

## 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

### Secretariat of the Convention on Biological Diversity, 2004

#### I. PURPOSE AND APPROACH

1. The present Guidelines are voluntary and intended to serve as guidance for Parties and Governments, subject to their national legislation, in the development and implementation of their impact-assessment regimes. The guidelines should be taken into consideration whenever developments are 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.
2. The objective of these Guidelines is to provide general advice on the incorporation of cultural, environmental, including biodiversity-related, and social considerations of indigenous and local communities into new or existing impact-assessment procedures, noting that some existing procedures may take these concerns into consideration in different ways. The Guidelines should be applied in conjunction with the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment endorsed by the Conference of the Parties in paragraph 1 of decision VI/7 A, and contained in the annex to that decision.
3. More specifically, the purpose of these Guidelines is to provide a collaborative framework within which Governments, indigenous and local communities, decision makers and managers of developments can:

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\*Pronounced {agway-goo}. A holistic Mohawk term meaning “everything in creation” provided by the Kahnawake community located near Montreal, where the guidelines were negotiated.

- (a) Support the full and effective participation and involvement of indigenous and local communities in screening, scoping and development planning exercises;
  - (b) Properly take into account the cultural, environmental and social concerns and interests of indigenous and local communities, especially of women who often bear a disproportionately large share of negative development impacts;
  - (c) Take into account the traditional knowledge, innovations and practices of indigenous and local communities as part of environmental, social and cultural impact-assessment processes, with due regard to the ownership of and the need for the protection and safeguarding of traditional knowledge, innovations and practices;
  - (d) Promote the use of appropriate technologies;
  - (e) Identify and implement appropriate measures to prevent or mitigate any negative impacts of proposed developments;
  - (f) Take into consideration the interrelationships among cultural, environmental and social elements.
4. The Guidelines recognize that developments vary enormously in nature, scale and complexity with respect to such aspects as their scope, size and duration; strategic and economic importance; and the nature of impacts. The Guidelines therefore should be adapted to suit the appropriate circumstances of each development. Individual countries may redefine the steps in the cultural, environmental and social impact assessment procedure to their needs and requirements, taking into account the needs and concerns of indigenous and local communities and their national legislative, administrative and policy framework, bearing in mind that nothing in these Guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations.
5. Cultural, environmental and social impact assessment procedures should refer to other relevant domestic legislation, regulations, guidelines and international and multilateral environmental agreements and protocols that have been ratified by the Party and have come into force, bearing in mind that nothing in these Guidelines should adversely affect biodiversity and the livelihoods of other communities, and that they should be implemented in a manner that is consistent with international law and with other international obligations.

## II. USE OF TERMS

6. For the purpose of the Guidelines:
- (a) *Cultural impact assessment*—is a process of evaluating the likely impacts of a proposed development on the way of life of a particular group or

- community of people, with full involvement of this group or community of people and possibly undertaken by this group or community of people: a cultural impact assessment will generally address the impacts, both beneficial and adverse, of a proposed development that may affect, for example, the values, belief systems, customary laws, language(s), customs, economy, relationships with the local environment and particular species, social organization and traditions of the affected community;
- (b) *Cultural heritage impact assessment*—is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development on the physical manifestations of a community's cultural heritage including sites, structures, and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological or aesthetic value or significance;
  - (c) *Customary law*—law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws<sup>1</sup>;
  - (d) *Environmental impact assessment*—is a process of evaluating the likely environmental impacts of, and proposing appropriate mitigation measures for, a proposed development, taking into account interrelated socio-economic, cultural and human health impacts, both beneficial and adverse;
  - (e) *Sacred site*—may refer to a site, object, structure, area or natural feature or area, held by national Governments or indigenous communities to be of particular importance in accordance with the customs of an indigenous or local community because of its religious and/or spiritual significance;
  - (f) *Social impact assessment*—is a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development that may affect the rights, which have an economic, social, cultural, civic and political dimension, as well as the well-being, vitality and viability, of an affected community—that is, the quality of life of a community as measured in terms of various socio-economic indicators, such as income distribution, physical and social integrity and protection of individuals and communities, employment levels and opportunities, health and welfare, education, and availability and standards of housing and accommodation, infrastructure, services;
  - (g) *Strategic environmental assessment*—is a process of evaluating the likely environmental impacts of proposed policies, plans or programmes to ensure that they are fully included and addressed at an early stage of decision-making, together with economic, social and cultural considerations<sup>2</sup>;
  - (h) *Traditional knowledge*—refers to the traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

### III. PROCEDURAL CONSIDERATIONS

7. Noting that the actors involved in the assessment process may include the proponent of the development, one or more governmental agencies, indigenous and local communities, stakeholders, and technical experts conducting the assessment; noting further the desirability of integrating cultural, environmental, and social impacts within a single assessment process, and taking into account the fundamental components of an environmental impact assessment as described in the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment, an integrated assessment should involve the following stages:
  - (a) *Preparatory stage:*
    - (i) Screening;
    - (ii) Scoping;
  - (b) *Main stage:*
    - (i) Impact analysis and assessment;
    - (ii) Consideration of mitigation measures (including not proceeding with the development, finding alternatives which avoid the impacts, incorporating safeguards in the design of the development, or providing compensation—monetary and/or nonmonetary—for adverse impacts);
  - (c) *Reporting and decision-making stage:*
    - (i) Reporting of the impact assessment study;
    - (ii) Review of the impact assessment study;
    - (iii) Decision-making; and
    - (iv) Devising management and monitoring plans, including roles and responsibilities, alternative proposals and mitigation requirements and conditions;
  - (d) *Monitoring and auditing stage:* Monitoring and environmental auditing.
  
8. As part of the above stages, the following steps may also be considered in carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:
  - (a) Notification and public consultation of the proposed development by the proponent;
  - (b) Identification of indigenous and local communities and relevant stakeholders likely to be affected by the proposed development;
  - (c) Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups, in the impact assessment processes;

- (d) Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development;
  - (e) Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community;
  - (f) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures;
  - (g) Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development;
  - (h) Identification of actors responsible for liability, redress, insurance and compensation;
  - (i) Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development;
  - (j) Establishment of a review and appeals process.
9. While the focus of environmental, cultural and social impact assessments is necessarily different, it is assumed, however, that the steps or phases for carrying out all three kinds of assessment will be the same for the most part. However, in the case of small-scale locally-based and initiated development, it may be possible to omit some of these steps.

### *A. Notification and public consultation of proposed development by the proponent*

10. The proponent of a development proposal or the responsible government authority should engage in a process of notification and public consultation of intention to carry out a development. Such notification should use all normal public means of notification (print, electronic and personal media, including newspapers, radio, television, mailings, village/town meetings, etc.), take into account the situation of remote or isolated and largely non-literate communities, and ensure that such notification and consultation take place in the language(s) of the communities and region that will be affected. Such notification should clearly identify the proponent, contain a brief summary of the proposal, the sites and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, as well as possible cultural and social impacts, arrangements for public consultation, contact details, key dates in

the life of the project, including those regarding impact assessment procedures, and identify obligations under national and subnational laws as well subregional, regional and international agreements.

11. The development proposal and impact assessment should be made available to organizations representing affected indigenous and local communities and relevant stakeholders for the purposes of public scrutiny and consultation. It should include all details relevant to the proposal. Notification and public consultation of the proposed development should allow for sufficient time to allow the affected indigenous or local community to prepare its response. An opportunity to present its response should be allowed for full and fair consideration by the proponent.

### *B. Identification of indigenous and local communities and stakeholders likely to be affected by the proposed development*

12. In any development proposed to take place on, or likely to have an impact on, sacred sites and lands and waters traditionally occupied or used by them, indigenous and local communities should be invited to participate in and are to be accorded full respect at all stages of the assessment and development process, including planning and implementation.
13. A formal process to identify the indigenous and local community members, experts and organizations, and relevant stakeholders should be engaged, including local and open consultations. Once all parties have been identified, it is appropriate that a committee representative of the parties be formally established and its mandate defined to advise on the impact assessment processes, particularly in relation to screening and scoping phases, and for the establishment of any environmental management and monitoring plan, as well as cultural and social contingency plans. In establishing this committee, special consideration should be given to ensuring the adequate representation of indigenous and local communities.

### *C. Establishment of mechanisms for indigenous and local community participation*

14. Affected indigenous and local communities should be invited to participate on any body appointed to advise on the screening and scoping phases or should be consulted on an impact assessment process for a development proposal, and should be involved in the establishment of the terms of reference for the conduct of the impact assessments, subject to national legislation. The screening and scoping phases should also take into account

any community development plans and any mechanisms for strategic environmental assessment that have been formulated by an affected community.

15. In addition to representation on any body established to advise on the other impact assessment process phases, the full and effective participation and involvement of affected indigenous and local communities should contemplate using participatory models of community engagement during the conduct of the impact assessments, including in decision-making. The proponent should also provide regular feedback to the affected community throughout all stages of the impact assessment and development processes.
16. In order to facilitate the involvement and participation of the affected indigenous and local communities, local experts should be identified and their expertise recognized and engaged at the earliest opportunity.

*D. Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development*

17. The proponent and members of the affected indigenous or local community should establish a process by which community views and concerns can be properly recorded, as community members may not be in a position to attend public meetings because of, for example, remoteness of the community, or poor health. While written statements may be preferred, the views of the community members could also be recorded on video or audio tape, or any other appropriate way, subject to the consent of communities.

*E. Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures*

18. Early identification by the State and affected indigenous and local communities and, as circumstances warrant, provision of necessary human, financial, technical and legal resources, particularly to those indigenous and local communities, to support indigenous and local expertise, will facilitate effective indigenous and local community participation in the impact assessment process. In general, the larger the proposed development, the greater and more widespread the potential impacts and therefore potentially greater are the requirements for support and capacity-building.

*F. Establishment of an environmental management or monitoring plan, including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development*

19. In order to maximize benefits and minimize adverse impacts, it will be necessary in most instances to establish an environmental management or monitoring plan to provide a framework within which the development can take place. Formulation of the environmental management or monitoring plan should be guided by an affected community's development plan and/or measures for strategic environmental assessment, where such plans exist, and should also include contingency plans for possible adverse cultural and social impacts.

*G. Identification of actors responsible for liability, redress, insurance and compensation*

20. In order to maintain the health, well being and security of affected indigenous and local communities and the ecosystems that sustain them, and, to the extent that it is possible, in order to prevent adverse cultural, environmental and social impacts of any proposed developments, actors that should bear the responsibility for liability, redress, insurance and compensation should be clearly identified.

*H. Conclusion of agreements or action plans on mutually agreed terms between the proponents of the proposed development and the affected indigenous or local community*

21. In order to protect the interests of affected indigenous and local communities, an agreement, could be negotiated between the community and the proponent of the development. The terms of such an agreement, subject to national legislation and regulations, could cover the procedural aspects of impact assessments, including the option of a no-action alternative, setting out the rights, duties and responsibilities of all parties, and also address measures to prevent or mitigate any negative impacts of the proposed development.

*I. Establishment of a review and appeal process*

22. Parties, if they have not already done so, should seek to ensure the full participation of affected indigenous and local communities, in accordance with



national legislation, in the decision-making process for of any development proposal, including the review and appeal process, taking into account methods of mediation and dispute resolution, which may include customary methods.

#### IV. INTEGRATION OF CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS AS A SINGLE PROCESS

23. Bearing in mind the unique relationship between indigenous and local communities and the environment, the Guidelines allow for the consideration of the integration of cultural, environmental, social impact assessments as a single process. The conduct of impact assessments should meet the requirements of the Convention on Biological Diversity as defined in its Articles 14 and 8(j), and take into account the general principles guiding the programme of work on Article 8(j) and related provisions. The Guidelines should take into account work on integration of biodiversity issues into the environmental impact assessment and strategic impact assessment in accordance with Article 14 of the Convention, and give special attention to incorporating cultural and social considerations within any environmental impact assessment legislation or policies.

##### *A. Cultural impact assessments*

24. Through the cultural impact assessment process, and particularly during the screening and scoping phases, the issues that are of particular cultural concern should be identified, such as cultural heritage, religions, beliefs and sacred teachings, customary practices, forms of social organization, systems of natural resource use, including patterns of land use, places of cultural significance, economic valuation of cultural resources, sacred sites, ceremonies, languages, customary law systems, and political structures, roles and customs. The possible impacts on all aspects of culture, including sacred sites, should therefore be taken into consideration while developing cultural impact assessments.
25. Cultural heritage impact assessment is concerned with the likely impacts of a proposed development on the physical manifestations of a community's cultural heritage and is frequently subject to national heritage laws. A cultural heritage impact assessment will need to take into account, as the circumstances warrant, international, national and local heritage values.
26. In the event that sites or objects of potential heritage significance are uncovered during earthworks associated with a development, then all activities in and around the area of discovery should cease until a proper archaeological or heritage assessment has been completed.

27. In determining the scope of a cultural impact assessment, the following should be considered:

- (a) Possible impacts on continued customary use of biological resources;
- (b) Possible impacts on the respect, preservation, protection and maintenance of traditional knowledge, innovations and practices;
- (c) Protocols;
- (d) Possible impacts on sacred sites and associated ritual or ceremonial activities;
- (e) Respect for the need for cultural privacy; and
- (f) Possible impacts on the exercise of customary laws.

### 1. Possible impacts on continued customary use of biological resources

28. The assessment should take the customary uses of biological resources that meet the requirements of the Convention, particularly in relation to Article 10(c), fully into consideration, as the diminution of the genetic diversity maintained and fostered by such customary use may lead to a loss of associated traditional knowledge, innovations and practices.

### 2. Possible impacts on the respect, preservation, protection and maintenance of traditional knowledge, innovations and practices

29. In the conduct of cultural impact assessments, due consideration should be given to the holders of traditional knowledge, innovations and practices and the knowledge itself. Customary laws governing ownership, access, control, use and dissemination of traditional knowledge, innovations and practices should be observed. Protocols with regard to indigenous and local communities should be followed with regard to the disclosure of secret and or sacred knowledge, including those that may involve public hearings and judicial processes in the courts. In the event of the disclosure of secret and or sacred knowledge, prior informed consent and proper protection measures should be ensured.

### 3. Protocols

30. As part of possible agreements or action plans to be concluded by the proponent of the development and the concerned communities, protocols could be established in order to facilitate the proper conduct of the development, and personnel associated with it, on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Specific protocols may need to be established for particular kinds of development activity (for example, adventure tourism, mining) and may need to take into account the behaviour to be observed when visiting local communities, particular sites or when dealing with members of indigenous and local communities. Protocols should respect regulations already existing

under relevant national, sub national or community self-government legislation.

#### 4. Possible impacts on sacred sites and associated ritual or ceremonial activities

31. When developments are 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, personnel associated with such developments should recognize that many sacred sites, and areas or places of other cultural significance may have important functions with respect to the conservation and sustainable use of biological diversity and, by extension, the maintenance of the natural resources upon which such communities rely for their well-being.
32. If it is necessary to assess the potential impact of a proposed development on a sacred site, the assessment process should also include the selection of an alternate site for development in consultation with the site custodians and the affected community as a whole. Where a sacred site is to be affected by a proposed development, and in cases where no law exists to protect the site, the concerned indigenous and local community may wish to develop protocols regarding the site in the context of the proposed development.

#### 5. Respect for the need for cultural privacy

33. Proponents of development and personnel associated with the development should respect the cultural sensitivities and needs of indigenous and local communities for privacy, especially with regard to important rituals and ceremonies such as those associated with rites-of-passage and death, and also ensure their activities do not interfere with the daily routines and other activities of such communities.

#### 6. Possible impacts on the exercise of customary laws

34. Development proposals should be assessed for possible impacts on the customary laws of an affected community. If a development requires the introduction of an outside work-force, or requires changes in local customary systems (e.g. regarding land tenure, distribution of resources and benefits) conflicts may result. It may therefore be necessary to codify certain parts of customary law, clarify matters of jurisdiction, and negotiate ways to minimize breaches of local laws.

### *B. Environmental impact assessments*

35. In the conduct of the environmental component of an impact assessment regarding a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or

used by indigenous and local communities, the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment, should be taken into account. National environmental impact assessment legislation and processes should respect existing inherent land and treaty rights as well as legally established rights of indigenous and local communities. As information gathering processes, environmental impact assessments can contribute to the protection of the rights of indigenous and local communities by recognizing the distinct activities, customs and beliefs of the affected indigenous and local communities.

36. The direct impacts of the development proposal on local biodiversity at the ecosystem, species and genetic levels should be assessed, and particularly in terms of those components of biological diversity that the affected indigenous or local community and its members rely upon for their livelihood, well-being, and other needs. Indirect impacts should be carefully assessed and monitored over the long term. The development proposal should be rigorously assessed with respect to the introduction of invasive species.

## 1. Baseline studies

37. In order to effectively undertake an environmental impact assessment for a proposed development, it is desirable to carry out a baseline study, in consultation with the affected indigenous and local communities, to ascertain those components of biological diversity of particular significance to the affected indigenous or local community. Detailed knowledge of biological resources (ecosystems, species and genetic diversity), including valuation of these resources, is essential to the protection of both biodiversity and cultural values. Such baseline study should include whether, for example, habitat types to be affected by the proposed development are represented elsewhere in existing conservation reserves (under national reserve systems), and whether particular crop species (and varieties) for food and agriculture are represented in ex situ collections. Baseline studies should collect information with respect to:

- (a) Species inventories (including identification of particular species important to the affected indigenous or local community as food, medicine, fuel, fodder, construction, artefact production, clothing, and for religious and ceremonial purposes, etc);
- (b) Identification of endangered species, species at risk, etc. (possibly referenced to the World Conservation Union (IUCN) Red Data Book, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and national inventories);
- (c) Identification of particularly significant habitat (as breeding/spawning grounds, remnant native vegetation, wild-life refuge areas including buffer

- zones and corridors, habitats and routes for migratory species) and crucial breeding seasons for endangered and critical species;
- (d) Identification of areas of particular economic significance (as hunting areas and trapping sites, fishing grounds, gathering areas, grazing lands, timber harvesting sites and other harvesting areas);
  - (e) Identification of particularly significant physical features and other natural factors which provide for biodiversity and ecosystems (e.g. water-courses, springs, lakes, mines/quarries that supply local needs); and
  - (f) Identification of sites of religious, spiritual, ceremonial and sacred significance (such as sacred groves and totemic sites).
38. Consistent with principle 11 of the ecosystem approach, endorsed by the Conference of the Parties in paragraph 1 of decision V/6, traditional knowledge, innovations and practices should be considered an important and integral component of baseline studies, particularly the traditional knowledge, innovations and practices of those who have a long association with the particular area for which the development is proposed. Traditional knowledge, innovations and practices can be cross-referenced by old photographs, newspaper articles, known historical events, archaeological records, anthropological reports, and other records contained in archival collections.

### *C. Social impact assessments*

39. In order to effectively undertake a social impact assessment with respect to an indigenous or local community that is or is likely to be affected by a proposed development, the screening and scoping phases should take into account gender and demographic factors, housing and accommodation, employment, infrastructure and services, income and asset distribution, traditional systems and means of production, as well as educational needs, technical skills and financial implications.
40. Proposed developments should be evaluated in relation to tangible benefits to such communities, such as non-hazardous job creation, viable revenue from the levying of appropriate fees from beneficiaries of such developments, access to markets and diversification of income opportunities. Evaluation of changes to traditional economies could involve economic valuation of negative social impacts, such as crime and sexually transmitted diseases.
41. Developments involving changes to traditional practices for food production, or involving the introduction of commercial cultivation and harvesting of a particular wild species, should have those changes and introductions assessed.
42. In social impact assessments, social development indicators consistent with the views of indigenous and local communities should be developed and should include gender, generational considerations, health, safety, food and

livelihood security aspects and the possible effects on social cohesion and mobilization.

43. In determining the scope of a social impact assessment, the following should be considered:
- (a) Baseline studies;
  - (b) Economic considerations;
  - (c) Possible impacts on traditional systems of land tenure and other uses of natural resources;
  - (d) Gender considerations;
  - (e) Generational considerations;
  - (f) Health and safety aspects;
  - (g) Effects on social cohesion;
  - (h) Traditional lifestyles; and
  - (i) The possible impact on access to biological resources for livelihoods.

### 1. Baseline studies

44. In the conduct of baseline studies, the following areas should, *inter alia*, be addressed:
- (a) Demographic factors (number and age structure of population, ethnic grouping, population distribution and movement—including seasonal movements);
  - (b) Housing and human settlements, including involuntary resettlement, expulsion of indigenous peoples from lands and involuntary sedentarization of mobile peoples;
  - (c) Health status of the community (particular health problems/issues availability of clean water—infectious and endemic diseases, nutritional deficiencies, life expectancy, use of traditional medicine, etc);
  - (d) Levels of employment, areas of employment, skills (particularly traditional skills), education levels (including levels attained through informal and formal education processes), training, capacity-building requirements;
  - (e) Level of infrastructure and services (medical services, transport, waste disposal, water supply, social amenities (or lack of) for recreation, etc.);
  - (f) Level and distribution of income (including traditional systems of distribution of goods and services based on reciprocity, barter and exchange);
  - (g) Asset distribution (e.g. land tenure arrangements, natural resource rights, ownership of other assets in terms of who has rights to income and other benefits);
  - (h) Traditional systems of production (food, medicine, artefacts), including gender roles in such systems; and

(i) Views of indigenous and local communities regarding their future and ways to bring about future aspirations.

45. In particular, in relation to subsistence-based indigenous and local communities, the following additional social factors should also be taken into consideration, including impacts thereon:

- (a) Traditional non-monetary systems of exchange such as hunting, barter and other forms of trade, including labour exchange;
- (b) Related economic and social relations;
- (c) Importance of gender roles and relations;
- (d) Traditional responsibilities and concepts of equity and equality in society; and
- (e) Traditional systems of sharing natural resources, including resources that have been hunted, collected or harvested.

## 2. Economic considerations

46. Proposed developments on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities should ensure that tangible benefits accrue to such communities, such as payment for environmental services, job creation within safe and hazard-free working environments, viable revenue from the levying of appropriate fees, access to markets and diversification of income-generating (economic) opportunities for small and medium-sized businesses. In accordance with national legislation or relevant national regulations, indigenous and local communities should be involved in the financial auditing processes of the developments in which they participate to ensure that the resources invested are used effectively.

## 3. Possible impacts on traditional systems of land tenure and other uses of natural resources

47. Developments that particularly involve changes to traditional practices for food production, or involve the introduction of commercial cultivation and harvesting of a particular wild species (e.g. to supply market demands for particular herbs, spices, medicinal plants, fish, fur or leather) may lead to pressures to restructure traditional systems of land tenure or expropriate land, and to pressures on the sustainable use of biological diversity, in order to accommodate new scales of production. The ramifications of these kinds of changes can be far-reaching and need to be properly assessed, taking into account the value systems of indigenous and local communities. Likely impacts associated with the cultivation and/or commercial harvesting of wild species should also be assessed and addressed.

#### 4. Gender considerations

48. In social impact assessments, there is a particular need to examine the potential impacts of a proposed development on women in the affected community with due regard to their role as providers of food and nurturers of family, community decision-makers and heads of households, as well as custodians of biodiversity and holders of particular elements of (gender-specific) traditional knowledge, innovations and practices.

#### 5. Generational considerations

49. In any social impact assessment, the potential impact of a proposed development on all generations within a community should be examined. Of particular concern are the impacts that may potentially interfere with opportunities for elders to pass on their knowledge to youth, or which might render certain skills and traditional knowledge, innovations and practices redundant.

#### 6. Health and safety aspects

50. In the impact assessment process, the health and safety aspects of the proposed development should be scrutinized. Safety aspects should include such risks as physical injury during construction, and health risks resulting from various forms of pollution, sexual exploitation, social disturbance, disruption to habitats of medicinal species, and use of chemicals, such as pesticides. Foreign workers should be screened for any infectious diseases for which local populations may have no immunity, or for which there is no evidence of infection within their communities.

#### 7. Effects on social cohesion

51. The impact assessment process should take into consideration the possible effects that a proposed development might have on the affected community and its people as a whole by ensuring that particular individuals or groups are not unjustly advantaged or disadvantaged to the detriment of the community as a result of the development.

### V. GENERAL CONSIDERATIONS

52. The following general considerations should also be taken into account when carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:
  - (a) Prior informed consent of the affected indigenous and local communities;
  - (b) Gender considerations;



- (c) Impact assessments and community development plans;
- (d) Legal considerations;
- (e) Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes;
- (f) Mitigation and threat-abatement measures;
- (g) Need for transparency; and
- (h) Establishment of review and dispute resolution procedures.

### *A. Prior informed consent of the affected indigenous and local communities*

53. Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities.

### *B. Gender considerations*

54. The vital role that women and youth play, in particular women and youth within indigenous and local communities, in the conservation and sustainable use of biological diversity and the need for the full and effective participation of women in policy-making and implementation for biological diversity conservation should be fully taken into consideration.

### *C. Impact assessments and community development plans*

55. Indigenous and local communities should be encouraged, and provided with the necessary support and capacity to formulate their own community development plans. Such plans should include and should develop mechanisms for strategic environmental assessment that are commensurate with the goals and objectives of the development plans and appropriate poverty eradication programmes as defined by the indigenous and local communities.
56. Any 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 should maintain a balance between economic, social, cultural and environmental concerns, on the one hand, while, on the other hand, maximizing opportunities for the conservation and sustainable use of biological diversity, the access and equitable sharing of benefits and the recognition of traditional knowledge, innovations and practices in accordance with Article 8(j) of the Convention, and should seek to minimize risks to biological diversity. The cultural, environmental and social impact assessment processes should reflect this.

#### *D. Legal considerations*

57. In any assessment procedure, subject to national legislation consistent with international obligations, Governments, their agencies and development proponents should take into account the rights of indigenous and local communities over lands and waters traditionally occupied or used by them and the associated biological diversity.
58. There is a need for clarification of legal responsibilities, particularly with regard to matters that may arise during the conduct of cultural, environmental and social impact assessments, including enforcement, liability and redress measures.

#### *E. Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes*

59. Consistent with the ecosystem approach, proponents of development proposals should recognize the importance of understanding and applying the values and knowledge, where relevant, of use of biological diversity held by indigenous and local communities and their application for sustainable development.
60. In all circumstances related to the proposed development, the customary laws and intellectual property rights of the indigenous and local communities with respect to their traditional knowledge, innovations and practices, should be respected. Such knowledge should only be used with the prior informed consent of the owners of that traditional knowledge. In order to safeguard their rights, indigenous and local communities should establish, or be assisted to establish, protocols consistent with relevant national legislation for access to and use of traditional knowledge, innovations and practices in the cultural, environmental and social impact assessment processes. Assistance in establishing such protocols should be provided if so requested.

### *F. Mitigation and threat-abatement measures*

61. In the context of impact assessments, and particularly with respect to mitigation measures associated with the development, where there is a threat of significant reduction or loss of biodiversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

### *G. Need for transparency*

62. Transparency and public accountability should be maintained regarding the conduct of all phases of the cultural, environmental and social impact assessments, and in any decision-making processes, except in cases of national security and where confidentiality regarding the handling of secret/sacred traditional knowledge, innovations and practices is required. A clause on non-disclosure of information gathered through the impact assessment process of baseline studies related to traditional knowledge, innovations and practices should be ensured.

### *H. Establishment of review and dispute resolution procedures*

63. In order to manage any disputes that may arise in relation to a development proposal and in the ensuing impact assessment processes, dispute resolution means or mechanisms should be available or be established.

## VI. WAYS AND MEANS

### *A. Strengthening and rebuilding of capacity*

64. Any activity aimed at the incorporation of cultural and social considerations, and the biodiversity-related considerations of indigenous and local communities, into national environmental impact assessment systems should be accompanied by appropriate strengthening and rebuilding of capacities. Expertise in traditional knowledge, innovations and practices is required within the agencies responsible for impact assessment. At the same time, indigenous and local community expertise is required in impact assessment methodologies, techniques and procedures. Environmental impact assessments should include in the assessment team experts, including indigenous experts, in the traditional knowledge, innovations and practices related to the relevant ecosystems.
65. Training workshops on cultural, social and biodiversity-related aspects of environmental impact/strategic assessment and on economic valuation of cultural social and biodiversity resources for both assessment practitioners

and representatives of indigenous and local communities would facilitate the emergence of a cross-cultural understanding of the issues.

66. Governments should encourage and support indigenous and local communities, where they have not already done so, to formulate their own community-development plans that will enable such communities to adopt a more culturally appropriate strategic, integrated and phased approach to their development needs in line with community goals and objectives. These plans should include a strategic environment assessment policy or aim to provide a systematic process for integrating social, environmental and cultural considerations in planning and decision-making, for the application of impact assessments to development proposals.

### *B. Legislative authority*

67. If cultural, environmental and social impact assessment processes relevant to indigenous and local communities are made an integral part of environmental impact assessment and strategic environmental assessment procedures and incorporated into legislation, and the requirements for project/policy developers to find the most culturally, environmentally and socially sound, efficient options that avoid, reduce or mitigate adverse impacts are made explicit, this will prompt developers, at a very early stage, to use cultural, environmental and social impact assessment tools to improve the development process prior to the project application or consent stage or in some cases prior to screening procedures.

### *C. Exchange of information*

68. Web-based resources, such as the clearing-house mechanism of the Convention on Biological Diversity and other means of exchanging experiences and information, including traditional means of communication, may help to raise awareness about best available methods and useful sources of information and experience concerning both the conduct and integration of cultural, social and biodiversity-related concerns of indigenous and local communities in environmental impact assessment processes and in strategic environmental assessment, and should be developed and used for the provision and exchange of information on environmental impact assessment.
69. Communication between assessment practitioners and indigenous and local community members with experience in cultural, environmental and social impact assessment is in urgent need of improvement and should be enhanced through workshops, case-study assessments and through the sharing of experiences through, for example, the focal point on Article 8(j) and related provisions of the clearing-house mechanism of the Convention on Biological Diversity.

### *D. Resources*

70. Resources, including financial, technical and legal support, should be made available to indigenous and local communities and relevant national organizations to enable them to participate fully in all aspects of national impact assessments. This support may be provided by national Governments, where possible, or, in developing countries and countries with economies in transition, by appropriate donor agencies.

### **ENDNOTES**

1. See definition contained in Black's Law Dictionary (7th edition), 2000.
2. Term derived from the definition contained in paragraph 1(b) of the Guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and instrategic environmental assessment contained in the annex to decision VI/7 A.