

FIRST READING (13 JULY 2010)

ARTICLE 1

OBJECTIVE

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to GR and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components

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 [any][the] utilization of such resources [that were acquired after the entry into force of this Protocol for a Party with Parties providing such resources] [or its derivatives]. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the CBD and to the benefits arising from the utilization of such knowledge.

[This Protocol does not apply to genetic resources beyond the limits of national jurisdiction or to those located in the Antarctic Treaty Area, which is the area south of latitude 60 South.]

[This Protocol does not apply to:

- a) human genetic resources;
- b) genetic resources beyond national jurisdictions;
- c) genetic resources under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture, both current and as may be amended by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture;
- d) genetic resources when utilized solely as a commodity;
- e) genetic resources and traditional knowledge associated with genetic resources acquired prior to the entry into force of the Protocol;
- f) human pathogens;
- g) Antarctic Treaty.]

[The Protocol also applies to benefits arising from the continuing and new utilization of genetic resources and associated traditional knowledge acquired before the entry into force of the Convention; genetic resources from the Antarctic Treaty Area and marine areas beyond national jurisdiction.]

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt modified procedures for benefit-sharing for genetic resources and associated traditional knowledge in paragraph 2.]

[Parties shall, for new and continuous utilisation of genetic resources acquired before the entry into force of the Protocol, encourage users to take all reasonable measures to enter into fair

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and equitable benefit-sharing arrangements with a provider country where such material is located *in situ*.

ARTICLE 4

FAIR AND EQUITABLE BENEFIT-SHARING

1. Benefits arising out of [the][every] utilization of genetic resources [including their derivatives] [and associated traditional knowledge][and traditional knowledge associated with genetic resources] shall be shared in a fair and equitable way [, in accordance with this Protocol][with the [Party providing such resources][country of origin of such resources or by the Parties that have acquired the genetic resources in accordance with the Convention] [or, where applicable, with][including] the indigenous and local community holding such resources [or associated traditional knowledge] [, upon mutually agreed terms]. [When a genetic resource or associated traditional knowledge is utilised without mutually agreed terms, the country of origin and/or indigenous and local community involved shall be entitled to one hundred percent of the benefits generated, including any intellectual property, plus punitive damages.]

2. Parties shall take [legislative, administrative or policy] measures, as appropriate, [in accordance with this Protocol] [with the aim of ensuring the fair and equitable sharing of the benefits][to ensure the fair and equitable sharing of the benefits][with the aim of sharing in a fair and equitable way the benefits] arising from [the][any] utilization of genetic resources [for the purposes of research and development on their genetic and biochemical makeup], including from [derivatives][naturally occurring biochemical compounds], [in accordance with mutually agreed terms] [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][any] utilization of genetic resources[, their derivatives] [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 [as appropriate]. 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, [in accordance with the Protocol] [to ensure the fair and equitable sharing of benefits][with the aim of ensuring the fair and equitable sharing of benefits][with the aim of sharing in a fair and equitable way benefits] arising from [the][any] utilization of traditional knowledge associated with genetic resources [or its derivatives] with indigenous and local communities holding such knowledge[, taking into consideration the provisions of Article 9].

[4bis. Benefits arising from the utilisation of traditional knowledge associated with genetic resources shall be shared on mutually agreed terms that may include monetary or non-monetary benefits including, as appropriate, types of benefit-sharing identified in Annex I.]

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ARTICLE 5

ACCESS TO GENETIC RESOURCES

1. In the exercise of [its][their] sovereign rights over [its genetic resources [and/or its derivatives]][their natural resources and subject to its national legislation], access to genetic resources, [their derivatives and/or associated traditional knowledge] shall be subject to the prior informed consent of the [Party providing such resources][country of origin], unless otherwise determined by that Party, [and in accordance with Article[s] 9(d) and] 15 of the Convention].

2. [For Parties requiring prior informed consent,][Unless a Party waives its sovereign right through a national decision posted on the Access and Benefit-sharing Clearing-House,] Parties shall take the necessary legislative, administrative or policy measures, as appropriate, [with the aim,] [and make them available to the Access and Benefit-sharing Clearing-House established under Article 11,] to:

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

[(a bis) Provide for equal treatment in applications for access to genetic resources between similar domestic and foreign applicants and between similar foreign applicants of different Parties][Parties shall avoid application of discriminatory rules in processing access permits except where such rules aim at advancing local, non-commercial biodiversity and ecosystem research and education];]

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

[(c) [Provide for a timely written decision by a competent national authority][Establish clear criteria against which applications for prior informed consent are judged and for a written decision by the authority to be notified to the applicant in a reasonable period of time];]

[(c bis) Provide a simplified procedure for access to genetic resources for non-commercial use in research in accordance with national law];]

[(d) Provide for the issuance [at its discretion] of a permit or [internationally recognized] certificate [of access or equivalent that would be recognized internationally], as evidence of the decision to grant prior informed consent [and of the establishment of mutually agreed terms];]

[(e) [Where applicable national law recognizes and affirms existing rights of indigenous and local communities to genetic resources, set out [criteria][procedures], for the prior informed consent[approval and involvement] of such communities for access to their genetic resources][Where applicable national law recognizes that indigenous and local communities have the right to provide access to genetic resources, set out processes for obtaining their prior informed consent or approval and involvement and/or for negotiating mutually agreed terms];]

[(e bis) Require the establishment of mutually agreed terms at the time of access];] 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, inter alia,] include:

- (i) A dispute settlement clause;
- (ii) Terms on benefit-sharing, including any [ownership of] intellectual property rights;

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- (iii) Terms on subsequent third-party use, if any; and
- (iv) Terms on changes of intent, where applicable.

[(g) Provide for appropriate administrative or judicial appeals procedures;]

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[(h) Ensure that the costs for obtaining decisions on prior informed consent do not exceed the actual costs of processing the applications.]

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. [In accordance with Article 15(1) of the Convention, each Party shall determine][A Party that determines] which of its genetic resources [and/or its derivatives] will [or will not] [be subject to PIC][be subject to the access requirement of prior informed consent under Article 15(5) of the Convention,] [. It] shall inform the [Access and Benefit-sharing] Clearing-House accordingly, along with any accompanying information.

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ARTICLE 5 BIS

ACCESS TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

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

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[2. Parties shall take appropriate, effective and proportionate measures with the aim of ensuring that traditional knowledge utilised within their jurisdiction have been accessed and utilised in accordance with paragraph 1.]

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3. 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.

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4. Parties shall cooperate in cases of alleged violation of paragraph 1.]

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ARTICLE 6

[CONSIDERATIONS RELEVANT TO [NON-COMMERCIAL] RESEARCH AND EMERGENCY SITUATIONS

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

(a) Create conditions [including simplified measures on access for non-commercial research purpose,] to [facilitate,] promote and encourage [non-commercial] biodiversity-related research, [important][considering its importance] for the conservation of biological diversity and the sustainable use of its components [in accordance with Article 12(b) of the CBD]; and

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(b) [Pay due regard to emergency situations including serious threats to public health, food security or biological diversity, according to national legislation.][Provide immediate access to [pathogens][genetic resources], falling also under the scope of relevant international organizations and conventions, such as the World Health Organization, the International Plant Protection Convention, or the World Animal Health Organization, and which are of particular public concern for the health of humans, animals or plants, in ways and for uses provided for in existing and future rules, procedures or practices on the sharing of pathogens and related benefits established under those international organizations and conventions[, taking into consideration the legal, structural and/or administrative obstacles to the optimal implementation of the World Trade Organization paragraph 6 system]];

(c) Consider the importance of genetic resources for food and agriculture and their special role for food security and climate change adaptation and mitigation;

(d) Consider sectoral approaches in the implementation and further development of this Protocol.]]

[This Protocol shall provide no special consideration for any sector or any use of genetic resources or associated traditional knowledge without adequate provisions for fair and equitable benefit-sharing and compliance;]

[Pay due regard that the domestic access and benefit-sharing laws, policies or measures will not affect biological resources that are traded and used as commodities.]

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. Where genetic resources with similar properties are found in-situ within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

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ARTICLE 9

TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. In implementing their obligations under this [Protocol][Article], Parties shall [in good faith, meaningfully] take into consideration the laws, customary laws, community protocols and procedures, of indigenous and local communities, as applicable, with respect to traditional knowledge associated with genetic resources [or its derivatives].
2. Parties, [as appropriate and] 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 [or its derivatives] about their obligations [including measures as made available through the [Access and Benefit-sharing] Clearing-House under Article 11] for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.
3. Parties shall [endeavour to] support, as appropriate, the development by indigenous and local communities [including women within these communities,] of:
 - (a) Community protocols in relation to access to traditional knowledge associated with genetic resources [or its derivatives] 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 [or its derivatives]; and
 - (c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources [or its derivatives].
4. Parties, in their implementation of this Protocol, shall not restrict the customary use and exchange of genetic resources [, their derivatives] and associated traditional knowledge within and amongst indigenous and local communities [that are compatible with conservation and sustainable use requirements].
5. Parties shall [, where appropriate,] [encourage][require] 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][such] knowledge [within their indigenous and local communities].

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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 make information available as follows:
 - (a) for applicants seeking access to genetic resources, including derivatives, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;
 - (b) for applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and

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(c) information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.

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 or, as applicable, issuing written evidence that access requirements have been met 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 contact information of its national focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, 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 contact information 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) [All relevant] Legislative, administrative and policy measures on access and benefit-sharing;

(b) Information on the national focal point and competent national authority(ies);

[(b bis) Any bilateral, regional or multilateral agreements or arrangements;] and

(c) [When access is granted, decisions related to prior informed consent] [Decisions to grant prior informed consent], [for access to genetic resources, as appropriate and where applicable];

[(c bis) Details of mutually agreed terms concluded, specifically those concerning benefit-sharing arrangements].

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[3. Additional information may include:]

(a) [Indigenous and local community laws, customary laws, community protocols and procedures as applicable, applied][Community-level procedures, as applicable, of indigenous and local communities] within the country with respect to traditional knowledge associated with genetic resources;

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[(a bis) Relevant competent authorities of indigenous and local communities:]

(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 [INTERNATIONAL AND] NATIONAL LEGISLATION ON ACCESS AND BENEFIT-SHARING

[1. Parties shall take appropriate, effective and proportionate measures [aiming] [to ensure][with the aim] that [genetic resources[, [their derivatives] and associated traditional knowledge] utilized within their jurisdiction have been [accessed][obtained] [[and used] in accordance] with prior informed consent [and mutually agreed terms][prior informed consent has been obtained in accessing genetic resources utilized within their jurisdiction] [and that mutually agreed terms have been established [and complied with],] as specified in the national legislation[, policies, measures and requirements] on access and benefit-sharing of the [[country][Party] providing][country of origin of] the genetic resources[[, derivatives] and associated traditional knowledge].]

[1. Parties shall apply appropriate, effective and proportionate measures to:

(a) Natural or legal persons having the nationality of that Party, who misappropriated a genetic resource in the jurisdiction of another Party;

(b) Natural or legal persons who, on its territory, acquire or use a genetic resource knowing that it has been misappropriated in the jurisdiction of another Party;

(c) Natural or legal persons who, on its territory, acquire or use a genetic resource and who should have known, based on available information that the genetic resource has been misappropriated in the jurisdiction of another Party.]

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[1. [Each Party shall take measures aimed at preventing the use of misappropriated genetic resources[, derivatives and associated traditional knowledge].][Each Party shall require natural or legal persons who use genetic resources on its territory to take, to the best of their ability, appropriate actions to prevent the acquisition or utilization of misappropriated genetic resources and provide for remedies, and effective, proportionate and dissuasive sanctions where users fail to apply such actions.]]

[1. bis Misappropriation of a genetic resource means to acquire a genetic resource in violation of the provisions of domestic access and benefit-sharing legislation of a Party providing the genetic resource by failing to:

(a) Obtain the prior informed consent of the Party or any competent authority designated by the Party to provide such consent; or

(b) Enter into mutually agreed terms on access and benefit-sharing arising from the commercial or other utilization of the genetic resource with the provider of the genetic resource.]

[1. ter In cases where the user has not as per paragraph 1 obtained the necessary prior informed consent and mutually agreed terms, the user should be given the opportunity to remedy the omission within a specified time fixed under the relevant law or administrative requirement of the country of origin.]

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. [Parties may refrain from taking such measures if the domestic access and benefit-sharing framework of another Party providing the misappropriated genetic resources at the time of misappropriation was not in conformity with Article 5(2).]

3. Parties shall [, as appropriate,] cooperate in cases of alleged violation of the national legislation on access and benefit-sharing of the [country][Party] providing genetic resources.

ARTICLE 13

MONITORING, TRACKING AND REPORTING THE UTILIZATION OF GENETIC RESOURCES [AND ASSOCIATED TRADITIONAL KNOWLEDGE]

1. [In implementing Article 12, paragraph 1,] Parties shall take measures, as appropriate, to [monitor[, track and report][create transparency about] the utilization of genetic resources [in accordance with internationally recognized certificate of compliance] [and its derivatives [and associated traditional knowledge]], [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 [could] include:

(a) The identification and establishment of [appropriate] check points [and [mandatory] [disclosure][information] requirements [including] [any permit, certificate or equivalent that was granted in accordance with Article 5, paragraph 2(d)] [at[, for example]:

- (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][Patent and plant variety] offices; and
- (v) Authorities providing regulatory or marketing approval of products [derived from genetic resources][resulting from the use of genetic resources or its derivatives].]

(v bis) [Indigenous and local communities, including their relevant competent authorities, that may grant access to traditional associated with genetic resources.]

[The [mandatory] 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)][prior informed consent and mutually agreed terms as provided by national legislation];]

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(b) [[Requiring]][[Encouraging]] users and providers of genetic resources to share information on the implementation of mutually agreed terms, including through reporting requirements[[Encouraging the inclusion in mutually agreed terms of provisions on reporting and information sharing between users and providers of genetic resources]]; and

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

[[d)]] Databases containing information about genetic resources that have been or may be provided.]

2. [[The]][[Any]] [[permit]], or] certificate [[or equivalent]] issued [[at the time of access]] in accordance with Article 5, paragraph 2 (d) and [[registered with]][[made available to]] the [[Access and Benefit-sharing]] Clearing-House, [[in accordance with]] [[Article 5 paragraph 3]][[Article 11, paragraph 2(c)]] shall constitute an internationally recognized certificate of compliance [[with national law]].

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[[acquired]] with prior informed consent[[, where applicable]] and that mutually agreed terms have been entered into, as specified in the national legislation on access and benefit-sharing of the [[country]][[Party]] [[providing]][[of origin of]] the genetic resource [[or its derivatives]]. [[Mandatory]] Disclosure requirements shall be met by providing an internationally recognized certificate.]

[4. The internationally recognized certificate of compliance [[or equivalent]] [[shall]][[may]] contain the following minimum information [[when it is not confidential]]:

- (a) Issuing national authority;
- (b) Details of the provider;
- (c) [[A codified unique alpha numeric identifier]]
- (d) [[Details of the]] [[relevant indigenous and local communities who are]] [[rights holders]][[rightful holder]] of associated traditional knowledge [[within indigenous and local communities]], as appropriate;]
- (e) Details of the user;
- (f) [[Subject-matter]][[Genetic resources and/or derivatives]] covered by the certificate [[or equivalent]];
- (g) [[Geographic location]] [[and/or georeference]] of the access activity;]

[[h)]] [[Link to]][[Confirmation that]] mutually agreed terms [[were entered into]];

[[h bis)]] [[Confirmation that prior informed consent was obtained, where applicable]];

- (i) Uses permitted and restrictions of use[[, where applicable]];
- (j) Conditions of transfer to third parties;
- (k) Date of issuance.]

[5. The [[first]] Conference of the Parties serving as the meeting of the Parties to this Protocol [[after the entry into force of this Protocol]] shall [[decide on the minimum content]][[consider additional modalities]] of the internationally recognized certificate of compliance [[system]], taking

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into account the need to minimize transaction costs and to ensure feasibility, practicality and flexibility.]

[ARTICLE 13bis

NON-COMPLIANCE WITH MANDATORY DISCLOSURE REQUIREMENTS

If the user fails or refuses to disclose pertinent information on the country of origin or source in cases and where the claim is directly based on GR and associated TK:

(a) a user should be given the possibility to remedy the omission within a specific time fixed under the relevant law;

(b) if the user continues to fail to make any declaration then the application shall not be further processed.]

ARTICLE 14

COMPLIANCE WITH MUTUALLY AGREED TERMS

1. In the implementation of Article 5, paragraph 5 (f) (i), Parties shall encourage providers and users of genetic resources, [derivatives] [and/or associated] traditional knowledge [associated with genetic resources] 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 [regarding]:

- (a) [Facilitate] access to [justice][legal system];
- [(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 14bis

INTERNATIONAL ACCESS AND BENEFIT-SHARING OMBUDSPERSON

An office of an access and benefit-sharing ombudsperson shall be established to support developing countries and indigenous and local communities to identify breaches of rights and to provide technical and legal support in ensuring effective redress of such breaches. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall implement this provision no later than two years after entry into force of this Protocol.]

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ARTICLE 15

MODEL CONTRACTUAL CLAUSES

- 1. [Each Party][Parties] shall encourage, as appropriate, the development, update and use of [voluntary] sectoral [and cross-sectoral] [menus of] model contractual clauses for mutually agreed terms [in collaboration with international and regional organizations and] [in consultation with][by] users and providers from [key][relevant] sectors.
- 2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically [take stock of][consider] the use of sectoral [and cross-sectoral] [menus of] model contractual clauses.

ARTICLE 16

CODES OF CONDUCT, [GUIDELINES] AND BEST PRACTICE[S] [STANDARDS]

- 1. [Each Party][Parties] shall encourage, as appropriate, the development, update and use of [voluntary] codes of conduct[, guidelines] and best practice[s] [standards] in relation to access and benefit-sharing [in collaboration with international and regional organizations and] [in consultation with][by] users and providers from [key][relevant] sectors.
- 2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically [take stock of][consider] the use of codes of conduct[, guidelines] and best practice[s] [standards] [and consider the adoption of specific codes of conduct, guidelines and best practice standards].

ARTICLE 17

AWARENESS-RAISING

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

- (a) Promotion of this Protocol and its objective;
- (b) Organization of stakeholder [and indigenous and local communities'] meetings;
- (c) Establishment and maintenance of a help desk for stakeholders [and indigenous and local communities];
- (d) Information dissemination through a national-level clearing-house;
- (e) Promotion of codes of conduct[, guidelines] and best practice[s] [standards] in consultation with stakeholders [and indigenous and local communities]; and
- (f) Promotion of [where appropriate, national,] regional, [and international] exchange of experiences,
 - [(g) Education and training of users and providers of genetic resources [and associated traditional knowledge] about their access and benefit-sharing obligations;
 - [(h) Involvement of stakeholders [and indigenous and local communities] in the further implementation of this Protocol.]
 - [(i) Protocols and guidelines of indigenous and local communities.]

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ARTICLE 18

CAPACITY

1. Parties shall cooperate in the building, 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 and through other relevant stakeholders, including the private sector.

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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, including capacity building for all relevant stakeholders including indigenous and local communities and should provide this information to the Access and Benefit-sharing Clearing-House established under Article 11.

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3bis. Parties shall support capacity-building for all relevant stakeholders including indigenous and local communities, based on needs and priorities identified by them all relevant stakeholders including indigenous and local communities including women from those communities in relation to the implementation of this Protocol.

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4. In support of the implementation of this Protocol, capacity building development may shall address inter alia the following key areas: (a) capacity to implement 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 of countries to support countries providing of origin of genetic resources to develop in the development of their endogenous research capabilities to add value to their own genetic resources.

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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

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financial mechanism referred to in paragraph 2, for consideration by the Conference of the Parties, shall take into account the need for [adequate, predictable and timely flow of new and additional] financial resources by developing country Parties, in particular the least developed and the small island developing States [including Parties with economies in transition] among them [as well as the specific needs and requirements of indigenous and local communities, including women within these communities].

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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, [for adequate, predictable and timely flow of new and additional financial resources] in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.

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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.

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