and (vii) Means for the protection of traditional knowledge associated with genetic resources.<sup>15</sup>

24. With regard to processes, the Action Plan stipulates that among the processes and measures that should be taken, should be the identification of existing and planned capacity-building initiatives at the local, national, sub-regional and regional levels, both public and private, and their coverage including by, *inter alia*, other stakeholders, in particular indigenous and local communities.<sup>16</sup>

25. In relation to means of implementation, the Action Plan identifies a number of mechanisms that could be used for the implementation of capacity-building measures for access to genetic resources and benefit-sharing which include, *inter alia*, (i) full and effective involvement and participation of all relevant stakeholders, in particular indigenous and local communities taking into account the tasks defined within the programme of work on the implementation of Article 8(j) and related provisions of the Convention, and (ii) the roster of experts on access to genetic resources and benefit-sharing to be established under the Convention.<sup>17</sup> The roster of experts should also include, *inter alia*, representatives of indigenous and local communities.<sup>18</sup>

26. The Working Group on ABS also made a number of recommendations to the Conference of the Parties at its sixth meeting concerning the role of intellectual property rights in the implementation of access and benefit-sharing arrangements that are important to the protection of traditional knowledge. These recommendations include, *inter alia*: an invitation to Parties and Governments to encourage the disclosure of relevant traditional knowledge, innovations and practices of indigenous and local

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<sup>13</sup> UNEP/CBD/COP/6/6, pgs. 30-31.

<sup>14</sup> UNEP/CBD/COP/6/6, pg 31.

<sup>15</sup> *Ibid*, pp. 31-32.

<sup>16</sup> *Ibid*, pp. 32-33.

<sup>17</sup> *Ibid*, p. 33.

<sup>18</sup> *Ibid*, pg 31 (para. 5).

communities in applications for intellectual property rights, where an invention concerns or makes use of such knowledge in its development;

27. The Working Group on ABS also acknowledged that further information is required on a number of key issues relating to intellectual property rights and access to genetic resources and benefit-sharing and recommended that the Conference of the Parties request the Executive Secretary, with the help of other international and intergovernmental organizations such as the World Intellectual Property Organization and through the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j), to undertake further information gathering and analysis with regard to, *inter alia*, role of customary laws and practices in relation to the protection of genetic resources and traditional knowledge, innovation and practices, and their relationship with intellectual property rights.

28. The Working Group on ABS noted that there is a need for accurate technical intellectual property information and explanation concerning methods for requiring the disclosure within patent applications of, *inter alia*, (i) associated traditional knowledge, innovations and practices utilized in the development of the claimed inventions; (ii) the source of associated traditional knowledge, innovations and practices; and (iii) evidence of prior informed consent.

29. The Working Group on ABS has requested the Executive Secretary to compile information regarding the legal mechanisms and procedures for resolving contractual disputes domestically and internationally, taking into consideration factors such as differences between Parties in the nature of legal systems (for example, common law, customary law, Civil Code, and the customary law and practices of indigenous and local communities) and contracting approaches (for example, national competent authorities, and contracting entities) and make the information available through, *inter alia*, the clearing-house mechanism of the Convention.

30. The Working Group on ABS has requested the Executive Secretary to submit to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions the report of the Working Group on ABS and requested the Ad Hoc Working Group on Article 8(j) to further examine the issues contained in the report relevant to its work.

#### ***D. Sustainable use***

31. In its decision V/24, the Conference of the Parties requested the Executive Secretary:

(a) To invite organizations involved in sustainable use initiatives, and other relevant organizations, to gather, compile and disseminate through the clearing-house mechanism and other means, case-studies on best practices and lessons learned from the use of biological diversity under the thematic areas of the Convention, drawing on the experiences of Parties, Governments, relevant organizations, the private sector and indigenous and local communities (paragraph 1).

(b) To assemble practical principles, operational guidelines and associated instruments, and guidance specific to sectors and biomes, which could assist Parties and Governments to develop ways to achieve the sustainable use of biological diversity, within the framework of the ecosystem approach (paragraph 3).

32. In paragraph 6 of decision V/24 the COP urged Parties, Governments and organizations to develop or explore mechanisms to involve the private sector and indigenous and local communities in initiatives on the sustainable use of biological diversity, and in mechanisms to ensure that indigenous and local communities benefit from such sustainable use.

33. In response to these requests, the Executive Secretary is, *inter alia*:

(a) Compiling the information received, and posting case-studies on best practices on the website of the Convention on Biological Diversity;

(b) Convening three regional workshops on the sustainable use of biological diversity, with the objective to identify elements for guidelines for the sustainable use of biodiversity.<sup>19</sup>

34. The first workshop was held in Maputo, Mozambique to identify guiding principles for the sustainable use of biodiversity with a focus on the use of terrestrial, dryland resources and game utilization in the African region. The second workshop will take place in Hanoi, in January 2002, to discuss further the guiding principles and will address sustainable use of forest biological diversity (including timber and non-wood forest products). The third meeting will focus on marine, and freshwater capture fisheries and will take place in Quito, Ecuador.

35. The SBSTTA, at its seventh meeting in its recommendation VII/4, *inter alia*: took note of the progress report of the Executive Secretary on the development of practical principles, operational guidance and associated instruments for sustainable use,<sup>20</sup> and urged the implementation of activities in application of decision V/24 of the COP.<sup>21</sup> In-depth discussion on progress on development of practical principles, operational guidance and associated instruments, will take place at a SBSTTA meeting prior to seventh meeting of the Conference of the Parties.<sup>22</sup>

#### *E. Alien species that threaten ecosystems, habitats or species*

36. At its sixth meeting the SBSTTA recommended in para 4 of recommendation VI/4 that the COP at its sixth meeting *inter alia* adopts the Guiding Principles [Guidelines] for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species annexed to the recommendation. The SBSTTA 6, noting the range of measures contained in doc. UNEP/CBD/SBSTTA/6/7 and the need to strengthen national capacities and international collaboration, recommended that COP 6 urges Parties and other Governments, in implementing the Guiding Principles, and when developing, revising and implementing national biodiversity strategies and action plans to address the threats posed by invasive alien species, to *inter alia*, facilitate the involvement of all stakeholder groups, including in particular local and indigenous communities.<sup>23</sup>

37. In relation to the Guiding Principles, it is noted that the 15 guiding principles contain two references to the role that indigenous and local communities could play in relation to invasive alien species. Guiding Principle 5: Research and Monitoring, points out that, *inter alia*, "In order to develop an adequate knowledge base to address the problem it is important that States undertake research on and monitoring of invasive species as appropriate. Monitoring should include both targeted and general surveys, and benefit from the involvement of other sectors, including local communities."<sup>24</sup> And in Guiding Principle 6: Education and public awareness, "States should facilitate education and public awareness of the risks associated with the introduction of alien species. When mitigation measures are required, education and public awareness-oriented programmes should be set in motion so as to inform local communities and appropriate sector groups on how to support such measures."

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<sup>19</sup> UNEP/CBD/SBSTTA/7/5, para. 6.

<sup>20</sup> UNEP/CBD/SBSTTA/7/5

<sup>21</sup> UNEP/CBD/COP/6/4 Annex, Recommendation VII/4

<sup>22</sup> UNEP/CBD/SBSTTA/7/5, para. 1.

<sup>23</sup> UNEP/CBD/COP/6/3, Annex, Recommendation VI/4 A, para. 10(f).

<sup>24</sup> *Ibid*, Annex, p. 47.

38. A number of references are made in the Guiding Principles to stakeholders which, in relevant circumstances, will also include indigenous and local communities. For example, in Guiding principle 12: Mitigation of Impacts which states that. "Techniques used for eradication, containment or control should be safe to humans, the environment and agriculture as well as ethically acceptable to stakeholders in the areas affected by invasive alien species,"<sup>25</sup> stakeholders in this instance would also include indigenous and local communities.

39. The SBSTTA at its sixth meeting, in response to paragraph 14 of decision V/8, has also recommended that COP 6 urges Parties, Governments and relevant organizations, at the appropriate level, with the support of relevant international organizations to promote and carry out, as appropriate, research and assessment on, *inter alia*, the socio-economic implications of invasive alien species particularly the implications for indigenous and local communities.<sup>26</sup>

#### *F. Global Taxonomy Initiative*

40. In its decision III/10, on identification, monitoring and assessment, the Conference of the Parties established the need for a specific action under the Convention in capacity-building in taxonomy, through its endorsement of SBSTTA recommendation II/2. In decision IV/1 D, the Conference of the Parties endorsed, as initial advice, a set of Suggestions for Action to develop and implement a Global Taxonomy Initiative. It also stressed the need to consider indigenous and traditional knowledge as an important existing information source that should be taken into account, and made available through appropriate mechanisms.

41. In decision V/9, the Conference of the Parties adopted a range of activities for the Global Taxonomy Initiative, including the preparation of a programme of work for the Global Taxonomy Initiative defining timetables, goals, products and pilot projects.<sup>27</sup>

42. The Global Taxonomy Initiative (GTI) covers the taxonomic work required to support the implementation of the Convention at all three levels of biodiversity (genetic, species and ecosystem), and is concerned with all organisms, i.e. plants, animals and micro-organisms. The GTI has been established under the Convention on Biological Diversity to underpin decision-making in conservation of biological diversity, sustainable use of its components and equitable sharing of the benefits derived from the utilization of genetic resources;<sup>28</sup> and specifically to support work programmes in the thematic areas (marine and coastal biological diversity, agricultural biodiversity, dry and subhumid land biological diversity, inland water biological diversity, forest biological diversity and mountain biological diversity), and in the cross-cutting issues (invasive alien species, access and benefit-sharing, scientific assessments, indicators, traditional knowledge) under the Convention.<sup>29</sup> The SBSTTA, at its sixth meeting, has recommended that the Conference of the Parties at its sixth meeting, endorses the programme of work for the GTI, as annexed to the recommendation.<sup>30</sup>

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<sup>25</sup> Ibid, p. 50.

<sup>26</sup> Ibid, para. 21(d).

<sup>27</sup> Ibid, para. 9.

<sup>28</sup> Ibid, page 57, paras 2 and 3.

<sup>29</sup> Ibid, para. 5.

<sup>30</sup> Ibid, Recommendation VI/6, para. 1(a).



43. Among the functions that the programme of work is intended to fulfil, is the function: "To serve as a guide to all biodiversity stakeholders on specific objectives to which they can contribute individually or collectively, at the local, national or international level."<sup>31</sup>
44. The work programme contains a number of references concerning Article 8(j), of which the most comprehensive occurs under Operational Objective 5. This objective specifies that within the work on cross-cutting issues of the Convention, include key taxonomic objectives to generate information needed for decision-making in conservation and sustainable use of biological diversity and its components. Planned activity 16 is concerned with support in implementation of Article 8(j)<sup>32</sup>. The rationale for this activity states that the "Conference of the Parties has acknowledged that traditional biodiversity-related knowledge (TBRK) has the potential to inform the activities of the Convention on Biological Diversity. Given that the GTI has the potential to make TBRK more accessible to a wide range of users, due regard must be given to the concerns raised by indigenous and local communities regarding the right to preserve, protect and manage TBRK, particularly traditional taxonomic knowledge."<sup>33</sup> A number of tasks in the programme of work for the implementation of Article 8(j) endorsed in decision V/16 have a direct bearing on the proposed activities of the GTI, in particular tasks 1, 2 and 7 in phase 1 and tasks 6, 10, 13 and 16 in phase 2.<sup>34</sup>
45. In the rationale it is also pointed out that traditional knowledge systems include taxonomic information, which if used in combination with Linnaean taxonomies could support the GTI. Access to and use of traditional knowledge must have the prior informed consent of the holders of that knowledge and be based on mutually agreed terms. When this has occurred, comparison of indigenous taxonomies and Linnaean taxonomies in different regions could be made to provide general principles to assist in the conservation and sustainable use of elements of biodiversity in different ecosystems.<sup>35</sup>
46. The expected output for planned activity 16 is the production of regional and subregional guides based on ethical research practices and developed with full and effective participation of indigenous and local communities.<sup>36</sup> The preparation of the guides is to be completed as part of implementation activities under Article 8(j). It is also envisaged that the Ad Hoc Open-ended Working Group on Article 8(j) should play a key role in advising on the development of projects.<sup>37</sup>
47. Another area in which members of indigenous and local communities can play a key role in support of the GTI is parataxonomy. Under *Planned activity 4: Public awareness and education of Operational Objective 1 (Assess taxonomic needs and capacities at national, regional and global levels for the implementation of the Convention)*, among the outputs is the production of packages of materials and activities aimed at broadening public understanding of the importance of taxonomy in achieving the objectives of the Convention. A special part of these initiatives should be, *inter alia*, public involvement in parataxonomic activity. Appropriate mechanisms would be toolkits addressing particular taxonomic issues to be developed by the lead agencies for trial in selected regions of developing and developed countries. A key mechanism will involve participatory activity by local communities to strengthen the training and awareness raising for parataxonomists.<sup>38</sup>

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<sup>31</sup> Ibid, page 59, para. 14(d).

<sup>32</sup> Ibid, p. 79.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid, pages 79-80.

<sup>36</sup> Ibid, page 80.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid, p. 65.

### G. Public education and awareness

48. In the preamble to decision IV/10 B: Public education and awareness: consideration of measures for the implementation of Article 13, the COP, *inter alia*, stressed that modern technologies and expanding access to electronic communication means bring new possibilities for promoting and encouraging understanding of the importance of, and measures required for, the conservation of biological diversity; but also recognized the importance of traditional communication systems among local communities, with emphasis on maintaining their integrity and dynamism. It therefore, in paragraph 1(d) urged Parties, to integrate biological diversity concerns into education strategies, recognizing the particular needs of indigenous and local communities. In paragraph 4, it also called upon Parties, where necessary, to illustrate and translate the provisions of the Convention into the respective local languages to promote public education and awareness-raising of relevant sectors, including local communities.

49. In decision V/17 the Conference of the Parties in paragraph 2 requested the Executive Secretary in cooperation with the United Nations Educational, Cultural and Scientific Organization (UNESCO), to convene a consultative working group of experts, to further advance and, in particular, to identify priority activities for the proposed global initiative on biological diversity education and public awareness. The CBD-UNESCO Consultative Working Group of Experts on Biological Diversity Education and Public Awareness has held three meetings.

50. At the Paris meeting in July 2000, the Group of Experts reviewed relevant existing and planned initiatives, decided to initiate a number of priority activities and discussed further steps in the development of the initiative. Specific recommendations were formulated in this regard. It was concluded that both short-term and long-term strategies for the implementation of the initiative were needed: in the short term, a series of priority activities such as demonstration projects, should be launched, and if possible completed prior to COP 6; for the longer term, the CBD-UNESCO Consultative Working Group of Experts should continue work during the period leading up to COP 6 to further advance and technically supervise the initiative.<sup>39</sup>

51. At the Bergen meeting in November 2000, the Group of Experts identified relationships between objectives, problems and challenges, strategy, and operational elements and suggested action and reviewed the basic structure of its final report, through the Executive Secretary, to the Conference of the Parties at its sixth meeting. At this meeting it was concluded that education and public awareness: (a) should be integrated in all programmes of work of the Convention's thematic areas and cross-cutting issues; (b) constitute a professional discipline, therefore professional education and communication expertise should be included in all relevant education and communication activities; and (c) should be a basic element in the Strategic Plan of the Convention and in all funding mechanisms on biological diversity.<sup>40</sup>

52. At the third meeting held in Bilbao in November 2001, the Group of Experts discussed the proposed Plan of Action. The Plan proposes, *inter alia*, to compose a list of education and communications experts, organizations and networks which also take into account indigenous and local communities.<sup>41</sup>

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<sup>39</sup> UNEP/CBD/GEEP/1/1.

<sup>40</sup> UNEP/CBD/GEEP/2/3.

<sup>41</sup> UNEP/CBD-UNESCO/CWGE/DEPA-3/2.

## H. Identification, monitoring and assessment, and indicators

53. The primary role of indicators in the context of the Convention on Biological Diversity is as a tool for the management of biological diversity at local and national levels and assessment of the implementation of the Convention.<sup>42</sup>

54. The Conference of the Parties, in paragraph 1 of its decision V/7, requested the Executive Secretary to carry out the pending activities set out in the work programme on indicators of biological diversity as approved by decision IV/1 A and, in particular, to develop:

(a) A set of principles for designing national-level monitoring programmes and indicators;

(b) A key set of standard questions and a list of available and potential indicators, covering the ecosystem, species and genetic levels, taking into account the ecosystem approach, that may be used by Parties at their national level and in national reporting.

55. A set of 5 principles and questions for designing national-level monitoring programmes and indicators has been developed. The principles cover: (i) relevance to the objectives of the Convention; (ii) management and policy relevance; (iii) user-driven nature; (iv) relevance to target audience; and (v) technical features. The principles contain few direct references to indigenous and local communities, or the role that they or their traditional knowledge that they hold may have in designing national-level monitoring programmes and indicators. One such reference occurs in relation to principle 3: user-driven nature, the conservation of biological diversity and sustainable use of its components are predominantly a national and sometimes a local responsibility.<sup>43</sup>

56. The Executive Secretary sent out a questionnaire to Parties in May 2001, with a set of principles for designing a national-level monitoring programme and indicators, a key set of standard questions and a generic list of indicators that have been compiled from various initiatives on indicators by Parties and international organizations. As of 9 August 2001, 32 Parties and other Governments had replied to the Executive Secretary's request.<sup>44</sup>

57. With regard to the set of questions for developing national-level indicators, one of the questions in reference to state indicators, concerns the state of knowledge (including traditional knowledge) of biological diversity; the pressure leading to biodiversity loss; and measures taken to conserve, sustainably use biodiversity and equitably share the benefits derived from the utilization of genetic resources.<sup>45</sup>

58. The SBSTTA in its recommendation VII/11, has recommended that the COP requests the Executive Secretary to report on the development of indicators in all thematic and cross cutting issues to the SBSTTA prior to the seventh meeting of the COP; and *inter alia*, requests the Executive Secretary to convene a meeting of an expert group "that is broadly representative of experts from both United Nations and biogeographical regions", to develop: (i) principles for developing national-level monitoring and indicators; (ii) a set of standard questions for developing national-level indicators; and (iii) a list of available and potential indicators based on a conceptual framework that has qualitative and quantitative approach, and report to a meeting of the SBSTTA prior to the seventh meeting of the COP.<sup>46</sup>

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<sup>42</sup> SBSTTA recommendation III/5 para. 2.

<sup>43</sup> Ibid, annex I.

<sup>44</sup> UNEP/CBD/SBSTTA/7/12, paras 4 and 5.

<sup>45</sup> Ibid, annex II, . State indicators, para. (c).

<sup>46</sup> UNEP/CBD/COP/6/4, Recommendation VII/11, para. 2(a) and (c).

### I. Incentive measures

59. In para. 4 of decision V/15, the COP decided to integrate actions on incentives in thematic work programmes and ensure synergy with activities on sustainable use, noting that incentive measures are essential elements in developing effective approaches to conservation and sustainable use of biological diversity especially at the level of local communities.

60. In order to achieve these and other results of the work programme, a workshop on incentive measures for the conservation and sustainable use of biological diversity was held in Montreal, September 2001. The conclusions of the workshop were submitted to the seventh meeting of the SBSTTA. On the basis of these conclusions, SBSTTA adopted recommendation VII/9 in which it submits proposals for the design and implementation of incentive measures (annex I) to the sixth meeting of the Conference of the Parties, and also suggests recommendations for further cooperation on incentive measures (annex II).

61. In the development of appropriate incentive measures for the conservation and sustainable use of biological diversity, the SBSTTA agreed that in general terms incentive measures should be designed to address the conservation and sustainable use of biological diversity, while taking into account, *inter alia*, local and regional knowledge, geography, circumstances and institutions.<sup>47</sup> Indigenous and local communities as well as women have been considered in recommendation VII/9. Specifically, the following sections are relevant to the implementation of Article 8(j) and related provisions of the Convention.

62. Annex I: Proposals for the design and implementation of incentive measures contains a number of references to indigenous and local communities and Article 8(j) and related provisions. An incentive measure, in the context of decision V/15, should have the purpose to change institutional and individual behaviour in order to achieve in whole or in part the following objectives of the Convention on Biological Diversity: the conservation of biodiversity, the sustainable use of the components of biodiversity and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. Thus, under Section A: Identification of the problem: purpose and issue identification, the proposal recognizes the need for identification of relevant experts and stakeholders, which may include, *inter alia*, "local communities as well as individuals". It is also necessary to establish processes for participation, which includes the participation of relevant stakeholders including indigenous and local communities.<sup>48</sup>

63. In the design of incentive measures under Section B, the proposal identifies the need to capture value for indigenous and local communities. The value of biological diversity for subsistence, cultural or commercial purposes should be recognized and incentive measures designed so that, to the extent possible, they support the social and economic development needs of indigenous and local communities. The approach of these communities in determining the values of biological diversity should be taken into consideration.<sup>49</sup> Stakeholder involvement is also recognized in the proposal as an important part in the provision of capacity and building of support, facilitating implementation, and this includes after the design of a measure, to ensure effective on-ground implementation of the incentive measure(s).<sup>50</sup>

64. In Section C – Provision of capacity and building of support: facilitating implementation,

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<sup>47</sup> Ibid, Annex I, paras 1 and 2.

<sup>48</sup> Ibid, paras. 4, 8 and 9.

<sup>49</sup> Ibid, para. 22.

<sup>50</sup> Ibid, para. 31.

65. paragraph 31, concerning stakeholder involvement stresses that relevant stakeholders should be involved even after the design of a measure in order to ensure that incentive measures are effectively implemented; and that these stakeholders should play a role in building the capacity of local institutions and individuals in order to raise awareness and to facilitate capacity to participate in all stages of the process.

66. In relation to guidelines for selecting appropriate and complementary measures, the proposal suggests, *inter alia*, that equity consideration such as poverty alleviation should be given a prominent role in the design and selection of appropriate incentive measures; and that well defined land and property rights are an important focus in the design and implementation of incentive measures in the conservation of biological diversity and the promotion of sustainable use.

67. In relation to suggested recommendations for further cooperation on incentive measures identified by the SBSTTA in annex II of Recommendation VII/9, cooperation to assist Governments in designing and implementing incentive measures should be based on, *inter alia*, the involvement of stakeholders including indigenous and local communities. In this regard, States should develop and apply participatory and coherent approaches to policy-making for biodiversity conservation and sustainable use that fully engage all stakeholders, which includes indigenous and local communities, in a meaningful dialogue in a timely fashion and promote a consistent approach to the use of incentive measures for conservation and sustainable use of biodiversity. In accordance with paragraph 7 (b) particular emphasis should be given to mobilizing key stakeholders in policy dialogues relating to the design and implementation of incentive measures, including, *inter alia*, indigenous and local communities. <sup>51</sup>

68. The SBSTTA at its seventh meeting has recommended that the COP at its sixth meeting consider and endorse the proposals for the design and implementation of incentive measures and the recommendations for further cooperation on incentive measures contained respectively in annexes I and II of the recommendations, as far as they are consistent with Parties' national policies and legislation as well as their international obligations. <sup>52</sup>

#### ***J. Impact assessment, liability and redress***

69. Paragraph 1 of Article 14 of the Convention identifies impact assessment as a key instrument for achieving the conservation, sustainable use and equitable sharing objectives of the Convention. Impact assessment also has a potential part to play in implementing a number of other Articles of the Convention.

70. At its fifth meeting, the Conference of the Parties considered the cross-cutting issue of environmental impact assessment and, through its decision V/18, paragraph 5, requested the Executive Secretary to compile and evaluate existing guidelines, procedures and provisions for environmental impact assessment together with information on existing guidelines on incorporating biological diversity considerations into environmental impact assessment and make this information available in order to facilitate sharing of information and exchange experiences at the regional, national and local levels. <sup>53</sup>

71. In paragraph 4 of the same decision, the Conference of the Parties requested the SBSTTA to further develop guidelines for incorporating biodiversity-related issues into legislation and/or processes on strategic environmental assessment, in collaboration with relevant stakeholders, and to further elaborate the application of the precautionary approach and the ecosystem approach, taking into account

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<sup>51</sup> Ibid, paras. 40, 44 and 46.

<sup>52</sup> UNEP/CBD/COP/6/4, Report of SBSTTA 7, Recommendation VII/9 Incentive measures, para. 8.

<sup>53</sup> Ibid, para. 1.

needs for capacity-building, with a view to completion by the sixth meeting of the Conference of the Parties.<sup>54</sup>

72. At its seventh meeting, the SBSTTA considered the information contained in document UNEP/CBD/SBSTTA/7/13 including the draft guidelines for incorporating biodiversity considerations into environmental impact assessment and strategic environmental assessment procedures. The SBSTTA recommended that the Conference of the Parties at its sixth meeting endorses the draft guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessment on the basis of the draft contained in the annex to recommendation VII/10 and identify ways and means for their further development or adjustment.<sup>55</sup>

73. The draft guidelines contain few direct references to indigenous and local communities or the knowledge they hold. Instead, the term stakeholder is frequently used, which, depending on the context, would include indigenous and local communities. For example, in the section on scoping, it states that scoping also enables the competent authority (or environmental impact assessment professionals in countries where scoping is voluntary), *inter alia*, “to provide an opportunity for stakeholders to have their interests taken into account in the environmental impact assessment.”<sup>56</sup> In another example, in the section dealing with impact analysis and assessment, assessing impacts “usually involves a detailed analysis of their nature, magnitude, extent and effect, and a judgement of their significance, i.e., whether the impacts are acceptable to stakeholders, require mitigation, or are just unacceptable.”<sup>57</sup> In relation to ways and means, in the section concerning participation, it is stated that: “Relevant stakeholders or their representatives, and in particular indigenous and local communities should be involved in the development of guidelines or recommendations for environmental impact assessments as well as throughout the assessment processes relevant to them, including decision-making.”<sup>58</sup>

74. The SBSTTA also requested the Executive Secretary to forward the draft guidelines to the meeting of the Ad Hoc Inter-Sessional Working Group on Article 8(j) and Related Provisions.<sup>59</sup>

75. With regard to liability and redress, in paragraph 9 of decision V/18, the Conference of the Parties decided to consider at its sixth meeting a process for reviewing paragraph 2 of Article 14 which is concerned with the issue of “liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.” The COP also welcomed the offer of the Government of France to organize a workshop on liability and redress in the context of the Convention on Biological Diversity.

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<sup>54</sup> Ibid, para. 2.

<sup>55</sup> UNEP/CBD/COP/6/4, Annex, recommendation VII/10, para. 1(a).

<sup>56</sup> Ibid, Annex: Draft guidelines..., para. 17(b).

<sup>57</sup> Ibid, para. 23.

<sup>58</sup> Ibid, para. 39.

<sup>59</sup> Ibid, para. 2.

76. The workshop on liability and redress in the context of the Convention on Biological Diversity was held in Paris, France, from 18 to 20 June 2001.

77. The purpose of the workshop was to provide guidance to the Conference of the Parties regarding its consideration of a process for reviewing paragraph 2 of Article 14 of the Convention based on a review of the state of international law relating to liability and redress for transboundary environmental damage. On the basis of its deliberations, the workshop made a number of recommendations regarding further information gathering and analysis; the establishment of a legal and technical experts group to review the information gathered and to continue the technical analysis of pertinent issues, including examining the appropriateness of a liability and redress regime under the Convention; and the enhancement of capacities at the national level with respect to measures for the prevention of damage to biological diversity, the establishment and implementation of national policy and legislative regimes on liability and redress, including through the elaboration of guidelines. The report of the workshop including its recommendations will be submitted to the sixth meeting of the Conference of the Parties in April 2002.

78. Issues regarding liability and redress for damage to biological diversity are of central importance to indigenous and local communities, precisely because of their social and economic dependence on biological resources. Damage to biodiversity is likely to have an adverse impact on the livelihoods and lifestyles of indigenous and local communities. The development of measures at national and international levels regarding liability, restoration and compensation are, therefore, of particular interest and concern to indigenous and local communities.

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