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AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING
First meeting
Bonn, 22-26 October 2001

RESULTS OF THE PILOT PROJECT FOR BOTANIC GARDENS: PRINCIPLES ON ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING, COMMON POLICY GUIDELINES TO ASSIST WITH THEIR IMPLEMENTATION AND EXPLANATORY TEXT

Text submitted by the Government of the United Kingdom

Note by the Executive Secretary

1 At the request of the Government of the United Kingdom, the Executive Secretary is circulating herewith, for the information of participants in the first meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing, the results of the pilot project for botanic gardens, including principles on access to genetic resources and benefit-sharing and common policy guidelines to assist with their implementation.

2. As noted in the foreword of the present document, the results of the pilot project also include an explanatory text, which is available electronically from http://www.rbgkew.org.uk/conservation/, in hard copy from the CBD Unit, Royal Botanic Gardens, Kew, Richmond TW9 3AE, United Kingdom, and copies will be distributed at the meeting of the Ad Hoc Open-ended Working Group.

3. The attached text is being circulated in the language and the form it was received by the Secretariat of the Convention on Biological Diversity.

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FOREWORD

Nigel Taylor, Kerry ten Kate, China Williams, Fernando Latorre García & Phyllida Cheyne, Royal Botanic Gardens, Kew

There are now over 2,000 botanic gardens worldwide. They are daily involved in the practicalities of access to genetic resources and the sharing of a wide range of benefits through collaborations with their partners around the world.

The entry into force of the Convention on Biological Diversity in December 1993 and its subsequent ratification by 181 parties provides a new mandate for botanic gardens and other scientific organisations working with genetic resources and presents them with both policy and practical challenges. For *ex situ* collections to be of value to science and conservation, they must be maintained and improved. To achieve this, continued access to plant, fungal, microbial and animal genetic resources is essential. The exchange of genetic resources between organisations such as botanic gardens is also necessary to facilitate taxonomic and other scientific research and to ensure that the levels of diversity held in *ex situ* collections are adequate for conservation. Additionally, *ex situ* collections act as an important 'clearing house' as the genetic resources they collect may be supplied to a wide range of organisations including botanic gardens, universities, research institutions and industry.

By working together, the botanical community is in a position to make a very real and very practical contribution to the rapidly evolving debate on access to genetic resources and benefit-sharing (ABS). Such a harmonised approach may help to support the conservation and sustainable use of biological diversity by facilitating the continued exchange of biological material and associated knowledge by the botanical community within the letter and spirit of the Convention on Biological Diversity.

Consisting of 28 botanic gardens and herbaria from 21 countries[1], the Project Group that developed the Principles and Common Policy Guidelines set out in this document represents a wide range of institutional and scientific expertise from organisations of all sizes. Botanic Gardens Conservation International and the International Association of Botanic Gardens also took part. The project was coordinated by the CBD Unit of the Royal Botanic Gardens, Kew and funded by the UK Department for International Development.

The objectives of the project, which started in November 1997, have been to develop a harmonised approach for the participating gardens on access to genetic resources and the sharing of benefits that implements the letter and spirit of the Convention on Biological Diversity; to produce model material transfer agreements for the acquisition and supply of genetic resources by botanic gardens; and to prepare a publication explaining the choices made and their implications. The participants are committed to helping similar institutions and ABS

[1] INTA, Argentina; Australian National Botanic Garden, Australia; Royal Botanic Gardens, Sydney, Australia; INSTECO, Bolivia; Jardim Botânico do Rio de Janeiro, Brazil; Limbé Botanic Garden, Cameroon; Royal Botanical Gardens, Hamilton, Canada; Beijing Botanical Garden, China; Nanjing Botanical Garden, China; Jardín Botánico del Quindío, Colombia; Jardín Botánico Guillermo Piñeres, Cartagena BG, Colombia**;** Bogota Botanic Garden, Colombia; National Herbarium, Ethiopia; Herbarium of the University South Pacific, Fiji; Botanischer Garten der Universität Bonn, Germany; Botanischer Garten und Botanisches Museum Berlin-Dahlem, Germany; Aburi Botanic Gardens, Ghana; National Botanical Research Institute, India; Forest Research Institute, Malaysia; Jardín Botánico del Instituto de Biología (UNAM), Mexico; Puebla Botanic Garden, Mexico; Institut Agronomique et Vétérinaire Hassan II, Morocco; Botanic Garden of Irkutsk State University, Russian Federation; Kirstenbosch National Botanical Garden, South Africa; Freiburg Botanic Garden, Switzerland; Royal Botanic Gardens, Kew, UK; Missouri Botanical Garden, USA; New York Botanical Garden, USA.

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policy-makers to address the issues and find workable solutions for effective implementation of the CBD and associated national legislation.

The Project Group believes that by taking a voluntary, proactive approach, such solutions can facilitate collaborative scientific research that supports the conservation and sustainable use of biological diversity and also respect the rights of all those involved, including indigenous and local communities, and ensure that benefits are shared fairly and equitably.

At its last meeting in Cartagena in November 2000, the Project Group felt that it was important both to find a common approach for all participants on access and benefit-sharing and to allow room for flexibility, so that participants could find solutions tailored to their individual circumstances. Consequently, the group has produced a publication containing three separate documents.

- The Principles on Access to Genetic Resources and Benefit-Sharing: Institutions are invited to endorse these non-legally binding Principles and to develop individual institutional policies that reflect both their letter and spirit.

- The Common Policy Guidelines (CPG): It is hoped that the CPG will provide a useful background for institutions preparing an institutional policy in line with the Principles.

- The Explanatory Text: This text provides additional information on issues that were raised and discussed during the project, and explains why the project participants settled on the language of the Principles and the Common Policy Guidelines.

The Principles and Common Policy Guidelines are included in this document.

The Explanatory Text[2] is available electronically from http://www.rbgkew.org.uk/conservation/, in hard copy from the CBD Unit, Royal Botanic Gardens, Kew, Richmond TW9 3AE, UK, and copies will be distributed at the *Ad Hoc* Open-Ended Working Group On Access And Benefit-Sharing in Bonn, 22-26 October 2001.

The Project Group hopes that the ideas and potential solutions in this document offer a useful background for the delegates to the Bonn meeting.

Any institution that wishes to do so may notify the project coordinators (CBD Unit, Royal Botanic Gardens, Kew – cbdunit@rbgkew.org.uk) that its management or Board of Directors have endorsed the Principles. The organisations that have endorsed the Principles to date are listed on: http://www.rbgkew.org.uk/conservation/endorsements.html.

[2] Latorre García, F., Williams, C., ten Kate, K. & Cheyne, P. 2001 (based on contributions from 36 individuals from 28 botanic gardens and herbaria from 21 countries). Results of the Pilot Project for Botanic Gardens: Principles on Access to Genetic Resources and Benefit-Sharing, Common Policy Guidelines to assist with their implementation and Explanatory Text. Royal Botanic Gardens, Kew. 78pp.

COMMON POLICY GUIDELINES (NOVEMBER 2000)[3]:

GUIDELINES TO ASSIST IN THE PREPARATION OF INSTITUTIONAL POLICIES BASED ON THE "PRINCIPLES ON ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING FOR PARTICIPATING INSTITUTIONS"

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SECTION 1 - INTRODUCTION

Participating Institutions have endorsed the Principles set out in Section 3 because:

- Activities involving access to genetic resources and associated traditional knowledge should be consistent with the provisions of the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and other international, regional, national and sub-national laws and policies concerning biodiversity[4].

- States have sovereign rights over their own biological resources and the authority to determine access to genetic resources rests with national governments.

- Access to genetic resources and benefit-sharing is vital for the conservation and sustainable use of biodiversity.

[3] This document was prepared by the botanical institutions listed in the Explanatory Text.

[4] The Common Policy Guidelines do not apply to plant genetic resources for food and agriculture (PGRFA) within the scope of the multilateral system established by any revised International Undertaking on PGRFA. The terms of access and benefit-sharing for such PGRFA will be set out in part IV of the International Undertaking.

- It is essential to establish conditions that facilitate access and support scientific research, while honouring the principles of prior informed consent and benefit-sharing.

- It is essential to share the benefits arising from the use of genetic resources and their derivatives fairly and equitably with the country of origin that provided the genetic resources and with other Stakeholders, as appropriate.

- It is essential to honour the terms and conditions under which genetic resources have been acquired.

- Cooperation among botanical institutions and with governments will facilitate access to genetic resources and benefit-sharing.

It is the intent of this document to promote a harmonised basis for access and benefit-sharing among botanical institutions.

SECTION 2 - OBJECTIVE

The objective of these Common Policy Guidelines is to provide background guidance to assist Participating Institutions implement the "Principles on Access to Genetic Resources and Benefit-Sharing for Participating Institutions" set out in Section 3 of this document;

SECTION 3 – PRINCIPLES ON ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING FOR PARTICIPATING INSTITUTIONS

Participating Institutions endorse the following Principles on access to genetic resources and benefit-sharing:

Convention on Biological Diversity (CBD) and laws related to access to genetic resources and associated traditional knowledge and benefit-sharing

- Honour the letter and spirit of the CBD, The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and laws relating to access and benefit-sharing, including those relating to traditional knowledge.

Acquisition of genetic resources

- In order to obtain prior informed consent, provide a full explanation of how the genetic resources will be acquired and used.
- When acquiring genetic resources from *in situ* conditions, obtain prior informed consent from the government of the country of origin and any other relevant Stakeholders, according to applicable law and best practice.
- When acquiring genetic resources from *ex situ* collections (such as botanic gardens), obtain prior

informed consent from the body governing the *ex situ* collection and any additional consents required by that body.

- When acquiring genetic resources from *ex situ* sources, whether from *ex situ* collections, commercial sources or individuals, evaluate available documentation and, where necessary, take appropriate steps to ensure that the genetic resources were acquired in accordance with applicable law and best practice.

Use and supply of genetic resources

- Use and supply genetic resources and their derivatives on terms and conditions consistent with those under which they were acquired.
- Prepare a transparent policy on the commercialisation (including plant sales) of genetic resources acquired before and since the CBD entered into force and their derivatives, whether by the Participating Institution or a recipient third party.

Use of written agreements

- Acquire genetic resources and supply genetic resources and derivatives using written agreements, where required by applicable law and best practice, setting out the terms and conditions under which the genetic resources may be acquired, used and supplied and resulting benefits shared.

Benefit-sharing

- Share fairly and equitably with the country of origin and other Stakeholders, the benefits arising from the use of genetic resources and their derivatives including non-monetary, and, in the case of commercialisation, also monetary benefits.
- Share benefits arising from the use of genetic resources acquired prior to the entry into force of the CBD, as far as possible, in the same manner as for those acquired thereafter.

Curation

- In order to comply with these Principles, maintain records and mechanisms to:
    - record the terms and conditions under which genetic resources are acquired;
    - track the use in the Participating Institution and benefits arising from that use; and
    - record supply to third parties, including the terms and conditions of supply.

Prepare a policy

- Prepare, adopt and communicate an institutional policy setting out how the Participating Institution will implement these Principles.

SECTION 4 - DEFINITIONS

In this document, the following terms have the following meanings:

Accession means a sample or specimen of **biological material** incorporated into an ***ex situ* collection**;

Access to genetic resources means the permission to **acquire** and use **genetic resources**;

A*cquisition* means obtaining possession of a material or resource, through collection or receipt;

Benefit-sharing means the sharing of benefits arising from the use, whether commercial or not, of **genetic resources** and their **derivatives,** and may include both monetary and non-monetary returns;

Biological material includes, but is not limited to, plants, plant parts or propagation material (such as seeds, cuttings, roots, bulbs, corms or leaves), fungi or other fungal material, and any other material of plant, animal, fungal, microbial or other origin and the **genetic resources** contained therein;

Biological resources includes, but are not limited to, organisms or parts thereof, populations or any biotic component of ecosystems of actual or potential value, including **genetic resources**;

Botanic garden means, but is not limited to, an institution maintaining documented collections of living and/or preserved plant **accessions** for purposes such as scientific research, conservation, sustainable use, display and education;

Commercialisation means applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval and/or the sale of any resulting product;

Country of origin of **genetic resources** means the country which possesses those **genetic resources** in ***in situ* conditions**;

Derivatives includes, but are not limited to **any progeny**, extracts and compounds obtained from **genetic resources** and analogues of those compounds;

***Ex situ* collection** means managed, documented biological material maintained in conditions other than *in situ*;

Explanatory Text means the document [being] developed to accompany these Common Policy Guidelines;

Genetic resources means any material of plant, animal, fungal, microbial or other origin containing functional units of heredity of actual or potential value;

Herbarium means a reference collection of preserved and documented plant specimens, including those that are dried and pressed and those that are preserved in liquid;

In situ conditions means conditions where **genetic resources** exist within ecosystems and natural

habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties;

Participating Institution means any **botanic garden**, **herbarium** or other institution which endorses the "Principles on Access to Genetic Resources and Benefit-Sharing for Participating Institutions" set out in Section 3 of this document and which has agreed to develop an institutional policy to implement the **Principles**;

Principles means the text set out in Section 3.

Prior informed consent means the consent of the government of the **country of origin** and of any other appropriate **Stakeholders** which must be obtained by the **Participating Institution** prior to gaining **access to genetic resources.** It must be based on full disclosure of information, such as the intended use of those **genetic resources**;

Provider means any individual or organisation, whether governmental or non-governmental, that provides **genetic resources** or **derivatives** to a **Participating Institution**;

Recipient means any individual or organisation, whether governmental or non-governmental, that acquires **genetic resources** or **derivatives** from a **Participating Institution** with its consent;

Stakeholder means an individual, organisation or group whether formal or informal, affected by, or with an interest in, the activities relating to the **acquisition**, use or supply of **genetic resources** or their **derivatives**. Stakeholders involved in conservation and the granting of collecting permits and **prior informed consent** for **access** may include relevant departments of government, local authorities, private individuals such as landowners, indigenous peoples, local communities, farmers and non-governmental organisations. Stakeholders such as these are often described in law relating to **access** and **benefit-sharing**;

Written agreement means any form of written agreement between two or more organisations or individuals setting out the terms and conditions under which one party will transfer **biological materials**. What constitutes a written agreement can take many forms, ranging from an exchange of letters and the granting of a collecting permit based on a completed application, to a shipping notice or a detailed contract (sometimes known as a material transfer agreement or access and benefit-sharing agreement). A range of different written agreements is set out for illustrative purposes in the **Explanatory Text.**

SECTION 5 - ACQUISITION

5.1 PRIOR INFORMED CONSENT

5.1.1 When it collects or otherwise gains access to genetic resources, each Participating Institution

will abide by international and national applicable laws, regulations and best practice.

When obtaining access to genetic resources from *in situ* conditions, each Participating Institution will:

(a) where required, in accordance with applicable law, obtain, in writing, the prior informed consent of the government of the country of origin;

and will make reasonable and sincere efforts to:

(b) obtain and record the prior informed consent of other Stakeholders, as appropriate, for access to and use of the genetic resources concerned and associated knowledge;

(c) ensure that any collection, import, export and other handling of the genetic resources has been in accordance with all applicable law; and

(d) clarify, in writing based on a full explanation of how the genetic resources will be acquired and used, the terms and conditions under which the materials are acquired and can subsequently be used, particularly whether the materials or their derivatives may be supplied to third parties and/or commercialised.

5.1.2. When obtaining access to genetic resources from *ex situ* collections, each Participating Institution will:

(a) obtain, in writing, prior informed consent from the officer authorised to agree terms and conditions of access on behalf of the *ex situ* collection, and such other consents required as indicated by that officer for access to the genetic resources concerned and for their use;

and will make reasonable and sincere efforts to:

(b) obtain from the authorised officer of the Provider a written statement that the genetic resources were acquired and are being supplied in accordance with all applicable law and that the Provider is entitled to supply them to the Participating Institution;

(c) ensure that the export of the genetic resources or their derivatives from the country where the Provider is based, and import to the country where the Participating Institution is based, are in accordance with all applicable law; and

(d) clarify, in writing, based on a full explanation of how the genetic resources will be acquired and used, the terms and conditions under which the materials are acquired and can subsequently be used, particularly whether the materials or their derivatives may be supplied to third parties and/or commercialised.

5.1.3 When obtaining access to genetic resources from *ex situ* sources other than those in Section 5.1.2, above, for instance from commercial sources or individuals, each Participating Institution will ensure that the acquisition conforms with applicable law and best practice, and in cases where there is no applicable law, will, if appropriate, evaluate available documentation and make reasonable and sincere efforts to ascertain from the Provider that the materials were obtained in accordance with the CBD and best practice.

5.2 USE OF WRITTEN AGREEMENTS TO CLARIFY TERMS AND CONDITIONS OF ACQUISITION

5.2.1 When obtaining access to genetic resources, each Participating Institution will make reasonable and sincere efforts to clarify in writing the respective roles, rights and responsibilities of the Participating Institution, the Provider, the country of origin and relevant Stakeholders, as appropriate, in activities involving the acquisition and use of genetic resources.

SECTION 6 – USE

6.1 USE WHERE TERMS AND CONDITIONS ARE CLEAR

6.1.1 Participating Institutions will only use genetic resources for purposes consistent with the terms and conditions under which they were acquired. If a Participating Institution wishes to use such genetic resources for purposes other than those allowed by the terms and conditions under which the material was originally acquired (such as for commercial use when access was granted for non-commercial purposes), the Participating Institution will obtain approval from the Provider for such use and should specify in writing the terms and conditions of use, including fair and equitable benefit-sharing as set out in Section 9 below.

6.2 USE WHERE TERMS AND CONDITIONS ARE NOT CLEAR

6.2.1 A Participating Institution may wish to commercialise genetic resources (or their derivatives) for which the terms and conditions under which they were acquired are not clear. In this case:

(a) if the genetic resources were acquired after the entry into force of the CBD, each Participating Institution will obtain the informed consent of the Provider (or, if the Provider is not known, the country of origin), prior to commercialising the genetic resources, and should specify in writing the terms and conditions of use, including fair and equitable benefit-sharing as set out in Section 9 below.

(b) if the genetic resources were acquired prior to the entry into force of the CBD, each Participating Institution will share benefits arising from their commercialisation according to Section 9, and will

clarify, in the policy on commercialisation referred to in the Principles, whether, prior to commercialisation, they will obtain the informed consent of the Provider (or, if the Provider is not known, the country of origin).

SECTION 7 – CURATION

7.1 COLLECTION MANAGEMENT

7.1.1 Each Participating Institution acquiring genetic resources will make reasonable and sincere efforts to record and maintain data on their acquisition, including information on the Provider; country of origin; collector; and, if available, dates, accession numbers, taxon names, etc; prior informed consent and terms and conditions of use; and other relevant data associated with the acquisition of accessions in its collections in order to be able to implement the Principles.

7.1.2 Each Participating Institution will make reasonable and sincere efforts to record and maintain information concerning the use of genetic resources and their derivatives by that Participating Institution, and the benefits to that Participating Institution arising from such use.

7.1.3 Each Participating Institution will make reasonable and sincere efforts to record and maintain data on the supply of genetic resources and their derivatives, including information on the Recipient and the terms and conditions of access and benefit-sharing under which they were supplied. When providing genetic resources and their derivatives to a Recipient, each Participating Institution will also provide relevant data on their acquisition to the Recipient, as described in Section.7.1.1, particularly information on prior informed consent and conditions of use.

7.1.4 In order to be able to fulfil its commitments in the Principles now and in the future, each Participating Institution will develop and implement appropriate mechanisms to track the acquisition of genetic resources, the different uses of genetic resources and their derivatives held in its collections, their supply to Recipients, and the benefits that arise from their use.

7.2 STAFF MANAGEMENT

7.2.1 Each Participating Institution will establish systems of staff management and individual responsibilities for the implementation of and compliance with the Principles.

SECTION 8 - SUPPLY

8.1 SUPPLY OF GENETIC RESOURCES

8.1.1 Each Participating Institution may supply, whether by way of a gift, sale or loan, genetic resources or their derivatives to other Participating Institutions and third parties for conservation, research, public display, education and other purposes.

8.1.2 At the time of supplying genetic resources or their derivatives, each Participating Institution will, consistent with its policy on commercialisation referred to in the Principles, clarify with the Recipient, whether the supply is for commercial or for non-commercial purposes.

8.1.3 When supplying genetic resources or their derivatives, each Participating Institution will honour any terms and conditions to which it committed when acquiring the genetic resources, such as any terms and conditions set out in written agreements.

8.1.4 To the extent possible, when supplying genetic resources or their derivatives, each Participating Institution will treat genetic resources acquired prior to the entry into force of the CBD and those acquired after its entry into force in the same manner.

8.2 USE OF WRITTEN AGREEMENTS TO CLARIFY TERMS AND CONDITIONS OF SUPPLY

8.2.1 When supplying genetic resources or their derivatives, each Participating Institution recognises the need to supply genetic resources under written agreements, which obliges each Recipient:

a) to share benefits arising from its use of the genetic resources and their derivatives fairly and equitably as set out in Section9.

b) not to commercialise the genetic resources or their derivatives without the explicit consent of the Participating Institution providing them; and

c) not to pass the genetic resources or their derivatives on to third parties without ensuring that the third parties enter into written agreements containing terms and conditions that are no less restrictive.

SECTION 9 - BENEFIT-SHARING

9.1 COMMITMENT TO SHARE BENEFITS

9.1.1 Each Participating Institution will make reasonable and sincere efforts to share the benefits arising from the use of genetic resources and their derivatives fairly and equitably with the country of origin and other Stakeholders, as appropriate.

9.1.2 To the extent possible, each Participating Institution will share the benefits arising from the use of

materials acquired prior to and after the entry into force of the CBD in the same manner.

9.2 BENEFITS

9.2.1 The object of sharing benefits is to achieve fairness and equity and to create incentives and provide resources for the conservation of biological diversity and the sustainable use of its components.

9.2.2 Benefits which Participating Institutions will share, depending upon what is fair and equitable in the circumstances, including commitments made in written agreements, may include:

- taxonomic, biochemical, ecological, horticultural and other information and data, through research results, publications and educational materials;
- access to collections and databases;
- benefits in kind, such as augmentation of national collections in the country of origin and support of community development activities;
- the transfer of technology such as hardware, software and know-how;
- training in science, *in situ* and *ex situ* conservation and management, information technology and management and administration of access and benefit-sharing;
- institutional development, strengthening and management;
- joint research and development, through collaboration in training and research programmes, participation in product development, joint ventures and co-authorship of publications; and,
- in the case of commercialisation, also monetary benefits such as royalties.

SECTION 10 - IMPLEMENTATION

10.1 DEVELOP AN INSTITUTIONAL POLICY

10.1.1 Each Participating Institution will prepare and, as appropriate, communicate its own policy setting out how it will implement the Principles, using these Common Policy Guidelines for guidance.

10.1.2 Participating Institutions may develop such policies individually or collectively, as groups

or networks of institutions.

10.1.3 In order to reflect changes in international, national and other applicable law and acknowledged best practice, it may revise its own policy periodically.

10.2 BROADENING PARTICIPATION

10.2.1 The Participating Institutions endorsing the Principles are committed to working with governments and the broader botanical community, including individuals, organisations and groups dealing with genetic resources in order to develop a harmonised basis for access to genetic resources and benefit-sharing.
