



## Convention on Biological Diversity

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GROUP OF TECHNICAL AND LEGAL EXPERTS  
ON COMPLIANCE IN THE CONTEXT OF THE  
INTERNATIONAL REGIME ON ACCESS AND  
BENEFIT-SHARING

Tokyo, 27-30 January 2009

Item 2 of the provisional agenda\*

### REVISED ANNOTATIONS TO THE PROVISIONAL AGENDA

#### INTRODUCTION

1. The meeting of the Group of Technical and Legal Experts on Compliance in the Context of the International Regime on Access and Benefit-sharing is being held pursuant to decision IX/12 of the Conference of the Parties to the Convention on Biological Diversity.

2. In paragraph 11 of this decision, the Conference of the Parties decided to establish three distinct groups of technical and legal experts. In accordance with paragraph 1 of section A of annex II to the decision, the Group of Technical and Legal Experts is established to further examine the issue of compliance in order to assist the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. As set out in its terms of reference contained in that paragraph:

“The expert group shall provide legal and, as appropriate, technical advice, including, where appropriate, options and/or scenarios. The expert group will address the following questions:

(a) What kind of measures are available, or could be developed, in public and private international law to:

(i) Facilitate, with particular consideration to fairness and equity, and taking into account cost and effectiveness:

a) Access to justice, including alternative dispute resolution;

b) Access to courts by foreign plaintiffs;

(ii) Support mutual recognition and enforcement of judgments across jurisdictions;

and

(iii) Provide remedies and sanctions in civil, commercial and criminal matters;

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in order to ensure compliance with national access and benefit-sharing legislation and requirements, including prior informed consent, and mutually agreed terms;

(b) What kind of voluntary measures are available to enhance compliance of users of foreign genetic resources;

(c) Consider how internationally agreed definitions of misappropriation and misuse of genetic resources and associated traditional knowledge could support compliance where genetic resources have been accessed or used in circumvention of national legislation or without setting up of mutually agreed terms;

(d) How could compliance measures take account of the customary law of indigenous and local communities?

(e) Analyse whether particular compliance measures are needed for research with non-commercial intent, and if so, how these measures could address challenges arising from changes in intent and/or users, particularly considering the challenge arising from a lack of compliance with relevant access and benefit-sharing legislation and/or mutually agreed terms.”

3. In paragraph 2 of section A of annex II of decision IX/12, the Conference of the Parties also decided that the group of experts shall be regionally balanced and composed of thirty experts nominated by Parties and a total of ten observers, including three observers from indigenous and local communities nominated by them, and remaining observers from, *inter alia*, international organizations and agreements, industry, research institutions/academia and non-governmental organizations.

4. In accordance with paragraph 12 of decision IX/12, the Bureau, on the recommendation of the Executive Secretary, has approved a list of selected experts for the meeting, prepared in accordance with the terms of reference set out in paragraph 3 above.

5. An information note containing details of registration and logistical arrangements for the meeting, including information on travel visa requirements, accommodation and other matters has been made available to participants.

#### **ITEM 1. OPENING OF THE MEETING**

6. Following the registration of participants, which will start at 8.30 a.m., the meeting will be opened by the representative of the Executive Secretary at 9.30 a.m. on Tuesday, 27 January 2009.

#### **ITEM 2. ORGANIZATIONAL MATTERS**

7. Participants will be invited to elect the Chair/Co-Chairs for the meeting on the basis of proposals from the floor.

8. Participants will also be invited to adopt the agenda for the meeting on the basis of the provisional agenda prepared by the Executive Secretary (UNEP/CBD/ABS/GTLE/2/1).

9. The Group may wish to carry out its work in plenary or break out into sub-groups, as appropriate. A proposal for the organization of work for the meeting is contained in annex II below.

10. The language of the meeting will be English.

#### **ITEM 3. COMPLIANCE IN THE CONTEXT OF THE INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING**

11. As noted in paragraph 2 above, the Group of Experts was established to further examine the issue of compliance in order to assist the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

The Group was requested by the Conference of the Parties to provide legal and, as appropriate, technical advice, including, where appropriate, options and/or scenarios.

12. As set out in the terms of reference, the Group of Experts will address the questions listed in paragraph 2 above. In addressing these questions, the Group of Experts will have before it a compilation of contributions from Parties, other Governments, indigenous and local communities, international organizations and relevant stakeholders (UNEP/CBD/ABS/GTLE/2/2). These views were submitted to the Executive Secretary in response to the invitation of the Conference of the Parties in paragraph 15 of decision IX/12. Any additional submissions received before the meeting will be issued as an addendum or addenda to that document.

13. The Group of Experts will also have before it as an information document (UNEP/CBD/GTLE/2/INF/1) *the International Standard for Sustainable Wild Collections of Medicinal and Aromatic Plants* referred to in the submission by the International Chamber of Commerce included in the compilation of contributions.

14. The drafts of two of the studies commissioned by the Executive Secretary in accordance with paragraph 13 of decision IX/12 which are of relevance to this expert group are also being made available for the information of participants in the meeting: a comparative study of the real and transactional costs involved in the process of access to justice across jurisdictions (UNEP/CBD/ABS/GTLE/2/INF/2); and a study on compliance issues in relation to the customary law of indigenous and local communities in the context of access and benefit-sharing (UNEP/CBD/ABS/GTLE/2/INF/3). The final versions of these studies will be made available for the seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

15. In considering this item, participants may also wish to take into consideration documents prepared by the Secretariat for the fifth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, held in October 2007, which contain information of relevance to this Expert Group. The note by the Executive Secretary on analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing (UNEP/CBD/WG-ABS/5/3) addresses the issue of compliance under its section C. In addition, the overview of regional and national measures related to access and benefit-sharing adopted by countries as providers and users of genetic resources (UNEP/CBD/WG-ABS/5/4). This overview includes reference to voluntary measures adopted by Parties and stakeholders to support compliance with prior informed consent and mutually agreed terms.

#### **ITEM 4. ADOPTION OF THE REPORT**

16. The Group will be invited to consider and adopt its report, which will be presented to the seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing by the Chair/Co-Chairs of the meeting.

#### **ITEM 5. CLOSURE OF THE MEETING**

17. It is expected that the meeting will be closed at 6 p.m. on Friday, 30 January 2009.

*Annex I*

**LIST OF DOCUMENTS**

<i>Symbol</i>	<i>Title</i>
UNEP/CBD/ABS/GTLE/2/1	Provisional agenda
UNEP/CBD/ABS/GTLE/2/1/Add.1/Rev.1	Revised annotations to the provisional agenda
UNEP/CBD/ABS/GTLE/2/2	Compilation of submissions provided by Parties, Governments, indigenous and local communities, international organisations and relevant stakeholders in preparation for the meeting of the Group of Technical and Legal Experts on Compliance in the Context of the International Regime on Access and Benefit-sharing
UNEP/CBD/ABS/GTLE/2/INF/1	Compilation of submissions provided by Parties, Governments, indigenous and local communities, international organisations and relevant stakeholders in preparation for the meeting of the Group of Technical and Legal Experts on compliance – <i>International Standard for Sustainable Wild Collection of Medicinal and Aromatic Plants</i>
UNEP/CBD/ABS/GTLE/2/INF/2	Comparative study of the real and transactional costs involved in the process of access to justice across jurisdictions – (Draft)
UNEP/CBD/ABS/GTLE/2/INF/3	Study on compliance in relation to the customary law of indigenous peoples and local communities, national law, across jurisdictions, and international law – (Draft)

**PREVIOUSLY ISSUED DOCUMENTS OF RELEVANCE TO THE MEETING**

UNEP/CBD/WG-ABS/5/3	Analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing – note by the Executive Secretary
UNEP/CBD/WG-ABS/5/4	Overview of recent developments at national and regional levels relating to access and benefit-sharing – note by the Executive Secretary

*Annex II***PROPOSED ORGANIZATION OF WORK**

<i>Date and time</i>	<i>Agenda items</i>
<b>Tuesday, 27 January 2009 A.M.</b>	<ol style="list-style-type: none"> <li>1. Opening of the meeting;</li> <li>2. Organizational matters;</li> <li>3. Compliance related issues in the context of the international regime on access and benefit-sharing:               <ol style="list-style-type: none"> <li>(a) What kind of measures are available, or could be developed, in public and private international law to:                   <ol style="list-style-type: none"> <li>(i) Facilitate, with particular consideration to fairness and equity, and taking into account cost and effectiveness:                       <ol style="list-style-type: none"> <li>a) Access to justice, including alternative dispute resolution;</li> <li>b) Access to courts by foreign plaintiffs;</li> </ol> </li> <li>(ii) Support mutual recognition and enforcement of judgments across jurisdictions; and</li> <li>(iii) Provide remedies and sanctions in civil, commercial and criminal matters;</li> </ol> </li> </ol> </li> </ol> <p>in order to ensure compliance with national access and benefit-sharing legislation and requirements, including prior informed consent, and mutually agreed terms.</p>
<b>P.M.</b>	3.(a) Compliance related issues in the context of the international regime on access and benefit-sharing ( <i>continued</i> )
<b>Wednesday, 28 January 2009 A.M.</b>	<ol style="list-style-type: none"> <li>3.(b) What kind of voluntary measures are available to enhance compliance of users of foreign genetic resources;</li> <li>3.(c) Consider how internationally agreed definitions of misappropriation and misuse of genetic resources and associated traditional knowledge could support compliance where genetic resources have been accessed or used in circumvention of national legislation or without setting up of mutually agreed terms;</li> </ol>
<b>P.M.</b>	3.(d) How could compliance measures take account of the customary law of indigenous and local communities?
<b>Thursday, 29 January 2009 A.M.</b>	3.(e) Analyse whether particular compliance measures are needed for research with non-commercial intent, and if so, how these measures could address challenges arising from changes in intent and/or users, particularly considering the challenge arising from a lack of compliance with relevant access and benefit-sharing legislation and/or mutually agreed terms.
<b>P.M.</b>	Finalization of discussions and preparation of the report.
<b>Friday, 30 January 2009 A.M/P.M.</b>	<ol style="list-style-type: none"> <li>4. Adoption of the report.</li> <li>5. Closure of the meeting.</li> </ol>

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