



ARTICLE 8(J) WG-3 HIGHLIGHTS: TUESDAY, 9 DECEMBER 2003

Delegates to the third meeting of the Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (CBD) convened in sub-working group sessions throughout the day. Sub-Working Group I (SWG-I) considered draft guidelines for the conduct of cultural, environmental and social impact assessments. Sub-Working Group II (SWG-II) discussed participatory mechanisms and genetic use restriction technologies (GURTs). A brief Plenary session was held in the afternoon to review progress.

SUB-WORKING GROUP I

IMPACT ASSESSMENTS: The Secretariat introduced draft recommendations and guidelines on cultural, environmental and social impact assessments regarding proposed developments on sacred sites and lands or waters occupied or traditionally used by indigenous and local communities (UNEP/CBD/WG8J/3/5).

Liberia, on behalf of the AFRICAN GROUP, stressed that communities are holders and owners, rather than custodians, of traditional knowledge. SWEDEN called for considering ways to achieve the document's integrated approach and for collaborating with the UN Educational, Scientific and Cultural Organization (UNESCO).

The International Indigenous Forum on Biodiversity (IIFB), opposed by ARGENTINA, CANADA, KENYA and the BAHAMAS, proposed that the guidelines be binding. ARGENTINA and JAMAICA stressed the need for a compilation of sacred sites. The IIFB called for transparency and collection of data by indigenous peoples. The RUSSIAN ASSOCIATION OF INDIGENOUS PEOPLES OF THE NORTH (RAIPON) suggested ethnological studies to identify sacred sites.

Draft recommendations: MEXICO proposed acknowledging local biodiversity conservation strategies. CARE EARTH-INDIA suggested reference to sacred species.

The AFRICAN GROUP suggested encouraging information exchange between communities. The IIFB, ETHIOPIA and JORDAN supported transparency and community participation in prior planning processes. JORDAN stressed management of negative environmental impacts. CÔTE D'IVOIRE requested addressing risks such as waste disposal.

KENYA and the IIFB supported a financial mechanism to allow independent evaluations by communities.

EGYPT stressed the need to protect communities and their knowledge from the threats of globalization. RAIPON highlighted threats caused by extractive activities to traditional lifestyles. The GAMBIA said communities should request project assessments.

SWG-I co-Chair John Herity (Canada) said a co-Chairs' text will be prepared.

Draft guidelines: Purpose and approach: CANADA suggested considering the inter-relationship between environmental, cultural and social aspects. The IIFB recommended addressing prevention and mitigation of impacts on traditional lifestyles, and effects on, and participation of, women. JORDAN recommended ensuring appropriate use of technology. BURUNDI said assessments should take into account traditional knowledge. SWEDEN and the US called for differentiating between the assessment and decision-making processes.

Use of terms: On social impact assessments, MEXICO requested considering economic, social, cultural and political rights, and the IUCN emphasized communities' social and physical integrity. IRAN noted difficulties in measuring cultural impacts. While CANADA suggested deleting the definition of customary law, the IIFB opposed, underscoring that it does not qualify customary law. The IIFB also requested including prior informed consent and effective community participation in, and review of, the definitions of assessments. INDIA proposed using CBD definitions. The Coordinating Body of the Indigenous Organizations of the Amazon Basin (COICA) requested reference to Convention 169 of the International Labour Organization on Indigenous and Tribal Peoples. The IIFB proposed that the Secretariat, in collaboration with indigenous representatives, elaborate the terms.

Procedural considerations: Regarding language on agreement between communities and proponents of development projects, the AFRICAN GROUP stressed that agreed terms or an agreement should be concluded. The IUCN said agreements should involve authorities and be on mutually agreed terms.

Several delegates noted that agreements based on assessments could pre-empt communities' rights to oppose a project. The US suggested including a "no-action" option. CÔTE D'IVOIRE stressed that environmental impact assessments (EIAs) should correct wrong approaches but not stop developments.

CANADA supported indigenous participation at all stages of the assessment process, not only in decision making. The IIFB suggested language on the identification of liable parties and their obligation to compensate for adverse impacts. RAIPON recommended listing participants in, and identifying stages of, assessments.

On public consultation of proposed developments, NIGER and LIBERIA said means of notification should include village and town meetings. BURKINA FASO proposed considering obligations under regional and international agreements to address trans-boundary impacts.

On identification of affected communities and stakeholders, delegates discussed the concepts of communities and stakeholders, and agreed to a proposal by CANADA that communities be invited to participate in the development process.

On mechanisms for community participation, BURKINA FASO stressed the need to involve communities in assessments. KENYA called for reference to national legislation.



The AFRICAN GROUP and RAIPON called for establishing processes for recording communities' views and, with CANADA, YEMEN and CÔTE D'IVOIRE, shared concerns regarding the appropriateness of using audio or video recording. The AFRICAN GROUP proposed rural appraisal methods, while RAIPON, COICA and the IIFB suggested choosing means in agreement with affected communities.

Integration of assessments: RAIPON said the link between communities and biodiversity should be assessed. The BAHAMAS and RAIPON suggested addressing the economic valuation of cultural resources. The IUCN highlighted possible impacts on systems of transmission of traditional knowledge.

Regarding EIAs, delegates discussed language on the need to respect land and treaty rights. CANADA said national EIA legislation should respect community rights established under domestic law, and noted that EIA processes can contribute to their protection by documenting communities' activities and customs. The IIFB objected referring to domestic legislation.

The IIFB proposed language differentiating direct and indirect impacts of development projects, and addressing the impacts of invasive alien species.

Regarding baseline studies, the US proposed addressing the issue of baselines at the national level.

SUB-WORKING GROUP II

PARTICIPATORY MECHANISMS: The Secretariat introduced a note on mechanisms to promote effective participation of indigenous and local communities (UNEP/CBD/WG8J/3/6), the report of the *Ad Hoc* Technical Expert Group (AHTEG) on Traditional Knowledge and the Clearing-House Mechanism (CHM) on communication mechanisms (UNEP/CBD/WG8J/3/6/Add.1) and a note on cooperation among environmental conventions concerning indigenous and local communities' participation (UNEP/CBD/WG8J/3/6/Add.2).

Many delegates supported creating a biodiversity-specific fund to support indigenous participation, with CHINA recommending that it be voluntary, and the IIFB and NEW ZEALAND that it be independent. ARGENTINA and BRAZIL requested that governments select the indigenous representatives funded through such a mechanism. NEW ZEALAND and the INDIGENOUS WOMEN'S BIODIVERSITY NETWORK (IWBN) said applications to the fund should not go through governments. HAITI and the IIFB said funding should cover education and capacity building for indigenous participation at local and international levels.

The INDIGENOUS PEOPLES OF SAINT LUCIA recommended developing national participatory mechanisms for indigenous peoples that would also allow collecting traditional knowledge. The COORDINATING ORGANIZATION OF ARGENTINIAN INDIGENOUS PEOPLES ASSOCIATIONS supported establishing a national advisory committee and promoting capacity building. The IWBN recommended references to indigenous women's role in preserving and transmitting traditional knowledge. The IIFB suggested that countries report on indigenous participation and benefit-sharing, according to indigenous valuation.

ASOCIACION IXACAVAA, opposed by BRAZIL, supported synergies between multilateral environmental agreements regarding indigenous participation. COSTA RICA stressed legal differences between the concepts of indigenous peoples and local communities, and the need to address representation issues.

ZAMBIA called for translating and simplifying the language of the CBD. SENEGAL said the CHM is the primary source of information, and called for national information workshops. CANADA suggested considering communication arrangements other than national focal points for countries with decentralized governments and diverse indigenous communities. The CARIBBEAN ANTILLES INDIGENOUS PEOPLES CAUCUS supported developing electronic communication mechanisms.

GENETIC USE RESTRICTION TECHNOLOGIES: The Secretariat introduced: the report of the AHTEG on GURTs (UNEP/CBD/WG8J/3/INF/2); decision VI/5 of the Conference of the Parties (COP) on agricultural biodiversity requesting the

AHTEG to report to the Article 8(j) Working Group prior to COP-7; and SBSTTA Recommendation IX/2 to transmit the AHTEG's report to COP-7.

The INDIGENOUS PEOPLES COUNCIL ON BIOCOLONIALISM (IPCB) and the IIFB supported the AHTEG report and its consideration as soon as possible, highlighting that testing and commercialization of GURTs will pose serious threats to indigenous livelihoods. The IPCB called on the Working Group to recommend establishing a process to review and assess GURTs' impacts on indigenous peoples and implement the AHTEG's conclusions. UGANDA said GURTs can make communities dependent on foreign technologies. The IIFB and ZAMBIA called for a precautionary approach.

BRAZIL presented its proposal on GURTs, emphasizing: development of national regulatory frameworks to assess their use; promotion of further research, including field testing; and disapproval of commercial use that may adversely affect smallholder farmers and indigenous agrobiodiversity. She requested forwarding the proposal to COP-7.

ITALY, on behalf of EC Member States and acceding countries (EU), supported by NAMIBIA, the IIFB, UGANDA and SWITZERLAND, opposed the Brazilian proposal, noting its encouragement of field testing and focus on the environmental impacts on agrobiodiversity, and suggested that the Working Group discuss the socioeconomic aspects of the AHTEG's report. ARGENTINA expressed concern regarding the AHTEG's composition, and suggested forwarding the Brazilian proposal as an information document to COP-7, including reservations made by parties.

Noting the lack of reliable scientific data on GURTs, the US said claims about their negative impacts on communities were premature. TANZANIA suggested considering the issue at the next meeting of the Article 8(j) Working Group.

SWG-II co-Chair Diann Black Layne (Antigua and Barbuda) said a co-Chairs' text will be prepared.

PLENARY

SWG-I co-Chairs Herity and Earl Stevenson (Peguis First Nation), and SWG-II co-Chairs Black Layne and Lucy Mulenkei (African Indigenous Women's Network) reported on progress made by SWG-I and SWG-II, respectively.

IN THE CORRIDORS

Inspired by the snow cap covering Mont Royal, SWG-I delegates graciously glided through the guidelines for impact assessments, with participants building on progress made at the second meeting of the Working Group. While some expressed hope that the thorough treatment of the document early in the week would avoid late night sessions, others noted that the absence of means for implementation of the guidelines diminishes expectations for the development of a meaningful outcome.

In the meantime, SWG-II delegates skated around GURTs, and many indigenous delegates remarked that they would have needed more time to prepare for the discussions, not initially on the agenda. Finishing way ahead of the afternoon Plenary session, some participants expressed concerns that valuable time was being wasted, considering the heated discussions that the co-Chairs' text on *sui generis* systems may trigger. One delegate noted that the choice not to rush consideration of *sui generis* systems may actually benefit indigenous delegates in leaving them time to prepare on complex and sensitive issues.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will convene at 10:00 am in Room I to continue considering impact assessments, address technology transfer, and discuss a co-Chairs' text on the composite report on status and trends. Discussions on these items will continue in the afternoon.

SUB-WORKING GROUP II: SWG-II will convene at 10:00 am in Room II to discuss co-Chairs' texts on *sui generis* systems for the protection of traditional knowledge, participatory mechanisms, and GURTs. Discussions on these items will continue in the afternoon.

PLENARY: Plenary will meet at 5:30 pm to review progress.