

**Submission of the Group of Like-Minded Megadiverse Countries
in the context of WG-ABS 8**

The following text proposals are in addition to those submitted by the Group of Like-Minded Megadiverse Countries as contained in document UNEP/CBD/WG-ABS/7/4/Add.1

**Protocol on Access and Benefit-Sharing
to the Convention on Biological Diversity**

Preamble

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as “the Convention”,

Reaffirming the sovereign rights of the States over their own natural resources and according to the provisions of the Convention on Biological Diversity and our commitment to meet its three objectives, and in particular Articles 8(j), 15, 16, 19, 20 and 21.

Reaffirming that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation;

Emphasizing that the resources of biological diversity and the environmental services that depend on them have an immense strategic, economic and social value, and offer development opportunities to our populations and to the international community,

Recognizing the urgent need to develop human resources, institutional capabilities, as well as an appropriate legal framework and public policies to enable all Parties, in particular developing countries, to take an active part in the new economy associated with the use of biological diversity, genetic resources and biotechnology;

Recognizing that the benefit sharing measures under this Protocol are effective tools for the eradication of poverty and the promotion of economic and social development,

Recalling that Parties to the CBD are required to take legislative, administrative and/or policy measures to address benefit-sharing, so as to comply with the objective of this Protocol;

Recognizing the importance of providing legal certainty to the various stakeholders involved in the conservation, sustainable use and the fair and equitable sharing of benefits derived from the use of genetic resources, their derivatives and associated traditional knowledge;

Recognizing that intellectual property rights play an important role in the fair and equitable sharing of benefits arising from the use of genetic resources, their derivatives

and associated traditional knowledge, and that these rights need to be supportive of and do not run counter to the objectives of the Convention;

Acknowledging the “Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their utilisation”, adopted by the Conference of the Parties of the CBD at its sixth meeting, in April 2002;

Taking into account the need to ensure compliance with access and benefit-sharing national legislations, regulations and requirements, with the aim of ensuring the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources, their derivatives and associated traditional knowledge;

Underlining the importance of the traditional knowledge of indigenous and local communities and the development of that knowledge for the conservation of biological diversity and the sustainable use of its components;

Emphasizing that this Protocol shall be implemented in an harmonious and mutually supportive manner with other multilateral agreements;

Emphasizing that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements;

Understanding that the above recital is not intended to subordinate this Protocol to other international agreements;

Considering the provisions contained in Article 28 of the Convention;

III. MAIN COMPONENTS

B. ACCESS

Article XX Access

1. States have sovereign rights over their natural resources and the authority to determine access to genetic resources, derivatives and associated traditional knowledge rests with national Governments and is subject to national legislation.

2. a) Access to traditional knowledge, innovations and practices of indigenous and local communities associated to genetic resources and their derivatives shall be subject to the prior informed consent of these communities, through their representatives where applicable, and subject to national legislation.

b) Where applicable, access to the genetic resources and derivatives owned by indigenous and local communities shall be subject to the prior informed consent of these communities, subject to national legislation.

3. Access to genetic resources and their derivatives shall be undertaken only when prior informed consent, as determined by national legislation, has been granted.

4. Each Party shall take the necessary legislative, administrative or policy measure to ensure that any application for obtaining prior informed consent shall contain, at a minimum, the following information:

- (a) Legal entity and affiliation of the applicant and/or collector and contact person when the applicant is an institution;
- (b) Type and quantity of genetic resources to which access is sought;
- (c) Starting date and duration of the activity;
- (d) Geographical prospecting area;
- (e) Evaluation of how the access activity may impact on conservation and sustainable use of biodiversity, to determine the relative costs and benefits of granting access;
- (f) Accurate information regarding intended use (e.g.: taxonomy, collection, research, commercialization);
- (g) Identification of where the research and development will take place;
- (h) Information on how the research and development is to be carried out;
- (i) Identification of local bodies for collaboration in research and development;
- (j) Possible third party involvement;
- (k) Purpose of the collection, research and expected results;
- (l) Kinds/types of benefits that could come from obtaining access to the resource, including benefits from derivatives and products arising from the commercial and other utilization of the genetic resource;
- (m) Indication of benefit-sharing arrangements;
- (n) Budget;
- (o) Treatment of confidential information.
- (p) Identification of bodies from the Party that is the country of origin of the genetic resource, their derivatives and/or associated traditional knowledge that will fully participate in the scientific research and development based on such genetic resources, their derivatives and/or associated traditional knowledge
- (q) Information on the modalities for access to the results of such research and development

- (r) information on the modalities for access to and transfer of any technology making use of such genetic resources, their derivatives and/or associated traditional knowledge, on mutually agreed terms.

C. COMPLIANCE

Article XX

Compliance

The Governing Body of the Protocol shall consider such measures or mechanisms as appropriate to support effective implementation of the Protocol, including by providing assistance to Parties, upon request, in litigation related to cases of alleged non compliance. Such measures/mechanisms shall be considered by the Governing Body of the Protocol not later than at its first meeting.

Article XX

ABS national regulatory framework

Parties shall take the necessary measures to establish an appropriate national regulatory framework to protect their rights over genetic resources, their derivatives and associated traditional knowledge and ensure benefit sharing.

D. TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

Article XX

When addressing ABS related to ATK, Parties shall recognize the traditional forms of organization, including community-level procedures, of indigenous and local communities, subject to their national legislation.

Article XX

The implementation of this Protocol shall not restrict the exchange of genetic resources and traditional knowledge among indigenous and local communities for traditional purposes.

E. CAPACITY-BUILDING

Article XX

Capacity Building

1. Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities in access and benefit-sharing, for the purpose of the effective implementation of this Protocol, in developing country Parties, in particular the least developed countries, through new and additional funding, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating the involvement of other relevant stakeholders.
2. For the purposes of implementing paragraph 1 above, in relation to cooperation, the needs of developing country Parties, in particular the least developed countries, for financial resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the Convention, shall be taken fully into account for access and benefit sharing.
3. Parties shall cooperate through capacity-building programmes for the development and implementation of national ABS laws, upon request of the interested Party.
4. Parties shall cooperate through capacity-building programmes for the development and training of national competent authorities in order to ensure compliance with national ABS laws.
5. Parties shall undertake special capacity-building measures for indigenous and local communities.
6. Parties shall undertake capacity building measures for technology transfer and cooperation
7. The Secretariat of the CBD will establish a fund to support capacity-building programs with the objectives described above. This fund will be established within 6 months following the entry into force of this Protocol, and will be constituted by contributions from developed country Parties and from other interested stakeholders.

IV. NATURE

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