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ACCESS TO GENETIC RESOURCES

Note by the Executive Secretar

1. INTRODUCTION

1. The provisions of the Convention addressing the issues of access to genetic resources and the sharing of benefits received considerable attention during the negotiation of the Convention and have periodically been discussed during the subsequent meetings of the Convention. At its first meeting, the Conference of the Parties to the Convention on Biological Diversity (COP) adopted a mediu -term programme of work that included, as point 5.4.1 for 1995, the compilation of existing legislative, administrative and policy information on access to genetic resources and the equitable sharing of benefits from their use[1]. The medium-term programme of work indicated that the issue would be considered further at this meeting of the COP under item 6.6.1 of the mediu -term programme of work and consequently indicated that this meeting might consider a compilation of iews of the Parties on possible options for developing national legislative, administrative or policy measures, as appropriate, to implement Article 15".

2. Access to genetic resources and benefit-sharing will also be central to the theme of the fourth meeting of the COP, which will consider matters related to benefit-sharing. Genetic resources are an important and valuable component of biological diversity. Measures for controlling access to these resources are a primary means of promoting benefit-sharing. Thus, although the matter is not specifically identified in the mediu -term programme of work as a possible issue for consideration at the next meeting of the COP, it will nevertheless be an important feature of many of the matters before the meeting.

3. To assist the Parties in their consideration of this issue at the second and third meetings of the COP, the Secretariat prepared document UNEP/CBD/COP/2/13, *Access to Genetic Resources and Benefit-Sharing: Legislation, Administrative and Policy Information*. The document considered the Convention's provisions relating to genetic resources; compiled information on illustrative examples of legislative, administrative or policy measures on the access to and benefit-sharing of genetic resources, as well as specific arrangements created since the adoption of the Convention; and outlined key issues that the Parties might need to address in preparing for item 6.6.1 of the mediu -term programme and in considering the implementation of Article 15.

4. In decision II/11, the second meeting of the COP requested the Executive Secretary to f]urther elaborate the survey of measures taken by Governments to implement Article 15, including any national interpretations of key terms used in that article, with a view to completing the survey in time for circulation at the third meeting of the Conference of the Parties".

5. This Note has been prepared by the Executive Secretary in response to that request from the COP. Its draws upon document UNEP/CBD/COP/2/13 and updates the information contained in that document. This Note assumes a familiarity with the contents and ideas of UNEP/CBD/COP/2/13 (additional copies of document UNEP/CBD/COP/2/13 are available upon request from the Secretariat). As required by decision II/11, this Note places particular emphasis on national and regional interpretations of key terms used in Article 15, such as *prior informed consent, mutually agreed terms and the fair and equitable sharing of benefits*. Governments that have taken measures since October 1995 and which are described in some detail in this Note include: the Philippines, the governments of the Andean Pact, Fiji, Brazil, South Africa, and Australia.

6. Section 2 discusses the process by which measures are developed in these and other countries, including a broad consultative process involving the participation of a wide range of stakeholders, and the development of national strategic plans, and reviews potential benefits deriving from regional approaches to developing access and benefit -sharing measures.

7. Section 3 reviews key terms drawn from existing national measures and discusses the implications of various options employed. Terms addressed in this section include: *genetic resources* (Article 15.1), *access* (Article 15.1), *mutually agreed terms* (Article 15.4), *prior informed consent* (PIC) (Article 15.5), and *benefit-sharing* (Articles 15.6 and 15.7). Section 4 concludes with possible options for future work within the Convention.

8. The Secretariat has not received any communications in response to paragraph 3 of decision II/11, which urged governments to send information on national measures to the Secretariat at their earliest convenience. In the circumstances, this review of measures introduced and developed since the second meeting of the COP does not seek to be exhaustive, but rather to draw to the attention of the COP to some of the major developments of the last year.

2. UPDATE ON NATIONAL EFFORTS SINCE THE PREVIOUS REPORT

9. This section updates information contained in UNEP/CBD/COP/2/13 regarding legislative, administrative, or policy measures undertaken by governments to implement Article 15. This section is divided into two parts. The first summarises the content and status of national implementing measures and discusses examples of measures currently under development. The second part examines the process by which these measures are developed, including a participatory national consultative process and the drafting of strategic plans.

10. A variety of strategies have emerged in those countries that have begun the process of establishing controls over access to their genetic resources in order to implement the equitable sharing of the benefits of their use. In some countries, the route to introducing access measures is to produce specific legislation on access and benefit-sharing. The measures already introduced in the Philippines and the Andean Pact fall into this category, as do drafts under consideration in Brazil and India. Others have developed provisions within new legislation designed to implement a much broader set of objectives, such as establishing a basic framework for implementing the Convention or to ensure sustainable development generally. Fiji, for example, is pursuing this approach. For others, the preferred route is the modification of existing legislation, such as conservation, wildlife or forestr laws, to incorporate access provisions. Western Australia has already introduced amendments to its Conservation and Land Management Act, and other countries are believed to be considering such an approach. A fourth category of measures consists of those intended primarily for other purposes, but touching on access and benefit-sharing. An example is the Indonesian government Regulation on Plant Seed Management, whose objective is to ensure the quality of seeds, but whose provisions on plant seed management contain clauses concerning the introduction and supply of seeds and propagating material to and from the country, and within it.

2.1 The Philippines

11. In May 1995, the Philippines issued Presidential Executive Order No. 247, rescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their B -Products and Derivatives, for Scientific and Commercial Purposes, and for other Purposes" (hereafter hilippines Executive Order 247"). The Executive Order provides a framework for biological-diversity prospecting activities, with obligations for acquiring the prior informed consent of both the Government and Indigenous Cultural Communities (Section 2), minimum terms for both commercial and academic research agreements (Section 5), requirements for benefit-sharing, and the establishment of an institutional structure to act as the Competent National Authority on these matters (Sections 6 and 7).

12. The Philippines introduced more detailed provisions on access and benefit-sharing in June 1996, in "Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources" (hereafter "Philippines Implementing Regulations"). The Implementing Regulations provide details on the requirements of prior informed consent and benefit-sharing with the Government and Indigenous Cultural Communities. These include procedures for the application and processing of research and commercial agreements, including public-sector notification and sector consultation (Sections 6 and 7); minimum terms and conditions for both research and commercial agreements, which include both a requirement of research collaborations, reporting, export procedures, ownership of resources, and the requirement of and some detail regarding benefit-sharing (Section 8); and the duties and functions of the national authority, the Inter-Agency Committee on Biological and Genetic Resources (IACBGR), its technical support committee, and the manner in which IACBGR will operate in conjunction with other government agencies (Sections 10 and 11).

2.2 The Andean Pact

13. In July 1996, the Commission of the Cartagena Accord, or "Andean Pact", introduced a regional measure on access and benefit-sharing, effective in Bolivia, Colombia, Ecuador, Peru and Venezuela. Decision 391 introduces "The Common System on Access to Genetic Resources" (hereafter "The Andean Pact Common System on Access"), whose objective is "To regulate access to the genetic resources of the Member Countries and their derivatives, in order to:

(a) Create the conditions for fair and equitable sharing of the benefits accruing from such access;

(b) Establish a basis for the recognition and appreciation of genetic resources, their derivatives and related intangible components, particularly where indigenous, afro-american and local communities are involved;

(c) Encourage the conservation of biological diversity and sustainable use of biological resources containing genetic resources;

(d) Promote the consolidation and development of scientific, technological and technical capacities at local, national and subregional level; and

(e) Strengthen the negotiating capacity of the Member Countries".

14. The Andean Pact Common System on Access requires applicants seeking access to obtain the prior informed consent of, and share benefits with, both the Competent National Authority and indigenous, Afro-American, and local communities. Article 1 defines the Competent National Authority as the public state authority or body designated by each Member Country and authorised to provide the genetic resource or its derivatives and, consequently, to sign or inspect access contracts, carry out the actions envisaged in the Common System, and ensure compliance with them. The

Common System sets out the details of a permitting process, requiring public notification, the participation of nationals in research, support for conservation and sustainable use, technology transfer, scientific reporting requirements, and the deposit of voucher specimens. The duties of the Competent National Authority and the technical-support Andean Committee on Genetic Resources are found in Articles 50 and 51.

15. While the Andean Pact Common System on Access became binding on the Member Countries as soon as it was published in the Official Gazette on 17 July 1996, each country must enact its own secondary legislation in order to meet its obligations. On 2 September 1996, the Ecuadorian Congress passed legislation providing a general framework for the protection of biological diversity, including the requirement that the co ercial use of biological diversity shall be subject to special regulations to be decreed by the President of the Republic, guaranteeing the ancestral rights of indigenous communities over intangible knowledge and the components of biological diversity, and of genetic resources and control over them. The other members of the Pact are also working on implementing legislation. Peru is developing detailed secondary legislation, which may be passed before the third meeting of the Conference of the Parties. Colo bia is working on national legislation, which may be introduced in two steps: the first stipulating the Competent National Authority, and the second introducing more detailed procedural requirements.

2.3 Brazil

16. The Draft Bill of Law on Access to Brazilian Biodiversity, No. 306 of 1995 (Brazil Access Bill) includes requirements regarding Access to Genetic Resources (Chapter III), such as prior informed consent (as manifested in a permitting process), and including the PIC of local communities, and benefit-sharing that includes the participation of the Country in the economic, social and environmental benefits of the products and processes obtained through the use of the genetic resources found in the Brazilian territory (Chapter III, Article 8.IV).

2.4 Fiji

17. Fiji Draft Sustainable Development Bill of 15 May 1996 contains components of access measures in Part XIX, on Biodiversity, Conservation, and National Parks Management. These include requirements of prior informed consent and benefit-sharing. The Bill outlines a general permitting process for biological-diversity prospecting in Article 249, including the requirement of public notification and export controls. Benefit-sharing is covered in Article 249(1)(c), which requires that fair return is provided for any commercial exploitation of Fiji biological resources".

2.5 Australi

18. In federal systems, access and benefit sharing often require both national, or federal, and state legislation. A case in point is Australia, where access is currentl governed by individual states, but where the export of genetic resources is controlled at the federal level. Various states protect different categories of flora and fauna and have different provisions on state control over biological diversity on

privately owned lands. Some marine areas fall within state waters, and others within the Commonwealth.

19. In order to develop a nationally consistent approach to managing Australia's biological resources (including genetic ones), Australia established, in May 1994, a Commonwealth-State Working Group (CSWG) on Access to Biological Resources to investigate options for a national approach to access to biological resources in Australia. The CSWG is expected to report to First Ministers by the end of this year. The CSWG is required: to identify the benefits for the Australian community of a national approach; to develop principles to be applied in the assessment of mechanisms and in negotiations concerning grant of access; and to develop mechanisms that may be employed to govern the access to and the collection, processing, development and export of Australia's biological resources.

20. At the state level, Queensland started to develop draft legislation, but is awaiting the outcome of the CSWG. Western Australia has already passed the Conservation and Land Management (CALM) Amendment Act 1993 to modify the CALM Act 1985. The 1993 Act empowers the Department of CALM to enter into exclusive agreements to commercialise flora, but did not alter the existing permitting or benefit-sharing requirements. This state is considering amendments to its Wildlife Act the better to coordinate bioprospecting activities for the benefit of the community of Western Australia.

2.6 Processes by Which Measures are Developed and Implemented

21. As important as the manner in which governments have interpreted key terms of Article 15 is the processes by which they have developed access and benefit-sharing measures. In this regard, a number of key strategies have emerged as central to the process by which these measures are developed. They are: participation of a wide-range of stakeholders; the development of a strategic plan; and coordination with other governments on a regional basis to facilitate the development and implementation of access and benefit-sharing measures.

2.6.1 Participation

22. Parties that have introduced, and several that are currently developing, measures to govern access have involved a broad range of stakeholders in the process of developing these measures. This emerging practice recognises that access legislation will be most effective and likely to achieve the objectives of the Convention if it secures the participation of both those affected by it and those whose motivation will be essential for its implementation. Furthermore, in some countries, consultation and participation may be legal requirements in the development of legislative, administrative or polic measures. Processes for developing access legislation have thus involved stakeholders such as indigenous peoples and local communities; relevant government ministries, including departments of environment, forests, science and technology, health, justice, finance, trade and industry; researchers and collectors within the country; and, to a lesser extent, potential commercial partners both in-country and overseas.

23. The Commission of the Cartagena Agreement, for example, started consultations at least two-and-a-half years before the Andean Pact Common System on Access to Genetic Resources entered into force. These consultations were made not only with public-sector representatives within the Member Countries, but also with non-governmental organisations and representatives of indigenous peoples' organisations, some of which were closely involved in the drafting of the legislation. Workshops and meetings solicited the contributions of individuals with relevant expertise in universities, UNEP, FAO, the Secretariat Pro Tempore of the Amazon Cooperation Treaty, indigenous peoples' representatives and non-governmental organisations from the region as well as from the Caribbean, Europe, Africa, Asia, and North America.

24. The Philippines Executive Order No. 247 was the result of an NGO initiative, and was developed during 1994 through a process of consultation involving diverse government agencies, scientific and technical experts and institutions, and NGOs. In cases where the time available during the consultative process leading to the development of the Executive Order was inadequate for full stakeholder consultations on specific details (for example, the definition of prior informed consent), the Executive Order introduced framework obligations and left the details to be spelled out in the implementing regulations that were published in July 1996 following further consultations.

25. Through the Department of Environmental Affairs and Tourism (DEAT) in South Africa, a consultative process has recently been initiated in order to develop a biological-diversity policy and strategy for South Africa, including access and benefit-sharing measures. This process involves national, provincial and local government representatives, members of Parliament, parastatals, museums and research institutions, protected area agencies, non-governmental and community-based organisations, traditional healers, and the private sector. In March 1996, the DEAT produced a Draft Discussion Document Towards A Policy for the Conservation and Sustainable Use of South Africa□ Biological Diversity, which is currently being revised into a Green Paper following input from interest groups and a national consultative conference held in May 1996 (see Laird and Wynberg 1996).

2.6.2 Development of a strategic plan

26. Governments have also found it important to develop a strategies perspective with regard to the overall purpose of the access and benefit-sharing legislation and how it relates to other relevant measures. As part of the process in which legislation is developed, countries have found it important to assess their own needs, opportunities, resources, and c apacities. Assessments such as those conducted by the Philippines and presently underway in South Africa have included a review of the many types of commercial uses to which resources might be applied, including the pharmaceutical, biotechnological, agricultural, horticultural, cosmetic, personal care, food and beverage, flavour and fragrance, and other industries (see document UNEP/CBD/SBSTTA/2/13, Economic Valuation of Biological Diversity). The development of a strategic plan has focused benefit-sharing requirements and streamlined subsequent access procedures and mechanisms for administration and cooperation (see ten Kate 1995; NEP 1995). Experience suggests that a strategic plan also results in the identification of parameters for access legislation and the implementing process (such as the identification or creation of appropriate national focal points, channels for integrating indigenous and local communities into PIC procedures, and the identification of potentially collaborative national research institutions).

27. A strategic process is also needed to understand how access and benefit-sharing regimes for the use of genetic resources relate to other policies necessary for supporting access provisions and the implementation of Article 15. These include: land tenure; environment and forests (see Forests and Biological Diversity, document UNEP/CBD/COP/3/16), including the creation of incentives for conservation and sustainable development (see UNEP/CBD/COP/3/24, Implementation of Article 11); intellectual property rights (see documents UNEP/CBD/COP/3/19 and UNEP/CBD/COP/3/23); rights of indigenous peoples and local communities (see document UNEP/CBD/COP/2/Inf. 23; the knowledge, innovations and practices of indigenous and local communities, UNEP/CBD/SBSTTA/2/7; Traditional Forest-Related Knowledge and the Convention on Biological Diversity UNEP/CBD/SBSTTA/2/Inf.3); the creation of incentives for investment in research and development (see document UNEP/CBD/COP/3/21, Promoting and Facilitating Access to and Transfer and development of Technology); education; and health care.

2.6.3 Regional strategies

28. A number of parties have also identified regional cooperation as a useful mechanism for supporting implementation. As illustrated by the Andean Pact Common System, some governments have already moved to take advantage of the opportunities offered by regional collaboration on access. These might include avoiding competition and undercutting between countries in the same region, the facilitation of access through practical and harmonised policies and procedures on access and benefit - sharing, and regional strategic plans on capacit -building and research collaboration, as well as conservation and sustainable-use programs.

29. Less formal regional collaborations have also proven of value in many areas, such as Southern Africa, involving shared information, research and conservation planning, and the development of regional policies and statements that reflect unique local conditions. The African Ministerial Conference on the Environment (AMCEN) intends to strengthen the African Common Perspective on Biodiversity, and considers access to genetic resources a key issue (AMCEN6/2). This follows the promulgation of the African Common Perspectives and Position on the Convention on Biological Diversity (AMCEN/Conventions/ CBD/1, 26 October 1994), in which the governments of African countries, represented by their ministers and senior officials responsible for the environment and sustainable development, recommended the accelerated development of the legislative basis on which access to their genetic resources is granted; authorised the AMCEN Secretariat to set up a panel of African technical and legal experts to examine a temporary ban on access; and, pending the panel report, recommended interim measures including temporary ban on the transfer, from our countries, of any biological resources not covered by existing Conventions and where Prior Informed Consent is not in effect".

30. Groups within particular regions are considering further cooperation. For example, a meeting last June in Kuala Lumpur examined the potential advantages of a common strategy for access to genetic resources in the ASEAN region, and might lead to regional guidelines building on the 1992 Manila Declaration concerning the ethical utilisation of Asian biological resources and 1994 Melaka Accord.[2]

3. INTERPRETATIONS OF KEY TERMS OF ARTICLE 15

31. Parties have used and interpreted the key provisions of Article 15 in their access and benefit-sharing legislation in a variety of ways. Table 1 below identifies those key terms that have been used by Parties in their access and benefit-sharing legislation and the section in this Note in which they are described.

Table 1

Ter	Article	Section
authority to determine	15(1)	3.4.1
access	15(1)	3.2
genetic resources	15(1)	3.1
facilitate access...not impose restrictions		15(2) 3.4.1
environmentally sound uses	15(2)	3.3
provided by Contracting Parties that are countries of origin...or acquired in accordance with this Convention	15(3)	3.1.4
mutually agreed terms	15(4)	3.3
prior informed consent	15(5)	3.4
unless otherwise determined	15(5)	3.4
full participation of [providing Party]	15(6)	3.5
fair and equitable [sharing of benefits]	15(7)	3.5

3.1 Genetic Resources

32. How genetic resources are defined sets out the scope of the regime and as such is a crucial preliminary step in the development of measures for implementing Article 15. Article 2 of the Convention defines genetic resources as "enetic material of actual or potential value" and genetic material as "ny material of plant, animal, microbial, or other origin containing functional units of heredity". Consequently, the scope of the access and benefit-sharing provisions of Article 15, and related provisions in Articles 16 and 19, are limited to access to genetic resources thus defined. The are also limited to those genetic resources provided by Contracting Parties that are countries of origin of such resources, or Parties that have acquired genetic resources in accordance with the Convention, as set out in Article 15(3) and the relevant definitions in Article 2.

33. The Secretariat, in document UNEP/CBD/COP/2/13, noted that, in practice, the definition of genetic resources may raise a number of difficulties. That Note observed that there were two distinct types of definitional problems. The first was that biochemicals, *ex-sit* holdings, and certain marine genetic resources potentially fell outside the definition used by the Convention. The concern here was that, as these resources represent important and valuable manifestations of genetic diversity, leaving them outside the Convention would undermine the extent to which the Convention would be able to ensure the distribution of the full benefits of utilisation; a fundamental requirement of the equitable

sharing of benefits. The other concern arising from the nature of the definition of genetic resources was one of inclusion rather than exclusion in that human genetic material was ostensibly included within the ambit of the Convention.

34. Parties have chosen to exercise sovereign rights over their natural resources, as described in Article 15 (1), by introducing access measures with a broader scope than the definitions in the Convention. For example, some Parties have introduced provisions that potentially cover derivatives of genetic resources, synthetic versions of original material, biochemicals, ntangible components", associated knowledge, and resources that were not acquired by providing Parties in accordance with the Convention. Parties have also specifically excluded certain types of genetic resources from the syste of control that they are introducing. For example, the Andean Pact has excluded human genetic resources. In another example, the customary use of genetic and biological resources by indigenous and local communities is excluded by the Philippine Implementing Regulations, the Andean Pact Common System on Access, and the Brazilian Bill.

3.1.1 Genetic resources

35. Section 3 of the Philippines Imple enting Regulations states that it governs the) prospecting of all biological and genetic resources in public domain, including natural growths in private lands, intended to be utilised by both foreign and local individuals, entities, organisations, whether government or private"; and,) except traditional use, all bioprospecting activities aimed at discovering, exploring, or using these resources for pharmaceutical development, agricultural, and commercial applications". Section 2 defines biological re sources as including enetic resources, organisms, or parts thereof, populations or any other biotic components of ecosystems with actual or potential use or value for humanity such as plants, seeds, tissues, and other propagation materials, animals, microorganisms, live or preserved whether whole or in part thereof".

36. Article 3 of the Andean Pact Common System on Access sets its scope. The regime covers genetic resources — as well as their derivatives and intangible components — provided by Member Countries where they originate, and the genetic resources of migratory species found for natural reasons in the territory of the Member Countries. Article 1 defines *genetic resources* as ny biological material containing genetic information of actual or potential value", and the country of origin is defined as the country which possesses the genetic resources in *in-sit* conditions.

37. Both the Philippine Implementing Regulations and the Andean Pact Common System on Access include within the scope of their access and benefit-sharing provisions resources such as derivatives, by-products, and synthesised products. Article 1 of the Andean Pact Common System on Access defines a derivative as molecule or combination or mixture of natural molecules, including raw extracts of living or dead organisms of biological origin, derived from the metabolism of living organisms". A synthesised product is defined as substance obtained by means of an artificial process, using genetic information or other biological molecules. This includes semi-processed extracts and substances obtained through treatment of a derivative using an artificial process". The Philippine Implementing Regulations, Section 2, defines a b -product as ny part taken from biological and genetic resources, such as hides, antlers, feathers, fur, internal organs, roots, trunks, branches, leaves,

stems, flowers, and the like, including compounds indirectly produced in a biochemical process or cycle". *Derivative* is defined as "something extracted from biological and genetic resources such as blood, oils, resins, genes, seeds, spores, pollen and the like, taken from or modified from a product".

3.1.2 Human genetic resources

38. Decision II/11 reaffirmed that human genetic resources were not included within the framework of the Convention. This decision parallels some national access and benefit-sharing measures that have also specifically excluded human genetic resources from the definition of genetic resources included within the scope of their laws. For example, Article 4 of the Andean Pact Common System on Access explicitly excludes human genetic resources and their derivatives from its scope, and the Draft Brazilian Bill excludes "the whole, the parts or the genetic components of human beings".

3.1.3 Marine genetic resources

39. There is growing interest in the scientific and commercial potential of the genetic resources and biochemicals found in marine environments. National jurisdiction over marine living resources extends to inland waters, territorial waters and exclusive economic zones. The Philippine Implementing Regulations applies to "all biological and genetic resources in public domain, including natural growths in private lands" (Section 3). The public domain "refers to water and lands owned by the state that have not been declared alienable and disposable" (Section 2 [z]). Consequently, to the extent that there is state ownership over territorial waters and any other marine areas under Philippines law, marine genetic resources will be covered by the Implementing Regulations. It is important to note, however, that the exclusive economic zone is ordinarily considered as distinct from the territorial waters, and the jurisdictional powers of the coastal state are understood to be less expansive in this zone.

40. The Andean Pact Common System on Access to Genetic Resources applies to genetic resources for which Member Countries are "countries of origin" and to the genetic resources of migratory species found in their territories for natural reasons. Since *country of origin* is defined as the country "which possesses the genetic resources in *in sit* conditions", Decision 391 does not clarify its application to marine genetic resources.

3.1.4 *Ex-sit* collections

41. The effect of Article 15(3) of the Convention on Biological Diversity is to exclude from the remit of its provisions on access and benefit-sharing those genetic resources acquired before the entr into force of the Convention. *Ex-sit* collections of genetic resources acquired before the Convention thus fall outside these provisions. Notwithstanding, it is open to governments to consider introducing access requirements and benefit-sharing for these resources, although there are important legal considerations related to the retrospective nature of any such obligations, as well as the fact that the resources may be privately owned (ten Kate 1995b; FAO 1987).

42. Accordingly, the Andean Pact Common System on Access to Genetic Resources applies only to "those genetic resources of which the Member States are countries of origin, their derivatives and intangible components, and to the genetic resources of migratory species found, for natural reasons, in

the territory of the Member Countries" (Article 3 of Decision 391). As noted in paragraph 40 above, the Decision defines *country of origin* in a manner similar to Article 2 of the Convention; that is, as the country which possesses those genetic resources in *in-sit* conditions, but departs from the Convention in explicitly including in this category those genetic resources that, having been established in *in-sit* conditions, are encountered in *ex sit* conditions.

43. The effect of the Decision would appear to be that *ex-sit* collections, whether dating before or after the Convention, and including international collections such as Centro Internacional de Agricultura (CIAT) in Colombia and Centro Internacional de la Papa (CIP) in Peru, are covered by the obligations set out in the Common System. However, the picture is not entirely clear, and the Decision provides various routes for clarification in the future. For example, Article 36 provides that a Competent National Authority can establish framework access contracts with bodies such as research centres. Article 37 stipulates that *ex sit* conservation centres should sign access contracts with the Competent National Authority and that the latter may sign agreements with third parties concerning resources deposited in *ex-sit* collections of which a Member Country is also the country of origin, taking into account the rights, for example, of those who supplied the genetic resources to the collection.

44. As described above, Section 3 of the Philippine Implementing Regulations defines its scope as "ll biological and genetic resources in public domain", and does not explicitly state whether, or which, *ex sit* collections established prior to the Convention are in the "ater and lands owned by the state that have not been declared alienable and disposable" and thus constitute the public domain. Section 8.1.4 provides that "ll Filipino citizens and any Philippine governmental entities shall be allowed complete access to specimens deposited at an internationally recognised ex situ depository or genebank; provided that, access to these materials and documents shall be governed by International Agreement consistent with the Convention on Biological Diversity, the FAO International Undertaking on Plant Genetic Resources, and other international agreements to which the Philippines is a party thereof".

3.2 Access

45. National measures might include definitions of the ter *access*, to clarify what kind of activit constitutes "ccess"; for instance, physical taking, collection, exchange, etc.; definitions of the kind of use to which the materials "ccessed" will be put, and the scope of the national legislation. To date, *access* is generally defined by geographical scope, and the scope of genetic resources covered (see the discussion above under Genetic Resources), rather than by the nature of the physical activity that constitutes it. Article 1 of the Andean Pact Common System on Access, however, contains a broad definition of *access* as "he acquisition and use of genetic resources conserved in ex-situ and in-situ conditions and of their derivatives or, as applicable, intangible components, for purposes of research, biological prospecting, conservation, industrial application, or commercial use, among others".

3.3 Mutually Agreed Terms

46. The phrase *mutually agreed terms* appears in Articles 15 (4), which states that "ccess, where

granted, shall be on mutually agreed terms subject to the provisions of this Article". This term also appears in Articles 16 (3) and 19 (2), and as "utual agreement" in Article 18 (5). Mutually agreed terms have not been explicitly defined in any measures taken by governments to date but are closel linked with prior informed consent and benefit-sharing. Furthermore, all measures indirectly define mutually agreed terms by creating an environment in which the providers of genetic resources are in a position to negotiate on a more equal basis with the users of those resources, and by specifying certain types of benefits that parties to access and benefit-sharing arrangements must include in their agreements, or must consider when forming such agreements. These types of benefits are discussed under benefit-sharing (Section 3.5 below. See also the discussion of possible elements of guidelines on mutually agreed terms in UNEP/CBD/COP/2/13).

47. Terms are mutually agreed-upon if they are reciprocally accepted. Inherent in the *phrase mutually agreed terms* is the expectation of a negotiation between the Party providing genetic resources and a potential user. This aspect of mutually agreed terms points not only to the importance of defining particular elements or features that each agreement should contain but also to the direct and central relevance of the procedural aspects of the regime in implementing this term. Consequently, how a country implements prior informed consent will have a significant bearing on how govern ents have interpreted *mutually agreed terms*.

48. Mutually agreed terms will vary depending upon the nature of use intended. For example, some national measures might distinguish between commercial and academic research, with each option having a bearing on the form of prior informed consent and the nature of benefit-sharing measures required. The line between these two types of research is often blurred, which makes this a complex undertaking. The Philippines Executive Order and Implementing Regulations attempt to make this distinction on an institutional basis, defining Academic Research Agreements (ARA) as those entered into by and between duly recognised Philippines universities and academic institutions, domestic governmental entities or intergovernmental entities, and the concerned national government agencies for the purpose of undertaking academic and scientific research relative to bioprospecting. Commercial Research Agreements (CRA) refer to the research agreements entered into by and between private persons or corporations, or foreign international entities, and the government agency concerned for the purpose of undertaking bioprospecting intended directly or indirectly for commercial use (Section 2, Implementing Regulations). The minimum terms for ARA and CRA are defined differently in the Executive Order and Implementing Regulations (Section 8.), with those for ARAs being described as broader and more general in character (Executive Order, Section 4).

49. National measures might also include minimu terms requiring that commercial and academic research be conducted in an environmentally sound manner. This is in line with Article 10(b) of the Convention, which requires the Parties to take measures as far as possible and as appropriate to avoid or minimise harm to biological diversity from the use of biological resources (See Section I.B.13 of UNEP/CBD/COP/2/13). Section 8.2.4 of the Philippines Implementing Regulations requires that users "ubmit a performance, compensation, ecological rehabilitation bond to be deposited in favour of the government". Article 8.I of the draft Brazilian Law obliges the petitioner to observe all other Brazilian rules, especially those regarding sanitary control, biosafety, protection of the environment and customs; Article 9.II requires that the environmental conditions of the region where the activities are carried out

be conserved. The Article also provides that the competent authority may, when it deems necessary, demand the submission of a study of the environmental impact derived from the activities to be carried out.

50. Article 15 does not make any specific reference to using the benefits arising from access to promote conservation, focusing instead on facilitating access for environmentally sound uses. Parties have, however, noted that the use of benefits to promote conservation can serve two purposes: first, to promote the objectives of the Convention as a whole; and second, companies are attracted to access partnerships where there is a demonstrable conservation result. Consequently, in practice, some access agreements involve the dedication of some of the benefits received to conservation. One such example is Costa Rica agreement to provide 10% of the research budget and 10% of the royalties it receives from bioprospecting to the Ministry of Environment and Natural Resources. Another example is the Department of Conservation and Land Management in Western Australia, which received over $1m for supplying the Smokebush that is the source of conocurvone, currently in anti-AIDS trials; roughl $600,000 of that was dedicated to conservation projects in the State.

3.4 Prior informed consent

51. Article 15 (5) requires that access to genetic resources shall be subject to the prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party. Prior informed consent has emerged as the central procedural device enabling Parties to achieve the specific provisions of Article 15. However, as required by Article 15(2), Parties must endeavour to facilitate access, thereby ensuring the continued exchange of genetic resources. National measures must therefore strike a balance between the need to control access so as to ensure benefit-sharing and mutually agreed-upon terms, and the need to ensure that access procedures, as well as requirements for PIC and benefit-sharing, are flexible and simple enough that they do not block access. Parties ma also need to resolve an interpretation of the last phrase of Article 15(5) — nless otherwise determined" — which might suggest, on the one hand, that if access measures are not in place, PIC is not required or, on the other, that access remains restricted and PIC is required until a Party legall determines otherwise.

52. Significant international experience has been gained in PIC procedures through other international instruments, such as the 1989 Basel Convention on the Control of Transboundar Movements of Hazardous Wastes and their Disposal, but the relevance of such instruments to access and benefit-sharing arrangements for genetic resources is limited (see the discussion in UNEP/CBD/COP/2/13). Prior informed consent is broadly understood to mean consent to an activit that is given after receiving full disclosure regarding the reasons for the activity, the specific procedures the activity would entail, the potential risks involved, and the full implications that can realistically be foreseen (Glowka et al. 1994).

53. The Andean Pact Common System on Access requires the applicant to provide egally correct, complete and trustworthy information" (Article 22). The information to be provided concerns the applicant for access and the resources to which access is sought. Article 26 of the Andean Pact

Common System on Access requires the applicant for access to submit an application containing the following information:

> "(a) Identification of the applicant and, as appropriate, documents demonstrating that he is legally entitled to enter a contract;
>
> (b) Identification of the supplier of genetic or biological resources and their derivatives or of the associated intangible component;
>
> (c) Identification of the national support institution or individual;
>
> (d) Identification and curriculum vitae of the project manager and working group;
>
> (e) Nature of the access activity being requested;
>
> (f) Locality or area in which access will be made, together with the geographical coordinates". This application is to be accompanied by a project proposal, taking into account a reference model provided by the Andean Pact Board.

54. The Philippines Executive Order and Implementing Regulations set out the informational PIC requirements similarly. Minimum terms for Academic and Research Agreements are set out in Section 8 (see Section 3.3 on mutually agreed terms above), and Article 6 requires the applicant to provide a letter of intent and an application form setting out the kind, number and quantity of specimens, the purpose and places of collection, the foreign and local-counterpart researchers (Annex B). Applicants must attach a research proposal setting out the objectives and date of the project, the nature of the bioresources involved, methodology, the manner of collecting, the anticipated intermediate and final destination of the bioresources, how they are to be used, a description of funding and budget, foreseen impact on biological diversity, details of immediate and long-term anticipated compensation, and a list of in-country entities likely to receive compensation (Annex A). Other accompanying documents must include a letter of acceptance from Filipino counterparts, a letter of endorsement from the head of the institution with which the applicant is affiliated, an institutional profile of the applicant, and any others that the concerned government agency may require (Article 6.1).

55. PIC measures also commonly involve a period of public notification. The Philippines Implementing Regulations, Section 7, for example, calls for public notification, through various media, of any collection activities, as well as local community and relevant sector consultation and notification. The Andean Pact Common System on Access also calls for the publicly availability of the records and files of all applications and details of collection plans, as well as the publication of an extract of the application "in a written medium of social communication with a wide national circulation and in another medium of communication in the locality where access activities are to take place..." (Article 28).

56. The language of Article 15(1) suggests that a first step in defining PIC consists of resolving who has the authority to give consent, i.e., to determine access. To date, Parties have defined a two-tiered set of authorities: (a) the Contracting Party, at the national level; and (b) local-level, private

individuals and groups, including indigenous peoples and local communities.

3.4.1 National-level contracting party authorities

57. At the national level, the relevant authorities have tended to be cross-sectoral, representative bodies, usually housed in the government as some form of inter-ministerial or inter-agency committee, which includes the representation and participation of indigenous and local communities, the private sector, the research community, non-governmental organisations, and other stakeholders. This body is generally supported in some manner by advisory technical committees. Governments can play a variet of roles in biodiversity prospecting relationships, and this will be manifested in the types of national authorities they design. For example, a government might be party to every commercial agreement, acting as middleman and broker for local institutions and groups. A government might establish laws that guide the development of access and benefit-sharing arrangements, but may remain distant from all negotiations and transactions. Building on this second option, a government might provide onl monitoring services to ensure that the law is enforced, but leave individual institutions to draft agreements with commercial partners, and to define terms on a case basis. Alternatively, it might designate a national research institution as an official watchdog, advisor, or broker for the country. Finally, governments might set laws, and then provide, through a government department, some for of strategic and advisory oversight and guidance to the activities underway within the country and regions of which they are a part.

58. The Philippines Executive Order promotes an inter-agency approach to regulating the research, collection, exploitation and use of biological and genetic resources. Article 6 defines the Composition and Functions of the Inter-Agency Committee on Biological and Genetic Resources (IACBGR). The Implementing Regulations, in Section 10, detail the composition of the IACBGR, its duties and functions, and the roles and functions of IACBGR member agencies. Duties and functions include: processing applications for Research Agreements; ensuring that conditions are strictly observed; determining and listing the amount of biological material that may be taken and ensuring compliance; deputising and training appropriate agencies to prevent the illegal export of material; ensuring that the rights of indigenous cultural communities and/or indigenous peoples and local communities are protected, including verification of PIC; studying policy and laws, including new laws on intellectual property rights; involving local scientists by creating a Multi-Disciplinary Advisory Board; and developing a conceptual framework for significantly increasing knowledge on Philippine biological diversity. The IACBGR will also be supported by a Technical Secretariat, as defined in Section 11.

59. The Andean Pact Common System of Access, Article 1, defines a Competent National Authority as the public state authority or body designated by each Member Country and authorised to provide the genetic resource or its derivatives and, consequently, to sign or inspect access contracts, carry out the actions envisaged in this common system and ensure compliance with them. The Competent National Authority oversees the granting of prior informed consent through a permitting process, which it also monitors. It also supervises the state of genetic resource conservation and maintains a national inventory of genetic resources and their derivatives (Article 50). Policy and technical recommendations, including proposals for the establishment of networks within the region, capacit -building, and models for the implementation of access controls, are the responsibility of the

Andean Co ittee on Genetic Resources. This committee is comprised of the directors of the Competent National Authorities, or their representatives, advisors, and representatives of other sectors concerned, as designated by each member country (Article 51).

60. The Fiji Bill establishes a Conservation and National Parks Authority within the Department of Environment. The functions of this group will include: (a) the management and licensing of biological - diversity prospecting; (b) the conservation, protection and management of Fiji flora and fauna; (c) the establishment, administration and management of any national parks or protected areas; and (d) the implementation of international agreements in the areas of biological-diversity protection, conservation, and habitat management, including the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), the Convention on Conservation of Nature in the South Pacific (Apia Convention), and the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and related Protocols (SPREP Convention). Section 249, Biodiversity Prospecting, describes the Conservation and National Parks Authority establishment of a system that includes a permitting process, requiring prior informed consent, the written submission of complete information (detailed in 249.4 .b), and the provision of penalties for any person who contravenes or attempts to contravene the requirement of prior informed consent.

3.4.2 Local-level PIC

61. The Philippines Executive Order and Implementing Regulations, the Andean Pact Common System on Access, the Draft Brazilian Law, and other measures require PIC not only from government, but also from private individuals and groups, including indigenous people and local communities. These provisions reflect existing rights, laws and emerging policies within the countries concerned. Even if Article 15 itself is interpreted as not requiring PIC at the local level, these requirements may be linked to the phrase therwise determined", as in Article 15(5).

62. Section 2 of the Philippines Implementing Regulations includes in its definition of PIC both local communities and private land owners. rior informed consent - refers to the consent obtained b the applicant from the Local Community, Indigenous Cultural Communities or Indigenous Peoples (IP), Protected Area Management Board (PAMB) or Private Land Owner concerned, after disclosing fully the intent and scope of the bioprospecting activity, in a language and process understandable to the community, and before any bioprospecting activity is undertaken". Both Section 2 of the Philippines Executive Order and Section 5 of the Implementing Regulations require the prior informed consent of indigenous and local communities. Section 5.1 states that the rospecting of biological and genetic resources within areas of local communities, including ancestral lands and domains of Indigenous Cultural Communities/Indigenous Peoples shall be allowed only with the prior informed consent of such communities". The customary law of communities is also incorporated into the PIC process,

whereby government agencies □hall see to it that the consent required is obtained in accordance with the customary traditions, practices, and mores of the concerned communities and, where appropriate, concurrence of the Council of the Elders in a public consultation/meeting in the site concerned" (Section 5.2).

63. Section 2 of the Philippines Implementing Regulations defines *Indigenous Cultural Communities or Indigenous Peoples* as □ homogenous society identified by self-ascription and ascription by others, who have continuously lived as a community on communally bounded and defined territory, sharing common bonds of language, customs, traditions and other distinctive cultural traits, and who, through resistance to the political, social, and cultural inroads of colonization, became historically differentiated from the majority of Filipinos".

64. The Andean Pact Common System on Access also provides for a two-tiered approach to access and benefit-sharing arrangements. Article 7 of Chapter II, □ecognition of traditional practices, knowledge and innovations", states that the □ember Countries...recognize the value and rights and decision-making capacity of indigenous, Afro-american and local communities with regards to their traditional practices, knowledge, and innovations connected with genetic resources and their derivatives" (Chapter II, Article 7). Article 1 defines an *indigenous, Afro-american, or local community*, as □ human group whose social, cultural and economic conditions distinguish it from other sectors of the national population and which is wholly or partially governed by its own customs or traditions or by special legislation and which, regardless of its legal status, retains, wholly or in part, its own social, economic, cultural and political institutions". In Article 41, reference is also made to accessory contracts for genetic resources subject to the law, including, in Article 41(a), the owner, holder or administrator of the property on which the biological resource containing the genetic resource is found; thus granting a level of PIC to private land owners as well.

65. The Brazilian Draft Bill similarly requires the □articipation of local communities and of indigenous peoples in decisions aimed at giving access to the genetic resources in the areas the occupy" (Article 1.II). Article 6 of Chapter III includes language requiring that □etitions requesting access to the territories of local communities, as well as those aimed at the collection and research of resources in indigenous lands, shall be examined in accordance with rules to be issued within one hundred and eighty days as of publication of the Act, the opinion of the populations involved and the participation of at least one member of the community in the activities carried out b eing ensured, in any event".

3.5 Fair and Equitable Benefit-sharing

66. Article 15(7) requires Parties to take legislative, administrative or policy measures with the ai of □haring in a fair and equitable way the results of research and development and the benefits arising from commercial and other utilization of genetic resources with the Contracting Party providing such resources". This provision recognises that access and benefit-sharing are closely linked, with the production and subsequent sharing of benefits growing out of and being dependent upon the control of access. The Convention refers to specific forms of benefit and their fair and equitable sharing in a

number of articles, including: the participation of providers in the scientific research process (Article 15(6); the sharing of research results and development, and benefits arising from the commercial or other utilisation of genetic resources (Article 15(7); the access to and transfer of technology (Article 16(3); effective participation in the research process by providers (Article 19(1); priority access to results and benefits derived from biotechnologies based on genetic resources provided (Article 19(2), see document UNEP/CBD/SBSTTA /2/6); and the equitable sharing of benefits with indigenous and local communities (Article 8(j), see document UNEP/CBD/COP/3/19). A discussion of potential benefits, and benefit-sharing arrangements, can be found in UNEP/CBD/COP/2/13.

67. Definitions of the term *fair and equitable benefit-sharing* in national measures are not common, although all national measures developed to date devote significant attention to defining what this term means by specifying certain types of benefits that users must share, or that negotiators must consider sharing, when coming to mutually agreed-upon terms for access and benefit-sharing arrangements. The Andean Pact Common System on Access, Article 2, includes in its objectives the creation of "the conditions for fair and equitable sharing of the benefits accruing from access". The Philippines Implementing Regulations, Article 1, define both *benefit-sharing* and *equitable sharing* as follows: "Benefit-sharing — refers to the sharing of results of bioprospecting activity and benefits arising from the utilization or commercialization of the biological or genetic resources fairly and equitably with the indigenous cultural community/local community/protected area/private land owner concerned and the national government by the Principal/Collector. Among the results and benefits that may be shared are payment for access to specimens, royalties, data, technology, capacity building, training, joint research"; "Equitable sharing — refers to the benefit-sharing mutually agreed upon by the parties to the Research Agreement".

68. Examples of benefits specified in national measures, in particular the Andean Pact Common System on Access (AP below), Article 17, and the Philippines Implementing Regulations (P below), Section 8, to date include the following:

(a) The participation of nationals in research activities, as in Article 15(6) (AP, 17.a; P 8.1.12);

(b) The sharing of research results, including all discoveries, as in Article 19(2) (AP 17.d, 17.h; P8.1.9);

(c) A complete set of all voucher specimens left in national institutions (P8.1.2, AP 17.g);

(d) Support for research into the conservation and sustainable use of biological diversit (AP17.b);

(e) Strengthening mechanisms for technology transfer, including biotechnology, as in Article 16 (AP 17.c, 9);

(f) Strengthening institutional capacity in the areas of genetic resources and their derivatives (AP 17.e);

(g) Strengthening the capacities of indigenous peoples and local communities with regard to the intangible components associated with genetic resources and their derivatives (AP 17.f);

(h) Access by nationals to all national specimens deposited in international *ex-sit* collections (P8.1.4);

(i) The receipt by Providers, without payment of a royalty, of all technologies developed from research on endemic species (P 8.1.13);

(j) Fees, royalties and financial benefits (P 8.1.14, 8.2.2); and

(k) The donation to national institutions of equipment used as part of research (P 8.1.3).

69. The practical relationship between access-control and benefit-sharing must be fleshed out on national and local levels. As described above, national measures often outline the nature of benefits — both monetar and non-monetary[3] — that will accrue to the country through biological-diversity prospecting relationships. These measures will also require the sharing of benefits with indigenous peoples and local communities involved in research programs. For example, the Implementing Regulations, Section 8.1.11 and 8.1.14, call for the equitable sharing of benefits pon mutual consent among the Philippine government, communities concerned, and the principal"; (8.1.11) and aid benefit-sharing arrangements must ensure that benefits and results received shall also accrue to the benefit of the Local Communities/Indigenous Peoples (IP)/Protected Areas (PA) concerned and be allocated for conservation measures".

70. Details on the manner in which benefits, and particularly financial benefits, will be distributed so as to reflect both the involvement of local research institutions and communities, as well as national interests are missing in national measures, however. National measures might, for example, include principles and guidelines on benefit-sharing measures that reflect the objectives of Article 1 of the Convention on Biological Diversity and other objectives for the national good, as well as legal and institutional mechanisms for practically distributing benefits to those at a local level. In some cases, benefits will accrue directly to local-level parties through agreements, and the national government might attach conditions to these benefits, requiring, for example, that a portion be returned to a national trust fund, or that the bulk of benefits serve development and conservation objectives, or that onl institutions or communities, and not individuals, benefit directly. Access partnerships are only likely to succeed if the benefit-sharing requirements are tailored to the individual needs of the parties. Consequently, there are limits to how precise legislation can be in its prescription of benefit-sharing. It is important to recognise that the process engendered by PIC provides an opportunity for engaging different stakeholders in benefit-sharing negotiations that result in an appropriate, mutual agreement.

4. CONCLUSION AND RECOMMENDATIONS

71. Exchanging information on the experiences of both the processes within countries by which the measures to be taken by governments are developed and of the measures themselves could be ver

helpful to Parties developing such measures and to institutions involved in either seeking or granting access to genetic resources. This type of exchange could provide a range of ideas and o ptions on measures, prevent the duplication of effort, allow Parties to learn from the experiences of others, and facilitate access to genetic resources, according to Article 15 (2).

72. The Conference of the Parties may wish to consider requesting the Executive Secretary to continue to collect and organise new measures introduced by Parties, as well as measures under development The COP may further wish to encourage governments to communicate such information to the Executive Secretary. The COP may also wish to consider how such information could be disseminated to the advantage of the Parties through the clearing-house mechanism.

73. The Conference of the Parties may wish to consider requesting the Executive Secretary to compile case studies based on input from Parties and other countries and relevant bodies, as appropriate, on: (a) measures that have been introduced or are being developed; (b) the national participatory processes by which the measures have been or are being developed; and (c) their implementation. This could involve updating those supplied in Annex 1 of UNEP/CBD/COP/2/13, and could also cover a variety of partnerships, such as cases in which indigenous and local communities are involved in biological-diversity prospecting relationships with companies, examples of different forms of government involvement in negotiations and access-determinations, and cases representing a spectrum of commercial uses such as pharmaceuticals, biotechnologies, agricultural and horticultural products, cosmetics and personal-care products, foods and beverages, flavours and fragrances, and other industries. Such case studies could inform the Conference of the Parties for its consideration of matters related to benefit-sharing, an agenda item for the fourth meeting of the Conference of the Parties proposed in Decision II/18 on the Mediu -Term Programme of Work of the Conference of the Parties 1996-7. The COP may also wish to consider how such information could be disseminated through the clearing-house mechanism.

74. In its Decision II/11, the second meeting of the Conference of the Parties noted that regional efforts, based in part on the similarity of the genetic resources found in a region, are important to common strategies and should be encouraged. This Note has outlined some of the key provisions of the first such regional strategy (the Common Accord on Access to Genetic Resources of the Andean Pact).

75. The COP may wish to consider requesting the Executive Secretary to prepare a stud identifying the possible advantages of regional strategies, analysing the experience to date, and making recommendations as to how regional initiatives and strategies could assist the Parties in implementing Articles 15,16 and 19 of the Convention. The COP may also consider encouraging appropriate regional organisations to address the issues of access to genetic resources and benefit-sharing.

76. Given the complexity of the scientific and technical, policy, legal and management issues involved in developing measures on access to genetic resources and benefit-sharing, the implications of measures such as access legislation are not always immediately obvious to interested parties and institutions involved in access determinations. The COP may wish to encourage competent organisations to review the measures introduced to date and to produce explanatory and interpretative notes on their effect and implications.

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Notes

[1] See report of the First Meeting of the Conference of the Parties to the Convention on Biological Diversity, decision I/9, Medium-term programme of work of the Conference of the Parties, UNEP/CBD/COP/1/17, Annex II (1995).

[2] Melaka Accord, Resolutions ratified by ASOMPS VIII: 8th Asian Symposium on Medicinal Plants, Spices and other Natural Products, 12-16 June 1994, Melaka, Malaysia.

[3] Laird and Cunningham refer to rocess" benefits, highlighting the non-monetary benefits that arise from the research process, such as research collaborations, equipment, and the sharing of laborator

results. See Laird and Cunningham (in press).

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