



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/COP/DEC/X/42
29 October 2010

ORIGINAL: ENGLISH

CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Tenth meeting
Nagoya, Japan, 18-29 October 2010
Agenda item 6.7

DECISION ADOPTED BY THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY AT ITS TENTH MEETING

X/42. The Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities

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 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 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,¹

Recalling that access by indigenous and local communities to 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,² cultural³ spiritual, and temporal qualities,⁴

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 Akwé:Kon Guidelines (CBD 2004);
- (n) The United Nations Declaration on the Rights of Indigenous Peoples (2007),

¹ Decision VII/16 F, annex.

² Territorially-based/locally-based.

³ Rooted in the broader cultural traditions of a people.

⁴ Evolves, adapts and transforms dynamically over time.

Having considered 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,

1. *Adopts* the elements of the code of ethical conduct as contained in the annex hereto;
2. *Decides* to entitle the elements of the code of ethical conduct “the Tkarihwaí:ri⁵ 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”;
3. *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”⁶ that are developed according to each Party’s unique national circumstances and needs and recognizing the rich cultural diversity of indigenous and local communities;
4. *Also 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;
5. *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;
6. *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

THE TKARIHWAIÉ:RI CODE OF ETHICAL CONDUCT TO ENSURE RESPECT FOR THE CULTURAL AND INTELLECTUAL HERITAGE OF INDIGENOUS AND LOCAL COMMUNITIES RELEVANT TO THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

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. They should not be interpreted as altering domestic laws, treaties, agreements or other constructive arrangements that may already exist.

⁵ Pronounced {Tga-ree-wa-yie-ree}, a Mohawk term meaning “the proper way”.

⁶ Decision V/16, annex, programme of work on the implementation of Article 8(j), element 5, task 16.

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

5. 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.

6. 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

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

Intellectual property

8. 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

9. 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

10. 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.

Prior informed consent and/or approval and involvement

11. Any activities/interactions related to traditional knowledge associated with the conservation and sustainable use of biological diversity, occurring on or likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities and impacting upon specific groups, should be carried out with the prior informed consent and/or approval and involvement of indigenous and local communities. Such consent or approval should not be coerced, forced or manipulated.

Inter-cultural respect

12. 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

13. 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

14. Indigenous and local communities ought to receive fair and equitable benefits for their contribution to 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

15. 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

16. This principle reaffirms the precautionary approach contained in principle 15 of the Rio Declaration on Environment and Development⁷ and in the preamble to the Convention on Biological

⁷ 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.

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

17. 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 be occupied or used by indigenous or local communities.

Access to traditional resources

18. Traditional resource rights are collective in nature but may include other interests and obligations and apply to traditional resources occurring on lands and waters traditionally occupied or used by indigenous and local communities. 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

19. 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 their lands and waters or lands and waters traditionally occupied or used by them, as applicable, by force or coercion and without their consent. Where they consent to removal 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

20. 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

21. 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

22. Every effort should be made to avoid any adverse consequences to indigenous and local communities 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, in accordance with domestic legislation, and relevant international obligations, as applicable, and through mutually agreed terms between indigenous and local communities and those undertaking such activities/interactions.

Repatriation

23. 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

24. 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 research initiatives of indigenous and local communities

25. 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***

26. 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

27. 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

28. 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

29. 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

30. 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

31. 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

32. 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 promoting inter-cultural exchanges, knowledge and technology transfer, synergies and complementarity.
