



CONVENTION ON BIOLOGICAL DIVERSITY

Distr.
GENERAL

UNEP/CBD/WG-ABS/INF/4
15 December 2005

ORIGINAL: ENGLISH

AD HOC OPEN-ENDED WORKING
GROUP ON ACCESS AND
BENEFIT-SHARING
Fourth Meeting
Granada, 30 January – 3 February 2006
Item 6 of the provisional agenda*

COMPILATION OF SUBMISSIONS RELATING TO THE MATRIX ON THE ANALYSIS OF GAPS

Note by the Executive Secretary

I. INTRODUCTION

In its recommendation 3/1, paragraph 5, the Working Group invited Parties, Governments, indigenous and local communities, international organizations and relevant stakeholders to provide information to the Executive Secretary on the basis of the matrix contained in annex II of the same recommendation in order to facilitate the further analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing. The Executive Secretary was requested to consolidate the information provided and to make it available to the Working Group at its fourth meeting.

In light of the above, notification 2005-044 of 14 April 2005 was sent out to Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders.

On the basis of submissions received by the Secretariat, a consolidation of the submissions received relating to the matrix on the analysis of gaps was prepared and is available as document UNEP/CBD/WG-ABS/4/3. In addition, this document contains a compilation of the same submissions. They have been reproduced in the form and language in which they were provided.

* UNEP/CBD/WG-ABS/4/1.

Annex

**COMPILATION OF SUBMISSIONS RELATING TO THE MATRIX ON THE
ANALYSIS OF GAPS**

I. SUBMISSIONS FROM PARTIES

Canada
Costa Rica
European Union
India
Japan
Norway
Switzerland

II. SUBMISSIONS FROM NON-PARTIES

United States of America

III. SUBMISSIONS FROM RELEVANT ORGANIZATIONS AND STAKEHOLDERS

International Plant Genetic Resources Institute (IPGRI)

I. SUBMISSIONS FROM PARTIES

CANADA

As per the report of the third meeting of the Open-Ended Working Group on Access and Benefit-sharing,

“Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders [are invited] to provide information to the Executive Secretary on the basis of the matrix contained in annex II to the present recommendation and the potential additional elements and options three months before the fourth meeting of the Working Group, in order to facilitate further analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing”.

Attached is Canada’s initial and non-exhaustive input to the matrix. It contains the key elements of some existing international treaties and agreements that, in Canada’s view, already cover the basic principles of access to genetic resources and benefit-sharing.

In Canada’s view, the matrix exercise has helped to elucidate and enhance understanding of the relationship between the ABS-related provisions of the CBD and those of other international instruments. Nevertheless, this exercise and any subsequent compilations do not represent a full and comprehensive analysis of gaps. Although at WGABS-3 Canada did not object to the matrix, we did express concerns that it might be viewed as a substitute for a full gap analysis. In our view, it is simply a tool to summarize the outcome of the individual analyses so far conducted by Parties and others as to whether any gaps exist in the current international regime, whether such gaps should be filled, and if so, how. Whether something constitutes a “gap” is a matter of perception, and not all gaps would necessarily warrant filling. For example, we would note that as most obligations arising under mutually agreed arrangements will be between providers and users, many of which will be in the private sphere, disputes arising in these arrangements should be solved in accordance with the relevant contractual arrangements on access and benefit-sharing and the applicable law and practice. Although private contracts are not referenced in the matrix, it could be argued that private international law in this area is sufficient and there is no gap, even though it does not easily fall under the matrix headings. Another example is that some of the gaps might be geographical in nature, such as the Antarctic and other areas beyond national jurisdiction. This may be difficult to fully reflect in the matrix.

WGABS-4 needs to engage in this more detailed discussion, rendered more complex because the elements included in the matrix are not yet agreed. Interpretation of the elements included in the attached matrix will vary depending on the understanding Parties have of the need for, objectives, elements and efficiency of a potential international regime on ABS. It will also vary depending on the interpretation of what constitutes a regime. It is difficult for the matrix, even as complex as it is, to fully reflect all aspects of this discussion.

ANALYSIS OF GAPS

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Access</i></p> <p>Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>	<p>PGRFA Treaty article 10.1 establishes the sovereign right of States over their own PGRFA. In accordance with article 10.1, and subject to national legislation, access to these shall be granted.</p> <p>In accordance with article 12.2 of the PGRFA Treaty, the Contracting Parties agree to take legal or other appropriate measures to provide access to other Contracting Parties through the MS. Both legal and natural persons should be granted such access. Without prejudice to the other provisions of the Treaty, access to <i>in situ</i> collections should be</p>	<p>CBD Article 15.1 recognizes the sovereign rights of States (not just Parties) over their natural resources, and confirms that the authority to determine access to genetic resources rests with national governments and is subject to national legislation.</p> <p>CBD Article 15.2 requires each Party to endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Parties, and not to impose restrictions that run counter to the objectives of the Convention.</p> <p>Section I of the Bonn</p>	<p>Existing legislation in Canada regulates access to, and ownership of, resources in various sectors (forests, marine, environment, etc).</p> <p>The Northwest Territories Scientist Act includes provisions for access to, and use of, resources and traditional knowledge in the North. According to this legislation, a research permit can be denied if “the research proposed to be carried out might be injurious to or unduly interfere with the natural and social environment of the territories or any part of the environment” .</p>	<p>Need for a more focussed discussion on bioprospecting and commercialization of genetic resources found in the Antarctic and in the deep seabed beyond national jurisdiction.</p>	<p>Internationally through discussions within the CBD, the Antarctic Treaty System, UNCLOS, and other relevant fora.</p>

^{1/} The Roman numerals in parenthesis following each element refer to the numbering of that element under heading (d) of the annex to decision VII/19 D.

^{2/} Please take into account the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

^{3/} Please refer to the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

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	<p>provided according to national legislation, or in the absence of such legislation, in accordance with such standards as may be set by the Governing Body of the Treaty.</p> <p>Under UNCLOS coastal states have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research by others in the territorial sea shall only be conducted with the express consent of and under the conditions set forth by the coastal State.</p>	<p>Guidelines aim at providing Parties and stakeholders with a transparent framework to facilitate access to genetic resources and ensure fair and equitable sharing of benefits. Sub-section B of Section II of the Guidelines provides guidance on elements for granting access and negotiating benefit-sharing agreements. Section IV of the Guidelines provides key elements to be included in systems for PIC.</p>			
<p><i>Ensuring benefit-sharing</i></p> <p>Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and</p>	<p>PGRFA Treaty Article 13.2 describes which types of benefits may be derived from the use of the resources for food and agriculture. In accordance with this article, benefits arising from the use, including commercial, of PGRFA should be shared using the following mechanisms: exchange of</p>	<p>CBD Article 15.7 contains the key provision on benefit-sharing. It requires that each Party take legislative, administrative or policy measures, as appropriate, with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other</p>		<p>Need for a more focussed discussion on bioprospecting and commercialization of genetic resources found in the Antarctic and in the deep seabed beyond national jurisdiction.</p>	<p>Internationally through discussions within the CBD, the Antarctic Treaty System, UNCLOS, and other relevant fora.</p>

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<p>other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention; (ii)</p>	<p>information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization.</p> <p>Under the PGRFA Treaty, States are invited, in respect of their national law and priorities, to protect and promote Farmers' Rights including the right to equitably participate in sharing benefits arising from the utilization of PGRFA.</p> <p>Article 13 (d) of the PGRFA Treaty states that Parties agree to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors.</p> <p>Activities undertaken in this purpose include the conclusion of MTAs which include a provision requiring a recipient who commercializes a product that is a PGRFA and that incorporates material</p>	<p>utilization of genetic resources with the Party providing such resources.</p> <p>Section IV of the Bonn Guidelines establishes the basic principles, elements and mechanisms for benefits-sharing. More precisely, para. 50 of the Guidelines states that such mechanisms for sharing benefits should include full cooperation in scientific research and technology development, as well as those that derive from commercial products including trust funds, joint ventures and licences with preferential..</p>			

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	accessed from the MS should pay an equitable share of the benefits.				
Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)		<p>Article 2 of the CBD defines “biological resources”, “genetic resources” and “genetic material”. Based on the CBD definitions, derivatives fall outside the scope of the Convention and would not apply to an international regime on ABS.</p> <p>The CBD does contain various articles that cover the sharing of benefits in the context of MAT:</p> <p>CBD Article 15.7 contains the key provision on benefit-sharing. It requires that each Party take legislative, administrative or policy measures, as appropriate, with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic</p>			

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		<p>resources with the Party providing such resources. Such sharing shall be upon mutually agreed terms.</p> <p>Article 16.3 of the CBD requires each Party to take legislation, administrative or policy measures, as appropriate, with the aim that Parties, in particular developing countries, which provide genetic resources, are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, consistent with international law and Articles 16.4 and 16.5.</p> <p>One of the objectives of the Bonn Guidelines is to provide guidance to Parties in the development of access and benefit-sharing Regimes. Section IV of the Bonn Guidelines establishes the steps for benefits-sharing. Sub-section D of the section IV sets out the basic principles, elements</p>			

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		and mechanisms for negotiating mutually-agreed terms and ensure benefit-sharing.			
Measures for benefit-sharing including, <i>inter alia</i> , monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)	<p>PGRFA Treaty Article 10 (e) requires each Party, as far as possible and as appropriate to “encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.”</p> <p>PGRFA Treaty Article 13 (d) addresses the management of commercial benefits arising out of the use of PGRFA. In accordance with this article, Parties agree to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors. Activities undertaken in this purpose include the conclusion of MTAs which include a provision requiring a recipient who</p>	<p>CBD Article 10 (e) requires each Party, as far as possible and as appropriate to “encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.”</p> <p>CBD Article 15.7 requires that each Party take legislative, administrative or policy measures, as appropriate, with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources</p> <p>CBD Article 16.1 requires Parties to undertake to provide and/or facilitate access for and transfer to other Parties technologies</p>			

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	<p>commercializes a product that is a PGRFA and that incorporates material accessed from the MS should pay an equitable share of the benefits.</p> <p>PGRFA Treaty Article 13.1 recognizes that facilitated access to resources is a major benefit of the multilateral system and states that the sharing of the benefits arising out of the use of PGRFA should be fair and equitable.</p> <p>PGRFA Treaty article 13.2 states that, benefits arising from the use, including commercial, of PGRFA should be shared using the following mechanisms: exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization</p> <p>In accordance with PGRFA Treaty article 13.3, benefits</p>	<p>that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment</p> <p>CBD Article 16.3 requires each Party to take legislation, administrative or policy measures, as appropriate, with the aim that Parties, in particular developing countries, <i>which provide genetic resources</i> are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, consistent with international law and Articles 16.4 and 16.5.</p> <p>CBD Article 19.2 aims at fostering exchange of scientific information between Parties through measures to promote and advance priority access on a fair and equitable basis by Contracting Parties,</p>			

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	<p>arising out of the utilization of the resources (regardless of their nature) should flow primarily to farmers in all countries, especially developing countries who and conserve and sustainably use the resources.</p> <p>Under UNCLOS, all States regardless of their geographic location, are entitled to conduct marine scientific research in the Area. However, marine scientific research in the Area is to be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole.</p>	<p>especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.</p> <p>One of the objectives of the Bonn Guidelines is to promote the adequate and effective transfer of appropriate technology to providing Parties, especially developing countries, in particular least developed countries and small island developing States among them, stakeholders and indigenous and local communities. Sub-section D of Section II of the Guidelines elaborates on the elements to be negotiated in the context of mutually-agreed terms. Benefits arising out of the use of genetic resources can be monetary and non-monetary and should be shared following the</p>			

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		<p>conditions, obligations, procedures, types, timing, distribution and mechanisms established under MAT. Types of benefits are listed in Appendix II of the Bonn Guidelines</p>			
<p><i>Promoting benefit-sharing</i></p> <p>Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)</p>	<p>Under Article III of the Antarctic Treaty, Contracting Parties agree that, in order to promote international cooperation in scientific investigation in Antarctica, to the greatest extent feasible and practicable:</p> <ol style="list-style-type: none"> 1) information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy of and efficiency of operations 2) scientific personnel shall be exchanged in Antarctica between expeditions and stations 3) scientific observations and results from Antarctica 	<p>CBD Article 15.6 requires each Party to endeavour to develop and carry out scientific research based on genetic resources provided by other Parties with the full participation of, and where possible in, such Parties.</p> <p>CBD Article 18 requires the Parties to promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity. Each Party is required to promote technical and scientific cooperation with other Parties, in particular developing countries, <i>inter alia</i>, through the</p>			

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	<p>shall be exchanged and made freely available.</p> <p>The Madrid Protocol also encourages collaborative research in the Antarctic. According to article 3, in the planning and conduct of all activities in the Antarctic Treaty area, the following are fundamental considerations: the protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment.</p> <p>While bioprospecting is not mentioned, general principles are articulated in Article 3.2 of the Madrid Protocol to achieve the above ends, including: Activities in the Antarctic Treaty area shall be planned</p>	<p>development and implementation of national policies. Article 18.4 requires the Parties, in accordance with national legislation and policies, to encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of the Convention. Finally, Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of the Convention.</p> <p>Article 19.1 requires each Party to take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Parties,</p>			

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	<p>and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems, activities in the Antarctic Treaty area shall be planned and conducted so as to avoid, among other things, detrimental changes in the distribution, abundance or productivity of species or populations of species of fauna and flora, further jeopardy to endangered or threatened species or populations of such species, or degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance, activities are to be planned and conducted on the basis of sufficient information to allow prior informed judgments about possible impacts on the Antarctic environment.</p> <p>Parties are also required to ensure that the Protocol's environmental assessment procedures in Annex I are</p>	<p>especially developing countries, which provide the genetic resources for such research, and where feasible in such Parties.</p> <p>Article 19.2 aims at fostering exchange of scientific information between Parties through measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.</p> <p>One of the objectives of the Bonn Guidelines is to promote the adequate and effective transfer of appropriate technology to providing Parties, especially developing countries, in particular least developed countries and</p>			

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	<p>applied to decisions about activities regarding scientific research, tourism and all other governmental and non-governmental activities in the area. Presumably this would also apply to bioprospecting activities.</p> <p>Article 13.2(b)(ii) of the PGRFA Treaty encourages the establishment and maintenance of crop-based thematic groups on utilization of PGRFA, and participation in all types of partnership in research and development and in commercial joint ventures relating to the material received. Special attention should also be paid to human resource development and effective access to research facilities. Concepts contained in sections (a), (b), and (c) of article 13.2, are beneficial to Parties and farmers as they contribute to extending the knowledge of natural and</p>	<p>small island developing States among them, stakeholders and indigenous and local communities. Para. 50 of the Guidelines states that mechanisms for sharing benefits should include full cooperation in scientific research and technology development, as well as those that derive from commercial products including trust funds, joint ventures and licences with preferential terms.</p>			

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	<p>legal persons about the uses, existence, threats, technology developments, etc, associated with PGRFA.</p> <p>Under UNCLOS, States and competent international organizations have obligations to make available by publication and dissemination through appropriate channels information on proposed major programmes and their objectives as well as knowledge resulting from marine scientific research.</p> <p>The UNCLOS also contains a number of provisions on the development and transfer of marine technology, in particular for States to cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and</p>				

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	<p>conditions. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with the Convention, with a view to accelerating the social and economic development of developing States.</p> <p>Marine scientific research is specifically regulated by UNCLOS and must be conducted in accordance with rules set out in Part XIII. All States and competent international organizations have the right to conduct marine scientific research, subject to the</p>				

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	<p>rights and duties of other States under the Convention (article 238). There is also a duty on all States and competent international organizations to promote and facilitate the development and conduct of marine scientific research in accordance with the Convention (art.239).</p> <p>Article 243 makes reference to “creating favourable conditions” for marine scientific research through international cooperation. Benefit-sharing is touched upon in articles 242 and 244, which calls for the sharing and dissemination of scientific research, especially where it can help in protecting and minimizing damage to the marine environment.</p> <p>Article 244.2 makes similar provisions for sharing scientific information, calling on states to “actively promote the flow of scientific data and</p>				

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	<p>information and the transfer of knowledge resulting from marine scientific research, especially to developing States.”</p> <p>UNCLOS article 248 provides for information requirements to be provided to the coastal state, including the name of the sponsoring institution, the nature and objectives of the project, and the extent to which it is considered that the coastal State should be able to participate or be represented in the project.</p>				
Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v)	<p>Under the PGRFA, States are invited, in respect of their national law and priorities, to protect and promote Farmers’ Rights including the right to equitably participate in sharing benefits arising from the utilization of PGRFA.</p> <p>PGRFA Article 13.2 describes which types of</p>	<p>CBD Article 15.7 contains the key provision on benefit-sharing. It requires that each Party take legislative, administrative or policy measures, as appropriate, with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other</p>			

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	<p>benefits may be derived from the use of the resources for food and agriculture. In accordance with this article, benefits arising from the use, including commercial, of PGRFA should be shared using the following mechanisms: exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization.</p> <p>In accordance with PGRFA Treaty article 13.3, benefits arising out of the utilization of the resources (regardless of their nature) should flow primarily to farmers in all countries, especially developing countries which make a sustainable use and conservation of the resources.</p>	<p>utilization of genetic resources with the Party providing such resources. Such sharing shall be upon mutually agreed terms.</p> <p>Similarly, CBD Article 19 on biotech research also contemplates participation in research and in its results constituting a benefit.</p> <p>The Bonn Guidelines aim at providing guidance to Parties in the development of access and benefit sharing regimes. Paragraphs 45 to 50 of the Bonn Guidelines provide the conditions, obligations, procedures, types, timing, distribution and mechanisms for benefit-sharing. Appendix II of the Guidelines sets out the types of benefits to be shared.</p>			

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<p><i>Recognition and protection of rights of indigenous and local communities</i></p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv)</p>	<p>Under the PGRFA Treaty, States are invited, in respect of their national law and priorities, to protect and promote Farmers' Rights including: protection of TK relevant to PGRFA, right to equitably participate in sharing benefits arising from the utilization of PGRFA, and the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of PGRFA.</p> <p>On-going discussions at the WIPO-IGC.</p>	<p>CBD article 8 (j).</p> <p>One of the objectives of the Bonn Guidelines is to contribute to the development by Parties of mechanisms and access and benefit-sharing regimes that recognize the protection of traditional knowledge, innovations and practices of indigenous and local communities, in accordance with domestic laws and relevant international instruments.</p> <p>Section IV of the Bonn Guidelines, (Competent authority granting PIC) calls for "Respecting established legal rights of indigenous and local communities associated with the genetic resources being accessed or where traditional knowledge associated with these</p>	<p>Canadian legal regime enables communities to enter into contracts setting out terms and conditions under which confidential information will be shared;</p> <p>Land claims agreements contemplate this through environmental assessments.</p>	<p>Need to determine which means could appropriately contribute to ABS for indigenous and local communities.</p>	<p>Nationally through national ABS legislation consistent with existing regulations and in respect of national Aboriginal contexts.</p>

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		<p>genetic resources is being accessed, the prior informed consent of indigenous and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices should be obtained, in accordance with their traditional practices, national access policies and subject to domestic laws.</p> <p>MAT should consider whether the knowledge, innovations and practices of indigenous and local communities have been respected, preserved and maintained, and whether the customary use of biological resources in accordance with traditional practices has been protected and encouraged.</p>			
Customary law and traditional cultural practices of indigenous and local communities; (xvi)	PGRFA Treaty article 9 recognizes the contribution of local and indigenous communities, and farmers to the conservation and development of plant	<p>CBD Article 8 (j).</p> <p>CBD Article 10(c) requires each Party, as far as possible and as appropriate, “protect and encourage customary</p>	Self-government agreements with legislative authority internal to the community over culture lands and	Need to determine relationship between customary law and national legislation on ABS.	Nationally through national ABS legislation consistent with existing regulations and in respect of national

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	<p>genetic resources.</p> <p>On-going discussions at WIPO-IGC and WTO-TRIPS Council.</p>	<p>use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”.</p> <p>The Bonn Guidelines aim at strengthening access and benefit-sharing regimes that recognize the protection of traditional knowledge, innovations and practices of indigenous and local communities, in accordance with domestic laws and relevant international instruments.</p> <p>The Bonn Guidelines state that in the implementation of MAT, users should respect customs, traditions, values and customary practices of indigenous and local communities.</p> <p>The Bonn Guidelines also state that Contracting Parties should support measures, as appropriate, to enhance indigenous and</p>	<p>resources.</p> <p>In Canada, Indigenous communities can adopt customary protocols and practices not inconsistent with Canadian law.</p>		<p>Aboriginal contexts.</p>

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
		local communities' capacity to represent their interests fully at negotiations.			
Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)	In accordance with PGRFA Treaty article 12.4, facilitated access shall be provided pursuant to a standard Material Transfer Agreement (MTA). Elaborated by the Governing Body, the MTA should be consistent with the Treaty principles for access and provisions on benefit-sharing.	Section IV of the Bonn Guidelines elaborates on the elements to be included in PIC systems. Elements contained in para 36 constitute a model for designing PIC systems.	Some existing codes of practice in Canadian universities require PIC when research involves Indigenous and local communities. Canadian governmental research institutions also have in place codes of ethics, practices and guidelines for ensuring that PIC is provided by Indigenous and local communities. Canadian law does not prevent Indigenous communities from adopting guidelines and codes of conduct.		
Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge	On-going discussions at WIPO-IGC and WTO-TRIPS Council.	CBD Article 15.5 provides that access to genetic resources shall be subject to prior informed consent of the Party providing such resources, unless otherwise determined by that Party. The CBD leaves full			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
associated with genetic resources, in accordance with Article 8(j); (x)		<p>flexibility for Parties to set up national systems that address Indigenous concerns and circumstances.</p> <p>The Bonn Guidelines state that in the implementation of MAT, users should seek informed consent prior to access to genetic resources, in conformity with Article 15, paragraph 5, of the Convention.</p> <p>Section II of the Bonn Guidelines also states that Contracting Parties should consider measures aimed at preventing the use of genetic resources obtained without the prior informed consent of the Contracting Party providing such resources.</p> <p>Section IV of the Bonn Guidelines sets out the steps for accessing genetic resources. It details the basic principles and elements of a PIC system.</p>			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Derivatives</i></p> <p>Addressing the issue of derivatives; (xii)</p>		<p>Article 2 of the CBD defines “biological resources”, “genetic resources” and “genetic material”. Based on the CBD definitions, derivatives fall outside the scope of the Convention and would not apply to an international regime on ABS.</p>			
<p><i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i></p> <p>Monitoring, compliance and enforcement; (xx)</p> <p>Dispute settlement, and/or arbitration, if and when necessary; (xxi)</p>	<p>In order to comply with the PGRFA Treaty, Contracting Parties must put in place a set of measures to facilitate access to the listed PGRFA. Such measures can be legal and/or administrative.</p> <p>In the context of the PGRFA Treaty, the conclusion of a MTA is also at the heart of compliance with the Treaty provisions. Providers and users of listed PGRFA must</p>	<p>Implementation of relevant CBD articles including 8,10,15,16,18,19,20, and 21.</p> <p>Section V of the Bonn Guidelines includes a number of provisions that address issues of compliance, including: incentives, accountability in implementing access and benefit-sharing arrangements, national monitoring and reporting, means for verification, settlement of disputes, and</p>	<p>National measures to ensure compliance with the elements of section II,III,IV, and V of the Bonn Guidelines.</p>		

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	<p>enter into an MTA that includes benefit-sharing provisions. The Governing Body (GB) is responsible for elaborating a model for MTAs that will ensure compliance with the provisions and principles of the Treaty.</p>	<p>remedies.</p> <p>Bonn Guidelines Paras. 59-61, contains elements for the resolution of disputes and establishment of remedies. As most obligations arising under mutually agreed arrangements will be between providers and users, disputes arising in these arrangements should be solved in accordance with the relevant contractual arrangements on access and benefit sharing and the applicable law and practices. In cases where the access and benefit-sharing agreements consistent with the CBD and national legal instruments of the country of origin of genetic resources have not been complied with, the use of sanctions could be considered, such as penalty fees set out in contractual agreements.</p>			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi)	<p>The conclusion of MTAs is also at the heart of compliance with the Treaty provisions. Providers and users of listed PGRFA must enter into a MTA that includes benefit-sharing provisions. The Governing Body (GB) is responsible for elaborating a model for MTAs that will ensure compliance with the provisions and principles of the Treaty.</p> <p>On-going discussions at WIPO-IGC and WTO-TRIPS Council.</p>	<p>Article 15.4 makes it clear that where access is granted, it is to be on mutually agreed terms and subject to the provisions of Article 15.</p> <p>Article 15.7 requires that each Party take legislative, administrative or policy measures, as appropriate, with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources. This sharing, which applies to both the sharing of commercial benefits and those arising from research and development is to be upon mutually agreed terms.</p> <p>Sub-section D of section IV of the Bonn Guidelines establishes the basic requirements for MATs.</p>			
Measures to ensure compliance with national legislations	On-going discussions at WIPO-IGC.	Implementation of relevant CBD articles including 8,10,15,16,18,18,20 and 21.	In the process of elaborating national policies and regulations		

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)		<p>The Bonn Guidelines aim at providing Parties and stakeholders with a transparent framework to facilitate access to genetic resources and ensure fair and equitable sharing of benefits, fostering participation of stakeholders in the development of ABS regimes, promoting awareness on the implementation of relevant provisions of the CBD. The Bonn Guidelines also invite parties to strengthen the clearing-house mechanism as a mechanism for cooperation among Parties in ABS.</p> <p>One of the objectives of the Bonn Guidelines is to provide guidance to Parties in the development of access and benefit-sharing regimes, including in respect of the elements for PIC and MAT they include.</p>	<p>consistent with relevant provisions of the CBD and the Bonn Guidelines.</p> <p>Raise awareness among stakeholders and Indigenous communities with regards to the negotiation of Mat terms and granting of PIC.</p>		

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Functioning of the international regime</i></p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p>	<p>In the context of the PGRFA Treaty, the conclusion of MTAs is at the heart of the functioning of the system. Providers and users of listed PGRFA must enter into a MTA elaborated by the GB.</p>	<p>Support the development of national legislations on ABS as proposed in the Bonn Guidelines. The Bonn Guidelines also promote awareness on implementation of relevant provisions of the CBD. The Guidelines also call for Cooperation between Contracting Parties to address alleged infringements of access and benefit-sharing agreements. Implementation of the elements contained in Appendix II of the Bonn Guidelines for the elaboration of material transfer agreements. The Bonn Guidelines also invite parties to strengthen the clearing-house mechanism as a mechanism for cooperation among Parties in ABS.</p>		<p>Need for a more focussed discussion on bioprospecting and the commercialization of genetic resources found in the Antarctic and in the deep seabed beyond national jurisdiction</p>	<p>Internationally through discussions within the CBD, the Antarctic Treaty System, UNCLOS, and other relevant fora.</p>
<p>Means to support the implementation of</p>	<p>PGRFA Treaty article 18 requires the Contracting</p>	<p>Implementation of relevant CBD articles including 8,</p>			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
the international regime within the framework of the Convention; (xix)	Parties to undertake the implementation of a funding strategy for the implementation of this Treaty in accordance with the provisions of this Article. The objectives of the funding strategy shall be to enhance the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under this Treaty.	10, 15, 16, 18, 19, 20, and 21. Implementation of the Bonn Guidelines in a manner that is coherent and mutually supportive of the work of relevant international agreements and institutions. The guidelines are without prejudice to the access and benefit-sharing provisions of the FAO International Treaty for Plant Genetic Resources for Food and Agriculture. Furthermore, the work of the World Intellectual Property Organization (WIPO) on issues of relevance to access and benefit-sharing should be taken into account. The application of the Bonn Guidelines should also take into account existing national legislation and regional agreements on access and benefit-sharing.			
Institutional issues to support the	The PGRFA Treaty, UNCLOS, Antarctic Treaty,	Implementation of CBD articles 23, 24, and 25 for			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
implementation of the international regime within the framework of the Convention; (xxii)	and other relevant international agreements and treaties all contain institutional provisions to support their implementation.	supporting the work of Secretariat, the COP and SBSTTA. The Bonn Guidelines aim at providing capacity-building to guarantee the effective negotiation and implementation of access and benefit-sharing arrangements, especially to developing countries, in particular least developed countries and small island developing States among them.			
Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii)	The PGRFA model MTA is also a model that could apply to genetic resources and serve the purpose of identifying their origin.	The Bonn Guidelines call upon Contracting Parties to consider the elaboration of voluntary certification schemes for institutions abiding by rules on access and benefit-sharing. Appendix II of the Bonn Guidelines sets out the elements to be included in Material Transfer Agreements which are key to ensuring the exchange of genetic material between		Need for focussed discussion on the feasibility of such a system: considering the level of resources available varying from one country to another; determination of the certificate's object (origin, source or legal provenance and their respective definitions).	

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<p>Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p>	<p>Article 3 of the Budapest Treaty allows for the deposit of microorganisms for patent purposes.</p> <p>Article 7 of UPOV 1978 states that for examination purposes, the competent authorities of each member State of the Union may require the breeder to furnish all the necessary information, documents, propagating material or seeds</p> <p>On-going discussions at WIPO and WTO TRIPS Council.</p>	<p>users and providers.</p> <p>The Bonn Guidelines call upon Contracting Parties to consider measures to encourage the disclosure of the country of origin of the genetic resources and of the origin of traditional knowledge, innovations and practices of indigenous and local communities in applications for intellectual property rights.</p>	<p>Patent Rule 29(1)(a) allows the patent examiner to requisition an identification of any prior art cited in respect to the application submitted.</p> <p>Article 38.1 of the <i>Patent Act</i> allows biological material to be deposited for patent application purposes.</p>		
<p>Capacity-building measures based on country needs (xvii)</p>	<p>PGRFA Treaty Article 13.2 describes which types of benefits may be derived from the use of the resources for food and agriculture. In accordance with this article, benefits arising from the use, including commercial, of PGRFA should be shared using the following mechanisms: exchange of</p>	<p>CBD Article 18 deals with technical and scientific cooperation. It requires the Parties to promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity. Each Party is required to promote technical and scientific cooperation with other</p>			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	<p>information, access to and transfer of technology, capacity-building, etc.</p> <p>PGRFA Treaty article 18 establishes a funding strategy aimed at providing resources for capacity-building for developing countries and countries with economies in transition.</p> <p>UNCLOS also contains a number of provisions on the development and transfer of marine technology, in particular to cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, with</p>	<p>Parties, in particular developing countries, <i>inter alia</i>, through the development and implementation of national policies.</p> <p>CBD Article 18.4 requires the Parties, in accordance with national legislation and policies, to encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of the Convention. Finally, Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of the Convention.</p> <p>CBD articles 20 and 21 to provide financial resources and mechanisms for</p>			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	<p>regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with the Convention, with a view to accelerating the social and economic development of developing States.</p>	<p>capacity-building. The Bonn Guidelines aim at providing capacity-building to guarantee the effective negotiation and implementation of access and benefit-sharing arrangements, especially to developing countries, in particular least developed countries and small island developing States among them.</p>			

Elements ^{1/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{2/}	Relevant provisions of existing international instruments within the framework of the CBD ^{3/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Poverty eradication</i></p> <p>Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p>	<p>UNCLOS also contains a number of provisions on the development and transfer of marine technology, in particular to cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with the Convention, with a view to accelerating the social and economic</p>	<p>CBD Article 18 deals with technical and scientific cooperation. It requires the Parties to promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity. Each Party is required to promote technical and scientific cooperation with other Parties, in particular developing countries, <i>inter alia</i>, through the development and implementation of national policies.</p> <p>CBD Article 18.4 requires the Parties, in accordance with national legislation and policies, to encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of the Convention. Finally, Parties shall, subject to mutual</p>			

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	<p>development of developing States.</p> <p>In particular, UNCLOS Article 244 highlights strengthening the “autonomous marine scientific capabilities” of developing countries and cites education and training as two important priority areas.</p>	<p>agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of the Convention.</p> <p>The Bonn Guidelines aim at contributing to poverty alleviation and be supportive of the realization of human food security, health and cultural integrity, especially in developing countries, in particular least developed countries and small island developing States among them.</p>			

COSTA RICA

ANÁLISIS DE LAGUNAS

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
<p><i>Acceso</i></p> <p>Medidas para promover un acceso facilitado a los recursos genéticos para usos ambientalmente adecuados, de conformidad con el artículo 15.2 del Convenio sobre la Diversidad Biológica; (iv)</p>	<p>Tratado Internacional de Recursos Fitogenéticos</p> <p>Para la Agricultura y la Alimentación en su sistema multilateral de acceso</p>	<p>Directrices de Bonn sobre Acceso a los Recursos Genéticos y Participación justa y equitativa en los beneficios provenientes de su utilización</p>	<p>Acuerdo Centroamericano de acceso y distribución de Beneficios (firmado por los países centroamericanos)</p> <p>En Costa Rica:</p> <p>Ley de Biodiversidad N° 7788</p> <p>Decreto Ejecutivo N° 31-514 MINAE del 15 de diciembre 2003 denominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad</p> <p>En borrador:</p> <p>Normas Generales para el</p>	<p>Mucha legislación no promueve el acceso facilitado.</p> <p>No se facilita la investigación</p> <p>Oposición de grupos a l tema de acceso</p> <p>Desconocimiento de la materia</p>	<p>A nivel nacional</p> <p>En Países de usuarios</p> <p>Los esfuerzos regionales son muy pobres</p>

^{4/} Los números romanos entre paréntesis que siguen a un elemento se refieren a la numeración de ese elemento bajo el título d) del anexo a la decisión VII/19 D.

^{5/} Téngase en cuenta la lista de instrumentos y procesos del párrafo d) (xxiii) del anexo a la decisión VII/19D de la Conferencia de las Partes .

^{6/} Téngase en cuenta la lista de instrumentos y procesos del párrafo d) (xxiii) del anexo a la decisión VII/19D de la Conferencia de las Partes.

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
			acceso a elementos y recursos genéticos y bioquímicos de la biodiversidad ex situ		
<p><i>Garantizar la participación en los beneficios</i></p> <p>Medidas para garantizar la participación justa y equitativa en los beneficios de los resultados de las actividades de investigación y desarrollo, y los derivados del uso comercial y otros usos de los recursos genéticos, de conformidad con los artículos 15.7, 16, 19.1, 19.2. del Convenio; (ii)</p> <p>Medidas para garantizar la participación en los beneficios derivados del uso comercial y otros usos de los recursos genéticos, de sus derivados y productos, en el contexto de condiciones mutuamente convenidas; (vi)</p> <p>Medidas para la participación en los beneficios, tanto monetarios como no monetarios, y la transferencia de tecnología y cooperación tecnológica</p>	<p>Tratado Internacional de Recursos Fitogenéticos para la Agricultura y la Alimentación FAO</p> <p>Idem</p> <p>Idem</p>	<p>Directrices de Bonn sobre Acceso a los Recursos Genéticos y Participación justa y equitativa en los beneficios provenientes de su utilización</p> <p>Idem</p> <p>Idem</p>	<p>Ley de Biodiversidad N^a 7788</p> <p>Decreto Ejecutivo N^a 31-514 MINAE del 15 de diciembre 2003 denominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad</p> <p>En borrador:</p> <p>Normas Generales para el acceso a elementos y recursos genéticos y bioquímicos de la biodiversidad ex situ</p> <p>Idem</p>	<p>Existen muy pocas leyes en los países en desarrollo que traten el tema</p> <p>Idem</p>	<p>A nivel Nacional</p> <p>A nivel Nacional</p> <p>A nivel Nacional</p>

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
efectivas a fin de respaldar la creación de beneficios sociales, económicos y ambientales; (iii)				Idem	
<p><i>Promover la participación en los beneficios</i></p> <p>Medidas para promover y fomentar la investigación científica conjunta, así como la investigación con fines comerciales y comercialización, de conformidad con los artículos 8(j), 10, 15, párrafos 6 y 7, y artículos 16, 18 y 19 del Convenio; (i)</p> <p>Medidas para promover y salvaguardar la participación justa y equitativa en los beneficios derivados del uso de recursos genéticos; (v)</p>	<p>Tratado Internacional de Recursos Fitogenéticos para la Agricultura y la Alimentación FAO</p> <p>Idem</p>	<p>Directrices de Bonn sobre Acceso a los Recursos Genéticos y Participación justa y equitativa en los beneficios provenientes de su utilización</p> <p>Idem</p>	<p>Ley de Biodiversidad N^a 7788</p> <p>Decreto Ejecutivo N^a 31-514 MINAE del 15 de diciembre 2003 denominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad</p> <p>Idem</p>	<p>Medidas en países desarrollados para realizar investigación conjunta</p>	<p>A nivel Nacional</p>
<p><i>Reconocimiento y protección de los derechos de las comunidades indígenas y locales</i></p> <p>Reconocimiento y protección de los derechos de las comunidades indígenas y locales sobre sus conocimientos tradicionales asociados a los recursos genéticos, con sujeción</p>	<p>Comité Intergubernamental sobre la Propiedad Intelectual y recursos genéticos, conocimientos tradicionales y Folclore de la</p>	<p>Grupo de Composición Abierta sobre el Artículo 8 J y Disposiciones conexas</p>	<p>Acuerdo Centroamericano de acceso y distribución de Beneficios (firmado por los países centroamericanos)</p> <p>En Costa Rica:</p> <p>Ley de Biodiversidad N^a 7788</p>	<p>No existe n ningún instrumento internacional que aborde el tema</p> <p>Homogenizar criterios</p> <p>Fomento a la</p>	<p>A nivel internacional para dar recomendaciones a los países</p> <p>A nivel nacional</p>

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
<p>a la legislación nacional de los países en los que se encuentran estas comunidades; (xv)</p> <p>Derecho consuetudinario y prácticas culturales tradicionales de las comunidades indígenas y locales; (xvi)</p> <p>Código de ética/Código de conducta/Modelos de consentimiento fundamentado previo u otros instrumentos para garantizar la participación justa y equitativa en los beneficios de las comunidades indígenas y locales; (xviii)</p>	<p>OMPI .</p> <p>Tratado Internacional de Recursos Fitogenéticos para la Agricultura y la Alimentación FAO</p> <p>Convenio 169 OIT UNESCO</p> <p>Convenio Sobre Pueblos Indígenas y Tribales 169 de la OIT</p> <p>FAO</p> <p>Y Organización Mundial de la Propiedad Intelectual</p>	<p>Grupo de Composición Abierta sobre el Artículo 8 J y Disposiciones conexas</p> <p>Grupo de Composición Abierta sobre el Artículo 8 J y Disposiciones conexas y Directrices de</p>	<p>Decreto Ejecutivo N° 31-514 MINAE del 15 de diciembre 2003 denominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad</p> <p>Ley de Biodiversidad N° 7788</p> <p>Ley de Biodiversidad N° 7788 y Decreto Ejecutivo N° 31-514 MINAE del 15 de diciembre 2003 deominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad “</p>	<p>cooperación</p> <p>Falta desarrollar el tema en las legislaciones nacionales</p> <p>El tema no está desarrollado en las legislaciones nacionales</p>	<p>A nivel Internacional</p> <p>A nivel Internacional</p>

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
Medidas para garantizar el cumplimiento del consentimiento fundamentado previo de las comunidades indígenas y locales que poseen conocimientos tradicionales asociados con recursos genéticos, de conformidad con el artículo 8(j); (x)	Idem al anterior	Bonn sobre Acceso a los Recursos Genéticos y Participación justa y equitativa en los beneficios provenientes de su utilización Idem al anterior	Idem al anterior	Idem al anterior	Idem al anterior
<i>Derivados</i> Tratamiento de la cuestión de los derivados; (xii)	No existen	Directrices de Bonn sobre Acceso a los Recursos Genéticos y Participación justa y equitativa en los beneficios provenientes de su utilización	Ley de Biodiversidad N° 7788 y Decreto Ejecutivo N° 31-514 MINAE del 15 de diciembre 2003 deominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad son definidos como elementos y recursos bioquímicos En Decisión 391 de la	Un tema no tratado internacionalmente	Internacional Definición pendiente y en discusión en el WG/ABS

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
			Comunidad Andina de Naciones		
<p><i>Fomento y mecanismos de imposición del régimen internacional y cumplimiento de PIC y MAT</i></p> <p>Supervisión, cumplimiento e imposición; (xx) Solución de controversias y/o arbitraje, siempre y cuando sea necesario; (xxi)</p> <p>Medidas para garantizar el cumplimiento con las legislaciones nacionales sobre acceso y participación en los beneficios, consentimiento fundamentado previo y condiciones mutuamente convenidas, de conformidad con el Convenio sobre la Diversidad Biológica; (xi)</p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where</p>	<p>OMC TRIPS FAO</p> <p>ADPIC Convenio 169 de OIT y Otros tratados de Derechos Humanos</p>	<p>No existen</p> <p>Temas en discusión en el WG/ABS</p>	<p>Ley de Biodiversidad N^o 7788 y Decreto Ejecutivo N^o 31-514 MINAE del 15 de diciembre 2003 deominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad son definidos como elementos y recursos bioquímicos</p> <p>Idem al anterior</p>	<p>Medidas de monitoreo y cumplimiento son muy débiles en la mayoría de las legislaciones</p> <p>Idem al anterior</p>	<p>Internacional</p> <p>A nivel Internacional y Nacional</p> <p>En la solicitud de derechos de Propiedad Intelectual debe solicitarse la revelación de origen</p>

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
<p>these communities are located; (xv)</p> <p>Customary law and traditional cultural practices of indigenous and local communities; (xvi)</p> <p>Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)</p>					
<p><i>Funcionamiento del régimen internacional</i></p> <p>Medidas para facilitar el funcionamiento del régimen a escala local, nacional, subregional, regional e internacional, tomando en cuenta la naturaleza transfronteriza de la distribución de algunos recursos genéticos y conocimientos tradicionales asociados <i>in situ</i>; (viii)</p> <p>Medios para dar apoyo a la aplicación del régimen internacional en el marco del Convenio; (xix)</p> <p>Asuntos institucionales para dar apoyo</p>	<p>No existen</p> <p>No existen</p> <p>No existen</p>	<p>No existen</p> <p>Instrumento financiero del GEF</p>	<p>No existen</p> <p>No existen</p> <p>No existen</p>	<p>XXXX</p> <p>XXX</p>	<p>XXX</p> <p>XXX</p>

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
<p>a la aplicación del régimen internacional en el marco del Convenio; (xxii)</p> <p>Certificado internacionalmente reconocido de origen/fuente/procedencia jurídica de los recursos genéticos y de los correspondientes conocimientos tradicionales; (xiii)</p> <p>Divulgación del origen/fuente/procedencia jurídica de los recursos genéticos y de los correspondientes conocimientos tradicionales en las solicitudes de derechos de propiedad intelectual; (xiv)</p>	<p>OMC ADPIC</p> <p>Comité Intergubernamental sobre la Propiedad Intelectual y recursos genéticos, conocimientos tradicionales y Folclore de la OMPI .</p>	<p>No existen</p> <p>Tema en discusión en el WG/ABS</p> <p>Tema en discusión en el WG/ABS</p>	<p>Ley de Biodiversidad N^o 7788 y Decreto Ejecutivo N^o 31-514 MINAE del 15 de diciembre 2003 deominadas: “Normas Generales para el acceso a los elementos y recursos Genéticos y bioquímicos de la biodiversidad son definidos como elementos y recursos bioquímicos y en Acta de Biodiversidad (Ley de Biodiversidad) de India</p> <p>Directrices de Bonn sobre Acceso a los Recursos Genéticos y Participación justa y equitativa en los beneficios provenientes de su utilización</p>	<p>XXX</p> <p>No se ha definido</p> <p>Compatibilidad con el sistema de protección de derechos de propiedad Intelectual y es un tema no exigido a nivel internacional</p> <p>XXX</p>	<p>XXX</p> <p>A nivel Internacional y a Nivel Nacional</p> <p>A nivel Internacional</p>

Elementos ^{4/}	Disposiciones pertinentes de los instrumentos globales existentes y procesos pertinentes fuera del marco del CBD ^{5/}	Disposiciones pertinentes de los instrumentos existentes dentro del marco del CBD ^{6/}	Disposiciones pertinentes de los instrumentos nacionales y regionales existentes y procesos pertinentes	Lagunas detectadas	¿A qué nivel deberían atenderse estas lagunas: nivel nacional, regional o internacional?
Medidas de creación de capacidad en función de las necesidades del país. (xvii)	No existen	Directrices de Bonn sobre Acceso a los Recursos Genéticos y Participación justa y equitativa en los beneficios provenientes de su utilización	Ley de Biodiversidad N ^o 7788		A nivel internacional y a nivel nacional
<i>Erradicación de la pobreza</i> Medidas para promover arreglos de acceso y participación en los beneficios que contribuyan al logro de las Metas de Desarrollo del Milenio, en particular en materia de erradicación de la pobreza y sostenibilidad ambiental; (vii)	Cumbre de Johannesburgo	Algunos procesos dentro del CDB en el tema de conservación y uso sostenible de la biodiversidad Algunos procesos en las Naciones Unidas	Algunos procesos en el seno de las Naciones Unidas	XXX	A nivel Internacional

EUROPEAN UNION

Information on the basis of the matrix in Annex B

The European Union attaches Annex B with contributions to the five columns for each of the elements identified by the Working Group. In doing so, it wishes to make the following observations:

- although the columns include relevant material identified by the Member States and the Commission, the material gathered is certainly not comprehensive.
- existing instruments that are relevant to more than one of the elements identified by the Working Group, are mentioned more than once in the matrix.
- the first three columns of the matrix⁷ contain information of a largely factual nature.
- information provided in the final two columns of the matrix⁸ is more subjective in character.
- in the second, and in particular in the third column of the matrix, instruments of relevance for specific EU Member States are presented in *italics*. The respective Member State(s) are identified when appropriate.

In the third column dealing with existing regional and national instruments and relevant processes, the EU has not included instruments adopted in or applying exclusively to regions/countries outside the EU: as we expect these regions / countries to mention them in their own submissions, unless they consider them inappropriate.

Overall, the matrix provides a detailed and complex picture of existing instruments and provisions at the international, regional and national levels and of potential gaps and measures to fill them. When combined with information provided by other Parties, Governments, indigenous and local communities, international organisations and relevant stakeholders, the information contained in the matrix will become even more difficult to access.

Against this background, and in order to assist the use of the wealth of information contained in the matrix, the EU has decided to add a summary assessment of its analysis of the matrix to this submission. This summary assessment identifies six areas where relevant gaps appear to exist and suggests possible solutions to address them. The EU sincerely hopes that this innovation is welcome and useful.

For convenience, this summary assessment is also shown below:

^{7/} i.e.: Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD; Relevant provisions of existing international instruments within the framework of the CBD; Relevant provisions of existing regional and national instruments, and relevant processes.

^{8/} i.e.: Identified gaps; At what level, national, regional or international, and how should the gaps be addressed?

<p>Summary assessment of major gaps and possible manners of filling them based on the analysis contained in the matrix in Annex B of the SCBD Notification</p>	
<p>Major gaps remaining:</p> <p>1. Awareness raising and education of administrators and stakeholders in the public and private sectors at all levels and in the institutions of all Parties: lack of awareness on the concepts and requirements of ABS issues is a major impediment to driving forward implementation.</p> <p>2. Overall there is a lack of transparency in relation to national legislation and/or procedures on ABS, accompanied by an insufficient use of existing available instruments: obvious examples, CBD lists of national focal points (NFP) and national competent authorities (NCA) are incomplete.</p> <p>3. Where provisions exist, facilitated access (i.e. regulated/controlled access, promoting benefit-sharing and without hindering actual access) is rarely practical and effective. This fundamental element needs to be addressed since without facilitated access there are no benefits to share.</p> <p>Relevant reasons include:</p> <ul style="list-style-type: none"> - a diversity of national authorities dealing with the various aspects of ABS leads to confusion, lack of effectiveness, etc and consequently intentionally or not, national legislation often impedes access due to delays, unnecessary bureaucracy, the lack of explicit procedures. It can even lead to legal uncertainty as regards authority of the different bodies and stakeholders involved in access granting procedures. These difficulties have hindered the potential for benefit-sharing; - where indigenous and local communities are involved, identifying authorised representatives and relevant laws and customs can be an impediment to recognising the rightful entities to whom benefits might accrue. 	<p>Possible manner of filling gaps:</p> <p>1. Not generally amenable to legislation and regulation. Increased use of and awareness of CBD web-site, regional and national web-sites etc. Initiatives at national level to promote, encourage and educate through a range of instruments: publicity, stakeholder meetings, requirements of practicing institutions, etc.</p> <p>2- Wide use of available mechanisms facilitated by the SCBD: website with lists of NFP and NCA.</p> <p>3 - Legislation needs to be reviewed. Clarification and simplification of procedures should be encouraged. Best practice on PIC and MAT and government experience with administration of ABS should be shared., particularly:</p> <ul style="list-style-type: none"> - cohesive arrangements and coordination among competent authorities, dealing with all elements should be encouraged to address these deficiencies; - the resolution of identification etc of indigenous and local communities is a matter for national/regional consideration.

<p>4. Current arrangements usually fail to link benefits with biodiversity conservation. In addition, regulations governing access rarely provide for measures to guarantee that bioprospecting will not be detrimental to biodiversity conservation.</p> <p>5. Often, there is no ready differentiation between the access of material purely for scientific research purposes and potentially for commercial purposes: this is currently discouraging scientific collaboration.</p> <p>6. Monitoring of PIC an MAT is hindered by the fact that from the process from the provision of genetic resources to the commercialisation of products is long and complex and the commercial products using genetic material do not allow for ready identification of the origin or source of material.</p>	<p>4. National regulation could be reviewed to take into account any detrimental effects of bioprospecting on biodiversity.</p> <p>5. Any new aspects of an international regime on ABS should address this fundamental issue: this would need to recognise the global implications of the distinction between access of genetic resources for scientific collaboration and for potential commercial gains the benefits of which need to be shared. They should also be consistent with the FAO International Treaty on plant genetic resources for food and agriculture with regard to the genetic resources covered by the Multilateral System of the IT.</p> <p>6. The EU proposal to WIPO to include the disclosure of origin in patent applications as a formal condition is an important element that could enhance benefit-sharing. The Clearing House Mechanism could have an enlarged role for example, as recipient of the notifications of disclosure of origin in patent applications.</p>
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Note: This table results from a technical analysis of the available information. It should not however be necessarily assumed that the EU will seek to promote these very provisional 'conclusions' at ABS 4. This will be dependent on a number of factors, particularly the matrix information provided by other Parties, etc.

Analysis of gaps

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
<i>Access</i> Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)	- Article 12 and Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA) - FAO International Code of conduct for Plant Germplasm Collecting and Transfer	Information on national access legislation on the CHM Measures by the Provider: - CBD (Art. 15.2, 15.5, 15.6) - Bonn Guidelines (Section IV A, B and C) Measures by the User: - Principles and	- Designation of National focal points on ABS and National Competent Authorities. For example: Ministerial Declaration on Access and Rights to Genetic Resources in the Nordic Countries 2003 paragraphs 3, 5, 8-15 and 18 (see www.nmr.dk) - Strategy for Genetic resources in the Fisheries, Agriculture, Forestry and Food Sectors of the Nordic	- Insufficient use of existing instruments (ABS NFP) - Lack of transparency on national ABS legislation and procedures - Where provisions exist, facilitated access (i.e. regulated/controlled access, promoting benefit-sharing and	- Access and MAT concerning genetic resources are under specific national legislations or under national ownership and contract laws. MAT are under the international civil laws and rules and shall also be considered as such. - International guidance, such as that provided by the Bonn Guidelines (see Section IV. A, B, C) might be useful. However, implementation

^{9/} The Roman numerals in parenthesis following each element refer to the numbering of that element under heading (d) of the annex to decision VII/19 D.

^{10/} Please take into account the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

^{11/} Please refer to the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

^{12/} Additional information compiled by the Secretariat is available in documents UNEP/CBD/WG-ABS/3/2 and UNEP/CBD/WG-ABS/3/5.

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
	<p>- FAO Conference Resolution 4/89 (Art. 5a).¹³</p> <p>Move explanation to footnote. Add also reference to the International Undertaking which the International Treaty has not superseded</p>	<p>Common Policy Guidelines for Botanical Institutions, sections on acquisition. In particular: in order to obtain PIC a full explanation of how Genetic Resources will be acquired and used must be given.</p> <p>International</p>	<p>Region 2005-2008 (see www.nmr.dk)</p> <ul style="list-style-type: none"> - The Swedish Scientific Council on Biodiversity is currently preparing a Handbook on the collection of biological material, including the aspects of access and benefit-sharing, with the purpose to assist scientists avoiding legal pitfalls - National Access 	<p>without hindering actual access) has rarely been effected by practical and efficient measures.</p> <p>-Intentionally or not national legislation has often impeded access due to delays, unnecessary bureaucracy, the lack of explicit PIC mechanisms and</p>	<p>efforts at the regional/ country-level need to reflect local conditions and requirements.</p> <p>- Section V.B of the Bonn Guidelines suggests mechanisms to promote accountability by all stakeholders involved in ABS.</p> <p>- Principles and Common Policy Guidelines for Botanical Institutions, sections on acquisition are examples on how to provide guidance on how</p>

^{13/} In the context of the International Undertaking on Plant Genetic Resources for Food and Agriculture Art. 5(a) of FAO Conference Resolution 4/89 (included as Annex I of the IU) contains an agreed interpretation to clarify that “free access” does not necessarily mean free of charge but can embrace a range of transfers. Furthermore, the IT specifically deals with the processes necessary for facilitated access.

^{14/} Available at: <http://bccm.belspo.be/mosaicc/docs/code.pdf>.

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
	<p>- The Consultative Group on International Agricultural Research (CGIAR) holds in public trust one of the world's largest ex-situ collections.</p> <p>Draft Agreement between the ITPGRFA Governing Body and the International Agricultural Research Centres.</p> <p>Micro-Organism Sustainable Use and Access</p>	<p>Plant Exchange Network (IPEN) Code of Conduct on the acquisition, maintenance and supply of plant material for botanic gardens and similar collections (Art. 1).</p>	<p>Legislation, for example: Philippine Executive Order n°247, Andean Pact Decision n° 391, Indian Biodiversity Bill, etc (non-exhaustive list; to be completed by other regions).</p>	<p>uninformed national authorities.</p> <p>- Access regulations rarely provide for measures to guarantee that bioprospecting will not be detrimental to biodiversity conservation.</p>	<p>the user should operate. Similar approaches could be introduced for other stakeholders/ in other fields (e.g. public research institutions, institutions funding research) at the international/ regional/ national levels.</p> <p>- Facilitated access does not mean uncontrolled access: this could usefully be clarified.</p> <p>Capacity building and</p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
	<p>Regulation International Code of Conduct (MOSAICC) ^{14/}</p> <p>International Agricultural Research Centres of the CGIAR.</p> <p>International Databases on plant (VIEWS) and animal (Dad-IS) genetic resources.</p>				<p>financial resources for development co-operation is needed to improve processes and decisions procedures on access to genetic resources at national level.</p> <p>National regulation could be reviewed to take into account any detrimental effects of bioprospecting on biodiversity.</p>
<p>Ensuring benefit-sharing</p> <p>Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the</p>	<p>- Articles 12.4 and 13 of the ITPGRFA.</p> <p>- In the framework of the</p>	<p>- CBD (Art. 15.7)</p> <p>- Bonn G (Section IV.D.3 and Appendix II)</p> <p>- Principles and Common Policy</p>	<p>- The Nordic Ministerial Declaration on Access and Rights to Genetic Resources (para. 11) recommends the Nordic Gene Bank to consider</p>	<p>- This fundamental element needs to be addressed in order for the provisions of the CBD to be achieved and for wider objectives</p>	<p>- Bonn G set fair and practical conditions in Section IV.D.3 and Appendix II.</p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
Convention; (ii)	<p>ITPGRFA the level, form and manner of benefit-sharing payments for using genetic resources taken from the Multilateral System is currently debated in negotiations on the standard Material Transfer Agreement..</p> <p>- The 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV). Arts.</p>	<p>Guidelines for Botanical Institutions: section on Benefit-sharing. In particular, regarding examples of non-monetary benefits: “benefits in kind such as augmentation of national collections in the country of origin and support of community development activities, training in science, conservation and management and IT administration.”</p>	<p>the use of the provisional MTA, which now is used by international agricultural research centres, until the adoption of the standard MTA for the Multilateral System</p> <p>Council Regulation (EC) 2100/94 of 27 July 1994 establishing in line with UPOV a Community system of plant variety right protection</p>	<p>such as the Millennium Development Goals to be realised.</p> <p>- Difficulties in access have resulted in minimal benefit-sharing. (See entry on ‘access’ above).</p> <p>-Often a diversity of national authorities dealing with the various aspects of ABS leads to confusion, lack of effectiveness, etc: cohesive arrangements and coordination among the competent authorities ,</p>	<p>- At national level the same mechanisms to grant access could be used to ensure and monitor the benefit sharing and the distribution of those benefits.</p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
	<p>15.1 and 15.2.</p> <p>- The UPOV Convention provides a sui generis form of intellectual property protection which has been specifically adapted for the process of plant breeding and has been developed with the aim of encouraging breeders to develop new varieties of plants.</p> <p>Work of the WIPO in relation to disclosure of genetic</p>	<p>- The IPEN Code of Conduct for Botanic Gardens (Art. 2.3)</p>		<p>dealing with all elements should be encouraged to address these deficiencies.</p> <p>-Current arrangements fail to link benefits with biodiversity conservation. (An issue also identified relating to facilitated access).</p> <p>- Contrary to paragraph 48 of the Bonn Guidelines, some arrangements fail to link benefits with biodiversity conservation</p>	

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
<p>Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)</p> <p>Measures for benefit-sharing including, inter alia, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p>	<p>resources</p> <p>Micro-Organism Sustainable Use and Access Regulation International Code of Conduct (MOSAICC)</p> <p>International Agricultural Research Centers of the CGIAR</p> <p>International data bases on plant (VIEWS) and animal (Dad-IS) genetic resources</p> <p>Ditto</p>				
<p>Promoting benefit-sharing</p> <p>Measures to promote and encourage collaborative scientific research, as</p>	<p>- ITPGRFA (Arts. 12.4 and</p>	<p>- CBD (Art. 15.6 and 15.7)</p> <p>- Common</p>	<p>- Ad hoc bilateral/multilateral arrangements as promoted by, for</p>	<p>- PIC and MAT processes rarely differentiate between</p>	<p>- National legislation needs to be framed in the light of these gaps and</p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)	13) – FAO Global Plan of Action for the conservation and sustainable use of plant genetic resources for food and agriculture, FAO Global Strategy on farm animal genetic resources	Policy Guidelines for Botanical Institutions includes examples of written Material Transfer Agreements for non-commercial purposes. - IPEN Regulations	example the UK's Darwin Initiative introduced in 1992 to encourage collaborative scientific research and the practical implementation of its results for biodiversity conservation. National Research for Development Organisations (France : CIRAD, IRD) – National or Regional funding for research in cooperation	acquisition for scientific purposes (e.g. taxonomy) and commercialisation. This provides a disincentive for partnerships, slowing down the rate of scientific progress as well as reducing the potential sharing of non-monetary benefits in the context of non-commercial scientific research cooperation (e.g., exchange of researchers, joint research projects).	difficulties.
Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization	As above.	As above.	As above. -See also Nordic Council of Ministers	As above.	As above.

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
of genetic resources; (v)			Declaration and Strategy above as well as implementation measures taken by the Nordic Gene Bank which state that all material held by the NGB is under open access and is part of the Multilateral system. No demands for benefit-sharing will be made when handing out material		
Recognition and protection of rights of indigenous and local communities Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv) Customary law and traditional cultural practices of indigenous and	- ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (especially Articles 4, 5, 7 and 13-19) which is a partial revision of	- CBD Art. 8(j) and decisions related thereto. - Bonn Guidelines, para. 31.		-Identifying authorised representatives as well as relevant laws and customs from these communities is often a very difficult and lengthy process. Identifying prior	- Governments should identify relevant representatives and customary laws so that potential users are not overburdened with procedures and unnecessary delays in the granting of PIC and in the agreeing of benefit-sharing.

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
<p>local communities; (xvi)</p> <p>Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)</p> <p>Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)</p>	<p>Convention No. 107 on Indigenous and Tribal Populations. - Draft UN Declaration on the Rights of Indigenous Peoples.</p> <p>ITPGRFA (Art. 9.2(a) on Farmers' Rights)</p> <p>WIPO's work on recognition of prior art in the use of genetic resources</p>			<p>art in use of genetic resources.</p>	<p>- Formal legislation is unlikely to assist this procedures.</p> <p>- WIPO's work on recognition of prior art should be concluded.</p>
<p>Derivatives</p> <p>Addressing the issue of derivatives; (xii)</p>		<p>A very specific and tailor-made definition only for their</p>		<p>- There is no common understanding of what is meant by derivatives.</p>	

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
		<p>purposes is to be found in the Principles and Common Policy for Botanical Institutions Guidelines line: Derivatives includes, but are not limited to any progeny, extracts and compounds obtained from genetic resources and analogues of those compounds”</p>			
<p><i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i></p> <p>Monitoring, compliance and enforcement; (xx)</p> <p>Dispute settlement, and/or arbitration, if and when necessary;</p>	<p>- Art. 12.5 of the IT.</p> <p>- Dispute settlement/arbitr</p>	<p>- Bonn Guidelines Section V, (B,C,E,F)</p> <p>- CGIAR: policy statements of ABS relevance of particular</p>	<p><u>Arbitration</u> : in France, the New Civil Code of Procedure governs international arbitration in its articles 1492 to 1507</p>		<p>- Disputes between parties agreeing on MAT must be resolved by domestic law.</p> <p>- Bonn Guidelines: relevant provisions could be implemented</p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
(xxi)	<p>ation is likely to be covered in the standard MTA of the ITPGRFA</p> <p>International conventions on conflicts arising from international contracts : <u>conflict of laws and jurisdiction</u> (European Community Convention on the Law Applicable to Contractual Obligations (Rome, 1980), Convention on the Law Applicable to Agency (The Hague, 1978)) ;</p>	<p>relevance are those that deal with aspects of third person use of genetic material delivered by the <i>CGIAR</i> institutes.</p> <p>ditto</p>			<p>nationally.</p> <ul style="list-style-type: none"> - Compliance with the provisions of PIC should be a matter for the provider country. - Compliance with MAT should be embedded in the contractual arrangements under which the MAT functions, using the provisions of civil law.

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
	<u>Conciliation</u> (Resolution 57/18 UNGA);				

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
<p>Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi)</p> <p>Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)</p>	<p>Judicial cooperation at the different procedural stages:</p> <ul style="list-style-type: none"> - <u>Investigation</u> through the Convention on the Taking Evidence Abroad in Civil or Commercial Matters (The Hague, 1970); - <u>Notification of judicial actions</u>, through the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial 	<p><i>Ditto</i></p> <p><i>Ditto</i></p>	<p>National or regional regimes of judicial assistance helping legally and financially poor stakeholders to get access to national courts (exists in all EU members, and organized through an EU network ; in France, judicial assistance is defined by law no 91-1266, 18 December 1991, and open to non-nationals)</p>		

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
	<p>Matters (The Hague, 1965);</p> <p>- <u>Enforcement of arbitral awards</u> through the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1965)</p>				

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
<p>Functioning of the international regime</p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some in situ genetic resources and associated traditional knowledge; (viii)</p> <p>Means to support the implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p> <p>Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii)</p> <p>Disclosure of origin/source/legal</p>	<p>The Patent Law Treaty and the Patent Cooperation</p>		<p>Databases held by national patent offices</p>		<p>- These might be key components/instruments of any new international regime on ABS.</p> <p>- Inst. Issues: The Clearing House Mechanism (CHM) could have an enlarged role for example, as recipient of the notifications of disclosure of origin in patent applications.</p> <p>- <i>The</i></p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
<p>provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p> <p>Capacity-building measures based on country needs (xvii)</p>	<p>Treaty governed by the World Intellectual Property Organization (WIPO) are relevant for disclosure of origin/ source/ legal provenance. Potential amendments to these agreements are currently being debated in WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)</p>		<p>(where the origin of the genetic resource is part of the description of the invention).</p>		<p>EU proposal to WIPO to include the disclosure of origin in patent applications as a formal condition is a very important element facilitating the possibilities for the sharing of benefits arising from the use of genetic resources.</p> <p>- Capacity building measures at national level with international contributions will be a key element to raise awareness among officials and operators. Need to set up necessary mechanisms to have a coherent ABS strategy in every Party, though it should not be necessary to legislate for this.</p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
	<p>Paragraph 19 of the Doha Declaration, instructs the TRIPS Council to continue the review of Article 27.3(b) TRIPS, and to examine the relationship between TRIPS and CBD and (TK)</p>				
<p>Poverty eradication</p> <p>Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p>					<p>- National authorities should set up the mechanisms so that the benefits from the granted access revert to conservation of the environment of the local communities. These could cover, for example,</p>

<i>Elements ^{9/}</i>	<i>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{10/}</i>	<i>Relevant provisions of existing international instruments within the framework of the CBD ^{11/}</i>	<i>Relevant provisions of existing regional and national instruments, and relevant processes ^{12/} (see endnotes)</i>	<i>Identified gaps</i>	<i>At what level, national, regional or international, and how should the gaps be addressed?</i>
					environmental education programmes, sustainable projects which would help in the fight against poverty.

INDIA ANALYSIS OF GAPS					
Elements	Relevant Provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>1. Access</p> <p>Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>	<p>- ITPGR- Articles 10 to 15, specify use for which access shall be facilitated (Art 12.5), SMTA facilitated access according to SMTA contain provisions related to access as well as benefit-sharing and the recipient shall require that these conditions of MTA apply to transfer of plant genetic resources for food and agriculture. However scope of SMTA is restricted to the crops as given in annex –1 which are primarily in food and agriculture (Art 12.4). Therefore it does not serve the overall objectives of</p>	<p>- CBD Articles 15.1 and 15.2 stipulate that the states have authority to regulate access and that each party facilitates access for environmentally sound purposes and not impose restrictions that are counter to CBD</p> <p>- The Bonn Guidelines (2001) provides for a framework to operationalize the access procedures at international level, while respecting the national legislations on the ABS in respective member countries/parties to CBD.</p> <p>- The international Regime on ABS being</p>	<p>- Andean Community Common Regime 1996 Central American Agreement 2001 –Draft African model Legislation 2000 – Draft ASEAN Framework Agreement - All have provisions to promote access to genetic resources for environmental sound uses</p> <p>- Biological Diversity Act (BDA), 2002 of India</p> <p>Article 3 and 7 of BDA stipulates norms for access to biological resources (include genetic resources and associated TK) in three ways: Access to biological</p>	<p>- Absence of uniform standards and procedures for access regimes at national/regional level</p> <p>- Many countries are yet to enact their Access, Legislations and Rules</p> <p>- Developing countries are holders of genetic resources and associated traditional knowledge. Bonn Guidelines addresses the issue of access and benefit sharing, however these are only guidelines. Enactments have taken place only in countries</p>	<p>- The gaps should be addressed at national, regional and international level, considering the transboundary nature of certain genetic resources and associated TK. The gaps could be address by way of regional understanding among and harmonizing the Access provisions to make them legally binding and implementable at international level.</p> <p>- There are thus practically no mechanisms of any practical value. Till</p>

	<p>access and benefit sharing in GR and TK</p> <ul style="list-style-type: none"> - UPOV 1991, facilitates access to modified genetic material by recognizing a limited research exemption to the plant breeders' rights - ILO 169 (Articles 14 &15) provide for the tribal and indigenous people the rights to their traditional lands and biological resources in their territories - TRIPS - No specific measures. However, as per Doha Declaration para 19, countries were to make submission to TRIPS council on the genetic resources-traditional knowledge issue - WIPO – has established Inter-Governmental Committee on 	<p>negotiated by CBD and Regional Associations such as LMMC, EU, African Union, Andean Community, Organization, etc, focuses the discussions on transparent and implementable legal provisions for the access to genetic resources by CBD parties</p> <p>- Bonn Guidelines contain clear guidelines on access (IV A para 23-44) as well as standardized MTA [IV D 42 (b) (ii)]</p>	<p>resources and TK to foreign citizens, companies and NRI's based on prior approval of National Biodiversity Authority (NBA)</p> <p>Access permits to Indian citizens, companies, associations and other organizations registered in India on the basis of prior intimation to the State Biodiversity Board concerned</p> <p>Exemption of prior approval or intimation for local people and communities, including growers and cultivators of biodiversity, and vaidis and hakims, who have been practising indigenous medicines</p> <p>-Biological Diversity Rules 2004 – India- Rules 14 (1-10 subrules) provide for the key procedures to be followed for access to biological resources and TK. These</p>	<p>such as Costa Rica, Peru, Portugal, India, Brazil, Venezuela, Philippines, which are all developing or least developed countries. Traditional knowledge and genetic resources normally get exploited by MNCs located in developed countries who do not support such laws. After Doha declaration (2001), few of European countries including Switzerland have made similar submissions as developing countries on the following: Indication of source of origin, PIC and evidence of equitable benefit sharing. EU has agreed on indication of source of origin. However other developed countries are not in agreement. ITPGR is the only one to directly refer to access and benefit sharing, however its scope is restricted to the list of crops in annex I.</p>	<p>proper mechanisms can be agreed upon, regional co-operation is essential as well as comprehensive documentation of genetic resources and traditional knowledge in the intervening period.</p>
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	<p>intellectual property (IP), genetic resources (GR), traditional knowledge (TK) and Folklore. This Committee had so far had eight meetings. During IGC 8 model provisions on TK and folklore were submitted, since consensus was lacking, it is unlikely that any <i>sui-generis</i>, legal framework binding or otherwise for access and benefit sharing will get agreed upon in near future</p> <p>- Principle 2 of Rio Declaration</p>		<p>procedures are laid out by adhering to the basic principles of prior informed consent and mutual agreed terms.</p> <p>The BDA 2002 and BDR 2004 have provisions for restricting access to biological resources and TK if the request is on :</p> <p>(i) endangered taxa (ii) endemic rare taxa (iii) adverse and irrecoverable environmental impact (iv) cause genetic erosion or affect ecosystem functions (v) purpose contrary to national interests and other related international agreements to which India is a Party</p>		
<p>2. Ensuring benefit-sharing</p> <p>Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and</p>	<p>- ITPGR (2004) Articles 13(13.1, 13.2, 13.3, 13.6), 17.1, 18.4 deals with fair and equitable benefit sharing arising from the use of genetic resources accessed through the multilateral system under mutually agreed</p>	<p>- Article 15.7 of CBD stipulates Parties to take legislative, administrative, or policy measures to share benefits from research and development and commercialization equitably and on mutually agreed terms.</p>	<p>- India –BDA 2002 and BDR 2004</p> <p>Art. 21 of BDA and Rule 20 of BDR insist upon including appropriate benefit-sharing provisions in the access agreement and mutually agreed terms related to access and transfer of biological resources or knowledge</p>	<p>- Lack of uniform standards or statutes for benefit-sharing</p> <p>- Transboundary nature of certain genetic resources and associated knowledge pose difficulties in framing uniform measures for benefit sharing.</p>	<p>- National, international and international levels.</p> <p>- Benefit sharing can be ensured only if the laws are abided in the countries where the resources are being exploited. There should be specific provisions for protection of</p>

<p>other utilization of genetic resources in accordance with Article 15.7, 16, 19.1, 19.2 of the Convention; (ii)</p>	<p>terms. - WIPO and TRIPs Refer above - UPOV - Exception to Breeder's right indirectly facilitates benefit sharing</p>	<p>- Bonn Guidelines (2001) provides for detailed procedural steps for implementing benefit sharing arising out of sustainable use of genetic resources. Bonn Guidelines - IV (3) deals with benefit sharing terms and conditions as well as mechanisms for the same (para 45-50)</p>	<p>occurring in or obtained from India for commercial use, bio-survey, bio-utilization or any other monetary purposes. The suggested benefit sharing may include ‘ ‘monetary’ or ‘non-monetary benefits’</p> <p>- The Biological Diversity Act -Benefit sharing is included in Section 6 of the Act. The NBA will define benefit-sharing conditions as under Section 18 (1). NBA shall also provide guidelines for benefit sharing</p> <p>- Andean Community Common Regime 1996 Art. 2.9 establishes conditions for benefit sharing of Article 35 – also insists for sharing of profits from use of intangible components</p> <p>- Central American Agreement Draft 2001 Article 19-stipulates that benefit-sharing to be determined as case to case basis</p>	<p>- Lack of uniformity in provisions for PIC for access in national/regional legislations is another major shortfall in framing a common regime for benefit sharing.</p> <p>- In some countries where the laws have been enacted as listed above, benefit sharing provisions exist, but when the genetic resources and traditional knowledge get exploited in another country with no such laws, fair and equitable sharing cannot be ensured.</p>	<p>genetic resources and traditional knowledge at an international level.</p>
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<p>3. Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)</p>	<p>- ITPGR 2004 – Art. 15.3 deals with benefit sharing in accordance with mutually agreed terms</p> <p>- ITPGR – does not directly refer to Mutually Agreed Terms (MAT) but Art 13.2(d) defines</p>	<p>- CBD – Art. 15.4 stipulates access based on mutually agreed terms (MTA)</p> <p>- Bonn Guidelines provide the scope, content for MTA</p>	<p>- African Model Legislation draft 2000 Article 2.3., Art. 8.1 9vi), Art. 12 – dealing with benefit sharing provision</p> <p>- ASEAN Framework Agreement –Draft 1996</p> <p>- Benefit sharing negotiations are to be at the discretion of each Party. Calls for full disclosure of benefits and risks while negotiating for benefit sharing.</p> <p>- Suggests of collective discussions by Parties on the terms and conditions of benefit sharing</p> <p>- Regional and national instruments like BDA 2002 have provisions to promote benefit sharing based on mutually agreed terms</p>	<p>- Lack of uniform standards or statutes for benefit-sharing</p> <p>- Transboundary nature of certain genetic resources and associated knowledge pose difficulties in framing uniform measures for benefit</p>	<p>- National, international and international levels.</p> <p>In view of genetic resources and traditional knowledge being exploited in countries not original holders of these, there have to be precise provisions to ensure that the country of</p>
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measures to achieve commercial benefit sharing for the benefit of countries with economies in transition & Art 13.3 deals with benefit sharing

sharing.

- Lack of uniformity in provisions for PIC for access in national/regional legislations is another major shortfall in framing a common regime for benefit sharing.

- As stated above there is a lack of mutual consensus among the developed and developing countries regarding access and benefit sharing provisions. In absence of such provisions MAT has not got due recognition.

origin gets its due recognition.

<p>4. Measures for benefit-sharing including, inter alia, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p>	<ul style="list-style-type: none"> - ITPGR 2004 – Art. 15.3 deals with benefit sharing in accordance with mutually agreed terms - UPOV – No provisions specifically for benefit sharing or its promotion 	<ul style="list-style-type: none"> - CBD – Art. 15.4 stipulates access based on mutually agreed terms (MTA) - Bonn guidelines IVD 46 clearly defines types of benefits, i.e., monetary and non-monetary including examples as given in Appendix II of the Guidelines. 	<ul style="list-style-type: none"> - Regional and national instruments like BDA 2002 have provisions to promote benefit sharing based on mutually agreed terms 	<ul style="list-style-type: none"> - Lack of uniform standards or statutes for benefit-sharing - Transboundary nature of certain genetic resources and associated knowledge pose difficulties in framing uniform measures for benefit sharing. - Lack of uniformity in provisions for PIC for access in national/regional legislations is another major shortfall in framing a common regime for benefit sharing. 	<ul style="list-style-type: none"> - National, international and international levels
<p>5. Promoting benefit-sharing Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i) Measures to promote and safeguard the fair</p>	<ul style="list-style-type: none"> - ITPGR 2004 – Art. 15.1(b), 111; 15.2 & 15.3 include provisions for collaborative scientific research and technology transfer through the multilateral systems of access to genetic resources for food and agriculture. - ITPGR - Art. 13 (d) specifically mentions sharing of monetary and other benefits of 	<ul style="list-style-type: none"> - CBD –Articles 15.7, 19.1 deals with this. Bonn Guidelines (2001) includes technology transfer and collaborative research as items under MATs and Benefit-Sharing agreements - Bonn Guidelines IV D 48, is related to distribution of benefits which should be shared equitably with all those who have contributed including governmental and non-governmental or 	<ul style="list-style-type: none"> - India –BDA 2002 (Section 21(1) and BDR 2004 include relevant provisions for promoting collaborative scientific research, Biosurvey, bioutilization, commercial research, etc with the prior approval of the NBA 	<ul style="list-style-type: none"> - Absence of an internationally acceptable and legally binding ABS regime curtails the scope for collaborative scientific research among member countries - Absence of national legislations to deal with ABS and related biodiversity issues in many countries is a major gap 	<ul style="list-style-type: none"> - At national, regional and international level. Through MOUs for regional or international cooperation for scientific research and development involving the use of genetic resources and /or associated TK - There must be global mechanisms for implementation in absence of which the parties to collaborative research may not be

<p>and equitable sharing of benefits arising out of the utilization of genetic resources; (v)</p>	<p>commercialization.</p> <p>- Art. 13.2 of ITPGR refers to benefits arising from use including commercial of plant genetic resources.</p>	<p>academic institutions</p> <p>- Bonn Guidelines IVA 22 deals with utilization of biodiversity access and benefit sharing systems</p>		<p>- Collaborative research or commercialization must be such that both parties must benefit from it. Mere guidelines will not ensure the promotion of interest of specially the developing countries.</p>	<p>bound by any protocols. Till this happens, developing countries need better understanding of IPR issues and provisions such as MTAs.</p>
<p>3. Recognition and protection of rights of indigenous and local communities</p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located;(xv)</p> <p>Customary law and traditional cultural practices of indigenous and local communities; (xvi)</p> <p>Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable</p>	<p>- ITPGR 2004, Art. 9.2 (b) has provisions to ensure protection of Farmers' rights.</p> <p>- ITPGR – There is no specific reference to indigenous/local communities, only promotion farmers and local communities efforts to conserve farm plant genetic resources is mentioned (Art. 5(c))</p> <p>- WIPO-IGC- 2001 is working on the modalities for recognizing and protecting the rights of local and indigenous communities</p> <p>- Principle 22 of Rio Declaration</p>	<p>- CBD Art. 8(j)</p> <p>CBD's Adhoc working Group on Traditional Knowledge is working on the issues involved in Protection of the rights of Indigenous and local communities.</p> <p>- Bonn Guidelines - Respecting established legal rights of indigenous and local communities whose genetic resources and traditional knowledge are being accessed, the following paras are relevant: (28, IV C), II in responsibilities, C 16, IVC 26 and III 19)</p>	<p>- Central American Agreement Draft 2001</p> <p>Art. 31, 35 includes provisions to provide the local communities to have the rights to provide PIC for access and object to access, which the national authority must take into account</p> <p>-African Model Legislations Draft 2000</p> <p>Article 5 - National Competent Authority to verify the PIC of local communities</p> <p>Article 18 – Access to biological resources subject to PIC of local communities</p> <p>-ASEAN 1996 – suggests that PIC procedures must provide for direct</p>	<p>- No international legislations exists that accord, protection of TK and recognize their customs as well as intellectual property.</p> <p>- Though local and indigenous communities are recognised nationally, there is a general lack of awareness and there is no international instrument to address this aspect with respect to access & benefit sharing. Protection must include positive rights and effective safeguards against illicit use and its commercialization.</p> <p>- Customary law and cultural practices of indigenous and local communities vary greatly, will pose a huge threat for its survival</p>	<p>- No international legislations exists that accord, protection of TK and recognize their customs as well as intellectual property.</p> <p>- There is a need for separate bodies to address local and indigenous communities to educate them about genetic resources & traditional knowledge at national level and guidance and protection instruments at international level. Also the issue of documented TK is to be addressed.</p>

<p>sharing of benefits with indigenous and local communities; (xviii)</p>	<p>- Article 1 of International Covenant on Civil and Political Rights 1966</p> <p>- Article 22 Universal Declaration of Human Rights</p>		<p>involvement of resource providers.</p> <p>- India – BDA 2002 & BDR 2004 Art 36.5 –accords for protection of traditional knowledge of local people/traditional communities</p> <p>- The Biological Diversity Act – Section 7 exempts local people, in the area, including vaid and hakims who have been practising indigenous medicine. Section. 21(1) includes concerned local bodies in the benefit sharing process, section 21(2) (d) also includes local people.</p>	<p>since PIC not a mandatory criteria in most nations.</p> <p>- Countries such as India have a wealth of documented knowledge, areas of concern in which would need special treatment.</p>	
<p>Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)</p>	<p>- WIPO- IGC on IP, TK, GR and Folklore –is considering the incorporation of PIC of local and indigenous communities in ABS as well as Intellectual property frameworks</p> <p>- ITPGR - Nothing specific, but Art 21 in general refers to effective procedures and operational mechanisms to promote compliance with provisions of the treaty.</p>	<p>- CBD Art. 8(j) CBD’s Adhoc working Group on Traditional Knowledge is working on the issues involved in Protection of the rights of Indigenous and local communities.</p> <p>- Bonn Guidelines in IV C 25 recommends consent of relevant stakeholders such as indigenous and local communities in accordance to domestic law (IVC 31) whereas para 55 deals with national monitoring on</p>	<p>- Central American Agreement Draft 2001 Art. 31, 35 includes provisions to provide the local communities to have the rights to provide PIC for access and object to access, which the national authority must take into account</p> <p>- African Model Legislations Draft 2000 Article 5 - National Competent Authority to verify the PIC of local communities</p>	<p>- No international legislations exists that accord, protection of TK and recognize their customary as well as intellectual property rights.</p> <p>- In countries where enactments are in place there is a clear provision for PIC. But in most of the developed nations it is not mandatory to even disclose the origin of genetic resources or traditional knowledge</p>	<p>- At national, regional and international level</p> <p>It should be made mandatory where IP is involved to reveal the source of GR and TK when used including PIC from the concerned holder of the genetic resource or traditional knowledge.</p>

		whether their use is in compliance with terms of access and benefit sharing.	<p>Article 18 – Access to biological resources subject to PIC of local communities</p> <p>- ASEAN 1996 – suggests that PIC procedures must provide for direct involvement of resource providers.</p> <p>- India – BDA 2002 & BDR 2004 Art 36.5 –accords for protection of traditional knowledge of local people. The Biological Diversity Act-Under Section 19 approval required for obtaining biological resources as well as for any IPR protection for genetic resources or traditional knowledge</p>	used in IP. Only recently, EU agreed that indication of source of origin may be mandatory for IP.	
4. Derivatives Addressing the issue of derivatives; (xii)	- ITPGR- No specific provision	<p>- Bonn Guidelines – IV D 42(b)(iv) specifies benefit – sharing arrangements of similar sources like genetic resources, their products, derivatives under the MTA [Appendix I B(2)]</p> <p>- Decision 391 of Andean Community defines the term ‘derivatives’.</p>	- Section 21(1) NBA addresses granting of approvals including by-products, innovations, practices, application and related knowledge	- This issue has not been sufficiently addressed in any of the instruments. Its inclusion would prevent the misuse of molecule, combination of molecules, extracts of organisms of biological origin, etc if not properly defined.	- A clear definition of these derivatives should be included in the various instruments at national as well as international levels.
5. Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT	- ITPGR 2004 – Multilateral systems The enforcement and implementation of the multilateral system in accordance with the CBD	- Bonn Guidelines (2001) have been used as a model framework in developing national ABS legislation in several countries. Bonn guidelines provide details of the essential elements of PIC	- Regional instruments... National legislations –India –BDA 2002 & BDR 2004 follow strictly the PIC and MAT procedures in line with the Bonn guidelines and in accordance with the CBD	- India – BDA 2002 – Art. 50 deals with provisions of settlement of disputes between state Biodiversity Board and National Biodiversity Authority or among State	- Regional and international authorities for ensuring that these mechanisms function with equity is necessary. Also a provision in TRIPS Agreement that mandates

<p>Monitoring, compliance and enforcement; (xx)</p> <p>Dispute settlement, and/or arbitration, if and when necessary; (xxi)</p>	<p>provisions need to be monitored. Annex II of ITPGR deals only with arbitration and conciliation mechanisms.</p>	<p>and MTA</p> <ul style="list-style-type: none"> - CBD secretariat has various mechanisms for dispute settlement - Bonn guidelines define mechanisms for promotion in the sense that approvals should be taken and the procedure should be transparent. 	<p>provisions</p> <ul style="list-style-type: none"> - Andean Community Common Regime 1996 Has the first final provision for dispute settlement between member countries in accordance with the ACN law - African Model Legislation 2000 Courts laws only after administrative laws are exhausted - ASEAN 1996 Suggests for settlement of disputes amicably through consultation or negotiations by Members - NBA approval required 21(1) for benefit sharing, monetary compensation, non-monetary benefits. Enforcement: Section 55 makes certain offences punishable under law. Since approval is mandatory, unauthorised use and access is to some extent prevented. 	<p>Biodiversity Boards. The Central Government will be the authority to examine the dispute between NBA and SBB, whereas NBA will be the authority to settle disputes SBBs.</p> <p>- Enforcement is a difficult task unless there is primarily national legislation in place to curb illegal use of another's genetic resource or traditional knowledge. Once wrong patents or IP are issued it becomes a very long winding and expensive affair for the original holders as has been observed previously The basic associated problem is the identification of owners which makes it very difficult to enforce such rights.</p>	<p>patent applicants to disclose source of origin, evidence of PIC and compliance with benefit sharing will ensure that the TRIPS and CBD are implemented in a mutually supportive manner.</p>
<p>6. Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent</p>	<p>- ITPGR 2004 – Articles 12.1, 12.2, 12.3 ensures any unauthorized access and use of any genetic resource accessed through the multilateral system</p>	<p>- CBD and Bonn guidelines (2001) have provisions to deal with the misuse or misappropriation of genetic resource accessed from one Party by another subject to conditions agreed upon in the MAT and MTAs</p>	<p>- Andean Community Common Regime 1996 Third Party Transfer of genetic resources is the second Temporary Provision in Access Agreements. Existing access agreements with third parties to be renegotiated or not renewed according to the criteria to be</p>		

<p>with the Convention on Biological Diversity; (xi)</p>			<p>established by the Andean Committee on Genetic resources</p> <p>- Central American Agreement –Draft 2000 As per Art. 19(b) terms for transfers to third parties required</p> <p>- ASEAN 1996 suggests that terms for Third party transfers to be explicitly spelt out in application for access to genetic resources</p> <p>- India –BDA 2002 & BDR 2004 Art. 20 of BDA 2002 requires prior permission of the country providing genetic resources –BDR 2004 (rules 9, Subrules 1-6) provide conditions and procedures for applying for Third party transfer.</p>		
<p>7. Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)</p>	<p>- ITPGR (2004)</p>	<p>- CBD secretariat has various mechanisms for dispute settlement</p>	<p>- Andean Community Common Regime 1996 Has the first final provision for dispute settlement between member countries in accordance with the ACN law.</p> <p>- African Model Legislation 2000 Courts laws only after administrative laws re exhausted.</p> <p>- ASEAN 1996 Suggests for settlement of disputes amicably through</p>	<p>- India – BDA 2002 – Art. 50 deals with provisions of settlement of disputes between state Biodiversity Board and National Biodiversity Authority or among State Biodiversity Boards. The Central Government will be the authority to examine the dispute between NBA and SBB, whereas NBA will be the authority to settle disputes SBBs.</p>	

			consultation or negotiations by Members.		
<p>8. Functioning of the international regime</p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p> <p>Means to support the implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p> <p>Internationally recognized certificate of origin/source/ legal provenance of</p>	<p>- ITPGR (2004) Multilateral System for Access to genetic resources for food and agriculture will be implemented through national node in each member parties to ITPGR. The national nodes have the responsibility to implement ITPGR objectives at local level. Regional and sub-regional implementation measures need to be streamlined. ITPGR - International cooperation is emphasised in Art 7, Capacity building measures in Art 13 (c) and Art 14 outlines global plan of action. Art 15 talks of International Agricultural Research Centres (IARCs) of CGIAR (Consultative Group of International Agricultural research) to implement the various articles of the treaty. The possible implementation measures for ITPGR (2004) and the proposed International regime for ABS within the framework of CBD needs to be harmonized and implemented at local,</p>	<p>- CBD Secretariat is in the processes of developing the International Regime and its possible implementing mechanisms at various levels through negotiations among Parties, regional association or union of parties, such as EU, LMMC, African union, etc. CBD-ABS WG is also actively working on this.</p> <p>- Bonn Guidelines describe these issues</p>	<p>- LMMC is actively working on the development of a legally binding International regime within the framework of CBD.</p> <p>- The Biological Diversity Act - Biodiversity management committees for documentation and chronicling of knowledge relating to biodiversity (Section 41), Disclosure of origin/ source of genetic resources & traditional knowledge is required under Indian Patent Act Section 10.</p>	<p>- Absence of national legislations in many of the CBD parties.</p> <p>- Mere guidelines do not ensure that are mechanisms in place to put a check on biopiracy since most countries do not require origin/source disclosure of Traditional knowledge /Genetic Resources in IPR.</p> <p>- Disclosure of the source and the country of origin in a patent application would play a significant role in preventing biopiracy and misappropriation.</p>	<p>- National and international level.</p> <p>- It is imperative that disclosure of origin / source be made mandatory to avoid biopiracy. This will avoid the pursuing legal remedies in other countries, which may be complicated and not economically feasible for many aggrieved countries. Also at the international level there is an urgent need to harmonise the provisions of CBD and TRIPS, in the interest of all parties, namely, the stakeholders of biological material /traditional knowledge, the consumer and intellectuals. Article 7 of TRIPS agreement clearly emphasises that the 'protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation in a manner conducive to social and economic welfare and to a balance of right and obligation'.</p>

<p>genetic resources and associated traditional knowledge; (xiii)</p> <p>Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p> <p>Capacity-building measures based on country needs (xvii)</p>	<p>sub regional, regional, national and international level</p>				
<p>9. Poverty eradication Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p>		<p>- Poverty alleviation particularly in developing and least developed countries is an objective of Bonn Guidelines [(E 11 (k))] and provisions related to benefit sharing and sustainable development will indirectly serve this purpose.</p>	<p>- Provisions of Biological Diversity Act indirectly and subtly facilitates poverty eradication through benefit sharing mechanism.</p>	<p>- The absence of specific laws and mechanisms in place make the achievement of this goal a hard task.</p>	<p>- International and regional mechanisms should be evolved in mutual cooperation.</p>

JAPAN

Elements ^{15/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}	Relevant provisions of existing international instruments within the framework of the CBD ^{17/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Access</i></p> <p>Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>	<p>FAO/ ITPGR Art.12</p> <p>UNCLOS § 62-1</p>	<p>Bonn Guidelines</p>	<p>The new Ministry Guidelines on ABS that was put in place on 1 April, 2005 (abbreviated as MGL 2005).</p> <p>National Strategy for the Conservation and Sustainable Use of Biological Diversity</p> <p>Japan has some culture collections. e.g., National Institute of Technology and Evaluation (NITE), Japan Collection of Microorganisms (JCM), National Institute of Agrobiological Sciences (NIAS)</p>	<p>No gaps identified.</p> <p>Japan will continue to accumulate experience with MGL 2005.</p>	

^{15/} The Roman numerals in parenthesis following each element refer to the numbering of that element under heading (d) of the annex to decision VII/19 D.

^{16/} Please take into account the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

^{17/} Please refer to the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

Elements ^{15/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}	Relevant provisions of existing international instruments within the framework of the CBD ^{17/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Ensuring benefit-sharing</i></p> <p>Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention; (ii)</p> <p>Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)</p> <p>Measures for benefit-sharing including, <i>inter alia</i>, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p>	<p>FAO/ ITPGR Art.10-13</p> <p>UNCLOS § 62-2.3.</p> <p>ILO169 Art. 13-19, esp. 14 & 15</p> <p>UNCLOS § 144</p> <p>UNCLOS § 145</p>	<p>Bonn Guidelines</p>	<p>MGL 2005, especially pp. 17-25</p> <p>NITE concluded MOUs with Asian countries to promote fair benefit- sharing.</p>	<p>No gaps identified.</p> <p>Japan will continue to accumulate experience with MGL 2005.</p>	

Elements ^{15/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}	Relevant provisions of existing international instruments within the framework of the CBD ^{17/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Promoting benefit-sharing</i></p> <p>Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)</p> <p>Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v)</p>	<p>FAO/ITPGR</p> <p>Art. 10-13</p>	<p>Bonn Guidelines</p>	<p>MGL 2005, especially pp. 17-25</p> <p>NITE concluded MOUs with Asian countries to promote fair benefit- sharing.</p>	<p>No gaps identified.</p> <p>Japan will continue to accumulate experience with MGL 2005.</p>	
<p><i>Recognition and protection of rights of indigenous and local communities</i></p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv)</p> <p>Customary law and traditional cultural practices of indigenous and local communities; (xvi)</p>	<p>FAO/ ITPGR</p> <p>Art.9</p> <p>ILO169 Art. 23</p>	<p>Bonn Guidelines</p>	<p>MGL 2005, especially p. 24</p>	<p>No gaps identified.</p> <p>Japan will continue to accumulate experience with MGL 2005.</p>	

<p>Elements ^{15/}</p>	<p>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}</p>	<p>Relevant provisions of existing international instruments within the framework of the CBD ^{17/}</p>	<p>Relevant provisions of existing regional and national instruments, and relevant processes</p>	<p>Identified gaps</p>	<p>At what level, national, regional or international, and how should the gaps be addressed?</p>
<p>Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)</p> <p>Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)</p>					
<p><i>Derivatives</i></p> <p>Addressing the issue of derivatives; (xii)</p>	<p>FAO/ITPGR</p> <p>Art. 13</p>	<p>Bonn Guidelines</p>	<p>MGL 2005, especially pp. 23-24</p>	<p>No gaps identified. Japan will continue to accumulate experience with MGL 2005.</p>	

Elements ^{15/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}	Relevant provisions of existing international instruments within the framework of the CBD ^{17/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i></p> <p>Monitoring, compliance and enforcement; (xx)</p> <p>Dispute settlement, and/or arbitration, if and when necessary; (xxi)</p>	<p>FAO/ITPGR Art. 21</p>	<p>Bonn Guidelines</p>	<p>MGL 2005, especially pp. 26-29 We are conducting a government-sponsored consultation service and open seminars regarding ABS matters for potential users of genetic resources. NITE concluded MOUs with Asian countries to promote fair benefit- sharing.</p>	<p>No gaps identified.</p> <p>Japan will continue to accumulate experience with MGL 2005.</p>	

<p>Elements ^{15/}</p>	<p>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}</p>	<p>Relevant provisions of existing international instruments within the framework of the CBD ^{17/}</p>	<p>Relevant provisions of existing regional and national instruments, and relevant processes</p>	<p>Identified gaps</p>	<p>At what level, national, regional or international, and how should the gaps be addressed?</p>
<p>Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi)</p> <p>Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)</p>					
<p><i>Functioning of the international regime</i></p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p> <p>Means to support the</p>	<p>FAO/ITPGR Art.10-13</p>	<p>Bonn Guidelines</p>	<p>MGL 2005</p> <p>Capacity building: e.g., microbial resource projects by National Institute of Technology and Evaluation (NITE), and JICA group training course in bioindustries implemented by JBA.</p>	<p>No gaps identified.</p> <p>Japan will continue to accumulate experience with MGL 2005.</p>	

Elements ^{15/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}	Relevant provisions of existing international instruments within the framework of the CBD ^{17/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p> <p>Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii)</p> <p>Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p> <p>Capacity-building measures based on country needs (xvii)</p>	ILO169 Art. 26-31		<p>National Strategy for the Conservation and Sustainable Use of Biological Diversity</p> <p>ODA Charter</p>		

<p>Elements ^{15/}</p>	<p>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{16/}</p>	<p>Relevant provisions of existing international instruments within the framework of the CBD ^{17/}</p>	<p>Relevant provisions of existing regional and national instruments, and relevant processes</p>	<p>Identified gaps</p>	<p>At what level, national, regional or international, and how should the gaps be addressed?</p>
<p><i>Poverty eradication</i> Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p>	<p>FAO/ITPGR</p>	<p>Bonn Guidelines</p>	<p>MGL 2005, especially p. 3</p>	<p>No gaps identified.</p>	

NORWAY

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Access</i></p> <p>Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>	<p>- Article 10, 11, 12 and 15 of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA)</p> <p>Draft Agreement between the IT-PGRFA Governing Body and the International Agricultural Research Centres.</p> <p>Micro-Organism Sustainable Use and Access Regulation International Code of Conduct (MOSAICC)¹⁸</p> <p>International code of conduct for plant germplasm collecting and transfer (FAO)</p>	<p>- CBD (Art. 15.2, 15.5, 15.6)</p> <p>- Bonn Guidelines (Section IV A, B and C)</p> <p>- Principles and Common Policy Guidelines for Botanic Institutions.</p>	<p>- Designation of National Focal Points on ABS and National Competent Authorities. So far only about 45 countries have established NFPs and about 15 countries have nominated CAs.</p> <p>- Ministerial Declaration on Access and Rights to Genetic Resources in the Nordic Countries 2003 (see www.norden.org)</p> <p>Strategy for Genetic resources in the Fisheries, Agriculture, Forestry and Food Sectors of the Nordic Region 2005-2008 (see www.norden.org)</p>	<p>- As a whole, few countries have developed national legislation to regulate access to genetic resources. Where regulations are in place they vary amongst countries. There is a need for transparent national access legislation and many countries need to strengthen administrative capacities for maintenance and enforcement</p> <p>- Access legislation should also be linked to the objective of conservation and sustainable use of biodiversity.</p> <p>There is also a lack of predictability</p>	<p>- <i>Guidance</i> could be introduced for stakeholders/ in various fields (e.g. public research institutions, institutions funding research) at the international/ regional/ national levels.</p> <p>Countries within one region may cooperate in conservation of genetic resources. In order to facilitate exchange of genetic material between the such countries there may be developed regional approach for access legislation. Capacity building, technology transfer and financial resources is needed to assist countries in developing national legislation, and decision procedures on access to genetic resources at the national level. There is a need for a mechanism at the international level to</p>

¹⁸ Available at: <http://bccm.belspo.be/mosaicc/docs/code.pdf>.

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
			<p>– National Access Legislation, inter alia Philippines Executive Order n°247, Andean Pact Decision n° 391, Indian Biodiversity Bill, African Model Law.</p>	<p>and certainty for users of genetic resources in that several authorities may be involved in the access process and decision-making procedure. Since so few countries have nominated NFPs and CA it is very difficult for bioprospectors/recipients/users to know which authority to address.</p> <p>Lack of predictable and certain legal situation for research and industry</p>	<p>address countries request for assistance within these cross-cutting issues.</p>
<p><i>Ensuring benefit-sharing</i></p> <p>Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic</p>	<p>- Articles 12.4 ,13, 15.1 and 18 of the IT-PGRFA. In the framework of the IT-PGRFA. There are currently ongoing negotiations on the</p>	<p>- CBD (Art. 15.7) - Bonn G (Section IV.D.3 and Appendix II)</p>	<p>The UPOV Convention provides a <i>sui generis protection of plant varieties with unrestricted access for breeders to use the protected varieties to develop</i></p>	<p>- This important element needs to be further developed in many fields.</p> <p>- It seems that current national legislation/policies</p>	<p>- The mechanisms/modalities for benefit-sharing should be included in an international regime, for example in the form of model or standard benefit-sharing provisions. The specific</p>

¹⁹ Available at: <http://bccm.belspo.be/mosaicc/docs/code.pdf>.

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention; (ii)</p> <p>Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)</p> <p>Measures for benefit-sharing including, <i>inter alia</i>, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p>	<p>level, form and manner of benefit-sharing payments for using genetic resources originating from the Multilateral System. and a Standard Material Transfer Agreement.</p> <p>- The 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV). Arts. 15.1 and 15.2.</p> <p>Work of the WIPO in relation to disclosure of origin of genetic resources</p> <p>Micro-Organism Sustainable Use and Access Regulation International Code of Conduct (MOSAICC)¹⁹</p> <p>International Agricultural Research Centers of the CGIAR</p>		<p><i>new and improved plant varieties</i></p>	<p>do not always link benefits from bioprospecting activities with measures to conserve biodiversity</p> <p>(- See para. 48 of the Bonn Guidelines on distribution of benefits.</p> <p>Mechanisms need to e developed in order to ensure benefits are returning to the conservation of biodiversity.</p> <p>Lack of incentives for complying with benefit sharing provisions</p> <p>Lack of efficient international enforcement mechanisms in the countries where a product of genetic resources is put on the market</p>	<p>details have to be left to individual contracts.</p> <p>- Bonn Guidelines provide guidance in Section IV.D.3 and Appendix II.</p> <p>- There is also a need to address trigger mechanisms for benefit-sharing at the international level.</p>

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Promoting benefit-sharing</i></p> <p>Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)</p>	<p>- ITPGRFA (Arts. 12.4 and 13)</p> <p>– FAO Global Plan of Action for the conservation and sustainable use of plant genetic resources for food and agriculture, FAO Global Strategy on farm animal genetic resources.</p>	<p>- CBD (Art. 15.6 and 15.7)</p> <p>- <i>Bonn Guidelines, section V</i></p>		<p>- PIC and MAT processes rarely differentiate between acquisition for scientific purposes (e.g. taxonomy) and commercialisation. This provides a disincentive for partnerships between provider and user countries of genetic resources, slowing down the rate of scientific progress as well as reducing the potential sharing of non-monetary benefits in the context of non-commercial scientific research cooperation (e.g., exchange of researchers, joint research projects).</p>	<p>- National legislation needs to be developed/reviewed to address the gaps.</p> <p>A mechanism for stakeholder involvement for the industry, research institutions etc. needs to be addressed within the context of the international regime in order to make them accountable for bioprospecting activities and provide more certainty and predictability.</p>

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v)	See above.	See above.	See above. – <i>See also Nordic Council of Ministers Declaration and Strategy above as well as implementation measures taken by the Nordic Gene Bank following the Ministerial Declaration on Rights and Access to Genetic Resources</i>	See above. Lack of common practices and principles to assess the value added to the product by the contribution from the genetic material used in the process Also the trigger for benefit sharing varies in different benefit sharing agreements	See above.
<p><i>Recognition and protection of rights of indigenous and local communities</i></p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv)</p> <p>Customary law and traditional cultural practices of indigenous and local communities; (xvi)</p> <p>Code of ethics/Code of</p>	<p>- ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries</p> <p>Draft UN Declaration on the Rights of Indigenous Peoples.</p> <p>WIPO's work on recognition of prior art in the use of genetic resources</p> <p>ITPGRFA article 9</p>	<p>- CBD Art. 8(j) and COP decisions related thereto.</p> <p>- Bonn Guidelines, para. 31.</p> <p>Bonn Guidelines Appendix 1 and II</p>		<p>Identifying prior art in use of genetic resources.</p> <p>Lack of definition of “traditional knowledge”</p> <p>Lack of common practices and principles.</p>	<p>At the national level but measures could also be taken at the international level to support recognition of the rights of indigenous peoples by national governments in the ABS process, including in PIC and benefit-sharing arrangements</p>

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)</p> <p>Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)</p>					
<p><i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i></p> <p>Monitoring, compliance and enforcement (xx)</p> <p>Dispute settlement, and/or arbitration, if and when necessary (xxi)</p>	<p>-Art. 12.5 and 21 of the IT</p> <p>Dispute settlement/arbitration is likely to be included in the standard MTA of the ITPGRFA</p> <p>International conventions on conflicts arising from international contracts: conflict of laws and jurisdiction (European Community Convention on the Law Applicable to Contractual Obligations (Rome 1980), convention on the Law Applicable to</p>	<p>CBD Article 27 deals with settlement of disputes, including arbitration, between parties to the CBD</p> <p>Bonn Guidelines, section V, (B,C,E,F)</p>		<p>Lack of cost effective measures to monitor and ensure enforcement</p>	<p>Need to develop how e.g. certificates and disclosure requirements may form part of a comprehensive benefit-sharing system. See below.</p> <p>Dispute settlement procedures between parties to an MTA should be agreed upon in the MTA (leave it up to the parties whether this should be solved by national law or in accordance with international law.</p>

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	Agency (The Hague, 1978)				
<p>Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi)</p> <p>Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)</p>	<p>- <u>Investigation</u> through the Convention on the Taking Evidence Abroad in Civil or Commercial Matters (The Hague, 1970)</p> <p>- <u>Notification of judicial actions</u>, through the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague, 1965).</p> <p>- Enforcement of arbitral awards through the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1965)</p>	<p><i>CBD Art. 15.7.</i></p> <p><i>Bonn Guidelines, section II., para. b) and d) and section V, subsection. F</i></p>	<p>National or regional regimes of judicial assistance helping legally and financially poor stakeholders to get access to national courts</p>		<p>Compliance with the provisions of PIC should be a matter for both provider and user countries. There is a need to address compliance with PIC and MAT at the multilateral level within the context of the international regime. User countries need to adopt measures to ensure compliance with national legislation in provider countries. This is also a matter for international IPR regimes (e.g. TRIPs and WIPO (PCT)).</p> <p>This could be dealt at the national level by introducing legislation to enforce ABS legislation by both user and provider countries and measures to deal with violations of ABS legislation.</p> <p>This question of enforceability should also be dealt with in the context of the international regime.</p>

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Functioning of the international regime</i></p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p> <p>Means to support the implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p> <p>Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii)</p> <p>Disclosure of origin/source/legal provenance of genetic</p>	<p>CITES (Art. VI)</p> <p>The Patent Law Treaty and the Patent Cooperation Treaty governed by the World Intellectual Property Organization (WIPO) are relevant for disclosure of origin/source/ legal provenance. Potential amendments to these</p>		<p>Disclosure provisions can be found in patent laws/ABS laws in inter alia in Brasil, Costa Rica, Denmark, Egypt, India, Norway</p>	<p>Only a few countries have introduced disclosure provisions in their national patent laws. In addition, these provisions vary widely amongst countries. The existing</p>	<p>- Such measures could be components of a new international regime on ABS.</p> <p>The Clearing House Mechanism (CHM) could have a role as receiver of notifications of disclosure of origin in patent applications and unique identifiers of genetic resources under a system for international certificates of origin/legal provenance.</p> <p>- An international certificate of origin/legal provenance as part of the international regime could be a useful tool in building trust, increasing transparency and traceability of the origin of genetic resources.</p> <p>- Proposals in WIPO (eg the EU proposal) to include the disclosure of origin in patent applications as a formal condition is an element that could lead to triggering of benefit-</p>

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
resources and associated traditional knowledge in applications for intellectual property rights; (xiv)	agreements are currently being debated in WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) Paragraph 19 of the Doha Declaration, instructs the TRIPS Council to continue the review of Article 27.3(b) TRIPS, and to examine the relationship between TRIPS and CBD and (TK)			treaties like the PCT does not allow international disclosure requirements (only as a requirement for national patent applications).	sharing. - Such a disclosure requirement at the international level could result in a level playing field for users of genetic resources. and could lead to more predictability in this field.
<i>Derivatives</i> Addressing the issue of derivatives: (xii)		The CBD covers derivatives as far as they are contained in the definition of genetic resources (e.g. "...material containing functional units of heredity" Derivatives included in the scope of the Bonn Guidelines since benefits arising from the commercial and other utilizations of		-Definitions in national legislations vary widely	Definition/common understanding to be provided in an international ABS regime and/or at the national level with guidance from the international regime.

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
		genetic resources are included. Also dealt with in the context of indicative list of MATs.			
<p><i>Poverty eradication</i></p> <p>Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p> <p>Capacity-building measures based on country needs (xvii)</p>		<p>Action Plan for Capacity building on access and benefit-sharing (Decision VII/19F of COP7)</p> <p>CBD art. 16, 17 and 18</p>		<p>More resources and capacity building is needed in order to enable countries to implement the Action Plan for Capacity building on access and benefit-sharing</p>	<p>- National legislation/mechanisms should be designed so that the benefits from arising from the use of genetic resources are channelled to the conservation and sustainable use of biological diversity, taking into account the welfare and environments of indigenous and local communities.</p> <p>Mechanisms for Capacity-building and technology transfer will be important elements of an international regime. Capacity-building activities should be based on elements in the Action Plan for Capacity building on access to genetic resources and benefit-sharing.</p>

SWITZERLAND

Firstly we would like to emphasise that the responses to the table contained in Annex II of decision 3/1 of ABS3 should not be limited to a compilation in the further document that the secretariat will elaborate but needs to be complemented by an analysis. This document will be an important asset to identify issues and gaps that remain to be resolved.

Concerning our response to the table of the annex II of the recommendation we took the liberty to change slightly the structure of the matrix. The aim was to highlight the major elements which should be clearly related with what we consider as the k-identified gaps.

To streamline the discussion , the main elements to be considered in the 1st column of the matrix should, in our view, be reduced to:

- (i) the question of the access to genetic resources,
- (ii) the measure to ensure the Benefit sharing and to ensure the compliance with the mutually agreed terms,
- (iii) the question of disclosure of origin and the possible tools such as the international certificate of origin/source/legal provenance of genetic resources, and
- (iv) the recognition and protection of the rights of indigenous and local communities

To prepare our discussion in order to make progress, the ABS 4 session should focus on a limited number of priority issues and k-gaps which need to be fulfilled at

Elements	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD	Relevant provisions of existing international instruments within the framework of the CBD	Relevant provisions of existing national (Swiss) instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>ACCESS</p> <p>Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>	<p>ITPGRFA - FAO²⁰ Art. 10.2; 12</p>	<p>CBD²¹ - Art. 15.2</p> <p>Bonn Guidelines²² (BGL)</p>	<p>Use of existing national legislation²³</p> <p>Participation of Swiss Botanic gardens in IPEN</p> <p>Swiss tool for Academic Research</p> <p>ABS Management Tool²⁴</p>	<p>lack of legal certainty, including the rights of participation of indigenous and local communities</p> <p>- no ABS national focal points in many countries</p>	<p>National</p> <p>International</p> <p>Plan of action for Capacity building</p>

^{20/} <http://www.fao.org/ag/cgrfa/French/itpgr.htm#text>

^{21/} <http://www.biodiv.org/convention/articles.asp?lg=0&a=cbd-15>

^{22/} <http://www.biodiv.org/doc/publications/cbd-bonn-gdls-en.pdf>

^{23/} DUCOR, P., 2003 : L'accès aux ressources génétiques en droit suisse.

http://www.umwelt-schweiz.ch/buwal/fr/fachgebiete/fg_biotechnologie/information/publi/cahiers/index.html#sprungmarke1

^{24/} <<<http://www.iisd.org/standards/abs.asp>>>

<p>benefit-sharing Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention; (ii) Measures for benefit-sharing including, <i>inter alia</i>, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii) Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v) Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi) Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix) Measures to ensure compliance with the mutually agreed terms on which genetic resources were</p>	<p>ITPGRFA - FAO - Art.12.4; 13.2 19.3 (f), 21</p>	<p>CBD - Art. 15.6; 15.7, 16.4; 19.1, 19.2 - Decision VII/19 E Bonn Guidelines</p>	<p>Sectorial voluntary instruments Participation of Swiss Botanic gardens in IPEN Swiss tool for Academic Research ABS Management Tool</p>	<p>Transparency measure: mechanism to ensure effective identification an follow-up of genetic resources, in the ABS process. No legal obligations for Parties having essentially users of generic resources under its jurisdiction to take measures to ensure compliance with PIC and MAT</p>	<p><i>In International</i> Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge Standards and certification</p>
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- 25/ http://www.wipo.int/meetings/en/details.jsp?meeting_id=9006
26/ http://www.wipo.int/edocs/mdocs/pct/en/pct_r_wg_7/pct_r_wg_7_13.doc
27/ http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_32/wo_ga_32_8.doc
28/ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16239

<p>granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi) Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii) Monitoring, compliance and enforcement; (xx) Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p>	<p>PCT WIPO - Working Group on Reform of the PCT²⁵; one of the outstanding issues under discussion are the proposals by Switzerland on the declaration of the source (see PCT/R/WG/7/13, para. 135(i))²⁶</p> <p>IGC WIPO Response by WIPO to the Conference of Parties of the CBD (WO/GA/32/8)²⁷</p> <p>- Draft Technical Study on Disclosure Requirements Related to Genetic Resources</p>	<p>CBD Decision VI/24 C Bonn Guidelines</p>		<p>No international provisions concerning the disclosure of source of genetic resources and associated traditional knowledge</p>	<p><i>National and international</i></p> <p>- Swiss proposal to amend the PCT to explicitly enable the national legislator to require patent applicants to declare the source of genetic resources and traditional knowledge in patent applications²⁹</p>
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See <http://www.ige.ch/E/jurinfo/j105.shtm#6>

	and Traditional Knowledge ²⁸ WIPO/GRTKF/IC/5/10				
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<p><i>Recognition and protection of rights of indigenous and local communities</i></p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv)</p> <p>Customary law and traditional cultural practices of indigenous and local communities; (xvi)</p> <p>Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)</p> <p>Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)</p>	<p>ITPGRFA - FAO - Art. 9</p> <p>IGC WIPO³⁰ - Protection of Traditional knowledge: Revised Objectives and Principles WIPO/GRTK/IC/8/5 <i>(in discussion)</i></p> <p>IGC WIPO - The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles WIPO/GRTK/IC/8/4 <i>(in discussion)</i></p>	<p>CBD Working group on Art. 8 (j)</p> <p>Bonn Guidelines - Par. 11 j; 16 a vi, vii ; 16 b i, ii, iii; 16 d ii, 19; 26 d; 30; 31; 43 a ; 43b; 44g</p>	<p>ABS Management Tool - (MT) - - 'Preservation and respect of TK and sharing of benefits when TK associated with GR is accessed and used' MT.p.36.</p>		
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<http://www.wipo.int/meetings/en/documents.jsp>.

<p><i>Derivatives</i></p> <p>Addressing the issue of derivatives; (xii)</p>	<p>***</p>	<p>***</p>	<p>***</p>	<p>***</p>	<p>***</p>
<p><i>Functioning of the international regime</i></p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p> <p>Means to support the implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p> <p>Dispute settlement, and/or arbitration, if and when necessary; (xxi)</p>					

<p><i>Capacity-building measures based on country needs (xvii)</i></p> <p><i>(Promoting) benefit-sharing</i></p> <p>Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)</p>	<p>ITPGRFA - FAO</p> <p>- Art. 13.2(c)</p> <p>ITPGRFA - FAO</p> <p>- Art. 7; 13</p>	<p>CBD</p> <p>- Art. 12; 13; 25</p> <p>- Decision VII/16</p> <p>- Decision VII/19F</p> <p>Bonn Guidelines</p> <p>- Par. 20 b ; 44 d</p>			
<p><i>Poverty eradication (reduction)</i></p> <p>Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p>	<p>ITPGRFA - FAO</p> <p>ABS provisions</p>	<p>CBD</p> <p>ABS provisions</p> <p>Bonn Guidelines</p>	<p>ABS provisions</p>		

II. SUBMISSIONS FROM NON-PARTIES

UNITED STATES OF AMERICA

Explanatory Comments

The United States appreciates the opportunity to participate in the ongoing discussion regarding access and benefit sharing of genetic resources. We have undergone an initial canvas of existing international and national regimes and inserted relevant references in the attached matrix. This was not necessarily an exhaustive analysis.

It is apparent that there currently exist a wide variety of mechanisms to support access and benefit sharing. It is also clear that given the scope and complexity of existing frameworks, which are intended to address the specific circumstances of different types of providers and users, access and benefit sharing could not be properly addressed in a single instrument.

While the matrix exercise has been useful, we are concerned that it may not be the best model for focusing discussion on the identification of actual problems with access and benefit sharing. For example, our analysis made clear the need to highlight strong national access and benefit sharing regimes, including strong enforcement mechanisms.

Many problems may involve the evolution of national laws and regulations. For instance, U.S. researchers note that from their experiences that many countries do not have clear or consistent access systems to clearly enable users to identify their obligations for benefit sharing. This does not necessarily reflect the existence of gaps, but of the need for governments to gain a greater understanding of the specific conditions under which access and benefit sharing occur in their jurisdictions. As they become more experienced with implementing access and benefit sharing measures, such as the Bonn Guidelines, they will be able to adjust their national systems to respond to these conditions. We believe that governments must engage in this analysis and plug gaps in their national systems before it can be determined whether any gaps might best be addressed internationally.

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Access</i> Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>	<ul style="list-style-type: none"> -FAO International Treaty (IT-PGRFA). - 1991 The International Union for the Protection of New Varieties of Plants (UPOV) - World Intellectual Property Organization (WIPO)– Budapest treaty. - Global Crop Diversity Trust. - International Agricultural Research Centers (IARCs). 	<ul style="list-style-type: none"> - Bonn Guidelines. 	<p>US government agencies and trusts have instituted procedures that educate users about ABS, track use of government held genetic resources, and support the principles of prior informed consent and mutually agreed terms when US government funds are used in biodiversity research. Laws and processes include:</p> <ul style="list-style-type: none"> - U.S. Plant Variety Protection Act (PVPA) - Cooperation research and Development Agreement (CRADAS), permit systems under the U.S. National Parks Omnibus Management Act of 1998. - U.S. National Plant Germplasm System-NPGS agreements for plant exploration . - NHI Research grant award terms. - NCI contracts. 		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
			-Smithsonian (US National Museum) collection and loan policies and procedures. - BIO Code of conduct. - USG supported extramural research grants and programs		
<i>Ensuring benefit-sharing</i> Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the convention (ii)	- IT –PGRFA. - TRIPS & UPOV - Global Crop Diversity Trust.	- Bonn Guidelines.	- Plant Varieties Protection Act (PVPA). - Patent Act - Plant Patent Act - Lanham Act (trademark) - Cooperation research and Development Agreement (CRADAS). - NIH Research grant and contract award terms. - Health and Human Service (HHS). - Bayh-Dole Act (tech transfer) -Smithsonian (US National Museum) research, collection and loan policies and procedures. - USG supported extramural research grants and programs - BIO Code of conduct. - U.S. court system/ contract law		
Measures to ensure the	- TRIPS & UPOV	- Bonn Guidelines.	- Plant Varieties Protection		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)</p> <p>Measures for benefit-sharing including, <i>inter alia</i>, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p>			<ul style="list-style-type: none"> Act (PVPA). - Patent Act. - Plant Patent Act. - Lanham Act (trademark). - CRADAS. - NIH Research grant and contract award terms. - Health and Human Service (HHS). - Bayh-Dole Act. (tech transfer) -Smithsonian (US National Museum) collection and loan policies and procedures. - USG supported extramural research grants and programs - BIO Code of conduct - U.S. National Plant Germplasm System-NPGS agreements for plant exploration - USDA Plant Exploration Code of Conduct -U.S. court system/ contract law 		
<p><i>Promoting benefit-sharing</i> Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and</p>	<ul style="list-style-type: none"> - TRIPS & UPOV - WIPO – Patent Cooperation Treaty (PCT) 	<ul style="list-style-type: none"> - Bonn Guidelines. 	<p>The US government supports collaborative research ranging from basic science through joint ventures for transferring technology from the</p>		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)			laboratory to the market. - CRADAS. - Code of conducts (BIO) - NIH Research grant and contract award terms. - USDA NPGS agreements for plant exploration -Smithsonian (US National Museum) research, collection and loan policies and procedures. - USG supported extramural research grants and programs - BIO Code of conduct . explorations - Plant Varieties Protection Act (PVPA). - Patent Act. - Plant Patent Act. - Lanham Act (trademark) - Bayh-Dole Act.(tech transfer)		
Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v)	- IT – PGRFA. - TRIPS & UPOV	- Bonn Guidelines	- U.S. Plant Varieties Protection Act (PVPA). - Patent Act - Plant Patent Act - Lanham Act (trademark) - CRADAS. - NIH Research grant and contract award terms. - Health and Human Service (HHS).		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
			<ul style="list-style-type: none"> - Bayh-Dole Act (tech transfer). -Smithsonian (US National Museum) research, collection and loan policies and procedures. - USG supported extramural research grants and programs - BIO Code of conduct - U.S. court system/contract law 		
<p><i>Recognition and protection of rights of indigenous and local communities</i></p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional Knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv) Customary law and traditional cultural practices of indigenous and local communities; (xvi) Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with</p>	- IT – PGRFA.	<ul style="list-style-type: none"> - Bonn Guidelines. - The Akwe: Kon voluntary guidelines. 	<ul style="list-style-type: none"> - Bayh-Dole Act.(tech transfer) - Uniform Trade Secret Act. - CRADAS. - NIH Research grant and contract award terms. - Health and Human Service (HHS) Human Subjects Protection policies. -Smithsonian (US National Museum) research, education, collection and loan policies and procedures. - USG supported extramural research grants and programs - BIO Code of conduct 		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
Indigenous and local communities; (xviii) Measures to ensure compliance with prior informed consent of Indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)					
<i>Derivatives</i> Addressing the issue of Derivatives; (xii)	- IT – PGRFA.	- Bonn Guidelines.	- CRADAS. - NIH Research grant and contract award terms. - Health and Human Service (HHS). - BIO Code of conduct.		
<i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i> Monitoring, compliance and enforcement; (xx) Dispute settlement, and/or arbitration, if and when necessary; (xxi)		- Bonn Guidelines	- CRADAS. - NIH Research grant award terms. - Health and Human Service (HHS). - U.S. Court system/ contract law		
Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to		- Bonn Guidelines	- CRADAS. - NIH Research grant and contract award terms. - Health and Human Service (HHS).		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi) Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)			- Lacey Act -U.S. Court system /contract law, and other protections. -Smithsonian (US National Museum) collection and loan policies and procedures. - USG supported extramural research grants and programs - BIO Code of conduct PIIPA		
<i>Functioning of the international regime</i> Measures to facilitate the Functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the Distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)	- IT – PGRFA. - 1991 UPOV. - Paris Convention. - TRIPS. - World Organization for Animal Health (OIE). - International Plant Protection Convention (IPPC). Global Biodiversity Information Facility	- Bonn Guidelines	- U.S. Plant Varieties Protection Act (PVPA). - Patent Act - Plant Patent Act - CRADAS. - Bayh-Dole Act.(tech transfer) State Department sponsored regional training on ABS Support and participation in the Global Biodiversity Information Facility		
Means to support the implementation of the international regime within the Framework of the Convention; (xix) Institutional issues to	-IT-PGRFA -OIE -IPPC - WIPO -The Budapest treaty on the international recognition of micro	-Bonn Guidelines	-CRADAS. - NIH Research grant award terms. - Health and Human Service (HHS). - Lanham Act (trademark)		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
support the implementation of the international regime within the Framework of the Convention; (xxii) Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional Knowledge; (xiii) Disclosure of origin/source/legal provenance of genetic resources and associated traditional Knowledge in applications for Intellectual property rights; (xiv) Capacity-building measures based on country needs (xvii)	deposit; - UPOV -TRIPS - TRIPS		- USPTO databases - USPTO international training		
<i>Poverty eradication</i> Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)	IT – PGRFA	Bonn Guidelines	Many programs, for example, those managed by USAID, US Forest Service, USDA, Peace Corps and the Smithsonian indirectly link ABS and poverty eradication by developing information, systems and markets for sustainably sourced goods and products, by encouraging better stewardship of lands in production, innovating		

UNCBD ABS/3/7 Annex II Analysis of Gaps					
Elements 2/	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD 3/	Relevant provisions of existing international instruments within the framework of the CBD 4/	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
			new, higher yield and lower risk management systems and empowering local communities through programs of sustainable natural resource management.		

2/ The Roman numerals in parenthesis following each element refer to the numbering of that element under heading (d) of the annex to decision VII/19 D.

3/ from Decision 7:19: (xxiii) Relevant elements of existing instruments and processes, including:

4/ Please refer to the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

TERMS OF REFERENCE FOR THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

(a) **Process:**

(i) To elaborate and negotiate the nature, scope and elements of an international regime on access and benefit-sharing within the framework of the Convention on Biological Diversity, as contained in paragraphs (b), (c) and (d) below, drawing on *inter alia* an analysis of existing legal and other instruments at national, regional and international levels relating to access and benefit-sharing, including: access contracts; experiences with their implementation; compliance and enforcement mechanisms; and any other options.

(ii) As part of the work, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing will examine whether and to what extent possible elements as contained in paragraph (d) below are part of these instruments and determine how to address the gaps.

(b) **Nature:** The international regime could be composed of one or more instruments within a set of principles, norms, rules and decision-making procedures, legally-binding and/or non-binding.

(c) **Scope:**

(i) 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;

(ii) Traditional knowledge, innovations and practices in accordance with Article 8(j).

(d) **Elements:** The following elements shall be considered by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing for inclusion in the international regime, *inter alia*:

Note: the elements are those mentioned in the table and a list of relevant elements of existing instruments and processes (xxiii), including:

MULTILATERAL

- Convention on Biological Diversity (CBD);

<http://www.biodiv.org/default.shtml>

- Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Bonn Guidelines);

<http://www.biodiv.org/programmes/socio-eco/benefit/bonn.asp>

- The International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (IT);
<http://www.fao.org/ag/cgrfa/itpgr.htm>
- The Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (PGRFA);
<http://www.fao.org/ag/cgrfa/default.htm>
- The United Nations Permanent Forum on Indigenous Issues (UNPFII);
<http://www.un.org/esa/socdev/unpfii/>
- Outcomes of Working Group on Article 8(j);
<http://www.biodiv.org/programmes/socio-eco/traditional/default.asp>
- The Agreement on Trade-related Aspects of Intellectual Property Rights and other World Trade Organization agreements (TRIPS);
http://www.wto.org/english/tratop_e/trips_e/trips_e.htm
- World Intellectual Property Organization conventions and treaties (WIPO);
<http://www.wipo.int/treaties/en/classification/locarno/index.html>
- International Convention for the Protection of New Varieties of Plants (UPOV);
<http://www.upov.int/>
- United Nations Convention on the Law of the Sea (Law-sea);
<http://www.un.org/Depts/los/index.htm>
- Rio Declaration (Rio)
<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>
- CITES;
<http://www.ukcites.gov.uk/default.asp>
- Antarctic Treaty (Antartica);
<http://www.scar.org/treaty/>
- The Universal Declaration of Human Rights (UDHR);
<http://www.un.org/Overview/rights.html>
- The International Covenant on Civil and Political Rights (OHCHR);
http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

- The International Covenant on Economic, Social and Cultural Rights

http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

- Agenda 21 (A21);

<http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm>

REGIONAL

- Regional agreements (RegA);

- African Model Law on the Rights of Communities, Farmers, Breeders, and on Access to Biological Resources (AfricaM);

http://www.chr.up.ac.za/hr_docs/african/docs/oau/oau4.doc

- Decision 391 of the Andean Community (D391);

<http://www.comunidadandina.org/ingles/treaties/dec/d391e.htm>

- Decision 486 of the Andean Community (D486);

<http://www.comunidadandina.org/ingles/treaties/dec/D486e.htm>

NATIONAL

- Current national legislative, administrative and policy measures implementing Article 15 of the Convention on Biological Diversity (NatL);

- Codes of conduct and other approaches developed by specific user groups or for specific genetic resources, including model contractual agreements (CodeC and Contracts);

III. SUBMISSIONS FROM RELEVANT ORGANIZATIONS AND STAKEHOLDERS

INTERNATIONAL PLANT GENETIC RESOURCES INSTITUTE

Annex B

ANALYSIS OF GAPS

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p><i>Access</i></p> <p>Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>	<p>1. The International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty), Part 4, creates a multilateral system of access and benefit sharing (MLS) for 34 crops and 29 forage genera listed in Annex 1 of the Treaty. Those materials must also be under the control of the contracting parties and in the public domain to be included in the MLS. They are made available “for the purpose of utilization and conservation for research,</p>			<p>1.a. Crops and forages not listed in Annex 1 held by state parties are not included in the MLS.</p> <p>(N.B.: This gap is much narrower – arguably does not exist - in the case of the CG Centres. Art 15 of the Treaty states that non-Annex 1 materials held ‘in trust’ by the Centres will be made available pursuant to</p>	<p>1.a. Several possibilities exist to address this gap: eventually including more materials in the Treaty’s Annex 1 (on a consensus basis by all of the parties to the Treaty); regional and subregional agreements for access and benefit sharing for non-Annex 1 materials; case-by-case agreements brokered under bilaterally-oriented national access laws for the same materials.</p>

^{31/} The Roman numerals in parenthesis following each element refer to the numbering of that element under heading (d) of the annex to decision VII/19 D.

^{32/} Please take into account the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

^{33/} Please refer to the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	breeding and training for food and agriculture,” free of charge or for minimal costs involved among the contracting parties.			substantially similar conditions as Annex 1 materials.) b. It is possible that the products of CG Centres’ research (i.e., improved materials) are not included within article 15 of the Treaty which sets out the conditions under which Centres’ materials will be made available.	b. The CG Centres have approved a policy that the products of Centres’ research shall be distributed pursuant to the benefit sharing provisions of the Treaty. This voluntarily developed policy on the part of the CG Centres is specifically designed to address this potential gap.
	2.The 1994 Agreements between twelve CG Centres and FAO (the FAO-CGIAR In Trust Agreements) places “designated germplasm in trust for the benefit of the international community.” Pursuant to those agreements the Centres agree to “make samples of the designated germplasm and related information available directly to users and through FAO, for			2.a. One gap relates to the scope of the In Trust Agreements: i.e., they only apply to materials held by CG Centres. 2.b. Another gap relates to the longevity of the In Trust agreements. The FAO CGIAR	2.a. States have the opportunity to participate in a similar system of multilateral exchange, with improved benefit sharing provisions, by joining the Treaty. 2.b. By forging agreements with the Governing Body of the Treaty, as anticipated by Art 15 of the Treaty, the long term legal status of the

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	<p>the purposes of scientific research, plant breeding or genetic resources conservation, without restriction.” They also agree not to “seek any intellectual property rights over that germplasm or related information” and to pass those same restrictions onto subsequent recipients. The Centres use the same material transfer agreement (MTA) for the distribution of all such materials. At present, there are approximately 600,000 designated accessions of crop and forage germplasm held in trust by the CG Centres.</p>			<p>agreements need to be renewed every 4 years. (They renew automatically unless there is an notice of non-renewal from one of the parties.) They are due to expire again in 2006. They were always meant to be temporary agreements until the legal status of the CG held collections could be permanently settled, as it is by the Treaty.</p>	<p>CG collections will be permanently settled, and they will to be made available pursuant to the terms and conditions of the Treaty.</p>
	<p>3.In 2004, the Tropical Agriculture Research and Higher Education Centre (CATIE) entered into an agreement to place its collections of plant germplasm under the auspices of FAO, modelled on the earlier In Trust Agreements</p>			<p>3. (same comment as above for the CG Centres)</p>	<p>3.It is anticipated that CATIE will also sign an agreement with the Governing Body of the Treaty pursuant to Art 15.</p>

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	between FAO and the CG Centres.				
	<p>4. The Commission on Genetic Resources for Food and Agriculture is a permanent forum where governments discuss and negotiate matters relevant to genetic resources for food and agriculture. The main objectives of the CGRFA are to ensure the conservation and sustainable utilization of genetic resources for food and agriculture, as well the fair and equitable sharing of benefits derived from their use, for present and future generations. Prior to 1995, it was exclusively concerned with PGRFA. In 1995, however, its mandate was broadened (Resolution 3/95), to cover all components of agro-biodiversity of relevance to food and agriculture. It was</p>			<p>4. So far, in the context of access and benefit sharing, the Commission has focussed on PGRFA in the form of the International Undertaking, the CGIAR-FAO In Trust Agreements and most recently, the negotiations of the International Treaty. In November 2004, a number of countries called for the Commission to expand the scope of its access and benefit sharing work to include farm animal genetic resources. Other countries expressed a preference to wait until the State of the</p>	<p>4. Verify that indeed a focus on animal genetic resources for food and agriculture will be included in the Commission’s rolling Multi-Year Plan of Work.</p>

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	then renamed the Commission ON Genetic Resources for Food and Agriculture (CGRFA).			World's Animal Genetic Resources was released in 2006 and finalized in 2007 to provide a sound scientific basis for deciding how to approach animal genetic resources policies at a global level.	
<p><i>Ensuring benefit-sharing</i></p> <p>Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention; (ii)</p> <p>Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their</p>	<p>1. The International Treaty includes provisions to share both non-monetary and monetary benefits derived from the use of genetic resources received from the multilateral system of access and benefit sharing (MLS) which is created by the Treaty. Those benefits have been mutually agreed to and are subject to the prior informed consent of state parties as encapsulated in the Treaty itself (and will be in the SMTA that will be approved at the first meeting of the</p>				

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>derivatives and products, in the context of mutually agreed terms; (vi)</p> <p>Measures for benefit-sharing including, <i>inter alia</i>, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p>	<p>Governing Body in June 2006).</p>				
	<p>2. The largest benefit to be gained through membership in the Treaty is access to the common pool of all parties' Annex 1 materials. Parties enjoy a 'multiplier effect' – by placing their own collections in the pool, they obtain access to exponentially greater diversity from around the world.</p>			<p>The list of crops in the common pool is restricted to those listed in Annex 1.</p>	<p>Expansion of the Annex 1 list; regional arrangements for multilateral exchanges and benefit sharing for non-Annex 1 materials; bilateral exchanges on national bases for non-Annex 1 materials.</p>
	<p>3. With respect to monetary benefits, Art 13.2.d.ii states that anyone who commercializes a new</p>			<p>a. Mandatory benefit sharing does not apply when a new PGRFA is available</p>	<p>a. Nonetheless, it is certainly worth exploring means to encourage voluntary benefit sharing in cases where the</p>

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	<p>PGRFA that incorporates materials received from the MLS and restricts access to that product so that it is not available for further research shall pay “an equitable share of the benefits arising from the commercialization of that product”.</p>			<p>for use in research. This may not be a ‘gap’ per se, as not being required to share monetary benefits can be justified on the grounds that the new PGRFA is still available for use in research, which is a significant benefit in itself.</p> <p>b. It is not yet determined what level, form or manner of payment shall be made pursuant to 13.2.d.ii.</p>	<p>mandatory measures are not ‘triggered’.</p> <p>b. The level form and manner of payment is currently being considered by the Contact Group for the Development of the Standard Material Transfer Agreement. The Contact Group’s recommendation will be considered by the first meeting of the Governing Body in June 2006.</p>

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	<p>4. Articles 13.2.a, b and c state that parties will encourage the sharing of benefits derived from commercial and other uses of PGRFA under the MLS by promoting: a) exchange of information, b) access to and transfer of technology, and c) capacity building.</p>			<p>Current gaps include a definitive programme of work and reporting process back to the Governing Body with respect to state parties' contributions to these forms of benefit sharing under the Treaty.</p>	<p>These issues will be addressed at the first meeting of the Governing Body in 2006 and in subsequent meetings of the Governing Body.</p> <p>The CG Centres are conducting a study of their own contributions to benefit sharing through technology transfers as envisaged in Art. 13.2.a.</p>
<p><i>Promoting benefit-sharing</i></p> <p>Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)</p>	<p>Same as above</p>				

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v)	Same as above				
<p><i>Recognition and protection of rights of indigenous and local communities</i> Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv) Customary law and traditional cultural practices of indigenous and local communities; (xvi) Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with</p>	<p>1. The International Code of Conduct for Plant Germplasm Collecting and Transfer was adopted by the FAO Conference in November 1993. It is voluntary. It includes standards and procedures to be followed by parties seeking permission to collect plant germplasm and by parties granting permits for those collecting activities based on the principles of prior informed consent and mutually agreed terms.</p> <p>2. The CGIAR's Ethical Principles Relating to Genetic Resources are in the process of being revised to reflect the necessity of seeking prior informed consent of communities before using</p>				

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>indigenous and local communities; (xviii)</p> <p>Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)</p>	<p>their knowledge. The Principles go one step further to encourage active participation of traditional knowledge holders in research activities.</p>				
<p><i>Derivatives</i></p> <p>Addressing the issue of derivatives; (xii)</p>					
<p><i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i></p> <p>Monitoring, compliance and enforcement; (xx)</p> <p>Dispute settlement, and/or arbitration, if and when necessary; (xxi)</p>	<p>1. Under the FAO-In Trust Agreements, in cases of suspected non-compliance by recipients of germplasm, the CG Centres will seek an explanation from the potentially alleging party; notify the relevant authority in the country concerned (e.g. patent office); and notify the Commission for Genetic Resources for Food and</p>				

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	<p>Agriculture of FAO. The Centres also reserve the right to take legal actions in their own names in such instances.</p> <p>2. Under the International Treaty, two levels of obligation and enforcement are involved. On one level, the SMTA creates contractual obligations between the two parties to the SMTA and the supplier can bring a legal action against the recipient for alleged non compliance. Whether such actions would be heard in the courts of the countries concerned or be subject to international arbitration is an issue that is currently being considered in the meetings of the Contact Group for the Development of the Standard Material Transfer Agreement. On another level, it may be possible that the third party beneficiary interest of the MLS itself will be</p>				

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
	formally recognized, and a body representing that interest will be empowered to bring legal actions against alleged offenders. Again, this is an issue that is being considered by the Contact Group and subsequently by the first meeting of the Governing Body of the Treaty in June 2006.				
Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi) Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the	(same comment as immediately above)				

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
Convention on Biological Diversity; (ix)					
<p><i>Functioning of the international regime</i></p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p> <p>Means to support the implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p>	<p>1. The Global Crop Diversity Trust (the Trust), established as an international organization in 2004, will support conservation efforts of materials held <i>ex situ</i>, with a particular emphasis on materials listed in Annex 1 of the Treaty. The Trust is part of the funding strategy pursuant to article 18 of the Treaty.</p>			<p>1.a. The Trust seeks to raise a 260 million US\$ endowment of which circa 42 million is currently pledged.</p> <p>1.b. The Trust does not support <i>in situ</i> conservation. For the time being, it is focussing on Annex 1 crops and forages.</p>	<p>1.a. Continue fund raising.</p> <p>1.b. Other sources of funds will be necessary for conservation efforts under the Treaty's funding strategy for non-Annex 1 and <i>in situ</i> PGRFA</p>
Internationally recognized certificate of	2. The standard material transfer agreement to be used			2. The Treaty and the SMTA does not	2. There may not be a need to close this gap, if indeed it

Elements ^{31/}	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD ^{32/}	Relevant provisions of existing international instruments within the framework of the CBD ^{33/}	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii)</p> <p>Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p> <p>Capacity-building measures based on country needs (xvii)</p>	<p>within the MLS of the IT, functions, <i>de facto</i>, as a certificate of source. Parties receive materials from the MLS with the SMTA indicating that the materials came from the MLS. All subsequent transfers of those materials will have to be done using the same SMTA which recognizes the MLS as the ultimate source of the material.</p> <p>N.B.: this SMTA indicating the source of the material as the MLS is directly related to monetary benefit sharing. When a recipient of the material from the MLS incorporates that material in a new product and restricts access to it so that it is not available for further research.</p>			<p>oblige the recipient of material from the provide a certificate of source when applying for a patent. However, the SMTA does create a binding legal obligations to share benefits upon commercializing a new PGRFA and restricting access to it such that it is not available for research.</p>	<p>constitutes a gap. If national law requires the provision of a certificate of source, presumably the SMTA could be deemed to satisfy that condition.</p>
<p><i>Poverty eradication</i></p> <p>Measures to promote access and benefit-sharing arrangements that contribute</p>					

to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)					
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