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Sixth meeting

The Hague, 8-19 April 2002

Items 11 of the provisional agenda*

REPORT OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

INTRODUCTION

A. Background

1. In paragraph 11 of its decision V/26 A, the Conference of the Parties to the Convention on Biological Diversity decided to establish an Ad Hoc Open-ended Working Group, composed of representatives, including experts, nominated by Governments and regional economic integration organizations, with the mandate to develop guidelines and other approaches for submission to the Conference of the Parties and to assist Parties and stakeholders in addressing the following elements as relevant to access to genetic resources and benefit-sharing, *inter alia*: terms for prior informed consent and mutually agreed terms; roles, responsibilities and participation of stakeholders; relevant aspects relating to *in situ* and *ex situ* conservation and sustainable use; mechanisms for benefit-sharing, for example through technology transfer and joint research and development; and means to ensure the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, taking into account, *inter alia*, work by the World Intellectual Property Organization (WIPO) on intellectual property rights issues.

2. Following an offer from the Government of Germany, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing met in Bonn, Germany, from 22 to 26 October 2001.

B. Attendance

3. As noted above, the Conference of the Parties decided that the Ad Hoc Open-ended Working Group should be composed of representatives, including experts, nominated by Governments and regional economic integration organizations. It further decided that the Working Group would be open to the participation of indigenous and local communities, non-governmental organizations, industry and scientific and academic institutions, as well as intergovernmental organizations.

* UNEP/CBD/COP/6/1 and Corr.1/Rev.1.

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4. The meeting was attended by representatives nominated by the following Governments and regional economic integration organizations: Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bhutan, Bolivia, Brazil, Burkina Faso, Cameroon, Canada, Central African Republic, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Egypt, El Salvador, Ethiopia, European Community, Fiji, Finland, France, Gabon, Georgia, Germany, Guinea, Haiti, India, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Kenya, Latvia, Lebanon, Lesotho, Lithuania, Madagascar, Malaysia, Maldives, Mexico, Mongolia, Morocco, Myanmar, Netherlands, Nigeria, Norway, Pakistan, Palau, Peru, Philippines, Poland, Republic of Korea, Russian Federation, Saint Lucia, Samoa, Sao Tome and Principe, Senegal, Seychelles, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, Viet Nam, Zambia, Zimbabwe.

5. Representatives of the following other organizations also participated:

(a) *Intergovernmental organizations:* Food and Agriculture Organization of the United Nations (FAO), Office of the United Nations High Commissioner for Human Rights, Organisation for Economic Co-operation and Development (OECD), Secretariat of the African-Eurasian Migratory Waterbird Agreement, Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), United Nations Environment Programme (UNEP), World Intellectual Property Organization (WIPO);

(b) *Non-governmental organizations:* !Xun and Khwe Communal Property Association, A Harvest Biotech Foundation International, AidEnvironment, ALMACIGA, Apu Agbibilin Community Inc., Asamblea Nacional Indigena Plural por la Autonomia-Umbral Axochiatl, Asociacion Interetnica de Desarrollo de la Selva Peruana, Asociacion Ixacavaa de Desarrollo e Información Indigena, International Association of Plant Breeders (ASSINSEL), Association pour l'épanouissement de la femme nomade, Bayer AG, Berne Declaration, Biodiversity Strategies International, Biotechnology Industry Association, Biotechnology Industry Organization, Buko Agrar Koordination, Buryat Regional Department on Lake Baikal, Centre for Sustainable Development in Mountainous Areas, Church Development Service (Evangelischer Entwicklungsdienst), CIDOB, Climate Alliance, Coordinating Body for the Indigenous Peoples' Organizations of the Amazon Basin (COICA), Communauté des Autochtones Rwandais, Consejo de Todas Las Tierras, Consultative Group on International Agricultural Research (CGIAR), Coord. Mapuche de Neuquen, Deutscher Entwicklungsdienst, Ecooperation, ECOROPA, Ethnic Minority and Indigenous Rights Organisation of Africa (EMIROAF), Europabio, Forest Peoples Programme, Forum Umwelt und Entwicklung, Foundation for International Environmental Law and Development (FIELD), German Development Institute, Greenpeace, HAI, International Institute for Environment & Development (IIED), Indian Confederation of Indigenous and Tribal Peoples North-East Zone, Indigenous Information Network, Institute for Ecology and Action - Anthropology (INFOE), Institut fuer internationale und Europaeische Umweltpolitik, International Alliance of Indigenous and Tribal Peoples of the Tropical Forest, International Indigenous Biodiversity Forum, IUCN—The World Conservation Union, Japan Bioindustry Association, Klima-Buendnis/Alianza del Clima e.V., Naadutaro Tanzania, Netherlands Center for Indigenous People (NCIV), Oesterreichisches Lateinamerika-Institut, Organizacion de Pueblos Indigenas de Colombia, Programa de Conocimiento Indigena - Indigenous Community, Programme d'intégration et de développement du Peuple Pygmée, Royal Botanic Gardens Kew, Russian Association of Indigenous Peoples of the North (RAIPON), Science Center Berlin, Taller de Historia Oral Andina, Tebtebba Foundation, Tourism and Congress GmbH, Traditional Indigenous Healers, Universidad Católica, University of Bonn, University of Frankfurt, University of Freiburg, University of Goettingen, University of Ibadan, University of Kassel, UOBDU, World Resources Institute, World Wide Fund for Nature, York University.

ITEM 1. OPENING OF THE MEETING

6. The meeting was opened at 10.30 a.m. on Monday, 22 October 2001 by Mr. Reuben Olembo (Kenya) on behalf of Mr. Noah Katana Ngala, President of fifth meeting of the Conference of the Parties. Mr. Olembo said that the first meeting of the Working Group was the beginning of a new phase in the consideration of the question of access and benefit-sharing under the Convention on Biological Diversity. The issue was the main concern of the vast majority of developing countries, because it touched directly upon their needs and priorities. It was through the objective of access and benefit-sharing that the Convention most directly addressed poverty reduction, human well-being and empowerment of the disenfranchised. Access and benefit-sharing therefore tied the Convention into the wider issues of poverty alleviation and sustainable development. Stressing the need to continually demonstrate that the Convention process was a vital and dynamic one that could respond to modern issues in a modern way, he said that a failure to assist Parties in implementing the objective of access and benefit-sharing through the development of clear and focused guidelines would mean that the Convention would have failed to play its role in meeting the needs of the poor and would thereby risk becoming an irrelevant treaty. Finally, on behalf of the President and Bureau of the Conference of the Parties, he expressed his gratitude to the Government of Germany for hosting the meeting in Bonn.

7. Opening statements were also made by Ms. Bärbel Dieckmann, Mayor of Bonn; Ms. Gila Altmann, Parliamentary State Secretary in the German Federal Ministry of the Environment, Nature Conservation and Nuclear Safety; Mr. Paul Chabeda of the UNEP Division of Environmental Conventions, speaking on behalf of the Executive Secretary of UNEP; and Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity.

8. Ms. Dieckmann warmly welcomed all participants to Bonn, a city that was host to the secretariats of all the Rio conventions, except the Convention on Biological Diversity. Due to its excellent institutional capabilities, Bonn was able to offer high-level facilities for international conferences and had hosted a number of such important meetings. The great political significance of the United Nations organizations in Bonn was illustrated by the fact that the Government of Germany had appointed a Special Commissioner for issues concerning them. The city considered that the maintaining of the biosphere under national and international law was a pressing task, and was also active in the field of biological diversity. Other tasks were teaching children about responsibility for the environment, as well as trying to translate the complicated content of the Convention on Biological Diversity for the citizens. Such was the purpose of the special Biodiversity Information Tent, which would be part of the United Nations celebrations to be opened in Bonn by the Federal President of Germany, Mr. Johannes Rau, during the current week.

9. Ms. Gila Altmann welcomed participants and said that conservation and environmentally sound use of biological diversity was a focal point of the Government's policy. The biggest threat came from conversion and destruction of natural habitats. For that reason, in the summer, her Government had introduced a comprehensive draft amendment to the Federal Nature Conservation Act. Recalling that the industrialized countries were primarily consumers of the resources of biological diversity, she said that these latter had a duty to accept their responsibility vis-à-vis the developing countries in terms of protecting and conserving those resources. That meant not merely financial participation, but also real cooperation in the field of research and development. It was essential to support capacity-building for the conservation and sustainable use of biological diversity, including regulation of access to genetic resources and benefit-sharing. On the issue of equity, the participation of indigenous groups and local communities was crucial, and she extended special welcome to them, as well as to the representatives of non-governmental organizations, as well as industry. All of those played an important role in developing and stabilizing civil society and had to be an integral part of all international meetings and procedures with economic, development and trade dimensions. However, the issue of access to genetic resources should not be discussed as a separate topic to the actual goal of the Convention. She encouraged participants to seek pragmatic solutions that were flexible, created transparency and prevented

superfluous administration. The drawing up of draft international guidelines on access and benefit-sharing at the current meeting would mark a significant step forward, and she wished participants success in their deliberations.

10. Mr. Chabeda said that it was important to retain and promote the principle of equity in any mechanism designed for the sharing of benefits derived from the utilization of genetic resources in the Earth's biological diversity. Progress had been made in implementing the aims of the two of the three main pillars or objectives of the Convention, namely, conservation and sustainable use of biological diversity. The ecosystem approach had been adopted, the Convention had elaborated work programmes for the five thematic areas, as well as identifying 13 cross-cutting issues, and had developed a draft Strategic Plan for the implementation of the Convention to address the issues therein. The Working Group was called upon to address the third fundamental pillar of the Convention, namely the objective of benefit-sharing, and he reiterated the mandate given to it by the Conference of the Parties at its fifth meeting in its decision V/26 A. He was confident that participants would be able to deal with the task before them and provide appropriate guidelines on access and benefit-sharing, as one of the important inputs for the upcoming sixth meeting of the Conference of the Parties. The draft international guidelines on access and benefit-sharing would be an important asset—indeed a pillar of strength—to the Convention, and would help to stem the tide of accelerated biodiversity loss that had been witnessed over the past 50-100 years. He wished participants success in their endeavours.

11. Mr. Zedan welcomed participants and expressed his gratitude to the Government of Germany for their financial and technical support, organizational arrangements and warm hospitality. He also acknowledged the financial support provided by Sweden and the United Kingdom of Great Britain and Northern Ireland. The current meeting was a major undertaking and a test for the Convention as a vehicle to meet the expectations attached to it. In view of the forthcoming World Summit on Sustainable Development, he believed that it was important to provide further evidence to the international community that progress had been made since the Rio Conference and that the Convention on Diversity was an effective instrument through which basic international sustainable development objectives could be met. The meeting would benefit from the work done by the Panel of Experts on Access and Benefit-sharing, which had clarified and provided advice on a number of key concepts and had identified elements that could be included in a package of measures to assist Parties and stakeholders in the implementation of access and benefit-sharing arrangements. He suggested that the Working Group might wish to keep in mind the other objectives of the Convention, as well as its work programmes, which were directly related to access and benefit-sharing, such as the work programme on Article 8(j) and the Global Taxonomy Initiative. It might also take into consideration the work in other international forums, including FAO and WIPO. In conclusion, he drew attention to the documentation prepared for the meeting and suggested that the Working Group might wish to make recommendations to the Conference of the Parties on priorities for further work on intellectual property rights, in light of recent developments under the Convention and in other international organizations.

12. Also at the 1st session of the meeting, introductory statements were made by Mr. Jorge Medaglia Cabrera (Costa Rica), Co-Chair of the Panel of Experts on Access and Benefit-sharing, speaking also on behalf of Mr. Martin Girsberger (Switzerland), the other Co-Chair of the Panel, as well as by the representatives of the World Intellectual Property Organization (WIPO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Conference on Trade and Development (UNCTAD), the International Indigenous Forum on Biodiversity, and the Global Biodiversity Forum.

13. Mr. Jorge Medaglia Cabrera (Costa Rica) reported on the work of the Panel of Experts on Access and Benefit-Sharing at its second meeting, held in Montreal from 19 to 22 March 2001, and said that the Panel had come up with specific conclusions that were of importance for the current Working Group. Those conclusions, which were contained in the annex to the Panel's report (UNEP/CBD/WG-ABS/1/2), concerned capacity-building; legislative, administrative or policy measures on access and benefit-sharing; prior informed consent; mutually agreed terms and benefit-sharing arrangements; intellectual property

rights, traditional knowledge and access and benefit-sharing; identification of stakeholders; examples of stakeholder involvement; identification of approaches for stakeholder involvement; the scope and detail of the guidelines on access and benefit-sharing; and the elements of the guidelines. He thanked his fellow Co-Chair of the Panel and all who had participated in its fruitful work.

14. The representative of WIPO reported that the WIPO General Assembly had established the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, with a mandate to provide a forum for discussions among member States on intellectual property issues arising in the context of: access to genetic resources and benefit-sharing; protection of traditional knowledge; and protection of expressions of folklore. The Committee had held its first session from 30 April to 3 May 2001, at which it had determined a work programme, comprising, *inter alia*, the development of guide contractual agreements on access to genetic resources and benefit-sharing. It had also adopted four tasks concerning the protection of traditional knowledge related to genetic resources, which focused on a definition of the term "traditional knowledge"; an assessment of the availability and scope of intellectual property protection for traditional knowledge; the effective integration of traditional knowledge into searchable prior art; and assisting traditional knowledge holders in the enforcement of intellectual property rights. The second session of the Committee would begin the development of model intellectual property clauses for contractual arrangements on access to genetic resources and benefit-sharing by considering a background document, entitled "Operational principles for intellectual property clauses of contractual agreements concerning access to genetic resources and benefit-sharing" (WIPO/GRTKF/IC/2/3). That document also took account of comments provided by the Secretariat of the Convention on Biological Diversity. He stressed that WIPO's work was limited exclusively to intellectual property-specific issues related to genetic resources, and that WIPO left all other aspects of genetic resources to the relevant international forums. The Intergovernmental Committee had expressed a clear consensus that WIPO should cooperate closely with the secretariats of the Convention and of FAO, in order to ensure that WIPO's work was complementary to and consistent with the work of those forums on genetic resources. He recalled that WIPO had cooperated with the Secretariat of the Convention and had responded to several requests from the Conference of the Parties for intellectual property-specific advice and information related to genetic resources.

15. The representative of FAO provided the Working Group with a brief update on the negotiations in FAO to revise the International Undertaking on Plant Genetic Resources. He said that the Commission on Genetic Resources had completed its work in June 2001, and the FAO Council was expected to set up an open-ended working group to address the outstanding issues and finalize the text for submission to the FAO Conference in early November 2001. The revised Undertaking included provisions for a Multilateral System for Access and Benefit-sharing. While the general provisions of the Undertaking applied to all crops, the Multilateral System applied to a list of major food crops and some forage species. Further details of the revised text were provided in annex II to the note by the Executive Secretary on elements for consideration in the development of guidelines and other approaches for access to genetic resources and benefit-sharing (UNEP/CBD/WG-ABS/1/3). At its fifth meeting, the Conference of the Parties to the Convention on Biological Diversity had noted that the revised Undertaking was envisaged to play a crucial role in the implementation of the Convention. The continued conservation and sustainable use of plant genetic resources for food and agriculture that would be facilitated by the revised Undertaking would help underpin food security and sustainable development. He looked forward to the finalization of the agreement in the following month and to continued cooperation between FAO and the Convention on Biological Diversity in such an important area of work.

16. The representative of the United Nations Conference on Trade and Development (UNCTAD) said that her organization had responded to its new mandate to examine means of protecting traditional knowledge, innovations and practices of local and indigenous communities by, *inter alia*, convening an Expert Meeting on Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices in October 2000. The outcome of that meeting had been taken up in February 2001 by the UNCTAD Commission on Trade in Goods and Services. The Commission encouraged the

international community to promote fair and equitable sharing of the benefits derived from traditional knowledge in favour of indigenous and local communities; to exchange information on national systems to protect traditional knowledge; and to explore minimum standards for internationally recognized *sui generis* systems to protect traditional knowledge. It requested UNCTAD to, *inter alia*, conduct analytical work and organize regional workshops to exchange national experiences and examine strategies on issues related to traditional knowledge, in cooperation with WIPO, the Secretariat of the Convention and regional organizations; and assist in exploring policies to harness traditional knowledge for trade and development. In response, UNCTAD had already completed a capacity-building project for 10 countries, addressing issues of access and benefit-sharing and traditional knowledge, and was preparing a number of further technical cooperation activities.

17. The spokesperson for the International Indigenous Forum on Biodiversity, convened in Bonn from 15 to 21 October 2001, emphasized the important contribution of indigenous peoples to the work under the Convention, since their lands and territories contained the highest biological diversity in the world, imbued with high social, cultural, spiritual and economic values. Indigenous women in particular possessed key traditional knowledge of the management and sustainable use of biological diversity. Reaffirming the inherent and collective rights of indigenous peoples, she said that speedy recognition of those rights and the contributions within the Convention, as currently discussed under the Working Group on Article 8 (j), would bring effective progress to the thematic and cross-cutting programmes of the Convention. Any discussion of access and benefit-sharing had to recognize the fundamental rights of indigenous peoples to control their own knowledge, their right to free prior informed consent as peoples, and their collective land and territorial security. Expressing concern that, currently, a disproportionate emphasis was placed upon the commercial and economic values of biological diversity through intellectual property rights, at the expense of conservation and its cultural and spiritual values, she believed that the privatization and commodification of the knowledge and natural resources of indigenous peoples would undermine their political, social, economic and cultural integrity. On the subject of capacity-building, she said that it needed to be seen from a broader perspective that contributed to the strengthening of peoples rights and cultures, and the capacity of Parties to meet their obligations with respect to indigenous peoples' rights. Concluding her statement, she drew attention to a series of recommendations prepared by the Forum for consideration by Parties.

18. The spokesperson for the 23rd Session of the Global Biodiversity Forum, held at the Geographic Institute of the University of Bonn from 19 to 21 October 2001, said that the Forum had brought together representatives from the private sector, non-governmental organizations, research and development institutions, governments and indigenous peoples to address key issues of access and benefit-sharing, including its linkages with community participation, intellectual property rights, food security, and poverty. Participants had noted, *inter alia*, that it was particularly important to ensure conservation of biological diversity as the basis for continued access to biological resources for local food security, health and development needs, as well as protection of economic, social and cultural human rights. It had also emerged clearly that financial support was urgently needed for the development, implementation and monitoring of national policies for access and benefit-sharing, which must involve all stakeholders fully and equally in the decision-making process. To ensure full participation of stakeholders, public awareness and capacity-building for access and benefit-sharing were a priority. Concerning the draft international guidelines on access and benefit-sharing, any future work needed to be fully participatory and had to clearly identify and establish the purpose and objectives; the target groups and scope of application; mechanisms to ensure accountability; and provisions for monitoring and evaluating future implementation. The guidelines and other approaches were not a substitute for community and national measures reflected in customary and national law, but should complement such measures, with a view to developing a comprehensive and integrated regulatory system.

19. Also at the 1st session of the meeting, general statements were made on behalf of the European Community and its member States, the Group of 77 and China, and the African Group.

20. Speaking on behalf of the European Community and its member States, the representative of Belgium said that the European Union was committed to the fair and equitable sharing of the benefits arising out of utilization of genetic resources. Expressing support for the development of guidelines on access and benefit-sharing—together with a range of other approaches such as codes of conduct, indicators, model agreements, as well as sectoral guidelines developed by other organizations—she believed they should be aimed at assisting Parties and relevant stakeholders in developing, as appropriate, legislative and administrative policy measures, as well as contractual arrangements on access and benefit-sharing. The guidelines should facilitate access for users by increasing transparency and legal certainty, and reducing transaction costs. They should have broad scope and be flexible enough to suit access and benefit-sharing arrangements by different users and for different uses, and be voluntary in nature. They should endorse and elaborate the principles of prior informed consent and mutually agreed terms and be a means of assisting providers to obtain an equitable sharing of benefits arising from the use of genetic resources, and such benefits could be monetary and non-monetary and could be shared in the short, medium and long term. It was important to ensure coherence and mutual supportiveness between the guidelines and other ongoing developments, such as in FAO, WIPO and the WTO. Stressing the importance of capacity-building activities to facilitate the implementation of Article 15, she said it was crucial that they be demand-driven, since that was the best way to ensure that such activities were adapted to local situations and needs.

21. Speaking on behalf of the Group of 77 and China, the representative of the Islamic Republic of Iran stressed the importance that the developing countries attached to the issue of access and benefit-sharing and therefore to the current meeting. The Working Group had a mandate to give effect to the provisions of the Convention with regard to one of its fundamental objectives. The Group of 77 and China believe that capacity-building and technology transfer were very essential components of any international guidelines on access and benefit-sharing and should therefore be adequately ensured in the draft guidelines.

22. Speaking on behalf of the African Group, the representative of Togo said that the achievement of the objective of access and benefit-sharing was one of the preconditions for improved conservation of biological diversity. Therefore, in the work of the Working Group and the guidelines, commercial considerations should not outweigh the principles of the Convention. The question of traditional knowledge should be given in-depth consideration, as it was closely linked to the question of access and benefit-sharing. Capacity-building remained for developing countries a prerequisite for effective implementation.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. OFFICERS

23. The Bureau of the Conference of the Parties served as the Bureau of the Working Group. However, at the opening session of the meeting, the Working Group agreed, on the proposal of the President of the Bureau, that Ms. Gila Altmann (Germany) and Mr. Mohammad bin Osman (Malaysia) would act as Co-Chairs for the meeting.

2.2. ADOPTION OF THE AGENDA

24. At the opening session of the meeting, on 22 October 2001, the Working Group adopted the following agenda on the basis of the provisional agenda proposed in document UNEP/CBD/WG-ABS/1/1, which had been prepared by the Executive Secretary on the basis of decision V/26 A:

1. Opening of the meeting.
2. Organizational matters:

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- 2.1. Officers;
- 2.2. Adoption of the agenda;
- 2.3. Organization of work.
3. Development of draft international guidelines on access and benefit-sharing.
4. Other approaches, including the development of an action plan for capacity-building.
5. Report on the role of intellectual property rights in the implementation of access and benefit-sharing arrangements.
6. Other matters.
7. Adoption of the report.
8. Closure of the meeting.

2.3. ORGANIZATION OF WORK

25. At the opening session of the meeting, on 22 October 2001, the Working Group established two sessional sub-working groups open to all Parties and observers: Sub-Working Group I, under the chairmanship of Ms. Birthe Ivars (Norway), to consider the development of draft international guidelines on access and benefit-sharing (agenda item 3), and Sub-Working Group II, under the chairmanship of Mr. Jorge Medaglia Cabrera (Costa Rica), to consider other approaches, including the development of an action plan for capacity building and the role of intellectual property rights in the implementation of access and benefit-sharing arrangements (agenda items 4 and 5).

26. Following a statement from one representative, who said that it was difficult for small delegations to attend simultaneous meetings of both sub-working groups, the Chair assured delegations that they would have an opportunity to express their views on the agenda items when they were addressed in plenary after consideration by the sub-working groups.

ITEM 3. DEVELOPMENT OF DRAFT INTERNATIONAL GUIDELINES ON ACCESS AND BENEFIT-SHARING

27. As agreed at the 1st plenary session of the meeting, on 22 October 2001, agenda item 3 was taken up by Sub-Working Group I, under the chairmanship of Ms. Birthe Ivars (Norway).

28. At the 2nd plenary session of the meeting, on 25 October, the Chair of Sub-Working Group I reported on the progress made in the consideration of the draft guidelines on access and benefit-sharing. She thanked the participants in the sub-working group for their hard work, which had, to date, resulted in agreement on a substantial majority of the elements of the draft guidelines, as reflected in a conference room paper prepared by the Sub-Working Group. Noting that some issues were still outstanding, she expressed the hope that they could be resolved in the course of the day's deliberations.

29. At the 3rd plenary session, the Chair of Sub-Working Group I reported that the Group had completed its work and had agreed on draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, that were before the plenary for approval in document UNEP/CBD/WG-ABS/1/L.4. Noting that, after adoption by the current meeting, the draft Guidelines would be submitted to the Conference of the Parties at its sixth meeting for

finalization, taking also into account the other recommendations of the Open-ended Working Group, she thanked all who had participated in the work to elaborate the Guidelines and recommended them for the approval of the Open-ended Working Group.

30. The Open-ended Working Group adopted the draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, as recommendation 1. The recommendation is contained in the annex to the present report.

31. One representative proposed, and the Open-ended Working Group agreed, that the draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization would also be made available as a paper for the meeting of the Working Group on Article 8 (j), scheduled for February 2002.

ITEM 4. OTHER APPROACHES, INCLUDING THE DEVELOPMENT OF AN ACTION PLAN FOR CAPACITY-BUILDING

32. As agreed at the 1st plenary session of the meeting, agenda item 4 was taken up by Sub-Working Group II, under the chairmanship of Mr. Jorge Medaglia Cabrera (Costa Rica).

33. At the 2nd plenary session of the meeting, on 25 October, the Chair of Sub-Working Group II reported that the Group had reached agreement on specific draft recommendations concerning capacity-building and other approaches, thus completing its work under agenda item 4. Those draft recommendations were available in document UNEP/CBD/WG-ABS/1/L.2. He thanked the participants in the Sub-Working Group for their hard work.

34. At the 3rd plenary session of the meeting, the representative of Peru, speaking on behalf of the Chair of Sub-Working Group II, said that the subgroup had completed its work on item 4 of the agenda, on other approaches, including development of an action plan on capacity-building, and presented draft recommendation UNEP/CBD/WG-ABS/1/L.2 to the Open-ended Working Group for adoption.

35. The Open-ended Working Group adopted the draft recommendation on other approaches, including the development of an action plan for capacity-building, with a technical amendment by the Secretariat, as recommendation 2. The recommendation, as adopted, is contained in the annex to the present report.

ITEM 5. REPORT ON THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE IMPLEMENTATION OF ACCESS AND BENEFIT-SHARING ARRANGEMENTS

36. As agreed at the 1st plenary session of the meeting, agenda item 5 was taken up by Sub-Working Group II.

37. At the 2nd plenary session of the meeting, on 25 October, the Chair of Sub-Working Group II reported that, following deliberations in the group, there were still issues to be resolved on the subject of intellectual property rights in the implementation of access and benefit-sharing arrangements, and two contact groups had been established to examine the outstanding questions. Noting that the Sub-Working Group had already prepared a draft document that provided a basis for its further work, he expressed his thanks to the participants for their efforts to date.

38. At the 3rd plenary session of the meeting, the representative of Peru, speaking on behalf of the Chair of Sub-Working Group II, said that the Sub-Working Group had set up two contact groups to consider outstanding issues under item 5 of the agenda. One, chaired by the representative of Peru, had been entrusted with consideration of the role of intellectual property rights in prior informed consent, as

well as intellectual property rights and access and benefit-sharing, including prior art. The second, chaired by the representative of Canada, had considered issues of intellectual property rights and traditional knowledge related to genetic resources. The Sub-Working Group had concluded its work on the issues in question, and he expressed his gratitude to all participants for their efforts. The results of the deliberations of the Sub-Working Group were before the Working Group in document UNEP/CBD/WG-ABS/1/L.3 for adoption.

39. The Open-ended Working Group adopted as recommendations 3 A and B the draft recommendations in document UNEP/CBD/WG-ABS/1/L.3, on the role of intellectual property rights in the implementation of access and benefit-sharing arrangements. The recommendations, as adopted, are contained in the annex to the present report.

ITEM 6. OTHER MATTERS

Strategic Plan for the Convention on Biological Diversity

40. At the 2nd plenary session of the meeting, on 25 October, the Chair invited the Executive Secretary to brief the Working Group on the process of preparing the Strategic Plan for the Convention in light of the forthcoming Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity, to be held in Montreal from 19 to 21 November 2001.

41. The Executive Secretary recalled that the Conference of the Parties at its fifth meeting, by decision V/20, had initiated an inter-sessional process to develop a Strategic Plan for the Convention for the period 2003-2010, with a view to preparing a full draft plan in time for consideration and adoption by its sixth meeting. As part of the procedural requirements for the development of the plan, as set out in paragraph 16 of decision V/20, in preparing the initial draft the Executive Secretary had been requested to engage in a participatory process that also ensured that the views of the subsidiary bodies under the Convention would be considered. In response, the Secretariat had prepared an outline of the overall process for developing the plan, an initial review of the Convention, and some draft elements of the Plan, based on a number of submissions received, as well as views expressed in informal discussions.

42. A workshop had been convened in Seychelles from 28 to 30 May 2001, which had resulted in a number of conclusions, including a proposed structure and draft elements of a Strategic Plan (UNEP/CBD/WS-StratPlan/5). Those conclusions had been disseminated to, had been made available at meetings since 3 May 2001, and had been posted on the website of the Secretariat. They formed the basis for the draft elements of the plan contained in the note by the Executive Secretary on the Strategic Plan (UNEP/CBD/MSP/2), which would be considered at the Open-ended Inter-sessional Meeting in November. It was expected that the outcome of that meeting would form the basis of discussions on the Strategic Plan at the sixth meeting of the Conference of the Parties, to be held in The Hague in April 2002.

43. Noting that a sound basis had been prepared for the elaboration of the Strategic Plan, he cautioned that there was still much to do. For example, it was necessary to see how the Plan might reflect issues of access and benefit-sharing. In that connection, he invited participants to encourage Governments to submit their views on the subject, in writing, to the Secretariat in time for the Open-ended Meeting in November 2001, or even to do so at the current meeting of the Working Group.

Statements by representatives of non-governmental organizations

44. At the 3rd plenary session of the meeting, on 26 October 2001, the Working Group heard a statement on behalf of a number of non-governmental organizations attending the meeting and a statement by a representative of the International Indigenous Biodiversity Forum.

45. In their statement, the environmental non-governmental organizations said that the purpose of the voluntary guidelines developed by the Working Group could only be to give guidance to Governments in the development of national legislation, in both user and provider countries. They should not be used to facilitate access in countries without national regulations on access and benefit-sharing. Legally binding instruments had to be developed at the least on a national level, and such instruments must recognize the rights, customary laws and practices of indigenous peoples and local communities. There was a need to clearly distinguish between rights-holders and stakeholders, and it was necessary to ensure that the customary rights of indigenous peoples and local communities be fully acknowledged in the implementation of the Convention, including through full participation of such groups in all its processes. Prior informed consent represented an inherent and collective right of indigenous peoples and local communities, which included the denial of access or other activities when those contradicted their traditions and beliefs. Changes in the agreed use of the resource should require a new prior informed consent process, with involvement of the original providers. Any benefit-sharing arrangement must be fair and equitable and contribute to poverty alleviation. Parties should ensure that intellectual property rights should not be granted if they constrained further access to the genetic resources. The disclosure of geographic origin and prior informed consent were unquestionable principles in the entire process for use of genetic resources. Countries should support the development of community-based measures to protect traditional knowledge, based on customary laws and practices. In addition, Parties to the Convention must ensure that its objectives and obligations were not subordinated to agreements of the WTO and regional trade agreements.

46. The representative of the International Indigenous Biodiversity Forum said that the Forum had been particularly concerned about ensuring the full and effective participation of indigenous peoples in the implementation of the Convention on Biological Diversity because it affected their lives and fundamental rights. She emphasized that the concept "stakeholders" was not applicable to indigenous peoples because they were "rights holders". Rights over their traditional knowledge and natural resources were collective rights that were inherent and inalienable to indigenous peoples. She emphasized that the fundamental precondition for progress on the implementation of the Convention was the recognition of their existence and rights as indigenous peoples. The International Forum maintained its position that, as they stood, the draft Bonn Guidelines would not win the consent of indigenous peoples. There was a need for capacity-building among the Parties with respect to the rights of indigenous peoples as established within existing and emerging instruments and agreements. She drew attention to the fact that, while the debates on items 4 and 5 of the agenda had been regarded as a side-issue, in reality significant progress had been made. The Forum recommended that the most practical way forward would be to realize a series of activities drawing on case-studies prepared by indigenous peoples in countries where the existence and rights of indigenous peoples were already recognized as a basis for formulating concrete recommendations to the Parties in the future. The Forum would welcome the opportunity to work with countries where the existence and rights of indigenous peoples were already recognized within national legislation, in accordance with international law, and countries that had adopted policies recognizing the rights of indigenous peoples. The Forum further recommended that, in order to ensure consistency in the development of the work of the Convention, other relevant United Nations bodies and specialized agencies should be invited to contribute to future work. In conclusion, she drew attention to the recommendations of the International Indigenous Biodiversity Forum that had been presented to the Working Group at the 1st plenary session of the meeting (see para. 17 above).

Status of preparation for the sixth meeting of the Parties to the Convention on Biological Diversity

47. At the 3rd plenary session of the meeting, on 26 October 2001, the representative of the Netherlands reported to the Open-ended Working Group on the status of preparations in his country for the hosting of the sixth meeting of the Conference of the Parties, in April 2002. He assured that his Government would do its utmost to ensure the success of the meeting. The results achieved on access and benefit-sharing were very important for the Convention in the context of global efforts to ensure

sustainable development, a point that it was important to include in the signal from the sixth meeting of the Conference of the Parties to the forthcoming World Summit on Sustainable Development.

Tribute to the Government and people of the Federal Republic of Germany

48. Also at the 3rd plenary session of the meeting, the Working Group took up a draft tribute to the Government and people of the Federal Republic of Germany submitted by the President of the fifth meeting of the Conference of the Parties (UNEP/CBD/WG-ABS/1/L.5).

49. The draft recommendation was adopted as recommendation 4 of the Working Group, the text of which is annexed to the present report.

ITEM 7. ADOPTION OF THE REPORT

50. The present was adopted at the 3rd plenary session of the meeting, on the basis of the draft report prepared and presented by the Rapporteur (UNEP/CBD/WG-ABS/1/L.1) and the draft recommendations of the sub-working groups, on the understanding that the Rapporteur, with the assistance of the Secretariat and in consultation with the co-chairs, would be responsible for its finalization to reflect the proceedings of the final plenary session.

ITEM 8. CLOSURE OF THE MEETING

51. The meeting was closed at 1.45 p.m. on Friday 26 October 2001.

Annex

**RECOMMENDATIONS ADOPTED BY THE HOC OPEN-ENDED WORKING GROUP ON
ACCESS AND BENEFIT-SHARING**

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1. *Draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization*

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing

1. *Recommends* that the Conference of the Parties, taking into account the other recommendations of the Working Group, finalize and adopt the draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, as contained in the annex to the present recommendation;

2. *Further recommends* that the Executive Secretary, in consultation with the Bureau of the Conference of the Parties, convene a group of ten representatives nominated by Parties, having due regard to the principle of equitable geographical representation, to develop draft elements of a decision for paragraph 6 of the draft Bonn Guidelines.

Annex to recommendation 1

DRAFT BONN GUIDELINES ON ACCESS TO GENETIC RESOURCES AND FAIR AND EQUITABLE SHARING OF THE BENEFITS ARISING OUT OF THEIR UTILIZATION

I. GENERAL PROVISIONS

A. Key features

1. These guidelines may serve as inputs when developing and drafting legislative, administrative or policy measures on access and benefit-sharing with particular reference to provisions under Articles 8(j), 10 (c), 15, 16 and 19; and contracts and other arrangements under mutually agreed terms for access and benefit-sharing.

2. Nothing in these guidelines shall be construed as changing the rights and obligations of Parties under the Convention on Biological Diversity.

3. Nothing in these guidelines is intended to substitute for national legislation for access and benefit-sharing arrangements.

4. The present guidelines are voluntary and were prepared with a view to ensuring their:

(a) Voluntary nature: they are intended to guide both users and providers of genetic resources on a voluntary basis;

(b) Ease of use: to maximize their utility and to accommodate a range of applications, the guidelines are simple;

(c) Practicality: the elements contained in the guidelines are practical and are aimed at reducing transaction costs;

(d) Acceptability: the guidelines are intended to gain the support of users and providers;

(e) Complementarity: the guidelines and other international instruments are mutually supportive;

/...

(f) Evolutionary approach: the guidelines are intended to be reviewed and accordingly revised and improved as experience is gained in access and benefit-sharing;

(g) Flexibility: to be useful across a range of sectors, users and national circumstances and jurisdictions, guidelines should be flexible;

(h) Transparency: they are intended to promote transparency in the negotiation and implementation of access and benefit-sharing arrangements.

B. *Use of terms*

5. The terms as defined in Article 2 of the Convention shall apply to these guidelines. These include: biological diversity, biological resources, biotechnology, country of origin of genetic resources, country providing genetic resources, *ex situ* conservation, *in situ* conservation, genetic material, genetic resources, and *in situ* conditions.

6. [In addition the following terms could be included and defined in the guidelines: access to genetic resources; benefit-sharing; commercialization; derivatives; provider; user; stakeholder; *ex situ* collection, voluntary nature.]

C. *Scope*

7. All genetic resources and associated traditional knowledge, innovations and practices covered by the Convention on Biological Diversity and benefits arising from the use of such resources [including derivatives and products] should be covered by the guidelines, with the exclusion of human genetic resources.

D. *Relationship with relevant international regimes*

8. The guidelines should be applied in a manner that is coherent and mutually supportive of the work of relevant international agreements and institutions. The guidelines should be without prejudice to the access and benefit-sharing provisions of the FAO International Undertaking for Plant Genetic Resources for Food and Agriculture. Furthermore, the work of WIPO on issues of relevance to access and benefit-sharing should be taken into account. The application of the guidelines should also take into account existing regional legislation and agreements on access and benefit-sharing.

E. *Objectives*

9. The objectives of the guidelines are the following:

- (a) To contribute to the conservation and sustainable use of biological diversity;
- (b) To provide Parties and stakeholders with a transparent framework to facilitate access to genetic resources and ensure fair and equitable sharing of benefits;
- (c) To provide guidance to Parties in the development of access and benefit-sharing regimes;
- (d) To inform the practices and approaches of stakeholders (users and providers) in access and benefit-sharing arrangements;
- (e) To provide capacity-building to guarantee the effective negotiation and implementation of access and benefit-sharing arrangements;

(f) To promote awareness on implementation of relevant provisions of the Convention on Biological Diversity;

(g) To promote the adequate and effective transfer of appropriate technology to providing Parties, stakeholders and indigenous and local communities;

(h) To promote the provision of necessary financial resources to providing countries that are developing countries or countries with economies in transition with a view to contributing to the achievement of the objectives mentioned above;

(i) To strengthen the clearing-house mechanism as a mechanism for cooperation among Parties in access and benefit-sharing;

(j) To contribute to the development by Parties of mechanisms and access and benefit-sharing regimes that recognize the protection of traditional knowledge, innovations and practices of indigenous and local communities, in accordance with domestic laws and relevant international instruments;

(k) To contribute to poverty alleviation and be supportive to the realization of human food security, health and cultural integrity;

(l) Taxonomic research, as specified in the Global Taxonomy Initiative, should not be prevented, and providers should facilitate acquisition of material for systematic use and users should make available all information associated with the specimens thus obtained.

10. The guidelines are intended to assist Parties in developing an overall access and benefit-sharing strategy, which may be part of their national biodiversity strategy and action plan (NBSAP), and in identifying the steps involved in the process of obtaining access to genetic resources and sharing benefits.

II. ROLES AND RESPONSIBILITIES IN ACCESS AND BENEFIT-SHARING PURSUANT TO ARTICLE 15 OF THE CONVENTION ON BIOLOGICAL DIVERSITY

A. National focal point

11. Each Party should designate one national focal point for access and benefit-sharing and make such information available through the clearing-house mechanism. The national focal point should inform applicants for access to genetic resources on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing, and on competent national authorities and relevant stakeholders, through the clearing-house mechanism.

B. Competent national authority(ies)

12. Competent national authorities, where they are established, may, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access and be responsible for advising on:

(a) The negotiating process;

(b) Requirements for obtaining prior informed consent and entering into mutually agreed terms;

(c) Monitoring and evaluation of access and benefit-sharing agreements;

- (d) Implementation/enforcement of access and benefit-sharing agreements;
- (e) Processing of applications and approval of agreements;
- (f) The conservation and sustainable use of the genetic resources accessed;
- (g) Mechanisms for the effective participation of different stakeholders, ^{1/} as appropriate for the different steps in the process of access and benefit-sharing, in particular, indigenous and local communities.

13. The competent national authority(ies) that have the legal power to grant prior informed consent may delegate this power to other entities, as appropriate.

C. Responsibilities

14. Recognizing that Parties and stakeholders may be both users and providers, the following balanced list of roles and responsibilities provides key elements to be acted upon:

- (a) Contracting Parties which are countries of origin of genetic resources, or other Parties which have acquired the genetic resources in accordance with the Convention, should:
 - (i) Be encouraged to review their policy, administrative and legislative measures to ensure they are fully complying with Article 15 of the Convention;
 - (ii) Be encouraged to report on access applications through the clearing-house mechanism and other reporting channels of the Convention;
 - (iii) Seek to ensure that the commercialization and any other use of genetic resources should not prevent traditional use of genetic resources;
 - (iv) Ensure that they fulfil their roles and responsibilities in a clear, objective and transparent manner;
 - (v) Ensure that all stakeholders take into consideration the environmental consequences of the access activities;
 - (vi) Establish mechanisms to ensure that their decisions are made available to relevant stakeholders, particularly indigenous and local communities;
- (b) In the implementation of mutually agreed terms, users should:
 - (i) Seek informed consent prior to access to genetic resources, in conformity with Article 15, paragraph 5, of the Convention;
 - (ii) Respect customs, traditions, values and customary practices of indigenous and local communities, and respond to requests for additional information from indigenous and local communities to the extent feasible;
 - (iii) Only use genetic resources for purposes consistent with the terms and conditions under which they were acquired;
 - (iv) Ensure that uses of genetic resources for purposes other than those for which they were acquired, only take place after new prior informed consent and mutually agreed terms are given;

^{1/} In general, the meaning of the word stakeholders needs to be clarified.

- (v) Maintain all relevant data regarding the genetic resources, especially documentary evidence of the prior informed consent and information concerning the origin and the use of genetic resources and the benefits arising from such use;
 - (vi) As much as possible endeavour to carry out their use of the genetic resources in, and with the participation of, the providing country;
 - (vii) When supplying genetic resources to third parties, honour any terms and conditions regarding the acquired material. They should provide this third party with relevant data on their acquisition, including prior informed consent and conditions of use and record and maintain data on their supply to third parties. Special terms and conditions should be established under mutually agreed terms to facilitate taxonomic research for non-commercial purposes;
 - (viii) Ensure the fair and equitable sharing of benefits, including technology transfer to providing countries, arising from the commercialization or other use of genetic resources, in conformity with the mutually agreed terms they established with the stakeholders involved;
- (c) Providers should:
- (i) Only supply genetic resources and/or traditional knowledge when they are entitled to do so;
 - (ii) Strive to avoid imposition of arbitrary restrictions on access to genetic resources.

III. PARTICIPATION OF STAKEHOLDERS

15. Involvement of relevant stakeholders is essential to ensure the adequate development and implementation of access and benefit-sharing arrangements. However, due to the diversity of stakeholders and their diverging interests, their appropriate involvement can only be determined on a case-by-case basis.

16. Relevant stakeholders should be consulted and their views taken into consideration in each step of the process, including:

- (a) When determining access, negotiating and implementing mutually agreed terms, and in the sharing of benefits;
- (b) In the development of a national strategy, policies or regimes on access and benefit-sharing.

17. To facilitate the involvement of relevant stakeholders, including local and indigenous communities, appropriate consultative arrangements, such as national consultative committees, comprising relevant stakeholder representatives, should be made.

18. The involvement of relevant stakeholders should be promoted by:

- (a) Providing information, especially regarding scientific and legal advice, in order for them to be able to participate effectively;
- (b) Providing support for capacity-building, in order for them to be actively engaged in various stages of access and benefit-sharing arrangements, such as in the development and implementation of mutually agreed terms and contractual arrangements.

19. The stakeholders involved in access to genetic resources and benefit-sharing may wish to seek the support of a mediator or facilitator when negotiating mutually agreed terms.

IV. STEPS IN THE ACCESS AND BENEFIT-SHARING PROCESS

A. Overall strategy

20. Access and benefit-sharing systems should be based on an overall access and benefit-sharing strategy at the country or regional level. This access and benefit-sharing strategy should aim at the conservation and sustainable use of biological diversity, and may be part of a national biodiversity strategy and action plan and promote the equitable sharing of benefits.

B. Identification of steps

21. The steps involved in the process of obtaining access to genetic resources and sharing of benefits may include activities prior to access, research and development conducted on the genetic resources, as well as their commercialization and other uses, including benefit-sharing.

C. Prior informed consent

22. As provided for in Article 15 of the Convention on Biological Diversity, which recognizes the sovereign rights of States over their natural resources, each Contracting Party to the Convention shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and fair and equitable sharing of benefits arising from such uses. In accordance with Article 15, paragraph 5, of the Convention on Biological Diversity, access to genetic resources shall be subject to prior informed consent of the contracting Party providing such resources, unless otherwise determined by that Party.

23. Against this background, the guidelines are intended to assist Parties in the establishment of a system of prior informed consent, in accordance with Article 15, paragraph 5, of the Convention.

1. Basic principles of a prior informed consent system

24. The basic principles of a prior informed consent system should include:

- (a) Legal certainty and clarity;
- (b) Access to genetic resources should be facilitated at minimum cost;
- (c) Restrictions on access to genetic resources should be transparent and should be based on legal grounds in order to conserve biological diversity;
- (d) Consent of the relevant competent national authority(ies) in the provider country. The consent of relevant stakeholders, such as indigenous and local communities, as appropriate to the circumstances and subject to domestic law, should also be obtained.

2. Elements of a prior informed consent system

25. Elements of a prior informed consent system may include:

- (a) Competent authority(ies) granting or providing for evidence of prior informed consent;
- (b) Timing and deadlines;

/...

- (c) Specification of use;
- (d) Procedures for obtaining prior informed consent;
- (e) Mechanism for consultation of relevant stakeholders;
- (f) Process.

Competent authority(ies) granting prior informed consent

26. Prior informed consent for access to *in situ* genetic resources shall be obtained from the Contracting Party providing such resources, through its competent national authority(ies), unless otherwise determined by that Party.

27. In accordance with national legislation, prior informed consent may be required from different levels of Government. Requirements for obtaining prior informed consent (national/provincial/local) in the provider country should therefore be specified.

28. National procedures should facilitate the involvement of all relevant stakeholders from the community to the government level, aiming at simplicity and clarity.

29. Respecting established legal rights of indigenous and local communities associated with the genetic resources being accessed or where traditional knowledge associated with these genetic resources is being accessed, the prior informed consent of indigenous and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices should be obtained, in accordance with their traditional practices, national access policies and subject to domestic laws.

30. For *ex situ* collections, prior informed consent should be obtained from the competent national authority(ies) and/or the body governing the *ex situ* collection concerned as appropriate.

Timing and deadlines

31. Prior informed consent is to be sought adequately in advance to be meaningful both for those seeking and for those granting access. Decisions on applications for access to genetic resources should also be taken within a reasonable period of time.

Specification of use

32. Prior informed consent should be based on the specific uses for which consent has been granted. While prior informed consent may be granted initially for specific use(s), any change of use including transfer to third parties may require a new application for prior informed consent. Permitted uses should be clearly stipulated and further prior informed consent for changes or unforeseen uses should be required. Specific needs of taxonomic and systematic research as specified by the Global Taxonomy Initiative should be taken into consideration.

33. Prior informed consent is linked to the requirement of mutually agreed terms.

Procedures for obtaining prior informed consent

34. An application for access could require the following information to be provided, in order for the competent authority to determine whether or not access to a genetic resource should be granted. This list is indicative and should be adapted to national circumstances:

- (a) Legal entity and affiliation of the applicant and/or collector and contact person when the applicant is an institution;
- (b) Type and quantity of genetic resources to which access is sought;
- (c) Starting date and duration of the activity;
- (d) Geographical prospecting area;
- (e) Evaluation of how the access activity may impact on conservation and sustainable use of biodiversity, to determine the relative costs and benefits of granting access;
- (f) Accurate information regarding intended use (e.g.: taxonomy, collection, research, commercialization);
- (g) Identification of where the research and development will take place;
- (h) Information on how the research and development is to be carried out;
- (i) Identification of local bodies for collaboration in research and development;
- (j) Possible third party involvement;
- (k) Purpose of the collection, research and expected results;
- (l) Kinds/types of benefits that could come from obtaining access to the resource;
- (m) Indication of benefit-sharing arrangements;
- (n) Budget;
- (o) Treatment of confidential information.

35. Permission to access genetic resources does not necessarily imply permission to use associated knowledge and *vice versa*.

Process

36. Applications for access to genetic resources through prior informed consent and decisions by the competent authority(ies) to grant access to genetic resources or not shall be documented in written form.

37. The competent authority could grant access by issuing a permit or licence or following other appropriate procedures. A national registration system could be used to record the issuance of all permits or licences, on the basis of duly completed application forms.

38. The procedures for obtaining an access permit/licence should be transparent and accessible by any interested party.

D. Mutually agreed terms

39. In accordance with Article 15, paragraph 7, of the Convention on Biological Diversity, each Contracting Party shall “take legislative, administrative or policy measures, as appropriate (...) with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such

/...

resources. Such sharing shall be upon mutually agreed terms". Thus, guidelines should assist Parties and stakeholders in the development of mutually agreed terms to ensure the fair and equitable sharing of benefits.

1. Basic requirements for mutually agreed terms

40. The following principles or basic requirements could be considered for the development of mutually agreed terms:

- (a) Legal certainty and clarity;
- (b) Minimization of transaction costs, by, for example:
 - (i) Establishing and promoting awareness of the Government's and relevant stakeholders' requirements for prior informed consent and contractual arrangements;
 - (ii) Ensuring awareness of existing mechanisms for applying for access, entering into arrangements and ensuring the sharing of benefits;
 - (iii) Developing framework agreements, under which repeat access under expedited arrangements can be made;
 - (iv) Developing standardized material transfer agreements and benefit-sharing arrangements for similar resources and similar uses (see appendix I for suggested elements of such an agreement);
- (c) Inclusion of provisions on user and provider obligations;
- (d) Development of different contractual arrangements for different resources and for different uses and development of model agreements;
- (e) Different uses may include, *inter alia*, taxonomy, collection, research, commercialization;
- (f) Mutually agreed terms should be negotiated efficiently and within a reasonable period of time;
- (g) Mutually agreed terms should be set out in a written agreement.

41. The following elements could be considered as guiding parameters in contractual agreements. These elements could also be considered as basic requirements for mutually agreed terms:

- (a) Regulating the use of resources in order to take into account ethical concerns of the particular Parties and stakeholders, in particular local and indigenous communities concerned;
- (b) Making provision to ensure the continued customary use of genetic resources and related knowledge;
- (c) Provision for the use of intellectual property rights include joint research, obligation to implement rights on inventions obtained and to provide licences by common consent;
- (d) The possibility of joint ownership of intellectual property rights according to the degree of contribution.

2. *Indicative list of typical mutually agreed terms*

42. The following provides an indicative list of typical mutually agreed terms:

- (a) Type and quantity of genetic resources, [derivatives and products] and the geographical/ecological area of activity;
- (b) Any limitations on the possible use of the material;
- (c) Recognition of the sovereign rights of the country of origin;
- (d) Capacity-building in various areas to be identified in the agreement;
- (e) A clause on whether the terms of the agreement in certain circumstances (e.g. change of use) can be renegotiated;
- (f) Whether the genetic resources can be transferred to third parties and conditions to be imposed in such cases, e.g. whether or not to pass genetic resources to third parties without ensuring that the third parties enter into similar agreements except for taxonomic and systematic research that is not related to commercialization;
- (g) Whether the knowledge, innovations and practices of indigenous and local communities have been respected, preserved and maintained, and whether the customary use of biological resources in accordance with traditional practices has been protected and encouraged;
- (h) Treatment of confidential information;
- (i) Provisions regarding the benefits to be shared.

3. *Benefit-sharing*

43. Mutually agreed terms could cover the conditions, obligations, procedures, types, timing, distribution and mechanisms of benefits to be shared. These will vary depending on what is regarded as fair and equitable in light of the circumstances.

Types of benefits

44. Examples of monetary and non-monetary benefits are provided in appendix II to these guidelines.

Timing of benefits

45. Near-term, medium-term and long-term benefits should be considered, including up-front payments, milestone payments and royalties. The time-frame of benefit-sharing should be definitely stipulated. Furthermore, the balance among near-term, medium-term and long-term benefit should be considered on a case-by-case basis.

Distribution of benefits

46. Pursuant to mutually agreed terms established following prior informed consent, benefits should be shared fairly and equitably with all those who have been identified as having contributed to the resource management, scientific and/or commercial process. The latter may include governmental, non-governmental or academic institutions and local and indigenous communities. Benefits should be directed in such a way as to promote conservation and sustainable use of biological diversity.

Mechanisms for benefit-sharing

47. Mechanisms for benefit-sharing may vary depending upon the type of benefits, the specific conditions in the country and the stakeholders involved. The benefit-sharing mechanism should be flexible as it should be determined by the partners involved in benefit-sharing and will vary on a case-by-case basis.

48. Mechanisms for sharing benefits should include full cooperation in scientific research and technology development, as well as those that derive from commercial products including trust funds, joint ventures and licences with preferential terms.

V. OTHER PROVISIONS

A. *Incentives**

49. The following incentive measures could be used in the implementation of the guidelines:

(a) The identification and mitigation or removal of perverse incentives, that may act as obstacles for conservation and sustainable use of biological diversity through access and benefit-sharing, should be considered;

(b) The use of well-designed economic and regulatory instruments, directly or indirectly related to access and benefit-sharing, should be considered to foster equitable and efficient allocation of benefits;

(c) The use of valuation methods should be considered as a tool to inform users and providers involved in access and benefit-sharing;

(d) The creation and use of markets should be considered as a way of efficiently achieving conservation and sustainable use of biological diversity.

B. *Accountability in implementing access and benefit-sharing arrangements*

50. Parties should endeavour to establish mechanisms to promote accountability by all stakeholders involved in access and benefit-sharing arrangements.

51. To promote accountability, Parties may consider establishing requirements regarding:

(a) Reporting; and

(b) Disclosure of information.

52. The individual collector or institution on whose behalf the collector is operating should, where appropriate, be responsible and accountable for the compliance of the collector.

C. *National monitoring and reporting*

53. Depending on the terms of access and benefit-sharing, national monitoring may include:

* While the Working Group agreed in principle with this section, some groups did not have time to consider it fully.

- (a) Whether the use of genetic resources is in compliance with the terms of access and benefit-sharing;
- (b) Research and development process;
- (c) Applications for patents and other intellectual property rights relating to the material supplied.

54. The involvement of relevant stakeholders, in particular, indigenous and local communities, in the various stages of development and implementation of access and benefit-sharing arrangements can play an important role in facilitating the monitoring of compliance.

D. Means for verification

55. Voluntary verification mechanisms could be developed at the national level to ensure compliance with the access and benefit-sharing provisions of the Convention on Biological Diversity and national legal instruments of the country of origin providing the genetic resources.

56. A system of voluntary certification could serve as a means to verify the transparency of the process of access and benefit-sharing. Such a system could certify that the access and benefit-sharing provisions of the Convention on Biological Diversity have been complied with.

E. Settlement of disputes

57. As most obligations arising under mutually agreed arrangements will be between providers and users, disputes arising in these arrangements should be solved in accordance with the relevant contractual arrangements on access and benefit-sharing and the applicable law and practices.

58. In cases where the access and benefit-sharing agreements consistent with the Convention on Biological Diversity and national legal instruments of the Country of origin of genetic resources have not been complied with, the use of sanctions could be considered, such as penalty fees set out in contractual agreements.

F. Remedies

59. Parties may take appropriate effective and proportionate measures for violations of national legislative, administrative or policy measures implementing the access and benefit-sharing provisions of the Convention on Biological Diversity, including requirements related to prior informed consent and mutually agreed terms.

*Appendix I**

SUGGESTED ELEMENTS FOR MATERIAL TRANSFER AGREEMENTS

Material transfer agreements (MTAs) may contain wording on the following elements:

A. Introductory provisions

1. Preambular reference to the Convention on Biological Diversity and/or FAO International Undertaking
2. Legal status of the provider and user of genetic resources
3. Mandate and/or general objectives of provider and, where appropriate, user of genetic resources

B. Access and benefit-sharing provisions

1. Description of genetic resources covered by the MTA, including accompanying information
2. Permitted uses of the genetic resources under the MTA (e.g. research, breeding, commercialization)
3. Conditions under which user may seek intellectual property rights
4. Terms on benefit-sharing, including commitment to share information such as results of research
5. No warranties guaranteed by provider on identity and/or quality of the provided material
6. Conditions of transfer of provided material and/or accompanying information to third parties
7. Compliance with the MTA
8. Definitions
9. Duty to minimize environmental impacts of collecting activities

C. Legal provisions

1. Length of agreement
2. Notice to terminate the agreement
3. Fact that the obligations in certain clauses (e.g. benefit-sharing) survive the termination of the agreement
4. Independent enforceability of individual clauses in the agreement
5. Events limiting the liability of either party (such as Act of God, fire, flood, etc.)

* This annex was not discussed by the Working Group and is expected to be discussed at the Conference of the Parties.

6. Arbitration and alternative dispute settlement arrangements
7. Assignment or transfer of rights
8. Choice of law
9. Confidentiality clause

*Appendix II**

MONETARY AND NON- MONETARY BENEFITS

1. Monetary benefits may include:
 - (a) Access fees/fee per sample collected or otherwise acquired;
 - (b) Milestone payments;
 - (c) Payment of royalties;
 - (d) Licence fees in case of commercialization;
 - (e) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
 - (f) Salaries and preferential terms where mutually agreed;
 - (g) Research funding;
 - (h) Joint ventures.

2. Non-monetary benefits may include:
 - (a) Sharing of research and development results;
 - (b) Collaboration in scientific research and development programmes, particularly biotechnological research activities, where possible in the provider country;
 - (c) Participation in product development;
 - (d) Collaboration in education and training;
 - (e) Admittance to *ex situ* facilities of genetic resources and to databases;
 - (f) Transfer 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 to user developing country Parties and technology development in the country of origin that provides genetic resources. Also to strengthen capacities of local and indigenous people to conserve and sustainably use their genetic resources;
 - (h) Institutional capacity-building;
 - (i) Human and material resources to strengthen the capacities of personnel responsible for the administration and enforcement of access regulations;
 - (j) Training related to genetic resources with the full participation of providing Parties, and where possible, in such Parties;
 - (k) Scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;

* This annex was not discussed by the Working Group and is expected to be discussed at the Conference of the Parties.

- (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 provider countries;
- (n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- (o) Food security benefits;
- (p) Joint ownership of patents and other relevant forms of intellectual property rights.

2. *Other approaches, including the development of an action plan for capacity-building*

A. *Capacity-building*

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Recalling decision V/26 A, paragraph 11, by which the Conference of the Parties decided to establish the Ad Hoc Open-ended Working Group with the mandate to develop guidelines and other approaches regarding access to genetic resources and benefit-sharing and emphasized that in order to build the capacities for access to genetic resources and benefit-sharing the Ad Hoc Open-ended Working Group shall consider issues of capacity-building including the capacity-building needs identified in paragraph 14 of the decision,

Recalling also paragraph 14 of decision V/26 A, by which the Conference of the Parties noted that further development of capacities regarding all aspects of access to genetic resources and benefit-sharing arrangements is required for all stakeholders including local governments, academic institutions, and indigenous and local communities, and that key capacity needs include: (a). assessment and inventory of biological resources as well as information management; (b). contract negotiation skills; (c). legal drafting skills; and (d) means for the protection of traditional knowledge associated with genetic resources,

Recalling further paragraph 3 of decision V/26 A, by which the Conference of the Parties urged Parties to ensure that national biodiversity strategies as well as legislative, administrative or policy measures on access to genetic resources and benefit-sharing contribute to conservation and sustainable-use objectives,

Taking note of paragraph 12 of decision V/26 A, by which the Conference of the Parties noted that information is a critical aspect of providing the necessary parity of bargaining power for stakeholders in access to genetic resources and benefit-sharing arrangements and identified the key areas in which more information is needed,

Taking note also of the report of the Panel of Expert on Access and Benefit-sharing on the work of its second meeting in which the Panel emphasized that capacity-building should be the essence of the work on access to genetic resources and benefit-sharing under the Convention, identified key areas for capacity-building, and recommended that the Ad Hoc Open-ended Working Group consider the need to draw up action plans for capacity-building on access to genetic resources and benefit-sharing with specific indicators, identified milestones, timeframes, roles, donors, drivers, etc.,

Recognizing that access to genetic resources and benefit-sharing should be considered as part of an overall strategy for the conservation of biological diversity and the sustainable-use of its components,

1. *Requests* the Executive Secretary, in consultation with the Bureau of the Conference of the Parties, to convene, as soon as possible and depending on voluntary financial contributions by Parties and other donors and taking into account the global calendar of meetings, an open-ended expert workshop on capacity-building for access to genetic resources and benefit-sharing. The workshop will be open to participation by representatives, including experts, nominated by Governments and regional economic integration organizations; as well as representatives of relevant intergovernmental organizations (including donor organizations), non-governmental organizations, and indigenous and local communities.

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The workshop should further develop the draft elements for an Action Plan on Capacity-building for Access and Benefit-sharing annexed to the present recommendation and submit its report to the sixth meeting of the Conference of the Parties;

2. *Urges* Parties and Governments to provide voluntary financial contributions to support the convening of the open-ended experts workshop on capacity-building for access to genetic resources and benefit-sharing;

3. *Invites* Parties, Governments, relevant international organizations, non-governmental organizations and the private sector to submit, as soon as practicable, to the Executive Secretary information regarding capacity-building needs, priorities and existing initiatives for capacity-building for access to genetic resources and benefit-sharing;

4. *Requests* the Executive Secretary to compile information received from Parties, Governments, relevant international organizations, non-governmental organizations and the private sector and to submit a report to the open ended experts workshop referred to above or to the Conference of the Parties, as appropriate;

5. *Recommends* that the Conference of the Parties requests the Executive Secretary to establish a roster of experts on access to genetic resources and benefit-sharing and *urges* Parties, other Governments and relevant bodies when nominating their experts for inclusion in the roster to consider gender balance, involvement of representatives of indigenous and local communities, and a range of relevant disciplines and expertise.

Annex to recommendation 2 A

DRAFT ELEMENTS FOR AN ACTION PLAN FOR CAPACITY-BUILDING FOR ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

1. Objective of the Action Plan

3. The objective of the Action Plan is to facilitate and support the development and strengthening of capacities for the effective implementation of the provisions of the Convention relating to access to genetic resources and benefit-sharing at the local, national, sub-regional, regional and international levels.

4. To achieve the objective, the Action Plan will provide a framework for identifying country and stakeholder needs, priorities, mechanisms of implementation and sources of funding.

2. Key areas requiring capacity-building

5. The following key areas, which require capacity-building initiatives, should be considered in a flexible and transparent manner, based on a demand-driven approach, taking into account the different situations, needs, capabilities and stages of development of each country and should avoid duplication of efforts between various capacity-building initiatives:

- (a) Strengthening of relevant institutions;
- (b) Assessment, inventory and monitoring of biological resources, and traditional knowledge including taxonomic capacity, within the context of the Global Taxonomy Initiative;

- (c) Valuation of genetic resources and market information, including production and marketing strategies;
- (d) Inventory and case-studies of existing legislative measures and development of appropriate legislation, including *sui generis* systems;
- (e) Development of information systems, and information management and exchange, linked with the clearing-house mechanism of the Convention;
- (f) Development and strengthening capacities of indigenous and local communities for participation in decision making and implementation;
- (g) Public education and awareness focusing on relevant stakeholders;
- (h) Human resources development and training at all levels, including legal drafting skills for development of access to genetic resources and benefit-sharing measures;
- (i) Funding and resource management;
- (j) Contract negotiation skills for all relevant stakeholders, in particular indigenous and local communities;
- (k) Means for the protection of traditional knowledge associated with genetic resources;
- (l) Scientific and technical areas, including technology transfer relevant to access to and use of genetic resources and benefit-sharing;
- (m) Development of instruments, tools, and indicators to monitor and assess the implementation of capacity-building for access to genetic resources and benefit-sharing at all stages.

3. *Processes*

6. The following processes and measures should be undertaken:

- (a) Awareness raising for the issues at stake and identification of capacity needs at the local, national, subregional, and regional levels, taking into account, as appropriate, the work of the Global Environment Facility on national capacity self-assessment;
- (b) Integration of capacity-building for access to genetic resources and benefit-sharing within the framework of national biodiversity strategies and other related initiatives and strategies;
- (c) Prioritization at the local, national, and regional levels of the key areas;
- (d) Sequencing of actions, including timelines for the operation of capacity-building for access to genetic resources and benefit-sharing;
- (e) Identification of existing and planned capacity-building initiatives at the local, national, sub-regional and regional levels, both public and private, and their coverage including by:
 - (i) National sources,;
 - (ii) Bilateral sources;
 - (iii) Regional sources;

- (iv) Multilateral agencies;
- (v) Other international sources;
- (vi) Other stakeholders, in particular indigenous and local communities;
- (f) Enhancing synergies and coordination of capacity-building initiatives;
- (g) Establishment of indicators for monitoring capacity-building implementation.

4. Means of implementation

7. The following mechanisms could be used for the implementation of capacity-building measures for access to genetic resources and benefit-sharing:

- (a) Development of appropriate national regulatory framework;
- (b) Scientific and technical cooperation among Parties, and between Parties and relevant multilateral agencies and other organizations through, *inter alia*, the clearing-house mechanism of the Convention;
- (c) Information exchange, through the clearing-house mechanism of the Convention, the use of the internet, databases, CD-ROMs, hard copies and workshops;
- (d) Identification and dissemination of case studies and best practices;
- (e) Regional and subregional collaborative arrangements;
- (f) Coordination between multilateral and bilateral donors and other organizations;
- (g) Development of model agreements and codes of conduct for specific uses, users and sectors;
- (h) Training workshops;
- (i) Full and effective involvement and participation of all relevant stakeholders, in particular indigenous and local communities taking into account the tasks defined within the programme of work on the implementation of Article 8(j) and related provisions of the Convention;
- (j) Funding through the Global Environment Facility and other donors;
- (k) The participation of the private sector as provider of capacity-building in specific areas, for example through collaborative research, transfer of technology and funding;
- (l) The Global Taxonomy Initiative;
- (m) The roster of experts on access to genetic resources and benefit-sharing to be established under the Convention;
- (n) National focal points and competent national authorities.

5. Coordination

8. In view of the multiplicity of actors undertaking capacity-building initiatives for access to genetic resources and benefit-sharing, mutual information and coordination should be promoted in order to avoid

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duplication of effort and to identify existing gaps in coverage. Initiatives for coordination should be encouraged at all levels.

9. The Conference of the Parties should encourage voluntary submissions by Parties and Governments and relevant international organizations on steps taken, including by donors, towards the implementation of capacity building measures, to be accessible through the clearing-house mechanism of the Convention.

10. Parties may consider including in their national reports information on the implementation of capacity-building measures on access to genetic resources and benefit-sharing.

B. Other approaches

The Ad Hoc Open-ended Working Group on Access and Benefit-Sharing,

Recalling paragraph 11 of decision V/26 A, in which the Conference of the Parties mandated the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing to develop guidelines and other approaches for submission to the Conference of the Parties and to assist Parties and stakeholders in addressing key elements relevant to access to genetic resources and benefit-sharing,

Recalling also the report of the Panel of Experts on Access and Benefit-sharing on the work of its second meeting, in which the Panel emphasized that guidelines should be seen as part of a package of complementary measures or approaches that may be considered to address the different needs of Parties and stakeholders and that this package should include and be guided by a national strategy on access to genetic resources and benefit-sharing,

Recognizing the existence of other complementary measures such as voluntary codes of conduct, model agreements and indicators which could make a contribution to the effective implementation of the provisions of the Convention on access to genetic resources and benefit-sharing,

Recommends that the Conference of the Parties requests the Executive Secretary to compile information on existing complementary measures and approaches, and experiences with their implementation, and to disseminate such information to Parties and relevant stakeholders through, *inter alia*, the clearing-house mechanism of the Convention.

3. *Role of intellectual property rights in the implementation of access and benefit-sharing arrangements*

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Recalling decision V/26 A of the Conference of the Parties on access and benefit-sharing,

Recalling decision V/26 B on the relationship between intellectual property rights and relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights and the Convention on Biological Diversity,

Recalling paragraph 14 of decision V/16, on Article 8(j) and related provisions of the Convention on Biological Diversity,

Recalling Article 16, paragraph 5, of the Convention on Biological Diversity,

Noting the ongoing work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, and its work programme,

Noting that other relevant international and intergovernmental bodies such as the Commission on Trade in Goods and Services, and Commodities of the United Nations Conference on Trade and Development, the Committee on Trade and Environment of the World Trade Organization and the Council for the Agreement on Trade-related Aspects of Intellectual Property Rights are also discussing related matters in their work programmes,

Noting the importance of contracting approaches in the achievement of the third objective of the Convention, that is, the fair and equitable sharing of the benefits arising out of the utilization of genetic resources,

Noting that provisions to ensure the recording of contributions to inventions such as disclosure of the country of origin or geographical origin of genetic resources in applications for intellectual property rights exist in a number of countries and that some countries require evidence of prior informed consent for the use of genetic resources and/or traditional knowledge, innovations and practices of indigenous and local communities as a precondition for the granting of patents,

Noting the work programme of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the Convention,

Noting that national *sui generis* systems may need to be reinforced by international actions,

Noting the potential utility of requiring disclosure of the origin of genetic resources and associated traditional knowledge, innovations and practices through other regulatory means, such as product approval applications, health product certification procedures, etc.,

Recognizing the need to ensure that the Convention of Biological Diversity and relevant international instruments dealing with intellectual property rights are mutually supportive regarding access to genetic resources and benefit-sharing,

Recognizing that intellectual property rights may support access to genetic resources and benefit-sharing objectives through sharing of benefits, technology transfer and promotion of innovation,

Recognizing that intellectual property rights might, under certain circumstances, constrain access to and use of genetic resources and scientific research,

Recognizing that disclosure of the use of genetic resources and traditional knowledge, innovation and practices of indigenous and local communities in applications for intellectual property rights may, *inter alia*, assist patent examiners in the identification of prior art,

Recognizing the distinction between the rights over genetic resources, where vested in the State, and rights over traditional knowledge associated with such resources, vested in local and indigenous custodians,

Having considered the results of the work of the Panel of Experts on Access and Benefit-sharing on these issues,

1. *Recommends* that the Conference of the Parties invite Parties and Governments to encourage the disclosure of the country of origin of genetic resources in applications for intellectual property rights, where an invention concerns or makes use of genetic resources in its development, as a possible contribution to tracking compliance with prior informed consent and the mutually agreed terms on which access to those resources was granted;

2. *Recommends* that the Conference of the Parties invite Parties and Governments to encourage the disclosure of relevant traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity in applications for intellectual property rights, where an invention concerns or makes use of such knowledge in its development;

3. *Acknowledges* that further information is required on a number of key issues relating to intellectual property rights and access to genetic resources and benefit-sharing and *recommends* that the Conference of the Parties request the Executive Secretary, with the help of other international and intergovernmental organizations such as the World Intellectual Property Organization and through the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, where appropriate, to undertake further information gathering and analysis with regard to:

(a) Impact of intellectual property regimes on access to and use of genetic resources and scientific research;

(b) Role of customary laws and practices in relation to the protection of genetic resources and traditional knowledge, innovations and practices, and their relationship with intellectual property rights;

(c) Consistency and applicability of requirements for disclosure of country of origin and prior informed consent in the context of international legal obligations;

(d) Efficacy of country of origin and prior informed consent disclosures in assisting the examination of patent applications and the re-examination of patents granted;

(e) Efficacy of country of origin and prior informed consent disclosures in monitoring compliance with access provisions;

(f) Feasibility of an internationally recognized certificate of origin system as evidence of prior informed consent and mutually agreed terms; and

(g) Role of oral evidence of prior art in the examination, granting and maintenance of intellectual property rights;

4. *Notes* that there is a need for accurate technical intellectual property information and explanation concerning methods for requiring the disclosure within patent applications of, *inter alia*:

- (a) Genetic resources utilized in the development of the claimed inventions;
- (b) The country of origin of genetic resources utilized in the claimed inventions;
- (c) Associated traditional knowledge, innovations and practices utilized in the development of the claimed inventions;
- (d) The source of associated traditional knowledge, innovations and practices; and
- (e) Evidence of prior informed consent;

and *recommends* that the Conference of the Parties at its sixth meeting invite the World Intellectual Property Organization to prepare a technical study on such methods which are consistent with obligations in treaties administered by the World Intellectual Property Organization, and report its findings to the Conference of the Parties at its next meeting;

5. *Urges* the World Intellectual Property Organization to transmit to the Conference of the Parties at its sixth meeting the report of the second meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and to make rapid progress in its work, and also *requests* the Executive Secretary to transmit the report of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization in time for its second session;

6. *Recommends* that the Conference of the Parties:

(a) Request the Executive Secretary to collect, compile and disseminate information on the matters specified in paragraphs 3 and 4, including through the clearing-house mechanism of the Convention and other appropriate means;

(b) Invite Parties and Governments to submit case studies that they consider relevant to the issues specified in paragraphs 3 and 4; and

(c) Request the Executive Secretary to gather information and prepare a report on national and regional experiences;

7. *Recommends* that the Conference of the Parties invite other relevant international organizations (such as the Food and Agriculture Organization of the United Nations, the United Nations Conference on Trade and Development, the World Intellectual Property Organization, the World Trade Organization, and the United Nations Commission on Human Rights), as well as regional organizations, Parties and Governments to contribute to the further study and analysis of the issues specified in paragraphs 3 and 4;

8. *Requests* the Executive Secretary to submit to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention the report of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and *requests* the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention to further examine the issues contained in the report relevant to its work;

9. *Recommends* that the Conference of the Parties encourage the World Intellectual Property Organization to make rapid progress in the development of model intellectual property clauses which may be considered for inclusion in contractual agreements when mutually agreed terms are under negotiation;

10. *Requests* the Executive Secretary to compile information regarding the legal mechanisms and procedures for resolving contractual disputes domestically and internationally, taking into consideration factors such as differences between Parties in the nature of legal systems (for example, common law, customary law, Civil Code, and the customary law and practices of indigenous and local communities) and contracting approaches (for example, national competent authorities, and contracting entities) and make the information available through, *inter alia*, the clearing-house mechanism of the Convention;

11. *Requests* the Executive Secretary to transmit to the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention and the World Intellectual Property Organization, for use within their respective mandates, the report of this meeting and also the reports of the Expert Panel on Access and Benefit-sharing;

12. *Recommends* that the Conference of the Parties at its sixth meeting:

(a) Recognize the importance of the work being undertaken by the World Intellectual Property Organization on international models and encourage the World Intellectual Property Organization to also consider means by which Parties could collaborate to protect traditional knowledge for further consideration by the Conference of the Parties;

(b) Urge the World Intellectual Property Organization to provide to the Conference of the Parties with the results of its deliberations of relevance to access to genetic resources and benefit-sharing related to traditional knowledge;

(c) Encourage Parties to facilitate the participation of indigenous and local communities and other relevant stakeholders in the various forums, in particular the World Intellectual Property Organization, the Convention on Biological Diversity, the World Trade Organization, the United Nations Conference on Trade and Development and regional forums, as well as in the preparation of national strategies, policies, regulatory frameworks and legislation related to access to genetic resources and benefit-sharing, from a very early stage;

(d) Request the Executive Secretary to compile information, and to make it available through the clearing-house mechanism of the Convention and other means, on the principles, legal mechanisms and procedures for obtaining prior informed consent of indigenous and local communities under national access regimes for genetic resources, and also on assessments of the effectiveness of such mechanisms and procedures, and request Parties to provide such information to assist the Executive Secretary.

4. Tribute to the Government and people of Germany

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Having met in Bonn from 22 to 26 October 2001, at the gracious invitation of the Government of the Federal Republic of Germany,

Deeply appreciative of the special courtesy and the warm hospitality extended by the Government and people of Germany to the members of delegations, indigenous people's and local communities' participants, observers and members of the Secretariat attending the meeting,

Expresses its sincere gratitude to the Government of Germany and its people for the cordial welcome that they accorded to the meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and to those associated with its work, and for their contribution to the success of the meeting.
