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**OPEN-ENDED EXPERT WORKSHOP ON
CAPACITY-BUILDING FOR ACCESS
TO GENETIC RESOURCES AND
BENEFIT-SHARING**

Montreal, 2-4 December 2002

**SCOPING MEETING ON CAPACITY BUILDING APPROACHES FOR ACCESS TO GENETIC
RESOURCES AND BENEFIT-SHARING**

Note by the Executive Secretary

1. The Executive Secretary is circulating herewith, for the information of participants in the Open-ended Expert Workshop on Capacity-building for Access to Genetic Resources and Benefit-sharing a letter dated 6 November 2002 from the Director of the Institute of Advanced Studies of the United Nations University transmitting the report of the Scoping Meeting on Capacity-building Approaches for Access to Genetic Resources and Benefit-sharing, which was organized by the Institute of Advanced Studies and the United Nations Environment Programme in Kuala Lumpur from 7 to 9 October 2002.
2. The letter and the report are being circulated in the language and the form in which they were received by the Secretariat of the Convention on Biological Diversity.

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Annex

**LETTER DATED 6 NOVEMBER 2002 FROM THE DIRECTOR OF THE INSTITUTE OF
ADVANCED STUDIES OF THE UNITED NATIONS UNIVERSITY ADDRESSED TO
THE EXECUTIVE SECRETARY OF THE CONVENTION ON BIOLOGICAL
DIVERSITY**

I am pleased to inform you that the United Nations University Institute of Advanced Studies (UNU/IAS) and the United Nations Environment Programme (UNEP) organized a Scoping Meeting on Capacity Building Approaches for Access to Genetic Resources and Benefit-Sharing (ABS) in Kuala Lumpur, Malaysia, from 7 - 9 October, 2002. The purpose of the Meeting was to exchange ideas and develop concrete proposals to address the capacity building needs of countries with respects to developing ABS regimes.

The Meeting brought together experts on access and benefit-sharing issues from all regions and from a wide variety of sectors, including government departments, non-governmental organizations, inter-governmental organizations, private sector, scientists, and indigenous peoples organizations. The participants identified four critical areas where more capacity building is required for developing and implementing ABS regimes. These areas were: a) national policy and legislation; b) user measures; c) science and technology; and d) enhancing participation of stakeholders. Based on a detailed consideration of these areas and on experience from around the world, the meeting made recommendations for action on capacity-building approaches for access and benefit-sharing.

The participants agreed that these recommendations be submitted to the Executive Secretary of the Convention on Biological Diversity for use by the Open-ended Expert Workshop on Capacity-Building for Access and Benefit Sharing and the second meeting of the Working Group on Access and Benefit-Sharing and other relevant processes. Accordingly, please find enclosed the Report of the Scoping Meeting on Capacity Building Approaches for Access to Genetic resources and Benefit-Sharing.

The results of the meeting will help UNU/IAS and UNEP focus their efforts to better meet the needs of countries, which are developing and implementing ABS regimes. I sincerely hope that the Report will also be useful for the work of the Convention on Biological Diversity.

(Signed) A.H. Zakri
Director
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SCOPING MEETING ON CAPACITY BUILDING APPROACHES FOR ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

**ABS Scoping Meeting/3
6 November 2002**

**Renaissance Hotel
Kuala Lumpur
Malaysia
7-9 October 2002**

Report of the Scoping Meeting on Capacity Building Approaches for Access to Genetic Resources and Benefit-Sharing

1. INTRODUCTION

1. The Scoping Meeting on Capacity Building Approaches for Access to Genetic Resources and Benefit-Sharing was held at the Renaissance Hotel, in Kuala Lumpur, Malaysia, from 7 to 9 October 2002.

2. The Scoping Meeting brought together experts on access and benefit-sharing (ABS) issues, from all regions and from a wide cross section of different sectors, including government departments, non-governmental organizations, inter-governmental organizations, private sector, scientists, and indigenous people organizations. The participants to this meeting are listed in Annex 1.

2. OPENING OF THE MEETING

3. The meeting was opened by Ms. Goh Siok Eng of the Ministry of Science, Technology and the Environment at 9:00 am on 7 October. In her opening remarks, she noted that this Scoping Meeting was an important initiative to assist developing countries to develop and implement access to genetic resources and benefit-sharing. Ms. Goh pointed out that agricultural food production would remain a strategic sector for Malaysia although agricultural development had been lagging behind the other economic sectors. She added that Malaysia expected that science, biodiversity and biotechnology would bring breakthroughs for food and agriculture. Ms. Goh mentioned that Malaysia was one of the 12 megadiversity countries of the world, and emphasized the need for concerted actions to protect and conserve these resources. Thus, she recognized the importance of establishing ABS laws. Finally, Ms. Goh wished the participants success in their work.

4. Professor A. H. Zakri welcomed participants on behalf of the UNU/Institute of Advanced Studies. In his opening remarks, he emphasized the importance of the subject of this meeting - capacity building approaches for access to genetic resources and benefit-sharing. He noted that promoting benefit-sharing raised a complex set of issues, which were linked to policy making in many areas of government and involved a wide range of stakeholders, each with different priorities, expectations and processes. He also noted that demand for access to genetic

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resources fluctuated significantly and could be difficult to predict. It was not therefore a simple exercise to understand the potential benefits of a country's genetic resources. He noted that what was certain was that all countries needed to develop their capacity to manage their genetic resources if they wanted to take full advantage of these valuable resources. In this respect, he noted that practical and useful ideas about how to address the capacity building needs of countries were urgently needed. Even though over 100 countries have begun to develop and implement a comprehensive ABS regime, there remained a significant gap between policy and action. He emphasized that what countries needed now more than ever was information about the latest experience in other countries. What has worked? What has not? What are the common capacity building needs? Where can resources and expertise to meet these needs be found. He concluded that an ABS toolkit that provided a variety of tools to address these needs would be of enormous value. He finished by noting that the UNU/IAS was pleased to be able to facilitate this important discussion and looked forward to implementing those recommendations of the meeting that were within its mandate and resources.

5. Ms. Margaret Oduk of UNEP also welcomed the participants and outlined the work of UNEP. She emphasized that capacity building on access and benefit-sharing was a priority for UNEP and outlined UNEP's Initiative on Capacity Building for Access and Benefit-Sharing.

6. Ms. Valerie Normand, representing the Secretariat of the CBD, thanked the conveners of this meeting; the UNU/IAS and UNEP and the local organizers (Universiti Kebangsaan Malaysia and the Genetics Society of Malaysia) for organizing this meeting. She stressed that the SCBD strongly supported this initiative. Capacity-building for access to genetic resources and benefit-sharing was recognized as an essential priority by Parties to the Convention on Biological Diversity. An Action Plan on capacity-building for ABS is being developed under the Convention process. This scoping meeting was therefore timely and provided the opportunity for the group of experts gathered to provide relevant input to the ongoing process on access and benefit-sharing under the Convention and to go a step further by developing concrete tools for access and benefit-sharing.

3. ADOPTION OF THE AGENDA

7. At the 1st session of the meeting, on 7 October 2002, the meeting adopted the following agenda based on the provisional agenda contained in document ABS Scoping Meeting/1:

1. Opening of the meeting.
2. Adoption of the agenda.
3. Organization of work.
4. Identification of other complementary approaches to the Bonn Guidelines.
5. The elements of ABS toolkits.
6. How toolkits should be developed and by whom.
7. Develop an action plan for the implementation of the toolkits.
8. Funding for implementation.
9. Other matters.
10. Adoption of the report.
11. Closure of the meeting.

4. THE WORK OF THE MEETING

8. The meeting met five times in plenary. The Chair of the meeting was Professor A. H. Zakri, Director of the United Nations University/ Institute of Advanced Studies. He was assisted in his work by the following co-chairs:

- a) Mr. Effendy Sumardja;
- b) Mr. Sateevad Seebaluck; and
- c) Mr. Seizo Sumida.

9. Professor Zakri outlined the overall organization of the work of the meeting in which he proposed that the meeting consider each of the items of the agenda consecutively. He also recalled that the overall purpose of the meeting was to exchange ideas and develop concrete proposals to address the capacity building needs of countries. Professor Zakri also indicated that the results of the meeting would assist UNU/IAS in focusing their efforts to better meet the needs of countries developing and implementing ABS regimes.

10. Mr. Sam Johnston of the UNU/IAS then introduced the Background Note (document ABS Scoping Meeting/2). He noted that the content of Section B of the Note, which recalled the relevant Articles of the Convention, decisions of the COP and other relevant policies, would be the subject of the later presentations by the representative of SCBD, UNEP, FAO and WIPO. He then outlined the experiences of countries in developing capacities for ABS as described in Section C of the Note. He noted that this review demonstrated the need for a range of products from which countries could select when addressing their capacity building needs. He then briefly introduced Section D, which considered how to develop and implement useful and practical toolkits, under the following headings:

- i) the elements of ABS toolkits;
- ii) how toolkits should be developed and by whom;
- iii) development of an action plan for the development and implementation of the toolkits; and
- iv) funding for implementation.

He concluded by bringing the meeting's attention to the final section of the Note, which contained a brief list of specific topics the meeting was invited to provide guidance to the UNU/IAS to focus its activities better on meeting the needs of countries developing ABS regimes.

11. Ms. Valerie Normand of the SCBD then provided an overview of COP VI outcomes related to access to genetic resources and benefit-sharing and addressed implications of recent developments at WSSD for future work on ABS under the Convention process.

12. Ms. Linda Collette of the FAO briefed participants on the recently adopted International Treaty on Plant Genetic Resources for Food and Agriculture. She provided an overview of the Treaty, its objectives and scope, the Multilateral System of Access and Benefit-Sharing (including, the rationale for it, the condition for access and types of benefits), Farmer's rights, the supporting components (particularly the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture with its four areas of priorities which include Institutions and Capacity Building) as well as some institutional provisions (such as the Governing Body and Compliance). She mentioned that the Multilateral

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System of Access and Benefit-Sharing was established “in the exercise of sovereign rights”. She highlighted the cooperation between FAO and the CBD and particularly the recognition of the “special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions” (Decision II/15) as well as several decisions reflecting this specificity including the recent decisions VI/6 and VI/24 of the CBD. She recalled that when adopting the Bonn Guidelines, COP recognized that these should be applied in a manner that is coherent and mutually supportive of the work of the relevant international agreements and institutions, and that the guidelines are without any prejudice to the access and benefit-sharing provisions of the Treaty. She also mentioned as example of capacity building activities, the technical assistance provided by FAO in the drafting of legislation and regulations on Plant Genetic Resources.

13. At its fourth session, the meeting heard by telephone a presentation by Mr. Shakeel Bhatti of WIPO on the work of WIPO. He presented the WIPO’s draft Toolkit for Intellectual Property Management When Documenting Traditional Knowledge And Associated Biological Resources: Part A: ‘Documentation Toolkit’. He also explained the ongoing work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO’s development of a database of IP clauses from contractual agreements and their technical study on requirements for disclosure of information related to genetic resources in patent applications.

14. At its second session, the meeting heard presentations from each of the participants about their experiences in developing ABS regimes and the capacity-building needs of stakeholders.

15. It was then agreed that even though there are a wide variety of needs and priorities, the following were important areas for developing and implementing ABS regimes where more capacity building was required and that the meeting would consider in more detail in its remaining sessions:

- a) National policy and legislation;
- b) User measures;
- c) Science and technology; and
- d) Enhancing participation of stakeholders.

16. The meeting, at its third session, then decided to consider each of these issues in break out groups. Each group considered:

- a) how the topic generally relates to the overall purpose of ABS regimes (in order to understand the context of the capacity-building needs);
- b) priority building needs and priorities that hinder efforts to develop and implement effective ABS regimes;
- c) gaps in existing capacities and initiatives; and
- d) in some instances, potential actors to address these needs.

17. At its fifth session, the meeting considered the results of each group in plenary.

18. At its sixth session, the meeting adopted the recommendations for action on capacity building approaches for access and benefit-sharing contained in Annex 2.

19. The meeting was closed at 12:30 on Wednesday 9 October 2002.

Annex 1

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Annex 2

RECOMMENDATIONS FOR ACTION ON CAPACITY BUILDING APPROACHES FOR ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

We, the participants of the Scoping Meeting on Capacity Building Approaches for Access to Genetic Resources and Benefit-Sharing,

Having met from 7 to 9 October 2002 to exchange ideas and develop concrete proposals to address the capacity building needs and approaches for access to genetic resources and benefit-sharing

Having considered the experiences of developing access and benefit-sharing regimes in different parts around the world,

Noting that the outcomes of the WSSD, in particular, the Plan of Implementation and the recommendation to negotiate an international regime on benefit-sharing, emphasize the importance and urgency of addressing the issue of capacity-building for access and benefit-sharing in a focused, practical and effective manner,

Welcoming and acknowledging the contribution of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the World Intellectual Property Organization and other relevant processes to the development of relevant capacities

Noting that different communities have different capacity building needs and priorities with respect to the development and implementation of effective access and benefit-sharing regimes,

Noting that a wide variety of measures, initiatives and activities will be required to assist countries in their efforts to develop the necessary capacities for an effective access and benefit-sharing regime that takes into account their commitments at the international level,

Further noting that these recommendations are not authoritative or exhaustive, but simply highlight some key aspects,

Capacity Building Priorities

1. *Emphasizing the need for countries to develop an overall access and benefit-sharing strategy prior to engaging in the development of specific instruments to address access and benefit-sharing that takes into account their commitments at the international level,*
2. *Recognizing the importance of a transparent and predictable regulatory framework for access and benefits sharing in provider countries in order to attract foreign investors,*
3. *Noting the need for assessment, inventory and monitoring of biological resources,*

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4. *Noting* the lack or unavailability of information regarding existing markets for many genetic resources,
5. *Emphasizing* the importance of effective participation of all stakeholders,
6. *Noting* that in many cases there is inadequate participation of stakeholders,
7. *Further noting* the complexity of enhancing participation,
8. *Noting also* that developing capacities to allow stakeholders to effectively engage in decision-making at all levels is in many situations a critical capacity building need,
9. *Believing* that acceptable and credible decision-making processes for all stakeholders is vital for effective access and benefit-sharing regimes,
10. *Noting* that that developing capacities to promote the ability to develop and implement national policy and legislation, and the relevant sciences and technologies that use and apply genetic resources are critical capacity building needs.
11. *Further noting* that developing the awareness of users about their responsibilities and user measures are inextricably linked to an effective capacity building process,
12. *Noting* that more detailed observations about the above issues are contained in the appendices to this recommendation,
13. *Agree* that the capacities for the following activities in many cases require further development:
 - a) effective engagement of stakeholders in decision-making at all levels;
 - b) promotion of negotiation skills;
 - c) effective communication of relevant information, in particular, more effective dissemination of ongoing international processes and relevant international decisions;
 - d) promotion of basic awareness of access and benefit-sharing issues;
 - e) evaluation of existing legislative and policy frameworks for access and benefit-sharing regimes;
 - f) cooperation between relevant government institutions;
 - g) development of mechanisms to ensure that all genetic resources imported were acquired and are used in accordance with the requirements of the provider and remedies where these requirements are not respected;
 - h) development of technologies that promote the sustainable use and/or knowledge of genetic resources; and
 - i) promotion of awareness, information gathering and analysis of existing markets for genetic resources,

Capacity Building Tools

14. *Noting* that a range of tools is required to meet these capacity building needs,
15. *Agree* that the basic basket of tools that are required are:

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- a) compilations of existing instruments and assessments of these instruments (e.g. legislation, best practices, contracts, national and regional guidelines, and customary laws and practices);
- b) case studies;
- c) manuals on IPR measures and other mechanisms to reward innovation;
- d) model annotated regulatory frameworks;
- e) compilations of real and/or model contracts or MTAs;
- f) information about registration and certification systems and other novel mechanisms for access and benefit-sharing;
- g) seminars, workshops and training sessions;
- h) training manuals and programmes;
- i) exchange programmes;
- j) developing alliances, networks and partnerships;
- k) clearing house mechanisms, at international, regional, national and local levels;
- l) audio-visual and other multimedia material; and
- m) educational material.

16. *Noting* that, in order for tools to be effective, they must be designed for a targeted audience, in particular, those sections of society that are culturally distinct,

17. *Noting further* that tools need to be validated through culturally sensitive processes,

Mechanisms for Developing Tools

18. *Noting* that any new initiatives to focus and develop targeted tools need to build upon existing initiatives and in collaboration with relevant partners, to the extent that these are valid and relevant to developing capacities for access and benefit-sharing,

19. *Recalling* decision VI/24 of the Conference of the Parties to the Convention on Biological Diversity, which called for mutual information and coordination to be promoted in order to avoid duplication of effort and to identify existing gaps in coverage,

20. *Recalling* that the Conference of the Parties to the Convention on Biological Diversity requested the Executive Secretary to compile information on existing complementary measures and approaches, and experiences with their implementation, and to disseminate such information to Parties and relevant stakeholders,

21. *Agree* that these recommendations be submitted to the Executive Secretary of the Convention on Biological Diversity for use by the Open-ended Expert Workshop on Capacity-Building for Access and Benefit-Sharing and the second meeting of the Working Group on Access and Benefit-Sharing and other relevant processes,

22. *Welcomes* the UNEP Initiative on Capacity Building for Access and Benefit-Sharing,

23. *Welcomes* the proposed initiatives of the UNU/IAS, in particular, the study of the linkages between capacity building and user measures based on the points outlined in appendix 2 to these recommendations,

/...

24. *Encourages* the UNU/IAS to undertake a case study that would explore the issues confronting the development of national policy and legislation for access and benefit-sharing as outlined in these recommendations, in particular appendix 1,
25. *Encourages* the UNU/IAS to consider, based on the issues outlined in these recommendations, in particular appendix 4, how to promote the participation of stakeholders,
26. *Welcomes* the Capacity 2015 Initiative of the UNDP and its on-going work in more than 50 countries in undertaking assessments of national capacity as well as capacity building and kindly *requests* UNDP to provide information on experiences on capacity building for indigenous knowledge and access and benefit-sharing to any follow-up meetings of this group in order to help further develop these recommendations,
27. *Agree* to review and further develop these recommendations, in particular the appendices to this recommendation, on the margins of either the Open-ended Expert Workshop on Capacity-Building for Access and Benefit-Sharing and/or the second meeting of the Working Group on Access and Benefit-Sharing,
28. *Kindly request* the IAS and UNEP, in collaboration with other partners, to provide information on relevant activities for capacity building for access and benefit-sharing, in particular any activities arising as a result of this meeting, to further meetings of this group and resources to assist the participants to be properly engaged in this process,

Tribute to the Government and People of Malaysia

29. *Deeply appreciative* of the special courtesy and the warm welcome extended by the Government of Malaysia and its people,
30. *Express our sincere* gratitude to the Government of Malaysia and its people for their gracious hospitality and for their contribution to the success of the meeting.

Appendix 1

NATIONAL POLICY AND LEGISLATION

1. It is desirable to have an access and benefit-sharing policy first that reflects commitments made at the international level, before embarking on specific instruments such as legislation to support implementation of the policy.
2. Countries differ in their status of policy development. Therefore, their needs as far as developing or implementing legislation are different.
3. As a result of the above differences in status of policy development, needs and constraints differ in countries.
4. A full access and benefit-sharing policy that reflects international commitments should have the following minimal elements to address access and benefit-sharing needs:
 - a) Determination of ownership or rights to provide resources, including local/farmer/indigenous peoples' rights
 - b) Traditional Knowledge (TK)
 - c) Private sector partnership
 - d) Prior Informed Consent authority
 - e) Conflict resolution / avoidance
 - f) Enforcement
 - g) Mechanism to institutionalize the above
5. To implement the above elements the following activities have priority:
 - a) Having access to model laws
 - b) Develop drafting skill in laws and contracts
 - c) Develop negotiation skill for negotiators
 - d) Know the potential market for the resources at stake
 - e) Be aware of the nature of the resources in possession (i.e. taxonomic information, information about the monetary values and other information)
 - f) Existence of management and enforcement skill to comply with the laws (including conflict resolution)
 - g) Existence of harmonized policies at national level (cross-sectorial) and well informed policy makers, including politicians
6. There are shortcomings and limitations that make it difficult for countries to act on the above. Such gaps are country and/or case specific. Absence of action on the above priorities might be considered as a gap. Countries differ with each other in how extensive these gaps are, therefore, capacity development requirements varies among countries.
7. Tools are needed to take action on priorities. These tools are also country specific and/or case specific. One has to choose from different possibilities the most appropriate ones. Followings are the important tools:
 - a) Training courses (e.g. international obligations such as COP decisions)
 - b) Internship and exchange programs

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- c) Private sector partnership
 - d) Share of experiences
 - e) Conferences and meetings
 - f) Use of mass media
8. The above tools could be used by the following actors to fill in the gaps and priorities:
- a) National agencies
 - b) Indigenous peoples and local communities
 - c) Non-governmental Organizations (NGOs)
 - d) International and regional organizations
 - e) Private sector
 - f) Scientific community
 - g) Professional organizations
 - h) Regional organizations

Appendix 2

USER MEASURES

1. Introduction

1. The user measures indicated in this document are set down as an indicative list of potential mechanisms, deserving further analysis. Work needs to be undertaken to examine the potential utility of these measures for promoting realization of the objectives of the Convention on Biological Diversity (CBD), taking into consideration functionality, cost effectiveness, transparency and compatibility with other international obligations, in particular the ITPGRFA.

2. User measures are understood as a package of legal, administrative and policy measures designed to promote compliance by users of genetic resources and traditional knowledge with obligations regarding Prior Informed Consent (PIC), Mutually Agreed Term (MAT) and Benefit-sharing (BS). These measures can be applied by either the private or public sector and may be mandatory or voluntary. In order to promote greater effectiveness and efficiency of the measures, they should be attempt to be incentive-based.

3. Provider and user measures should complement each other, i.e. user measures should be aimed at supporting provider measures and vice versa. Ensuring this complementarity may require multilateral mechanisms to ensure "baselines and bridges" between provider and user provisions.

2. Measures

2.1 Measures to Promote Prior Informed Consent, Mutually Agreed Terms and Benefit-Sharing

2.1.1 Measures to support prior informed consent.

Measures aimed at encouraging the use of genetic resources obtained with the prior informed consent of the provider and/or Contracting Party providing such resources, including indigenous and local communities, as appropriate (tracking mechanisms).

- a) Certificates of legal provenance
- b) Potential check-points
 - i. Intellectual Property Rights (IPR) procedures
 - ii. Product approval procedures
 - iii. Funding applications for research
 - iv. Import procedures
 - v. Phyto-sanitary procedures
 - vi. Peer review procedures for scientific publication
 - vii. Applications for product development (e.g. clinical trials)
- c) Record keeping

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- i. Use of databases and good record keeping practices
 - ii. Chain-of-custody requirements
- d) Auditing rights
- e) Measures dealing with subsequent uses of materials
- f) Incentive measures
 - i. socially responsible investment

2.1.2 Measures to support Mutually Agreed Terms (MAT)

- a) Measures promoting fair trade practices
 - ii. Competition law and laws regulating trade practices
 - iii. Good corporate governance
 - iv. Use existing rules between business as much as possible
 - v. Lack of consideration
- b) Measures to promote and procure equity in access negotiations
 - i. Was this a fair deal to both sides?
 - ii. Independent funding for capacity building and negotiation
- c) Measures enhancing local food/health security
 - i. Alternative benefit-sharing mechanisms

2.1.3 Measures to promote equitable benefit-sharing

- a) Incentives and standards for technology transfer mechanisms (e.g. tax rebates)
- b) Review of intellectual property rights regimes (Identify CBD-Intellectual Property Rights trade-offs, open other options to reward innovations)

2.2 *Related Issues: Associated Traditional Knowledge*

2.2.1 Improvement of existing mechanisms

- a) Prevention of IPR grants over traditional knowledge (Prior art assessments)
- b) Access to databases
- c) Repatriation

2.2.2 New tools

- a) Proof that you have the right to use it (Extend the notion of legal provenance)
- b) Means to assert ancestral rights over traditional knowledge (Moral rights)

- c) Standards for the use of traditional knowledge in public domain
- d) Follow-on rights / resale rights

2.3 *Cross-cutting Measures*

Enforcement.

Cooperation between Contracting Parties to address alleged infringements of access and benefit-sharing agreements.

- a) Address issues of conflicts of laws
 - ii. Internationally
 - iii. Application of customary law
 - iv. State vs. Federal
- b) Dispute settlement mechanisms
 - i. Arbitration and mediation
 - ii. Standing before the courts
 - iii. Other dispute settlement mechanisms
 - iv. What counts as evidence
 - v. Choice of law
- c) Facilitated access to remedies
 - i. Funding
 - ii. Ease of procedures
- d) Enforcement of foreign judgments
 - i. Investigation of alleged infringements by user countries
 - ii. Facilitated mechanisms for provider countries

2.3.2 Awareness.

Mechanisms to provide information to potential users, regulators and the public (international and national) on their obligations regarding access to genetic resources.

- a) Audience
 - i. Private sector (Small firms, Cosmetics, botanicals, biotech, other biodiversity-based industries in user countries)
 - ii. Public sector (Trade, Intellectual Property Rights, Customs, Product approval, Funding agencies for research, agriculture, fisheries, environment, Judiciary, Legislative)
 - iii. Citizens (including the media)
 - iv. Academic sector (University, Botanical gardens / ex-situ collectors)
- b) Priority
 - i. There are currently no means to implement prior informed consent in user country, and in particular, users do not know about CBD requirements. There is misinformation and ignorance

- c) Tools should include measures to raise awareness and demystification of:
 - ii. ABS
 - iii. IPR and biodiversity
 - iv. Customary laws and beliefs

2.3.3 Information for providers

- a) Information for providers for mutually agreed terms (MAT)
 - i. Means to signal provider countries of their user measures
 - ii. From users (Contractual terms, Codes of conduct, Voluntary certification schemes for institutions abiding by rules on access and benefit-sharing, product certification)
 - iii. From user countries (Information of regulation in place and other measures)
- b) Information for providers for benefit-sharing
 - i. Markets
- c) Information for enforcement
 - ii. Court procedures
 - iii. Private right of action
 - iv. Remedies
 - v. Standing before the courts
 - vi. Alternative dispute settlement mechanisms

Appendix 3

SCIENCE AND TECHNOLOGY

1. Spectrum of Capacity in Providers

1. Countries who own or provide genetic resource have a different variety of levels of development, thus differ in their level of science and technology research capability. Their contribution in research and technology development differs accordingly. Since joint research where both sides can benefit is the preferable form of capacity building in science and technology, the higher the contribution by the provider the more the provider gains in terms of technology transfer and capacity building. This difference in current capacity makes it difficult to set a common priority among countries as to what kind of science and technology capacity building is needed.

2. Key elements in science and technology capacity buildings are:

1. Human Resource Development

- a) Science education
- b) Specialized training
- c) Cross-disciplinary education e.g. science and law or science and economics

2. Infrastructure

- a) Institute, facilities
- b) Strengthening e.g. computer and/or network

3. Technology transfer

4. Capacity building within providers

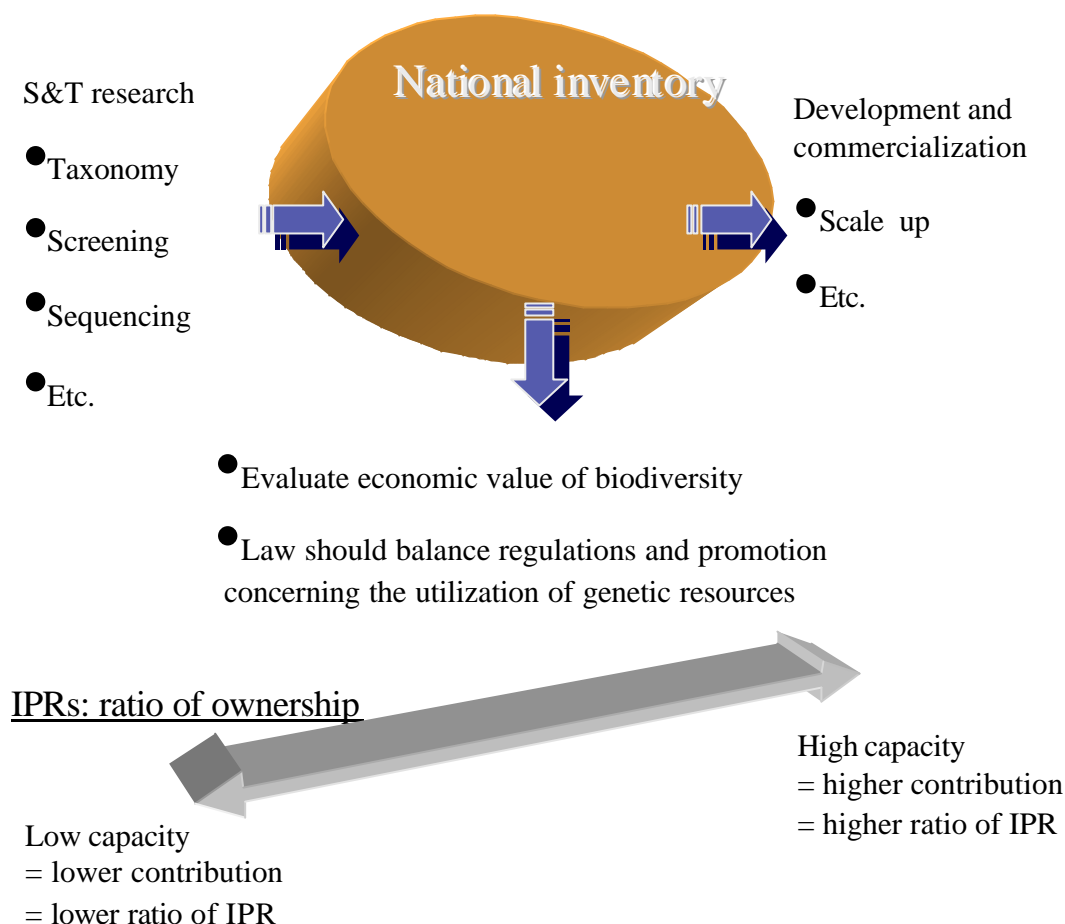
- a) Provider country itself should need to facilitate between local community and (national) R&D institutes to better build the capacity for the local community within the country.

2. Relationship between National Inventory and Science and Technology

3. Certain capacity in science and technology (mostly through basic research) are needed to build a national inventory of bio/genetic resources. The national inventory, in turn, contributes to the utilization of bio/genetic resources in further stages of research, such as development and commercialization. Such national inventory should contribute also in the evaluation of economic value of biodiversity. Now in most countries, law is being promulgated to better manage the access and utilization of those resources. These laws, however, should balance the need to control as well as promote the use of bio/genetic resources and be in compliance with international commitments.

Figure 1. Relationship between national inventory and science and technology

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Note: There are many ways of understanding or measuring the 'contribution'. Therefore, what is the contribution is an important question in all circumstances, but should include:

- Traditional knowledge counts
- Preservation by local community
- R&D investment
- Commercialization and marketing

3. Capacity Building Needs and Priorities for Science and Technology

4. The three important stages of research and development activities are:

1. Basic research
2. Development
3. Commercialization

5. Basic research includes the following activities:

1. Taxonomy & ecology
 - a) Gaps... Lack of taxonomist and taxonomy research
 - b) Tools... GTI, other Infrastructure for (national) biological collections
 - c) Actors... CBD/ SBSTTA
 - d) Training... 'Training program' at different educational levels and retraining.

2. Surveys
 - a) Priority... National inventory
 - b) Tools... Biodiversity assessment
3. Screening
 - a) Priority... Tech transfer, financing, facilities
 - b) Gaps... Lack of technology and facilities
4. Information
 - a) Gaps... HRD, format (sometimes irretrievable), languages, publication and dissemination
 - b) Tools... Clearing-House mechanism resulting in a universal directory or index
 - c) Actors... CBD
6. More tools for basic research include:
 1. On training
 - a) Scientific training program on ethnobotany, bioprospecting, phytochemicals, etc.
 - b) Product development
 - c) Higher degree training in taxonomy
 - d) BioLaw training and research e.g. Thailand's initiative
 2. On research
 - a) Identify area where collaborative research is relevant. For example:
 - i. Collections of material for herbarium or blood and muscle tissues
 - ii. Taxonomic analysis
 - iii. Conservation biology
 - iv. Ecological studies
 - v. Ecological restoration
 3. International foundation (funding agency) to give incentive to partnership formation.
7. More tools on development and commercialization include:
 1. Technology transfer through partnerships esp. platform technologies
 - a) Isolation, identification of compounds
 - b) Genetic engineering, molecular biology
 2. Know-how on patenting obtained through partnership
 3. Training and attachments
 4. Exchange program of researchers
 5. Technology transfer through industrial – national research partnership and investment (e.g. FDI)
 6. More multilateral partnerships
- 4. Some other remarks**
8. Attention needs to focus on more immediate needs in science and technology capacity building. For example, the lack of taxonomist is middle to long-term need that cannot be addressed in the immediate future. Nevertheless, even immediate needs among countries differ according to their current level of development and capacity in science and technology. For example, Thailand needs high-throughput screening technology, genome sequencing, post-genomics and bioinformatics capability, which can differ largely from less developed country.
9. What are science and technology policy options for developing countries?

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- a) Share of technology among developing countries.
- b) Inventing process and IPRs.

10. There should be more 'independent research' that is not driven by the applied needs of private companies, especially large multinational companies.

Appendix 4

ENHANCING PARTICIPATION OF STAKEHOLDERS

The effectiveness of access and benefit-sharing regimes at the local, national and international level depends significantly upon the participation of informed rights holders and stakeholders. The understanding of all international and national obligations and commitments is essential. Capacity building is required all levels.

| ACTORS | PRIORITY NEEDS | GAPS | TOOLS* |
|---------------------------------------|---|--|---|
| Local community/ Indigenous people | <ul style="list-style-type: none"> • Basic awareness of ABS issue • Negotiation • Assess impacts | <ul style="list-style-type: none"> • Different perception • Different value • Unclear concept on ABS • Negotiation skills | <ul style="list-style-type: none"> • Audio-visual aid in local language • Training program to translate the meaning of ABS to the community • Provide proper forum |
| NGOs | <ul style="list-style-type: none"> • Basic education on ABS • Opportunity to participate in the governmental policy | <ul style="list-style-type: none"> • Non-involvement of NGOs in all decision-making level | |
| Private Sector | <ul style="list-style-type: none"> • Incentive to help them to commercialize the scientific knowledge (small & medium size enterprises) • Understanding the meaning of “equitable benefit-sharing • Understanding of indigenous rights | <ul style="list-style-type: none"> • Lack of corporate responsibility | |
| Researchers & Scientists | <ul style="list-style-type: none"> • Flexibility in ABS laws • Understanding ABS issues better • Communicating effectively the results of research | <ul style="list-style-type: none"> • Lack of knowledge about ABS laws • ABS laws are too complicated • Lack of skills/means to communicate research results | <ul style="list-style-type: none"> • Research • Certification • Licensing • Incentive |
| | | | <ul style="list-style-type: none"> • Training program for negotiating skills • Build alliance with NGOs, private sector, indigenous people/local communities, etc. |

* *Note:* The tools listed in this column are relevant for all levels – but are particularly relevant the actor they appear next to.

| ACTORS | PRIORITY NEEDS | GAPS | TOOLS |
|---|---|--|--|
| Government (Officials) | <ul style="list-style-type: none"> •Education for a participatory approach •Education on negotiating skills | <ul style="list-style-type: none"> •Lack of negotiation skills •Lack of knowledge on ABS-related issues •Lack of information (National database, etc.) •Lack of knowledge in participatory approach (concept & practice) •Lack of political sustainability •Lack of transparency | <ul style="list-style-type: none"> •Reward/recognition of inter-sectorial contribution towards the issue |
| Political Masters (Parliamentarians, Ministers) | <ul style="list-style-type: none"> •Political will •Recognize the participatory consultative mechanisms | <ul style="list-style-type: none"> •Lack of knowledge on natural science & legislation •Absence of communication •Lack of recognition of the role of government officials •Lack of collaborative works among agencies (Ministries) | <ul style="list-style-type: none"> •Promote a regional CHM on ABS •Establish a regional consultation on ABS |
| Regional Organization (ASEAN, Andean Pact, CCDA, E.U., African Union, etc.) | <ul style="list-style-type: none"> •Facilitate communication among the member-countries •Better understanding of the scope and each individual countries activities | <ul style="list-style-type: none"> •Differences of opinion among countries •Lack of authoritative information (data/knowledge base, best practices, etc.) | |
| International Organization | <ul style="list-style-type: none"> •Facilitate, motivate & catalyze participation/ endorsement of international instruments on ABS | <ul style="list-style-type: none"> •Lack of commitment of countries in addressing the ABS issue | <ul style="list-style-type: none"> •Raise awareness •Documentation |
| General Public | <ul style="list-style-type: none"> •Raise awareness on ABS •Create consciousness on biodiversity | <ul style="list-style-type: none"> •Lack of knowledge biodiversity, hence on ABS | <ul style="list-style-type: none"> •Practical manual •Multimedia campaign •Create adds, cartoons, games, etc. |
