



**Convention on
Biological Diversity**

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GROUP OF TECHNICAL AND LEGAL EXPERTS ON
CONCEPTS, TERMS, WORKING DEFINITIONS AND
SECTORAL APPROACHES IN THE CONTEXT OF THE
INTERNATIONAL REGIME ON ACCESS AND
BENEFIT-SHARING

Windhoek, 2-5 December 2008

**COMPILATION OF SUBMISSIONS BY PARTIES, INTERNATIONAL ORGANIZATIONS,
INDIGENOUS AND LOCAL COMMUNITIES AND STAKEHOLDERS ON CONCEPTS,
TERMS, WORKING DEFINITIONS AND SECTORAL APPROACHES**

Note by the Executive Secretary

Addendum

SUBMISSION FROM THE GOVERNMENT OF JAPAN

1. The Secretariat is circulating herewith, as an addendum to the original compilation of submissions on concepts, terms, working definitions and sectoral approaches (UNEP/CBD/ABS/GTLE/1/2), a submission from the Government of Japan.
2. The contribution has been reproduced in the form and the language in which it was received by the Secretariat.

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JAPAN

Japan would like to submit its view as described below, for the meeting of the Group of Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches, to take place in Windhoek, Namibia during 2-5 December, 2008.

Whatever international regime is to be introduced within the framework of the CBD, bearing in mind the Bonn Guidelines, it must be a workable instrument(s) which ensures practicability, flexibility and cost-effectiveness as well as fair and equitable sharing of benefits.

1. The definitions of genetic resources and biological resources and their implications

In the COP9 decision IX/12, annex II, section I B, 1 (a), the following terms of references are set out;

(a) What are the different ways of understanding biological resources, genetic resources, derivatives and products and what are the implications of each understanding for the development of the main components of the international regime on access and benefit-sharing, including in relation to sectoral and subsectoral activities and in relation to commercial and non-commercial research?

(1) In order to facilitate discussion of the issues on access to and fair and equitable sharing of benefits arising out of utilization of genetic resources (ABS), ambiguity that arises from the interpretation of the terms “genetic resources” and “biological resources” defined in the Convention on Biological Diversity (CBD) (see footnotes 1 and 2 below) should be eliminated as much as possible.

For example, genetic resources which were affirmed by the Conference of Parties to the CBD (COP) as “not within the framework of the CBD” should be explicitly mentioned, e.g., human genetic resources (see footnote 3 below).

There is also a need to clarify how to treat genetic resources which are regarded as commodities, i.e., those normally traded. (e.g., those sold at markets).

Footnotes:

1) The definition of genetic resources

According to CBD Article 2, “genetic resources” means genetic material of actual or potential value, and “genetic material” means “any material of plant, animal, microbial or other origin containing functional units of heredity”.

2) The definition of biological resources

According to Article 2 of the Convention on Biological Diversity, “biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

3) Human genetic resources

Decision II/11, paragraph 2, of the second meeting of the Conference of the Parties (1995) reaffirmed that human genetic resources are not included within the framework of the Convention.

(2) How to treat derivatives and products of genetic resources in the context of ABS

Article 15 of the CBD covers “access to genetic resources”. ABS issues related to items which are not genetic resources should be discussed in the context of “mutually agreed terms” between users and providers, on the basis of the national legislation of the providing countries and/or taking into consideration the Bonn Guidelines.

2. Sectoral approach

(1) The other terms of reference set out in the COP9 decision IX/12, annex II, section I B, are as follows;

- (b) Identify different forms of utilization of genetic resources in relation to sectoral and subsectoral activities in the context of Article 15, paragraph 7, of the Convention;*
- (c) Identify and describe sector specific characteristics of access and benefit-sharing arrangements and to identify the differences, if any, between approaches in sectors;*
- (d) What are the range of options and approaches for taking these different characteristics into account and that may bring coherence to access and benefit-sharing related practices in different sectors?*

(2) We fully recognize the importance of those questions and we support such approaches which identify different characteristics of each “sector” and taking into account those differences in future discussions.

The definition of “sector” is too ambiguous at this stage and there is a room for discussion on the appropriate categorization. Therefore, we considered in this paper types, forms of utilization, and aim of utilization of genetic resources as elements to be included in the concept of “sector”.

The term “sector” used in this paper is neither comprehensive nor categorized systematically enough to avoid duplication. The “sectors” mentioned below are only indicative categories which need to be clarified in future discussion.

3. Indicative categories for “sectors”

(1) “Sector” where *ex situ* conservation is practised (*ex situ* collections)

With respect to the *ex situ* collections, an institutional framework has been functioning effectively. Through this framework, the access to genetic resources is facilitated and the compliance with the national legislations regarding prior informed consent and mutually agreed terms is being promoted. Therefore, due consideration should be paid to *ex situ* collections in the discussion on an international regime.

Attention should be drawn to the important role of *ex situ* collections, and therefore, an international regime, if established, should be as such to further promote the role of *ex situ* collections.

(2) “Sector” which is covered by other international frameworks (including the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA))

With regard to the plant genetic resources, a legally-binding framework of ITPGRFA (the FAO International Treaty on Plant Genetic Resources for Food and Agriculture) already covers specific plant species and connection with this scheme should be clarified and streamlined.

As for the plants which are already covered by ITPGRFA, the necessity of another regime might be questioned. On the other hand, as for the plants which are not covered by ITPGRFA, the background and rationale for their exclusion should be fully taken into account.

(3) “Sector” which contributes to the public health

Generally the development of pharmaceutical products and vaccines contributes to the disease prevention and treatments, benefiting the whole humanity in the world. In light of this particularity, due attention should be given to public health and its interdependent nature of user and provider countries in the course of discussion on an international regime.

For instance, users of pharmaceutical products and vaccines spread in the world and the nationals of provider countries are beneficiaries as well of the utilization of resources. Hence, it is not easy to draw a clear line between provider countries and user countries in this field. Furthermore, if the application of a regime restrains development of pharmaceutical products and vaccines for pandemic diseases, for example, the whole humanity would be victim of such negative consequence. Very prudent approach may be therefore required for this element in the consideration of an international regime.

In this regard, we should take note of the progress made in the ongoing work already launched by the World Health Organization (WHO).

(4) “Sector” where the genetic resources are utilized for basic science and non-profit purposes

It is appropriate to pay particular attention to the field of basic science which is not aimed at profit-making. Once the results of such research are made public through publication in scientific journals etc., they will be broadly shared by all the world including provider countries of genetic resources. Therefore particular consideration needs to be paid to that kind of section, in order not to inhibit advancement of basic science.

3. As stated above, each “sector” has its characteristics to be considered, and further detailed examination and consideration should be made for each case.
