

Decision VII/19

Access and benefit-sharing as related to genetic resources (Article 15)

A. Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization

The Conference of the Parties,

Recalling the evolutionary character of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization and the need to keep their implementation under review,

Recognizing that the Guidelines are making a useful contribution to the development of national regimes and contractual arrangements for access and benefit-sharing and to the implementation of the objectives of the Convention,

Recognizing further that some developing countries have encountered some constraints due to inadequate capacity to fully utilize the guidelines in the formulation of their national legislation of access and benefit sharing and related arrangements,

1. *Notes* the progress already accomplished and the need for further experience in the implementation of the Guidelines;
2. *Invites* Parties, Governments, indigenous and local communities and all relevant stakeholders to continue to promote the wide implementation of the voluntary Bonn Guidelines;
3. *Encourages* Parties, Governments, indigenous and local communities and all relevant stakeholders to further submit information on relevant experience and lessons learned, including successes and constraints, in the implementation of the Guidelines;
4. *Requests* the Executive Secretary to make this information available through appropriate means, including the clearing-house mechanism of the Convention.

B. Use of terms, definitions and/or glossary, as appropriate

The Conference of the Parties

Recalling the voluntary nature of the Bonn Guidelines,

Noting that the terms as defined in Article 2 of the Convention shall apply to the Bonn Guidelines on Access and Benefit Sharing in accordance with paragraph 8 of the Bonn Guidelines,

Noting further that a number of other relevant terms not defined in the Convention may need to be examined,

Bearing in mind the difficulties faced by some developing countries with respect to information technology and related infrastructure,

1. *Invites* Parties, Governments, relevant organizations, indigenous and local communities, and all relevant stakeholders, according to a format provided by the Secretariat, to submit to the Executive Secretary:

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

(b) Views on whether additional terms need to be considered, such as arbitrary restrictions;

2. *Requests* access and benefit-sharing national focal points within Governments to facilitate the process of gathering and submitting relevant information to the Secretariat, taking into account the need to consult widely, including with indigenous and local communities;

3. *Requests* the Executive Secretary to gather and compile the information referred to above and distribute this information through available means, including through the clearing-house mechanism of the Convention;

4. *Requests* the Executive Secretary to submit this compilation to the next meeting of the Ad Hoc Open Ended Working Group on Access and Benefit-sharing for its consideration and *requests* the Working Group to further examine the issue of use of terms not defined in the Convention including the possible establishment of an expert group to determine the need for definitions or a glossary, and to report back to the Conference of the Parties.

C. Other approaches, as set out in decision VI/24 B

The Conference of the Parties

Recognizing that a package of measures may be necessary to address the different needs of Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders in the implementation of access and benefit-sharing arrangements,

Acknowledging that existing other approaches could be considered to complement the Bonn Guidelines and are useful tools in assisting implementation of access and benefit-sharing provisions of the Convention,

Stressing the need to further examine other approaches set out in decision VI/24 B, and additional approaches such as interregional and bilateral arrangements as well as an international certificate of legal provenance/origin/source, in particular the operational functionality and cost effectiveness of such an international certificate,

1. *Invites* Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders, to submit to the Secretariat their views and relevant information on additional approaches as well as regional, national and local experiences on existing approaches, including on codes of ethics;

2. *Requests* the Executive Secretary to further compile information on existing complementary measures and approaches, and experiences with their implementation, and to disseminate such information to Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders through, *inter alia*, the clearing-house mechanisms of the Convention;

3. *Requests* the Open-ended Working Group on Access and Benefit-sharing to further consider the issue of additional approaches, in a cost effective way at an appropriate time, and, to this end, *requests* the Executive Secretary to prepare a report on the basis of the submissions received.

D. International regime on access to genetic resources and benefit-sharing

The Conference of the Parties,

Reaffirming that the fair and equitable sharing of the benefits arising out of the utilization of genetic resources is one of the objectives of the Convention on Biological Diversity, in accordance with Article 1 of the Convention,

Reaffirming the sovereign rights of States over their natural resources and that the authority to determine access to genetic resources rests with the national Governments and is subject to national legislation, in accordance with Article 3 and Article 15, paragraph 1, of the Convention,

Reaffirming the commitment of Parties in Article 15, paragraph 2 of the Convention to "endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention",

Recalling paragraph 44 (o) of the Plan of Implementation of the World Summit on Sustainable Development, which calls for action to "negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources",

Further recalling resolution 57/260 of 20 December 2002, adopted by the United Nations General Assembly at its fifty-seventh session, inviting the Conference of the Parties to take appropriate steps with regard to the commitment made at the World Summit on Sustainable Development "to negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources",

Recalling the recommendation of the Inter-Sessional Meeting on the Multi-Year Programme of Work of the Conference of the Parties up to 2010 inviting the Ad Hoc Open-ended Working Group on Access and Benefit-sharing "to consider the process, nature, scope, elements and modalities of an international regime on access to genetic resources and benefit-sharing and to provide advice to the Conference of the Parties at its seventh meeting on this issue",

Noting the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, adopted at the sixth meeting of the Conference of the Parties, "as a useful first step of an evolutionary process in the implementation of relevant provisions of the Convention related to access to genetic resources and benefit-sharing",

Recalling also paragraph 44 (n) of the Plan of Implementation of the World Summit on Sustainable Development which calls for action to promote the wide implementation of and continued work on the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits arising out of their Utilization, as an input to assist the Parties when developing and drafting legislative, administrative or policy measures on access and benefit-sharing as well as contract and other arrangements under mutually agreed terms for access and benefit-sharing",

Recalling further the Millennium Development Goals and the potential role of access and benefit-sharing in poverty eradication and environmental sustainability,

Taking into account Articles 8(j), 15, 16, 17, 18, 19, paragraphs 1 and 2, 20, 21 and 22 of the Convention on Biological Diversity,

Reaffirming the commitment by Parties, subject to national legislation, to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from their utilization,

Noting the work being carried out under the framework of the Convention by the Working Group on Article 8(j) and Related Provisions of the Convention,

Recognizing that the Convention is the key instrument for the conservation, sustainable use and fair and equitable sharing of benefits arising out of the utilization of genetic resources and bearing in mind the work related to access to genetic resources and benefit-sharing carried out in other relevant international interGovernmental organizations,

Recognizing also the important contribution of the FAO International Treaty for Plant Genetic Resources for Food and Agriculture that was negotiated in harmony with the Convention on Biological Diversity,

Recognizing that Parties that are countries of origin of genetic resources may be both users and providers and that Parties that have acquired these genetic resources in accordance with the Convention on Biological Diversity may also be both users and providers,

Recalling that the Bonn Guidelines indicate that Parties and stakeholders may be both users and providers, noting that these terms may still need to be examined and clarified,

Recognizing that the regime should be practicable, transparent, and efficient and avoid arbitrary treatment, consistent with the provisions of the Convention,

Recalling that the international regime should recognize and shall respect the rights of indigenous and local communities,

Noting that there is a need for further analysis of existing national, regional and international legal instruments and regimes relating to access and benefit-sharing and experience gained in their implementation, including gaps and their consequences,

Noting that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing has identified possible components of an international regime, without prejudging the outcome,

1. *Decides* to mandate the Ad Hoc Open-ended Working Group on Access and Benefit-sharing with the collaboration of the Ad Hoc Open ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, ensuring the participation of indigenous and local communities, non-Governmental organizations, industry and scientific and academic institutions, as well as interGovernmental organizations, to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing with the aim of adopting an instrument\instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and the three objectives of the Convention;

2. *Recommends* that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing should operate in accordance with the terms of reference contained in the annex to this decision;

3. *Request* the Executive Secretary to make the necessary arrangements for the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to be convened twice before the eighth meeting of the Conference of the Parties with one meeting from the core budget back to back with the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions and the other from voluntary contributions;

4. *Requests* the Ad Hoc Open-ended Working Group on ABS to report on progress to the Conference of the Parties at its eighth meeting;

5. *Invites* the United Nations Environment Programme, the Food and Agriculture Organization of the United Nations, the World Trade Organization, the World Intellectual Property Organization, the International Union for the Protection of New Varieties of Plants, to cooperate with the Ad Hoc Open-ended Working Group on Access and Benefit-sharing in elaborating the international regime;

6. *Encourages* Parties, Governments, international organizations and all relevant stakeholders to provide the ways and means to allow for sufficient preparation and to facilitate effective participation of indigenous and local communities in the process of the negotiation and elaboration of an international regime;

7. *Recommends* the promotion of the participation of all relevant stakeholders, including non-Governmental organizations and the private sector, and indigenous and local communities;

8. *Invites* Parties, Governments, international organizations, indigenous and local communities and all relevant stakeholders, to submit to the Executive Secretary their views, information and analysis on the elements of the international regime as soon as possible;

9. *Requests* the Executive Secretary to compile the submissions received and to make them available through the clearing-house mechanism and other means for the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

Annex

TERMS OF REFERENCE FOR THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

(a) **Process:**

(i) To elaborate and negotiate the nature, scope and elements of an international regime on access and benefit-sharing within the framework of the Convention on Biological Diversity, as contained in paragraphs (b), (c) and (d) below, drawing on *inter alia* an analysis of existing legal and other instruments at national, regional and international levels relating to access and benefit-sharing, including: access contracts; experiences with their implementation; compliance and enforcement mechanisms; and any other options.

(ii) As part of the work, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing will examine whether and to what extent possible elements as contained in paragraph (d) below are part of these instruments and determine how to address the gaps.

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

(c) **Scope:**

- (i) Access to genetic resources and promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources in accordance with relevant provisions of the Convention on Biological Diversity;
- (ii) Traditional knowledge, innovations and practices in accordance with Article 8(j).

(d) **Elements:** The following elements shall be considered by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing for inclusion in the international regime, *inter alia*:

- (i) Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention;
- (ii) Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention;
- (iii) Measures for benefit-sharing including, *inter alia*, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits;
- (iv) Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity;
- (v) Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources;
- (vi) Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms;
- (vii) Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability;
- (viii) Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some *in situ* genetic resources and associated traditional knowledge;
- (ix) Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity;
- (x) Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j);
- (xi) Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity;
- (xii) Addressing the issue of derivatives;
- (xiii) Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge;
- (xiv) Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights;
- (xv) Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located;
- (xvi) Customary law and traditional cultural practices of indigenous and local communities;
- (xvii) Capacity-building measures based on country needs;
- (xviii) Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities;
- (xix) Means to support the implementation of the international regime within the framework of the Convention;
- (xx) Monitoring, compliance and enforcement;

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

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

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

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

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

The Conference of the Parties,

Recalling paragraph 8 of its decision VI/24 A,

Recalling also Article 8(j), Article 15, paragraphs 1, 3 and 7, Article 16, paragraph 3, and Article 19, paragraphs 1 and 2, of the Convention,

Recalling further paragraph 16 (d) of the Bonn Guidelines on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization, which identifies a number of measures that could be taken by Contracting Parties with users of genetic resources under

their jurisdiction, to support compliance with prior informed consent of the Contracting Party providing such resources and with mutually agreed terms on which access was granted,

Noting that a number of Governments have taken initiatives at the national and regional levels to establish measures to support compliance with prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted,

Noting further the ongoing activities and processes in relevant international forums such as the World Intellectual Property Organization, the TRIPs Council of the World Trade Organization, and the Commission on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations acting as the Interim Committee for the International Treaty on Plant and Genetic Resources for Food and Agriculture, regarding measures to support compliance with prior informed consent,

Aware that further work is required on a number of issues, including analysis of: (i) specific measures to support compliance, in accordance with the sovereign rights of the country of origin of genetic resources, with the prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge; (ii) compliance measures existing in national laws; (iii) the extent and level of unauthorized access and misappropriation of genetic resources and traditional knowledge; and (iv) availability of remedies in user countries relating to non-compliance,

Recognizing that a number of critical issues, such as an international certificate of origin/source/legal provenance, and disclosure of origin of genetic resources and associated traditional knowledge, need to be addressed to support compliance with national legislation of countries of origin and prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted,

Recognizing further the need to ensure transparency in the international exchange of genetic resources and associated traditional knowledge,

Recalling paragraph 35 of decision VI/20 in which the Conference of the Parties recognized the leading role of the Convention on Biological Diversity in international biological diversity issues,

Noting with appreciation the Technical Study on Disclosure Requirements Concerning Genetic Resources and Traditional Knowledge prepared by World Intellectual Property Organization at the request of the Conference of the Parties in decision VI/24 C and considering the contents of the Technical Study to be helpful in the consideration of intellectual property-related aspects of user measures,

1. *Takes note* of ongoing initiatives at national, regional and international levels regarding measures to support compliance with national legislation, including prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted;

2. *Invites* Parties and Governments to continue taking appropriate and practical measures to support compliance with prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted. Such measures may include:

(a) Exchange of information between users and providers regarding legislative, administrative and policy measures existing in their jurisdiction relating to access and benefit-sharing;

(b) Incentive measures, as referred to in paragraph 51 of the Bonn Guidelines, to encourage users to comply with national legislation, including prior informed consent and mutually agreed terms, such as publicly sponsored research grants and voluntary certification schemes;

(c) Development of model/standard contractual agreements for different user groups and different genetic resources;

(d) Aspects related to the import and export of genetic resources, including regulations when feasible and as appropriate;

(e) Easy access to justice in cases of violation of legal provisions in provider and user countries;

(f) Administrative and judicial remedies, including penalties and compensation as provided by national laws;

(g) Monitoring;

3. *Invites* Parties to recognize that traditional knowledge, whether written or oral, may constitute prior art;

4. *Invites* Parties to establish national mechanisms to ensure compliance, when required by domestic law, with the obtaining of prior informed consent of indigenous and local communities regarding access to genetic resources and associated traditional knowledge;

5. *Invites* Parties to put in place mechanisms to ensure fair and equitable benefit-sharing at the national level with relevant stakeholders and indigenous and local communities;

6. *Requests* the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing to address issues related to an international certificate of origin/source/legal provenance, taking into account multilateral approaches to access to genetic resources and benefit-sharing, including issues such as feasibility, practicality and costs;

7. *Requests* the Ad hoc Open-ended Working Group on Access and Benefit-Sharing to identify issues related to the disclosure of origin of genetic resources and associated traditional knowledge in applications for intellectual property rights, including those raised by a proposed international certificate of origin/source/legal provenance, and transmit the results of this examination to the World Intellectual Property Organization and other relevant forums;

8. *Invites* the World Intellectual Property Organization to examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the Convention on Biological Diversity, issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications, including, *inter alia*:

- (a) Options for model provisions on proposed disclosure requirements;
- (b) Practical options for intellectual property rights application procedures with regard to the triggers of disclosure requirements;
- (c) Options for incentive measures for applicants;
- (d) Identification of the implications for the functioning of disclosure requirements in various World Intellectual Property Organization-administered treaties;
- (e) Intellectual property-related issues raised by proposed international certificate of origin/source/legal provenance;

and regularly provide reports to the Convention on Biological Diversity on its work, in particular on actions or steps proposed to address the above issues, in order for the Convention on Biological Diversity to provide additional information to the World Intellectual Property Organization for its consideration in the spirit of mutual supportiveness;

9. *Invites* the United Nations Conference on Trade and Development and other relevant international organizations to examine the issues in, and related to, the matters specified in paragraphs 7 and 8 in a manner supportive of the objectives of the Convention on Biological Diversity and prepare a report for submission to the on-going process of the work of the Convention on Biological Diversity on access and benefit sharing;

10. *Requests* the Executive Secretary to gather information, with the assistance of Parties, Governments and relevant international organizations, and undertake further analysis relating to:

- (a) Specific measures to support and ensure compliance with national legislation, prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted;
- (b) Existing measures to support compliance with national, regional, and international legal instruments;
- (c) The extent and level of unauthorized access and misappropriation of genetic resources and associated traditional knowledge;
- (d) Access and benefit-sharing arrangements existing in specific sectors;
- (e) Administrative and judicial remedies available in countries with users under their jurisdiction and in international agreements regarding non-compliance with the prior informed consent requirements and mutually agreed terms;
- (f) Existing practices and trends with regard to commercial and other utilization of genetic resources and the generation of benefits;
- (g) Measures that preserve and promote legal certainty for users over the terms and conditions of access and use;

and prepare a compilation of the information received and make this compilation available for the consideration of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its third meeting;

11. *Requests* the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to analyse the compilation prepared by the Executive Secretary in accordance with the preceding paragraph, and recommend to the Conference of the Parties at its eighth meeting further measures to support and ensure compliance with prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted.

F. Needs for capacity-building identified by countries to implement the Guidelines

The Conference of the Parties

Recalling decision VI/24 A, paragraph 8, in which the Conference of the Parties requested, the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing to advise the Conference of the Parties on needs for capacity-building identified by countries to implement the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization,

Mindful that capacity-building activities related to access and benefit-sharing are a crucial element in achieving the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, as well as the other two objectives of the Convention and the target to significantly reduce the rate of biodiversity loss by 2010,

Having considered the Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing developed by the Open-ended Expert Workshop on Capacity-building for Access to Genetic Resources and Benefit-sharing further to decision VI/24 B, paragraph 1,

Having considered the work done during the ninth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, held in Montreal from 10 to 14 November 2003, in preparing a programme of work on technology transfer and cooperation for consideration by the Conference of the Parties at its seventh meeting,

Recognizing that the Action Plan represents an important framework for the identification of capacity needs, priority areas requiring capacity-building, sources of funding and implementation of the identified needs and priorities,

Underlining that capacity-building should be a flexible, demand- and country-driven process requiring international and regional cooperation, as appropriate, involving indigenous and local communities as well as all relevant stakeholders,

Underlining also that the implementation of an international regime on access and benefit sharing and of national legislation on access and benefit-sharing could require additional activities to build capacity,

Taking note with appreciation of the report of the Open-ended Expert Workshop on Capacity-building for Access to Genetic Resources and Benefit-sharing and its work;

1. *Adopts* the Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing annexed to this decision;
2. *Invites* Parties and Governments and relevant organizations to use the Action Plan when designing and implementing national, regional and subregional plans and strategies to build capacities for access and benefit-sharing of genetic resources and related traditional knowledge;
3. *Urges* Parties and relevant organizations to provide financial and technical assistance to support developing countries, in particular, least developed countries, small island developing States, as well as countries with economies in transition, in implementing the Action Plan and the resulting national, regional and subregional plans and strategies;
4. *Encourages* Parties and Governments to provide for the full and effective involvement and participation of indigenous and local communities and all relevant stakeholders in the development and implementation of national capacity-building plans and strategies;
5. *Requests* Parties and Governments to make information available through the clearing-house mechanism and to include information in national reports regarding their implementation of capacity-building measures on access to genetic resources and related traditional knowledge, and benefit-sharing;
6. *Requests* the Executive Secretary to facilitate, including through the clearing-house mechanism, the sharing of relevant information among donor Parties and organizations to assist coordination, reduce duplication and identify gaps relevant to the implementation of the Action Plan.

Annex

ACTION PLAN ON CAPACITY-BUILDING FOR ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

A. Objective of the Action Plan

1. The objective of the Action Plan is to facilitate and support the development and strengthening of capacities of individuals, institutions and communities for the effective implementation of the provisions of the Convention relating to access to genetic resources and benefit-sharing, and in particular the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising Out of their Utilization, taking into account their voluntary nature. The implementation of the Action Plan at the local, national, subregional, regional and international levels should involve indigenous and local communities and all relevant stakeholders.
2. Capacity-building for access and benefit-sharing constitutes an integral part of efforts to build the capacities of Parties to manage and develop their genetic resources and should contribute to the conservation and sustainable use of biological diversity.
3. To achieve the objective, the Action Plan will provide a framework for identifying country, indigenous and local community and all relevant stakeholder needs, priorities, mechanisms of implementation and sources of funding.

B. Key areas requiring capacity-building

4. Key areas that require capacity-building initiatives should be considered in a flexible and transparent manner, based on a country-driven approach. This approach will take into account the different situations, needs, capabilities and stages of development of each country, as well as the different types of genetic resources and their respective characteristics, and will promote synergies between different initiatives related to capacity-building.
5. Capacities should be strengthened at the systemic, institutional and individual levels in the following key areas:

- (a) Institutional capacity-building:

- (i) Policy, legislative and regulatory frameworks;
 - (ii) Administrative framework;
 - (iii) Funding and resource management;
 - (iv) Mechanisms for follow-up, monitoring and assessment;
- (b) Assessment, inventory and monitoring of genetic resources, and traditional knowledge including taxonomic capacity, *inter alia*, within the context of the Global Taxonomy Initiative, and of *in situ* and *ex situ* conservation activities;
- (c) The capacity of indigenous and local communities to assess, inventory and monitor genetic resources and related traditional knowledge, with their approval and consent, using the Global Taxonomy Initiative and other relevant initiatives;
- (d) Bioprospecting, screening, DNA sequencing, characterization, product development and marketing;
- (e) Environmental, cultural, social and economic valuation of genetic resources, and associated traditional knowledge, innovations and practices, and market information, including sector-relevant production and marketing strategies;
- (f) Development by Contracting Parties with users of genetic resources under their jurisdiction of appropriate legal, administrative, or policy measures, as appropriate, to support compliance with prior informed consent of the Contracting Party providing such genetic resources and mutually agreed terms on which access was granted;
- (g) Inventory and case-studies of existing policy and legislative measures, and the development of appropriate policies and legislation;
- (h) Development of legislative, administrative and policy mechanisms for the protection of genetic resources and related traditional knowledge including, *inter alia*, the development of *sui generis* systems, the promotion of existing forms of protection of intellectual property rights and the support for community-based approaches of indigenous and local communities;
- (i) Development of national, regional, subregional and international information systems, and national, regional, subregional and international information management and exchange, linked with the clearing-house mechanism of the Convention;
- (j) Development and strengthening of the capacities of indigenous and local communities for participation in decision-making, policy formulation and implementation and for conservation, management and product development with regard to genetic resources and to enable them to benefit from the use of their traditional knowledge and practices related to genetic resources;
- (k) Public education and awareness focusing on indigenous and local communities and all relevant stakeholders at local, national and regional levels;
- (l) Human-resources development at all levels, including: legal drafting skills for development of access to genetic resources and benefit-sharing measures; contract-negotiation skills for indigenous and local communities and other relevant stakeholders; modalities for benefit-sharing; dispute resolution mechanisms;
- (m) Development of awareness with respect to conventions, norms and policies relating to intellectual property rights and trade and their interrelationship with genetic resources and traditional knowledge;
- (n) Strengthening inter-institutional linkages and processes with a view to ensuring more effective coordination;
- (o) Evaluation of how the access activity may impact on conservation and sustainable use of biodiversity, to determine the relative costs and benefits of granting access;
- (p) Clarification and/or recognition, as appropriate, of established rights and claims of indigenous and local communities over genetic resources and related traditional knowledge, innovations and practices, subject to collecting for scientific or potential commercial purposes and subject to national legal and policy frameworks;
- (q) Mechanisms to provide information to potential users, regulators and the public, international and national, on their obligations regarding access to genetic resources;

C. Mechanisms for the implementation of capacity-building in key areas

6. The following processes, measures and mechanisms could be used for the implementation of capacity-building activities for access to genetic resources and benefit-sharing: noting that measures directed towards the capacity-building needs of users and of providers should be mutually supportive.

7. Actions at multiple levels:

- (a) Awareness-raising for the issues at stake and identification of capacity needs at the local, national, subregional, and regional levels, taking into account, as appropriate, the work of the Global Environment Facility on national capacity self-assessment;

(b) Prioritization at the local, national, and regional levels of the key areas, drawing upon a range of existing expertise in academic, industrial and Government sectors and indigenous and local communities;

(c) Identification of existing and planned capacity-building initiatives, including capacity-building gaps, at the local, national, subregional, regional and international levels, both public and private, and their coverage, including by:

(i) National sources;

(ii) Bilateral sources;

(iii) Regional sources;

(iv) Multilateral agencies;

(v) Other international sources;

(vi) Indigenous and local communities;

(vii) Private sector, non-Governmental organizations and other stakeholders;

(d) Developing and enhancing synergies and coordination of capacity-building initiatives;

(e) Establishment of indicators for monitoring capacity-building implementation;

(f) Funding through the Global Environment Facility and other donors;

(g) The participation of the private sector, academic institutions, relevant institutions and organizations of indigenous and local communities, and non-Governmental organizations, as providers of capacity-building in specific areas, for example through collaborative research, transfer of technology and funding;

(h) Training workshops, train the trainers, exchange programmes and study trips;

(i) Full and effective involvement and participation of relevant stakeholders and indigenous and local communities, taking into account the tasks defined within the programme of work on the implementation of Article 8(j) and related provisions of the Convention;

(j) Development of audiovisual, multi-media and educational material.

8. Actions at the national level:

(a) Designation of national focal points and establishment of competent national authorities;

(b) Development of appropriate national access and benefit-sharing strategies, policies, legislation and regulatory frameworks;

(c) Integration of capacity-building for access to genetic resources and benefit-sharing within the framework of national biodiversity strategies and other related initiatives and strategies;

(d) Approaches for action, including timelines for the operation of capacity-building for access to genetic resources and benefit-sharing, as provided for in the appendix to this Action Plan;

(e) Scientific and technical areas, including research production and technology transfer relevant to access to and use of genetic resources and benefit-sharing;

(f) Development of instruments and tools, including indicators to monitor and assess the implementation of capacity-building for access to genetic resources and benefit-sharing at all stages, and the effectiveness of policy and legislative measures.

9. Actions at the regional and subregional levels and at the international levels:

(a) Regional and subregional collaborative arrangements;

(b) Assessment of resource requirements and development of a funding strategy;

(c) Scientific and technical cooperation and partnerships among Parties, and between Parties and relevant multilateral agencies and other organizations through, *inter alia*, the clearing-house mechanism of the Convention, and other relevant networks, including those of relevant indigenous and local communities and relevant stakeholders;

(d) Information exchange, through the clearing-house mechanism of the Convention, the use of the Internet, databases, CD-ROMs, hard copies and workshops;

- (e) Identification and dissemination of case-studies and best practices;
- (f) Coordination between multilateral and bilateral donors and other organizations;
- (g) Development of model agreements and codes of conduct for specific uses, users and sectors, where possible making use of work done in other forums;
- (h) The Global Taxonomy Initiative;
- (i) The roster of experts on access to genetic resources and benefit-sharing established under the Convention.

D. Coordination

10. In view of the multiplicity of actors undertaking capacity-building initiatives for access to genetic resources and benefit-sharing, mutual information- sharing and coordination at all levels should be promoted to encourage synergies and to identify existing gaps in coverage. At the international level, coordination is required with other relevant international regimes, in particular with capacity-building programmes under the International Treaty on Plant Genetic Resources for Food and Agriculture, and with the World Intellectual Property Organization to ensure synergies and complementarities.

11. While recognizing the country-driven nature of the Action Plan, regional and subregional approaches should be encouraged and facilitated to implement the Action Plan, noting in particular the special needs of small island developing States (SIDS). Such facilitation could include appropriate advice to the Global Environment Facility (GEF), including promotion of regional coordination among implementing agencies of capacity-building activities supported by GEF, the submission of relevant case-studies and the broader use of the clearing-house mechanism as a means, assisted by the Executive Secretary, of identifying opportunities for regional and subregional collaboration.

12. Parties, Governments and relevant international organizations should be encouraged to provide information to the Secretariat on steps taken, including by donors, towards the implementation of capacity-building measures, to be made available through the clearing-house mechanism of the Convention.

13. Parties may consider including in their national reports, websites and any other form of reporting, information on the implementation of capacity-building measures on access to genetic resources and benefit-sharing.

14. Coordination between the Ad Hoc Open-ended Inter-Sessional Working Group on Access and Benefit sharing and the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity in the continuing development of their programmes of work with respect to capacity-building for indigenous and local communities should be encouraged.

Appendix

Possible approaches for action

Recognizing that the status of policy development related to access and benefit-sharing differs among countries, the approaches for action necessary to implement the Action Plan on access and benefit-sharing are to be decided by countries according to their national needs and priorities,

Cognizant of the urgent need to build capacities in developing countries, in particular the least developed and small island developing States among them, as well as countries with economies in transition,

Building on the identified elements in the Action Plan and without prejudice to the timeframes indicated therein,

As a tool to assist countries to establish national priorities and to facilitate regional and subregional activities the following approaches for action, based on experience and past practice, are proposed for consideration.

Possible approaches for implementation of activities identified in the Action Plan

A. National level

1. Inventory of genetic resources and traditional knowledge and evaluation of their potential markets, as well as assessment of existing measures and practices relating to access and benefit-sharing.
2. Assessment of the effectiveness and adequacy of existing capacity.
3. Development of national access and benefit-sharing strategy or policy (determination of ownership or rights to provide resources, including rights of indigenous and local communities; traditional knowledge; private sector partnership; prior informed consent; implementation; conflict resolution).
4. Enhancing awareness and participation of indigenous and local communities and all relevant stakeholders.
5. Development of timelines, including short- and long-term requirements for internal and external funding.
6. Development and/or strengthening of institutional, administrative, financial and technical capacities, including designation of national focal points and competent authorities and development of national legislative measures.
7. Mechanism for handling access and benefit-sharing requests, including decision-making, as well as public information and participation.
8. Mechanisms for monitoring and compliance for access and benefit-sharing arrangements.
9. Appropriate information mechanisms.

B. Subregional and regional levels

1. Assessment of national, bilateral and multilateral funding.
2. Mechanisms for regional and subregional coordination and harmonization of access and benefit-sharing strategies, policies, and legislative measures, where appropriate. This may also include regional and subregional websites, databases, collaborative arrangements, advisory mechanisms, and centres of excellence and training.

C. International level

Effective functioning of the clearing-house mechanism, including the establishment of a database on capacity-building activities.

1. Effective functioning of the clearing-house mechanism, including the establishment of a database on capacity-building activities.
2. Enhancing the effectiveness and adequacy and coordination of financial resources to be provided by multilateral and bilateral donors and other donors to developing countries, in particular the least developed and small island developing States among them, as well as countries with economies in transition.
3. Development and effective use of the roster of experts.
4. Enhancing synergies and coordination with capacity-building initiatives carried out by the Food and Agriculture Organization of the United Nations (FAO), the World Intellectual Property Organization (WIPO) and other relevant organizations.
5. Strengthening South-South cooperation.
6. Regular review and provision of further guidance by the Conference of the Parties to the Convention.