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AD HOC OPEN-ENDED WORKING GROUP ON
ACCESS AND BENEFIT-SHARING
Fifth meeting
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**REPORT OF THE MEETING OF THE GROUP OF TECHNICAL EXPERTS ON AN
INTERNATIONALLY RECOGNIZED CERTIFICATE OF ORIGIN/SOURCE/LEGAL
PROVENANCE**

INTRODUCTION

A. Background

1. In paragraph 1 of its decision VIII/4 C, the Conference of the Parties to the Convention on Biological Diversity decided:

“[T]o establish a group of technical experts to explore and elaborate possible options, without prejudging their desirability, for the form, intent and functioning of an internationally recognized certificate of origin/source/legal provenance and analyse its practicality, feasibility, costs and benefits, with a view to achieving the objectives of Article 15 and 8(j) of the Convention. The Expert Group shall provide technical input to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and will operate in accordance with the following terms of reference:

“(a) Consider the possible rationale, objectives and the need for an internationally recognized certificate of origin/source/legal provenance;

“(b) Define the potential characteristics and features of different options of such an internationally recognized certificate;

“(c) Analyse the distinctions between the options of certificate of origin/source/legal provenance and the implications of each of the options for achieving the objectives of Articles 15 and 8(j) of the Convention;

“(d) Identify associated implementation challenges, including the practicality, feasibility, costs and benefits of the different options, including mutual supportiveness and compatibility with the Convention and other international agreements.”

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2. In paragraph 2 of the same decision, the Conference of the Parties also decided “that the group of experts shall be regionally balanced and composed of 25 experts nominated by Parties and 7 observers from, *inter alia*, indigenous and local communities, industry, research institutions/academia, botanical gardens, other *ex situ* collection holders and representatives from relevant international organizations and agreements”. It further requested the Executive Secretary to recommend the list of selected experts and observers for the approval of the Bureau.

3. Accordingly, the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance met in Lima, from 22 to 25 January 2007, in accordance with the above-mentioned decisions of the Conference of the Parties. The meeting was hosted by the Government of Peru with financial support from the Government of Spain.

B. Attendance

4. In accordance with decision VIII/4 C, 25 participants were selected among government-nominated experts from each geographic region, taking into account their expertise, the need to ensure regional distribution, and gender balance. In addition, seven observers were selected from among representatives of indigenous and local communities, industry, research institutions/academia, botanical gardens, other *ex situ* collection holders and relevant international organisations and agreements. The list of selected experts and observers was approved by the Bureau of the Conference of the Parties.

5. The meeting was attended by experts nominated by Algeria, Argentina, Australia, Belgium, Brazil, Canada, China, Costa Rica, Cuba, the Czech Republic, the European Community, Ethiopia, Finland, India, Japan, Madagascar, Malaysia, Mexico, Mozambique, Niger, Peru, the Russian Federation, Spain, and Thailand.

6. Representatives of the following organizations participated in the meeting as observers: Royal Botanic Gardens Kew, Tebtebba Foundation, International Chamber of Commerce, the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (FAO), Bioversity International (formerly IPGRI), the National Institutes of Health of the United States of America, and the United Nations University Institute of Advanced Studies (UNU/IAS).

7. In addition, the Co-Chairs of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, a representative of the President of the eighth meeting of the Conference of the Parties to the Convention (Brazil), and a representative of the host country of the ninth meeting of the Conference of the Parties (Germany) attended as *ex officio* observers.

ITEM 1. OPENING OF THE MEETING

8. The meeting was opened at 9 a.m. on Monday, 22 January 2007.

9. The President of the National Council for the Environment of Peru (CONAM), Mr. Manuel Ernesto Bernales Alvarado, welcomed all participants in the meeting and emphasized the significance of the commitment of the international community for the conservation of life on Earth and sustainable development and the need to ensure that conservation and sustainable use led to adequate food, improved health standards, and other necessities for people, and that access to genetic resources and advancement of biotechnology were essential to the achievement of these goals. He reiterated that today more than ever, developing countries must do away with malnutrition, environmental degradation and child mortality, and reduce the gap between the rich and the poor. Genetic resources and progress in biotechnology through information was a key to the achievement of these objectives. Hence, the urgency of creating a certificate for genetic resources. Finally, he wished the participants a very fruitful meeting.

10. The Under Secretary for Multilateral Affairs of the Department of External Relations of Peru, Ambassador Antonio García Revilla, welcomed participants and expressed his conviction that the discussions on a certificate of origin/source/legal provenance would assist in a decisive manner the important process of negotiation that sought to ensure a fair and equitable participation of all peoples in the benefits of access to genetic resources. He added that the Government of Peru was convinced of the legitimacy of, and committed to, this task. Therefore, Peru had not hesitated in supporting the organization of this event, which through its specialized and technical scope, would contribute to the construction of a new regime that would reduce the gap between the developed countries and the others. Participants had the opportunity to act in a visionary manner in this change, which is urgently needed.

11. Mr. Olivier Jalbert, Deputy Executive Secretary of the Convention on Biological Diversity, speaking on behalf of Mr. Ahmed Djoghla, the Executive Secretary of the Convention, expressed his gratitude to the Government of Peru for hosting this meeting. He noted that Peru was an ideal venue for such meeting in light of its exceptionally rich biodiversity and its vast traditional knowledge inherited from ancient civilizations. He also expressed his deep appreciation to the Government of Spain for the generous financial support, which had made this meeting possible, and recalled that Spain had been a staunch supporter of the Convention since its entry into force, including in the areas of access and benefit-sharing and traditional knowledge. In that connection, he recalled that Spain had hosted in the city of Granada the fourth meetings of the Working Group on Access and Benefit-sharing and of the Working Group on Article 8 (j) and Related Provisions. Mr. Jalbert recalled the mandate of the Group of Technical Experts as contained in the decision VIII/4 C of the Conference of the Parties and emphasized that the participants had been selected on the basis of their expertise and were requested to provide technical expert advice on the issues listed in the decision of the Conference of the Parties with a view to assisting the negotiations of an international regime on access and benefit-sharing in the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Officers

12. At the opening session, on 22 January 2007, participants elected Ms. Monica Rosell (Peru) as Chair of the meeting.

2.2. Adoption of the agenda

13. The Group of Technical Experts adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/GTE-ABS/1/1):

1. Opening of the meeting.
2. Organizational matters:
3. Possible options for the form, intent and functioning of an internationally recognized certificate of origin/source/legal provenance and analysis of its practicality, feasibility, costs and benefits.
 - 3.1 Consideration of the possible rationale, objectives and need for an internationally recognized certificate of origin/source/legal provenance;
 - 3.2 Definition of the potential characteristics and features of different options of such an internationally recognized certificate;

- 3.3 Analysis of the distinctions between the options of certificate of origin/source/legal provenance and the implications of each of the options for achieving the objectives of Articles 15 and 8(j) of the Convention on Biological Diversity;
 - 3.4 Identification of associated implementation challenges, including the practicality, feasibility, costs and benefits of the different options, including mutual supportiveness and compatibility with the Convention and other international agreements.
4. Other matters.
 5. Adoption of the report.
 6. Closure of the meeting.

2.3. Organization of work

14. At its opening session, the Group decided to work initially in plenary, with the possibility of breaking up in smaller working groups, as needed, during the second or third days.

ITEM 3. POSSIBLE OPTIONS FOR THE FORM, INTENT AND FUNCTIONING OF AN INTERNATIONALLY RECOGNIZED CERTIFICATE OF ORIGIN/SOURCE/LEGAL PROVENANCE AND ANALYSIS OF ITS PRACTICALITY, FEASIBILITY, COSTS AND BENEFITS.

15. During the 1st working session, on 22 January, the representative of the Secretariat gave an overview of the issues for consideration with regard to an internationally recognized certificate of origin/source/legal provenance based on written submissions of Parties and stakeholders, as well as available literature. The representative of the United Nations University Institute of Advanced Studies presented the results of the ABS Dialogue on the Role of Documentation in ABS and TK Governance, held also in Lima, on 21 January 2007, back to back with the meeting of the Group of Technical Experts.

16. During the 1st to the 4th sessions, on 22 and 23 January, the Group discussed in plenary the various issues contained in the four sub-items of agenda item 3.

(a) Consideration of the possible rationale, objectives and need for an internationally recognized certificate of origin/source/legal provenance;

(b) Definition of the potential characteristics and features of different options of such an internationally recognized certificate;

(c) Analysis of the distinctions between the options of certificate of origin/source/legal provenance and the implications of each of the options for achieving the objectives of Articles 15 and 8(j) of the Convention on Biological Diversity;

(d) Identification of associated implementation challenges, including the practicality, feasibility, costs and benefits of the different options, including mutual supportiveness and compatibility with the Convention and other international agreements.

17. In addressing the item, the Group had before it a note by the Executive Secretary entitled "Consideration of an internationally recognized certificate of origin/source/legal provenance" (UNEP/CBD/GTE-ABS/1/2) and the compilation of submissions received from Parties, Governments,

indigenous and local communities, international organizations and relevant stakeholders regarding an internationally recognized certificate of origin/source/legal provenance (UNEP/CBD/GTE-ABS/1/3 and Add.1-3).

18. At the 5th session, on 24 January, the Group decided to break into three small working groups to develop models for what would be needed in a legally binding system, a voluntary system and a mixed system for an eventual certificate of compliance, with consideration of the following specific issues relating to an internationally recognized certificate: scope, feasibility, cost, information to be contained in the certificate, form, process, institutional measures, and consequences.

19. At the 6th session, on 24 January, the Group reconvened in plenary to consider the outcome of the work of the three small working groups with a view to the elaboration of the report of the Group. Discussions continued in plenary at the 7th session, on 25 January, on the basis of a draft prepared by the Chair with the assistance of the Secretariat based on the discussions of the previous days.

20. At its 8th session, on 25 January, the Group adopted its report. The outcome of deliberations is contained in the annex to the present report.

ITEM 4. OTHER MATTERS

21. Participants expressed their appreciation to the Government of Peru for hosting the meeting and to the Government of Spain for providing the necessary financial support.

ITEM 5. ADOPTION OF THE REPORT

22. The present report was adopted at the 8th session of the meeting, on 25 January 2007.

ITEM 6. CLOSURE OF THE MEETING

23. Following the customary exchange of courtesies, the meeting was closed at 8 p.m. on Thursday, 25 January 2007.

*Annex***OUTCOME OF THE MEETING OF THE GROUP OF TECHNICAL EXPERTS ON AN INTERNATIONALLY RECOGNIZED CERTIFICATE OF ORIGIN/SOURCE/LEGAL PROVENANCE**

1. The Group of Technical Experts attempted to provide information and guidance in response to each of the elements contained in decision VIII/4 C, paragraph 1, of the Conference of the Parties. The following reflects the outcome of discussions without prejudice to the desirability of the options or agreement on any specific option.

A. *Possible rationale, objectives and the need for an internationally recognized certificate of origin/source/legal provenance*

2. Any option considered should contribute to achieving the objectives of the Convention. The group was aware that all countries are both providers and users of genetic resources.

3. National legal systems alone are not sufficient to guarantee benefit-sharing once genetic resources have left the provider country. In this respect, the certificate as part of a broader access and benefit-sharing regime, could be an important tool to reduce this limitation.

4. A certificate could assist to address a number of concerns of the Parties and therefore cover several other objectives. The Group identified the following:

- (a) Legal certainty;
- (b) Transparency;
- (c) Predictability;
- (d) Benefit-sharing facilitation;
- (e) Facilitation of legal access with minimal transaction costs and delay;
- (f) Technology transfer;
- (g) Preventing misappropriation;
- (h) Minimizing bureaucracy ;
- (i) Supporting compliance with national law and mutually agreed terms;
- (j) Enabling and facilitating cooperation in monitoring and enforcement of access and benefit-sharing arrangements;
- (k) Facilitating development of national access and benefit-sharing frameworks;
- (l) Protection of traditional knowledge.

5. Depending on the model, advantages of adopting a certificate could include, in addition, ensuring greater compliance with requirements of the Convention, assisting the fair and equitable sharing of the monetary and non-monetary benefits from the utilization of genetic resources and associated traditional knowledge, and facilitating cooperation among different jurisdictions. Another advantage could arise from simplifying access processes to genetic resources.

6. Achievement of these objectives will depend on the specific characteristics of the model.

B. Distinctions between the options of certificate of origin/source/legal provenance and the implications for Articles 15 and 8(j) of the Convention

7. After due deliberations, the Group discussed further the definitions, similarities and differences between a certificate of origin/source/legal provenance. The Group recognized that the basic role of the certificate is to provide evidence of compliance with national access and benefit-sharing regimes. Thus, it found it practical to refer to the certificate as a certificate of compliance with national law, in accordance with the Convention.

8. The certificate of compliance would support the effective implementation of Article 15 and Article 8(j) of the Convention, given the appropriate national framework.

C. Potential characteristics and features of different options of such an internationally recognized certificate

9. The Group identified potential features and characteristics of the certificate, as well as various options with respect to the obligations of users and providers of genetic resources.

10. The Group considered that the sovereign rights of Parties over their natural resources allowed them to regulate access and to determine the range of genetic resources and associated traditional knowledge that could be covered, providing flexibility to the Parties and avoiding the need to harmonize national access legislation and thereby significantly reducing implementation costs. This may also allow Parties to include derivatives in the national system if they so wish. It was felt that some harmonization of user measures and checkpoints may be necessary.

11. In order to facilitate and ensure the fair and equitable sharing of benefits, there was a need to provide greater transparency regarding the access to and use of genetic resources and associated traditional knowledge and to ensure compliance with access and benefit-sharing requirements in both user and provider countries. It was agreed that a national certificate, with standard features to allow its international recognition, in combination with control points to be established in the user countries to monitor the use of genetic resources and associated traditional knowledge in accordance with national laws, including prior informed consent and mutually agreed terms, was a possible way to meet these goals. This would require an implementation effort on the part of both providers and users.

12. Considering that there is a conceptual link between the sharing of benefits and conservation and sustainable use, it is important to ensure that countries and relevant indigenous and local communities that conserve and sustainably use biological diversity should be beneficiaries of this system.

13. In accordance with its mandate, the group assessed the practicality, feasibility, costs and benefits of such a system and examined various options for the implementation of the certificate. These options were:

	<i>Provider</i>	<i>User</i>
Option 1	All provider countries required to provide a certificate	All user countries required to request a certificate
Option 2	National discretion to provide a certificate	All user countries required to request a certificate
Option 3	All provider countries required to provide a certificate	National discretion to request a certificate
Option 4	National discretion to provide a certificate	National discretion to request a certificate

14. The combination of these options could lead to several models ranging from models based on purely voluntary instruments to mandatory ones and those having a mixture of voluntary and mandatory instruments.

Nature

15. In all the options presented, the certificate of compliance with national access and benefit-sharing legislation is considered to be a public document to be issued by a competent national authority appointed in accordance with national law, to be reviewed as appropriate at checkpoints by user countries.

Scope

16. Under all models considered, in principle, all types of genetic resources could be covered by the system, in accordance with national law. In a system providing for the mandatory issuance of a certificate in all provider countries, such a system should be in accordance with the scope of the Convention. However in a voluntary mechanism in which the issuance and request of the certificate is discretionary, the scope could even go beyond that of the Convention on Biological Diversity.

17. It was considered that providers may establish general or specific exemptions ^{1/} for specific purposes, limited to matters of public interest, such as health.

18. With regard to plant genetic resources for food and agriculture, the Group recognized that they fall within the scope of the International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations and that duplications with that treaty should be avoided.

19. With respect to traditional knowledge associated with genetic resources, the Group felt that its intangible nature poses practical difficulties in some cases, and distinct implementation challenges hence requiring special consideration. The country of origin should consider including traditional knowledge in the certificate, in accordance with national legislation. Further exploration may be needed in order to determine whether the certificate should be extended to traditional knowledge.

20. In order to determine whether the certificate should apply to genetic resources used for scientific research, it was felt that possible implications should be further assessed in order to avoid impeding such research and promote incentives. Various alternatives could be considered, such as excluding genetic resources used for research purposes, providing clear demarcation between commercial and non-commercial activities or establishing a simplified procedure for the issuance of the certificate.

21. In all the models presented, it was agreed that the certificate would serve to provide evidence of compliance with national access and benefit-sharing legislation, as may be required at specific checkpoints to be established in user countries. These checkpoints may be established to monitor compliance in relation to a range of possible uses. The certificate, in accordance with national law, could establish specific uses of the resources accessed.

^{1/} In accordance with decision II/11, paragraph 2, of the Conference of the Parties, human genetic resources are beyond the scope of the Convention.

Content and format

22. To facilitate international recognition of the national certificates, the certificate identified by a codified unique identifier ^{2/} could contain the following minimum information:

- (a) Issuing national authority;
- (b) Details of the provider;
- (c) A codified unique alpha numeric identifier;
- (d) Details of the rights holders of associated traditional knowledge, as appropriate;
- (e) Details of the user;
- (f) Subject-matter (genetic resources and/or traditional knowledge) covered by the certificate;
- (g) Geographic location of the access activity;
- (h) Link to mutually agreed terms;
- (i) Uses permitted and restrictions of use;
- (j) Conditions of transfer to third parties;
- (k) Date of issuance.

23. A standardized internationally recognized format for certificates was considered most appropriate. Certificates, should, where possible, provide a link to a national database providing non confidential information of prior informed consent (PIC) and mutually agreed terms (MAT), as appropriate.

24. In designing the content of certificates and related information on PIC and MAT, information to be provided should be gauged to take into account relevant requirements of the checkpoints.

25. The use of a freely available read-only access system based on a unique identifier (alphanumeric code) that links to national databases for additional information was considered desirable. Nevertheless, differences in the capacities of the countries to implement this system were noted. Any system would need to be flexible enough to allow for a mixture of paper and electronic formats.

26. Use of unique identifiers would enable any subsequent identification of material to relate back to the certificate. Transfers to third parties should require maintenance of the link with the certificate and the mutually agreed terms applying to the resources.

27. It is desirable to have some degree of standardization when there is a sub-identification of genetic resources, although it may not be feasible initially. In addition, measures necessary to ensure security should be considered as well as the costs of establishing such a system and the security measures included.

28. Countries that cannot provide for the mandatory issuance of a certificate may wish to consider its issuance on a discretionary basis in light of the benefits for both providers and users that may derive from standard practice in all countries.

^{2/} For example, code certificate BR 2007 N XXXXXXXXX. This would designate a resource provided by Brazil under a certificate issued in 2007 for non-commercial purposes.

Procedure

In the provider country

29. A national authority in charge of issuing the certificate should be designated and listed in a common international database. Furthermore, countries should be encouraged to streamline rather than add to current internal mechanisms for access, and issuance of permits, contracts and certificates.

30. The issuance of the certificate will be triggered at the request of a user. Countries will be encouraged to issue a certificate as soon as possible after the request and to establish a simple procedure in order to increase incentives for the use of the certificate. While a certificate should be requested as early as possible, a user should have the possibility to request it at any time or at the request of the checkpoint. Issuance could also be an automatic act triggered by the granting of access or agreement on mutually agreed terms.

In the user country

31. One or more national authority or entity identified as checkpoint(s) should be appointed by the competent national authority of the user country and listed in the common international database. It would be desirable that the latter be the same issuing authority as when the country is a provider.

32. Checkpoints identified were:

- (a) Registration points for commercial applications (e.g. product approval processes);
- (b) Intellectual property rights offices (in particular patent and plant variety authorities).

33. In the case of non commercial uses, additional checkpoints could be further explored such as entities funding research, publishers and *ex situ* collections.

34. The designation of a national authority as a focal point could be also considered.

35. Opinions varied on the requirements for reporting at checkpoints. Options include:

(a) No reporting to a central clearing-house mechanism or a national authority required; however the user would be obligated to record the certificate identifier on publication, on applications for patents and commercial product registration;

- (b) Reporting to the clearing-house mechanism.

At the international level

36. An international registry containing electronic copies of the certificate or the unique identifier of the certificate could serve as a clearing house mechanism (CHM). Countries could be required to notify the international registry when they issue a certificate. Checkpoints may be required to notify this registry upon the presentation of a certificate. A simple procedure for notification could be agreed. Opinions varied on the amount of information to be stored in the clearing-house mechanism. It ranged from only the unique identifier with a link to the issuing country database to duplication of the information in the certificate.

37. A committee could be constituted to consider logistical aspects of implementation.

38. Harmonization of processes in both provider and user countries related to the issuing and monitoring of certificates may enhance the efficiency and legal certainty of the whole system.

Consequences of infringement

39. Legal consequences will vary depending on the nature of the procedure under which the presentation of the certificate is requested. In cases where the certificate is required but not presented, the consequences may range from the suspension of the procedure until due presentation of the certificate to its withdrawal. In case of false representation or forgery, legal consequences may entail administrative sanctions, including fines; criminal sanctions; and, judicial action on the part of the issuing country. In a voluntary system, legal consequences will not apply.

D. Implementation challenges, including the practicality, feasibility, costs and benefits

40. There will be some implementation costs, particularly in the setting up of national authorities (where they have not yet been established), in capacity building and in the maintenance of the international registry as suggested. Other costs may include opportunity costs, direct costs and transaction costs. The implementation and opportunity costs may escalate if for example the model establishes the need of substantive review of certificates on both sides, considers excessive tracking, reporting and monitoring, generates more bureaucracy than required, slows down procedures unnecessarily or discourages research and product development.

41. Additional implementation challenges or costs may be related to the coexistence of genetic resources inside and outside the certificate system, the setting up and maintenance of checkpoints in user countries and the possibility of enforcing the certificate across various jurisdictions.

42. It should be borne in mind that, to the extent that the international certificate could lower significantly the transaction costs and provide more flexibility (and legal certainty), it could balance the additional costs mentioned above, especially when considered in the long run. The certificate may also avoid the costs resulting from a growing number of uncoordinated national regimes.

43. In addition, a preliminary assessment of options was made in relation to practicality, feasibility, cost, and benefits. Among the key factors in assessment will be the extent to which each option provides the basis for a certificate system which reduces transaction costs, builds trusts between Parties and furthers the effective realization of the access and benefit-sharing provisions of the Convention.

44. In evaluating options available for a certificate system the group noted that legal certainty may be increased as the level of obligations to provide certificates in provider countries and request certificates in user countries increased. Conversely, the level of legal certainty may decrease as any system becomes more discretionary.

45. Analysis of feasibility requires consideration of political willingness, institutional capacity and changes necessary to make certificates a part of systems for the management and use of resources.

46. With regard to the issue of costs, it was considered necessary to take into account not only transaction costs but also direct costs associated with implementation. In some cases, while it is likely that initial costs would be high in the start up phase of a global regime, the transaction costs (e.g. marginal costs of each additional transaction) may under certain circumstances be relatively low.

47. The potential benefits of a certificate system to achieve the access and benefit-sharing objectives of the Convention are likely to increase with greater participation of parties at both the user and provider end.

48. The Group considers it useful for Governments, industry, the research sector, international institutions, indigenous and local communities to further study these issues.

Capacity development

49. The Group noted the important role that capacity development will play in securing the effective implementation of any certificate system. The costs of capacity-building may need to be shared by national authorities and the international community. While institutional costs may in large part be borne by national authorities, building technical expertise and technological capacity will require international support.
