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CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Ninth meeting
Bonn, 19–30 May 2008
Agenda item 4.1

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

IX/12. Access and benefit-sharing

The Conference of the Parties,

Recalling its decisions VII/19 D and VIII/4 A-E on access and benefit-sharing,

Recalling also its decision VIII/5 C on collaboration and contribution of the Ad Hoc Working Group on Article 8(j) and related provisions to the fulfilment of the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Further recalling that the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilization are making a contribution to the development of national legislation,

Recalling paragraph 44(o) of the Plan of Implementation of the World Summit on Sustainable Development, which calls for action to “negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources”,

Having considered the reports of the fifth and sixth meetings of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/COP/9/5 and 6), which were held, respectively, in Montreal from 8 to 12 October 2007, and in Geneva from 21 to 25 January 2008,

Acknowledging the importance of awareness-raising to increased understanding of access and benefit-sharing in light of the ongoing elaboration and negotiation of the international regime,

Recognizing the potential role of the United Nations Environment Programme, Parties, Governments and other relevant international organizations in further contributing to awareness-raising and in capacity-development,

Taking note of the United Nations Declaration on the Rights of Indigenous Peoples 1/ adopted by the General Assembly 13 September 2007,

Acknowledging the potential role of the clearing-house mechanism of the Convention as a tool to facilitate the dissemination and exchange of information on access to genetic resources and benefit-sharing,

Welcoming the agreements and other work relating to access to genetic resources and sharing the benefits arising out of their utilisation in various forums, and in particular the International Treaty on Plant Genetic Resources for Food and Agriculture 2/ and the multi-year programme of work of the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations, 3/

Recognizing the importance of the participation of indigenous and local communities in the elaboration and negotiation of the international regime on access and benefit-sharing,

1. *Welcomes* the progress made in the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and *decides* that annex I to the present decision shall be the basis for further elaboration and negotiation of the international regime;

2. *Reiterates* its instruction to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to complete the elaboration and negotiation of the international access and benefit-sharing regime at the earliest possible time before the tenth meeting of the Conference of the Parties, in accordance with decision VII/19 D and decision VIII/4 A;

3. *Further instructs* the Working Group to finalize the international regime and to submit for consideration and adoption by the Conference of the Parties at its tenth meeting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and its three objectives, without in any way prejudging or precluding any outcome regarding the nature of such instrument/instruments;

4. *Welcomes* the outcome of the meeting of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance, held in Lima in January 2007 (UNEP/CBD/WG-ABS/5/7, annex), as a relevant contribution to the work of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;

5. *Decides* that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing should meet three times prior to the tenth meeting of the Conference of the Parties. The meetings should be preceded by two days of regional and interregional consultations;

6. *Also decides* that the meetings of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing should be convened in the first quarter of 2009, the third quarter of 2009 and by the second quarter of 2010 bearing in mind the requirements of Article 28 of the Convention;

7. *Further decides* that, subject to the availability of funds, each of these Working Group meetings will be held over the duration of seven consecutive days and that the purpose of these Working Group meetings will be as follows unless otherwise proposed by the Parties at the meeting and decided by the Bureau in consultation with the Co-Chairs:

1/ General Assembly resolution 61/295 of 13 September 2007, annex.

2/ Adopted under resolution 3/2001,

3/ CGRFA-11/07/21

(a) *Seventh meeting.* Negotiation of operational text on the objective, scope, compliance, fair and equitable benefit-sharing, access;

(b) *Eighth meeting.* Negotiation of operational text on nature, traditional knowledge associated with genetic resources, capacity-building, compliance, fair and equitable benefit-sharing, access;

(c) *Ninth meeting.* Consolidation of all operational text developed at the seventh and eighth meetings of the Working Group;

8. *Further instructs* the Working Group on Access and Benefit-sharing, after the negotiation of comprehensive operational text at its seventh meeting, to start its eighth meeting by negotiating on nature, followed by clearly identifying the components of the international regime that should be addressed through legally binding measures, non-legally binding measures or a mix of the two and to draft these provisions accordingly;

9. *Invites* Parties, other Governments, international organizations and indigenous and local communities, and relevant stakeholders to submit, for further elaboration and negotiation of the international regime on access and benefit-sharing, views and proposals including operational text, where relevant, in respect of the main components listed in the annex I to the present decision, preferably with supporting rationale;

10. *Requests* the Executive Secretary to compile the submissions received and to collate in three separate documents:

- (a) Any operative text submitted;
- (b) Operative text including related explanations and rationale;
- (c) Any other views and information;

by subject matter, in accordance with the annex I to the present decision and as indicated in the submissions, and to identify in the collation the respective sources *and further requests* the Executive Secretary to make the compilation and these documents available to Parties sixty days prior to the seventh meeting of the Working Group on Access and Benefit-sharing;

11. *Decides* to establish three distinct groups of technical and legal experts on: (i) compliance; (ii) concepts, terms, working definitions and sectoral approaches; and (iii) traditional knowledge associated with genetic resources. The terms of reference of the groups, including the criteria for the selection of experts are laid out in annex II to the present decision;

12. *Requests* the Executive Secretary to recommend the list of selected experts and observers for the approval of the Bureau;

13. *Requests* the Executive Secretary to commission studies on the following topics:

(a) Recent developments in methods to identify genetic resources directly based on DNA sequences;

(b) To identify the different possible ways of tracking and monitoring genetic resources through the use of persistent global unique identifiers, including the practicality, feasibility, costs and benefits of the different options;

(c) How an international regime on access and benefit-sharing could be in harmony and be mutually supportive of the mandates of and coexist alongside other international instruments and forums that govern the use of genetic resources, such as the FAO International Treaty on Plant Genetic Resources for Food and Agriculture;

(d) Development of a comparative study of the real and transactional costs involved in the process of access to justice across jurisdictions;

(e) How can compliance be ensured in conformity with indigenous peoples and local communities customary law, national law, across jurisdictions, and international law, including human rights and trade?

14. *Requests* the Executive Secretary to invite, in consultation with the Co-Chairs of the Working Group, relevant experts to address the Working Group on Access and Benefit-sharing, at the appropriate time, on the following issues:

(a) Should economic rent be charged for access to genetic resources and what is the justification for such a rent or against such a rent? What should be the basis for the valuation of such rent?

(b) On the information technology environment established by the secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture for accessing material covered by the International Treaty;

(c) Technical aspects of matters relevant to access and benefit-sharing as these arise in the negotiations.

15. *Invites* Parties, Governments, international organizations, indigenous and local communities and relevant stakeholders to provide information and views related to the issues to be addressed by each expert group, six weeks prior to the convening of each expert group;

16. *Requests* the Executive Secretary to convene the group of experts on compliance and on concepts, terms, working definitions and sectoral approaches so that the results are available in time for consideration in time for the seventh meeting of the Working Group on Access and Benefit-sharing and to convene the expert group on traditional knowledge associated with genetic resources so that its results are available in time for consideration by the eighth meeting of the Working Group on Access and Benefit-sharing;

17. *Emphasizes* the importance of consultations to advance the negotiations and *requests* the Co-Chairs of the Working Group on Access and Benefit-sharing to be instrumental in organizing and facilitating such consultations during the intersessional period and report on the outcome of such consultations at subsequent meetings of the Working Group on Access and Benefit-sharing; *encourages* Parties and stakeholders to carry out bilateral, regional, and interregional meetings and consultations; and *calls upon* donors and relevant organizations to provide financial resources necessary for such meetings and consultations;

18. *Encourages* Parties, other Governments, international organizations and all relevant stakeholders to provide the ways and means to allow for sufficient preparation and to facilitate effective participation of indigenous and local communities in the process of the negotiation and elaboration of the international regime, in accordance with decision VIII/5 C;

19. *Invites* Parties, donors and other interested bodies to financially support indigenous and local communities to hold national and regional workshops the outcomes of which could feed into the groups of experts related to compliance and traditional knowledge associated with genetic resources as well as into other aspects of the work of Working Group on Access and Benefit-sharing;

20. *Requests* that the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions continues to collaborate and contribute to the fulfilment of the mandate of the Working Group on Access and Benefit-sharing by providing detailed and focused views on the outcome of the technical expert groups on traditional knowledge associated with genetic resources and compliance as input to the work of the Working Group on Access and Benefit-sharing, and to this end, *requests* the Executive Secretary to make the reports of these groups available to the Working Group on Article 8(j) at least three months prior to its sixth meeting;

21. *Invites* the Global Environment Facility to strengthen the efforts to implement its strategic programme on capacity-building for access and benefit-sharing in order to enable Parties to elaborate, negotiate and implement the international regime, mobilizing available resources of the fourth replenishment and to provide appropriate resources in its fifth replenishment, and *urges* Parties to make full use of the programmes of the Global Environment Facility, including for the full implementation of the articles of the Convention related to access and benefit-sharing;

22. *Invites* the United Nations Environment Programme, Governments and relevant intergovernmental organizations, in close consultation with the Secretariat, to support or continue supporting and facilitating, as appropriate, regional and interregional consultations, to carry out capacity-development activities related to access and benefit-sharing and to contribute to raising awareness to the issue of access and benefit-sharing among decision makers, indigenous and local communities, and other relevant stakeholders, and encourage countries to include activities related to access and benefit-sharing among the priorities for external funding;

23. *Invites* Parties to make optimal use of the access and benefit-sharing component of the clearing-house mechanism of the Convention in order to facilitate the exchange of information related to access and benefit-sharing, including relevant literature, legislation, analytical studies, and case-studies, and *requests* the Executive Secretary, and *invites* Parties, other Governments, and relevant organizations to take further measures to build the capacity of Parties for access to, and use of, the clearing-house mechanism.

Annex I

THE INTERNATIONAL REGIME

I. OBJECTIVE 4/

Effectively implement the provisions [in Articles 15, 8(j), 1, 16 and 19.2] of the Convention [and its three objectives], specifically by:

- [[Facilitating] [regulating transparent] access to genetic resources, [their derivatives] [and products] [and associated traditional knowledge];]
- Ensuring [the conditions and measures for] the [effective,] fair and equitable sharing of benefits arising out of their utilization, [their derivatives] [and products] [and associated traditional knowledge] [and to prevent their misappropriation and misuse];

^{4/} These proposals were neither negotiated nor agreed.

- [Securing compliance in user countries with national laws and requirements, including PIC and MAT, of the country [of origin] providing those resources or of the Party that has acquired those resources in accordance with the Convention on Biological Diversity].

[taking into account all rights over those resources, including the rights of indigenous and local communities, and ensuring compliance with PIC.]

II. SCOPE ^{5/}

Option 1 (Consolidated text of submissions made at WG-ABS 6)

1. The international regime on access and benefit-sharing applies to [biological resources,] genetic resources, [derivatives,] [products] as well as [to their] [associated] traditional knowledge, [and derivatives of traditional knowledge associated with genetic resources,] innovations and practices [in accordance with Article 8(j)] [within national jurisdiction and of a transboundary nature] [in accordance with the relevant provisions of the CBD].

[2. Subject to paragraph 1, the international regime on access and benefit-sharing applies to:

(a) [Benefits arising from commercial and other utilization] [from] [genetic resources acquired after] the entry into force of the [international regime] [Convention on Biological Diversity];

[(b) Continuing benefits arising from commercial and other utilization taken prior to the coming into force of the Convention on Biological Diversity.]]

3. The international regime on access and benefit-sharing does not apply to:

(a) [Human genetic resources;]

(b) [Genetic resources that were acquired before the entry into force of the Convention on Biological Diversity on 29 December 1993 [or before the entry into force for a Party];] [Genetic material acquired prior to the national ratification of the Convention on Biological Diversity [and since then cultivated *ex situ*];]

(c) [Genetic material already made freely available by the country of origin;]

(d) [[Species] [listed in Annex I of] [genetic resources covered under] the International Treaty on Plant Genetic Resources for Food and Agriculture [unless they are used beyond the purpose of the said treaty];]

(e) [Genetic resources, including marine genetic resources found in areas beyond national jurisdiction;]

(f) [Genetic resources located in the Antarctic Treaty Area.]

4. [The international regime on access and benefit-sharing should provide [[flexibility] to respect] existing [and allow for the implementation and potential and further development of other, more] [specialized international access and benefit-sharing systems].]

[5. [In the further elaboration and negotiation of the international regime on access and benefit-sharing [special] [due] [consideration] will given to]:

^{5/} These proposals were neither negotiated nor agreed.

- (a) [Genetic resources covered by the FAO International Treaty on Plant Genetic Resources for Food and Agriculture when these are accessed for research, breeding or training for the purpose for food and agriculture;]
- (b) [Animal genetic resources for food and agriculture;]
- (c) [Genetic resources within the remit of the FAO Commission on Genetic Resources for Food and Agriculture;]
- (d) [The relationship with the International Convention for the Protection of New Varieties of Plants (UPOV);]
- (e) [The work within the WIPO [including the] Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore;]
- (f) [Marine genetic resources found in areas beyond national jurisdiction;]
- (g) [Genetic resources located in the Antarctic Treaty Area.]

Option 2

The international regime applies to all genetic resources and associated traditional knowledge, innovations and practices covered by the Convention on Biological Diversity, subject to other international obligations, with the exclusion of human genetic resources and genetic resources beyond national jurisdiction.

Option 3

1. Will cover:
 - Access to genetic resources and promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources in accordance with relevant provisions of the Convention on Biological Diversity;
 - Traditional knowledge, innovations and practices in accordance with Article 8(j).
2. Outside the scope will be:
 - Genetic resources that were acquired before the entry into force of the Convention on Biological Diversity on 29 December 1993;
 - Human genetic resources.
3. The international regime on access and benefit-sharing established in the framework of the Convention on Biological Diversity should provide flexibility to respect existing and allow for the implementation and potential and further development of other, more specialized international access and benefit-sharing systems.
4. Special consideration will be given to:
 - Genetic resources covered by the FAO International Treaty on Plant Genetic Resources for Food and Agriculture when these are accessed for research, breeding or training for the purpose for food and agriculture;

- The relationship with the International Convention for the Protection of New Varieties of Plants (UPOV);
- Marine genetic resources found in areas beyond national jurisdiction;
- Genetic resources located in the Antarctic Treaty area;
- Animal genetic resources for food and agriculture;
- Work within the WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore;
- Genetic resources within the remit of the FAO Commission on Genetic Resources for Food and Agriculture.

III. MAIN COMPONENTS

A. *Fair and equitable benefit-sharing*

1. *Components to be further elaborated with the aim of incorporating them in the international regime*

- 1) ■ Linkage of access to the fair and equitable sharing of benefits
- 2) ■ Benefits to be shared on mutually agreed terms
- 3) ■ Monetary and/or non-monetary benefits
- 4) ■ Access to and transfer of technology
- 5) ■ Sharing of results of research and development on mutually agreed terms
- 6) ■ Effective participation in research activities, and/or joint development in research activities
- 7) ■ Mechanisms to promote equality in negotiations
- 8) ■ Awareness-raising
- 9) ■ Measures to ensure participation and involvement of indigenous and local communities in mutually agreed terms and sharing of benefits with traditional-knowledge holders
- 10) ■ Mechanisms to encourage benefits to be directed toward conservation and sustainable use of biodiversity and socio-economic development, in particular the Millennium Development Goals (MDGs) in accordance with national legislation

2. *Components for further consideration*

- 1) Development of international minimum conditions and standards
- 2) Benefit-sharing for every use
- 3) Multilateral benefit-sharing options when origin is not clear or in transboundary situations

- 4) Establishment of trust funds to address transboundary situations
- 5) Development of menus of model clauses for potential inclusion in material transfer agreements
- 6) Enhanced utilization of Bonn Guidelines

B. Access to genetic resources ^{6/}

1. Components to be further elaborated with the aim of incorporating them in the international regime

- 1) ■ Recognition of the sovereign rights and the authority of Parties to determine access
- 2) ■ Linkage of access to fair and equitable sharing of benefits
- 3) ■ Legal certainty, clarity and transparency of access rules

2. Components for further consideration

- 1) Non-discrimination of access rules
- 2) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions
- 3) Internationally developed model domestic legislation
- 4) Minimization of administration and transaction costs
- 5) Simplified access rules for non-commercial research

C. Compliance

1. Components to be further elaborated with the aim of incorporating them in the international regime

- 1) ■ Development of tools to encourage compliance:
 - (a) Awareness-raising activities
- 2) ■ Development of tools to monitor compliance:
 - (a) Mechanisms for information exchange
 - b) Internationally recognized certificate issued by a domestic competent authority
- 3) ■ Development of tools to enforce compliance

2. Components for further consideration

- 1) Development of tools to encourage compliance:

^{6/} The title is without prejudice to the eventual scope of the international regime.

- (a) International understanding of misappropriation/misuse
 - (b) Sectoral menus of model clauses for material transfer agreements
 - (c) Codes of conduct for important groups of users
 - (d) Identification of best-practice codes of conduct
 - (e) Research funding agencies to oblige users receiving research funds to comply with specific access and benefit-sharing requirements
 - (f) Unilateral declaration by users
 - (g) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions
- 2) Development of tools to monitor compliance:
- (a) Tracking and reporting systems
 - (b) Information technology for tracking
 - (c) Disclosure requirements
 - (d) Identification of check points
- 3) Development of tools to enforce compliance:
- (a) Measures to ensure access to justice with the aim of enforcing ABS arrangements
 - (b) Dispute settlement mechanisms:
 - (i) Inter-State
 - (ii) Private international law
 - (iii) Alternative dispute resolution
 - (c) Enforcement of judgments and arbitral awards across jurisdictions
 - (d) Information exchange procedures between national focal points for access and benefit-sharing to help providers obtain relevant information in specific cases of alleged infringements of prior-informed-consent requirements
 - (e) Remedies and sanctions
- 4) Measures to ensure compliance with customary law and local systems of protection

D. Traditional knowledge associated with genetic resources ^{7/}

1. *Components to be further elaborated with the aim of incorporating them in the international regime*

- 1) ■ Measures to ensure the fair and equitable sharing with traditional-knowledge holders of benefits arising out of the utilization of traditional knowledge in accordance with Article 8(j) of the Convention on Biological Diversity
- 2) ■ Measures to ensure that access to traditional knowledge takes place in accordance with community level procedures
- 3) ■ Measures to address the use of traditional knowledge in the context of benefit-sharing arrangements
- 4) ■ Identification of best practices to ensure respect for traditional knowledge in ABS related research
- 5) ■ Incorporation of traditional knowledge in development of model clauses for material transfer agreements
- 6) ■ Identification of individual or authority to grant access in accordance with community level procedures
- 7) ■ Access with approval of traditional-knowledge holders
- 8) ■ No engineered or coerced access to traditional knowledge

2. *Components for further consideration*

- 1) Prior informed consent of, and mutually agreed terms with, holders of traditional knowledge, including indigenous and local communities, when traditional knowledge is accessed
- 2) Internationally developed guidelines to assist Parties in the development of their domestic legislation and policies
- 3) Declaration to be made on the internationally recognized certificate as to whether there is any associated traditional knowledge and who owners of traditional knowledge are
- 4) Community-level distribution of benefits arising out of traditional knowledge

E. Capacity

1. *Components to be further elaborated with the aim of incorporating them in the international regime*

- 1) ■ Capacity-building measures at all relevant levels for:
 - (a) Development of national legislation

^{7/} The title is without prejudice to the eventual scope of the international regime.

- (b) Participation in negotiations, including contract negotiations
 - (c) Information and communication technology
 - (d) Development and use of valuation methods
 - (e) Bioprospecting, associated research and taxonomic studies
 - (f) Monitoring and enforcing compliance
 - (g) Use of access and benefit-sharing for sustainable development
- 2) ■ National capacity self-assessments to be used as a guideline for minimum capacity-building requirements
 - 3) ■ Measures for technology transfer and cooperation
 - 4) ■ Special capacity-building measures for indigenous and local communities
 - 5) ■ Development of menus of model clauses for potential inclusion in material transfer agreements
2. *Components for further consideration*
 - 1) Establishment of a financial mechanism

IV. NATURE

Compilation of proposals on nature ^{g/}

1. Recommendation of Co-Chairs of the Working Group

Options

1. One legally binding instrument
2. A combination of legally binding and non-binding instruments
3. A non-binding instrument

2. Submissions

Option 1

The international regime should be legally binding. In addition, it should stress more cooperative enforcement between parties and *not* refer conflicts primarily to private international law, which is not only expensive, but also a strain on resource poor countries.

Option 2

1. One legally binding instrument

^{g/} These proposals were neither discussed, negotiated nor agreed.

2. A combination of legally binding and/or non-binding instruments
3. A non-binding instrument

Option 3

The international regime shall be composed of a single legally binding instrument containing a set of principles, norms, rules and compliance and enforcement measures.

Option 4

The nature should be discussed after deliberations of the substance of an international regime are completed. For the time being, Japan suggests the following: the international regime could be composed of one or more non-binding instruments within a set of principles, norms, rules and decision-making procedures.

Option 5

The international regime should be composed of one or more legally binding and/or non-binding instruments within a set of principles, norms, rules and procedures, legally binding and non-binding.

Annex II

**TERMS OF REFERENCE OF THE EXPERT GROUPS ESTABLISHED IN PARAGRAPH 11
OF DECISION IX/12**

A. *Expert group on compliance*

1. A group of technical and legal experts on compliance is established to further examine the issue of compliance in order to assist the Working Group on Access and Benefit-sharing. The expert group shall provide legal and, as appropriate, technical advice, including, where appropriate, options and/or scenarios. The expert group will address the following questions:

(a) What kind of measures are available, or could be developed, in public and private international law to:

- (i) Facilitate, with particular consideration to fairness and equity, and taking into account cost and effectiveness:
 - a) Access to justice, including alternative dispute resolution;
 - b) Access to courts by foreign plaintiffs;
- (ii) Support mutual recognition and enforcement of judgments across jurisdictions; and
- (iii) Provide remedies and sanctions in civil, commercial and criminal matters;

in order to ensure compliance with national access and benefit-sharing legislation and requirements, including prior informed consent, and mutually agreed terms;

(b) What kind of voluntary measures are available to enhance compliance of users of foreign genetic resources;

(c) Consider how internationally agreed definitions of misappropriation and misuse of genetic resources and associated traditional knowledge could support compliance where genetic resources have been accessed or used in circumvention of national legislation or without setting up of mutually agreed terms;

(d) How could compliance measures take account of the customary law of indigenous and local communities?

(e) Analyse whether particular compliance measures are needed for research with non-commercial intent, and if so, how these measures could address challenges arising from changes in intent and/or users, particularly considering the challenge arising from a lack of compliance with relevant access and benefit-sharing legislation and/or mutually agreed terms.

2. The expert group shall be regionally balanced and composed of thirty experts nominated by Parties and ten observers, including three observers from indigenous and local communities nominated by them, and remaining observers from, *inter alia*, international organizations and agreements, industry, research institutions/academia and non-governmental organizations.

/...

B. Expert group on concepts, terms, working definitions and sectoral approaches

1. A group of technical and legal experts on concepts, terms, working definitions and sectoral approaches is established to further examine the issue of concepts, terms, working definitions and sectoral approaches in order to assist the Working Group on Access and Benefit-sharing. The expert group shall provide legal and technical advice, including, where appropriate, options and/or scenarios. The expert group will address the following questions:

(a) What are the different ways of understanding biological resources, genetic resources, derivatives and products and what are the implications of each understanding for the development of the main components of the international regime on access and benefit-sharing, including in relation to sectoral and subsectoral activities and in relation to commercial and non-commercial research?

(b) Identify different forms of utilization of genetic resources in relation to sectoral and subsectoral activities in the context of Article 15, paragraph 7, of the Convention;

(c) Identify and describe sector specific characteristics of access and benefit-sharing arrangements and to identify the differences, if any, between approaches in sectors;

(d) What are the range of options and approaches for taking these different characteristics into account and that may bring coherence to access and benefit-sharing related practices in different sectors?

2. The expert group shall be regionally balanced and composed of thirty experts nominated by Parties and a total of fifteen observers from:

(a) Different sectors including, *inter alia*, industry, research institutions/academia, botanical gardens and other *ex situ* collection holders;

(b) International organizations and agreements, non-governmental organizations; and

(c) Including three representatives from indigenous and local communities nominated by them.

C. Expert Group on traditional knowledge associated with genetic resources

1. A group of technical and legal experts on traditional knowledge associated with genetic resources is established to further examine the issue of traditional knowledge associated with genetic resources in order to assist the Working Group on Access and Benefit-sharing. The expert group shall provide legal and technical advice, including, where appropriate, options and/or scenarios. The expert group will address the following questions:

(a) What is the relationship between access and use of genetic resources and associated traditional knowledge?

(b) What practical impacts should the negotiations of the international regime take into account based on the range of community level procedures and customary systems of indigenous and local communities for regulating access to traditional knowledge associated with genetic resources at the community level?

(c) Identify the range of community level procedures and determine to what extent customary laws of indigenous and local communities regulate access to genetic resources and associated traditional knowledge at the community level and its relevance to the international regime;

(d) To what extent measures to ensure compliance with prior informed consent and mutually agreed terms under Article 15 also support the prior informed consent of indigenous and local communities for the use of their associated traditional knowledge?

(e) Identify elements and procedural aspects for the prior informed consent of holders of associated traditional knowledge when traditional knowledge associated with genetic resources is accessed also taking into account potential transboundary contexts of such associated traditional knowledge and identifying best practice examples;

(f) Is there a basis for prior informed consent for indigenous and local communities relative to traditional knowledge associated to genetic resources in international law? If so, how can it be reflected in the international regime?

(g) Assess options, considering the practical difficulties and distinct implementation challenges, for including traditional knowledge associated with genetic resources in a potential internationally recognized certificate issued by the competent domestic authority also by considering the possibility of a declaration on such certificate as to whether there is any associated traditional knowledge and who the relevant holders of traditional knowledge are;

(h) How to define traditional knowledge associated to genetic resources in the context of access and benefit-sharing?

2. The expert group shall be regionally balanced and composed of thirty experts nominated by Parties and fifteen observers, including seven observers from indigenous and local communities nominated by them, and remaining observers from, *inter alia*, international organizations and agreements, industry, research institutions/academia and non-governmental organizations.

3. Parties are also encouraged to nominate experts from indigenous and local communities where possible.
