

GUIDELINES FOR DETAILED THEMATIC REPORTS ON BENEFIT-SHARING

The following format for preparation of a thematic report on benefit-sharing is derived from a series of matters identified by the Panel of Experts on Access and Benefit-sharing as requiring further study. In addition, Contracting Parties are invited to submit succinct case-studies in accordance with the indicative outline below.

Such information will help Contracting Parties to review the extent to which they are successfully implementing the provisions of the Convention and will assist the Conference of the Parties to provide further guidance on ways and means to implement this objective of the Convention.

In order to assist with the review and synthesis of the information in the reports, respondents are asked to ensure that the information provided is closely related to the preceding questions and is as succinct as possible. There is no set limit on length, but it is anticipated that Parties will be able to provide adequate and useful information in a few pages. An indicative length for case-studies is contained in the outline.

Contracting Parties are also invited to communicate any other issues relevant to implementation of these provisions of the Convention that have not been addressed by the questions below. The Executive Secretary would also welcome any comments on the adequacy of the questions, and difficulties in completing the questions, and any further recommendations on how these reporting guidelines could be improved.

It is recommended that Contracting Parties involve a wide range of stakeholders in the preparation of the report, in order to ensure a participatory and transparent approach to its development. A box is provided in which to identify those groups who have been involved.

Contracting Parties are requested to submit their thematic report on benefit-sharing in this format to the Executive Secretary by 30 December 2000. Parties are requested to submit an original signed copy by post and an electronic copy on diskette or by electronic mail. An electronic version of this document will be sent to all national focal points and this will also be available from the Convention's website at:

<http://www.biodiv.org>.

Completed national reports and any comments should be sent to:

The Executive Secretary
Secretariat of the Convention on Biological Diversity
World Trade Centre
393 St. Jacques Street West, suite 300
Montreal, Quebec
H2Y 1N9 Canada

Fax: (+1 514) 288 6588
e-mail: secretariat@biodiv.org

Please provide to following details on the origin of this report

Contracting Party	
<i>National Focal Point</i>	
Full name of the institution:	
Name and title of contact officer:	
Mailing address:	
Telephone:	
Fax:	
E-mail:	
<i>Contact officer for national report (if different)</i>	
Name and title of contact officer:	
Mailing address:	
Telephone:	
Fax:	
E-mail:	
<i>Submission</i>	
Signature of officer responsible for submitting national report:	
Date of submission:	

Please provide summary information on the process by which this report has been prepared, including information on the types of stakeholders who have been actively involved in its preparation and on material which was used as a basis for the report

I. Please provide the views of your country on the following issues:

Intellectual property and traditional knowledge related to genetic resources

(a) How to define relevant terms including subject matter of traditional knowledge and scope of existing rights;
(b) Whether existing intellectual property rights regimes can be used to protect traditional knowledge;
(c) Options for the development of <u>sui generis</u> protection of traditional knowledge rights.
(d) The relationship between customary laws governing custodianship, use and transmission of traditional knowledge, on the one hand, and the formal intellectual property system, on the other;
(e) Means by which holders of traditional knowledge, including indigenous peoples, may test means of protection of traditional knowledge based on existing intellectual property rights, <u>sui generis</u> possibilities, and customary laws;
(f) How to ensure that granting intellectual property rights does not preclude continued customary use of genetic resources and related knowledge;

Intellectual property rights and access and benefit-sharing agreements

(g) Ways to regulate the use of resources in order to take into account ethical concerns;
(h) Ways to ensure the continued customary use of genetic resources and related knowledge;
(i) How to make provision for the exploitation and use of intellectual property rights to include joint research, obligation to work any right on inventions obtained or provide licenses;
(j) How to take into account the possibility of joint ownership of intellectual property rights.

Indicative Outline for Case-studies on Benefit Sharing Arrangements

To the extent possible case-studies should be short, succinct summaries of experiences of 15-20 pages (5 to 10 000 words). A case-study should focus on the planned/actual benefit-sharing arrangements and their outcomes, the reasons for the outcome and the lessons learned. Footnotes are welcome, if they provide useful sources for further information.

Case-studies should follow, to the extent possible, the proposed structure outlined below. However, as there will be structural differences between those case-studies related to policy and law and those describing concrete activities, such as the bio-prospecting arrangements with local or indigenous communities or the specific management of a protected area for those arrangements, not all sections of the questionnaire will be applicable to every case-study. The outline is therefore meant to be an indicative one. If an author of a case-study feels it is useful to include facts or conclusions not covered by the outline, the outline may be adjusted accordingly.

1. Overview (1 - 3 pages)

Summary of the case-study including

(a) Main actors involved: A short description of the different stakeholders, i.e. who was/is involved in the arrangements leading to benefit sharing (both providers and beneficiaries):

- Governments - national level and/or regional/local authorities;
- universities and research/training institutes;
- private company/entrepreneurs;
- non profit making associations/NGOs;
- local and/or indigenous communities/individuals;

(b) The ecosystem, species and genetic resources concerned;

(c) The type of benefit-sharing arrangements and the expected results:
What kind of arrangements/partnership/relationship is the basis for action.
This can be, for instance:

- a short term or long term arrangement;
- consist in a written and/or verbal contract/ agreement/ understanding (including umbrella agreements as well as specific arrangements);
- they might be individual, communal, or public agreements;
- it could also consist in the national, regional or local legislation or policy for genetic resource use.

(d) The time-frame addressed;

(e) Its relevance to the Convention (e.g. which objective(s) or Article(s)), and to the decisions of the COP and/or to the recommendations of SBSTTA.

2. Description of the context (1 - 3 pages)

Description of the status of the ecosystem, the species and the genetic diversity relevant to the activities and benefit-sharing arrangements presented in the case-study. This should include a brief description of the situation regarding:

(a) The biological resources in question, including threats, pressures and trends as well as underlying causes, use and management;

(b) The physical environment in which the biological resources are located, including the factors mentioned under (a);

(c) The institutional and organisational structure of local communities and concerned institutions including their decision-making processes (as far as those communities or institutions are not stakeholders of the benefit-sharing arrangement);

(d) Where a legal or policy measure is the subject of the case-study, the relevant regional, national and/or local framework should be described.

3. Purpose/Objectives of the Benefit-sharing Arrangements (1 - 2 pages)

A description of the reasons and objectives for the different actors to have entered into the benefit-sharing arrangements or to have set up the legal and policy measures. This section should include, inter alia:

(a) The primary motivations/objective, for instance:

- Financial and/or employment;
- Access to genetic resources (including systems of protection and property rights);
- Access to knowledge, innovations and practices (including information exchange);
- Improved understanding and awareness);
- Access to research and training (acquisition of knowledge and skills);
- Scientific and technical cooperation;
- Commercialization/ trade;
- Environmental protection;

(b) Whether the arrangements contribute to more general long term objectives such as social and economic development, livelihood security and well being, food security, trade, environmental protection;

(c) Where possible, the identification of whether the underlying motivation can be attributed to one or more of the objectives of the Convention (conservation, sustainable use and/or equity) and/or to specific obligations of the Convention i.e. decisions and recommendations.

4. Process for Establishing the Arrangements (1-2 pages)

A brief description of how the arrangements were established and negotiated:

(a) To what extent did the different stakeholders participate in the negotiations regarding the benefits;

(b) What enforcement/compliance measures, if any, were included;

(c) To what extent did the different partners have the necessary skills for negotiating and bargaining (knowledge, information, access, bargaining skills).

5. Content and implementation of the arrangements (4-6 pages)

Description of the activities relevant to the implementation of the benefit sharing arrangements, inter alia:

(a) The different inputs, contributions, actions and responsibilities, rights and obligations of each stakeholder/actor (the providers and the beneficiaries). The contributions could include, for example:

- Research assistance;
- Samples/accessions of plant/animal/microbial genetic resources;
- Information and/or knowledge, i.e. Of the ecosystem/genetic resources;
- Health care, welfare;
- Money, capital, markets, employment;
- Food supply;
- Environmental protection.

(b) the different benefits that each stakeholder derived from the arrangements. Include how these benefits were identified and assessed (indicators and process). The identified benefits arising out of the arrangements in relation to the objectives of the Convention could include:

- Direct/indirect;
- Short term/long term;
- Monetary/non-monetary;
- Individual/public (cross-reference where appropriate with section 4).

(c) The mechanisms for sharing benefits. Describe the modalities and mechanisms for transferring/sharing-out the benefits including:

- Directly or indirectly (for instance through a trust fund); time specific or over time;
- How do they reach the different partners, i.e. Mechanism of distribution in the community or in the nation state;
- How are they utilised to further benefit the stakeholders.

(d) Where the case-study relates to measures in policy and legislation:

- How will compliance with the new regulations be ensured?
- Which institutions will be responsible for the control or administration of the measures?

6. Policy, legislative and administrative context (2 pages)

(a) How does the legislation and policy environment of the country influence the results and findings of the case-study, including application of national and community laws?

(b) Which specific regulations and/or policies were helpful and why?

(c) What specific policy, social, economic, cultural and environmental constraints have been identified and which need to be addressed at different levels. The assessment should consider, *inter alia*, the following areas:

- Access legislation, education, information, land tenure, intellectual property rights, traditional resource rights, administrative procedure, taxation, trade, investment, policies.

(d) Where the case-study is itself an example of policy or legal measures, this section could include reference to other relevant policies or legal or administrative issues that may influence the impact of the described case-study.

7. Impact on conservation (1-2 pages)

This section should include:

(a) What kind of impact does the activity have (actual and or potential) on the conservation of biological diversity:

- On genetic and species diversity;
- On the ecosystem in general;
- On most important (e.g., keystone, indicator, economic or cultural) species;

(b) How was the impact identified and assessed (indicators, process)?

8. Policy relevant conclusions: lessons learned and replicability (2 pages)

This section should analyse:

(a) Lessons learned

- How would you assess the case-study with regard to the actual/potential effectiveness of the benefit-sharing arrangements?
- Identify both negative and positive aspects which determine its success or failure.
- Do you consider that the benefits were shared in a fair and equitable way? On what evaluation are you basing your assessment?

- Identify the most important constraints to and opportunities for the identification and adoption of economically, socially and culturally sound benefit-sharing arrangements to promote the conservation and sustainable use of biological diversity
- (b) Transferability of the experience:
- Assess whether the case-study could be considered representative and could be replicated . If so, what would you propose should be done differently now if there were the opportunity to replicate the experience: with the same/other actors; in the same environment/elsewhere; with the same/different genetic resources;
 - In addition specify what information is available and what further research may be needed to improve the case-study and to develop proposals for further replication;
 - What are the minimum institutional, ecological and socio-economic/market requirements that would have to be met to allow the experience to be replicated?
- (c) Possible policy advice for implementation:
- Outline what policy conclusions and recommendations can be drawn from the case-study.