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## AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

Fifth meeting  
Montreal, 8-12 October 2007  
Agenda item 6

### REPORT OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING ON THE WORK OF ITS FIFTH MEETING

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## INTRODUCTION

1. The fifth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held at the headquarters of the International Civil Aviation Organization (ICAO) in Montreal from 8 to 12 October 2007.

2. The meeting was attended by representatives of the following Parties and other Governments: Antigua and Barbuda; Argentina; Australia; Austria; Bahamas; Bangladesh; Belgium; Benin; Bhutan; Brazil; Burkina Faso; Burundi; Cambodia; Cameroon; Canada; Central African Republic; Chad; Chile; China; Colombia; Comoros; Costa Rica; Côte d'Ivoire; Croatia; Cuba; Czech Republic; Denmark; Dominica; Ecuador; Ethiopia; European Community; Finland; France; Germany; Ghana; Grenada; Guinea; Guinea-Bissau; Haiti; India; Italy; Japan; Kenya; Lesotho; Madagascar; Malaysia; Maldives; Mali; Mauritania; Mexico; Micronesia (Federated States of); Morocco; Mozambique; Namibia; Nauru; Nepal; Netherlands; New Zealand; Niger; Nigeria; Norway; Pakistan; Peru; Philippines; Portugal; Republic of Korea; Saint Lucia; Saint Vincent and the Grenadines; Sao Tome and Principe; Saudi Arabia; Senegal; Seychelles; Slovenia; Solomon Islands; South Africa; Spain; Suriname; Sweden; Switzerland; Thailand; Timor-Leste; Togo; Trinidad and Tobago; Tuvalu; Uganda; Ukraine; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Yemen; Zambia.

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations (FAO), Global Environment Facility (GEF), International Treaty on Plant Genetic Resources for Food and Agriculture, Permanent Forum on Indigenous Issues (PFII), United Nations Environment Programme (UNEP), United Nations University (UNU), World Intellectual Property Organization (WIPO).

4. The following organizations were also represented by observers: African Union; African Centre for Biosafety; ALMACIGA; American BioIndustry Alliance; Andean First nations Council; Asociacion de la Juventud Indigena Argentina; Asociación Ixacavaa De Desarrollo e Información Indígena; Baikal Buryat Center for Indigenous Cultures; Berne Declaration; Biotechnology Industry Organization; Botanic Gardens Conservation International; Center for International Sustainable Development Law; Centre for Economic and Social Aspects of Genomics; Centre for Organisation, Research & Education; Centro de accion Legal-Ambiental y Social de Guatemala; Centro de Cooperacion al Indigena; Centro de Estudios Multidisciplinarios Aymara; Chisasibi Business Service Centre; Church Development Service (Evangelischer Entwicklungsdienst); Commission for Environmental Cooperation; Consejo Autonomo Aymara; Consultative Group on International Agricultural Research; Cooperativa Ecologica das Mulheres Extrativistas do Marajo; CropLife International; Dena Kayeh Institute; Deutsche Forschungsgemeinschaft; ECOROPA; Edmonds Institute; Emerging Indigenous Leaders Institute; ETC Group; European Federation of Pharmaceutical Industries and Associations; European Seed Association; Federacion de comunidades Nativas Fronterizas del Putumayo; Forum Environment & Development; Foundation for International Environmental Law and Development; Fundación para la Promoción del Conocimiento Indígena; Fundacion Tinku; Gent University; Glaxo Smith Kline; Global Forest Coalition; Grand Council of the Crees (Eeyou Istchee); Humboldt University - Berlin; INBRAPI; Indigenous Information Network; Indigenous Peoples Council on Biocolonialism; Indigenous Peoples of Africa Coordinating Committee; Indigenous World Association of Hawaii; Institut du développement durable et des relations internationales; Institut Hydro-Québec, Environnement, Développement et Société; Institute for Biodiversity; Intellectual Property Owners Association; Inter Mountain Peoples Education and Culture in Thailand Association; International Alliance of Indigenous and Tribal Peoples of the Tropical Forests; International Alliance of Indigenous and Tribal Peoples of the Tropical Forests Surulere Lagos; International Centre of Insect Physiology and Ecology; International Chamber of Commerce; International Development Research Centre; International Federation of Pharmaceutical Manufacturers and Associations; International Institute for Sustainable Development; International Research Institute for Sustainability; International Seed Federation; Irish Centre for Human Rights/National University of Ireland; IUCN Environmental Law Centre; IUCN - The World Conservation Union; J. Craig Venter Institute; Kummara Association; MISEREOR; National Aboriginal Health Organization; Native Women's Association of Canada; Natural Justice (Lawyers for Communities and the Environment); Nepal

Indigenous Nationalities Preservation Association; Netherlands Center for Indigenous Peoples; New Partnership for Africa's Development; New South Wales Aboriginal Land Council; Organisation Internationale de la Francophonie; Organizacion Dad Nakue Dupbir; Pacific Indigenous Peoples Environment Coalition; Research and Action in Natural Administration; Russian Association of Indigenous Peoples of the North (RAIPON); Saami Council; Safari Club International Foundation; Sierra Club of Canada; Tebtebba Foundation; The Eastern Door; The Fridtjof Nansen Institute; The Institute of Cultural Affairs; Third World Network; Tinhinan; Tulalip Tribes; UNI PROBA; United Confederation of Taino People; Universidade de Brasilia; Université de Sherbrooke; Université de Sherbrooke/CBD NGO Alliance; University of Ibadan; University of Malaya; West Africa Coalition for Indigenous Peoples' Rights (WACIPR); WWF International (Global Environmental Conservation Organisation).

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

5. The meeting was opened at 10 a.m. on Monday, 8 October 2007, by Mr. Fernando Casas and Mr. Timothy Hodges, Co-Chairs of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. Mr. Hodges recalled decision VIII/4 A of the Conference of the Parties, noting that the mandate must be followed to the letter, as well as noting other decisions of the Conference of the Parties. The Bureau would make every effort to respect the views of all delegations and be as inclusive as possible in facing the key challenges involved in meeting the 2010 biodiversity target. Mr. Casas drew to the attention of delegates that the Working Group had been instructed to complete its work at the earliest possible time before the tenth meeting of the Conference of the Parties, and that less than 10 working days were left to achieve meaningful results before the ninth meeting. He welcomed all positive contributions to that end.

6. Opening statements were made by Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity, and Mr. Pythoud (Switzerland), Chairman of the International Technical Conference on Animal Genetic Resources for Food and Agriculture.

7. Mr. Djoghlaif said that it was fitting that the opening of the fifth meeting of the Working Group coincided with Thanksgiving Day in Canada, being a reminder of the benefits that nature's biological diversity so generously bestowed on humanity year after year. That diversity was under serious threat, as had been stressed at the recent summit meeting of the United Nations General Assembly exclusively devoted to addressing the challenges of climate change. The biodiversity crisis offered a unique opportunity to embrace the genuine moral, spiritual, economic and cultural cause of protecting life on earth, based on shared values, common purposes and benefit-sharing. However, 15 years after the opening for signature of the Convention on Biological Diversity, little progress had been made on negotiating an international regime on access and benefit-sharing.

8. He paid tribute to the Co-Chairs for their tireless efforts during extensive inter-sessional consultations. He also expressed appreciation to Canada, the European Commission, Finland, Germany, Ireland, Norway, Spain, Sweden, Switzerland and the United Kingdom for their financial support. He thanked Germany, the Netherlands, the Government of Quebec, the African Union and Agence Intergouvernementale de la Francophonie for convening a training workshop on access and benefit-sharing for the African countries.

9. The successful conclusion of the negotiations on one of the three fundamental objectives of the Convention would be a powerful instrument for the promotion of sustainable development, sending a strong political message to the world and contributing to the realization of shared prosperity on the planet and the security of its peoples. He urged delegates to rise to the challenge of their responsibilities. An international regime on access and benefit-sharing could form the foundation of a fair and equitable partnership between today's and future providers and users of nature's cornucopia.

10. Mr. Hodges, Co-Chair of the Working Group, took the opportunity to thank the Executive Secretary and his team for the tireless efforts deployed since the eighth meeting of the Conference of the Parties in assisting the Co-Chairs in fulfilling their mandate during the inter-sessional period. The extrabudgetary resources raised by the Executive Secretary had greatly assisted the Co-Chairs in undertaking intensive informal consultations and meeting with partners and sister agencies. In that

respect, he also expressed his appreciation to the donors for their generosity and support. He invited the participants to give the Secretariat a round of applause.

11. Mr. Pythoud (Switzerland) presented a brief report on the results of the Conference on Animal Genetic Resources for Food and Agriculture held in September 2007 in Interlaken, Switzerland. Attended by delegations from 109 countries and 42 organizations, the Conference had launched the first authoritative assessment of global livestock biodiversity, entitled *The State of the World's Animal Genetic Resources for Food and Agriculture*, which had created a better understanding of the importance of animal genetic resources to food security and the nature of the threats to those resources.

12. The main achievement of the Conference had been the adoption of the Global Plan of Action for Animal Genetic Resources, which provided a framework for supporting and increasing the overall effectiveness of national, regional and global efforts for the sustainable use, development and conservation of animal genetic resources. The Conference had also adopted the Interlaken Declaration on Animal Genetic Resources, by which Governments reaffirmed their common and individual responsibilities for the conservation, sustainable use and development of animal genetic resources for food and agriculture. It called for prompt action through the implementation of the Global Plan of Action to conserve animal breeds at risk, owing to the alarming rate of erosion in animal genetic resources. Governments must now demonstrate sustained political will and mobilize the considerable resources needed to carry it out successfully.

13. The representative of Cameroon presented to the Museum of Nature and Culture of the Convention on Biological Diversity a wooden sculpture representing the biological and cultural diversity of Cameroon and its Government's commitment to the conservation and sustainable use of biodiversity.

14. The Executive Secretary thanked the representative of Cameroon for its donation and also acknowledged the recent donation of a pair of peacock vases presented to the Museum by India.

## **ITEM 2. ORGANIZATIONAL MATTERS**

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

15. In keeping with established practice, the Bureau of the Conference of the Parties acted as the Bureau of the meeting. As agreed by the Conference of the Parties at its eighth meeting, Mr. Fernando Casas and Mr. Timothy Hodges served as Co-Chairs of the Working Group.

16. On the proposal of the Bureau, Ms. Mary Fosi Mbantenkhu (Cameroon) served as Rapporteur.

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

17. At the 1st session of the meeting, on 8 October 2007, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG/ABS/5/1):

1. Opening of the meeting.
2. Organizational matters.
3. International regime on access and benefit-sharing:
  - 3.1. Fair and equitable sharing of benefits;
  - 3.2. Access to genetic resources;
  - 3.3. Compliance:
    - (a) Measures to support compliance with prior informed consent and mutually agreed terms;
    - (b) Internationally recognized certificate of origin/source/legal provenance;
    - (c) Monitoring, enforcement and dispute settlement;
  - 3.4. Traditional knowledge and genetic resources;

3.5. Capacity-building.

4. Strategic Plan of the Convention: Future evaluation of progress – the need and possible options for indicators for access to genetic resources and, in particular, the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.
5. Other matters.
6. Adoption of the report.
7. Closure of the meeting.

**2.3. Organization of work**

18. At the 1st session of the meeting, on 8 October 2007, the Working Group adopted the organization of work as proposed in annex II of the annotated provisional agenda (UNEP/CBD/WG-ABS/5/1/Add.1/Rev.1). In response to a question posed by the representative of Argentina, Mr. Timothy Hodges, Co-Chair of the Working Group, said that the Co-Chairs would attempt to be as inclusive as possible, bearing in mind constraints on time, the rules of procedures and the guidance provided by the Conference of the Parties. In response to a request for clarification by the representative of Australia as to the expected outputs of the meeting, the Co-Chair reminded the Working Group that the fifth and sixth meetings were to be treated as a single session. While there would be a formal report of the present meeting, there would also be a consolidated report at the end of the sixth meeting of the Working Group.

19. At the 5th session of the meeting, on 10 October 2007, Mr. Casas, Co-Chair of the Working Group, said that the Co-Chairs would prepare a paper reflecting the work in progress, including an assessment of the convergent and divergent options proposed with regard to access and benefit-sharing and how best to link those options for consideration by the Working Group.

20. At the 10th session of the meeting, on 12 October 2007, the representative of Portugal, speaking on behalf of the European Community and its member States, stated that, as the fifth and sixth meetings of the Working Group would be treated as a single session, it followed that all the documents that had been prepared for the fifth meeting would also be available as documents for the sixth meeting.

**2.4. Statements and general comments**

21. At the 1st session of the meeting, on 8 October 2007, statements were made by representatives of regional groups, governments, intergovernmental organizations, non-governmental organizations, industry and indigenous and local communities.

22. The representative of Portugal, speaking on behalf of the European Community and its member States, thanked the Bureau, the Secretariat of the Convention on Biological Diversity, its Executive Secretary and all Parties for their contributions to the preparatory work. She reaffirmed the commitment of the European Union to complete the elaboration and negotiation of an international regime on access to genetic resources and benefit-sharing. For that to happen, there would need to be a significant convergence of views on some of the fundamental concepts and issues underlying those complex negotiations. The European Union had worked hard since the eighth meeting of the Conference of the Parties to further develop its own understanding of the fundamental concepts and issues and, based on that work, the European Union had made a number of substantive submissions that identified its views on how negotiations could move forward.

23. The representative of Namibia, speaking on behalf of the African Group, said that the African Group was fully committed to both the process of negotiating an international regime on access to genetic resources and benefit-sharing and to delivering on the mandate entrusted to the Working Group by the eighth meeting of the Conference of the Parties. Africa recognized that access and benefit-sharing of genetic resources had the potential to generate significant economic and social benefits, if properly controlled. A balance had to be struck in providing incentives to interest groups to use genetic resources,

while at the same time maximizing benefits to countries of origin and indigenous and local communities, which had conserved and maintained those genetic resources over generations. Participants needed to revisit their positions and ask themselves whether those positions were still serviceable as there was now the need to consider humanity as a whole, to focus on the human community, and to transcend individual interests. He also thanked the Dutch-German ABS Capacity Development Initiative for African countries for assisting African countries to meet and elaborate their views and concerns regarding the issue of access and benefit-sharing.

24. The representative of Argentina said that Argentina was ready to work in collaboration with the other participants and expressed the hope that the Co-Chairs would ensure that the deliberations held during the meeting were inclusive and transparent.

25. The representative of the Federated States of Micronesia speaking on behalf of the Pacific Island Countries (small island developing States) said that the scope of benefit-sharing should be broad and include the derivatives and products of genetic resources as well as commercial and non-commercial uses. A wide range of monetary and non-monetary forms of benefits, including royalty payments, technology transfer, capacity-building and participation in product development should be included in such a regime, which also had to ensure that indigenous peoples and local communities were included as the primary parties to benefit-sharing agreements, especially where genetic resources were being accessed on indigenous peoples' lands. The Pacific Island Countries (small island developing States) supported indigenous peoples' rights related to access and benefit-sharing to genetic resources and traditional knowledge, and acknowledged the standards set by the United Nations General Assembly's adoption of the Declaration on the Rights of Indigenous Peoples. She stressed that an international regime needed to respect national laws that recognized customary rights to land and that there was a need to include measures to ensure compliance with the prior informed consent and mutually agreed terms provisions of Article 15 of the Convention on Biological Diversity. The issue of marine genetic resources also needed to receive special and separate attention and, when it was not possible to determine the country of origin of genetic resources, the provider country and the user must be able to certify that they had acted in good faith in attempting to determine the country of origin. Such a regime also needed to include measures that supported capacity-building so that it could be implemented effectively and in a timely way at national, regional and international levels.

26. The representative of Switzerland supported the approach taken by the Co-Chairs and said that Switzerland would continue to work toward a balanced compromise. To that end there was a need to work pragmatically, based on existing instruments, on those needs not covered at the international level. It therefore followed that the present discussions needed to consider the elaboration of minimum international measures that were targeted and could be flexibly applied to a variety of different sectors and resources. The report of the group of experts that had met in Lima to study the options for an international certificate of origin (UNDP/CBD/WG-ABS/5/7) provided a number of interesting inputs that merited careful consideration. Without prejudicing the nature and development of such a certificate, it was important to consider the possibilities of such a mechanism. It was also important that the competent international organizations adopt specific measures to ensure access to, and the fair and equitable sharing of benefits. He recalled the Swiss proposal to integrate the declaration of source of genetic resources and traditional knowledge in patent applications, made under the Patent Cooperation Treaty of the World Intellectual Property Organization. The search for a consensus on an international certificate and a declaration of source to be made during the patent application process were matters of priority for an international regime. There was also a need to work on a number of cross-cutting issues, such as capacity-building. Furthermore the International Regime should duly take into account the main relevant existing international instruments, which are the International Treaty for Plant Genetic Resources for Food and Agriculture and the Bonn Guidelines.

27. The representative of the International Indigenous Forum on Biodiversity noted that the United Nations Declaration on the Rights of Indigenous Peoples affirmed the existence of universal human-rights standards for the protection of the collective rights of indigenous peoples. The International Indigenous Forum on Biodiversity affirmed that those rights were a necessary foundation upon which all decisions of

the Convention on Biological Diversity relating to genetic resources, and to the associated traditional knowledge, had to be built. The implementation of decisions under the Convention had to be consistent with those rights in international law, and any potential regime had to guarantee the recognition and protection of indigenous peoples' rights, including rights to lands, territories, resources and identity. He further stated that indigenous peoples were the owners of their genetic resources and associated knowledge, which were not subject to national legislation, and that traditional knowledge and genetic resources were closely interrelated and could not be separated; without the recognition of indigenous rights there could be no access to those genetic resources and traditional knowledge.

28. The representative of Australia welcomed the work of the Co-Chairs and praised their availability for consultation as well as their commitment to openness, transparency and predictability. Australia appreciated that the Co-Chairs had designed an agenda to facilitate structured dialogue on the main issues facing the Working Group. Australia supported the agenda including its focus on major issues around an international regime but he wished to note that the Working Group had several other mandates from the Conference of the Parties and that those remained valid. He said that those issues should be returned to in the future. He said that Australia continued to adhere to the interpretative statement it had made at the World Summit on Sustainable Development that paragraph 44(o) of the Summit's Plan of Implementation was an invitation to the Conference of the Parties of the Convention on Biological Diversity to consider how to promote and safeguard the outcomes of its decision VI/24. Australia would continue to approach the issue by asking what States could collectively do through the process to better support national implementation of the Convention, which was the key question facing the Working Group. There was a need for a concrete and practical discussion of the concerns of the Parties and potential measures that might assist them. In the view of Australia, the aim of the Working Group should be to reach agreement by the ninth meeting of the Conference of the Parties on the practical measures that can be collectively taken to better support national implementation. There would then be a need to work quickly on those measures for their adoption by the Conference of the Parties at its tenth meeting. There was therefore a need to move step by step to ensure that a genuine consensus was built. Australia had carefully reviewed each aspect of its position since the eighth meeting of the Conference of the Parties at Curitiba and had some new ideas and some greater flexibility. Australia was particularly interested in hearing, in practical and concrete terms, of the problems that others were experiencing in their implementation efforts as well as their ideas for addressing them.

29. The representative of Colombia welcomed the approach of the Co-Chairs and said that the annex of decision VIII/4 A of the Conference of the Parties (UNEP/CBD/WG-ABS/5/2), should form the basis for the negotiations at the present meeting. She thanked the donors who had contributed to participation of representatives of developing countries and who had facilitated the work of the Co-Chairs. However that support had not been sufficient to facilitate the participation of representatives from the Latin American and Caribbean Group. Many had made great efforts to attend, but it was not clear that they would be able to attend the sixth meeting of the Working Group in Geneva in January without greater support from donor countries.

30. The representative of Ecuador reported on the meeting of the Working Group on Genetic Resources of the Forum of Ministers of the Environment of Latin America and the Caribbean that had taken place in Paipa, Colombia in September 2007, at which proposals for the fifth and sixth meetings of the Ad Hoc Working Group on Access and Benefit-sharing had been analysed. He also endorsed the statement by Colombia over the need for greater resources to facilitate the participation at meetings. He said that the current participation by members of the Latin American and Caribbean Group was due mainly to the efforts of those countries and that there was a need to redress that balance.

31. The representative of a number of non-governmental organizations (the African Center for Biosafety, the Berne Declaration, the Church Development Service, Ecoropa, the Edmonds Institute, the Forum on Environment & Development, the Global Forest Coalition, the Global Justice Ecology Project, Misereor, the Research & Action in Natural Wealth Administration, Sobre Vivencia, the Third World network and the Worldwide Fund for Nature) said that the documents prepared for the present meeting showed that current regulations and practices had not been able to stop biopiracy and that user countries

had failed to implement the relevant provisions of the Convention on Biological Diversity. An international regime was needed to achieve a number of different aims. She welcomed the report of the Group of Technical Experts on an Internationally Recognized Certificate of Origin and said that certificate of compliance would secure transparency concerning the origin of genetic resources, traditional knowledge and the negotiated restrictions of use. However such a certificate would only be effective if it were compulsory. She also said that the ecological debt of mainly industrialized countries needed to be recognized and that to compensate for that debt, industrialized countries needed to provide sufficient funding and other support to enable developing countries to conserve and sustainably use their biodiversity.

32. The representative of the IUCN-The World Conservation Union said that the development of an operational and effective international regime on access and benefit-sharing required careful appraisal of existing policy, as well as the role played by international binding and non-binding instruments, such as the International Treaty on Plant Genetic Resources and the Bonn Guidelines. She welcomed the documents prepared by the Secretariat for the present meeting and said that they were useful sources of information. She also acknowledged the work of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, as well as the work of the Ad Hoc Open-ended Working Group on Article 8(j), and welcomed the first draft of possible elements for an international regime. She said that the Working Group, based on the gap analysis undertaken by the Executive Secretary of the Convention on Biological Diversity (UNEP/CBD/WG-ABS/5/3), needed to further define the areas and issues requiring international action and consider potential areas or issues that might benefit from internationally agreed obligations. The synergies between the elements of an international regime and other international agreements had to be identified. There was a need for specific communication mechanisms to disseminate information regarding access and benefit-sharing, as well as further elaboration of the definition of key concepts, such as genetic resources and derivatives, and the meaning of access to genetic resources had to be clarified. Women had to be represented in the discussions and issues of gender also had to be fully integrated into the international regime; the international regime would have to comply with internationally agreed and national commitments on gender equality and human rights.

33. The representative of the Indigenous Women's Biodiversity Network welcomed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and its fundamental principles, which constituted the minimum standards for the survival, dignity and well-being of indigenous communities. She affirmed that indigenous women were the holders and transmitters of traditional knowledge from generation to generation and she demanded respect and protection for that traditional knowledge as well as full and active participation in the processes that affected their rights. Traditional knowledge was sacred, indivisible and inalienable and was an integral part of the education and well-being of indigenous families and communities. She asked the Working Group to consider the provisions established in Article 31 of the Declaration on Rights of Indigenous Peoples and said that without recognition of their rights, especially the right of free prior informed consent, there could be no access to that traditional knowledge.

34. The representative of the Secretariat of the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (FAO) gave a short overview of the Commission's recent work. He reminded the meeting that at its tenth regular session, in September 2005, the Commission had recommended that the FAO and the Commission contribute to further the work on access and benefit-sharing, in order to ensure that it moved in a direction supportive of the special needs of the agricultural sector, in regard to all components of a biological diversity of interest to food and agriculture, and that, at its eleventh meeting, the Commission had adopted its rolling ten-year multi-year programme of work. In adopting its multi-year programme of work, the Commission had agreed on the importance of considering access and benefit-sharing, in relation to all components of biodiversity for food and agriculture and had decided that work in that field should be an early task within that programme of work. The Commission would accordingly consider the development of policies and arrangements for access and benefit-sharing for genetic resources for food and agriculture as a priority within its multiyear programme of work at its twelfth regular session in 2009. In the consideration of those policies and arrangements, the Commission would have to take into account, *inter alia*, those



distinctive features of agricultural biodiversity that the Conference of the Parties to the Convention on Biodiversity had identified in decision V/5. Food security and rural poverty eradication were the overriding objectives in developing effective international policies for agricultural genetic resources in developing effective international policies for agricultural genetic resources, and the Commission would continue to pursue those priorities in harmony with the Convention on Biological Diversity.

35. Mr. Shakeel Bhatti, Executive Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture recalled that the International Treaty was, along with the Convention on Biological Diversity, the only binding international instrument regulating access and benefit-sharing for plant genetic resources. The treaty established a Multilateral System of access and benefit-sharing that covered the 64 most important crops for global food security. During the first seven months of its operation, more than 90,000 transfers of genetic material had occurred under the Standard Material Transfer Agreement (SMTA) adopted pursuant to the Treaty. Out of 89,000 transfers reported there had only been tree rejections of SMTAs. Within the field of agricultural plant resources, the International Treaty on Plant Genetic Resources for Food and Agriculture was moving from theory to practice in the area of access and benefit-sharing and Mr. Bhatti offered to share that practical experience, and the technical lessons learned, with the Convention on Biological Diversity. Under the SMTA, the recipient of plant genetic resources from the Treaty's Multilateral System had to contribute a fixed percentage of the gross sales from a new commercial product to an international benefit-sharing trust fund. Through the funding strategy of the Treaty funds would eventually benefit farmers and agricultural priority programmes in developing countries and countries with economies in transition. He also said that systems and operational platforms were being established to manage the start-up of the Multilateral System within the jurisdictions of 114 Contracting parties and that one of the main items on the agenda of the second session of the Governing Body of the Treaty would be the negotiation of a Compliance Protocol. He noted with pleasure that Mr. Ahmed Djoghlaif, the Executive Secretary of the Convention on Biological Diversity, would be attending that meeting and he looked forward to working closely with him.

36. The representative of the International Chamber of Commerce said that the diverse experience of industry could contribute to the success of the discussions on access and benefit-sharing. Industry's voice could be particularly valuable in the development of clear and stable regulatory frameworks, the clarification of the commercial and societal value of genetic resources, the promotion of mutual cooperation and enhanced decision-making with local and indigenous communities and the raising of consumer awareness of access and benefit-sharing. He said that the Bonn Guidelines remained an excellent roadmap for the development of national regimes of access and benefit-sharing and that the inter-relation of national regimes should be the principle focus of continued discussion of an international regime.

37. In a written statement, the American BioIndustry Alliance noted that in preparation for the meeting of the Working Group, its members had reached a consensus on access and benefit-sharing negotiating principles, including areas of common ground with Parties and stakeholders to the Convention on Biological Diversity and areas of continuing difficulties, such as patent disclosure. The members of the American BioIndustry Alliance hoped to play a constructive role in identifying areas for practical steps that all stakeholders might take to improve systems for access and benefit-sharing, in particular the front-loaded benefits, from commercialization of genetic resources and commercially valuable, related traditional knowledge, through that process.

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

38. The Ad Hoc Open-ended Working Group took up agenda item 3 at the 1st session of meeting, on 8 October 2007.

39. In considering the items, the Working Group had before it annex to decision VIII/4 A of the Conference of the Parties (UNEP/CBD/WG-ABS/5/2), a note by the Executive Secretary on the analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing (UNEP/CBD/WG-ABS/5/3), an overview of recent developments at national and regional

levels relating to access and benefit-sharing (UNEP/CBD/WG-ABS/5/4), the overview of recent developments at the international level relating to access and benefit-sharing (UNEP/CBD/WG-ABS/5/4/Add.1), the report on the legal status of genetic resources in national law, including property law, where applicable in a selection of countries (UNEP/CBD/WG-ABS/5/5), and the report of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance (UNEP/CBD/WG-ABS/5/7).

40. It also had before it, as information documents, a compilation of submissions provided by Parties and other relevant organizations on issues of relevance to the international regime on access and benefit-sharing (UNEP/CBD/WG-ABS/5/INF/1), a compilation of submissions provided by Parties on experiences in developing and implementing Article 15 of the Convention at the national level and measures taken to support compliance with prior informed consent and mutually agreed terms (UNEP/CBD/WG-ABS/5/INF/2), an analytical study on administrative and judicial remedies available in countries with users under their jurisdiction and in international agreements (UNEP/CBD/WG-ABS/5/INF/3), a document submitted by the International Chamber of Commerce on issues for consideration regarding an internationally recognized certificate of origin/source/legal provenance (UNEP/CBD/WG-ABS/5/INF/4), a discussion paper submitted by the Government of Japan on an internationally recognized certificate of origin/source/legal provenance (UNEP/CBD/WG-ABS/5/INF/4/Add.1), a document provided by ICIPE-African Insect Science for Food and Health on access to biocontrol agents to combat invasive alien species and the access and benefit-sharing regulations (UNEP/CBD/WG-ABS/5/INF/5), a document provided by the ERSC Centre for Economic and Social Aspects of Genomics (CESAGen), Lancaster University, United Kingdom, on biodiversity and the patent system: towards international indicators (UNEP/CBD/WG-ABS/5/INF/6), two submissions by the Government of Germany: the Workshop Report of the “Certificate of Origin/Source/Legal Provenance” in the African ABS Discussion (UNEP/CBD/WG-ABS/5/INF/7) and the report of the first Capacity Development Workshop on Access and Benefit-sharing for Africa (UNEP/CBD/WG-ABS/5/INF/8). It also had before it the report of the International Indigenous and Local Community Consultation on Access and Benefit Sharing and the Development of an International Regime (UNEP/CBD/WG-ABS/5/INF/9).

### **3.1 Fair and equitable sharing of benefits**

41. The Ad Hoc Open-ended Working Group took up agenda item 3.1 at the 2nd session of the meeting, on 8 October 2007.

42. In his introduction to the agenda item, Mr. Casas, Co-Chair, said that interventions should refer exclusively to the issue of benefit-sharing and should propose specific options based on the elements transmitted by the Conference of the Parties in the annex to decision VIII/4 A (UNEP/CBD/WG-ABS/5/2) and the inputs contained in various conference documents on the topic. Mr. Hodges, Co-Chair, then requested that delegations that had prepared written general statements but had not delivered them at the morning meeting should make their texts available to the Secretariat. The fact that they had done so would be reflected in the report of the meeting.

43. Statements, including proposals, were made by representatives of Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Cuba, Ecuador, Malaysia (on behalf of the Like-minded Megadiverse Countries), Mexico, Namibia (on behalf of the African Group), New Zealand, Norway, Peru, the Philippines, Portugal (on behalf of the European Community and its member States), Switzerland, and Thailand.

44. A statement was also made by the representative of the Arctic Indigenous Peoples Caucus.

45. The representative of the American BioIndustry Alliance also made a statement.

46. A number of representatives also expressed their appreciation for the work of the Executive Secretary and the Secretariat in preparing the meeting and for reminding the participants of the brief time that remained in order to fulfill the mandate entrusted to them.

47. At the third session of the meeting, on 9 October 2007, the Ad Hoc Open-ended Working Group continued its discussion of agenda item 3.1.

48. Mr. Casas, Co-Chair, suggested that the delegates should do their best to focus on each item individually, presenting a short introduction and then making concrete, concise proposals. Every effort should be made to move towards a convergence of views and build on the progress already made. He also noted that a correction should be made in the numbering of paragraphs in document UNEP/CBD/WG-ABS/5/2 to make them consistent with the original wording of the text adopted by the Conference of the Parties.

49. Statements, including proposals, were made by the representatives of Australia, Chile, China, Grenada, Japan, Malaysia, Philippines, Portugal (on behalf of the European Community and its member States), Republic of Korea and Uganda.

50. Statements, including proposals, were also made by the representatives of the Latin American Indigenous Peoples Caucus, Pacific Indigenous Peoples Caucus and African Indigenous Peoples Caucus.

### **3.2 Access to genetic resources**

51. The Ad Hoc Open-ended Working Group took up agenda item 3.2 at the 3rd session of the meeting, on 9 October 2007.

52. Statements, including proposals, were made by the representatives of Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Ecuador, Grenada, Haiti, Malaysia (on behalf of the Like-minded Megadiverse Countries) Mexico, Namibia (on behalf of the African Group), Peru, Portugal (on behalf of the European Community and its member States), Saint Lucia, South Africa, Switzerland, Thailand, Uganda, the United Republic of Tanzania, and the United States of America.

53. Statements, including proposals, were also made by the representatives of the Arctic Indigenous Peoples Caucus (supported by the African, Asian, Latin American, North American, Pacific and Russian Indigenous Peoples Caucuses), the Asian Indigenous Peoples Caucus, the International Forum of Local Communities, and the Pacific and Russian Indigenous Peoples Caucuses.

54. Statements, including proposals, were also made by the representatives of the International Centre of Insect Physiology and Ecology (ICIPE) and the Third World Network.

55. The representative of the Intellectual Property Owners Association also made a statement.

56. The Working Group continued its discussion of agenda item 3.2 at the 4th session of the meeting, on 9 October 2007.

57. Statements, including proposals, were made by the representatives of Argentina, Australia, and Portugal (on behalf of the European Community and its member States).

58. A statement was also made by the representative of the International Federation of Pharmaceutical Manufactures and Associations.

### **3.3 Compliance**

59. The Ad Hoc Open-ended Working Group took up agenda item 3.3 at the 4th session of the meeting, on 9 October 2007. Mr. Fernando Casas, Co-Chair of the Working Group, reminded the meeting that agenda item 3.3 was divided into three sub-items: (a) measures to support compliance with prior informed consent and mutually agreed terms; (b) internationally recognized certificate of origin/source/legal provenance; and (c) monitoring, enforcement and dispute settlement .

#### **A. Measures to support compliance with prior informed consent and mutually agreed terms**

60. The Working Group took up agenda item 3.3 (a) at the 4th session of the meeting, on 9 October 2007. Mr. Fernando Casas, Co-Chair of the Working Group invited the representatives to make brief introductory statements to explain the rationale for their interventions as well as specific proposals on

measures to support compliance with prior informed consent and mutually agreed terms. He also asked that specific proposals on wording be submitted directly to the Co-Chairs.

61. Statements, including proposals, were made by the representatives of Argentina, Australia, Brazil, Canada, Colombia, Cuba, Haiti, India, Japan, Malaysia (on behalf of the Like-minded Megadiverse Countries), Mexico, Namibia (on behalf of the African Group), New Zealand, Norway, Pakistan, Peru, Portugal (on behalf of the European Community and its member States), Thailand and United States of America.

62. The representative of the World Intellectual Property Organization (WIPO) also made a statement.

63. Statements, including proposals, were made by the representatives of the Latin American Indigenous Peoples Caucus, North American Indigenous Peoples Caucus (supported by the Arctic Indigenous Peoples Caucus) and Pacific Indigenous Peoples Caucus.

64. A statement was also made by the representative of the American BioIndustry Alliance.

#### ***B. Internationally recognized certificate of origin/source/legal provenance***

65. The Working Group took up agenda item 3.3 (b) at the 4th session of the meeting, on 9 October 2007. Mr. Fernando Casas, Co-Chair of the Working Group, reminded the meeting that in considering the agenda item the Working Group had before it both the annex to decision VIII/4 A of the Conference of the Parties (UNEP/CBD/WG-ABS/5/2) and the report of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance (UNEP/CBD/WG-ABS/5/7).

66. Statements, including proposals, were made by the representatives of Namibia (on behalf of the African Group), Switzerland and Uganda.

67. The Working Group continued its discussion of agenda item 3.3 (b) at the 5th session of the meeting, on 10 October 2007.

68. Statements, including proposals, were made by the representatives of Argentina, Australia, Brazil, Burkina Faso (on behalf of the African Group), Canada, Colombia, Costa Rica, Japan, Malaysia (on behalf of the Like-minded Megadiverse Countries), Mexico, Peru, the Philippines, Portugal (on behalf of the European Community and its member States), Senegal, Thailand, Ukraine, and the United States of America.

69. Statements, including proposals, were also made by the representatives of the Consultative Group on International Agricultural Research (CGIAR) and the IUCN-the World Conservation Union.

70. Statements, including proposals, were also made by representatives of the Asian Indigenous Peoples Caucus (supported by the African, Arctic, Pacific, North American and Russian Indigenous Peoples Caucuses), the International Indigenous Forum on Biodiversity, the North American Indigenous Peoples Caucus, and the Pacific Indigenous Peoples Caucus.

71. The representatives of the American BioIndustry Alliance and the International Chamber of Commerce also made statements.

72. The representative of the American BioIndustry Alliance wanted it reflected in the report that the American BioIndustry Alliance members did not support the development of a certificate system that provided for an additional formality as a condition of patentability for biotechnology inventions.

#### ***C. Monitoring, enforcement and dispute settlement***

73. The Working Group took up agenda item 3.3 (c) at the 5th session of the meeting, on 10 October 2007.

74. Statements, including proposals, were made by the representatives of Argentina, Australia, Brazil, Canada, Colombia, Cuba, Mexico, Namibia (on behalf of the African Group), New Zealand, Peru,

Portugal (on behalf of the European Community and its member States), Thailand and Tuvalu (on behalf of the Pacific Island Countries (small island developing States)).

75. The Working Group continued its discussion of agenda item 3.3 (c) at its 6th session on 10 October 2007.

76. Statements, including proposals, were made by the representatives of Argentina, Australia, Côte d'Ivoire, Ethiopia, Malaysia (on behalf of the Like-minded Megadiverse Countries), the Philippines, and Portugal (on behalf of the European Community and its member States).

77. Statements, including proposals, were also made by the representatives of the Indigenous Peoples Caucus of Latin America and North American Indigenous Peoples Caucus.

78. The representative of the Third World Network also made a statement.

### **3.4 Traditional knowledge and genetic resources**

79. The Ad Hoc Open-ended Working Group took up agenda item 3.4 at the 6th session of the meeting, on 10 October 2007.

80. In his introduction, Mr. Fernando Casas, Co-Chair of the Working Group, reminded the meeting that in considering the issues of traditional knowledge and genetic resources the Working Group was to bring together the key parts of the annex of decision VIII/4 A to specify options on traditional knowledge and genetic resources.

81. Statements, including proposals, were made by the representatives of Argentina, Australia, Brazil, Burkina Faso, Canada, Colombia, Ecuador, Haiti, Japan, Malaysia (on behalf of the Like-minded Megadiverse Countries), Mexico, Namibia (on behalf of the African Group), New Zealand, Norway, Peru, Portugal (on behalf of the European Community and its member States), Thailand and Uganda.

82. Statements, including proposals, were also made by representatives of the Arctic Indigenous Peoples Caucus, the Pacific Indigenous Peoples Caucus and the United Nations Permanent Forum on Indigenous Issues.

83. The representative of Canada requested that it be reflected in the report that his delegation objected to the use of the United Nations Declaration on the Rights of Indigenous Peoples as an international standard. The Declaration was not a legally binding instrument, had no legal effect in Canada, and its provisions did not represent customary international law. Notwithstanding Canada's opposition to the Declaration, Canada would continue to take effective action, at home and abroad, to promote and protect the rights of indigenous peoples based on existing human rights obligations and commitments and based on Canada's Constitution, which gave strong recognition and protection to indigenous and treaty rights. Such effective action would, however, not be undertaken on the basis of the provisions of the Declaration. Canada also believed that the issues of intellectual property and traditional knowledge fell within the mandate of WIPO.

### **3.5 Capacity-building**

84. The Ad Hoc Open-ended Working Group took up agenda item 3.5 at the 6th session of the meeting, on 10 October 2007.

85. Statements, including proposals, were made by the representatives of Argentina, Brazil, Cuba, Grenada, Malaysia (on behalf of the Like-minded Megadiverse Countries), Namibia (on behalf of the African Group), Portugal (on behalf of the European Community and its member States), the Solomon Islands (on behalf of the Pacific Island Countries (small island developing States)), Switzerland, and Thailand.

86. The representative of Peru requested that its position be reflected in the record that it was insufficient to identify capacity-building and technology transfer as necessary mechanisms for the regime without also ensuring adequate financing for the developing countries and economies in transition.

87. At the 7th session of the meeting, on 11 October 2007, statements, including proposals, were made under this item by representatives of Bangladesh, Burkina Faso, Canada, Colombia, Costa Rica, Peru and Timor-Leste.

88. Statements, including proposals, were also made by the North American and Asian Indigenous Peoples Caucuses.

*Action by the Working Group on item 3 as a whole*

89. At the 8th session of the meeting, on 11 October 2007, the Working Group took up under agenda item 3: the Co-Chairs' reflections on progress made by the Working Group on Access and Benefit-sharing at its fifth meeting—areas of convergence, options, possible tools, and concepts for clarification; and notes from the Co-Chairs on proposals made at the meeting. The Co-Chairs' reflections on progress made by the Working Group at its fifth meeting and the Co-Chairs' notes on proposals made at the meeting were the sole responsibility and under the sole authority of the Co-Chairs and would be circulated to Parties as information documents as soon as possible upon their completion.

90. A number of representatives thanked the Co-Chairs for their hard work in drafting the two informal texts.

91. Statements, including proposals, were made by the representative of Argentina, Australia, Brazil, Burkina Faso, Canada, Chile (on behalf of the Latin American and Caribbean Group) Colombia, Croatia (on behalf of the Central and Eastern European Group), Cuba, Ecuador, Ethiopia, Haiti, Japan, Malaysia (on behalf of the Link-minded Megadiverse Countries), Namibia (on behalf of the African Group), New Zealand, Nigeria, Norway, Peru, Portugal (on behalf of the European Community and its member States), Seychelles, South Africa, Uganda and the United Republic of Tanzania.

92. The representatives of the Arctic Indigenous Peoples Caucus and the North American Indigenous Peoples Caucus also made statements.

93. At the 9th session of the meeting, on 12 October 2007, the Working Group continued its discussion of the two informal texts submitted by the Co-Chairs.

94. Statements, including proposals, were made by the representatives of Argentina, Australia, Brazil, Canada, Chile (on behalf of the Latin American and Caribbean Group) Colombia, Croatia, Mexico, Namibia (on behalf of the African Group), Nigeria, Portugal (on behalf of the European Community and its member States), Switzerland and Tuvalu (on behalf of the Pacific Island Countries (small island developing States)).

95. A statement was also made by the International Forum of Local Communities.

96. At the 10th session of the Working Group, on 12 October 2007, the representative of Australia requested that the submissions included in the Co-Chairs' notes on proposals made at the meeting be attributed to the Parties that had made them.

97. In response to a query from Portugal, speaking on behalf of the European Community and its member States, as to how long the Co-Chairs' notes would remain open for corrections, Mr. Casas, Co-Chair, clarified that the notes would remain open for corrections until the end of the meeting.

**ITEM 4. STRATEGIC PLAN OF THE CONVENTION: FUTURE EVALUATION OF PROGRESS – THE NEED AND POSSIBLE OPTIONS FOR INDICATORS FOR ACCESS TO GENETIC RESOURCES AND IN PARTICULAR FOR THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THE UTILIZATION OF GENETIC RESOURCES**

98. The Ad Hoc Open-ended Working Group took up agenda item 4 at the 7th session of the meeting, on 11 October 2007.

99. In considering the item, the Working Group had before it a note by the Executive Secretary containing a compilation of views and information provided by Governments and relevant organizations on the need and possible options for indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources (UNEP/CBD/WG-ABS/5/6).

100. Statements, including proposals, were made by the representatives of Argentina, speaking on a point of order, Australia, Canada, Namibia (on behalf of the African Group) and Portugal (on behalf of the European Community and its member States).

101. There was general agreement that consideration of this item should be deferred to a future date.

#### **ITEM 5. OTHER MATTERS**

##### ***Presentation by Germany on preparations for the ninth meeting of the Conference of the Parties to the Convention***

102. At the 4th session of the meeting, on 9 October 2007, the Working Group heard a presentation by the representative of Germany on Germany's preparations for the ninth meeting of the Conference of the Parties, to be held in Bonn, Germany from 19 to 30 May 2008. In his presentation the representative of Germany said that Germany had been inspired by the activities hosted by Brazil, in the context of the eight meeting of the Conference of the Parties at Curitiba, to create an exhibition on diversity to be held in conjunction with the ninth meeting of the Conference of the Parties. Germany had also instituted an awareness raising campaign on biological diversity for the people of Germany that consisted of advertisements, a website, and a roadshow bus. In addition, the representative of Germany laid out the envisaged format of the ministerial segment in line with Conference of the Parties decision VIII/20 to ensure an effective and productive ministerial segment. The representative of Germany warmly thanked Mr. Ahmed Djoghla, Executive Secretary of the Convention on Biological Diversity, for his help in preparing for the ninth meeting of the Conference of the Parties. He said that Mr. Djoghla had been both easy to work with and had responded quickly to requests as they had arisen and at all times of the day and night.

#### **ITEM 6. ADOPTION OF THE REPORT**

103. The present report was adopted at the 10th session of the meeting, on 12 October 2007.

104. During the adoption of the report, the Working Group invited Parties, Governments, indigenous and local communities and stakeholders to submit to the Secretariat by 30 November 2007 concrete options on the substantive items on the agenda of the fifth and sixth meetings of the Working Group and requested the Secretariat to circulate a compilation of those options as soon as practicable prior to the sixth meeting of the Working Group.

105. The representative of Mali requested that the compilation be made available in all six languages of the United Nations. The Secretariat said that it would be happy to do so, subject to the normal United Nations rules governing the control and limitation of documentation.

106. During the adoption of the report, the representative of Mexico expressed support for an earlier statement made by Brazil that the Co-Chairs should be strongly urged to continue their consultations during the inter-sessional period.

107. The representative of Canada said that, while he did not object to the systematic insertion of the words "including proposals" after the word "statements" prefacing the list of speakers under each agenda item, he believed that it was unnecessary to make the distinction, given that "proposals" and "statements" were of equal significance.

**ITEM 7. CLOSURE OF THE MEETING**

108. After the customary exchange of courtesies, the Ad Hoc Open-ended Working Group was declared closed at 7 p.m. on 12 October 2007.

109. Statements were made by the representatives of Australia, Canada, Malaysia (on behalf of the Like-minded Megadiverse Countries), Namibia (on behalf of the African Group), Portugal (on behalf of the European Community and its member States), Ukraine (on behalf of the Central and Eastern European Group) and the Indigenous Youth Caucus.

110. The Executive Secretary also made a statement.

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