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STATUS OF THE NEGOTIATIONS OF THE INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING

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Appendix

I. INTRODUCTION

1. This document provides a brief introduction to the on-going negotiations of the International Regime on Access and Benefit-sharing under the Convention on Biological Diversity (CBD). It contains the text which resulted from the seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (Working Group), which took place in Paris, France, from 1 – 8 April 2009. The text will form the basis for further negotiations at forthcoming meetings of the Working Group. In considering policies and arrangements for access and benefit-sharing for genetic resources for food and agriculture, the Commission may wish to take into account the draft objective, scope and operational text of the draft International Regime.

II. BACKGROUND

2. At its fifth meeting, in 2000, the Conference of the Parties of the CBD established the Ad Hoc Open-ended Working Group on Access and Benefit-sharing with the mandate to develop guidelines and other approaches to assist Parties with the implementation of the access and benefit-sharing provisions of the CBD. The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, developed by the Working Group, were adopted in 2002 to assist Parties when establishing administrative, legislative or policy measures on access and benefit-sharing and/or when negotiating contractual arrangements for access to genetic resources and benefit-sharing.¹

3. The World Summit on Sustainable Development was held in Johannesburg, South Africa, in September 2002, after the sixth meeting of the Conference of the Parties. Paragraph 44 (o) of the Plan of Implementation adopted by the Summit called 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".²

4. Further to the call for action by the World Summit on Sustainable Development, the Conference of the Parties of the CBD mandated the Working Group 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 8(j) of the Convention and the three objectives of the Convention.

5. The eighth meeting of the Conference of the Parties was held in March 2006 and requested the Working Group to continue the elaboration and negotiation of the international regime, and to complete its work at the earliest possible time before the tenth meeting of the Conference of the Parties in 2010.

6. At its ninth meeting in Bonn, in May 2008, the Conference of the Parties reiterated its instruction to the Working Group to complete the elaboration and negotiation of the international regime at the earliest possible time, before the tenth meeting of the Conference of the Parties. The Conference of the Parties further instructed the Working Group to finalize the international regime and to submit for consideration and adoption by the Conference of the Parties at its tenth meeting an instrument/instruments to effectively implement the provisions of Article 15 and Article 8(j) of the Convention and its three objectives, without in any way prejudging or precluding any outcome regarding the nature of such instrument/instruments.

7. The Conference of the Parties also decided that the Working Group should meet three times prior to the tenth meeting of the Conference of the Parties. The seventh meeting of the Working Group took place in Paris, France, from 1 – 8 April 2009. The Working Group addressed objective, scope, compliance, fair and equitable benefit-sharing and access, and entered into negotiations of operational text on these issues. The text containing the outcome of the

¹ <http://www.cbd.int/abs/bonn.shtml>

² http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf

meeting on those issues is given in the Appendix to this document.³ It will form the basis for further negotiations. The eighth meeting of the Working Group will be held in November 2009, and the ninth meeting in March 2010.

8. The text refers specifically to genetic resources for food and agriculture in section II, paragraphs 3(d); 5; 5.1; 5.2; 5.3; 6 and section III.C.3, paragraph g. Paragraph 6 of section II refers to the Commission on Genetic Resources for Food and Agriculture. In its paragraph 3(k), option 1 of section III.A.3 refers to “food and livelihood security benefits.”

III. GUIDANCE SOUGHT

9. The Commission is invited to take the current draft text of the International Regime into account, and especially text that refers specifically to genetic resources for food and agriculture, when considering arrangements and policies for access and benefit-sharing for genetic resources for food and agriculture.

³ The full report is available on the website of the Convention on Biological Diversity, at: <http://www.cbd.int/wgabs7/doc/>.

APPENDIX^{*}

INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING ^{4/5/}

I. OBJECTIVE

The objective of the International Regime on Access and Benefit-sharing is to effectively implement the provisions in Articles [1,] [3,] 8(j), 15, [16 and 19.2] of the Convention on Biological Diversity and pursue its three objectives by:

- [[Facilitating] [regulating] [transparent] [appropriate] access to [biological resources] genetic resources, [their derivatives][and products] [containing genetic material] [through a transparent regulatory framework]; [for environmentally sound uses recognizing 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.];]
- Ensuring [the establishment of enabling conditions for] the effective, fair and equitable sharing of benefits arising out of the utilization of [biological resources] genetic resources, [their derivatives][and products] and associated traditional knowledge;
- [Preventing the misappropriation and misuse of [biological resources] genetic resources, [their derivatives] and/or associated traditional knowledge;]
- [[Securing] [supporting] compliance [in user countries with] [the International Regime, and] [national laws and requirements] [with domestic regulatory ABS frameworks [in provider countries]], including prior informed consent and mutually agreed terms, [of the country [of origin] providing such resources or of the Party that has acquired those resources in accordance with the Convention on Biological Diversity];]

[taking into account [all rights over those resources] [all sovereign rights of States over their natural resources], including the rights of indigenous and local communities, [subject to national legislation] [and the United Nations Declaration on the Rights of Indigenous Peoples][, where appropriate]].

II. SCOPE

1. The International Regime on Access and Benefit-sharing applies to [all] [biological resources,] genetic resources, [including viruses and other pathogenic [, as well as potentially pathogenic] organisms and genetic sequences regardless of their origin] [derivatives,] [products] [benefits arising from commercial and other utilization] as well as [to their] [associated] traditional knowledge, innovations and practices [covered by the Convention on Biological Diversity] [in accordance with Article 8(j)] [within national jurisdiction and of a transboundary nature] [in accordance with the relevant provisions of the Convention on Biological Diversity] [subject [and mutually supportive] to other [relevant] international obligations] [and without prejudice to other international obligations]. [The International Regime will also apply to genetic resources of migratory species that for natural reasons are found on the territories of the Parties.]

[2. Subject to paragraph 1, the international regime on access and benefit-sharing applies to:

^{*} The following text was extracted from the document UNEP/CBD/WG-ABS/7/8. The document is available at: <http://www.cbd.int/doc/?meeting=abswg-07>

^{4/} For ease of reference, the headings in annex I to decision IX/12 reproduced in this document have been shaded.

^{5/} Reference to the International Regime on Access and Benefit-sharing in this text is without prejudice to the nature of the International Regime.

(a) Benefits [including access to [funding] and transfer of technology,] arising from commercial and other utilization] [from] [biological resources] [derivatives] [products] [genetic resources acquired after] [and associated traditional knowledge] [the effective date of] [the entry into force of] the [International Regime] [Convention on Biological Diversity];

(b) Continuing benefits [and benefits from new uses arising from commercial and other utilization of genetic resources, [biological resources], [products] [and derivatives] and associated traditional knowledge acquired prior to the entry into force of the Convention on Biological Diversity.] arising from commercial and other utilization taken prior to the coming into force of the Convention on Biological Diversity.]

(c) All intellectual property rights (IPRs) associated with research and technology arising from the use of all genetic resources, [biological resources], [their derivatives], [products] and associated traditional knowledge of indigenous and local communities]]

3. The International Regime on Access And Benefit-sharing does not apply to:

(a) [Human genetic resources;]

(b) [[Biological resources], genetic resources [derivatives][and products] that were acquired [before the entry into force of the Convention on Biological Diversity [for a Party]] [or before the effective date of the international regime];] [on the understanding that any additional obligations under the international regime on access and benefit-sharing will not apply retroactively.]]

(c) [[Biological resources], genetic resources [and/or derivatives][and products] which a Party decides to offer or maintain without access requirements and/or benefit-sharing, provided that the rights of that Party over those biological resources, genetic resources,[and/or derivatives][and products] are fully respected]

(d) [[Species] [Crops] [listed in Annex I of] [Genetic resources covered under] the International Treaty on Plant Genetic Resources for Food and Agriculture [unless they are used beyond the purpose of the said treaty];]

[Plant genetic resources for food and agriculture (PGRFA) accessed under the Multilateral System established under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and other plant genetic resources for food and agriculture, which a Contracting Party to the ITPGRFA has determined shall be subject to the Standard Material Transfer Agreement (SMTA) under the ITPGRFA. Plant genetic resources for food and agriculture which have been transferred by an IARC or other international institutions under the SMTA in accordance with the agreements between the Governing Body of the ITPGRFA and the IARCs and other international institutions.]

(e) [[[Biological resources] genetic resources [[derivatives],[products] including] marine genetic resources in areas beyond the limits of national jurisdiction;]

(f) [[Biological resources], genetic resources [derivatives] [products] located in the Antarctic Treaty Area[, which is the area south of latitude 60°S,][or the Area of the Convention on the Conservation of Antarctic Marine Living Resources];]

(g) [Commodities in trade;]

(h) [The exchange of genetic resources, [their derivatives,] [the biological resources containing them], [products] or their associated traditional knowledge among indigenous and local communities for their own consumption based on their customary practices;]

(i) [Specific uses of pathogens.]

4. [The International Regime on Access and Benefit-sharing should provide [[flexibility] to respect] existing [and allow for the implementation and potential and further development of other, more] [specialized international access and benefit-sharing systems].] [The international regime on access and benefit-sharing will not apply if and in so far as [determined by the

Governing Body of the international regime,] other more specialized international access and benefit-sharing systems apply.] [Nothing in the international regime will prevent the development, recognition and accommodation of intergovernmental agreements relating to access and benefit-sharing [, which as determined by the Governing Body of the international regime,] [achieves] that achieve the objectives of the Convention on Biological Diversity and are consistent with the provisions of the international regime.]

[OR]

[The International Regime on Access and Benefit-sharing and [other] relevant international treaties [shall][should] [be interpreted and applied] in harmony [and in a mutually supportive manner]. In the implementation and further development of the international regime, special consideration should be given to [other] intergovernmental multilateral agreements in regard to access to [biological resources] genetic resources [derivatives] [products] and associated traditional knowledge [in a manner that will not run counter to the objectives of the Convention on Biological Diversity and the international regime].]

[OR]

[The International Regime on Access and Benefit-sharing [shall] [should] [be interpreted and applied] in harmony [and in a mutually supportive manner] with [other] relevant international treaties on access and benefit-sharing.]

5. [This International Regime on Access and Benefit-sharing [shall] [should] [be interpreted and applied] in harmony [and in a mutually supportive manner] with the International Treaty on Plant Genetic Resources for Food and Agriculture [to ensure] their effective, adequate and coherent implementation.

5.1 [[Parties] recognize that the Multilateral System created under the International Treaty on Plant Genetic Resources for Food and Agriculture [governs][regulates] access and benefit-sharing arrangements for crops specified in the coverage of the Multilateral System, in accordance with the decisions taken by the Governing Body of that Treaty.]

5.2 This international regime [shall][should] reinforce the relationship between the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture in order to develop the cooperation that has been provided for in the International Treaty.

5.3 [[Parties] reaffirm that genetic resources of Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture used for purposes other than those regulated by the Multilateral System of that Treaty are subject to national legislative, administrative or policy measures.]]

6. [The International Regime on Access and Benefit-sharing will be implemented in harmony with [and not duplicate] relevant [work of other organizations and] treaties [including, inter alia, the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA), [the International Union for the Protection of New Varieties of Plants (UPOV),] the World Intellectual Property Organization (WIPO), the World Health Organization (WHO), the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (OIE) [and the International Labour Organization (ILO)].]

III. MAIN COMPONENTS

A. FAIR AND EQUITABLE BENEFIT-SHARING

1) Linkage of access to the fair and equitable sharing of benefits ^{6/}

[*Recognizing* that the fair and equitable sharing of benefits can only be realized after access to genetic resources has been granted {*preambular paragraph*}]

^{6/} There is also a section on linkages of access to the fair and equitable sharing of benefits under section III.B.1.2 of annex I to decision IX/12.

[Recalling that Article 15(5) of the Convention provides that access to genetic resources shall be subject to prior informed consent of the Contracting Party providing genetic resources, unless otherwise determined by that Contracting Party {*preambular paragraph*}]

[Further recalling that Article 15(4) of the Convention provides that Contracting Parties shall take measures to ensure that access, where granted, is on mutually agreed terms {*preambular paragraph*}]

1. (a) [Parties requiring]Prior informed consent for access to [their] [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge], where applicable, [shall][should] be obtained [according to the access and benefit-sharing requirements of][from] [the Party] [country of origin or Party that has acquired the genetic resources [, their derivatives][and products] [in accordance with the Convention] providing such resources[, their derivatives][and products] [and/or associated traditional knowledge] [through its competent national authority(ies)][, [as defined in {...},]] unless otherwise determined by that Party.

(b) Subject to the national legislation[, regulations and/or requirements] of the country where these [indigenous and local] communities are located, [international law, [indigenous and local] community protocols and relevant customary laws of indigenous peoples and local communities] where access is sought to traditional knowledge, innovations and practices associated to [genetic resources][biological resources][, their derivatives][and products], users [shall][should] obtain the prior informed consent of [indigenous] and/or local communities holding such traditional knowledge, innovations and practices, in accordance with Article 8(j) of the Convention. [Such consent should also be obtained with regard to indigenous peoples and local communities rights to [genetic resources][biological resources][, their derivatives][and products].]

(c) [[Parties may provide in their national legislation and regulations that][Prior informed consent] [shall][should] be based on the specific uses of specific [genetic resources][biological resources][, their derivatives][and products][and/or associated traditional knowledge] for which consent has been granted [under mutually agreed terms].] [Parties requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products] [shall][should] clearly stipulate the permitted uses.][Permitted uses [shall][should] be clearly stipulated and further prior consent for changes or unforeseen uses [not covered by mutually agreed terms] [shall][should] be required].

(d) Specific needs of taxonomic and systematic research as specified by the Global Taxonomy Initiative [shall][should] be taken into consideration.]

2. Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures [to encourage providers and users] to provide in their mutually agreed terms[, as appropriate,] for the fair and equitable sharing of benefits arising from the utilization of [genetic resources][biological resources][,their derivatives][and products][.][, whilst recognizing that the fair and equitable sharing of benefits can only be realized after access to [genetic resources][biological resources][, their derivatives][and products] has been granted.]

3. Each Contracting Party [shall][should] take [appropriate] legislative, administrative, or policy measures[, as appropriate,] with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of [genetic resources][biological resources][, their derivatives][and products] with the [Contracting Party] [and/or indigenous peoples and local communities] [providing such resources][, their derivatives][and products][country of origin or Party that has acquired the genetic resources in accordance with the Convention]. [Such sharing [shall][should] be subject to prior informed consent] of the [Contracting Party] [and/or indigenous peoples and local communities] [providing such resources][, their derivatives][and products][country of origin or

Party that has acquired the genetic resources in accordance with the Convention], unless otherwise determined by that Party and on mutually agreed terms.

4. Each Contracting Party [shall][should][may] take the following measures:

(a) Establish mechanisms to provide information to potential users concerning [their] [any] obligations regarding access to [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge] [within that Party's jurisdiction];]

(b) Introduce rules requiring that users of [genetic resources][biological resources][, their derivatives][and products] comply with national legislation [in] [of] the providing country [or, where relevant, the]/country of origin [customary protocols and relevant customary laws of indigenous peoples and local communities] and the mutually agreed terms on which access was granted, including requirements to equitably share the benefits arising from the utilization of such resources[, their derivatives][and products].]

2) Benefits to be shared on mutually agreed terms

[Further recalling that Article 15(4) of the Convention provides that Contracting Parties shall take measures to ensure that access, where granted, is on mutually agreed terms {preambular paragraph}]

[Further recalling that in accordance with Article 15(7) of the Convention the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources shall be upon mutually agreed terms as decided between the provider and user {preambular paragraph}]

[Recognizing that benefit-sharing on mutually agreed terms may include monetary and/or non-monetary benefits {preambular paragraph}]

1. [Each Party [shall][should][may] stipulate [in its national legislation] measures to ensure the fair and equitable sharing of the benefits arising out of the use of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge. [Those measures [shall][should] be incorporated in mutually agreed terms and in prior informed consent.][Parties requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products] [shall][should] take measures to encourage providers and users to provide in their mutually agreed terms, as appropriate, for the fair and equitable sharing of benefits arising from the utilization of [genetic resources][biological resources][, their derivatives][and products], whilst recognizing that the fair and equitable sharing of benefits can only be realized after access to [genetic resources][biological resources][, their derivatives][and products] has been granted.][[Each Contracting Party][Contracting Parties] [shall][should] in accordance with Article 15(7) of the Convention take [legislative, administrative or policy] measures [, as appropriate, with the aim of sharing in a fair and equitable way the][to ensure the fair and equitable sharing of] benefits arising from the commercial and other utilization of [genetic resources][biological resources][, their derivatives][and products] with the [country of origin][Contracting Party providing the resources][. Such sharing shall be] on mutually agreed terms.]

2. The conditions for the equitable sharing of the benefits arising out of the use of traditional knowledge, innovations and practices associated with [genetic resources][biological resources][, their derivatives][and products] [shall][should] be stipulated in mutually agreed terms[, in accordance with national legislation][, community protocols and relevant customary laws of indigenous peoples and local communities]:

(a) between the indigenous or local communities and the users; or b) between users and the national authority of the provider country, with active involvement of concerned indigenous and local communities].]

3. Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures

to [ensure] [encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider]:

(a) Including in these terms [model] clauses and using relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary or non-monetary benefits developed in accordance with {...};]

(b) Sharing of results of research and development;

(c) Access to and transfer of technology which makes use of those resources;

(d) The effective participation of [providers][country of origin] of the [genetic resources][biological resources][, their derivatives][and products] in research activities and/or to facilitate the joint development of research activities between the [provider][country of origin] and the user;

(e) The Bonn Guidelines].

[4. The elements of paragraph 44 of the Bonn Guidelines [shall][should] be considered in the development of mutually agreed terms.]

[5. Sharing of benefits shall proceed upon mutually agreed terms. Mutually agreed terms may consider, *inter alia*, time, amount, conditions and other characteristics of such sharing of benefits in accordance with applicable national law. However, the existence of mutually agreed terms must not constitute grounds for the denial or non-recognition of the sharing of benefits. In such cases Contracting Parties shall promote the reaching of an agreement between the conflicting parties. If the user denies to enter into an agreement, or if the parties fail to reach such agreement, the competent authorities of the Contracting Parties in which the claim is filed will take a decision and make it effective. The decision shall take into account the legitimate rights and interests of both parties and shall be given in a timely manner, observe due process of law, be transparent, non-discriminatory, and shall be made public.]

3) Monetary and/or non-monetary benefits

[*Recognizing* that benefit-sharing on mutually agreed terms may include monetary and/or non-monetary benefits {*preambular paragraph*}]

1. [Parties [shall][should] take measures to [ensure][encourage] that benefit-sharing includes, as far as possible, [all forms of utilization of] [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

2. [The International Regime on Access and Benefit-sharing will include an indicative list of mutually agreed terms.] Mutually agreed terms [may][shall][should] identify the types of monetary and/or non-monetary benefits to be shared for the utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, innovations and practices.

3. [Parties [shall][should], subject to Article 16 of the Convention, take measures to share the benefits of research and technology linked to conservation and sustainable use, irrespective of access to [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

[4. Parties [shall][should] establish a financial mechanism for the International Regime on Access and Benefit-sharing, including a trust-fund for benefit-sharing arrangements.]

Option 1

3. The benefits shared [shall][should][could] be monetary[, including, *inter alia*, Appendix II of the Bonn Guidelines,] and/or non-monetary. Monetary benefits [may][shall][should] include[, but are not limited to]:

(a) Access fees/fee per sample;

- (b) Up-front payments;
 - (c) Milestone payments;
 - (d) Payment of royalties;
 - (e) License fees in case of commercialization;
 - (f) Research funding; and
 - (g) Investment in joint ventures.
4. Non-monetary benefits [may][shall][should] include[, but not be limited to]:
- (a) Sharing of research and development results;
 - (b) Participation in product development;
 - (c) Collaboration, cooperation and contribution in education and training;
 - (d) [Transfer to the provider of the [genetic resources][biological resources][, their derivatives] [and products] and/or associated traditional knowledge, the technology developed using such resources [, their derivatives][and products] and/or associate traditional knowledge, including biotechnology, or the technology which is relevant to the conservation and sustainable use of biological diversity, on fair and most favourable terms, including on concessional and preferential terms where mutually agreed;]
 - (e) [Strengthening capacities to enable effective technology transfer to user developing country Parties and to Parties that are countries with economies in transition and technology development in the country of origin that provides [genetic resources][biological resources][, their derivatives] [and products]. Also to facilitate abilities of indigenous and local communities to conserve and sustainably use their [genetic resources][biological resources] [, their derivatives][and products];]
 - (f) Institutional capacity-building;
 - (g) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
 - (h) Training related to [genetic resources][biological resources][, their derivatives][and products] with the full participation of providing Parties, and where possible, in such Parties;
 - (i) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
 - (j) Contributions to the local economy;
 - (k) Food and livelihood security benefits; and
 - (l) Joint ownership of relevant intellectual property rights.

Option 2

3. The benefits to be shared may include, but are not limited to:
- (a) Monetary and non-monetary benefits listed in Appendix II of the Bonn Guidelines; and
 - (b) Non-monetary benefits in accordance with Articles 15(6), 16(3), 16(4) and 19 of the Convention.

4) Access to and transfer of technology

[Option 1

1. Each Party that develops technologies making use of [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge] [shall][should] take legislative, administrative or policy measures [with the aim that

the private sector facilitates][, as appropriate, with the aim that] [to facilitate] access to, [joint development] and transfer of those technologies [is provided] to developing countries [which provide genetic resources][biological resources][that are the origin of such resources,] [, their derivatives][and products] [and/or associated traditional knowledge] under mutually agreed terms, in accordance with Article 16 of the Convention.]

2. [Parties [shall][should] subject to Article 16 of the Convention also facilitate access to and transfer of technologies that are relevant to conservation and sustainable use, or make use of [genetic resources][biological resources] [, their derivatives][and products] to all other Contracting Parties to the Convention irrespective of access to [genetic resources][biological resources][, their derivatives] [and products.]

[Option 2

Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures to [encourage][ensure] [providers][countries of origin or countries providing the resource in accordance with the Convention] and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to [consider][ensure] access to and transfer of technology which makes use of those resources.]

5) Sharing of results of research and development on mutually agreed terms

[1. Parties [shall][should] establish, taking into account Article 15, paragraph 7, Article 16, paragraph 3 and 4, Article 19, paragraph 1 and 2, and Article 20, paragraph 4, of the Convention, measures to ensure the fair and equitable sharing of benefits from the results of research and development, including through facilitating access to the results of such research and development and through access to and technology transfer, and other utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge[, including technology protected by patents and other intellectual property rights on concessional and preferential terms to developing countries], taking into account prior informed consent and mutually agreed terms and respecting national legislations of the country of origin of such resources or the parties that have acquired the resources in accordance with the Convention.]

2. Parties requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives] [and products] [shall][should] take measures to encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider sharing of results of research and development.

6) Effective participation in research activities, and/or joint development in research activities

[1. Parties [shall][should] agree to strengthen research capability and ensure effective involvement of national counterparts, taking into account the special needs of developing country Parties in particular the least developed among them, small island developing States and countries with economies in transition.]

[2. Parties [requiring prior informed consent for access to their genetic resources][biological resources][, their derivatives][and products] [shall][should] take measures to [ensure][encourage the [providers][countries of origin] and users when establishing mutually agreed terms, to [consider][ensure] the effective participation of [providers][countries of origin] of the [genetic resources][biological resources][, their derivatives][and products] [in research activities and/or to facilitate the joint development of research activities between the [provider][country of origin] and the user.]

[3. Parties [shall][should] take measures to ensure that the private sector facilitates joint development of technologies relevant to the conservation and sustainable use of biodiversity or make use of [genetic resources][biological resources][, their derivatives][and products] for the

benefit of both government institutions and the private sector of developing countries in accordance with Article 16 of the Convention.]

[4. Parties [shall][should] in accordance with Article 18 of the Convention promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of the Convention.]

7) Mechanisms to promote equality in negotiations

[*Recognizing* the importance of promoting equality in negotiations of mutually agreed terms between providers and users of genetic resources{*preambular paragraph*}]

1. Parties [shall][should][may] take measures such as:

(a) Making information available to users and [providers][countries of origin or Parties that have acquired [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention] through the designated access and benefit-sharing focal point in a timely manner[.][, including the [model] clauses and relevant inventories developed [in accordance with {...}][under the International Regime on Access and Benefit-sharing];]

(b) [Enabling engagement between][Developing consultative arrangements with] relevant stakeholders and indigenous and local communities holding traditional knowledge associated with [genetic resources][biological resources][, their derivatives][and products];

(c) Supporting the capacity of [providers][countries of origin or indigenous and local communities] and[, where appropriate,] users of [genetic resources][biological resources][, their derivatives][and products] to negotiate mutually agreed terms[, prior informed consent] and contractual arrangements[, as appropriate].

[2. Contracting Parties [providing [genetic resources][biological resources]][, their derivatives][and products] which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should][may]:]

(a) Take measures to ensure appropriate participation by relevant indigenous peoples and local communities in access procedures where their rights are associated with the [genetic resources][biological resources][, their derivatives][and products] being accessed or where traditional knowledge associated with these [genetic resources][biological resources][, their derivatives][and products] is being accessed;]

(b) Establish mechanisms to ensure that decisions are made available to relevant indigenous peoples and local communities and relevant stakeholders;]

(c) The effective involvement of indigenous and local communities should be promoted by:

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

8) Awareness-raising ^{7/}

^{7/} There is also a section on awareness-raising under section III.C.1.1.(a) of annex I to decision IX/12.

Parties [shall][should] take [the following] measures to raise awareness of access and benefit-sharing issues [in support of [mandatory][voluntary] compliance measures to [ensure][promote] benefit-sharing]. Such measures could include[, but not be limited to]:

(a) Making available up to date information about their domestic access and benefit-sharing framework, in particular national laws, policies and procedures;

(b) Steps to promote the International Regime on Access and Benefit-sharing [, including the promotion of a wider understanding among the public on the concepts of misappropriation, misuse, and biopiracy as well as for the recognition of the contribution made by indigenous and local communities to biological diversity and the benefits generated by that contribution];

(c) Organization of stakeholder meetings;

(d) Establishment and maintenance of a help desk for stakeholders;

(e) Information dissemination through [a specialized website][an access and benefit-sharing clearing house][, as well as hard copies];

(f) Promotion of codes of conduct [and best practice tools] in consultation with stakeholders;

(g) Promotion of regional exchange of experiences related to access and benefit-sharing;

(h) Communication, education and awareness-raising of access and benefit-sharing-related issues to the relevant sectors and stakeholders.]

[2. Awareness-raising, or the lack of any effort on it, by the Parties and users [shall][should] not be made a precondition for the implementation of benefit-sharing arrangements.]

9) Measures to ensure participation and involvement of indigenous and local communities in mutually agreed terms and sharing of benefits with traditional knowledge holders

[1. The elements of the International Regime on Access and Benefit-sharing [shall][should] be developed and implemented in accordance with Article 8(j) of the Convention:

(a) [In consultation with the relevant indigenous and local communities,] Parties [may][shall][should] consider developing, adopting and/or recognizing, as appropriate, [community protocols and/or other] sui generis systems for the [protection][and/or promotion] of traditional knowledge, innovations and practices associated to [genetic resources][biological resources][, their derivatives][and products];

(b) Parties [shall][should] [respect,] recognize and protect the rights of indigenous and local communities to their knowledge, innovations and practices and ensure the equitable sharing of benefits arising from the utilization of the knowledge, innovations and practices associated with [genetic resources][biological resources][, their derivatives][and products], subject to the national legislation[, regulations and requirements] of the countries where these communities are located;

(c) [When access to traditional knowledge associated with [genetic resources][biological resources][, their derivatives][and products] is sought,] Users [shall][should] obtain the prior informed consent of indigenous and local communities holding [that] traditional knowledge associated with [genetic resources] in accordance with Article 8(j) of the Convention, [subject to][in accordance with] national legislation[, regulations and requirements] of the country where these communities are located[, community protocols and relevant international law].]

[2. Contracting Parties [shall][should] in accordance with Article 8(j) of the Convention [encourage][ensure] fair and equitable sharing of benefits arising from the utilization

of knowledge, innovations and practices [associated with [genetic resources] of indigenous and local communities. The benefits referred to here are [benefits to humanity in general and] benefits to indigenous and local communities in particular:

(a) *Benefits to humanity:*

[All Contracting Parties [shall][should]:

(a) Promote the wider application of knowledge, innovations and practices of indigenous and local communities with their [voluntary] approval and involvement in accordance with Article 8(j) of the Convention;

(b) Further the customary use of biological resources in line with traditional customary practices that are compatible with conservation and sustainable use of biological diversity in accordance with Article 10(c) of the Convention;

(c) Take into account the customs, decision-making processes and systems integral to indigenous and local communities in the process of seeking access to their [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, and also in negotiating mutually agreed terms;]

(c) Encourage and develop methods of cooperation for the development and use of indigenous and traditional technologies in furtherance of the objectives of the Convention by the training of personnel and provision of expertise by representatives of indigenous and local communities in accordance with Article 18(4) of the Convention.]

[(b) Benefits to indigenous and local communities:

Contracting Parties [shall][should] [ensure][encourage] the fair and equitable sharing of benefits with indigenous and local communities arising from the utilization of their knowledge, innovations and practices[, and their [genetic resources][biological resources][, their derivatives][and products]. These benefits [shall][should] be based on mutually agreed terms with the indigenous and local communities and may include but not be limited to monetary and non-monetary benefits listed in Appendix II of the Bonn Guidelines.])

[3. Indigenous peoples and local communities [shall][should] be consulted by the appropriate national authorities, and their views taken into consideration, when their rights are associated with the [genetic resources][biological resources][, their derivatives][and products] being accessed or where traditional knowledge associated with these [genetic resources][biological resources][, their derivatives][and products] is being accessed, including:

(a) When determining access, prior informed consent, and when negotiating and implementing mutually agreed terms, and in the sharing of benefits;

(b) In the development of a national strategy, policies or regimes on access and benefit-sharing;

(c) Appropriate consultative arrangements, such as national consultative committees, comprising relevant stakeholder representatives, [shall][should] be established;

(d) Providing information in order for them to be able to participate effectively;

(e) Prior informed consent of indigenous peoples and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices, in accordance with their traditional practices, national access policies and subject to national legislation;

(f) Documentation of traditional knowledge, innovations and practices, [shall][should] be subject to the prior informed consent of indigenous peoples and local communities;

(g) Providing support for capacity-building, in order for them to be actively engaged in various stages of access and benefit-sharing arrangements, such as in the development and implementation of mutually agreed terms and contractual arrangements.]

[4. Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products] or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should]:

(a) Take measures to ensure appropriate participation by relevant indigenous peoples and local communities in access procedures where their rights are associated with the [genetic resources][biological resources][, their derivatives][and products] being accessed or where traditional knowledge associated with these [genetic resources][biological resources][, their derivatives][and products] is being accessed;

(b) Establish mechanisms to ensure that decisions are made available to relevant indigenous peoples and local communities and relevant stakeholders.]

[5. Parties shall provide timely guidance, legal representation, monitoring, information and assistance in prior informed consent and mutually agreed terms of traditional knowledge of indigenous and local communities at the request of indigenous and local communities seeking the recognition and/or enforcement of their rights.]

10) Mechanisms to encourage benefits to be directed toward conservation and sustainable use of biodiversity and socio-economic development, in particular the Millennium Development Goals (MDGs) in accordance with national legislation

Parties [shall][should] encourage users and providers, in their mutually agreed terms, to consider directing benefits arising from the utilization of [genetic resources][biological resources][, their derivatives] [and products] towards the conservation and sustainable use of biological diversity in accordance with the objectives set out in Article 1 of the Convention, [and] to contribute to [domestic] sustainable [socio-economic] development [strategies].

11) Development of international minimum conditions and standards

[1. Parties [shall][should] take measures and establish minimum conditions and standards for ensuring fair and equitable sharing of results of research, and of benefits arising from every commercial and other form of utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, upon mutually agreed terms.]

[2.^{8/} The definition of “fair and equitable benefit-sharing” is non-exhaustive and inclusive. It [shall][should] however encompass the following minimum conditions. Fair and equitable benefit-sharing [shall][should]:

(a) Contribute to strengthening the situation of the less powerful party/parties at all levels in the sharing relation, including by enabling:

- (i) Equal access to information;
- (ii) Effective participation by all relevant stakeholders;
- (iii) Capacity building;
- (iv) Preferential access to markets, new technology and products;

(b) Contribute toward, or as a minimum not counteract, the two other objectives of the Convention: conservation of biological diversity and the sustainable use of its components;

(c) Not interfere with existing forms of fair and equitable benefit-sharing, including customary benefit-sharing mechanisms;

^{8/} The placement of the paragraphs in this text must be further considered.

(d) Respect value and legal systems across cultural borders, including customary laws and practices and indigenous intellectual property systems;

(e) Allow democratic and meaningful participation in policy decisions and contract negotiation by all stakeholders, including stakeholders at the local level;

(f) Be transparent enough that all parties understand the process equally well, especially indigenous and local communities, and have time and opportunity to make informed decisions (effective prior informed consent);

(g) Include provisions for independent third party review to ensure that all transactions are on mutually agreed terms and preceded by effective prior informed consent;

(h) Provide for identification of the origin of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge;

(i) Make information about agreed terms publicly available.]

12) Benefit-sharing for every use

[There [shall][should] be measures and principles established in the International Regime on Access and Benefit-sharing to ensure benefit-sharing for every use of [genetic resources][biological resources][, their derivatives][and products].

13) Multilateral benefit-sharing options when origin is not clear or in transboundary situations

[1. [Genetic resources][biological resources] [, their derivatives][and products] accessed pre-Convention, [shall][should] be subject to access and benefit-sharing agreements with provider countries and all continuing benefits arising from these [genetic resources][biological resources][, their derivatives][and products] will be fairly and equitably shared with their countries of origin. In cases where the origin of the [genetic resources][biological resources][, their derivatives][and products] is unclear, a multilateral system of exchange [shall][should] be developed.]

[2. Contracting Parties who share [genetic resources][biological resources][, their derivatives][and products] [shall][should] enter into bilateral or multilateral agreements based on mutually agreed terms to ensure the fair and equitable sharing of benefits arising from the utilization of transboundary [genetic resources][biological resources][, their derivatives][and products].]

[3. Contracting Parties [shall][should] facilitate the inclusion of the different indigenous and local communities, within and across their boundaries that share a particular knowledge, innovation or practice in the negotiation of relevant access and benefit-sharing agreements and support the fair and equitable sharing amongst these indigenous and local communities of the benefits arising from such agreements.]

14) Establishment of trust funds to address transboundary situations

[Knowledge, innovations and practices of indigenous and local communities accessed pre-Convention [shall][should] be subject to access and benefit-sharing agreements with the indigenous and local communities concerned and all continuing benefits arising from such knowledge, innovations and practices [shall][should] be fairly and equitably shared with the relevant indigenous and local communities. In cases where the origin of the knowledge, innovations and practices are unclear, a fund [shall][should] be established which [shall][should] be administered by representatives of indigenous and local communities who [shall][should] ensure that it is used to further the rights of indigenous and local communities.]

15) Development of menus of model clauses for potential inclusion in material transfer agreements^{9/}

[Option 1]

Parties [shall][should][may][, in addition to [promoting][ensuring binding] compliance measures]:

- a) In consultation with users and providers from key sectors, develop sectoral menus of [model] clauses for contracts;
- b) Encourage users and providers to use these sectoral menus of [model] clauses when negotiating mutually agreed terms.]

[Option 2]

[*Emphasizing* that both providers and users of genetic resources benefit from the availability of model clauses for potential inclusion in material transfer agreements and inventories/catalogues of typical utilizations of genetic resources since the use of such clauses and inventories will raise legal certainty, may lower transaction costs and will contribute to creating a level playing field between provider and user when negotiating mutually agreed terms {*preambular paragraph*}]

1. Parties[, in addition to [promoting][ensuring binding] compliance measures,][shall][should] [take measures to] encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider:

(a) Including in these terms [model] clauses developed in accordance with paragraphs 2 and 3 below[, as appropriate];

(b) Relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary and non-monetary benefits.

2. [In order to enhance legal certainty, lower transaction costs and promote equality in negotiations of mutually agreed terms, the] Parties [collectively][shall][should][consider to][may wish to][establish[, as appropriate,] a procedure] [at the national level] [for the] develop[ment] [menus] of [sectoral] [model] clauses [and inventories/catalogues] of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary or non-monetary benefits. [The procedure [shall][should][may]][In this context, they should]:

(a) Identify sectors[, *inter alia* those] for which [model] clauses and inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related benefits should be developed [in cooperation with key international sectoral organizations and relevant users and providers] [and reflect best practices];

(b) Identify issues that [should][may] be addressed in [model] clauses [taking account of common elements of various sectors and the particularity of each sector];

(c) Include clear and transparent [rules][suggestions] to facilitate the involvement of stakeholders.

3. The Parties [shall][should][may] [collectively] consider and, where appropriate, [adopt [at the national level] recommendations for][submit a compilation to the clearing house mechanism of menus of] [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological resources][, their derivatives][and products]. They [shall][should][may] regularly review and, where appropriate, update such [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological resources] [, their derivatives][and products].]

^{9/} There are also sections on sectoral menus of model clauses in section III.C.2.1.b and in section III.E.1.5 of annex I to decision IX/12.

[4. Parties [shall][should] take measures to encourage the use of the [model] clauses of Annex {...} of the International Regime on Access and Benefit-sharing to be included into mutually agreed terms between providers and users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge for the following three categories of utilization of [genetic resources][biological resources][, their derivatives][and products]:

- (a) Research not aiming at commercialization;
- (b) Research and development aiming at commercialization; and
- (c) Commercialization.]

[5. Indicators for the identification of these three categories of utilization of [genetic resources][biological resources][, their derivatives][and products] are provided in Annex {...} of the International Regime on Access and Benefit-sharing.]

16) Enhanced utilization of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization

[Recalling decision VI/24 of the Conference of the Parties adopting the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization {*preambular paragraph*}]

B. ACCESS TO GENETIC RESOURCES ^{10/}

1) Recognition of the sovereign rights and the authority of Parties to determine access

[Recalling 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 {*preambular paragraph*}]

[Further recalling that each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not impose restrictions that run counter to the objectives of the Convention {*preambular paragraph*}]

[Further recalling that access to genetic resources shall be subject to the prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party; and in this context recognizing that each Contracting Party may determine that access to its genetic resources will not be subject to prior informed consent in the context of Article 15 of the Convention on Biological Diversity {*preambular paragraph*}]

[1. Contracting Parties have sovereign rights over their natural resources and the authority to determine access to [genetic resources][biological resources][, their derivatives][and products] rests with the national governments. [Where access to [genetic resources][biological resources][, their derivatives][and products] has an impact on the knowledge, innovations and practices of indigenous and local communities [embodying traditional lifestyles], the indigenous and local communities concerned [shall][should] have a say in determining access[, subject to national legislation].]

[2. Access to [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge [shall][should] be subject to the free prior informed consent of indigenous and local communities.][Access to the genetic resources and associated traditional knowledge of indigenous and local communities [shall][should] be subject to their prior informed consent.]

^{10/} The title is without prejudice to the eventual scope of the International Regime on Access and Benefit-sharing.

[3. Each Party [shall][should] introduce rules to ensure facilitated access to genetic resources.]

[4. Each Party [shall][should] designate one national focal point for access and benefit-sharing which [shall][should] be responsible on its behalf for liaison with the Secretariat. The national focal point [shall][should] inform applicants for access to [genetic resources][biological resources][, their derivatives][and products] on applicable procedures, including procedures for prior informed consent, mutually agreed terms and benefit-sharing. [It [shall][should] also [inform applicants of [any][the] rights][make available, as appropriate, information] pertaining to indigenous peoples and local communities and relevant stakeholders.]]

[5. Each Party [requiring prior informed consent for access to its [genetic resources][biological resources][, their derivatives][and products]] [shall][should] also, as appropriate, designate one or more competent national authorities, which [shall][should] be responsible for handling and processing of access applications, including mutually agreed terms and benefit-sharing arrangements. [A Party [may][shall][should] designate a single entity to perform the functions of both Focal Point and competent national authority.]]

[6. Each Party [shall][should] no later than the [effective] date [of entry into force] of this International Regime on Access and Benefit-sharing [for it], notify the Secretariat of the names and addresses of the focal point and competent [national] authority or authorities.]^{11/ 12/}

2) Linkage of access to fair and equitable sharing of benefits^{13/}

[*Recognizing* that the fair and equitable sharing of benefits can only be realized after access to genetic resources has been granted {*preambular paragraph*}]

[*Recalling* that Article 15(5) of the Convention provides that access to genetic resources shall be subject to prior informed consent of the Contracting Party providing genetic resources, unless otherwise determined by that Contracting Party {*preambular paragraph*}]

[*Further recalling* that Article 15(4) of the Convention provides that Contracting Parties shall take measures to ensure that access, where granted, is on mutually agreed terms {*preambular paragraph*}]

[1. Parties [shall][should][may] take [the] necessary measures [, as appropriate,] to establish an appropriate national regulatory framework to protect their rights over [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge][, as well as rights of indigenous peoples and local communities] and ensure [that] benefit-sharing [is on mutually agreed terms].]

2. [Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures to [encourage][ensure] [providers][countries of origin or Parties that have acquired the resources in accordance with the Convention] and users to provide in their mutually agreed terms [, as appropriate,] for the fair and equitable sharing of benefits arising from the utilization of [genetic resources][biological resources][, their derivatives][and products][.], whilst recognizing that the fair and equitable sharing of benefits can only be realized after access to [genetic resources][biological resources][, their derivatives][and products] has been granted.[Contracting Parties [shall][should] ensure that access to [genetic resources][biological resources][, their derivatives][and products] [shall][should] be subject to the prior informed consent of the country of origin/provider country[.] and be based on mutually agreed terms with fair and equitable sharing of benefits arising from the utilization of the [genetic resources][biological resources][, their derivatives][and products].] Where the access to the [genetic resources][biological

^{11/} The placement of paragraphs 4 to 6 above must be further considered.

^{12/} There is also a section on competent domestic authority, as addressed in paragraphs 4 to 6 above, in section III.C.1.2.b of annex I to decision IX/12.

^{13/} There is also a section on the linkage of access to fair and equitable sharing of benefits under section III.A.1.1 of annex I to decision IX/12.

resources][, their derivatives][and products] is linked to the use of any knowledge, innovations and practices of indigenous and local communities, it [shall][should] [where necessary] be subject to the prior informed consent and mutually agreed terms of the concerned indigenous and local communities with fair and equitable sharing of benefits [in accordance with national legislation].]

3. [Contracting Parties may provide that] New uses of [genetic resources][biological resources][, their derivatives][and products] [they have provided] [and/or associated traditional knowledge] beyond the scope what has been consented to under [prior informed consent and] mutually agreed terms [shall][should] [require new prior informed consent and mutually agreed terms.][from the country of origin and/or the indigenous and local communities][may be addressed under such mutually agreed terms].]

[4. Access to [genetic resources][biological resources][, their derivatives][and products] [and associated traditional knowledge] [may][shall][should] be revoked by the country of origin/provider country [or the indigenous and local communities providing access to [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge] if any of the mutually agreed terms are violated by the user and/or the continuing use of the [genetic resources][biological resources][, their derivatives][and products] has negative environmental implications.]

5. [Parties [shall][should] take measures, which are clear and transparent, [to facilitate access for environmentally sound uses, on mutually agreed terms and subject to prior informed consent of country providing [genetic resources][biological resources][, their derivatives][and products], so as] to ensure fair and equitable sharing of benefits arising from such use to the country providing the resource [takes place on mutually agreed terms] [including by using certificates of compliance with national legislation].][Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should] endeavour to [facilitate] access to [genetic resources][biological resources][, their derivatives][and products] for environmentally sound uses by other Contracting Parties. In accordance with Article 15, paragraph 5, of the Convention, access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.]

3) Legal certainty, clarity and transparency of access rules

[1. To create conditions to [facilitate][ensure the sovereign rights of States of their natural resources and their authority to determine] access to [genetic resources][biological resources][, their derivatives][and products] and to support compliance with access and benefit-sharing related obligations across jurisdictions, Parties requiring prior informed consent [shall][should] take [the] necessary legislative, policy or administrative measures [referred to in {...}] to provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing frameworks.]

[2. Contracting Parties [shall][should] create conditions of legal certainty, clarity and transparency to [facilitate][ensure the sovereign rights of States over their natural resources and their authority to determine] access to [genetic resources][biological resources][, their derivatives][and products] and not impose any restrictions that run counter to objectives of the Convention in accordance with Article 1 of the Convention. [Access [may][shall][should] however be denied if it is required for uses that are not environmentally sound. Countries of origin [shall][should] have the authority to determine the environmental soundness of a particular use. [The notion of 'use' [shall][should] be understood as including restrictions to use by third parties and countries of origin [shall][should] have the authority to determine whether the restriction of the use of [genetic resources][biological resources][, their derivatives][and products] through patents and other intellectual property rights are environmentally sound and whether such restrictions negatively impact the conservation and sustainable use of biological diversity.]]]

[3. Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should]:

(a) [Review their policy, administrative and legislative measures to ensure they are fully complying with Article 15 of the Convention in order to ensure clarity, legal certainty and transparency;]

(b) [Report on access applications through the clearing-house mechanism][Provide information on the process for obtaining access in accordance with national legislation and regulations];

(c) [Require providers only to supply [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge when they are entitled to do so;]

(d) The Contracting Parties [shall][should][may] use elements of an access application referred to in paragraph 36 of the Bonn Guidelines, while bearing in mind that the list is indicative and may be adapted to national circumstances.]

4) Non-discrimination of access rules

[Each Party, when applying its domestic access and benefit-sharing framework, [shall][should] not [arbitrarily and unjustifiably] discriminate between users from other Contracting Parties [and between national and foreign users][, save when it is in its national interest to do so in accordance with its sovereign right over its resources which gives it authority to determine access compatible with the recognition of this right in Article 15(1) of the Convention].]

5) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions

[*Recalling* 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 {*preambular paragraph*}]

[*Further recalling* that each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not impose restrictions that run counter to the objectives of the Convention {*preambular paragraph*}]

[*Recognizing* that each Contracting Party may determine that access to its genetic resources will not be subject to prior informed consent in the context of Article 15 of the Convention on Biological Diversity {*preambular paragraph*}]

[*Further recognizing* that the fair and equitable sharing of benefits can only be realized after access to genetic resources has been granted {*preambular paragraph*}]

[1. To create conditions to [facilitate][ensure the sovereign rights of States over their natural resources and their authority to determine] access to [genetic resources][biological resources][, their derivatives][and products] and to support compliance with access and benefit-sharing related obligations across jurisdictions, Parties requiring prior informed consent [shall][should] take [such][the] [necessary] legislative, policy or administrative measures[, as they may determine,] to provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing frameworks. These [shall][should][may] include[, where possible]:]

(*General issues*)

[(a) [Clear] rules on accessing [genetic resources][biological resources][, their derivatives][and products] existing in in situ and ex situ conditions [that do not [arbitrarily and unjustifiably] discriminate between users from other Contracting Parties] [and between national

and foreign users][, save when it is in its national interest to do so in accordance with its sovereign right over its resources which gives it authority to determine access compatible with the recognition of this right in Article 15(1) of the Convention];]

[(b) A [clear] procedure for applying for prior informed consent [from a competent national authority and, where applicable, from indigenous and local communities];]

[(c) A simplified procedure for access to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research in accordance with [/{...}][national law];]

[(d) Making available and easily accessible information on their domestic access and benefit-sharing frameworks, in particular on how to apply for prior informed consent;]

[(e) Providing and regularly updating the information generated under subparagraph (d) to the clearing house mechanism of the Convention, including information on access and benefit-sharing focal points;]

[(f) Requiring the competent national authority to [provide periodically to][register its decision to grant prior informed consent in] the clearing house mechanism of the Convention [up to date information on the number of requests processed];]

[(g) [Appropriate] administrative or judicial appeals procedures in respect of prior informed consent[, including for failure to act and [arbitrary and unjustifiably] discriminatory access practices];]

(Specific aspects for obtaining decisions on prior informed consent from the competent [national] authority)

[(h) Requiring that decisions by competent national authorities granting or refusing prior informed consent are reasoned, set out in writing, and notified to the applicant;]

[(i) Identifying in the domestic access and benefit-sharing framework the grounds upon which prior informed consent may be denied;]

[(j) Requiring competent national authorities to take decisions on prior informed consent within a reasonable period of time as specified in the domestic access and benefit-sharing framework;]

[(k) Ensuring that the costs for obtaining decisions on prior informed consent do not exceed the actual costs of processing the application;]

[(l) Requiring the competent national authority to include in its decision to grant prior informed consent available passport data as well as a reference code of the [genetic resources][biological resources][, their derivatives][and products] covered by this decision;]

(Specific aspects related to mutually agreed terms (normally set out in contracts))

[(m) [Clear] rules, in domestic access and benefit-sharing frameworks, for establishing mutually agreed terms;]

[(n) Requiring the establishment of mutually agreed terms;]

[(o) Requiring that mutually agreed terms be set out in writing;]

[(p) Requiring that mutually agreed terms include a clause on the settlement of disputes;]

[(q) Requiring that mutually agreed terms reflect that consideration has been given to benefit-sharing;]

[(r) Reference to the [model] clauses and inventories/catalogues of utilizations of [genetic resources][biological resources][, their derivatives][and products] and related benefits developed in accordance with {...}.]

[2. The additional measures set out in {...} to support compliance in cases of misappropriation will [have no relationship whatsoever with][be applicable if] the domestic access and benefit-sharing framework of a Contracting Party providing a genetic resource [is in conformity with paragraph 1].]

6) Internationally developed model domestic legislation

[Recalling that Article 15(1) of the Convention provides that states have sovereign rights over their resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation {*preambular paragraph*}]

[Recalling that Article 15(5) of the Convention provides that access to genetic resources shall be subject to prior informed consent of the Contracting Party providing genetic resources, unless otherwise determined by that Contracting Party {*preambular paragraph*}]

[Noting that Parties have differing legal systems, and accordingly have chosen to implement the access and benefit-sharing provisions of the Convention according to their national conditions {*preambular paragraph*}]

1. Parties [are encouraged to][shall][should] provide examples of [model] provisions for domestic legislation to the Secretariat, and the Secretariat to provide these to [P][p]arties on request, in order to assist and support those [P][p]arties in their domestic implementation of the access and benefit-sharing provisions of the Convention.

[2. The Parties [collectively] [shall][should][, as soon as practicable,] [adopt][compile] examples of [model] provisions for domestic legislation [and exemplary frameworks for administrative decision making that are consistent with the international access standards set out in {...}][and distribute them through the clearing house mechanism].]

7) Minimization of administration and transaction costs

8) Simplified access rules for non-commercial research

Option 1

[1. Parties requiring prior informed consent [shall][should] provide for a simplified administrative procedure for access to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research.]

[2. The classification of research as “non-commercial” [may][shall][should] be determined based on its nature, form and objective, particularly on the non-commercial intent at the time of access.]

[3. To preserve the integrity of the simplified procedure, Contracting Parties [shall][should] take measures aimed at:

(a) Ensuring that obligations in relation to access and benefit-sharing are passed on to subsequent users;

(b) Addressing potential changes in intent by non-commercial users, including through identification of clear reference points for such changes;

(c) Ensuring the renegotiation of mutually agreed terms with the provider of the [genetic resources][biological resources][, their derivatives][and products] in cases of changes in intent by non-commercial users where appropriate;

(d) Avoiding that users of [genetic resources][biological resources][, their derivatives][and products] without obligations vis-à-vis the provider make use of generated information if such use is restricted, for example, through publication policies;

(e) Giving recognition to the commitment of users of [genetic resources][biological resources][, their derivatives][and products] to access and benefit-sharing best practice codes of conduct applicable to the research community.]

4. Parties [shall][should] take measures to encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider including in these terms [model] clauses [and relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] developed in accordance with {...}.]

5. Parties [shall][should] collaborate in the exchange of experience in the use of and the development of electronic tools for the tracking of [genetic resources][biological resources][, their derivatives][and products].

6. Parties [shall][should] exchange information on best practices[, as appropriate,] in the application of simplified administrative procedures for access [and benefit-sharing] to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research.

Option 2

Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should]:

(a) Consider simplified access rules [to][for] [genetic resources][biological resources][, their derivatives][and products] to be used for taxonomy [and other non-commercial] purposes;

(b) [Require that [substantially] new or changed uses of a [genetic resource][biological resource] beyond [the scope of] what has been consented to under mutually agreed terms, [shall][should] be subject to new prior informed consent and mutually agreed terms from the providing country and/or the indigenous peoples and local communities concerned.][Parties shall encourage users and providers to consider, when establishing mutually agreed terms, including in these terms obligations to renegotiate mutually agreed terms should the use of the genetic resources change.]

C. COMPLIANCE

1) Development of tools to encourage compliance

(a) Awareness-raising activities

[*Noting* that awareness of domestic access and benefit-sharing regulatory frameworks is important for users and providers to ensure compliance {*preambular paragraph*}]

Parties [shall][should] take [the following] measures to raise awareness of access and benefit-sharing issues [in support of [mandatory][voluntary] compliance measures to [ensure][promote] benefit-sharing]. Such measures could include[, but not be limited to]:

(a) Making available up to date information about their domestic access and benefit-sharing framework, in particular national laws, policies and procedures;

(b) Steps to promote the International Regime on Access and Benefit-sharing[, including the promotion of a wider understanding among the public on the concepts of misappropriation, misuse and biopiracy, as well as for the recognition of the contribution made by indigenous and local communities to biological diversity and the benefits generated by that contribution];

(c) Organization of stakeholder meetings;

(d) Establishment and maintenance of a help desk for stakeholders;

(e) Information dissemination through [a specialized website][an Access and Benefit-sharing Clearing House][, as well as hard copies];

(f) Promotion of codes of conduct [and best practice tools] in consultation with stakeholders;

(g) Promotion of regional exchange of experiences related to access and benefit-sharing.

[2. Parties [shall][should] raise awareness in accordance with Articles 8(j) and 10(c) of the Convention to promote the wider application of indigenous knowledge, innovations and practices by actively involving indigenous and local communities with their consent in the planning and implementation of research and training (Article 12), public education and awareness (Article 13), exchange of information (Article 17.2) and technical and scientific cooperation (Article 18.4).]

(b) International understanding of misappropriation/misuse

[Each Contracting Party [shall][should] take measures aimed at preventing the use of misappropriated [genetic resources][biological resources][, their derivatives][and products] and traditional knowledge.]

(c) Sectoral menus of model clauses for material transfer agreements^{14/}

[Option 1

Parties [shall][should][may][,in addition to [promoting][ensuring binding] compliance measures]:

a) In consultation with users and providers from key sectors, develop sectoral menus of [model] clauses for contracts;

b) Encourage users and providers to use these sectoral menus of [model] clauses when negotiating mutually agreed terms.]

[Option 2

[Emphasizing that both providers and users of genetic resources benefit from the availability of model clauses for potential inclusion in material transfer agreements and inventories/catalogues of typical utilizations of genetic resources since the use of such clauses and inventories will raise legal certainty, may lower transaction costs and will contribute to creating a level playing field between provider and user when negotiating mutually agreed terms. {preambular paragraph}]

1. Parties[, in addition to [promoting][ensuring binding] compliance measures,][shall][should] [take measures to] encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider:

(a) Including in these terms [model] clauses developed in accordance with paragraphs 2 and 3 below[, as appropriate];

(b) Relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary and non-monetary benefits.

2. [In order to enhance legal certainty, lower transaction costs and promote equality in negotiations of mutually agreed terms, the] Parties [collectively][shall][should][consider to][may wish to][establish[, as appropriate,] a procedure] [at the national level] [for the] develop[ment] [menus] of [sectoral] [model] clauses [and inventories/catalogues] of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and

^{14/} There are also sections on sectoral menus of model clauses in section III.A.2.5 and in section III.E.1.5 of annex I to decision IX/12.

related monetary or non-monetary benefits. [The procedure [shall][should][may]][In this context, they should]:

(a) Identify sectors[, *inter alia* those] for which [model] clauses and inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related benefits should be developed [in cooperation with key international sectoral organizations and relevant users and providers] [and reflect best practices];

(b) Identify issues that [should][may] be addressed in [model] clauses [taking account of common elements of various sectors and the particularity of each sector];

(c) Include clear and transparent [rules][suggestions] to facilitate the involvement of stakeholders.

3. The Parties [shall][should][may] [collectively] consider and, where appropriate, [adopt [at the national level] recommendations for][submit a compilation to the clearing house mechanism of menus of] [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological resources][, their derivatives][and products]. They [shall][should][may] regularly review and, where appropriate, update such [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological resources] [, their derivatives][and products].]

[4. Parties [shall][should] take measures to encourage the use of the [model] clauses of Annex {...} of the International Regime on Access and Benefit-sharing to be included into mutually agreed terms between providers and users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge for the following three categories of utilization of [genetic resources][biological resources][, their derivatives][and products]:

(a) Research not aiming at commercialization;

(b) Research and development aiming at commercialization; and

(c) Commercialization.]

[5. Indicators for the identification of these three categories of utilization of [genetic resources][biological resources][, their derivatives][and products] are provided in Annex {...} of the International Regime on Access and Benefit-sharing.]

(d) Codes of conduct for important groups of users

[Recognizing the existence of a range of national and international, sectoral or company specific codes of conduct and best practice guidelines on access and benefit-sharing and their importance in achieving the fair and equitable sharing of benefits arising out of the the utilization of genetic resources, the third objective of the Convention {*preambular paragraph*}]

Parties [shall][should][may][, in addition to [promoting][ensuring binding] compliance measures]:

(a) Support, as appropriate, the development, review and update of access and benefit-sharing-related [voluntary] codes of conduct[, and best practice standards,] for users of [genetic resources][biological resources][, their derivatives][and products];

(b) Take measures to [encourage][ensure] users [to] adhere to the codes of conduct [and encourage users to adhere to best practice standards;]

(c) Ensure the communication, education and awareness of these codes of conduct and best practice standards to the relevant user groups].

(e) Identification of best-practice codes of conduct

[Recognizing the existence of a range of national and international, sectoral or company specific codes of conduct and best practice guidelines on access and benefit-sharing and their importance in achieving the third objective of the Convention {*preambular paragraph*}]

Parties [shall][should] collectively establish a procedure for identifying and regularly reviewing access and benefit-sharing related codes of conduct and guidelines that constitute best-practice.

(f) Research funding agencies to oblige users receiving research funds to comply with specific access and benefit-sharing requirements

Parties [shall][should] [encourage][ensure that] research, funding and publishing entities [to] ask for [the unique identifier code referred to in the certificate of compliance][evidence of compliance with relevant national law] as part of their application procedures or research results, as appropriate, when [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge [is][are] involved.

(g) Unilateral declaration by users

(h) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions

[The additional measures set out in {...}] to support compliance in cases of misappropriation [shall][should] be applicable if the domestic access and benefit-sharing framework of a Contracting Party providing a genetic resource is in conformity with {...].

2) Development of tools to monitor compliance

[Each Contracting Party [shall][should] take [appropriate legislative, [regulatory,] administrative or policy] measures [aimed at building capacity to develop tools to monitor compliance;]]

(a) Mechanisms for information exchange

1. [Parties [shall][should] collaborate to facilitate information exchange on access and benefit-sharing between Parties, providers and users of [genetic resources][biological resources][, their derivatives][and products] and, where appropriate, between national access and benefit-sharing focal points, including through:][Parties [shall][should] use] [An Access and Benefit-sharing Clearing-House is hereby established as part of] the clearing-house mechanism [pursuant to] [under] Article 18, paragraph 3, of the Convention, [as well as other means agreed by Parties, including non-internet means,] in order to:]

[(a) [Monitor][Support] compliance with national access and benefit-sharing legislation[, regulation][or community protocols] and with this International Regime on Access and Benefit-sharing [through the exchange of information];]

(b) Facilitate the [equitable] exchange of scientific, technical, environmental and legal information on, and experience with, access and benefit-sharing[, and on best practices in the application of simplified administrative procedures for access to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research];

(c) Facilitate adequate funding and capacity building for effective participation in the Access and Benefit-sharing Clearing House Mechanism, taking into account the special needs of developing country Parties, in particular the least developed among them and small island developing States, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity;]

(d) Assist Parties to implement this International Regime on Access and Benefit-sharing, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity[, through the provision of information as set out in paragraph 3 below];

[(e) Support potential users of genetic resources in accessing relevant information].

[2. The [Access and Benefit-sharing] Clearing-House [shall][should] serve as a means through which information is made available for the purposes of paragraph 1 above. It [shall][should] provide access to information made available by the Parties relevant to the implementation of [domestic access and benefit-sharing frameworks and] this International Regime on Access and Benefit-sharing.]

3. Without prejudice to the protection of confidential information, each Party [shall][should] make available to the [Access and Benefit-sharing] Clearing-House[, as appropriate,] [any information required to be made available to the Access and Benefit-sharing Clearing-House under this International Regime on Access and Benefit-sharing,] and:

(a) [Any existing laws, regulations and guidelines for][Mode of] implementation of this International Regime on Access and Benefit-sharing;

(b) Community protocols;

(c) Any bilateral, regional and multilateral agreements and arrangements [related to access and benefit-sharing];

(d) Information about national focal point and competent national authority(ies);

(e) List of defaulters of access and benefit-sharing agreements (“name and shame”);

(f) Information on [model] domestic access and benefit-sharing legislation and [menus of] model clauses for contracts;

(g) Experience in the development of electronic tools for the tracking of genetic resources;

(h) Codes of conduct and best practices in access and benefit-sharing].

[4. The [Access and Benefit-sharing] Clearing House [shall][should] include[, if appropriate,] an international [registration][and inquiry point][database of examples] of certificates of compliance with national legislation[, community protocols and relevant customary laws of indigenous peoples and local communities] and requirements on access and benefit-sharing, issued by the competent national authority(ies), in accordance with provisions in {...}.]

[5. The modalities of the operation of the [Access and Benefit-sharing] Clearing-House, including reports on its activities, [shall][should] be considered and decided upon by the Governing Body of the International Regime on Access and Benefit-sharing at its [first][next] meeting, and kept under review thereafter.]

(b) Internationally recognized certificate issued by a domestic competent authority

1. Each Party [shall][should] designate one national focal point for access and benefit-sharing [and make [any] information relevant to access and benefit-sharing available through the clearing-house mechanism][, as appropriate]. The national focal point [shall][should] [provide][make available] information [to the [access and benefit-sharing] clearing-house mechanism] [as well as other means agreed by Parties, including non-internet means] on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing, and on competent national authorities[, relevant indigenous and/or local communities and relevant stakeholders].

2. Each Party [shall][should] also designate one or more competent national authorities, which [shall][should] be responsible for and duly authorized to act on its behalf with respect to the following functions:

(a) Performing the administrative functions [required by][to support the implementation of] this International Regime on Access and Benefit-sharing[, including the [issuance][emission][and transferring inquiry] of certificates of compliance with national legislation and/or national] requirements on access and benefit-sharing];

(b) The receipt, administration and transfer to the financial mechanism of the funds collected through the enforcement of {...};]

(c) Help providers of genetic resources to obtain relevant information, including in specific cases of alleged infringements of provider country requirements in relation to prior informed consent and mutually agreed terms].

A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

3. Each Party [shall][should], no later than the [effective date] [date of entry into force] of this International Regime on Access and Benefit-sharing for it, notify the Secretariat of the names and addresses of its focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it [shall][should] convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Each Party [shall][should] forthwith notify the Secretariat of any changes in the designation of its national focal point or in the name and address or responsibilities of its competent national authority or authorities.

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3 above, and shall also make such information available through the [Access and Benefit-sharing] Clearing-House.^{15/}

Option 1

[[The International Regime on Access and Benefit-sharing [shall][should] establish a system [of an internationally recognized certificate of [origin][source][legal provenance][compliance]][of certification][Each Party shall issue a certificate of compliance with international legal effectiveness and applicability] which [shall][should] [establish the origin of the [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge and] [certify the compliance of a user] of [such] [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge] with the relevant [requirements and/or] laws [or regulations] of the [provider country][country of origin][countries of origin of such resources or of the Parties that have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention][, community protocols and relevant customary laws of indigenous and local communities]]. [Genetic resources][Biological resources][, their derivatives][and products] being provided by a Contracting Party are only those that are provided by Contracting Parties that are countries of origin of such resources or of the Parties that have acquired the genetic resources in accordance with the Convention.] The certificate [shall][should] be a public document to be issued by a competent national authority appointed in accordance with national law and [shall][should] be required to be presented at specific checkpoints in user and provider countries established to monitor compliance in relation to a range of possible uses.]

[Parties may, on a voluntary basis, make available to users a certificate of compliance with domestic access and benefit-sharing legislation issued by a relevant national authority, allowing users to demonstrate compliance with national access and benefit-sharing legislation.]

(a) The [voluntary] certificate [shall][should][may] include the following [minimum] information:

- (i) Issuing national authority;
- (ii) Details of the provider;
- (iii) A codified unique alpha numeric identifier;

^{15/} The placement of paragraphs 1 to 4 above must be further considered.

- (iv) Details of the rights holders of [genetic resources][biological resources][, their derivatives][and products] and/or [associated traditional knowledge], as appropriate;
- (v) Details of the user;
- (vi) Subject matter ([genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge]) covered by the certificate[, subject to confidential information as identified in national requirements or by indigenous and local communities providing associated traditional knowledge];
- [(vii) Geographic location of the [access][collection] activity][Source of [genetic resources][biological resources][, their derivatives][and products]];
- [(viii) Prior informed consent granted by [countries of origin][provider countries][or the Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention] or indigenous and local communities and mutually agreed terms;]
- [(ix) Uses permitted and restrictions of use;]
- [(x) Conditions of transfer to third parties;]
- (xi) Date of issuance;
- [(xii) Confirmation of compliance with domestic access requirements].

[(b) Contracting Parties [shall][should] establish checkpoints for the certificate for commercial and non- commercial uses. Checkpoints for commercial uses [may][shall][should] include customs controls, intellectual property offices and registration points for other commercial applications not covered by intellectual property rights. [Checkpoints for non- commercial uses [may][shall][should] include publishing houses of scientific journals, grants making bodies and ex-situ collections.]]

[(c) Contracting Parties [shall][should] facilitate an efficient, easy to use [voluntary] certification process through the use of new technology [and other means agreed to by Parties including capacity building and funding] which [may][shall][should] include:

- (i) Cost efficient publicly searchable certificate databases providing evidence of prior informed consent [and mutually agreed terms];
- [(ii) Recording of progressive compliance on such databases as conditions of prior informed consent and mutually agreed terms are met;]
- [(iii) Searchable patent application [and registration] databases;]
- (iv) Integration of genomic and morphological taxonomy [to create species certainty];
- (v) Low cost, portable, gene based bar-coding technology to create rapid attack taxonomy;
- (vi) Linking unique identifiers to gene-based bar-coding.]

[(d) Contracting Parties where viable [shall][should]:

- (i) Use existing tracking procedures by innovatively reconceptualizing them to track [genetic resources][biological resources][, derivatives and products] and/or associated traditional knowledge;]
- (ii) Minimize the creation of new levels of bureaucracy;

- (iii) [Where a Party requires prior informed consent,] Promote automatic issuing of certificates upon compliance with specific criteria[, such as completion of material transfer agreements or access and benefit-sharing agreements];
- [(iv) Promote consolidation of existing permitting requirements with any new certification system;]
- (v) Promote paperless systems;
- [(vi) Establish minimum standards for recording of collections, to ensure a link between incoming and outgoing resources, without requiring harmonization of internal recording procedures;]
- [(vii) Provide economic support to developing countries[, in particular the least developed among them and small island developing States, and countries with economies in transition,] to develop online systems to support an international documentation system.]]

[(e) Contracting Parties [shall][should] ensure that no intellectual property rights based on the utilization of [genetic resources][biological resources][, derivatives and products] and/or associated traditional knowledge will be granted unless the applications for such intellectual property rights include the disclosure of an Internationally Recognized Certificate of Compliance with the access and benefit-sharing legislation of the provider country.]

Option 2

Contracting Parties [agree to establish hereby][which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention,] [shall][should][may] [require that][as appropriate according to national circumstances, provide that][, through its competent national authority, issue], upon granting access, [an internationally recognized certificate provided to certify the compliance of a user of [genetic resources][biological resources][, their derivatives][and products] with the relevant law of the country of origin, [a certificate of compliance][[(]or documentary evidence[)]][[is issued,][by a national competent authority][allowing users of the [genetic resources][biological resources][, their derivatives][and products] to demonstrate compliance with the providing Party's access and benefit-sharing legislation [or regulation] or framework][with information on the country providing the resources and information on whether national legislation on access and benefit-sharing has been complied with].

(c) Tracking and reporting systems

1. Contracting Parties [shall][should] [develop tracking and monitoring systems that identify breaches of contractual obligations or misappropriation of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge and bring such breaches to the attention of the rights holders and stakeholders.][facilitate exchange of information, including through the clearing house mechanism, related to the development of tracking and monitoring systems of [genetic resources][biological resources][, their derivatives][and products], and encourage the further development of information technologies appropriate to that purpose].

[2. Parties [shall][should] encourage users and providers to include provisions in access and benefit-sharing contracts to cover monitoring and tracking the use of the [genetic resources][biological resources][, their derivatives][and products] accessed, including measures to monitor compliance with mutually agreed terms.]

(d) Information technology for tracking

(e) Disclosure requirements

[1. [Patent] [Intellectual property rights] applications [and product approval applications] whose subject matter concerns, is [directly based on][derived from or makes use of] [genetic resources][biological resources][, their derivatives][and products] and[/or] associated traditional knowledge [shall][should][may] disclose the country [providing [genetic resources][biological resources][, their derivatives][and products]] [of origin] [and/or the country providing the resource] [in accordance with the Convention] [or source of such] [genetic resources][biological resources], [their derivatives] [and products,] and [/or] associated traditional knowledge[.], as well as [information on prior informed consent and] evidence that provisions regarding prior informed consent, mutually agreed terms and benefit-sharing have been complied with, in accordance with the national legislation[, regulations and/or requirements] of the country providing the resources [in accordance with the Convention].]

[2. Each Party [shall][should][may] put in place effective enforcement procedures so as to ensure compliance with the obligations set out in the above paragraph. In particular, each Party [shall][should] establish administrative[, civil] and/or criminal measures for non-disclosure of the relevant information and the dissemination of false information to the national authorities, and [shall][should] ensure that administrative and/or judicial authorities have the authority to prevent the further processing of an application and to revoke or render unenforceable an intellectual property right or a product approval when the applicant has, knowingly or with reasonable grounds to know, failed to comply with the obligations in the above paragraph or provided false or fraudulent information.]

[3. [Compliance with national legislation and requirements in user countries [shall][should] be promoted][The obligations above-mentioned in paragraph 1 [may][shall][should] be met] by the presentation of a certificate of compliance with national legislation and requirements on access and benefit-sharing, issued by the country of origin in accordance with {...}.]

(f) Identification of check points

[1. Parties [shall][should] establish other effective supporting mechanisms for compliance at [border] check points[, intellectual property rights offices, entities funding research, etc., including by using certificates of compliance with national legislations, so as to prevent misappropriation of resources].]

[2. Contracting Parties [shall][should] establish check points at, *inter alia*, intellectual property rights offices, market approval authorities and entities funding research, to ensure that the use of [genetic resources][biological resources][, their derivatives][and products] is accompanied by, and is in line with, the relevant international recognized certificate.]

[3. The check points established by the Contracting Parties [shall][should] cover all uses of [genetic resources][biological resources][, their derivatives][and products] according to the definition included in the International Regime on Access and Benefit-sharing, in their jurisdiction.]

3) Development of tools to enforce compliance

[1. Each Party [shall][should] ensure that users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge under its jurisdiction comply with the national legislation [or regulation] of the countries of origin of such resources[, their derivatives][and products] and/or traditional knowledge or of the Parties that have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, when accessing and/or using such resources[, their derivatives][and products] and/or associated traditional knowledge[.] [by taking the following measures:]

[(a) Rules requiring that users of [genetic resources][biological resources][, derivatives][and products] and/or associated traditional knowledge comply with national legislation in the country of origin and the mutually agreed terms on which access was granted,

including requirements to equitably share the benefits arising out of the utilization of such resources [, derivatives][, and products] and/or associated traditional knowledge;]

[(b) [Introduce][rules requiring that][measures encouraging] the importation of [genetic resources] [biological resources][, their derivatives][and products] and/or associated traditional knowledge] from a country which requires prior informed consent for utilization or for the export of this resource[, only takes][to take] place in compliance with such prior informed consent;]

[(c) [Measures aimed at preventing the use of misappropriated [genetic resources][biological resources][, their derivatives][and products] and/or traditional knowledge;]

[(e) [Require that [genetic resources][biological resources][, their derivatives][and products][and/or associated traditional knowledge] are only used for purposes consistent with [prior informed consent and mutually agreed terms] [the terms and conditions under which they were acquired];]

[(f) Require that when [genetic resources][biological resources][, their derivatives][and products][and/or associated traditional knowledge] are used for research and commercial purposes within its jurisdiction, documentation with regard to the country of origin/providing country/agreed multilateral system providing these resources should accompany the material. If national legislation in the country providing the [genetic resources][biological resources][, their derivatives][and products] requires prior informed consent for access to the material, the documentation [shall][should] also specify whether such consent has been sought. [If the providing country is different from the country of origin, the country of origin or, if applicable, the agreed multilateral system [shall][should] also be disclosed.] If some of the information referred to in this subparagraph does not exist, this [shall][should] be stated in the documentation accompanying the material;]

[(g) [Introduce] rules requiring that when genetic resources covered by the [Multilateral System created under the] International Treaty on Plant Genetic Resources for Food and Agriculture are used for research and commercial purposes, they [shall][should] be accompanied by information confirming that these resources are accessed in accordance with the Standard Material Transfer Agreement under [the Multilateral System of] the Treaty;]

[(h) Other measures requiring users to comply with the provisions in the Convention and this International Regime on Access and Benefit-sharing.]]

[2. Each Party [shall][should] take appropriate, effective and proportionate measures to [establish sanctions and remedies][prevent situations] when users under their jurisdictions [have] violate[d] national access and benefit-sharing legislation of the countries of origin of [genetic resources][biological resources][, their derivatives][and products] and/or traditional knowledge or of the Parties that have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention. [Among others, the Parties [may][shall][should] establish the following sanctions and remedies:

- (a) The cessation of the acts related to the infraction;
- (b) Compensation for damages;
- (c) The withdrawal from the market of products resulting from the infringement;
- (d) The prohibition on the import or export of goods, materials or any means referred to in the previous paragraph;
- (e) The necessary action to avoid continuation or repetition of the offence;
- (f) Publication of the judgement and notification to interested persons at the expense of the person(s) who made the infraction;

(g) Criminal penalties for use of [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge without compliance with conditions of access and benefit-sharing in the country of origin;

(h) Others as appropriate.]]

[3. Each Party [shall][should], at the request of any interested Party, [in accordance with national law and existing agreements or arrangements,][if any,] cooperate in the investigation and follow up of cases of alleged violations of the national access and benefit-sharing legislation of the country of origin of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge or of the Party that has acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, including prior informed consent and mutually agreed terms.]

4. Each Party [shall][should] [provide timely guidance and][make available] information on the types of assistance that are available to nationals of other jurisdictions [to assist in the][to ensure that lack of funds and lack of experience with the law of the users are not elements preventing] exercise and enforcement of their rights.

[5. User Parties [shall][should] provide financial assistance for the settlement of legal disputes.]^{16/}

(a) Measures to ensure access to justice with the aim of enforcing ABS arrangements

[1. Access to justice [shall][should] be in accordance with Principle 10 of the Rio Declaration.]

[2. The Governing Body of the International Regime on Access and Benefit-sharing [shall][should][may] [consider][ensure] such [voluntary] measures or mechanisms as appropriate to support effective implementation of the International Regime on Access and Benefit-sharing, including by providing assistance to Parties[, as well assistance that covers issues related to the financial cost of legal expertise] [and/or indigenous and local communities], upon request, in litigation related to cases of alleged non-compliance [with national access and benefit-sharing laws, regulations and/or requirements and/or breach of access and benefit-sharing agreements]. Such measures/mechanisms [shall][should][may] be considered by the Governing Body of the International Regime on Access and Benefit-sharing not later than at its [first][next] meeting.]

[3. The International Regime on Access and Benefit-sharing [shall][should] establish an international access and benefit-sharing ombudsman's office. The ombudsman's office [shall][should] be responsible for provider countries[, or, where relevant,] [/] countries of origin and indigenous and local communities to identify breaches of their rights and to provide aid in seeking fair and equitable resolution of disputes. The ombudsman's office [shall][should] be empowered to take action on behalf of [provider] countries [of origin/provider countries] and indigenous and local communities through the binding Dispute Resolution Mechanism. The ombudsman's office [shall][should] also where necessary and when requested represent [provider] countries [of origin/provider countries] [and/or] indigenous and local communities in proceedings in foreign jurisdiction, take depositions from indigenous and local communities and provide evidence of customary law and practice as and where appropriate.]

(b) Dispute settlement mechanisms:

(i) Inter-State

(ii) Private international law

(iii) Alternative dispute resolution

[1.(a) The International Regime on Access and Benefit-sharing [shall][should] establish a Dispute Resolution Mechanism accessible to both countries and also other aggrieved parties

^{16/} The placement of paragraphs 1 to 5 above must be further considered.

who include indigenous and local communities, non-governmental organizations, research and commercial interests, and other providers and users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

[(b) The Dispute Resolution Mechanism [shall][should] also have regional offices that use local languages and have personnel conversant with the cultural, social, economic and environmental realities of the region.]

[(c) The Dispute Resolution Mechanism [shall][should] be guided in its work by principles of equity[, impartiality and independence] drawn from a wide range of legal sources including customary law and practices of indigenous and local communities.]

[(d) The International Regime on Access and Benefit-sharing [shall][should] establish mechanisms to provide legal assistance to developing countries and indigenous and local communities.]

[2. Parties to the Convention [shall][should] encourage users and providers to utilize, to the fullest extent possible, existing mechanisms on alternative dispute resolution.]

(c) Enforcement of judgments and arbitral awards across jurisdictions

[Noting the importance of compliance with ABS agreements/contracts to the international regime {*preambular paragraph*}]

[Noting also that the existing body of private international law provides a range of options for dispute resolution across national borders {*preambular paragraph*}]

[Noting the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the assistance it provides parties in the enforcement of foreign arbitral awards {*preambular paragraph*}]

[1. Contracting Parties [shall][should] ensure that their courts will enforce the decisions of the courts of the country of origin/provider countries against unlawful users under the former's jurisdiction subject to basic principles underlying enforcement of foreign judgments under comity in international law.]

2. Parties [shall][should] encourage access and benefit-sharing users and providers to include provisions in access and benefit-sharing contracts to cover international dispute resolution including:

(a) The jurisdiction to which they will subject any dispute resolution processes;

(b) The applicable law;]

(c) Options for alternative dispute resolution, such as mediation or arbitration, in the event of contractual disputes.

(d) Information exchange procedures between national focal points for access and benefit-sharing to help providers obtain relevant information in specific cases of alleged infringements of prior-informed-consent requirements

[The international ombudsman [shall][should] facilitate, through national focal points and/or competent authorities, the provision of relevant information on infringement of prior informed consent requirements of providers of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

(e) Remedies and sanctions

[1. National legislation [shall][should] provide for remedies to sanction lack of compliance with the requirements set out in paragraph {...} which must include inter alia revocation of the intellectual property rights in question, as well as co-ownership of the intellectual property rights and its transfer.]

[2. Contracting Parties [shall][should] develop effective, cost efficient systems to initiate and sustain actions to prevent, mitigate or seek redress in cases of breach of contractual obligations or misappropriation and where necessary provide support for claimants in actions for breach of contract or misappropriation.]

[3. Each Contracting Party [shall][should] introduce measures to facilitate cooperation between Contracting Parties to address alleged infringements of access and benefit-sharing agreements and misappropriation of [genetic resources][biological resources], [their derivatives][and products,] and/or associated traditional knowledge, such as access to justice and support for claimants in actions of breach of contract or misappropriation.]

4) Measures to ensure compliance with customary law and local systems of protection

[*Noting* that customary law provides a sub-set of existing rules related to access and benefit-sharing of [genetic resources][biological resources], and measures to comply with such rules {*preambular paragraph*}]

[*Recognizing* that customary law functions within a specific belief system, is dynamic and includes mechanisms to preserve its underlying values and principles {*preambular paragraph*}]

[1. Contracting Parties [shall][should]:

(a) Take necessary policy, administrative[, regulatory] and legislative measures to recognize the rights of indigenous peoples and local communities to [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge. Until, and to the extent such policies, administrative and legislative measures have not been put in place, the State shall nonetheless uphold obligations with respect to indigenous peoples' and local communities' rights to [genetic resources][biological resources][, their derivatives][and products] and/or traditional knowledge under international law;

(b) With the full and effective participation of the indigenous and local communities concerned support and facilitate local, national and/or regional community protocols regulating access to traditional knowledge taking into consideration the relevant customary laws and ecological values of indigenous and local communities in order to prevent the misappropriation of their associated traditional knowledge and to ensure the fair and equitable sharing of benefits arising from the utilization of such associated traditional knowledge;

(c) Ensure that any acquisition, appropriation or utilization of traditional knowledge in contravention of the relevant community protocols constitutes an act of misappropriation;

(d) Ensure that the application, interpretation and enforcement of protection against misappropriation of traditional knowledge, including determination of equitable sharing and distribution of benefits, [shall][should] be guided, as far as possible and appropriate, by respect for the ecological values, customary norms, laws and understandings of the holders of the knowledge;

(e) Encourage and support the development of community protocols that [shall][should] provide potential users of traditional knowledge with clear and transparent rules for access to traditional knowledge where associated traditional knowledge is shared between: (i) indigenous and local communities spread across national boundaries; and (ii) between indigenous and local communities with different values, customary norms, laws and understandings;

(f) Where such community protocols are developed with the full and effective participation of indigenous and local communities, give effect to such community protocols through an appropriate legal framework;

(g) Community protocols in their efforts to prevent misappropriation of associated traditional knowledge and ensure fair and equitable benefit-sharing must also make efforts to respect, preserve and maintain relations within and between indigenous and local communities that generate and sustain the traditional knowledge by ensuring the continued availability of traditional knowledge for the customary practice, use and transmission;

(h) Consider relevant customary law and its potential application to access and benefit-sharing transactions in taking measures to raise awareness of access and benefit-sharing issues.]

[2. Parties are encouraged to provide information on the indigenous community which has the responsibility to identify the appropriate customary law expert relevant to an access and benefit-sharing transaction.]
