

## TRADITIONAL KNOWLEDGE - INTERNATIONAL TRENDS AND NATIONAL CONSTRAINS

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### Abstract

*The paper is discussing Art 8 j. of the Convention on biological diversity which addresses a very important issue unsolved yet at international level – traditional knowledge. However a huge commitment is now at international level for the implementing art. 8 j provisions before the Conference of the Parties (COP 10) of the Convention on biological diversity (CBD) which will take place in October 2010 in Nagoya, Japan. Traditional knowledge as a concept relates to the style-life of the local communities in exploiting ecosystem's products and services in a historical proved equilibrium with nature. COP 6 of the CBD, adopted the Bonn Guidelines and COP 7 adopted The Akwé: Kon guidelines for the conduct of cultural, environmental and social impact assessments, both of them addressing important issues related to traditional knowledge. The COP 9 of the CBD decided that the Article 8(j) Working Group should work on: guidelines for documenting traditional knowledge, a plan of action for traditional knowledge retention; participatory mechanisms for indigenous and local communities; elements of sui generis systems and elements of the ethical code of conduct. This subject is further discussed by The Expert Group on Traditional Knowledge Associated with Genetic Resources which addressed legal and technical issues concerning: [1] the relationship between access to genetic resources and associated traditional knowledge; [2] customary laws of indigenous and local communities regulating access to genetic resources and associated traditional knowledge; and [3] measures to ensure compliance with Prior Informed Consent and Mutual Agreement Terms. Also this issue is addressed by the General Assembly (GA) of the World Intellectual Property Organization (WIPO) and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the Food and Agriculture Organization. Romania does not implement the provisions of art. 8 j. per se. Even, some issues related to tradition knowledge and particularly related to traditional food's processes and products are today covered by some legislation, however unfortunately they are not covering all subjects related to traditional knowledge. Romania should first adopt and implement the Akwé: Kon guidelines and should be prepared to adopt and implement the new international Access for Benefit Sharing Protocol to be adopted in 2010 together with other members states and which will address important guidance also for traditional knowledge implementation.*

Keywords: environment policy, food policy, agricultural biodiversity, traditional knowledge

## 1. INTRODUCTION

The Convention on Biological Diversity (CBD) is addressing for the first time its concerns regarding the traditional knowledge loss in relation to the indigenous and local communities and it is considered as an asset for the purpose of the achievements of the three goals of the Convention. In 1992, upon rounds of negotiations was adopted a very important article into the text of the CBD and it is referred as art 8 j. addressing traditional knowledge (TK) as a very important issue unsolved yet at international level. The CBD is ratified by Romania through the law 58/1994. However a huge commitment is now at international level in implementing its provisions before the COP 10 of the CBD

which will take place next year in Nagoya, Japan.

## 2. MATERIAL AND METHODS

This paper is a review regarding the published national and European political statements, strategy and existing legislation at the EU level towards the analysis of international instruments such as Convention on Biological Diversity on the subject of agricultural biodiversity.

It was applied the Albert Humphrey' SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats) regarding the legislation looking especially to the negotiators' language for international use.

It involves specifying the objective of the proposed project and identifying the internal and external factors that are favorable and unfavorable to achieving that objective.

### 3. RESULTS AND DISCUSSIONS

#### International Background

Historically the CBD negotiation work for the proper implementation of the Article 8(j) (traditional knowledge) started at COP 3 (November 1996, Buenos Aires, Argentina), 4 years after the adoption of the CBD and 2 years after Romania ratified the CBD through the law 58/1994.

Two years later COP 4 of the CBD adopted the terms of reference for an open-ended working group on Article 8(j). This working group is represented by technical, legal and scientific persons and also by the represent ants of indigenous local communities and it si addressed as 8(J) WG 1 [1].

The first 8(J) WG took place in March 2000, Seville, Spain and considered the main elements under traditional knowledge to be addresses for a programme of work (PoW) on Article 8(j), and also addressed forms of protection for traditional knowledge. It was already recognized the important role of the Traditional Knowledge in food supply connected directly to the sustainable use of genetic resources and biodiversity conservation.

At the second meeting WG2 (February 2002, Montreal, Canada), considered an outline for the composite report regarding (1) status and trends of traditional knowledge; (2) recommendations for the conduct of cultural, (3) environmental and social impact assessments; (4) participatory mechanisms; and the (5) effectiveness of existing instruments impacting the protection of traditional knowledge, particularly intellectual property rights (IPRs). All these subjects developed views and political visions regarding the proper implementation of the TK into international context where the place of it should be treated

long time ago. Maybe for the first time local and indigenous communities has a voice in protecting their traditional knowledge as an important component of universal culture working against the biodiversity loss and for the sustainability of their lifestyle in good communion with the nature. The involvement of these communities into the decision making is very important because the actions of the authorities should first listen to the voice of these people which are treasuring the biodiversity through their traditional knowledge. It is later part of the ecosystem approach principles later developed under the CBD during the COP VII through the decision VII/11.

At COP 6 (April 2002, The Hague, the Netherlands), was adopted *the Bonn Guidelines* on ABS and also considered the role of Intellectual Property Rights (IPRs) in the implementation of ABS arrangements. The COP identified actions to be taken with respect to the integration of Article 8(j) into CBD thematic work programmes, and adopted the outline of the composite report. European Union through the Council highly recommend the implementation of the Bonn Guidelines into the national legislation respecting in this way the traditional knowledge related to the access to the genetic resources and IPR – internationally recognized for local and indigenous communities – traditional knowledge.

The 8(J) WG 3 (December 2003, Montreal, Canada), considered recommendations from the UN Permanent Forum on Indigenous use restriction technologies (especially adopted for protecting the indigenous communities globally); elements for *sui generis* systems for the protection of traditional knowledge (international instruments under the WIPO – World Intellectual Property Organization); participatory mechanisms (recommendation for developing the capacity of representation into national and international level by themselves or engaging professionals for working for their golas). The same WG considered further *the Akwé: Kon guidelines* for the conduct of cultural, environmental and social impact

assessments which also recommend the way of assessing the impact of traditional knowledge for biodiversity conservation by taking into account their necessity for food also.

At COP 7 (February 2004, Kuala Lumpur, Malaysia), was adopted the Action Plan on capacity building for ABS (access for benefit sharing), mandating the WG on ABS to negotiate an international regime on ABS and agreed on the terms of reference for such a negotiation and linking also the references for the art. 8 j in relation to the traditional knowledge which might be part of the access for benefit sharing. The COP also adopted the Akwé: Kon Guidelines.

The 8(J) WG 4 (January 2006, Granada, Spain) absed on the last development into the filed considered, inter alia: collaboration with the WG ABS; participatory mechanisms; elements for an ethical code of conduct for the respect of the cultural and intellectual heritage of indigenous and local communities.

Later the COP 8 (March 2006, Curitiba, Brazil), instructed the WG on ABS to complete its work with regard to the international ABS regime at the earliest possible time before COP 10; and requested the WG on Article 8(j) to, inter alia, contribute to the mandate of the WG on ABS. Thus, two working groups are jointly working at a certain extent on the issue of traditional knowledge.

8(J) WG 5 (October 2007, Montreal, Canada), did not reach agreement on inputs to the negotiation of an international regime on ABS, due to divergence of views with regard to both procedural and substantive issues. There are massive disagreement regarding the type of instrument: some of the countries wants an administrative approach (also European Countries) and other countries wants civil approach (Africa, Asia). However, it is important to mention that the type of regime is adopted is highly influencing the legislation already in place – for the civil approach. Less problems are creating the administrative approach because the developed countries already are have in place some legal

instruments addressing parts of the ABS approach.

COP 9 (May 2008, Bonn, Germany), adopted a roadmap for the negotiation of the international regime before the 2010 deadline. The COP decided that the Article 8(j) WG should work on: guidelines for documenting traditional knowledge, a plan of action for retention of traditional knowledge; participatory mechanisms for indigenous and local communities in the Convention; elements of *sui generis* systems; elements of the ethical code of conduct; and further work on the composite report. It was also recognized once again the importance of the traditional knowledge protection and support at the global level.

Last AH WG on Article 8(j) and related provisions of the Convention on Biological Diversity (CBD) opened in Montreal, Canada, on Monday 2 November 2009.

The Expert Group on Traditional Knowledge Associated with Genetic Resources (June 2009, Hyderabad, India) addressed legal and technical issues concerning: (1) the relationship between access to genetic resources and associated traditional knowledge; (2) customary laws of indigenous and local communities regulating access to genetic resources and associated traditional knowledge; and (3) measures to ensure compliance with PIC (prior informed consent- trade procedure) and MAT (mutual agreed terms – under contract development for the trade of genetic resources linked to the traditional knowledge).

The General Assembly (GA) of the World Intellectual Property Organization (WIPO) (22 September-1 October 2009, Geneva, Switzerland) agreed that the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore would undertake negotiations with the objective of reaching agreement on a text of an international legal instrument/ instruments, and submit it to the 2011 General Assembly. Based on their final decision the TK will be treated under this Organization and for the first time being recognized the importance of the TK for the IPRs as a strong instrument in protecting

and preserving local and indigenous communities.

The twelfth regular session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the Food and Agriculture Organization adopted (19-23 October 2009, Rome, Italy) the Strategic Plan 2010-2017 for implementation of its multi-year programme of work, and a resolution on policies and arrangements for ABS for genetic resources for food and agriculture. It is important to underline here the relationship between the TK – biodiversity conservation – IPR and food security.

The Working Group on Article 8(j) is considering today for discussions: views on the international regime on ABS; mechanisms to promote the participation of indigenous and local communities; the development of *sui generis* systems for the protection of traditional knowledge, innovations and practices; elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities; and a multi-year programme of work on the implementation of Article 8(j) and related provisions. The Working Group's recommendations will be submitted to the tenth meeting of the Conference of the Parties (COP 10) to the CBD, to be held from 18-29 October 2010, in Nagoya, Japan.

The further development of art 8 j. is tightly linked to the ABS regime to be adopted for the COP10 as the access to genetic resources may involve traditional knowledge and as a consequence also local and indigenous communities.

The EU Members States through the Council Resolutions issued in 1998 and 2002 on indigenous people's issues have set the framework for EU support to the indigenous peoples. More recently, the European consensus on development cooperation has stated that "*the key principle for safeguarding indigenous people's rights in development cooperation is to ensure their full participation and their free and PIC of the communities concerned*"

## Romanian Situation

Romania does not implement the provisions of art. 8 j. *per se*. However, some issues related to traditions and particularly to food traditional knowledge are today covered by some legislation which unfortunately is not targeted to maintaining the TK at the stage people inherited from their ancestors and food standards are imposed to the local communities in line to the EU legislation for food staff. Romanian politicians for today should fight into the European Parliament for the local communities' rights – in using and preserving their traditional knowledge locally.

Still traditional knowledge should be understood not only for the food final product but also for the process and further for other types of products and services that are part of the traditional culture and all of them are working together for the sustainable use of biodiversity.

## 4. CONCLUSIONS

Romania should develop a policy vision such as: the traditional knowledge is recognized and respected and any activity in relation to the traditional knowledge of local communities is fully observing the Akwé: Kon guidelines and the future ABS regime

Further some actions should be taken in this regard:

- *The adoption of Akwé: Kon guidelines* [2] into the Romanian legislation and guidelines for stakeholders in applying them. These guidelines addressed especially the local and indigenous communities' protection against potential negative impact of developments taking into account that they are continuously contributing in biodiversity conservation and sustainable use.

- Capacity building in relation to the ABS regime for art 8 j implementation

- Study regarding legislation at international and national level (also for ABS) legal implications

- Direct reporting on local communities involvement in biodiversity conservation when the art. 8 j. is addressed in relation with the traditional knowledge.
- Reviewing legislation
- Developing guidelines for local authorities in involving individuals or ecosystems inhabitants as part of the local communities on which valuable genetic resources conservation and sustainable use are relying – in decision making- applying ecosystem approach principle

- Traditional knowledge under 8 j should be promoted and protected as intellectual property rights (IPRs) and local communities should be the direct beneficiary.

## 5. REFERENCES

- [1] Working Group on Article 8(j)  
<http://www.cbd.int/convention/wg8j.shtml>
- [2] Akwé: KON guidelines, COP 7 Decision VII/16 Article 8(j) and related provisions  
<http://www.cbd.int/decision/cop/?id=7753>