

Ref: SCBD/SEL/VN/GD/48027

12 April 2005

Dear Madam/Sir,

**NOTIFICATION****FOURTH MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND  
BENEFIT-SHARING**

The purpose of this notification is to invite Parties, Governments, international organizations, indigenous and local communities and relevant stakeholders to contribute to the preparatory work for the fourth meeting of the Ad Hoc Open-ended Working Group on Access and benefit-sharing and for the dissemination of information in accordance with the recommendations of the Working Group at its third meeting held in Bangkok, Thailand, in February 2005, and contained in the report of the meeting (document UNEP/CBD/WG-ABS/3/7).

The fourth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing is tentatively planned to be held in Spain, in January 2006. Issues requiring action by Parties are reviewed below.

**International Regime on Access and Benefit-sharing**

In recommendation 3/1 on the “International regime on access and benefit-sharing”, the Working Group agreed to transmit annex 1 to this recommendation, including further options submitted by Parties, to its fourth meeting as a basis, together with any other items set out in the annex to decision VII/19D of the Conference of the Parties, for further elaboration and negotiation by Parties.

The Working Group invited Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders to submit to the Executive Secretary written comments and proposals on the items in annex 1 as soon as possible and, in any case, no later than three months prior to the next meeting of the Working Group.

To: CBD NFP, ABS NFP, indigenous and local communities, international organizations and relevant stakeholders



It also requested the Executive Secretary to prepare a compilation and a consolidated text of the comments and proposals submitted by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders for consideration at its fourth meeting.

In addition, in order to facilitate further analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing, the Working Group invited Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders to provide information to the Executive Secretary on the basis of the matrix contained in annex II to recommendation 3/1 and the potential additional elements and options three months before its fourth meeting.

Finally, the Executive Secretary was requested to consolidate the information provided by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders on the basis of annex II to recommendation 3/1 and make it available to the Working Group on Access and Benefit-sharing at its fourth meeting.

**Requested action by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders**

Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders are invited to:

- 1) submit to the Executive Secretary written comments and proposals on the items in annex 1 of the recommendation, reproduced in Annex A of this notification, **as soon as possible and no later than 1 October 2005**, for consideration by the fourth meeting of the Working Group.
- 2) provide information to the Executive Secretary on the basis of the matrix contained in annex II of the recommendation (reproduced in annex B of this notification) and the potential additional elements and options, **as soon as possible and no later than 1 October 2005**, in order to facilitate further analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing.

**Use of terms, definitions and/or glossary, as appropriate**

In recommendation 3/2, the Working Group recalled decision VII/19B of the Conference of the Parties on the use of terms, definitions and/or glossary, as appropriate, and noted that only few Parties had submitted the requested information and that further gathering of information was necessary.

It reiterated the invitation of the Conference of the Parties to Parties, Governments, relevant organizations, indigenous and local communities, and relevant stakeholders to submit to the Executive Secretary:

(a) Information on existing national definitions or other relevant definitions of the following terms: access to genetic resources, benefit-sharing, commercialisation, derivatives, provider, user, stakeholders, *ex situ* collection, and voluntary nature (as contained in annex II to document UNEP/CBD/COP/6/INF/40 and in UNEP/CBD/WG-ABS/3/4);

(b) Views on whether additional terms need to be considered.

The Working Group then urged Parties that have not already done so to submit to the Executive Secretary the information and views requested by the Conference of the Parties and requested the Executive Secretary to prepare a consolidated glossary of existing and any additional definitions, based on the earlier work as well as the submissions referred to in paragraph 1 of recommendation 3/2, and also

taking into consideration relevant definitions in use, for consideration by the Working Group at its fourth meeting.

**Requested action by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders**

Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders are invited to submit information on existing national definitions and other relevant definitions of the terms referred to above and to provide their views on whether additional terms need to be considered by the Secretariat by **1 September 2005**, using the format provided in Annex C.

**Other approaches, as set out in decision VI/24B, including consideration of an international certificate of origin/source/legal provenance**

In recommendation 3/3, the Working Group recalled that existing other approaches could be considered to complement the Bonn Guidelines and are useful tools in assisting with the implementation of access and benefit-sharing approaches.

It also recognised that an international certificate of origin/source/legal provenance could be an element of an international regime on access and benefit-sharing and deserved further examination.

The Working Group invited Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders in particular the private sector, to prepare further studies and pilot projects and to report thereon to the Executive Secretary, and to submit their views to the Executive Secretary on the design of an international certificate of origin/source/legal provenance, including *inter alia*:

- (a) Its rationale, need and objectives;
- (b) The desirable characteristics/features;
- (c) The practicality, feasibility and costs at national and international levels.

It also requested the Executive Secretary to prepare a compilation thereon for the consideration of the Working Group at its fourth meeting.

**Requested action by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders**

Parties Governments, indigenous and local communities, international organizations and all relevant stakeholders are invited to submit to the Secretariat, by **1 September 2005**, reports on further studies and pilot projects and their views on the design of an international certificate of origin/source/legal provenance, including *inter alia*: (a) its rationale, need and objectives; (b) the desirable characteristics/feature; and (c) the practicality, feasibility and costs at national and international levels.

**Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction**

In paragraph 1 of recommendation 3/4, the Working Group invited Parties and Governments, in preparation for its fourth meeting, to start or continue activities as spelled out in decision VII/19 E.

In paragraph 3 of the same recommendation, it invited Parties to submit information, analyses and views on the activities referred to in paragraph 1 above, and in particular the measures outlined in paragraphs 2 (a) to (g) of decision VII/19 E, and on the implementation of the Bonn Guidelines, to the Executive Secretary, and requested the Executive Secretary to compile this information and make it available through the clearing-house mechanism and other means, and to the fourth meeting of the Working Group.

In paragraph 5, it invited Parties to identify issues related to disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights and submit this information to the Executive Secretary, and requested the Executive Secretary to prepare a compilation thereon for examination by the fourth meeting of the Ad Hoc Working Group on Access and Benefit-Sharing with a view to transmitting the results of this examination to the World Intellectual Property Organization (WIPO) and other relevant forums, such as the Food and Agriculture Organization of the United Nations (FAO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), the International Union for the Protection of New Varieties of Plants (UPOV), and the World Trade Organization (WTO).

Finally, in paragraph 8, the Working Group invited Parties, Governments, relevant international organizations, indigenous and local communities, and all relevant stakeholders to undertake analytical work on:

- (a) The occurrence, nature, extent and cost of misappropriation of genetic resources, [derivatives] and associated traditional knowledge including, for countries with relevant legislation, the extent of non-compliance with their national legislation on prior informed consent and mutually agreed terms;
- (b) The effectiveness, practicality and cost of measures to ensure compliance with prior informed consent and mutually agreed terms;
- (c) Enforcement problems experienced under national access legislation, including capacity constraints and related need for capacity-building, including the capacity-building of indigenous and local communities;

and to forward the outcome of this work to the Executive Secretary for compilation and dissemination through the clearing-house mechanism and other means.

The Executive Secretary is requested to submit the compilation referred to in paragraph 8 above to the Working Group on Access and Benefit-sharing for its consideration at its fourth meeting.

### **Requested action by Parties**

Parties are invited to submit to the Secretariat **by 1 September 2005**:

- information, analyses and views on the activities spelled out in decision VII/19E, and in particular the measures outlined in paragraphs 2 (a) to (g) of decision VII/19 E, and on the implementation of the Bonn Guidelines
- information on issues related to disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights that have been identified by Parties.

### **Requested action by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders**

Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders are invited to forward to the Secretariat **by 1 September 2005**, the outcome of analytical work undertaken on:

- The occurrence, nature, extent and cost of misappropriation of genetic resources, [derivatives] and associated traditional knowledge including, for countries with relevant legislation, the extent

of non-compliance with their national legislation on prior informed consent and mutually agreed terms;

- The effectiveness, practicality and cost of measures to ensure compliance with prior informed consent and mutually agreed terms;
- Enforcement problems experienced under national access legislation, including capacity constraints and related need for capacity-building, including the capacity-building of indigenous and local communities.

**Strategic Plan: future evaluation of progress – the need and possible options for indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources**

In recommendation 3/5, the Working Group recognized the need for indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources, and associated innovations, knowledge and practices of indigenous and local communities.

It underlined that both process and outcome-oriented indicators are needed for assessing progress in the implementation of the three objectives of the Convention and towards the 2010 biodiversity target, and also recognized the need for further development of targets and indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources.

It also noted the limited number of views provided to the Executive Secretary on the need, and possible options, for indicators for access to genetic resources, and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources, and associated knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles.

In paragraph 1 of this recommendation, it invited Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders to submit their views and information on the need and possible options for indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources, and associated knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles.

In paragraph 2, it also invited Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders to submit their views and information on the further consideration and review of targets under goal 10 of the provisional framework for goals and targets annexed to decision VII/30.

Finally, in paragraph 3, the Working Group requested the Executive Secretary to prepare a compilation of the submissions for the consideration of the Working Group at its fourth meeting.

**Requested action by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders**

Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders are invited to **provide their views and information** to the Secretariat, by **1 September 2005** on:

- the need and possible options for indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources, and associated knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles;

- the further consideration and review of targets under goal 10 of the provisional framework for goals and targets annexed to decision VII/30.

Please accept, Madam/Sir, the assurances of my highest consideration.

Yours sincerely,

Hamdallah Zedan  
Executive Secretary

## Annex A

### INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING <sup>1/</sup>

#### 1. Nature

*The international regime could be composed of one or more instruments within a set of principles, norms, rules and decision-making procedures legally-binding and/or non-binding.*

#### 2. Scope

*Access to genetic resources and promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources in accordance with relevant provisions of the Convention on Biological Diversity; (i)*

*Traditional knowledge, innovations and practices in accordance with Article 8(j). (ii)*

*Option 1:*

The legally binding instrument should apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources and their derivatives and products in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources and their derivatives.

*Option 2:*

The legally binding and/or non-binding instrument(s) should apply to:

- (a) Facilitate access to genetic resources in a non-discriminatory fashion;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources.

*Option 3:*

The legally binding instrument should apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources and their derivatives and products in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources, their derivatives and products.

*Option 4:*

Facilitation of access to genetic resources in a non-discriminatory fashion and the promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources and associated traditional knowledge in accordance with relevant provisions of the Convention on

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<sup>1/</sup> Italicized text, excluding side-headings, indicates text reproduced without change from the terms of reference of the Working Group in the annex to decision VII/19 D. The Roman numerals in parenthesis at the end of an entry refer to its numbering under the corresponding heading in those terms of reference.

Biological Diversity and in harmony with the International Treaty on Plant Genetic Resources and other relevant international instruments.

*Option 5:*

The international regime should apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources.

*Option 6:*

Subject to further refinement, the international regime could be composed of one or more instruments at different levels of implementation (national, regional and international) and of a different nature (including intergovernmental agreements, codes of conduct, national legislation, contracts, ethics, commissions) within a set of principles, norms, rules and decision-making procedures within the framework of the Convention on Biological Diversity that apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources.

### **3. Potential objectives**

*Option 1:*

- (i) To prevent the unauthorized access and use of genetic resources to ensure that fair and equitable sharing of benefits flow to the providers of the genetic resources and to reinforce national legislations.
- (ii) To provide effective protection for the traditional knowledge of indigenous and local communities associated with genetic resources, subject to the national legislation of the countries where these communities are located.
- (iii) Create conditions to facilitate access to genetic resources for environmentally sound uses.
- (iv) Ensure compliance with prior informed consent of providers and of indigenous and local communities, and mutually agreed terms and support the implementation of and compliance with national legislation.

*Option 2:*

- (i) To prevent the continued misappropriation and misuse of genetic resources and their derivatives to ensure that fair and equitable sharing of benefits flow to the countries of origin of the genetic resources and to reinforce national legislations.
- (ii) To provide effective protection for the rights of indigenous and/or local communities in relation to their traditional knowledge associated with genetic resources and derivatives, subject to the national legislation of the countries where these communities are located.
- (iii) To establish international measures to support the aforementioned objective.

*Option 3:*

(i) To prevent the continued misappropriation and misuse of genetic resources, their derivatives and products to ensure that fair and equitable sharing of benefits flow to the countries of origin of the genetic resources and to reinforce national legislations.

(ii) To provide effective protection for the traditional knowledge of indigenous and local communities associated with genetic resources, their derivatives and products, subject to the national legislation of the countries where these communities are located.

(iii) To create conditions to facilitate access to genetic resources for environmentally sound uses.

(iv) To ensure compliance with prior informed consent of countries of origin and of indigenous and local communities, and mutually agreed terms and support the implementation of and compliance with national legislation.

*Option 4:*

The objective of the international regime is:

(i) The conservation and sustainable use of biological diversity;

(ii) Facilitated access to genetic resources;

(iii) The fair and equitable sharing of the benefits arising out of the utilization of genetic resources and associated traditional knowledge.

*Option 5:*

(i) Contribute to the effective implementation of Articles 15 and 8(j) and the three objectives of the Convention.

(ii) Facilitate access to genetic resources.

(iii) Support the implementation of and compliance with national legislation and international law.

(iv) Promote compliance with prior informed consent of the providing countries and of indigenous and local communities and mutually agreed terms.

(v) Promote and safeguard the fair and equitable sharing of benefits.

(vi) Ensure and enforce the rights and obligations of users of genetic resources.

(vii) Protect the rights of indigenous and local communities to their traditional knowledge related to genetic resources consistent with international human rights obligations.

*Option 6:*

(i) Contribute to the effective implementation of Articles 15 and 8(j) and the three objectives of the Convention

(ii) Ensure compliance with the prior informed consent and mutually agreed terms of provider countries, including of indigenous and local communities

(iii) Ensure mutual supportiveness with relevant existing international instruments and processes

**4. Elements to be considered for inclusion in the international regime, clustered by subject matter**

*Access*

Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15, paragraph 2, of the Convention on Biological Diversity; (iv)

### *Ensuring benefit-sharing*

Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15, paragraph 7, 16, and 19 paragraphs 1 and 2 of the Convention. (ii)

Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms. (vi)

Measures for benefit-sharing including, *inter alia*, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits. (iii)

### *Promoting benefit-sharing*

Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention. (i)

Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. (v)

### *Recognition and protection of rights of indigenous and local communities*

Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located. (xv)

Customary law and traditional cultural practices of indigenous and local communities. (xvi)

Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities. (xviii)

Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j). (x)

### *Derivatives*

Addressing the issue of derivatives. (xii)

### *Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT*

Monitoring, compliance and enforcement. (xx)

Dispute settlement, and/or arbitration, if and when necessary. (xxi)

Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity. (xi)

Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity. (ix)

### *Functioning of the international regime*

Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some in situ genetic resources and associated traditional knowledge. (viii)

Means to support the implementation of the international regime within the framework of the Convention. (xix)

Institutional issues to support the implementation of the international regime within the framework of the Convention. (xxii)

Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge. (xiii)

Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights. (xiv)

Capacity-building measures based on country needs. (xvii)

*Poverty eradication*

Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability. (vii)

*Relevant elements of existing instruments and processes, including: (xxiii)*

- Convention on Biological Diversity;
- Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;
- The International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations;
- The Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations;
- Current national legislative, administrative and policy measures implementing Article 15 of the Convention on Biological Diversity;
- The United Nations Permanent Forum on Indigenous Issues;
- Outcomes of the Working Group on Article 8(j);
- The Agreement on Trade-related Aspects of Intellectual Property Rights and other World Trade Organization agreements;
- World Intellectual Property Organization conventions and treaties;
- International Convention for the Protection of New Varieties of Plants;
- Regional agreements;
- Codes of conduct and other approaches developed by specific user groups or for specific genetic resources, including model contractual agreements;
- African Model Law on the Rights of Communities, Farmers, Breeders, and on Access to Biological Resources;
- Decision 391 of the Andean Community;
- Decision 486 of the Andean Community;
- United Nations Convention on the Law of the Sea;
- Agenda 21;
- Rio Declaration on Environment and Development;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- Antarctic Treaty;
- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights;

- The International Covenant on Economic, Social and Cultural Rights.

## 5. Potential additional elements and options identified

Members of the Working Group also suggested a number of additional elements and options. These are reproduced hereunder as part of the process for elaborating and negotiating the international regime for the consideration of the Working Group within the framework of the Convention on Biological Diversity and the terms of reference adopted by the Conference of the Parties, at its next meeting:

### A. Option 1

Among the elements listed in the annex to decision VII/19 D of the Conference of the Parties, the legally-binding instrument should **primarily** focus on the following:

- I. Measures to ensure compliance by users with national legislations of the countries of origin or countries providing genetic resources where that country has satisfied conditions which qualify it to be considered as country of origin on access and benefit-sharing, prior informed consent and mutually agreed terms;
- II. Measures to ensure compliance with prior informed consent of, either:
  - a. Indigenous and / or local communities for the access to their traditional knowledge, innovations and practices associated with genetic resources and/or associated knowledge and their derivatives; and/or,
  - b. Country(s) of origin for the access to genetic resources associated to traditional knowledge.
- III. Measures to ensure compliance with mutually agreed terms on which genetic resources were granted.
- IV. Measures to prevent unauthorized access and use of genetic resources, their derivatives and associated traditional knowledge, innovations and practices.
- V. Measures to ensure and guarantee monitoring, compliance and enforcement of rights of countries of origin of genetic resources and their derivatives, whether established by national legislations or otherwise, by users and their countries through the international regime.
- VI. Disclosure of legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights;
- VII. Internationally recognized certificate of legal provenance of genetic resources that should include evidence of compliance with access legislation (including prior informed consent and mutually agreed terms);
- VIII. The requirements to obtain the certificate will be nationally defined, considering the provisions in the Convention on Biological Diversity;
- IX. Vision of the certificate: a standardized code that accompanies the biological material and is passed to all extracts, derivatives or information, through the least expensive channels, in a way that it can be shown at specific and relevant checkpoints in the research and development process (including product approval and intellectual property). There should be high cost of non-disclosure in order to induce users to behave legally. The specific conditions for access should be included in a clearinghouse, so that users/authorities/interested parties can check the conditions;
- X. Criteria for international recognition of the certificate shall be established in the legally-binding instrument;
- XI. Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15 paragraph 7, 16 and 19 paragraph 1 and 2 of the Convention;

- XII. Recognition and protection of the rights of indigenous and/or local communities over their traditional knowledge associated to genetic resources, subject to the national legislation of the countries where these communities are located;
- XIII. Monitoring, compliance and enforcement;
- XIV. Rules for access to and transfer of technology on the basis of Article 16 of the Convention;
- XV. Measures for benefit sharing including *inter alia*, monetary and non-monetary benefits and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits;
- XVI. Rules to strengthen the international cooperation in particular South – South cooperation;
- XVII. Building of human, institutional and scientific capacities including for putting in place the legal mechanism, taking into account Articles 18 and 19 of the Convention;
- XVIII. An institutional mechanism for implementation of the legally-binding instrument.

## **B. Option 2**

### *Benefit-sharing*

- (i) Measures to ensure the fair and equitable sharing of benefits arising from the use of traditional knowledge, innovations and practices of indigenous and local communities associated with genetic resources and their derivatives and ensure that those benefits flow to those communities.
- (ii) Measures to guarantee the transfer of technology to the countries of origin of the genetic resources and their derivatives under fair and most favourable terms, including on concessional and preferential terms.
- (iii) Relevant measures for communication, education and public awareness.

### *Compliance with the national legislation*

- (i) Measures to prevent the unauthorized use of genetic resources, their derivatives and associated traditional knowledge, innovations and practices at the international level.
- (ii) Measures to ensure the compliance of national legislation on access from countries of origin of genetic resources and their derivatives beyond their national jurisdiction.
- (iii) Legislative, administrative and policy measures in developed country users of genetic resources and their derivatives to guarantee the respect of the rights of developing countries of origin over those resources.

### *Implementation of the international regime*

- (i) Financial mechanisms and other ways and means to guarantee the effective implementation of the international regime.

### *Compliance and dispute settlement*

- (i) Measures related to repatriation and compensation.
- (ii) Measures to ensure access to justice.

## **C. Additional elements**

- Measures that support the development of national administrative, legislative and regulatory regimes.
- Establish international minimum standards for compliance with national legislations.
- Promote the establishment of appropriate measures by Parties with users under their jurisdiction.

- Measures to ensure recognition and protection of the rights of indigenous women as holders and protectors of traditional knowledge and genetic resources.
- Measures to protect the rights of indigenous peoples to the genetic resources originating in indigenous lands and territories.
- Measures to clarify national access laws.
- Measures to prevent misappropriation of genetic resources, their derivatives and products as well as traditional knowledge.
- Measures to ensure non-discriminatory access.
- Measures to ensure communication, information and awareness raising.
- Measures to ensure access to information in regulating access on access and benefit-sharing of genetic resources and associated traditional knowledge.
- Measures to ensure access to justice.
- Measures to ensure that intellectual property rights do not undermine the international regime.
- Measures to ensure mutual supportiveness between the Convention on Biological Diversity and intellectual property rights-related treaties.
- Measures to promote the carrying out of research and development and joint ventures in the country of origin as provided for in Article 15, paragraph 6, of the Convention.
- Measures to promote the carrying out of research and development and joint ventures in the providing countries as provided for in Article 15, paragraph 6, of the Convention.
- Relationship with other international legal instruments.
- Nationally recognised certificate of origin/source/legal provenance of genetic resources and their derivatives and associated traditional knowledge as well as rules of customary law.
- Measures to prevent the unauthorised access and use of genetic resources and traditional knowledge.
- Measures to ensure disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge as a precondition for the registration and commercialization of new products based on genetic resources and/or associated traditional knowledge.
- Measures to ensure the effective provision of technical assistance and technology transfer, especially to developing countries.

## **6. Analysis of gaps**

### *Process*

- (i) *To elaborate and negotiate the nature, scope and elements of an international regime on access and benefit-sharing within the framework of the Convention on Biological Diversity, as contained in paragraphs (b), (c) and (d) below drawing on, inter alia, an analysis of existing legal and other instruments at national, regional and international levels relating to access and benefit-sharing, including: access contracts; experiences with their implementation; compliance and enforcement mechanisms; and any other options.*
- (ii) *As part of the work, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing will examine whether and to what extent possible elements as contained in paragraph (d) of the terms of reference are part of these instruments and determine how to address the gaps*

The Working Group recognizes the utility of the matrix contained in annex II below to identify gaps and determine how to address them.

Further to the consideration of the potential additional elements and options identified contained in section 5, the Working Group decides to carry out the same analysis with respect to any of these elements and options without prejudice to the inclusion of these elements and options in the elaboration and negotiation of the international regime.

**Annex B**  
**ANALYSIS OF GAPS**

| <b>Elements <u>2/</u></b>                                                                                                                                                                                                                                                                                                  | <b>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u></b> | <b>Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u></b> | <b>Relevant provisions of existing regional and national instruments, and relevant processes</b> | <b>Identified gaps</b> | <b>At what level, national, regional or international, and how should the gaps be addressed?</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|------------------------|--------------------------------------------------------------------------------------------------|
| <p><i>Access</i></p> <p>Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>                                                                                                                           |                                                                                                                                     |                                                                                                            |                                                                                                  |                        |                                                                                                  |
| <p><i>Ensuring benefit-sharing</i></p> <p>Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention; (ii)</p> |                                                                                                                                     |                                                                                                            |                                                                                                  |                        |                                                                                                  |

2/ The Roman numerals in parenthesis following each element refer to the numbering of that element under heading (d) of the annex to decision VII/19 D.

3/ Please take into account the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

4/ Please refer to the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

| Elements <u>2/</u>                                                                                                                                                                                                                                                                                                                                                                                                                                       | Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u> | Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u> | Relevant provisions of existing regional and national instruments, and relevant processes | Identified gaps | At what level, national, regional or international, and how should the gaps be addressed? |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------|
| <p>Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)</p> <p>Measures for benefit-sharing including, <i>inter alia</i>, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p> |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |
| <p><i>Promoting benefit-sharing</i></p> <p>Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)</p>                                                                                                                                                 |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |

| Elements <u>2/</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u> | Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u> | Relevant provisions of existing regional and national instruments, and relevant processes | Identified gaps | At what level, national, regional or international, and how should the gaps be addressed? |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------|
| Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |
| <p><i>Recognition and protection of rights of indigenous and local communities</i></p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv)</p> <p>Customary law and traditional cultural practices of indigenous and local communities; (xvi)</p> <p>Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)</p> <p>Measures to ensure compliance</p> |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |

| Elements <u>2/</u>                                                                                                                                                                                                              | Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u> | Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u> | Relevant provisions of existing regional and national instruments, and relevant processes | Identified gaps | At what level, national, regional or international, and how should the gaps be addressed? |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------|
| with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)                                                           |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |
| <i>Derivatives</i><br>Addressing the issue of derivatives; (xii)                                                                                                                                                                |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |
| <i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i><br>Monitoring, compliance and enforcement; (xx)<br>Dispute settlement, and/or arbitration, if and when necessary; (xxi) |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |

| Elements <u>2/</u>                                                                                                                                                                                                                                                                                                                                                                                                                                         | Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u> | Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u> | Relevant provisions of existing regional and national instruments, and relevant processes | Identified gaps | At what level, national, regional or international, and how should the gaps be addressed? |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------|
| <p>Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi)</p> <p>Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)</p> |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |
| <p><i>Functioning of the international regime</i></p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p> <p>Means to support the</p>                                                                                   |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |

| Elements <u>2/</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u> | Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u> | Relevant provisions of existing regional and national instruments, and relevant processes | Identified gaps | At what level, national, regional or international, and how should the gaps be addressed? |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------|
| <p>implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p> <p>Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii)</p> <p>Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p> <p>Capacity-building measures based on country needs (xvii)</p> |                                                                                                                              |                                                                                                     |                                                                                           |                 |                                                                                           |

| Elements <u>2</u> /                                                                                                                                                                                                                                       | Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3</u> / | Relevant provisions of existing international instruments within the framework of the CBD <u>4</u> / | Relevant provisions of existing regional and national instruments, and relevant processes | Identified gaps | At what level, national, regional or international, and how should the gaps be addressed? |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------|
| <p><i>Poverty eradication</i></p> <p>Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p> |                                                                                                                               |                                                                                                      |                                                                                           |                 |                                                                                           |

**ANNEX C**  
**Use of Terms**

In accordance with recommendation 3/2 adopted by the third meeting of the Working Group on Access and Benefit-sharing, you are invited to provide to the Executive Secretary existing national definitions or other relevant definitions of the terms included in the following table along with the source of these definitions. Any views on whether additional terms should also be considered, including their definitions and source, are to be included in the last row of this table.

| <b>Terms to be defined</b>          | <b>Existing definition/Source</b> |
|-------------------------------------|-----------------------------------|
| <b>Access to genetic resources</b>  |                                   |
| <b>Benefit-sharing</b>              |                                   |
| <b>Commercialization</b>            |                                   |
| <b>Derivatives</b>                  |                                   |
| <b>Provider</b>                     |                                   |
| <b>User</b>                         |                                   |
| <b>Stakeholder</b>                  |                                   |
| <i>Ex situ</i> collection           |                                   |
| <b>Voluntary nature</b>             |                                   |
| <b>Other term(s) to be defined:</b> |                                   |

**Comments:**