

Date: 08 April 2010

From: Executive Secretary, Convention on Biological Diversity

To: CBD National Focal Points, ABS National Focal Points, international organizations, indigenous and local community organizations and stakeholders

Subject: **Access and Benefit-sharing: Communication of a Proposed Protocol pursuant to Article 28, paragraph 3 of the Convention on Biological Diversity**

Thematic area: Access to Genetic Resources and Benefit-sharing

Ref.: SCBD/SEL/LG/71198

NOTIFICATION (*English*) No. 2010-066

Madam/Sir,

In decision VII/19 D (Kuala Lumpur, February 2004), the Conference of the Parties mandated the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing 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 of Article 15 and 8 (j) of the Convention and its three objectives.

In decision VIII/4 A (Curitiba, March 2006), the Conference of the Parties extended the mandate of the Working Group and instructed it to complete its work at the earliest possible time before the tenth meeting of the Conference of the Parties.

In decision IX/12 (Bonn, May 2008), 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 in 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.

The Working Group has met three times since the ninth meeting of the Conference of the Parties (Paris, April 2009; Montreal, November 2009; Cali, March 2010) and work is progressing toward the conclusion of a legally binding instrument in the form of a Protocol to the Convention on Biological Diversity. As decided by the Working Group at its ninth meeting, a resumed session of the ninth meeting of the Working Group will be held in June 2010 to continue the negotiation of the international regime on the basis of the draft Protocol proposed by the Co-Chairs of the Working Group.

Pursuant to Article 28, paragraph 3 of the Convention, I am pleased to hereby circulate the text of the draft Protocol as annexed to the report of the first session of the ninth meeting of the Working Group. As you will be aware, Article 28, paragraph 3, of the Convention stipulates that the text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before the meeting during which it is to be submitted for adoption.

The present notification is without prejudice to the final outcome of the negotiations. The draft Protocol should be read in conjunction with the report of the ninth meeting (first session) of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/WG-ABS/9/3) of which it is an integral part.

The full text of this notification is available on the CBD website at: <http://www.cbd.int/doc/notifications/2010/ntf-2010-066-abs-en.pdf>

Please accept, Madam/Sir, the assurances of my highest consideration.

*Annex I*

**REVISED DRAFT PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY\***

*The Parties to this Protocol,*

*Being* Parties to the Convention on Biological Diversity, hereinafter referred to as “the Convention”,

*Recalling* that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention,

*Recalling further* Article 15 of the Convention on access to genetic resources and sharing of the benefits arising from their utilization,

*Recognizing* the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value to genetic resources in developing countries, in accordance with Articles 16 and 19;

*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,

*Recalling as well* the Plan of Implementation adopted by the World Summit on Sustainable Development (Johannesburg, September 2002) which 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 from the utilization of genetic resources”,

*Recognizing* the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation and adaptation to climate change,

*Acknowledging* the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and, thereby contributing to achieving the Millennium Development Goals,

*Recalling* Article 8(j) as it relates to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,

*Acknowledging* the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

*Recognizing* the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,

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\* This document, which was not negotiated, reflects the efforts by the Co-Chairs to elaborate the elements of a draft Protocol, and is without prejudice to the rights of the Parties to make further amendments and additions to the text. This document should be read in conjunction with the main body of the report, which reflects the views of the Parties during the ninth meeting of the Working Group on Access and Benefit-sharing, which took place in Cali, Colombia.

*Further recognizing* the importance of promoting equality in negotiation of mutually agreed terms between providers and users of genetic resources,

*Recognizing* that international instruments related to access and benefit-sharing should be mutually supportive with a view to achieving the objectives of the Convention,

*Determined* to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

*Recognizing* the diversity of circumstances in which traditional knowledge associated with genetic resources is owned, held and developed by indigenous and local communities,

*Taking into account* the existing rights of indigenous and local communities to genetic resources and associated traditional knowledge,

*Mindful* that when traditional knowledge associated with genetic resources is being accessed, it is the right of indigenous and local communities, consistent with their laws, customary laws, community protocols and procedures, as applicable, to identify the rightful holders of the knowledge within their indigenous and local communities.

*Have agreed as follows:*

## **ARTICLE 1**

### **OBJECTIVE**

The objective of this Protocol is to ensure the fair and equitable sharing of the benefits arising from the utilization of genetic resources, contributing to the conservation of biological diversity and the sustainable use of its components.

## **ARTICLE 2**

### **USE OF TERMS**

1. For the purposes of this Protocol:
  - (a) "*Conference of the Parties*" means the Conference of the Parties to the Convention;
  - (b) "*Regional economic integration organization*" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

## **ARTICLE 3**

### **SCOPE**

This Protocol shall apply to genetic resources within the scope of the Convention on Biological Diversity and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources and to the benefits arising from the utilization of such knowledge.

## **ARTICLE 4**

### **FAIR AND EQUITABLE BENEFIT-SHARING**

1. Benefits arising out of the utilization of genetic resources and associated traditional knowledge shall be shared in a fair and equitable way with the Party providing such resources or, where applicable, with the indigenous and local community holding such resources or associated traditional knowledge.

2. Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including from derivatives produced through techniques such as expression, replication, characterization or digitalization, with the country providing such resources, taking into account the list of typical uses of genetic resources provided in Annex II. The Conference of the Parties serving as the meeting of the Parties shall review this list on a regular basis with a view to keeping it in line with scientific and technological progress.

3. Benefits arising from the utilization of genetic resources and associated traditional knowledge shall be shared on mutually agreed terms, including as provided for by the Convention in Articles 8 (j), 15, 16 and 19. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in Annex I.

4. Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources with indigenous and local communities holding such knowledge, taking into consideration the provisions of Article 9.

## ARTICLE 5

### ACCESS TO GENETIC RESOURCES

1. In the exercise of its sovereign rights over its genetic resources, access to genetic resources shall be subject to the prior informed consent of the Party providing such resources, unless otherwise determined by that Party.

2. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to:

(a) Provide for legal certainty, clarity and transparency of their national access and benefit-sharing requirements;

(b) Provide for easily obtainable information on how to apply for prior informed consent;

(c) Provide for a timely written decision by a competent national authority;

(d) Provide for the issuance of a permit or internationally recognised certificate as evidence of the decision to grant prior informed consent;

(e) Where applicable national law recognizes and affirms existing rights of indigenous and local communities to genetic resources, set out criteria for the prior informed consent/approval and involvement of such communities for access to their genetic resources; and

(f) Establish clear rules and procedures for requiring and establishing mutually agreed terms at the time of access. Such terms shall be set out in writing and may include:

(i) A dispute settlement clause;

(ii) Terms on benefit-sharing, including any ownership of intellectual property rights;

(iii) Terms on subsequent third-party use, if any; and

(iv) Terms on changes of intent, where applicable.

3. Parties shall make their decisions to grant prior informed consent available to the Access and Benefit-sharing Clearing-House established under Article 11.

4. A Party that determines which of its genetic resources will or will not be subject to the access requirement of prior informed consent under Article 15(5) of the Convention, shall inform the Access and Benefit-sharing Clearing-House accordingly, along with any accompanying information.

## **ARTICLE 5 BIS**

### **ACCESS TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES**

Parties shall take legislative, administrative, or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources held by indigenous and local communities is accessed with the prior and informed consent/approval and involvement of indigenous and local communities, and is based on mutually agreed terms.

## **ARTICLE 6**

### **CONSIDERATIONS RELEVANT TO RESEARCH AND EMERGENCY SITUATIONS**

In the development and implementation of their national legislation on access and benefit-sharing, Parties shall:

- (a) Create conditions to facilitate, promote and encourage biodiversity-related research, important for the conservation of biological diversity and the sustainable use of its components; and
- (b) Pay due regard to emergency situations including serious threats to public health, food security or biological diversity, according to national legislation.

## **ARTICLE 7**

### **CONTRIBUTION TO CONSERVATION AND SUSTAINABLE USE**

Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation and sustainable use of biological diversity in support of the objectives of the Convention.

## **ARTICLE 8**

### **TRANSBOUNDARY COOPERATION**

1. In instances where the same genetic resources are found in-situ within the territory of neighbouring Parties, those Parties shall cooperate, as appropriate, with a view to implementing this Protocol, in order to ensure that measures taken are supportive of and do not run counter to its objectives.
2. Where the same traditional knowledge associated with genetic resources is shared by different indigenous and local communities in several Parties, those Parties shall cooperate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

OR

1. Where the same genetic resources and/or traditional knowledge associated with genetic resources are found *in situ* within the territory of more than one Party, those Parties shall cooperate with the involvement of the indigenous and local communities concerned, where applicable, with a view to implement the objective of this Protocol.

## ARTICLE 9

### TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. In implementing their obligations under this Protocol, Parties shall give due consideration of indigenous and local community laws, customary laws, community protocols and procedures, of indigenous and local communities, as applicable, with respect to traditional knowledge associated with genetic resources.
2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.
3. Parties shall support, as appropriate, the development by indigenous and local communities of:
  - (a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of its utilization;
  - (b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and
  - (c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.
4. Parties, in their implementation of this Protocol, shall not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities.
5. Parties shall encourage the users of publicly available traditional knowledge associated with genetic resources to take all reasonable measures, including due diligence, to enter into fair and equitable benefit-sharing arrangements with the rightful holders of that knowledge.

## ARTICLE 10

### NATIONAL FOCAL POINTS AND COMPETENT NATIONAL AUTHORITIES

1. Each Party shall designate a national focal point on access and benefit-sharing. The national focal point shall inform applicants for access to genetic resources and/or associated traditional knowledge on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing, and on competent national authorities, relevant indigenous and local communities and relevant stakeholders, through the Access and Benefit-sharing Clearing-House. The national focal point shall be responsible for liaison with the Secretariat.
2. Each Party shall designate one or more competent national authorities on access and benefit-sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.
3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.
4. Each Party shall, no later than the date of entry into force of this Protocol 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 or authorities, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall 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.

5. The Secretariat shall make information received pursuant to paragraph 4 available through the Access and Benefit-sharing Clearing-House.

## **ARTICLE 11**

### **THE ACCESS AND BENEFIT-SHARING CLEARING-HOUSE AND INFORMATION SHARING**

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

- (a) Legislative, administrative and policy measures on access and benefit-sharing;
- (b) Information on the national focal point and competent national authority(ies); and
- (c) Decisions to grant prior informed consent.

3. Additional information may include:

- (a) Indigenous and local community laws, customary laws, community protocols and procedures as applicable, applied within the country with respect to traditional knowledge associated with genetic resources;
- (b) Model contractual clauses;
- (c) Methods and tools developed to monitor genetic resources; and
- (d) Codes of conduct and best practices.

4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

## **ARTICLE 12**

### **COMPLIANCE WITH NATIONAL LEGISLATION ON ACCESS AND BENEFIT-SHARING**

1. Parties shall take appropriate, effective and proportionate measures to ensure that genetic resources utilized within their jurisdiction have been accessed and used in accordance with prior informed consent and that mutually agreed terms have been established, as specified in the national legislation on access and benefit-sharing of the country providing the genetic resources.

2. Parties shall take appropriate, effective and proportionate administrative or legal measures to address situations of non-compliance with measures adopted in accordance with paragraph 1.

3. Parties shall cooperate in cases of alleged violation of the national legislation on access and benefit-sharing of the country providing genetic resources.

## ARTICLE 13

### MONITORING, TRACKING AND REPORTING THE UTILIZATION OF GENETIC RESOURCES

1. In implementing Article 12, paragraph 1, Parties shall take measures, as appropriate, to monitor the utilization of genetic resources, including from derivatives produced through expression, replication and characterization, having regard to the list of typical uses of genetic resources provided in Annex II of the present Protocol. Such measures include:

(a) The identification and establishment of check points and disclosure requirements including at:

- (i) Competent national authority (CNA) in the user country;
- (ii) Research institutions subject to public funding;
- (iii) Entities publishing research results relating to the utilization of genetic resources;
- (iv) Intellectual property examination offices; and
- (v) Authorities providing regulatory or marketing approval of products derived from genetic resources.

The disclosure requirement shall be met by providing *bona fide* evidence that a permit or certificate was granted at the time of access in accordance with Article 5, paragraph 2 (d);

(b) Requiring users and providers of genetic resources to share information on the implementation of mutually agreed terms, including through reporting requirements; and

(c) Encouraging users and providers of genetic resources to use cost-effective communication tools and Internet-based systems for monitoring and tracking of genetic resources.

2. The permit or certificate issued at the time of access in accordance with Article 5, paragraph 2 (d) and registered with the ABS Clearing House, in accordance with Article 5, paragraph 3, shall constitute an internationally recognized certificate of compliance.

3. The internationally recognized certificate of compliance shall serve as evidence that the genetic resource in question has been obtained/obtained, accessed and used in accordance with prior informed consent and that mutually agreed terms have been entered into, as specified in the national legislation on access and benefit-sharing of the country providing the genetic resource. Disclosure requirements shall be met by providing an internationally recognized certificate.

4. The internationally recognized certificate of compliance shall contain the following minimum information:

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

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall consider additional modalities of the internationally recognized certificate of compliance system, taking into account the need to minimize transaction costs and to ensure feasibility, practicality and flexibility.

## **ARTICLE 14**

### **COMPLIANCE WITH MUTUALLY AGREED TERMS**

1. In the implementation of Article 5, paragraph 2 (f) (i), Parties shall encourage providers and users of genetic resources and/or associated traditional knowledge to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

- (a) The jurisdiction to which they will subject any dispute resolution processes;
- (b) The applicable law; and/or
- (c) Options for alternative dispute resolution, such as mediation or arbitration.

2. Parties shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

3. Parties shall take effective and proportionate measures, as appropriate, to address cases of alleged non-compliance with mutually agreed terms including measures to:

- (a) Facilitate access to justice;
- (b) Facilitate mutual recognition and enforcement of foreign judgments and arbitral awards;
- (c) Facilitate cooperation between Parties; and
- (d) Provide assistance to those seeking legal redress.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall review the effectiveness of measures referred to in paragraph 3 and based on this review shall consider the need for and modalities of further action.

## **ARTICLE 15**

### **MODEL CONTRACTUAL CLAUSES**

1. Parties shall encourage, as appropriate, the development, update and use of sectoral menus of model contractual clauses for mutually agreed terms in consultation with users and providers from key sectors.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral menus of model contractual clauses.

## **ARTICLE 16**

### **CODES OF CONDUCT AND BEST PRACTICE STANDARDS**

1. Parties shall encourage, as appropriate, the development, update and use of codes of conduct and best practice standards in relation to access and benefit-sharing in consultation with users and providers from key sectors.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of codes of conduct and best practice standards.

## ARTICLE 17

### AWARENESS-RAISING

Parties shall take measures to raise awareness of the importance of genetic resources and associated traditional knowledge, and related access and benefit-sharing issues. Such measures may include *inter alia*:

- (a) Promotion of this Protocol and its objective;
- (b) Organization of stakeholder meetings;
- (c) Establishment and maintenance of a help desk for stakeholders;
- (d) Information dissemination through a national-level clearing-house;
- (e) Promotion of codes of conduct and best practice standards in consultation with stakeholders; and
- (f) Promotion of regional exchange of experiences.

## ARTICLE 18

### CAPACITY

1. Parties shall cooperate in the development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small islands developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations.

2. The needs of Parties referenced in paragraph 1 for financial resources in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building to implement this Protocol.

3. Parties should identify their national capacity needs and priorities, through national capacity self-assessments, as a basis for appropriate measures, and should provide this information to the Access and Benefit-sharing Clearing-House established under Article 11.

3bis. Parties shall support capacity-building for indigenous and local communities, based on needs and priorities identified by them.

4. In support of the implementation of this Protocol, capacity shall address the following key areas: (a) capacity to comply with the obligations of this Protocol; (b) capacity to negotiate mutually agreed terms; (c) capacity to develop, implement and enforce national legislative, administrative or policy measures on access and benefit-sharing; and (d) capacity to support countries providing genetic resources in the development of their endogenous research capabilities to add value to their own genetic resources.

5. Measures in accordance with paragraphs 1 to 4 may include *inter alia*:

- (a) Legal and institutional development;
- (b) Promoting equality in negotiations, such as training to negotiate mutually agreed terms;
- (c) Monitoring and enforcing compliance;
- (d) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;
- (e) Development and use of valuation methods;
- (f) Bioprospecting, associated research and taxonomic studies;
- (g) Technology transfer, and infrastructure and technical capacity to make such technology

transfer sustainable ;

- (h) Enhancing the contribution of access and benefit-sharing activities to the conservation and sustainable use of biodiversity;
- (i) Special measures to increase the capacity of access and benefit-sharing stakeholders; and
- (j) Special measures to increase the capacity of indigenous and local communities in relation to access to traditional knowledge associated with genetic resources.

5. Information on capacity-building initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 4, should be provided to the Access and Benefit-sharing Clearing-House with a view to promote synergy and coordination on capacity-building for access and benefit-sharing.

### **ARTICLE 18 BIS**

#### **TECHNOLOGY TRANSFER AND COOPERATION**

In accordance with Articles 15, 16 and 19, Parties shall collaborate, cooperate and contribute in scientific research and development programmes, particularly biotechnological research activities, as a means to generate and share benefits in accordance with Article 4 of this Protocol. This shall include measures by developed country Parties that provide incentives, to companies and institutions within their jurisdiction, to promote and encourage access to technology by, and transfer of technology to, developing countries, including the least developed among them, in order to enable them to create a sound and viable technological base. Where possible, such collaborative activities shall take place in the country providing genetic resources.

### **ARTICLE 18 TER**

#### **NON-PARTIES**

The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

### **ARTICLE 19**

#### **FINANCIAL MECHANISM AND RESOURCES**

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.
2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.
3. Regarding the capacity-building referred to in Article 18, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2, for consideration by the Conference of the Parties, shall take into account the need for financial resources by developing country Parties, in particular the least developed and the small island developing States among them.
4. In the context of paragraph 1, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.
5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

## ARTICLE 20

### CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THIS PROTOCOL

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.
3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:
  - (a) Make recommendations on any matters necessary for the implementation of this Protocol;
  - (b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
  - (c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;
  - (d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 24 and consider such information as well as reports submitted by any subsidiary body;
  - (e) Consider and adopt, as required, amendments to this Protocol and its annex, as well as any annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and
  - (f) Exercise such other functions as may be required for the implementation of this Protocol.
5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat in conjunction with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5.

## **ARTICLE 21**

### **SUBSIDIARY BODIES**

1. Any subsidiary body established by or under the Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties to this Protocol, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under the Protocol shall be taken only by the Parties to the Protocol.
3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to the Protocol, shall be substituted by a member to be elected by and from among the Parties to the Protocol.

## **ARTICLE 22**

### **SECRETARIAT**

1. The Secretariat established by Article 24 of the Convention shall serve as the Secretariat to this Protocol.
2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.
3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

## **ARTICLE 23**

### **RELATIONSHIP WITH THE CONVENTION**

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

## **ARTICLE 24**

### **MONITORING AND REPORTING**

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol.

## **ARTICLE 25**

### **COMPLIANCE WITH THE PROTOCOL**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention.

## **ARTICLE 26**

### **ASSESSMENT AND REVIEW**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, five years after the entry into force of this Protocol and every five years thereafter, an evaluation of the effectiveness of the Protocol, including an assessment of its procedures.

## **ARTICLE 27**

### **SIGNATURE**

This Protocol shall be open for signature at {...}, on 4 June 2011, by States and regional economic integration organizations and at United Nations Headquarters in New York from 11 June 2011 to 10 June 2012.

## **ARTICLE 28**

### **ENTRY INTO FORCE**

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the 50<sup>th</sup> instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.
2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after its entry into force pursuant to paragraph 1, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.
3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

## **ARTICLE 29**

### **RESERVATIONS**

No reservations may be made to this Protocol.

## **ARTICLE 30**

### **WITHDRAWAL**

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depository, or on such later date as may be specified in the notification of the withdrawal.

### **ARTICLE 31**

#### **AUTHENTIC TEXTS**

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Nagoya on this twenty-ninth day of October, two thousand and ten.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

*Annex I*

**MONETARY AND NON-MONETARY BENEFITS**

1. Monetary benefits may include, but not be limited to:
  - (a) Access fees/fee per sample collected or otherwise acquired;
  - (b) Up-front payments;
  - (c) Milestone payments;
  - (d) Payment of royalties;
  - (e) Licence fees in case of commercialization;
  - (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
  - (g) Salaries and preferential terms where mutually agreed;
  - (h) Research funding;
  - (i) Joint ventures;
  - (j) Joint ownership of relevant intellectual property rights.
  
2. Non-monetary benefits may include, but not be limited to:
  - (a) Sharing of research and development results;
  - (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the country providing genetic resources;
  - (c) Participation in product development;
  - (d) Collaboration, cooperation and contribution in education and training;
  - (e) Admittance to ex situ facilities of genetic resources and to databases;
  - (f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
  - (g) Strengthening capacities for technology transfer;
  - (h) Institutional capacity-building;
  - (i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
  - (j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;
  - (k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
  - (l) Contributions to the local economy;

- (m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in country providing genetic resources;
- (n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- (o) Food and livelihood security benefits;
- (p) Social recognition;
- (q) Joint ownership of relevant intellectual property rights.

*Annex II*

**LIST OF TYPICAL USES OF GENETIC RESOURCES**

This list may include, but is not limited to:

- (a) Modification;
- (b) Biosynthesis;
- (c) Breeding and selection;
- (d) Propagation and cultivation;
- (e) Conservation;
- (f) Characterization and evaluation; or
- (g) Any biotechnological application involving genetic resources in activities of research not aiming at commercialization, research and development aiming at commercialization, and commercialization.

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