



## Convention on Biological Diversity

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### CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Tenth meeting

Nagoya, Japan, 18–29 October 2010

Items 2.1 and 3 of the provisional agenda\*

### REPORT OF THE THIRD PART OF THE NINTH MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

#### INTRODUCTION

##### A. *Background*

1. The third part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held in Nagoya on 16 October 2010. The meeting was preceded by informal consultations in the Interregional Negotiating Group at the same venue, from 13 to 16 October 2010.

##### B. *Attendance*

2. The meeting was attended by representatives of the following Parties and other Governments: Antigua and Barbuda; Argentina; Australia; Austria; Bangladesh; Bahrain; Belarus; Belgium; Benin; Bhutan; Bolivia; Botswana; Brazil; Bulgaria; Burkina Faso; Burundi; Cambodia; Cameroon; Canada; Central African Republic; Chad; China; Colombia; Comoros; Congo; Costa Rica; Croatia; Cuba; Cyprus; Czech Republic; Democratic Republic of the Congo; Denmark; Djibouti; Dominican Republic; Ecuador; Egypt; Eritrea; Estonia; European Union; Finland; France; Gabon; Georgia; Germany; Ghana; Grenada; Guatemala; Guinea; Guinea-Bissau; Guyana; Honduras; Hungary; India; Indonesia; Iraq; Iran (Islamic Republic of); Ireland; Italy; Japan; Jordan; Kenya; Kiribati; Kuwait; Lao People's Democratic Republic; Lesotho; Liberia; Madagascar; Malawi; Malaysia; Maldives; Mali; Marshall Islands; Mauritania; Mauritius; Mexico; Mongolia; Mozambique; Namibia; Nauru; Netherlands; New Zealand; Nicaragua; Niger; Nigeria; Norway; Oman; Palau; Panama; Paraguay; Peru; Philippines; Poland; Portugal; Qatar; Republic of Korea; Republic of Moldova; Saint Lucia; Saint Vincent and the Grenadines; Samoa; Saudi Arabia; Senegal; Serbia; Slovenia; Solomon Islands; South Africa; Spain; Sri Lanka; Sudan; Suriname; Swaziland; Sweden; Switzerland; Tajikistan; Thailand; Togo; Trinidad and Tobago; Tunisia; Turkey; Turkmenistan; Uganda; Ukraine; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Viet Nam; Yemen; Zimbabwe.

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Aarhus Convention; Convention on the Conservation of Migratory Species of Wild Animals;

\* Re-issued for technical reasons.

\* UNEP/CBD/COP/10/1.

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FAO Regional Office for Europe and Central Asia (FAO/REU); Global Environment Facility; United Nations Centre for Regional Development; United Nations Educational, Scientific and Cultural Organization; United Nations Environment Programme; United Nations University - Institute of Advanced Studies.

4. The following organizations were also represented by observers: 49th Parallel Biotechnology Consortium, A SEED Japan (Youth NGO), ABRASEM, African Agricultural Technology Foundation, African Biosafety Network of Expertise, African Centre for Biosafety, African Indigenous Women Organization (Nairobi), African Union, Aichi Prefectural Government, Aichi Prefecture, Aichi Prefecture, Armenian Forests, Asia Indigenous Peoples Pact Foundation, Asian Development Bank, Bayer Cropscience, Biodiversity Information Box, Biodiversity Network Japan, Biotechnology Coalition of the Philippines, CBD Alliance, Chibememe Earth Healing Association, Chubu Economic Federation, Chubu Fair Trade Association (CFTA), Chubu Region's Economy Union Confederation, Chubu University, Chukyo University, City of Nagoya Mayor, College of the Atlantic, Commission for the Information on Biotechnology, Communet Association, Community Technology Development Trust, Community-based Development Initiatives Center (CDIC), Compass Japan, Congress Corporation, CropLife Asia, CropLife International, CropLife International Compact Executive Committee, Dentsu Inc., Desarrollo Medio Ambiental Sustentable, Earth Negotiations Bulletin, Earth, Water & Green Foundation, Echizen City Eco-Village Interchange Center of the Association (E.E.I.C.), ECOROPA, Ecosystem Conservation Society-Japan, Eco-Tiras International Environmental Association, Embassy of the United States of America, European Network of Scientists for Social Environmental Responsibility, European Network of Scientists for Social Environmental Responsibility, Federation of German Scientists, Foundation for Aboriginal and Islander Research Action, Franciscans International, Fujimae Ramsar Society, Genet - European NGO Network on Genetic Engineering, German Technical Cooperation/Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Ghent University, Global Industry Coalition, GLOBE Japan, Grand Council of the Crees (Eeyou Istchee), Greenpeace International, Greenwomen Analytical Environmental Agency, Group of 77, House of Councilors, House of Representatives, Indigenous Information Network, Indigenous Knowledge and Peoples Network (IKAP), Indigenous Peoples Council on Biocolonialism, Innu Council of Nitassinan, Institute for International Trade Negotiations, Inter-American Institute for Cooperation on Agriculture, International Centre for Genetic Engineering and Biotechnology, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, International Chamber of Commerce, International Food Policy Research Institute, International Grain Trade Coalition, Ipsifendus Legal Consulting, ISAAA Afri Center, IUCN - International Union for Conservation of Nature, Japan Bear & Forest Society, Japan Bioindustry Association (JBA), Japan Citizens' Network for Planet Diversity, Japan Civil Network for Convention on Biological Diversity, Japan Committee for IUCN, Japan Council on the UN Decade of Education for Sustainable Development (ESD-J), Japan Environmental Lawyers' Federation (JELF), Japan Forest Technology Association, Japan International Cooperation Agency, Japan Network for Earth Environment and Prevention of Pollution (JNEP), Japan Wetland Action Network, Japan Youth Ecology League, Japanese Communist Party, Kajima Corporation - Environmental Engineering Division, Kobe University, McGill University, Mie Prefecture - Shima City, Mie Prefecture Fisheries Research Institute (MPFRI), Mie University - Japan, Nagoya Chamber of Commerce and Industry, Nagoya City Greenery Association, Nagoya City University, Nagoya NGO Center, Nagoya Open University of the Environment, Nagoya University, Natural Justice (Lawyers for Communities and the Environment), Nature Conservation Society of Mt. Daisetsu and the Ishikari, Network Earth Village Japan, OMOTEHAMA NETWORK, ONLUS Verdi Ambiente Societa, Organization for Security and Co-operation in Europe, Otsuma Women's University, Pan-European Coalition of Environmental Citizens Organisations ECO-Forum, Public Research and Regulation Initiative, Quebec Native Women's Association, RAEIN-Africa, Ramsar Center Japan (RCJ), Ramsar Network Japan, Russian Association of Indigenous Peoples of the North (RAIPON), Saami Council, Seikatsu Club Consumers' Co-operative Union, Shiga Prefecture, Simul International Inc., Specified Not-for-Profit Activity Corporation Voluntary Neighbors, Tadayoshi Ichida Office, Tebtebba Indigenous Peoples' International Centre for Policy Research & Education, Terra de Direitos, The Center for Food Safety, The Nature Conservation Society of Japan, The Nature Conservation Society of Tokyo, Third

World Network, Tokushin Yamauchi, Tulalip Tribes, Union Economique et Monétaire Ouest Africaine, Universidad Nacional Agraria La Molina, University of Campinas, University of Canterbury, University of Rome Sapienza, University of Tokyo, University of Vechta, USC - Canada, Via Campesina, Washington Biotechnology Action Council / 49th Parallel Biotechnology Consortium, WWF - Japan

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

5. The third part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was opened at 4.30 p.m. on Saturday, 16 October 2010, by the Co-Chairs of the Working Group, Mr. Timothy Hodges and Mr. Fernando Casas. They welcomed participants to the meeting and expressed their gratitude to the Government of Japan, the Aichi Prefecture, the City of Nagoya and the people of Japan for hosting the third part of the ninth meeting of the Working Group. It was due to the Government of Japan's generous support that the Working Group had been able to advance its work and been able to bring the goal of the adoption of the draft protocol within reach.

6. The Co-Chairs reminded the Working Group that in recent months its work had been carried on in an informal group, the Interregional Negotiating Group. Therefore, the outcome of the work of the Interregional Negotiating Group had to be forwarded by the Working Group to the consideration of the Conference of the Parties at its tenth meeting. The tasks of the Working Group at its present meeting were therefore to take note of the outcome of the Interregional Negotiating Group (UNEP/CBD/WG-ABS/9/ING/2), consistent with decision IX/12, and consider the draft decision on the adoption of the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the convention on biological Diversity and related matters (UNEP/CBD/WG-ABS/9/4).

## **ITEM 2. ORGANIZATIONAL MATTERS**

### ***2.1. Officers***

7. In keeping with established practice, the Bureau of the Conference of the Parties acted as the Bureau of the meeting. As decided by the Conference of the Parties at its eighth meeting, the Working Group was chaired by Mr. Fernando Casas and Mr. Timothy Hodges. Ms. Somaly Chan of Cambodia, Vice-President of the Conference of the Parties, continued to serve as Rapporteur.

### ***2.2. Adoption of the agenda***

8. The Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG-ABS/9/1/Rev.2).

1. Opening of the meeting.
2. Organizational matters.
3. Finalization of the international regime on access and benefit-sharing.
4. Other matters.
5. Adoption of the report.
6. Closure of the meeting.

### **2.3. Organization of work**

9. The Working Group agreed to the proposal of the Co-Chairs that it resume its work in plenary.

#### **ITEM 3. FINALIZATION OF THE INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING**

10. In considering the item, the Working Group had before it the results of the final meeting of the Interregional Negotiating Group (UNEP/CBD/WG-ABS/9/ING/2) as well as a draft decision on the adoption of the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the convention on biological Diversity and related matters (UNEP/CBD/WG-ABS/9/4).

11. The Working Group also continued to have the information documents of its previous sessions (UNEP/CBD/WG-ABS/5/INF/9, UNEP/CBD/WG-ABS/7/INF/2-5, and UNEP/CBD/WG-ABS/9/INF/1-19); as well as a Study on the Functionality of an ABS Protocol (UNEP/CBD/WG-ABS/9/INF/20); Concerns relating to CBD Process, Revised Draft Protocol and Indigenous Peoples' Human Rights (UNEP/CBD/WG-ABS/9/INF/21); and the Draft Protocol: Indigenous Peoples' Objections to the Current Test - A Call for Justice and Solidarity (UNEP/CBD/WG-ABS/9/INF/22).

12. The Co-Chairs proposed that the Working Group forward to the tenth meeting of the Conference of the Parties the text contained in document UNEP/CBD/WG-ABS/9/ING/2 as the final outcome of the work of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. They also proposed that the Working Group append the draft decision contained in document UNEP/CBD/WG-ABS/9/4 as an annex to the report of the present meeting, on the clear understanding that it had not been negotiated and that it was only being submitted to facilitate the work of the Conference of the Parties.

13. The representative of Canada reminded the Working Group that an important element in the discussions had been the understanding that nothing was agreed until everything had been agreed. She said that she would like that principle reflected in the report of the meeting.

14. A joint statement was also made on behalf of seven indigenous organizations from North America that stated that the Contracting Parties needed to know that those organizations did not agree with the proposed text of Article 5 *bis* in the draft protocol and regretted that they had not been consulted on that matter.

15. The Working Group decided to forward to the Conference of the Parties, for its consideration, the draft Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, as well as the draft decision contained in document UNEP/CBD/WG-ABS/9/4. The text of the draft protocol and of the draft decision are contained in annexes I and II to the present report.

#### **ITEM 4. OTHER MATTERS**

16. No other matters were raised by the Working Group..

#### **ITEM 5. ADOPTION OF THE REPORT**

17. The present report was adopted on 16 October 2010, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG-ABS/9/L.1/Add.2).

#### **ITEM 6. CLOSURE OF THE MEETING**

18. In his closing remarks, Co-Chair Hodges stated that the meeting would go down in history as the shortest meeting of the Working Group, but one of the most productive ones. He congratulated the Executive Secretary and his team for their exceptional support and commitment.

19. Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity, paid tribute to Co-Chairs Casas and Hodges and members of the Working Group for their excellent work. They had reduced the draft protocol from a document of 62 pages, with 3,000 square brackets, to one of 20 pages, with only a “few” square brackets. In addition 13 articles had been approved by the Working Group, including articles 20 to 29. The Working Group had therefore fulfilled its responsibility, thus contributing to the fulfilment of the mandate given at Curitiba, where the eighth meeting of the Conference of the Parties had agreed that the negotiations should be finalized no later than 2010.. The commitment that had been shown by the German Government in its capacity as President of the ninth meeting of the Conference of the Parties had also been essential to the tremendous progress that had been made, and had demonstrated the highest importance of governmental support for the success of the negotiations. He also thanked the Government of Japan for its exceptional leadership and continuing support for the negotiations. In closing he said that with the present negotiations the participants, coming together from the different regions of the world, were working together to build a common house on the planet for all people.

20. Mr. Jochen Flashbarth, speaking on behalf of the President of the Conference of the Parties, congratulated all participants on the spirit of cooperation that they had shown. He said that when the Government of Germany had taken up the presidency of the Conference of the Parties it had understood the critical importance of the negotiations that were taking place toward an international regime on access and benefit-sharing and it had made it one of its priorities for its presidency. The Government of Germany continued to be committed to that process, as well as the need for such an international regime. He urged the participants to continue to work toward accomplishing that goal during the tenth meeting of the Conference of the Parties. He conveyed his gratitude to the Executive Secretary and his team for their support.

21. After the customary exchange of courtesies, the third part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was declared closed at 5.15 p.m. on 16 October 2008.

*Annex I*

**DRAFT PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND  
EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO  
THE CONVENTION ON BIOLOGICAL DIVERSITY**

*The Parties to this Protocol,*

*Being* Parties to the Convention on Biological Diversity, hereinafter referred to as “the Convention”,

*Recalling* that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and *recognizing* that the Protocol pursues the implementation of this objective within the Convention,

*Reaffirming* the sovereign rights of States over their natural resources and according to the provisions of the Convention,

*Recalling further* Article 15 of the Convention on access to genetic resources [and sharing of the benefits arising from their [utilization]],

*Recognizing* the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value to genetic resources in developing countries, in accordance with Articles 16 and 19 of the Convention,

[*Believing* that public awareness of the economic value of ecosystems and biodiversity, and the fair and equitable sharing of this economic value with the custodians of biodiversity is the primary incentive available for conservation and sustainable use,]

*Recalling* decision VI/24 of the Conference of the Parties adopting the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization,

[*Recalling* the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing [and the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions] in decision VII/19 D to elaborate and negotiate an international regime on access and benefit sharing with the aim of adopting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and the three objectives of the Convention,]

[*Further recalling* decisions VIII/4 and IX/12 that instructed the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to complete the elaboration and negotiation of the International Regime on Access and Benefit-sharing at the earliest possible time before the tenth meeting of the Conference of the Parties to the Convention,]

[*Noting* the significance of the United Nations Declaration on the Rights of Indigenous Peoples as regards this Protocol,]

*Recalling as well* the Plan of Implementation adopted by the World Summit on Sustainable Development (Johannesburg, September 2002) which called for action to “negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising from the utilization of genetic resources”,

[*Recognizing* the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard,]

*Recognizing* the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation and adaptation to climate change,

[*Recognizing* the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,]

[*Recognizing* that no special characteristics of genetic resources should detract from the obligation of the users of these resources to provide for the fair and equitable sharing of benefits whenever these resources are utilized,]

*Acknowledging* the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and, thereby contributing to achieving the Millennium Development Goals,

*Recalling* Article 8(j) of the Convention as it relates [to access] to traditional knowledge associated with [*in situ*] [and *ex situ*] genetic resources and the [fair and] equitable sharing of [the] [all] benefits arising from the utilization of such knowledge,

*Acknowledging* the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

*Recognizing* the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,

*Further recognizing* the importance of promoting [equity [and fairness]] [equality] in negotiation of mutually agreed terms between providers and users of genetic resources,

[*Mindful* of the International Health Regulations (2005) of the World Health Organization and the importance of ensuring access to human pathogens for public health preparedness and response purposes,]

[*Recognizing* [and *affirming*] that intellectual property rights play an important role in the fair and equitable sharing of benefits arising from the use of genetic resources, their derivatives and associated traditional knowledge, and that these rights need to be supportive of and not run counter to the three objectives of the Convention,]

[*Affirming* that nothing in this Protocol shall be interpreted as affecting the granting, or the exercise of, intellectual property rights,]

*Recognizing* that international instruments related to access and benefit-sharing should be mutually supportive with a view to achieving the objectives of the Convention,

[*Acknowledging* ongoing work relating to access and benefit-sharing in various forums, including, *inter alia*, the International Treaty on Plant Genetic Resources for Food and Agriculture, the Commission of Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations, the United Nations Ad Hoc Open-ended Informal Working Group on Marine Biological Diversity beyond Areas of National Jurisdiction, and the Working Group on Pandemic Influenza Preparedness of the World Health Organization,]

[*Acknowledging* the ongoing work in the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO), *noting* that this Protocol will be the comprehensive protocol on access and benefit-sharing and that WIPO should use this Protocol as a basis for its ongoing work,]

[*Recalling* the Multilateral System of Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture as a legally binding international instrument on access and benefit-sharing developed in harmony with the Convention,]

*Recognizing also* the vital role that women play in access and benefit sharing and affirming the need for the full participation of women at all levels of policy making and implementation for biodiversity conservation,

*Determined* to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

[*Noting* the interrelationship between genetic resources and traditional knowledge and the inseparable nature of these resources to indigenous and local communities,]

[*Underlining* the importance of the traditional knowledge of indigenous and local communities and the development of this knowledge for the conservation of biodiversity and the sustainable use of its components,]

*Recognizing* the diversity of circumstances in which traditional knowledge associated with genetic resources is [available as oral or documented which may be] [owned,] held [and developed] by indigenous and local communities [and countries, as applicable],

[*Taking into account*] [*Affirming*] [any established] [the existing] rights [in national law] of [individuals,] indigenous and local communities [and countries] to genetic resources and associated traditional knowledge[, subject to national legislation where applicable [and, where appropriate, the United Nations Declaration of the Rights of Indigenous Peoples]],

*Mindful* that when traditional knowledge associated with genetic resources is being accessed, [subject to national legislation, [consistent with international obligations,]] it is the right of [individuals,] indigenous and local communities, [and countries,] consistent with [their] [national][laws, customary laws, community protocols and procedures][community level procedures], as applicable, to identify the rightful holders of the knowledge within their indigenous and local communities.

[*Recognizing* that this Protocol and other international agreements relevant to this Protocol should be mutually supportive,]

[*Emphasizing* that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements,]

[*Understanding* that the above recital is not intended to subordinate this Protocol to other international agreements,]

[*Understanding* that none of the above recital is intended to subordinate this Protocol to other international agreements and further *understanding* that this Protocol is the comprehensive instrument for the effective implementation of the access and benefit sharing provisions of the Convention,]

[Nothing in this Protocol shall be construed as diminishing or extinguishing the rights that indigenous and local communities have now or may have in the future,]



*Have agreed as follows:*

## **ARTICLE 1**

### **OBJECTIVE**

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the [utilization] of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components

## **ARTICLE 2**

### **USE OF TERMS**

[The terms defined in Article 2 of the Convention shall apply to this Protocol. In addition,] for the purposes of this Protocol:

- (a) “Conference of the Parties” means the Conference of the Parties to the Convention;
- (b) “Regional economic integration organization” means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.
- (c) “Utilization of genetic resources” means to conduct research and development on the genetic and biochemical composition of genetic material/biological resources/genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention.

“Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if they do not contain functional units of heredity.

Article 2 of CBD: “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.]

## **ARTICLE 3**

### **SCOPE**

This Protocol shall apply to genetic resources [and associated traditional knowledge] within the scope of [Article 15 of] the Convention on Biological Diversity and to the benefits arising from the [utilization] of such resources [that were acquired after the entry into force of this Protocol for a Party with Parties providing such resources] [or its derivatives]. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention on Biological Diversity [acquired after the entry into force of this Protocol] and to the benefits arising from the [utilization] of such knowledge.

[[Consistent with the Convention, the following genetic resources are excluded][This Protocol does not apply to]:

- (a) Human genetic resources;
- (b) Genetic resources beyond national jurisdictions;
- (c) Genetic resources [contained in Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture provided they are used for the purposes of the International Treaty on Plant Genetic Resources for Food and Agriculture][under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture, both current and as may be amended by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture];
- (d) [Genetic resources when utilized solely as a commodity][Commodities in trade [used solely for final consumption][when utilized solely as commodities];
- (e) Genetic resources and traditional knowledge associated with genetic resources acquired prior to the entry into force of the Protocol;
- (f) [Human pathogens][A genetic resource when it constitutes a serious and direct danger to the health of humans as described in the International Health Regulations, and it is covered by and for the purpose of a specialised instrument as described in paragraph (b) of Article 6];
- (g) Genetic resources located in the Antarctic Treaty Area, which is the area south of latitude 60° South.]

[The Protocol also applies to:

- (a) Benefits arising from the continuing uses of genetic resources and associated traditional knowledge acquired before the entry into force of the Convention;
- (b) Benefits arising from new uses of genetic resources and associated traditional knowledge acquired before the entry into force of the Convention;
- (c) Genetic resources from the Antarctic Treaty Area, which is the area south of latitude 60° South; and
- (d) Genetic resources from marine areas beyond national jurisdiction.

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt modified procedures for benefit-sharing for genetic resources and associated traditional knowledge in paragraph xxx.]

[[1. This Protocol will apply to benefits, uses and continuing uses of genetic resources [and derivatives] arising from the date of its entry into force.]

[2. Without prejudice to the rights and obligations of the Parties in accordance with international law, Parties [should][shall] encourage users of genetic resources [and traditional knowledge associated with genetic resources] to take all reasonable measures to share benefits for genetic resources acquired before the entry into force of this Protocol in situations where no access and benefit-sharing agreements have been established in accordance with the Convention [with the countries of origin of such genetic resources]].

[3. This Protocol will apply to traditional knowledge associated with genetic resources acquired prior to its entry into force and after such date.]]

### ARTICLE 3 *bis*

[1. The provisions of this Protocol shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biodiversity.

This paragraph is not intended to [create a hierarchy between this][subordinate the] Protocol [and][to] other international instruments.]

2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialised access and benefit sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

3. This Protocol and other international instruments relevant to this Protocol shall be implemented in a mutually supportive manner, [[without prejudice to][bearing in mind] ongoing work or practices under relevant international organizations and conventions.]

4. This Protocol is the instrument for the implementation of the access and benefit sharing provisions of the Convention. Where a specialised international access and benefit sharing instrument applies that is consistent with, and does not run counter to, the objectives of the Convention and of this Protocol, this Protocol does not apply for the Contracting Party or Parties to the specialised instrument in respect of the specific genetic resource covered by and for the purpose of the specialised instrument.

### ARTICLE 4

#### FAIR AND EQUITABLE BENEFIT-SHARING

1. In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources [as well as subsequent applications and commercialization] shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.<sup>1,2</sup>

[1 *bis* Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources and/or traditional knowledge associated with genetic resources that are held by indigenous and local communities, in accordance with national legislation regarding the established rights of these indigenous and local communities over these

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<sup>1</sup> Tentatively agreed.

<sup>2</sup> Outstanding issues:

- Status of *ex situ* collections;
- Bilateral/multilateral approach to benefit-sharing;
- Temporal and geographical scope;
- Absence of mutually agreed terms.

genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.]

2. To implement paragraph 1, Parties shall take legislative, administrative or policy measures, as appropriate.

3. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in Annex I.

[4. Parties shall take legislative, administrative or policy measures, as appropriate, [in accordance with the Protocol] [to ensure the fair and equitable sharing of benefits][with the aim of ensuring the fair and equitable sharing of benefits][with the aim of sharing in a fair and equitable way benefits] arising from [the][any] utilization of traditional knowledge associated with genetic resources [or its derivatives] with indigenous and local communities holding such knowledge[, taking into consideration the provisions of Article 9]].

## ARTICLE 5

### ACCESS TO GENETIC RESOURCES

1. In the exercise of its sovereign rights over its natural resources [and subject to its national legislation][and subject to its domestic access and benefit-sharing regulatory requirements], access to [its] genetic resources for their utilization, [and/or associated traditional knowledge] shall be subject to the prior informed consent of the [Party providing such resources [that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention]][country of origin], unless otherwise determined by that Party.

1 *bis*.

[Where applicable [law][national legislation][or international law] recognizes that indigenous and local communities [own genetic resources, or otherwise have the right to grant access to such genetic resources], the prior informed consent or approval and involvement of these indigenous and local communities is required.]

or

[In accordance with national legislation regarding the rights of indigenous and local communities over genetic resources, as applicable, the prior informed consent or approval and involvement of these indigenous and local communities is required for granting access to such resources.]

or

[Where resources being accessed [are owned] by indigenous and local communities, their approval shall be sought before the state provides prior informed consent for access to such genetic resources and associated traditional knowledge.]

[1 *ter.* In accordance with paragraph 2 of Article 15 of the Convention, all applications for access shall be channelled through the Competent National Authority of the Party where the applicant is domiciled and shall be accompanied by a full environmental impact assessment, conducted by an independent third party, certifying that the access requested is for environmentally sound uses as defined by the providing country.]

2. [Unless a Party determines not to require prior informed consent under paragraph 1,][Parties requiring prior informed consent,][Unless a Party waives its sovereign right through a national decision posted on the Access and Benefit-sharing Clearing-House,] each Party shall take the necessary legislative, administrative or policy measures, as appropriate, to:

(a) Provide for legal certainty, clarity and transparency of their national access and benefit-sharing requirements;

[(a *bis*) [Provide for equal treatment in applications for access to genetic resources between similar domestic and foreign applicants and between similar foreign applicants of different Parties][Parties shall avoid application of discriminatory rules in processing access permits except where such rules aim at advancing local, non-commercial biodiversity and ecosystem research and education][Provide for fair and non-arbitrary rules and procedures on accessing genetic resources];]

(b) Provide the information on how to apply for prior informed consent;

(c) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;

[(c *bis*) Provide a simplified procedure for access to genetic resources for non-commercial use in research in accordance with national law;]

(d) Provide for the issuance [at its discretion] of a permit or certificate [of access or equivalent that would be recognized internationally] as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms;

(e) Where applicable, and subject to national legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and

(f) Establish clear rules and procedures for requiring and establishing mutually agreed terms [at the time of access]. Such terms shall be set out in writing and [[[may]][shall], *inter alia*,] include][should include, as appropriate]:

(i) A dispute settlement clause;

(ii) Terms on benefit-sharing, including in relation to intellectual property rights;

(iii) Terms on subsequent third-party use, if any; and

(iv) Terms on changes of intent, where applicable.

[(g) Provide for appropriate administrative or judicial appeals procedures;]

3. Parties shall make their decisions to grant prior informed consent available to the Access and Benefit-sharing Clearing-House established under Article 11.

4. [In accordance with Article 15(1) of the Convention, each Party shall determine][A Party that determines] which of its genetic resources [for their utilization] [and/or their derivatives] will [or will not] [be subject to PIC][be subject to the access requirement of prior informed consent under Article 15(5) of the Convention,] [. It] shall inform the Access and Benefit-sharing Clearing-House accordingly, along with any accompanying information.

#### **ARTICLE 5 bis**

##### **ACCESS TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES**

1. In accordance with domestic law, Parties shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

[2. Parties shall take appropriate, effective and proportionate measures with the aim of ensuring that traditional knowledge utilised within their jurisdiction have been accessed and utilized in accordance with paragraph 1.

3. Parties shall take appropriate, effective and proportionate administrative or legal measures to address situations of non-compliance with measures adopted in accordance with paragraph 1.

4. Parties shall[, subject to and in accordance with national law,] cooperate in cases of alleged violation of paragraph 1.]

#### **ARTICLE 6**

##### **[[CONSIDERATIONS RELEVANT TO [NON-COMMERCIAL] RESEARCH AND EMERGENCY SITUATIONS][SPECIAL CONSIDERATIONS]<sup>3</sup>**

In the development and implementation of their national legislation on access and benefit-sharing, Parties shall:

(a) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research; and

[(b) [Pay due regard to emergency situations including serious threats to public health, food security or biological diversity, according to national legislation.][Provide immediate access to [pathogens][genetic resources] falling also under the scope of relevant international organizations and conventions, such as the World Health Organization, the International Plant Protection Convention, or the World Animal Health Organization, and which are of particular public concern for the health of humans, animals or plants, in ways and for uses provided for in existing and future rules, procedures or practices on the sharing of pathogens and related benefits established under those international organizations and

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<sup>3</sup> The following text was at the proposal of one Party and was neither agreed nor negotiated: [The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt guidance to support Parties in implementing this Article.]

conventions[, taking into consideration [the legal, structural and/or administrative obstacles to the optimal implementation of] the World Trade Organization paragraph 6 system]];

OR

[(b) Take into consideration the need for simplified measures for access in cases of emergencies or other circumstances of extreme urgency regarding public health and food security that would cause a serious damage or threat to biological diversity and, in this respect, pay due regard to rules, procedures and practices established under relevant organizations and conventions, such as the World Animal Health Organization, the International Plant Protection Convention, or World Health Organization.]

(c) Consider the importance of genetic resources for food and agriculture and their special role for food security and climate change adaptation and mitigation;

(d) Consider sectoral approaches in the implementation and further development of this Protocol.]

[This Protocol shall provide no special consideration for any sector or any use of genetic resources or associated traditional knowledge without adequate provisions for fair and equitable benefit-sharing and compliance;]

[Pay due regard that the domestic access and benefit-sharing laws, policies or measures will not affect biological resources that are traded and used as commodities.]

## **ARTICLE 7**

### **CONTRIBUTION TO CONSERVATION AND SUSTAINABLE USE**

Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation and sustainable use of biological diversity in support of the objectives of the Convention.

## **ARTICLE 8**

### **TRANSBOUNDARY COOPERATION**

1. In instances where the same genetic resources are found in-situ within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

## ARTICLE 9

### TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. In implementing their obligations under this [Protocol][Article], Parties shall[, subject to domestic legislation,] take into consideration[, as applicable and as appropriate,] the [community level procedures, including customary laws of indigenous and local communities][indigenous and local community laws, community protocols, procedures and/or customary laws] of indigenous and local communities, with respect to traditional knowledge associated with genetic resources [or its derivatives].

2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources [or its derivatives] about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(a) Community protocols in relation to access to traditional knowledge associated with genetic resources [or its derivatives] and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;

(b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources [or its derivatives]; and

(c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources [or its derivatives].

4. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources[, their derivatives] and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

[5. Parties shall [encourage][require] the users of [publicly available] traditional knowledge associated with genetic resources [which has been lawfully obtained by that user from a source other than an indigenous and local community] to take reasonable measures to enter into fair and equitable benefit-sharing arrangements with the [rightful] holders of [such] knowledge.]

## ARTICLE 10

### NATIONAL FOCAL POINTS AND COMPETENT NATIONAL AUTHORITIES

1. Each Party shall designate a national focal point on access and benefit-sharing. The national focal point shall make information available as follows:

(a) For applicants seeking access to genetic resources, including derivatives, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;



(b) For applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and

(c) Information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.

The national focal point shall be responsible for liaison with the Secretariat.

2. Each Party shall designate one or more competent national authorities on access and benefit-sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

4. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the contact information of its national focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the contact information or responsibilities of its competent national authority or authorities.

5. The Secretariat shall make information received pursuant to paragraph 4 available through the Access and Benefit-sharing Clearing-House.

## **ARTICLE 11**

### **THE ACCESS AND BENEFIT-SHARING CLEARING-HOUSE AND INFORMATION-SHARING**

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

- (a) Legislative, administrative and policy measures on access and benefit-sharing;
- (b) Information on the national focal point and competent national authority(ies); and
- (c) [When access is granted, decisions related to prior informed consent][Decisions to grant prior informed consent] [for access to genetic resources, as appropriate and where applicable].

3. Additional information, if available and as appropriate, may include:
  - (a) Relevant competent authorities of indigenous and local communities, and information as so decided;
  - (b) Model contractual clauses;
  - (c) Methods and tools developed to monitor genetic resources; and
  - (d) Codes of conduct and best practices.
4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

## ARTICLE 12

### COMPLIANCE WITH DOMESTIC LEGISLATION OR REGULATORY REQUIREMENTS ON ACCESS AND BENEFIT-SHARING

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources[, [their derivatives] and associated traditional knowledge] utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the [other Party][country of origin].
2. Parties shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1.
3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1.

## ARTICLE 13

### MONITORING[, TRACKING] AND REPORTING THE [UTILIZATION] OF GENETIC RESOURCES [AND ASSOCIATED TRADITIONAL KNOWLEDGE]

1. Parties shall take measures, as appropriate, [to enhance transparency about, and] to monitor[, track and report] the [utilization] of genetic resources [, its derivatives and associated traditional knowledge] to support [compliance][.] *inter alia*, [with the requirement to obtain prior informed consent and establish mutually agreed terms] [prior informed consent requirements and mutually agreed terms] [under Article 12(1)]. Such measures [could][shall] include:
  - (a) The identification and establishment of check points[[, which may include:][, including:]
    - (i) Competent national authority in the user country;
    - (ii) Research institutions subject to public funding;
    - (iii) Entities publishing research results relating to the utilization of genetic resources;
    - (iv) [Intellectual property examination][Patent and plant variety] offices; and

- (v) Authorities providing regulatory or marketing approval of products [derived from genetic resources][resulting from the utilization of genetic resources];
- (v *bis*) [Indigenous and local communities, including their relevant competent authorities, that may grant access to traditional knowledge associated with genetic resources.]

[The [mandatory] disclosure requirement shall be met by providing [*bona fide*] evidence that a [permit or] certificate was granted [at the time of access] in accordance with [Article 5, paragraph 2 (d)][prior informed consent and mutually agreed terms as provided by national legislation];]

(b) [Requiring][Encouraging] users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements; and

(c) Encouraging the use of cost-effective communication tools and systems for monitoring [, tracking and reporting] the utilization of genetic resources.

[(d) [Where appropriate,] [establishing] Databases containing information about genetic resources [that have been or [may][can] be provided].]

2. A [permit[, or]] certificate [or equivalent] issued [at the time of access] in accordance with Article 5, paragraph 2 (d) and made available to the Access and Benefit-sharing Clearing-House, [in accordance with [Article 5 paragraph 3][Article 11, paragraph 2(c)]] shall constitute an internationally recognized certificate of compliance.

3. The internationally recognized certificate of compliance shall serve as evidence that the genetic resource in question has been [[obtained/obtained,] accessed [and used] in accordance][acquired] with prior informed consent[, where applicable] and that mutually agreed terms have been entered into, as specified in the national legislation on access and benefit-sharing of the [country][Party] [providing][of origin of] the genetic resource [or its derivatives]. [[Mandatory] Disclosure requirements shall be met by providing an internationally recognized certificate.]

[4. The internationally recognized certificate of compliance [or equivalent] [shall][may] contain the following minimum information [when it is not confidential]:

- (a) Issuing national authority;
- (b) Details of the provider;
- (c) [A codified unique alphanumeric identifier]
- (d) [Details of the [relevant indigenous and local communities who are] [rights holders][rightful holder] of associated traditional knowledge [within indigenous and local communities], as appropriate;]
- (e) Details of the user;
- (f) [Subject-matter][Genetic resources and/or derivatives] covered by the certificate [or equivalent];
- (g) [Geographic location [and/or georeference] of the access activity;]
- (h) [Link to][Confirmation that] mutually agreed terms [were entered into];

(h *bis*) [Confirmation that prior informed consent was obtained, where applicable;]

- (i) Uses permitted and restrictions of use[, where applicable];
- (j) Conditions of transfer to third parties;
- (k) Date of issuance.]

[5. The [first] Conference of the Parties serving as the meeting of the Parties to this Protocol [after the entry into force of this Protocol] shall [decide on the minimum content][consider additional modalities] of the internationally recognized certificate of compliance [system], taking into account the need to minimize transaction costs and to ensure feasibility, practicality and flexibility.]

#### [**ARTICLE 13 *bis***

##### NON-COMPLIANCE WITH MANDATORY DISCLOSURE REQUIREMENTS

If the user fails or refuses to disclose pertinent information on the country of origin or source in cases and where the claim is directly based on genetic resources and associated traditional knowledge:

- (a) A user should be given the possibility to remedy the omission within a specific time fixed under the relevant law;
- (b) If the user continues to fail to make any declaration then the application shall not be further processed.]

#### **ARTICLE 14**

##### COMPLIANCE WITH MUTUALLY AGREED TERMS

1. In the implementation of Article 5, paragraph 5 (f) (i), Parties shall encourage providers and users of genetic resources[, derivatives] [and/or associated] traditional knowledge [associated with genetic resources] to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

- (a) The jurisdiction to which they will subject any dispute resolution processes;
- (b) The applicable law; and/or
- (c) Options for alternative dispute resolution, such as mediation or arbitration.

2. Parties shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

[3. Parties shall take effective measures, as appropriate, regarding non-compliance with mutually agreed terms including measures to:

- (a) [Facilitate] access to justice [including assistance to those seeking legal redress];
- (b) Promote the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards; and

[(c) Facilitate cooperation between Parties;]]

[4. The effectiveness of this article shall be reviewed by the Conference of the Parties [serving as the meeting of the Parties to this Protocol] in accordance with Article 26 of this Protocol.]

#### [**ARTICLE 14 bis**

#### INTERNATIONAL ACCESS AND BENEFIT-SHARING OMBUDSPERSON

An office of an access and benefit-sharing ombudsperson shall be established to support developing countries and indigenous and local communities to identify breaches of rights and to provide technical and legal support in ensuring effective redress of such breaches. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall implement this provision no later than two years after entry into force of this Protocol.]

#### **ARTICLE 15**

#### MODEL CONTRACTUAL CLAUSES

1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

#### **ARTICLE 16**

#### CODES OF CONDUCT, GUIDELINES AND BEST PRACTICES AND/OR STANDARDS

1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

#### **ARTICLE 17**

#### AWARENESS-RAISING

Parties shall take measures to raise awareness of the importance of genetic resources[, derivatives] and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues. Such measures may include *inter alia*:

- (a) Promotion of this Protocol and its objective;
- (b) Organization of indigenous and local communities' and relevant stakeholders' meetings;
- (c) Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;

- (d) Information dissemination through a national-level clearing-house;
- (e) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders; and
- (f) Promotion of, as appropriate, domestic, regional and international exchange of experiences.
- (g) Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;
- (h) Involvement of indigenous and local communities and relevant stakeholders in the further implementation of this Protocol.
- (i) Awareness-raising of protocols and guidelines of indigenous and local communities.

## ARTICLE 18

### CAPACITY

1. Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small islands developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. In doing so, Parties should facilitate the involvement of relevant stakeholders, *inter alia*, indigenous and local communities, non-governmental organizations, and the private sector.
2. The needs of Parties referenced in paragraph 1 for financial resources in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building to implement this Protocol.
3. As a basis for appropriate measures in relation to the implementation of this Protocol, Parties should identify their national capacity needs and priorities, through national capacity self-assessments. In doing so, Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, and emphasizing the needs and priorities of women.
4. In support of the implementation of this Protocol, capacity-building and capacity development may address, *inter alia*, the following key areas: (a) capacity to implement, and to comply with the obligations of, this Protocol; (b) capacity to negotiate mutually agreed terms; (c) capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing; and (d) capacity of countries [providing][of origin of] genetic resources to develop their endogenous research capabilities to add value to their own genetic resources.
5. Measures in accordance with paragraphs 1 to 4 may include *inter alia*:
  - (a) Legal and institutional development;
  - (b) Promoting equality in negotiations, such as training to negotiate mutually agreed terms;
  - (c) Monitoring and enforcing compliance;
  - (d) Employment of best available communication tools and Internet-based systems for access

and benefit-sharing activities;

- (e) Development and use of valuation methods;
- (f) Bioprospecting, associated research and taxonomic studies;
- (g) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;
- (h) Enhancing the contribution of access and benefit-sharing activities to the conservation and sustainable use of biodiversity;
- (i) Special measures to increase the capacity of access and benefit-sharing stakeholders; and
- (j) Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or traditional knowledge associated with genetic resources.

6. Information on capacity-building initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 4, should be provided to the Clearing-House with a view to promote synergy and coordination on capacity-building for access and benefit-sharing.

#### **ARTICLE 18 *bis***

#### **TECHNOLOGY TRANSFER AND COOPERATION**

In accordance with Articles 15, 16, 18 and 19 of the Convention, Parties shall collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of this Protocol. Parties undertake to promote and encourage access to technology by, and transfer of technology to, developing country Parties, including the least developed and small island developing states among them and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and of this Protocol. Where possible, [such] collaborative activities [shall][should] take place [with][in] the [[countries][country] providing][country of origin of] genetic resources.

#### **ARTICLE 18 *ter***

#### **NON-PARTIES**

1. The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

#### **ARTICLE 19**

#### **FINANCIAL MECHANISM AND RESOURCES**

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.

2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.

3. Regarding the capacity-building referred to in Article 18, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2, for consideration by the Conference of the Parties, shall take into account the need for [adequate, predictable and timely flow of new and additional] financial resources by developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, as well as the specific needs and priorities of indigenous and local communities, including women within these communities.

4. In the context of paragraph 1, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, [for adequate, predictable and timely flow of new and additional financial resources] in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

## ARTICLE 20

### CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THIS PROTOCOL

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.
3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:
  - (a) Make recommendations on any matters necessary for the implementation of this Protocol;
  - (b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
  - (c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;



(d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 24 and consider such information as well as reports submitted by any subsidiary body;

(e) Consider and adopt, as required, amendments to this Protocol and its annex, as well as any annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and

(f) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat and held concurrently with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held concurrently with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5.

## ARTICLE 21

### SUBSIDIARY BODIES

1. Any subsidiary body established by or under the Convention may serve the Protocol, including upon a decision of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Any such decision shall specify the tasks to be undertaken.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under the Protocol shall be taken only by the Parties to the Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the

Convention but, at that time, not a Party to the Protocol, shall be substituted by a member to be elected by and from among the Parties to the Protocol.

## **ARTICLE 22**

### **SECRETARIAT**

1. The Secretariat established by Article 24 of the Convention shall serve as the Secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

## **ARTICLE 23**

### **MONITORING AND REPORTING**

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals and in the format to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol.

## **ARTICLE 24**

### **PROCEDURES AND MECHANISMS TO PROMOTE COMPLIANCE WITH THE PROTOCOL**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention.

## **ARTICLE 25**

### **ASSESSMENT AND REVIEW**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, four years after the entry into force of this Protocol and thereafter at intervals determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, an evaluation of the effectiveness of the Protocol.

## **ARTICLE 26**

### **SIGNATURE**

This Protocol shall be open for signature at {...}, on 4 June 2011 by Parties to the Convention, and at United Nations Headquarters in New York from 11 June 2011 to 10 June 2012.

## **ARTICLE 27**

### **ENTRY INTO FORCE**

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the 50<sup>th</sup> instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.

2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after its entry into force pursuant to paragraph 1, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

## **ARTICLE 28**

### **RESERVATIONS**

No reservations may be made to this Protocol.

## **ARTICLE 29**

### **WITHDRAWAL**

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

## **ARTICLE 30**

### **AUTHENTIC TEXTS**

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

DONE at Nagoya on this twenty-ninth day of October, two thousand and ten.

## Annex I

### MONETARY AND NON-MONETARY BENEFITS

1. Monetary benefits may include, but not be limited to:
  - (a) Access fees/fee per sample collected or otherwise acquired;
  - (b) Up-front payments;
  - (c) Milestone payments;
  - (d) Payment of royalties;
  - (e) Licence fees in case of commercialization;
  - (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
  - (g) Salaries and preferential terms where mutually agreed;
  - (h) Research funding;
  - (i) Joint ventures;
  - (j) Joint ownership of relevant intellectual property rights.
2. Non-monetary benefits may include, but not be limited to:
  - (a) Sharing of research and development results;
  - (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the country providing genetic resources;
  - (c) Participation in product development;
  - (d) Collaboration, cooperation and contribution in education and training;
  - (e) Admittance to *ex situ* facilities of genetic resources and to databases;
  - (f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
  - (g) Strengthening capacities for technology transfer;
  - (h) Institutional capacity-building;
  - (i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
  - (j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;
  - (k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
  - (l) Contributions to the local economy;
  - (m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in country providing genetic resources;

- (n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- (o) Food and livelihood security benefits;
- (p) Social recognition;
- (q) Joint ownership of relevant intellectual property rights.

*Annex II*

**ADOPTION OF THE PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY**

*Draft decision of the Conference of the Parties*

**Decision X/.....**

*The Conference of the Parties,*

*Recalling* that the fair and equitable sharing of the benefits arising from the utilization of genetic resources is one of the three objectives of the Convention on Biological Diversity,

*Recalling further* Article 15 of the Convention on access to genetic resources and sharing of the benefits arising from their utilization,

*Recalling as well* the World Summit on Sustainable Development held in Johannesburg in September 2002, which called for action to negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources,

*Recalling* decision VII/19 D, in which the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was mandated with the collaboration of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions, to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing with the aim of adopting an instrument/instruments to effectively implement the provisions of Article 15 and Article 8(j) of the Convention and the three objectives of the Convention,

*Recalling also* decision IX/12, which further instructed the Working Group to finalize the international regime and to submit for consideration and adoption by the Conference of the Parties at its tenth meeting an instrument or instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and its three objectives,

*Noting with appreciation* the work carried out by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

*Recognizing* that the objectives of the International Treaty on Plant Genetic Resources for Food and Agriculture are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on biological diversity, for sustainable agriculture and food security,

*Recognizing further* the progress made by many intergovernmental forums in addressing access and benefit sharing related issues,

*Recognizing* that the International Regime is constituted of the Convention on Biological Diversity, the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization, as well as complementary instruments, including the International Treaty on Plant Genetic Resources for Food and Agriculture and the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising Out of Their Utilization,

*Considering* the need for interim arrangements pending the entry into force of the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization to prepare for its effective implementation once it enters into force,

/...

## I. ADOPTION OF THE PROTOCOL

1. *Decides* to adopt the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Protocol) as set out in the annex I to the present decision;
2. *Requests* the Secretary-General of the United Nations to be the Depositary of the Protocol and to open it for signature at the United Nations Headquarters in New York from 2 February 2011 to 1 February 2012;
3. *Calls upon* the Parties to the Convention on Biological Diversity to sign the Protocol at the earliest opportunity and to deposit instruments of ratification, acceptance or approval or instruments of accession, as appropriate, with a view to ensuring the entry into force of the Protocol as soon as possible;
4. *Invites* States that are not Parties to the Convention to ratify, accept, approve or accede to it, as appropriate, thereby enabling them also to become Parties to the Protocol;

## II. INTERGOVERNMENTAL COMMITTEE FOR THE PROTOCOL

5. *Decides* to establish an Open-ended Ad Hoc Intergovernmental Committee for the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Intergovernmental Committee);
6. *Decides* that the Intergovernmental Committee shall undertake, with the support of the Executive Secretary, the preparations necessary for the first meeting of the Parties to the Protocol, at which time it will cease to exist, taking into account the budgetary provisions adopted by the Conference of the Parties;
7. *Notes* that the rules of procedure for the Conference of the Parties to the Convention shall apply, *mutatis mutandis*, to meetings of the Intergovernmental Committee;
8. *Decides* that the Intergovernmental Committee shall hold its first meeting from 6 to 10 June 2011 and the second meeting from 23 to 27 April 2012;
9. *Decides* that the Co-Chairs of the Intergovernmental Committee shall be Mr/Ms..... of ..... and Mr/Ms..... of ..... and *invites* the Intergovernmental Committee to elect its Bureau at its first meeting from among the representatives of the Parties to the Convention;
10. *Endorses* the work plan for the Intergovernmental Committee as contained in annex II to the present decision;
11. *Requests* the Executive Secretary to provide technical assistance to Parties, subject to the availability of resources, with a view to supporting the early ratification and implementation of the Protocol;
12. *Requests* the Global Environment Facility to provide financial support to Parties to assist with the early ratification of the Protocol and its implementation;<sup>4</sup>
13. *Requests* the Executive Secretary, in collaboration with relevant organisations, as appropriate, to carry out awareness raising activities amongst relevant stakeholders groups, including the business community, the scientific community and others, to support the implementation of the Protocol;

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<sup>4</sup> This paragraph could be moved to a consolidated decision on guidance to the financial mechanism.



14. *Invites* Parties and relevant organisations to provide financial and technical assistance, as appropriate, to support the implementation of the Protocol;

15. *Requests* Parties that are developing countries, in particular the least developed countries and small island developing States amongst them, and Parties with economies in transition, to make an initial identification of their needs in relation to capacity-building, capacity development and strengthening of human resources and institutional capacities in order to effectively implement the Protocol and to make this information available to the Intergovernmental Committee no later than 2 months prior to its first meeting;

16. *Requests* the Executive Secretary to make available on the [Access and Benefit-sharing] Clearing-House Mechanism sectoral and cross-sectoral model contractual clauses for mutually agreed terms and to carry out a comparative analysis of their access and benefit-sharing components;

17. *Requests* the Executive Secretary to continue to make available on the [Access and Benefit-sharing] Clearing House Mechanism existing guidelines and codes of conduct related to access and benefit-sharing and to carry out a comparative analysis of their access and benefit-sharing components;

18. *Urges* the Parties to the Convention and other States and regional economic integration organizations to designate, as soon as possible and no later than 31 March 2011, a focal point for the Intergovernmental Committee and to inform the Executive Secretary accordingly;

### **III. ADMINISTRATIVE AND BUDGETARY MATTERS**

19. *Decides* that, pending the entry into force of the Protocol, the financial costs of the interim mechanisms shall be borne by the Trust Fund for the Convention on Biological Diversity (BY);

20. *Decides* also to establish until the first meeting of the Parties to the Protocol an interim secretariat of the Protocol hosted by the Secretariat of the Convention;

21. *Takes note* of the amounts supplementary to the funding estimates for the Special Voluntary Trust Fund (BE) for Additional Voluntary Contributions in Support of Approved Activities for the biennium 2011-2012 specified by the Executive Secretary and *invites* Parties and other States to make contributions to that fund;

22. *Decides* to consider and adopt the budget for the Protocol for the biennium 2013-2014 at its eleventh meeting and *requests* the Executive Secretary to submit the draft budget six months in advance.

*Annex I to the draft decision*

## **PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING OUT OF THEIR UTILIZATION**

*[To be inserted]*

*Annex II to the draft decision*

**WORK PLAN FOR THE INTERGOVERNMENTAL COMMITTEE FOR THE PROTOCOL ON  
ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF  
BENEFITS ARISING OUT OF THEIR UTILIZATION**

*[To be inserted]*

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