WORKING GROUP ON ARTICLE 8(J) HIGHLIGHTS
TUESDAY, 5 FEBRUARY 2002

Delegates to the second meeting of the Ad Hoc Open-ended Inter-
Sessional Working Group on Article 8(j) and Related Provisions of the
Convention on Biological Diversity (CBD) met throughout the day in
two sub-working groups. Sub-Working Group I (SWG-I) considered
the outline of the composite report on status and trends, and began
discussing guidelines for impact assessments. Sub-Working Group II
(SWG-II) concluded initial discussion on the effectiveness of existing
instruments, particularly regarding intellectual property rights (IPR),
and on participatory mechanisms for indigenous and local communi-
ties.

SUB-WORKING GROUP I

COMPOSITE REPORT ON STATUS AND TRENDS:
BRAZIL and SPAIN, on behalf of the EUROPEAN UNION (EU),
cautions against using confidential knowledge in the compilation of
the report. The EU suggested the report declare its use of traditional
knowledge. The GEF expressed concern about setting a precedent for
using GEF funding for such studies and the burden this would place on
funding resources. Representatives of the INTERNATIONAL
INDIGENOUS FORUM ON BIODIVERSITY (IIFB) commented
that the document was prepared with a top-down approach, stressed
the importance of including more indigenous perspectives, suggested
mechanisms to ensure indigenous participation, sought an examina-
tion of the impact of organized religion on traditional knowledge, and
highlighted the importance of empowering indigenous communities.
They noted that many governments give priority to multinational
companies, neglecting their commitments under Article 8(j), and
suggested regional workshops organized by indigenous peoples to
provide input into the report.

Regarding the report’s outline, the EU proposed reference to
conservation and sustainable use of biodiversity in the title, and called
for geographic and cultural balance to ensure appreciation of regional
differences. Regarding terms of reference, the EU suggested a consult-
tative or advisory group, including indigenous representatives.
ARGENTINA called for more discussion and clarification of global-
ization and its impacts. The contact group on the definition of indige-
ous and local communities identified the need for a glossary of
terminology.

GUIDELINES FOR IMPACT ASSESSMENTS:
The Secretariat introduced documents UNEP/CBD/WG8J/2/6 and Add.1.
Several delegates called for harmonization with SBSTTA’s work on
assessments. Noting problems with the document’s length and
complexity, several delegates called for a more practical document to
facilitate implementation. The US suggested that recommendations
might be more useful than guidelines. CANADA expressed concern
that the guidelines are prescriptive, and proposed a principle-based
approach that sets out goals, which are voluntary, flexible and imple-
mentable according to national circumstances. SWEDEN called for
prioritization of the salient aspects relevant to traditional knowledge.
The EU recommended that the guidelines focus on cultural, social and
environmental impact assessments in a more unified way.

The US noted the need to clarify the relationship between these
guidelines and those of the World Bank. The IIFB suggested that the
World Bank’s guidelines not be used as they are based on a different
approach. IIFB delegates also pointed to the importance of prior
informed consent; noted that existing impact assessment processes do
not adequately address the loss of traditional knowledge; highlighted
the impact of imposed development models on indigenous communi-
ities; and suggested language that better reflects indigenous peoples’
views. NEW ZEALAND called for a preventive approach, noting the
difficulty of redressing damages and, with ETHIOPIA, commented
that the draft guidelines overlook development activities on lands
adjacent to sacred sites. ETHIOPIA noted that the guidelines do not
address the community trust fund’s establishment, distribution of
funds to the community, or monitoring its effectiveness.

The EC stressed the need for balance among social, cultural and
environmental priorities, noting that projects that are good for the
environment are not necessarily good for society and culture.
DENMARK suggested that non-scientific approaches not be
precluded. CUBA addressed the cultural aspects of impact assess-
ments, and called for standardized procedures to guarantee transpar-
ency. FIJI stressed capacity building for increasing indigenous
participation, highlighted the special needs of small islands and, with
the PHILIPPINES, called for a holistic approach to cultural, environ-
mental and social impact assessments.

ECUADOR called for the use of indicators for conservation,
sustainable use and development, and for a plurality of legal regimes
to protect indigenous rights. BRAZIL emphasized the need for public

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called for case studies on regionally harmonized
sui generis systems. Delegates also highlighted potential
inputs from UNESCO, UNCTAD, and other
organizations.

Several delegates objected to the development of an international
database, which INDIA supported. Many delegates instead encour-
gaged their development at the local or national level. Several delegates
highlighted the need to build appropriate capacity. IPBN stressed that
databases should be under local control and based on local models.
The US and UNCTAD noted that databases at any level should address
issues of access, security and the legal status of information. PERU
and YORK UNIVERSITY stressed that no traditional knowledge
should be registered without the prior informed consent of indigenous
communities. The TULALIP TRIBE highlighted work on a database
involving categories of confidential and publicly available informa-
tion.

Regarding the establishment of an information system, ARGENTINA,
acting on behalf of GRULAC, noted that WIPO and the WTO already
require submissions on national legislation, and, with the EU,
suggested establishing links through the Clearing-House Mechanism
(CHM). ST. LUCIA, on behalf of Caribbean Small Island States,
requested support for public education, awareness-raising, inventories
documentation, noting that loss of traditional knowledge is espe-
cially rapid on small land areas. EL SALVADOR noted that pilot
projects should concentrate on new mechanisms, not existing ones.
FRANCE proposed examining the conflict between common and
customary law. INDONESIA proposed facilitating cooperation
between industry and indigenous and local communities. UNCTAD
suggested that the economic viability of indigenous communities is a
means of protecting traditional knowledge, and further noted the need
to exchange experiences on best practices. IPBN prioritized informa-
tion exchange among indigenous organizations.

IIFB representatives noted that protection of traditional knowledge
is intrinsically linked with indigenous rights to self-determination,
and territories; rejected patents as a form of protection; and called
for a separate international mechanism for the protection of traditional
knowledge. The UNIVERSITY OF SASKATCHEWAN called for
guidelines on the repatriation of traditional knowledge.

SWG-II Co-Chair Linus Thomas (Grenada) noted that he would
develop a draft recommendation for further consideration.

**PARTICIPATORY MECHANISMS:** The Secretariat introduced
document UNEP/CBD/WG8j/2/4. On effective involvement in deci-
sion making regarding use of traditional knowledge, SENEGAL drew
attention to lack of resources for the participation of governments’ and
communities’ representatives to international meetings. CANADA
noted that one set of guidelines could not satisfy the interests of many
indigenous cultures; cautioned against discussing land and human
rights issues currently addressed in other fora; and proposed changing
language on the recognition of traditional systems of land tenure to
research and documentation on such systems with incorporation into
national legislation as appropriate. BRAZIL requested references to
competent national authorities’ participation.

The ST. "AT” IMC CHIEFS COUNCIL stressed the lack of informa-
tion and of proper mechanisms for true participation of indigenous
peoples in CBD negotiations. He added that for the CBD to succeed,
indigenous peoples’ land title and rights must be recognized. The
INTERNATIONAL SUPPORT CENTRE FOR SUSTAINABLE
TOURISM called for indigenous participation in drafting guidelines
on tourism, highlighting the risks that tourism poses to biological and
cultural diversity, and to the protection of indigenous peoples’ rights.

Regarding the recommendations, the EU proposed: reference to
women’s knowledge; capacity building for developing guidelines on
participatory mechanisms and participation in relevant decision-
making processes; and identification of an indigenous focal point for
the CHM. CANADA, with BOLIVIA and BRAZIL, opposed develop-
ning guidelines for participatory mechanisms, and instead suggested
soliciting model examples.

Regarding national mechanisms to ensure stakeholder participa-
tion, NEW ZEALAND opposed reference to stakeholders and
TUNISIA suggested indigenous and local communities’ participation
instead. The IIFB noted that indigenous and local communities are
holders of rights rather than simply stakeholders. ST. LUCIA noted
that stakeholder analysis could enhance participation. Regarding the
recommendation for a consultation process with Secretariats of other
relevant environmental conventions, CANADA suggested that it be
broadened to include other relevant bodies such as WIPO, BRAZIL
and COLOMBIA suggested deleting the recommendation.

SENEGAL, with RWANDA, noted an information deficit in local
communities and suggested that stakeholders be invited to establish
communication strategies. NAMIBIA proposed submission of case
studies regarding national experiences in ensuring participation. The
US stressed the need for capacity-building efforts for indigenous
participation at international meetings. The GEF offered to organize a
workshop at a future meeting to train indigenous representatives on
preparation of project proposals.

SWG-II Co-Chair Thomas noted that he would prepare a draft text
for further consideration.

**IN THE CORRIDORS**

As the temperature dropped outside, delegates pondered whether
this had a chilling effect on the discussions regarding participatory
mechanisms, which finished early. Some indigenous representatives
noted a contradiction between the historical difficulties of establishing
effective and representative participation at the national level, and the
rhetoric of such discussions within intergovernmental fora. On a
broader scale, others were frustrated by the silence of some Parties,
and the complete absence of others, concerned that those not present
will attempt to dismantle any accomplishments achieved here during
COP-6.

**THINGS TO LOOK FOR TODAY**

**SUB-WORKING GROUP I: SWG-I will meet at 10:00 am in
Assembly Hall 1 to discuss the draft text on impact assessments.**

**SUB-WORKING GROUP II: SWG-II will meet at 10:00 am in
Assembly Hall 2 to review draft recommendations on participatory
mechanisms and on the effectiveness of existing instruments.**