

**CBD Notification 2009-050 - Decision IX/12 on Access and Benefit-sharing:  
submission of views and proposals for the eighth meeting of the Ad Hoc Open-ended  
Working Group on Access and Benefit-sharing**

Message from Norway:

Norway has already submitted operational texts on traditional knowledge and capacity building in letter dated 6 January 2009. We acknowledge that these texts will be included in the collations for the 8<sup>th</sup> meeting as well. For ease of reference I have highlighted the parts dealing with traditional knowledge in the attached document. The text is included in the ABSWG7 Annex as well.

Norway has also submitted a text related to "Nature" which we would like to see included in the operational text for ABSWG8. It has been submitted earlier but it was placed in the rationale part for ABSWG7.

Operational text on nature:

"The regime should be composed of, but not limited to, a single legally binding international agreement, namely a Protocol under the CBD. It should *inter alia* build upon and further develop the Bonn Guidelines. "

You can find the text on capacity building in our original submission of 6 January.

**Development of an international regime on access to genetic resources and benefit-sharing under the CBD – texts relating to traditional knowledge (the text is also included in the Annex from the Paris meeting since it was submitted to ABSWG7)**

## **Norway**

### **I. Objective**

#### Operational text:

The objective of the international regime on access to genetic resources and benefit-sharing is to effectively implement the provisions in Articles 1, 8(j), 15, 16 and 19.2 of the Convention, specifically by:

- facilitating appropriate access to genetic resources
- ensuring the fair and equitable sharing of benefits arising out of the commercial and other utilization of genetic resources
- ensuring that Parties have legal provisions that support compliance with national regulations on access and benefit-sharing in provider countries
- enabling appropriate access to and transfer of technology relevant to genetic resources

**taking into account all rights over these resources, including the rights of indigenous peoples and local communities.**

### **II. Scope**

#### Operational text:

The international regime on access and benefit-sharing applies to genetic resources **and associated traditional knowledge, innovations and practices** covered by the Convention on Biological Diversity, as well as to benefits arising from the commercial and other utilization of such resources.

### **III. Main components**

#### **Fair and Equitable Benefit-sharing**

#### Operational text:

Each Contracting Party shall take the following measures:

- a) **establish mechanisms to provide information to potential users concerning their obligations regarding access to genetic resources;**

- b) introduce rules requiring that users of genetic resources comply with national legislation in the providing country/Country of origin and the Mutually Agreed Terms on which access was granted, including requirements to equitably share the benefits arising from the utilisation of such resources, and their derivatives
- c) introduce rules and measures aiming at ensuring that users disclose the country providing the resources/country of origin and prior informed consent as well as the origin of traditional knowledge, innovations and practices of indigenous peoples and local communities in applications for intellectual property rights;
- d) Measures aimed at preventing the use of misappropriated genetic resources and traditional knowledge.
- e) Require that genetic resources are only used for purposes consistent with the terms and conditions under which they were acquired.

## **Access to genetic resources**

### **National focal point and competent national authorities**

Each Party shall designate one *national focal point* for access and benefit-sharing which shall be responsible on its behalf for liaison with the Secretariat. The national focal point should inform applicants for access to genetic resources on applicable procedures, including procedures for prior informed consent, mutually agreed terms and benefit-sharing. **It shall also inform applicants of any rights pertaining to indigenous peoples and local communities and relevant stakeholders.**

Each Party should also, as appropriate, designate ***one or more competent national authorities, which should be responsible for handling and processing of access applications, including mutually agreed terms and benefit-sharing arrangements.*** A Party may designate a single entity to perform the functions of both Focal Point and competent national authority.

Each Party shall no later than the date of entry into force of this Protocol for it, notify the Secretariat of the names and addresses of the focal point and competent authority or authorities.

### **Access provisions**

#### Operational text:

Contracting Parties which are countries of origin of genetic resources, or other Parties which have acquired the genetic resources in accordance with the Convention, shall:

- a) **Seek to ensure that the commercialization and any other use of genetic resources should not prevent traditional use of genetic resources;**

- b) **Require providers only to supply genetic resources and/or traditional knowledge when they are entitled to do so;**
  - c) **Take measures to ensure appropriate participation by relevant indigenous peoples and local communities in access procedures when their rights are associated with the genetic resources being accessed or where traditional knowledge associated with these genetic resources is being accessed**
  - d) **Establish mechanisms to ensure that decisions are made available to relevant indigenous peoples and local communities and relevant stakeholders;**
- e) **Require that substantially new or changed uses of a genetic resource beyond the scope of what has been consented to under MAT, shall be subject to new prior informed consent and mutually agreed terms from the providing country and/or the indigenous peoples and local communities concerned.**

### **Participation by indigenous peoples and local communities**

#### Operational text:

**Indigenous peoples and local communities shall be consulted by the appropriate national authorities, and their views taken into consideration, when their rights are associated with the genetic resources being accessed or where traditional knowledge associated with these genetic resources is being accessed, including:**

- a) **When determining access, prior informed consent, and when negotiating and implementing mutually agreed terms, and in the sharing of benefits;**
- b) **In the development of a national strategy, policies or regimes on access and benefit-sharing.**
- c) **Appropriate consultative arrangements, such as national consultative committees, comprising relevant stakeholder representatives, should be established.**
- d) **Providing information in order for them to be able to participate effectively;**
- e) **Prior informed consent of indigenous peoples and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices, in accordance with their traditional practices, national access policies and subject to national legislation.**
- f) **Documentation of traditional knowledge, innovations and practices, should be subject to the prior informed consent of indigenous peoples and local communities;**
- g) **Providing support for capacity-building, in order for them to be actively engaged in various stages of access and benefit-sharing arrangements,**

**such as in the development and implementation of mutually agreed terms and contractual arrangements.**

### **International certificate of origin to be issued by competent authorities**

Operational text:

Contracting Parties which are countries of origin of genetic resources, or other Parties which have acquired the genetic resources in accordance with the Convention, shall require that, upon granting access, a certificate of compliance (or documentary evidence) is issued, with information on the country providing the resources and information on whether national legislation on access and benefit-sharing has been complied with.

Comment: Under Section A we have already identified some measures to monitor compliance. In addition, we support the introduction of an internationally recognized format for certificates of compliance which should serve to provide evidence of compliance with national access and benefit-sharing legislation, as may be required at specific checkpoints to be established in user countries. The certificate could contain, inter alia, the following information: codified unique identifier (for example code certificate NO 2008 A XXXX); issuing national authority, details of the provider, **details of the right holders of associated traditional knowledge, as appropriate**; details of the user; links to mutually agreed terms; conditions for transfer to third parties etc.

Rationale:

### **Misappropriation of genetic resources/traditional knowledge**

Norway believes that a working understanding on what we mean with misappropriation of genetic resources and traditional knowledge could be helpful in developing the regime and also with regard to national implementation of the regime. This could be linked to an international obligation in the regime for all parties to prohibit the use of misappropriated genetic resources/traditional knowledge.

At least the following can be considered as acts or cases of misappropriation of genetic resources:

- Use of genetic resources that is not in compliance with CBD or the provisions of the international regime or national legislation
- Any acquisition or utilisation of genetic resources by illegal means
- Use of a genetic resource for purposes substantially different from those for which it was accessed
- Deriving commercial benefits from the acquisition, appropriation or utilisation of genetic resources when the person using the genetic resources, knows, or is negligent to know, that these were acquired or appropriated by illegal means.

Concerning traditional knowledge, Norway submitted a proposal to the WIPO dated 20 April 2006 (WIPO/GRTKF/IC/9/12) on protection against misappropriation and unfair use of Traditional Knowledge based on Article 10bis of the Paris Convention.

The legal standard in article 10bis is “what an honest person would consider an act of unfair competition within a commercial or industrial context”. Transposed to the WIPO committee’s work, the concept of “behaviour contrary to honest practices or amounting to inequitable conduct” could be developed to guide understanding of what constitutes an act of misappropriation or unfair use of TK. Acts that could clearly qualify as “unfair use” - would inter alia be exploitation of TK obtained by theft, bribery, coercion, fraud etc. while also other relevant acts would, depending on the circumstances in each case be covered.

It could be argued that it would be difficult for indigenous peoples to obtain a court decision in a foreign country. However, it can be argued that the mere possibility would serve as an incentive for users to obtain prior consent from TK -holders and to participate in benefit-sharing arrangements.

Norwegian proposal regarding protection against misappropriation and unfair use of Traditional Knowledge:

1. The members of the Paris Union for the Protection of Industrial Property and the World Intellectual Property Organization should assure nationals of member countries adequate and effective protection against misappropriation and unfair use of Traditional Knowledge (TK)
2. Any use of TK against honest practices in cultural, industrial or commercial matters should be considered as actions in breach of paragraph one.
3. TK holders should in particular be provided with effective means to ensure that:
  - (i) the principle of prior informed consent applies to access to TK,
  - (ii) benefits arising from certain uses of TK are fair and equitable shared,
  - (iii) all acts of such a nature as to create confusion by any means whatever with the origin of the TK are repressed, and
  - (iv) all acts of such a nature that would be offensive for the holder of the TK are repressed.”

