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AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

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Item 5 of the provisional agenda*

FURTHER CONSIDERATION OF OUTSTANDING ISSUES RELATED TO ACCESS AND BENEFIT-SHARING: USE OF TERMS, DEFINITIONS AND/OR GLOSSARY, AS APPROPRIATE

Note by the Executive Secretary

I. INTRODUCTION

1. At its third meeting in February 2005, the Working Group on Access and Benefit-sharing further examined the issue of use of terms related to access and benefit-sharing not defined in the Convention, including the possible establishment of an expert group to determine the need for definitions or a glossary, in accordance with decision VII/19 B, paragraph 4.
2. In recommendation 3/2, the Working Group recalled the previous work undertaken on the use of terms and considered the compilation of information on the use of terms prepared by the Executive Secretary (document UNEP/CBD/WG-ABS/3/4). The Working Group further noted that only a few Parties had submitted the requested information on existing national definitions and other relevant definitions of the terms previously identified, as requested in decision VII/19 B of the Conference of the Parties. The Working Group therefore reiterated the invitation of the Conference of the Parties to Parties, Governments, relevant organizations, indigenous and local communities, and all relevant stakeholders, to submit the information and views to the Executive Secretary.
3. This note has been prepared to assist the Working Group in further considering this issue. Section II provides an overview of developments since the first meeting of the Working Group in October 2001. Section III contains a consolidated glossary of existing and any additional definitions, based on earlier work as well as submissions provided in response to the invitation of the Working Group, taking into account relevant definitions in use. Finally, section IV contains comments provided by Parties and relevant organizations in preparation for the fourth meeting of the Working Group.
4. Following the third meeting of the Working Group, a notification was sent out to Parties, Governments, indigenous and local communities, relevant organizations and stakeholders inviting them to provide information on existing definitions and views on whether additional terms need to be defined. As of 1 November 2005, the Secretariat had received submissions from Canada, Costa Rica, the

* UNEP/CBD/WG-ABS/4/1.

European Commission, Ethiopia, India, Mexico, the Czech Republic, UPOV and the Pharmaceutical Research and Manufacturers of America (PhRMA). These are reflected in the glossary under section III or in section IV containing comments.

II. BACKGROUND

5. When the Bonn Guidelines were developed, in October 2001, some Parties suggested that in addition to the terms in the Bonn Guidelines which are terms defined by the Convention on Biological Diversity (see paragraph 8 of the Bonn Guidelines), additional terms of direct relevance could be included and defined in the guidelines

6. The Working Group recommended that the Executive Secretary, in consultation with the Bureau of the Conference of the Parties, convene a group of ten experts nominated by Parties, having due regard to the principle of equitable geographical representation, to develop draft elements of a decision on the use of terms in paragraph 6 of the draft Bonn Guidelines. As requested, following the first meeting of the Working Group, a group of experts was established and their suggestions regarding elements that should be included in the use of the terms in the Bonn Guidelines were included in a document for discussion at the sixth meeting of the Conference of the Parties (UNEP/CBD/COP/6/INF/40). In addition, in order to assist experts in their work, a preliminary list of existing definitions of the terms listed in the original draft of the Bonn Guidelines was compiled by the Secretariat. This list, available in annex II of the same document, contains definitions taken from existing guidelines, codes of conduct, agreements and legislation, which address the issue of access to genetic resources and benefit-sharing. The list is not exhaustive and was only meant to assist in launching the process regarding the use of terms under the Bonn Guidelines.

7. Due to lack of time, this issue was not discussed in detail at the sixth meeting of the Conference of the Parties and it was decided that the Bonn Guidelines should only include reference to terms already defined in the Convention on Biological Diversity.

8. Nevertheless, a number of Parties stressed that further work was needed in order to determine whether additional terms needed to be defined in the guidelines (access to genetic resources, benefit-sharing, commercialization, derivatives, provider, user, stakeholder, *ex situ* collection and voluntary nature), or whether a glossary of these terms could be annexed to the guidelines. The Conference of the Parties decided that the issue of “use of terms” should be considered by the Working Group at its second meeting, as set out in par. 8 (a) of decision VI/24 A. Three documents prepared for the 2nd meeting of the Working Group on ABS address the use of terms: document UNEP/CBD/WG-ABS/2/2, the compilation of submissions by experts on the use of terms provided prior to the sixth meeting of the Conference of the Parties (document UNEP/CBD/COP/6/INF/40), and the compilation of submissions by Parties and relevant organizations (UNEP/CBD/WG-ABS/2/INF/1).

9. At its seventh meeting, in decision VII/19 B, the Conference of the Parties noted “that the terms as defined in Article 2 of the Convention shall apply to the Bonn Guidelines on Access and Benefit-sharing” and “that a number of other relevant terms not defined in the Convention may need to be examined”.

10. In paragraph 1 of the same decision, the Conference of the Parties invited: “Parties, Governments, relevant organizations, indigenous and local communities, and relevant stakeholders, to submit to the Executive Secretary:

“(a) Information on existing national definitions or other relevant definitions of the following terms: access to genetic resources, benefit-sharing, commercialization, derivatives, provider, user, stakeholder, *ex situ* collection, and voluntary nature (as contained in annex II of document UNEP/CBD/COP/6/INF/40);

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

III. CONSOLIDATED GLOSSARY OF EXISTING AND ADDITIONAL DEFINITIONS RELATED TO ACCESS AND BENEFIT-SHARING

11. The following table includes for each term (access to genetic resources, benefit-sharing, commercialization, derivatives, provider, user, stakeholder, *ex situ* collection, voluntary nature): (i) the proposed definitions put forward by experts nominated by Governments following the first meeting of the Working Group on Access and Benefit-sharing; (ii) suggested definitions put forward by Parties and relevant organizations as requested in decision VII/19 B prior to the third meeting of the Working Group; (iii) suggested definitions put forward by Parties following the third meeting of the Working Group on ABS, in accordance with recommendation 3/2; and finally; (iv) existing definitions found in other relevant agreements and not referred to above. In addition, as suggested by Parties, additional terms for consideration and their definitions have been included at the end of the table.

TERMS TO BE DEFINED	EXISTING OR SUGGESTED DEFINITIONS	SOURCE
ACCESS TO GENETIC RESOURCES	Suggestions provided by experts	
	“Access” means the acquisition and use of genetic resources conserved in <i>ex situ</i> , <i>in situ</i> and other conditions, and of their derivatives or, as applicable, intangible components, for purposes of research, biological prospecting, conservation, industrial application or commercial use, among others.	Expert from China
	“Access to genetic resources” means acquiring an authorization to obtain in any possible way and to use for any purpose, including its commercial exploitation, a genetic resource and/or its derivatives and traditional knowledge, innovations and other associated intangible elements, regardless of whether the resource is kept <i>in situ</i> , <i>ex situ</i> or in any other conditions.	Expert from Cuba
	“Access” may be defined as collecting, acquiring, transferring, or using, genetic resources and/ or associated knowledge. (Comment by Ethiopian expert: The Bonn guidelines are on access to genetic resources and associated knowledge. The definition of the concept of “access to genetic resources” is, however, limited to genetic resources. In view of the scope of the guidelines, we suggest to define the concept of “access” instead of “access to genetic resources”).	Expert from Ethiopia
	“Access to genetic resources” means to obtain a genetic resource by whatever means and/or to utilize any genetic resource for research and/or commercial utilization, and includes bio-prospecting and field collection. The term ‘bio-prospecting’ which has been used in the above definition, may be defined as follows: “Bio-prospecting” means survey and collection of species, sub-species, genes, compounds and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay.	Expert from India
	The permission and facility to acquire and use genetic resources. (Addition of facility to the definition of the <i>Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit Sharing</i>).	Expert from Nigeria

<p>Firstly, access to genetic resources as a notion is limited to “physically obtaining biological material from any source and using the genetic resources contained therein”. Strictly speaking people are accessing genetic resources at all times, for different purposes and under varied circumstances. However, key in the context of article 15 is the fact that the genetic resources are actually utilized in some way, generally for some type of research.</p> <p>In this sense, it makes it a little easier to understand the issue if actual access (which regularly occurs) is linked to biological resources with subsequent utilization (in some way) of the genetic resources and their related information. If biological resources are obtained and used, but there is no actual use of their genetic content, this situation is not to be addressed by ABS regulations.</p> <p>Secondly, depending on the actual use of the genetic resources, specific conditions can be set.</p> <p>Breeding animals and even plants offer interesting examples. In these cases the genetic content and potential of these animals (whether horses, cows, vicuñas, flowers, etc.) is being utilized without really accessing genetic resources per se. However, semen and ovules or pollen in the case of plants are the most important issue at stake in these processes. In this regard, one could argue that genetic resources are being used (and certainly accessed by breeders) in some way. This is clearly the case in artificial insemination procedures or through genetic engineering procedures. This is an important issue for Andean countries, where the main producers of alpaca and vicuña fibers are now in New Zealand, Australia, the United States of America, where breeders had access to the genetic content and potential of these species. Breeders of all kinds are in fact using genetic resources by accessing biological resources in terms of animal or plant specimens. It should be noted that breeding is certainly a commercial activity with a huge and very lucrative market worldwide.</p>	Expert from Peru
<p>“Access to genetic resources” means, in accordance with terms mutually agreed by the provider and the user, the granting of permission by a provider to the user for collecting, obtaining or otherwise acquiring ownership of or property rights with respect to genetic resources <i>in situ</i> or <i>ex situ</i>.</p> <p>This definition applies only to access to physical items, plants, animals, microbes and not to intangible subjects such as associated knowledge or traditional knowledge, innovations or practices. The importance of this note should be considered in context of definition of “benefit sharing” where by term “access to genetic resources” is defined scope of benefit sharing.</p>	Expert from Poland
<p>“Access to genetic resources” means the admission/consent for collecting, obtaining or otherwise acquiring genetic resources.</p>	Expert from Switzerland
<p>“Access to genetic resources” means the permission to acquire and use, and/or the acquisition and use of, biological and genetic resources conserved in <i>ex situ</i> and <i>in situ</i> conditions, including organisms and their derivatives [see definition], for the purposes of research, biological prospecting, conservation, industrial application or commercial use, among others.</p>	Expert from Ukraine

<i>Comment:</i> In many cases the direct access to genetic and biological resources without associated knowledge means nothing, since the use of the resources clearly depends on that knowledge and technologies. The definition of Access to Genetic Resources should also include the obtaining of associated knowledge, innovations, technologies or practices. (See OAU Model Law and Costa Rica Law No. 7788). However, the proper wording is to be specified.	
Submissions provided in response to decision VII/19B	
<i>Access to genetic resources:</i> Possibility given by provider to user(s) to acquire information and samples of genetic resources for declared way of utilization and under agreed terms	Czech Republic, annex to the submission from the European Commission ^{1/}
<i>Access to genetic resources:</i> Access for research and for use of genetic characteristics of biodiversity resources without possession	Madagascar
<i>Access to genetic resources</i> means the permission to acquire and use genetic resources	United Kingdom, Royal Botanic Gardens, Kew, annex to the European Commission submission
<i>Access to genetic resources:</i> is the action through which an interested party, having fulfilled all relevant legal requirements in national and international legislation, makes use of genetic resources. The relevant authorization is personal and not transferable and may be granted by the competent national authority only when there is irrefutable proof of prior informed consent, on the part of the holder or owner of the resource to be accessed and that there are sufficient monitoring and follow-up mechanisms in place regarding the use of those resources.	Amigos de la tierra/Costa Rica (Friends of the Earth)
Submissions provided by Parties following WG-ABS 3	
Access to genetic resources: Action of obtaining samples of existing wild or domesticated elements of biodiversity, in conditions <i>ex situ</i> or <i>in situ</i> , and of associated traditional knowledge for purposes of basic research, bioprospecting or economic use.	Costa Rica
“Access” means collecting or in any other way obtaining or using an object.	Ethiopia
Access to Genetic Resources: Permission by competent authority of the country to acquire and use of genetic resources and/ or associated Traditional Knowledge (TK) in accordance with all the provisions of the relevant international and national legislation/ regulation governing such access and/ along with Mutually Agreed	India

^{1/} All the definitions from Czech Republic given in this table are not codified in national legislation (with exception of *ex situ* collection), however the terms are used on an agreed basis. Term *ex situ* collection is codified in national acts, e.g. Act 148/2003 on Conservation and Utilization of Genetic Resources of Plants and microorganisms Important for Food and Agriculture (Submission of Czech Republic in annex to the EC submission).

Terms (MAT), Material Transfer Agreement (MTA) between provider and user of the genetic resources.		
Existing definitions found in other relevant agreements and not referred to above		
Access is the acquisition of biological resources, their derivatives, community knowledge, innovations, technologies or practices as authorized by the National Competent Authority		OAU Model Law
Access to biological and genetic resources: the acquisition and use of biological and genetic resources as well as the derivatives thereof or, as applicable, intangible components, for purposes of research, bioprospecting, conservation, industrial application or commercial use, among others		Draft ASEAN Framework Agreement on Access to Biological and Genetic Resources, February 2000
Access means the acquisition and use of genetic resources conserved in ex situ and in situ conditions, and of their derivatives or, as applicable, intangible components, for purposes of research, biological prospecting, conservation, industrial application or commercial use, among others.		Andean Pact Decision 391
BENEFIT-SHARING	Suggestions provided by experts	
“Benefit-sharing” means the sharing of benefits arising from the use, whether commercial or not, of genetic resources and their derivatives, and may include both monetary and non-monetary returns, in particular the participation in scientific research and development on genetic resources, and the making available of the findings of such scientific research and development and the transfer of technology.		Expert from China
“Benefit-sharing” means any monetary or other benefits, mutually agreed to by the competent authority in the country that grants access and the party that requests access to genetic resources or to their derivatives and any knowledge, innovations and other associated intangible elements.		Expert from Cuba
The definition of benefit sharing should also include traditional knowledge. The concept of equitability should be included while defining benefit sharing. There may be possibilities of sharing benefits in an inequitable manner. The Bonn guideline and the national schemes that will be developed there on should target and promote equitable sharing of benefits within the meaning of the CBD. The following definition is suggested: “equitable benefit sharing “ means the sharing of benefits arising from the commercial or non commercial use of genetic resources and their derivatives as well as associated traditional knowledge and community practices in a fair and equitable manner. The form of sharing of benefit may be monetary and non monetary.		Expert from Ethiopia
“Benefit sharing” means the sharing of benefits mutually agreed upon by the designated authority of the providing country and the applicant for the accessed genetic resources, their by products and associated knowledge. The benefits may <i>inter alia</i> include: (a) Grant of joint ownership of intellectual property rights to the designated		Expert from India

<p>National Authority, or where benefit claimers are identified, to such benefit claimers;</p> <p>(b) Transfer of technology;</p> <p>(c) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;</p> <p>(d) Association of scientists, benefit claimers and the local people of the providing country with research and development in biological resources and bio-survey and bio-utilisation;</p> <p>(e) Setting up of venture capital fund for aiding the cause of benefit claimers;</p> <p>(f) Payment of monetary compensation and other non-monetary benefits to the benefit claimers as the designated National Authority may deem fit.</p>	
<p>As given by Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit Sharing.</p>	<p>Expert from Nigeria</p>
<p>Most of existing definitions of benefit-sharing are basically oriented in the right direction: benefit sharing is a wide ranging notion which, in general terms, refers to all the different types of benefits which can be shared when the process of accessing genetic resources takes place. These will obviously vary from case to case. However, we should not limit the understanding of benefit sharing to situations where actual tangible benefits are perceived in the R&D process or when money is made from commercializing a product. Even before this point there are benefits (i.e. participating in field work and learning collecting techniques, informing a wider audience about bioprospecting and its potential) which are being generated and can be realized. A wide definition is suggested, in line with that of the Common Policy Guidelines for Participating Botanical Gardens.</p>	<p>Expert from Peru</p>
<p>“Benefit sharing” means in accordance with terms mutually agreed [could be different forms of agreements bilateral or multilateral] the granting of monetary and/or non-monetary benefits arising from the [use of] [granted access to] genetic resources [traditional knowledge, innovations and practices].</p> <p>I put two different terms into definition “use of” and “granted access”. The second term is considered as more precise, because focus on the fact of taken agreement, not of the way of using e.g. commercial or not, and can be applied to all aspects of genetic resources as conservation, collecting, utilization etc.</p> <p>Benefit-sharing could be any compensation, reward or recognition that flows directly or indirectly from the user of genetic resources to the provider of that resources. The possible range of benefits is therefore very broad. They could include royalties or shares of profits from the commercialization of a commodity derived from a genetic resource, flat fees for access to a controlled area of exploration, access of the provider to technology and training, joint ventures or access to global funds for development assistance.</p>	<p>Expert from Poland</p>
<p>Benefit-sharing means any form of mutual compensation for the utilization of genetic resources, whether monetary or non-monetary. Examples of monetary and non-monetary benefits are included in Appendix II of the guidelines.</p>	<p>Expert from Switzerland</p>

Submissions provided in response to decision VII/19B		
<i>Benefit-sharing</i> : Taking part on benefit(s) of any kind arising from utilization of genetic resources		Czech Republic, annex to the EC submission
<i>Benefit-sharing</i> : Monetary advantages sharing deriving or not from exploitation of these genetic resources between possessors country and users, but also at the level of possessor country in taking into account local communities and traditional knowledge		Madagascar
<i>Benefit-sharing</i> : means the sharing of benefits arising from the use, whether commercial or not, of genetic resources, and may include both monetary and non-monetary returns		United Kingdom, Royal Botanic Gardens, Kew, annex to the EC submission
<i>Benefit-sharing</i> : it is an obligation that must be fulfilled in all actions related to access to genetic resources or to traditional knowledge. This obligation is derived from the Convention on Biological Diversity. This participation must be fair and equitable. In order to fulfill these essential requirements, before an authorization is granted, there must be access to information, sufficient time for the resource supplier to independently analyze the information received and definition of control mechanisms regarding the use that will be given to the elements being accessed.		Amigos de la tierra/Costa Rica
Submissions provided by Parties following WG-ABS 3		
Benefit-sharing: Sharing of economic, environmental, scientific, technological, social and cultural benefits resulting from the research, bioprospecting or economic use of biodiversity genetic resources between the actors involved in the access and the conservation of such resources, with particular consideration of local communities and indigenous peoples.		Costa Rica
Benefit-sharing means the sharing of benefit arising from the <i>sustainable use</i> , whether commercial or not, of genetic resources and may include both monetary and non monetary returns		India
	Existing definitions found in other relevant agreements and not referred to above	
Benefit-sharing means the sharing of benefits arising from the use, whether commercial or not, of genetic resources and their derivatives, and may include both monetary and non-monetary returns.		Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit-sharing
Benefit sharing is the sharing of whatever accrues from the utilization of biological resources, community knowledge, technologies, innovations or practices.		OAU Model Law

COMMERCIALIZATION	Suggestions provided by experts	
	“Commercialization” means applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval and/or sale of any resulting product.	Expert from China
	“Commercialization” means using for commercial purposes the genetic resource or its components or derivatives or any products obtained from the genetic resource, through its sale, concession of licences and other means that make it possible to obtain a monetary benefit.	Expert from Cuba
	“Commercialization” means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through breeding or genetic intervention and shall not include traditional practices in use in any agriculture, horticulture, poultry, dairy farming or animal husbandry and bee keeping.	Expert from India
	Converting to commercial use (sale, use, or exchange for financial or other benefit), including preparation or positioning for such use as with patenting, licensing or advertising.	Expert from Nigeria
	This refers to any use of genetic resources which is oriented at generating a short, medium or long term economic return. However, any use of genetic resources could lead directly or indirectly and at some point to economic benefits of some sort. It would probably be more convenient to understand ABS rules as applying to ANY type of use. When there is some indication that a commercial use or industrial application is part of the specific project, there will be specific conditions for these types of use. In a bio-prospecting project when patents are involved, licenses are negotiated, agreements are celebrated, companies are involved, etc. these are indications about the type of use sought (for a lucrative commercial or industrial purpose).	Expert from Peru
	“Commercialization” means the making available for sale, lease or license on usual commercial terms. Commercialization does not refer to the publication of the results and other information arising from research on genetic resources.	Expert from Poland
	“Commercialization” means making available genetic resources or the findings of research and development on such resources with the intention of making a monetary profit.	Expert from Switzerland
	Submissions provided in response to decision VII/19B	
	<i>Commercialization</i> – The fact to buy and to sell some goods	Madagascar

<p><i>Commercialization</i>: means applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval and/or the sale of any resulting product</p>	<p>United Kingdom, Royal Botanic Gardens, Kew, annex to the EC submission</p>
<p><i>Commercialization</i>: economic use of genetic resources or of traditional knowledge.</p>	<p>Amigos de la tierra/Costa Rica</p>
<p>Notions of commercialization and placing on the market exist in EC law. However, the notion of placing on the market is more broadly used and includes the notion of commercialization. The latter may have a different meaning depending on the areas covered.</p>	<p>France, annex to EC submission</p>
<p>Submissions provided by Parties and others following WG-ABS 3</p>	
<p>“Commercial” means the use of an object or part or component or derivative thereof directly or indirectly for sale, agricultural production, manufacturing or any other industrial application, or for providing a service to a third party.</p>	<p>Ethiopia</p>
<p>Commercialisation: any activity that involve economic use of the genetic resources and/ or TK directly or indirectly by developing value added products or process based on these resources and/ or TK and its marketing or transforming its Intellectual Property Rights (IPR) or other tangible or intangible rights by sale of license or any other manner whatsoever</p>	<p>India</p>
<p>Existing definitions found in other relevant agreements and not referred to above</p>	
<p>Commercial use of microbial genetic resources includes but is not limited to the following activities: sale, patenting, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence, product development and seeking pre-market approval</p>	<p>MOSAICC</p>
<p>'Commercial Utilization', 'Commercial Transactions' It means making available any tangible or intangible items, innovation, knowledge or any process or product related to biological and genetic resources for sale in the market for profit or other monetarily gainful purpose. This definition excludes common, traditional and customary exchange and/or transactions within and between Communities if profit making or monetarily gainful intention is not the implicit or explicit purpose, whether money is used or not.</p>	<p>Biodiversity and Community Knowledge Protection Act of Bangladesh,1998</p>
<p>“Commercialization”, of native biological material— 1. “Commercialization”, of native biological material, means using the material in any way for gain. 2. The term does not include using the material to obtain financial assistance from a State or the Commonwealth, including, for example, a government grant.</p>	<p>Queensland's Biodiscovery Act 2004, Australia</p>
<p>DERIVATIVES</p>	<p>Suggestions provided by experts</p>
<p>Derivatives: Something extracted from biological and genetic resources such as blood, oils, resins, genes, seeds, spores, pollen and the like as well as the products derived from, patterned on, or incorporating manipulated compounds and/or genes.</p>	<p>Expert from China</p>

“Derivative” means, but is not limited to, products developed from a genetic resource or its individual components or a mixture of them, or extracted from them and includes the combination of the genetic resource in question with other genetic resources.	Expert from Cuba
“Derivative” means a compound, molecule or any extract of an organism resulting from any metabolic process.	Expert from India
“Derivative” is a product (including information) developed, or part taken or extracted, from a biological or genetic resource, e.g. varieties, strains or breeds, blood, proteins, oils, resins, gums, genes, seeds, spores, bark, wood, leaf matter, or formulae . It includes products incorporating material or formulae as above. <i>(Modification of definitions of OAU Model Law and draft ASEAN Framework Agreement etc. combined)</i>	Expert from Nigeria
Clearly, ABS regulations should target access to biological material and USE of genetic resources on one hand, as well as access to derivatives of biological resources or materials which are understood to include: liquid extracts from a plant, mixtures of biologically derived materials among themselves (or with non biological materials), pollen, seeds, oils, etc. Probably derivatives would include all and any material which directly originates from a biological resource as such. A limit in terms of the scope of ABS rules would be established when a synthesized product is generated. This would not be considered to be a derived product in the context of ABS discussions. Strictly speaking these mixtures, combinations, resins etc. are not derived from genetic resources per se, but in terms of trying to come up with a legal construction or a basic understanding this type of “definition” serves an important purpose.	Expert from Peru
“Derivatives” means product developed or extracted from a biological resources.	Expert from Poland
The term “derivatives” appears twice in the draft Bonn Guidelines as bracketed text. There has not been a common understanding either what meaning this term has nor whether or not to retain it in the text. It is, therefore, premature to suggest a definition of “derivatives”. If the term is to be retained, the Conference of the Parties may need to consider how to proceed with the development of a definition. The possibly far reaching implications of the inclusion of derivatives may give reason for the constitution of a Technical Expert group or for holding another meeting of the ad hoc open-ended Working Group.	Expert form Switzerland
“Derivatives” include, but are not limited to, any parts, materials, substances and products extracted or developed from biological and genetic resources (living or dead organisms and their metabolites), such as seeds, spores, pollen, blood, oils, resins, gums, proteins, genes and the like, as well as any materials, substances and products derived from, patterned on, or incorporating manipulated (altered)	Expert from Ukraine

<p>compounds and/or genes.</p> <p>Comment: In short, derivatives are any parts, product or substances derived from living or dead organisms, or products of their metabolism (living activity).</p> <p>Probably derivatives may also include whole organisms modified by humans, such as artificial mutants and hybrids, cultivars (plant varieties and forms), breeds of animals, altered or modified strains of microorganisms, etc. (See the definition in OAU Model Law.) However, this issue should be additionally discussed.</p>	
Submissions provided in response to decision VII/19B	
<i>Derivatives:</i> Molecule, combination or mixture of natural molecules, including raw extracts of organisms of biological origin, whether alive or dead, derived from the metabolism of live organisms.	Colombia – Decision 391 of the Andean Community
<i>Derivatives:</i> Body gotten by the transformation of another.	Madagascar
Submissions provided by Parties following WG-ABS 3	
<i>Derivatives:</i> Biochemical information originating from the action of genes in living organisms, sought or utilised for its actual or potential value, which holds specific characteristics, special molecules or indications to describe them and which require a major transformation or technical-industrial use.	Costa Rica
“Derivatives: although frequently referred to in material transfer agreements and some national laws, because derivatives do not contain functional units of heredity, they do not fall within the definition of “genetic resources” in the Convention on Biological Diversity and are therefore outside the scope of the Convention.”	Canada
Derivatives of a biologic resource “may include part(s) of the organism, extracts/ exudates/ metabolic products, DNA, chemical isolates – fractions, single compound(s) or compound complexes or the semisynthetic derivatives or fully synthetic derivatives based on the natural compound(s) isolated from the organism (live or dead) etc” and any plausible improvement thereof by further scientific innovation etc	India
Existing definitions found in other relevant agreements and not referred to above	
Derivatives includes, but are not limited to, an institution maintaining documented collections of living and/or preserved plant accessions for purposes such as scientific research, conservation, sustainable use, display and education.	Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit-sharing

Derivatives is a product developed or extracted from a biological resource; a derivative may include such products as plants varieties, oils, resins, gums, proteins etc	OAU Model Law
Derivatives: something extracted from biological and genetic resources such as blood, oils, resins, genes, seeds, spores, pollen and the like as well as the products derived from, patterned on, or incorporating manipulated compounds and/or genes.	Draft ASEAN Framework Agreement on Access to Biological and Genetic Resources, February 2000
Something extracted from biological and genetic resources such as blood, oils, resins, genes, seeds, spores, pollen and the like, taken from or modified from a product.	Philippines Executive Order 247 (1995) and Department of Environment and Natural Resources Administrative Order 96-20 (1996)
“Derivative” , in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;	National Environmental Management: Biodiversity Act 2004, South Africa
“Derivative” refers to a substance/material extracted or taken from wildlife such as but not limited to blood, saliva, oils, resins, genes, gums, honey, cocoon, fur, tannin, urine, serum, spores, pollen and the like; a compound directly or indirectly produced from wildlife and/or products produced from wildlife and wildlife products;	Implementation of Rules and Regulations of Republic Act No. 9147 ; Wildlife Resources Conservation and Protection Act, 2004 The Philippines
“By-product or derivatives” refers to any part taken or substance extracted from wildlife, in raw or processed form, which include stuffed animals and herbarium specimens;	Republic Act No 9147: Wildlife Resources Conservation and Protection Act, 2001 The Philippines
PROVIDER	Suggestions provided by experts

<p>“Provider” means any individual or organization, whether governmental or non-governmental, that acquires genetic resources or derivatives from a Participating Institution with its consent.</p>	Expert from China
<p>“Provider” means the competent authority in the country that grants access to genetic resources or any other legal entity empowered by the said authority to make available to the authorised requesting party samples of the genetic resource or of its derivatives and knowledge, innovations and other associated intangible elements.</p>	Expert from Cuba
<p>The definition of provider should include local communities and reflect the acquisition of their consent. Moreover, the concept of traditional knowledge and community practices should be included in the definition.</p>	Expert from Ethiopia
<p>“Provider” means the authority designated by the providing country to provide access to genetic resources</p>	Expert from India
<p>“Provider” means any individual, organization, group or community with legitimate custody to make genetic material accessible for acquisition. There may be a need to distinguish between primary (as the original providers) and subsequent providers.</p>	Expert from Nigeria
<p>The Convention on Biological Diversity applies to States. States are responsible to comply with its provisions and, if necessary, enact legislation for this purpose. The Guidelines are voluntary and, from some of the concepts used, would seem to also apply to entities, for example a company or a research institution, which are not States.</p> <p>Although the State can be a provider of genetic resources, in the context of the Guidelines a “provider” would be referred to as the person or institution or community which physically gives or allows access to biological materials from which genetic resources will be used.</p>	Expert from Peru
<p>“Provider” means any entity that makes available genetic resources for users.</p>	Expert from Poland
<p>“Provider” means any entity that makes available genetic resources to users.</p>	Expert from Switzerland
<p>PROVIDER</p>	<p>Submissions in response to decision VII/19B</p>
<p><i>Provider of intangible components:</i> Person who through an access contract and within the framework of this decision and of complementary national legislation is authorized to provide intangible components associated to genetic resources or its by- products.</p>	Colombia – Decision 391 of the Andean Community
<p><i>Provider of biological resources:</i> person authorized within the framework of this decision and of the complementary national legislation, to provide biological resources containing genetic resources or its by- products.</p>	
<p><i>Provider:</i> Natural or juridical person providing genetic resources to user(s) under generally determined conditions.</p>	Czech Republic, annex to the EC submission
<p><i>Provider:</i> The entity authorized to provide genetic material or traditional knowledge for various uses, that is supposed facilitated the access to resources to the lowest cost and condition the access in all transparency.</p>	Madagascar

<i>Provider:</i> means any individual or organization, whether governmental or non-governmental, that provides genetic resources.	United Kingdom, Royal Botanic Gardens, Kew, annex to the EC submission
<i>Provider:</i> natural person or legal entity who is responsible, possess or owns material containing genetic resources that are the purpose of the access. Suppliers are also the people or groups of people (Indigenous or local communities) that are responsible for traditional knowledge.	Amigos de la tierra – Costa Rica
In the particular context of the commercialization of vegetable seedlings (plants de legumes) and materials for the multiplication of vegetables other than seeds (Directive 92/33/CEE of the Council of the European Union), “provider” is defined as “ any physical person or entity which carries out professionally at least one of the following activities related to the multiplication materials or vegetable seedlings: reproduction, production, protection and/or treatment and commercialization”. However, the notion of provider is not included in all directives.	France, annex to the EC submission
Submissions provided following WG-ABS 3	
Provider: Physical or legal person who owns, is responsible for or possesses goods in which biodiversity genetic resources are contained, or is the owner of associated traditional knowledge who can authorize their use, prior compliance with legal procedures established within the national legal framework.	Costa Rica
“Provider” means the Competent National Authority who has legal and/or administrative authority of the country providing the object to grant access to that object.	Ethiopia
Provider: any individual or organizations, whether governmental or non governmental who are authorized to provide genetic material subject to relevant international and national legislation/ regulation.	India
Existing definitions found in other relevant agreements and not referred to above	
Provider means any individual or organisation, whether governmental or non-governmental, that provides genetic resources or derivatives to a Participating Institution	Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit Sharing
USER	Suggestions provided by experts
“User” means any entity which collects, obtains or otherwise acquires genetic resources to conduct scientific research and development on these genetic resources, to commercialize the findings of this scientific research and development, or to supply other entities with these genetic resources.	Expert from China
“User” means a physical person or legal entity that acquires an authorisation to access a genetic resource or to its derivatives and any knowledge, innovations and other associated intangible elements, receiving, in exchange for the use of these	Expert from Cuba

resources, benefits of monetary and non-monetary nature.	
The definition of “user” should also include a definition where a legal and natural person make use of the genetic resources and associated traditional knowledge.	Expert from Ethiopia
“User” means any individual, agency/organization or institution receiving/authorized to receive genetic resources for any kind of use.	Expert from India
“User” means any entity that legitimately acquires and uses genetic resources or their derivatives.	Expert from Nigeria
<p>Although the State can also be conceived as a user, in the context of the Guidelines, the “user” could be understood as any person or institution or community which makes use of genetic resources in one way or another. The problem lies not so much in who actually uses genetic resources but the status which will be given to the different types of users. For example an indigenous community as a user of genetic resources will certainly not be subject to the conditions set for a company, botanic garden or research institution which accesses and uses genetic resources. Stronger conditions should be set in place for users who are part of a commercial or industrial enterprise.</p> <p>It is clear that all countries are users of genetic resources. However, those where industrial and research and development capacities are concentrated could bear a stronger burden in relation to potential user measures to be devised in order to ensure CBD objectives are met, particularly with regards to benefit sharing.</p> <p>General comment on the user - provider concepts: If the Guidelines are to remain as voluntary in nature, it makes more sense to try and develop these Guidelines as true and effective assistance for institutions (of all types) who are in the process of developing their ABS policies. If we consider the Guidelines in a broader context, and take into account that many or most biodiversity rich countries have already developed ABS drafts or even regulations, there are actually limited benefits and guidance which they might offer these countries. If the Guidelines focus on how countries which regularly use genetic resources might implement measures to ensure the ABS objectives of the CBD are met, then the focus would be different and we might still want to see the Guidelines as targeting Contracting Parties. As this is in essence not the case - except for a minor part of the Guidelines – it is suggested that they are targeted to user and providers as institutions, countries, companies, communities, etc.</p>	Expert from Peru
“User” means any entity, which collects, obtains or otherwise acquires genetic resources to conduct scientific research and development on these genetic resources, to commercialise the findings of scientific research and development, or to supply other entities with these genetic resources.	Expert from Poland
“User” means any entity which collects, obtains or otherwise acquires from providers genetic resources to conduct scientific and development on these genetic resources, or which commercialises the findings of this scientific research and development, or which supplies other entities with these genetic resources.	Expert from Switzerland

		Submissions provided in response to decision VII/19B
<i>User:</i> Natural or juridical person requesting genetic resources for research, breeding or education; if not agreed otherwise.		Czech Republic, annex to the EC submission
<i>User:</i> The entity that exploits the genetic materials to commercial or research ends.		Madagascar
<i>User and interested party:</i> Person who request access - whether a natural person or legal entity, national or foreign- interested in obtaining access to genetic resources or traditional knowledge. This person will obtain a personal and consequently non-transferable right.		Amigos de la tierra –Costa Rica
The terms user or product are generic terms, which appears several times in a large number of texts in different sectors without being defined in any of these (e.g.: Code de la Consommation, Code de la santé publique).		France, annex to the EC submission
Submissions provided following WG-ABS 3		
<i>User:</i> any individual or organization, whether governmental or non governmental, who is legally enabled to access and use genetic resources and/ or associated TK for a declared purpose of utilization of the genetic resources or TK as per the terms and conditions agreed to the provider of genetic resources and/ or TK through fulfillment of the Prior Informed Consent (PIC), benefit sharing and other terms and conditions stipulated in the MAT or MTA		India
Existing definitions found in other relevant agreements and not referred to above		
<i>User</i> means a legal or natural person that utilizes and benefits from plant genetic resources and related information		FAO International Code of Conduct for Plant Germplasm Collecting and Transfer, 1995
STAKEHOLDER	Suggestions provided by experts	
“Stakeholder” means an individual, organization or group whether formal or informal, affected by, or with an interest in, the activities relating to the acquisition, use or supply of genetic resources or their derivatives. Stakeholders involved in conservation and the granting of collecting permits and prior informed consent for access may include relevant departments of government, local authorities, private individuals such as landowners, indigenous peoples, local communities, farmers and non-governmental organizations. Stakeholders such as these are often described in law relating to access and benefit-sharing.	Expert from China	
(As given by Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit Sharing).	Expert from Nigeria	
The Common Policy Guidelines makes an interesting list of those who might be considered stakeholders. Again, the problem is not so much who are regarded as having interests with regards to access and genetic resources but the conditions and status of these different stakeholders. The stakes for an indigenous community are certainly not the same as those of a company.	Expert from Peru	

“Stakeholder” means any entity that is involved in, or affected by, or with an interest in, the activities relating to conservation, acquisition and utilization of genetic resources and the sharing of benefits arising from their utilization	Expert from Poland
“Stakeholder” means any entity that is involved in, or affected in its use of genetic resources by, the collection or other acquisition of genetic resources, the utilization of these resources and the sharing of benefits arising from their utilization.	Expert from Switzerland
Submissions provided in response to decision VII/19B	
<i>Stakeholder:</i> Subject involved and/or interested in study, conservation and utilization of genetic resources.	Czech Republic, annex to the EC submission
<i>Stakeholder :</i> Participants in a contract.	Madagascar
<i>Stakeholder:</i> means an individual, organization or group whether formal or informal, affected by, or with an interest in, the activities relating to the acquisition, use or supply of genetic resources. Stakeholders involved in conservation and the granting of collecting permits and prior informed consent for access may include relevant departments of government, local authorities, private individuals such as landowners, indigenous peoples, local communities, farmers and non-governmental organizations. Stakeholders such as these are often described in law relating to access and benefit-sharing;	United Kingdom, Royal Botanic Gardens, Kew, annex to the EC submission
Submissions provided by Parties following WG-ABS 3	
Stakeholder: An individual, organization or group whether formal or informal, affected by the activities relating to the acquisition, use or supply of genetic resources. Stakeholders involved in conservation and the granting of collecting permits and prior informed consent for access may include relevant departments of government, local authorities, private individuals such as landowners, indigenous peoples, local communities, farmers and non-governmental organizations. Stakeholders such as these are often described in law relating to access and benefit sharing.	India
Existing definitions found in other relevant agreements and not referred to above	
<i>Stakeholder:</i> means an individual, organization or group whether formal or informal, affected by, or with an interest in, the activities relating to the acquisition, use or supply of genetic resources or their derivatives. Stakeholders involved in conservation and the granting of collecting permits and prior informed consent for access may include relevant departments of government, local authorities, private individuals such as landowners, indigenous peoples, local communities, farmers and non-governmental organizations. Stakeholders such as these are often described in law relating to access and benefit-sharing;	Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit Sharing
“ Stakeholder ” means- (a) a person, an organ of state or a community contemplated in section 82(1)(a); or (b) an indigenous community contemplated in section 82(1)(b); 82.(1) “... (a) A person, including any organ of state or community, providing or giving access	National Environmental Management: Biodiversity Act 2004, South Africa

to the indigenous biological resources to which the application relates; and (b) an indigenous community- (i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or (ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.”		
Ex SITU COLLECTION	Suggestions provided by experts	
“ <i>Ex situ</i> collection” means managed, documented biological material maintained outside their natural habitat in conditions other than <i>in situ</i> .		Expert from China
“ <i>Ex situ</i> collection” means a collection of genetic resources maintained outside their natural habitat, under conditions different from those <i>in situ</i> .		Expert from Cuba
Input by the expert from Ethiopia relevant to <i>ex situ</i> collections is included under section III on “Additional terms to be included in the use of terms”, in paragraphs 114 and 115.		Expert from Ethiopia
“ <i>Ex-situ</i> collection” means any collection of genetic resources conserved outside their natural habitats.		Expert from India
Biological material or genetic resources maintained outside the natural habitat.		Expert from Nigeria
“ <i>Ex situ</i> collection” refers to any type of biological collection maintained under artificial or semi artificial conditions and outside the natural habitats where the actual materials, animals, plants, etc. collected generally live and reproduce. It is suggested that the concept is clear in the normal, colloquial context in which it is regularly used, that probably no definition is required and that the term is almost self explanatory.		Expert from Peru
“ <i>Ex situ</i> collections” means maintenance of biological material outside their original or natural environment, in conditions other than <i>in situ</i> : “Collection” – the material gathered by the act of collecting is termed a collection. “ <i>Ex situ</i> ” – out of place not in the original or natural environment e.g. seeds stored in a gene bank.		Expert from Poland
The list of terms should be kept as short as possible and should make use of the existing terms as defined in the Convention of Biological Diversity. Several of the terms are sufficiently clear in the context of the provisions in which they are found or their ordinary meaning is used. Hence, the following terms do not require any further elaboration: a) <i>Ex situ</i> collection; b) Voluntary nature.		Expert from Switzerland
<i>Ex situ</i> collection means managed and properly documented, living or preserved		Expert from

<p>biological material (e.g., whole organisms, seeds, spores, germplasm, isolated genes, and any other parts and/or substances that have genetic and other basic biological properties of the original organisms) maintained in conditions other than <i>in situ</i>, i.e. outside of the natural habitats of the organisms concerned. <i>Ex situ</i> collections originate from intentional activities of man, as opposed to unintentionally introduced alien species, or species naturally spreading outside their original (natural) area of distribution.</p> <p><i>Comment:</i> The expression “Outside their natural habitats” is somewhat vague. Such a definition could include, for example, unintentionally introduced non-native (alien, adventive) organisms, which spread outside their original (i.e., “natural”) ranges. Thus, it would be useful to emphasize the intentional character of <i>ex situ</i> collections.</p> <p>Technically speaking, some <i>ex situ</i> collections are not always “living” (e.g., isolated genes or frozen samples), but they still have the essential biological features of the original organisms, and may be used in studies and utilization of genetic resources.</p> <p><i>Ex situ</i> collections should be properly maintained, managed and documented.</p>	Ukraine
Submissions provided in response to decision VII/19B	
<i>Ex situ collection</i> - Collection of genetic resources conserved out of their natural occurrence	Czech Republic, annex to the EC submission
“ <i>Ex situ collection</i> ” a collection of genetic material for agriculture maintained outside their natural habitat”.	EC submission - Council Regulation (EC) No 870/2004 of 24 April 2004 establishing a Community programme on the conservation, characterization, collection and utilization of genetic resources in agriculture and repealing Regulation (EC) No 1467/94, Article 3 h)
“ <i>Ex situ collection</i> ” means a collection of plant genetic resources for food and agriculture maintained outside their natural habitat.	France - definition from the FAO International Treaty on Plant Genetic Resources for Food and Agriculture

<i>Ex situ collection</i> : The conservation of constituent elements of biological diversity outside their natural habitat.	Madagascar
<i>Ex situ collection</i> : means managed, documented biological material maintained in conditions other than <i>in situ</i> .	United Kingdom, Royal Botanic Gardens, Kew, annex to the EC
Submissions provided following WG-ABS 3	
<i>Ex situ collection</i> : Any systematic collection of specimens, parts or organs of them, living or dead, representative of plants, animals or microorganisms. These collections may be, among others, herbariums, nurseries, botanical gardens, seed banks, germplasm banks, zoos, aquariums, in situ conservation centres, collection of microorganisms, fungi or arthropods or collection of other materials of propagation.	Costa Rica
<i>Ex-situ collection</i> : Collection of components of biological diversity outside their natural habitats	India
VOLUNTARY NATURE	Suggestions provided by experts
“Voluntary nature” means that there is no application obligation.	Expert from Cuba
Refer to paragraph 13 of this document under “specific comments on some terms” provided by the expert from Germany.	Expert from Germany
Made without external compulsion.	Expert from Nigeria
“Voluntary nature” is used only in Article 4(a) and already provides its own definition, i.e. to be used to “guide both users and providers of genetic resources on a voluntary basis”.	Expert from Poland
The list of terms should be kept as short as possible and should make use of the existing terms as defined in the Convention of Biological Diversity. Several of the terms are sufficiently clear in the context of the provisions in which they are found or their ordinary meaning is used. Hence, the following terms do not require any further elaboration: a) <i>Ex situ</i> collection b) Voluntary nature.	Expert from Switzerland
<i>Voluntary nature</i> : Qualification of an act makes freely without constraint.	Expert from Madagascar
Submissions provided following WG-ABS 3	
Voluntary nature: Free decision to carry out a negotiation or act. Decision taken by consent, in conformity or with the assent of the party.	Costa Rica
Voluntary nature: Any action done without any external influence, pressure or	India

inducements		
ADDITIONAL TERM(S) FOR CONSIDERATION	Suggestions provided by experts	
Ex Situ condition In situ condition	<i>In-situ</i> and <i>ex-situ</i> are conditions and forms of conservation of genetic resources. It is thus suggested to define “ <i>ex-situ</i> condition instead of <i>ex-situ</i> collection” and define <i>in-situ</i> condition. The terms could be defined as follows: “ <i>Ex-situ condition</i> ” means a condition in which genetic resources are conserved and found outside their natural habitat. “ <i>In-situ condition</i> ” means a condition in which a genetic resource is found its eco-system or natural habitat.	Expert from Ethiopia
Prior Informed Consent	The guideline refers to consent without defining it. The definition could be developed based on relevant provisions of the CBD.	Expert from Ethiopia
	“Entity” means any natural or legal person; any community; any government or any body placed under its authority; any organization, regardless of whether this organization is governmental or non-governmental; regional and international agricultural research centres, regional plant genetic resources networks as well as relevant inter-governmental agencies such as FAO.	Expert from Poland
Entity	“Entity” means any natural or legal person or any plurality thereof; any government or local or indigenous community; any body placed by government under its authority; or any organization, regardless of whether this organization is governmental or non-governmental.	Expert from Switzerland
Submissions provided in response to decision VII/19B		
Access to traditional knowledge associated to genetic resources	No definition provided	Brazil
Bioprospecting	No definition provided	Brazil
Utilization of genetic resources	No definition provided	Brazil
Country of origin of genetic resources	<i>Country of origin of genetic resources</i> : the country who possesses genetic resources in <i>in situ</i> conditions, including those that after being in these conditions are now found in <i>ex situ</i> conditions.	Colombia

	Submissions provided following WG-ABS 3	
Biological resources	“Biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.	Ethiopia
Bioprospecting	Bioprospecting: Any activity that involves survey and/or documentation of biological resources and associated traditional knowledge, and/or their uses thereof	India
Biotechnology	Biotechnology means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.	Ethiopia
	Biotechnology: every application that uses biological resources, alive organisms or its derivatives for the creation or modification of products or processes for specific uses	Mexico
Biotechnology collection with commercial purposes	Biotechnology collection with commercial purposes: to obtain or to gather forest biological resources to produce chemical compounds genes, proteins, secondary compounds, molecular structures, metabolic processes, and other results, with lucrative purposes (Ley General de Desarrollo Forestal Sustentable)	Mexico
Country of origin	“Country of origin” means the country which possesses a biological resource <i>in-situ</i> .	Ethiopia
Ecosystem	“Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.	Ethiopia
Ex-situ conservation	“Ex-situ conservation” means the conservation of components of biological diversity outside their natural habitats.	Ethiopia
Genetic material	“Genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity.	Ethiopia
Genetic resource	“Genetic resource” means genetic material of actual or potential value.	Ethiopia
	Genetic resources: genetic material of real or potential value (LGEEPA) Forestry genetic resources: Seeds or organs from forest vegetation that exists in different ecosystems, whose generic name is forestry germoplasm and from which are dependable the inherit factors and reproduction (Ley General de Desarrollo Forestal Sustentable)	Mexico

Direct interested party	Physical or legal person, national or foreign, interested in obtaining an access permit to biodiversity genetic resources present in the country. This interested party may act through legal representation.	Costa Rica
Local Community	“Local Community” means a human population in a distinct geographical area within a country or in two or more countries with its biological resources, innovations, practices, knowledge, or technologies managed partially or completely under its own customs, traditions or laws.	Ethiopia
Object	“Object” means a specimen of a specified biological resource or any modification thereof, or any parts or genetic or biochemical components derived therefrom, whether incorporated into any other organisms or not. “Object” also means a specified component of the knowledge or technology of a local community, whether that specified knowledge or technology is imbedded in a specimen of a biological, including genetic, resource or not.	Ethiopia
Country providing genetic resources	Country providing genetic resources: Country that provides genetic resources obtained from in situ sources, including populations of wild and domesticated species, or genetic resources ex situ, that may or may not originate from this country.	Costa Rica
Person	“Person” includes a natural or juridical person.	Ethiopia
Prior Informed Consent	Prior informed consent: Procedure through which the State, private owners, or local and indigenous communities, upon disclosure of the information required, consent to access to their genetic resources or to the intangible element associated to them, on the basis of mutually agreed terms.	Costa Rica
	Prior Informed Consent (PIC)” means the consent given by the provider and/or concerned local community or local communities, as the case may be, to the recipient’s or a third party’s access application that shall contain complete and accurate information regarding the aim of, anticipated activities on, and expected results from, the object and the anticipated impacts of the results.	Ethiopia
Recipient	Recipient means the natural or legal person who seeks, or who has been granted, access to an object or objects.	Ethiopia

Result	Result means the product, process or item of information that the recipient obtains from using the accessed object.	Ethiopia
Scientific Collection	Scientific Collection: activity that consists in the capture, removal or temporary or permanent extraction of biological material from the wild with non commercial purposes to obtain scientific information, to gather a data, or to expand scientific collections (NOM-126-SEMARNAT-2000-Colecta Cientifica)	Mexico

III. GENERAL COMMENTS ON USE OF TERMS

The following are general comments related to the “use of terms” provided by Parties and relevant organizations, in accordance with recommendation 3/2 of the third meeting of the Working Group, in preparation for the fourth meeting of the Working Group on Access and Benefit-sharing.

A. Parties

Canada

“We continue to consider it premature for the secretariat to prepare a glossary of definitions in advance of decisions about an instrument within the negotiations on access and benefit-sharing. Typically one defines a term once the nature and content of that instrument is known. Nevertheless, at ABSWG-3, we did not object to the preparation of a glossary, as we thought it might serve the purpose of understanding the diversity of views and approaches. In that same spirit, we offer guidance to the secretariat in the preparation of the glossary.

We recommend that terms not be included in a glossary where they have no meaning other than the ordinary meaning of the term: e.g., “voluntary nature”, “access”. This will simply overburden the glossary and be of little assistance.

We recommend that the glossary note the source of a term, such as the Convention on Biological Diversity (e.g. “genetic resources”, “*ex situ*”), or an instrument such as the Bonn Guidelines.

Similarly, the glossary should also indicate that there are terms which are only likely to be defined or have their meaning clarified in the context of material transfer agreements (MTAs). Such terms would include “benefit-sharing”, “commercialization”, “derivatives”, “provider”, “user”, “stakeholder”. Users of the glossary must be aware of terms like these whose definition or meaning may vary depending on the context in which the term is found.

As regards the term “derivatives”, we recognize that this is one of the most controversial topics before us. However, while we encourage their inclusion, as per the Bonn Guidelines, in specific contracts between users and providers, we are of the view that they do not fall within the scope of the Convention on Biological Diversity.

Under the Convention, Article 2 provides a definition of “genetic resources” as “genetic material of real or potential value.” “Genetic material” is defined as “any material of plant, animal, microbial or other origin containing functional units of heredity.” Combining the two results in a definition as follows: “any material of plant, animal, microbial or other origin, containing functional units of heredity [and are] of real or potential value.”

Canada is therefore of the view that derivatives should not be included in an international regime under the CBD as they are outside the scope of the definition of genetic resources.

If “derivatives” are to be included in the glossary, we ask that the following be included:

/...

“derivatives: although frequently referred to in material transfer agreements and some national laws, because derivatives do not contain functional units of heredity, they do not fall within the definition of “genetic resources” in the Convention on Biological Diversity and are therefore outside the scope of the Convention.”

European Community (EC)

“The European Community and its Member States would like to take this opportunity to re-iterate the content of their previous submission under this item. This can be found in page 24 of the information document (UNEP/CBD/WG-ABS/3/INF/1). Furthermore, we continue to support the request to the Executive Secretary to prepare a glossary of definitions used in relation to access and benefit sharing.”

Mexico

“We consider that the reach of the definitions must refer exclusively to the legal interpretation of the legal instrument to be negotiated, without prejudice and independent of the technical or legal definitions existing in national legislations.

Not all terms currently under consideration are essential for the negotiation process of the Regime. Therefore, more work is needed to identify and develop only those definitions that will be essential for the Regime. Particular attention should be given to those that define the reach and scope of the regime. This work will be best carried out when concrete elements of the regime are analyzed and not out of context.

The definition of derivatives, as mentioned before, is key for the Regime, since it is determinant for the scope. However, it is perhaps best to work on it from the perspective of what constitutes a use of genetic resources.

Based on the above, presented hereby are some of the definitions that are currently in use in the Mexican legislation,

a. Biotechnology: every application that uses biological resources, alive organisms or its derivatives for the creation or modification of products or processes for specific uses (LGEEPA)

b. Scientific collection: activity that consists in the capture, removal or temporary or permanent extraction of biological material from the wild with non commercial purposes to obtain scientific information, to gather a data, or to expand scientific collections (NOM-126-SEMARNAT-2000-Colecta Cientifica)

c. Biotechnology collection with commercial purposes: to obtain or to gather forest biological resources to produce chemical compounds, genes, proteins, secondary compounds, molecular structures, metabolic processes, and other results, with lucrative purposes (Ley General de Desarrollo Forestal Sustentable)

d. Genetic resources: genetic material of real or potential value (LGEEPA)

e. Forestry genetic resources: Seeds or organs from forest vegetation that exists in different ecosystems, whose generic name is forestry germoplasm and from which are dependable the inherit factors and reproduction (Ley General de Desarrollo Forestal Sustentable)

There is an Access Law initiative in Mexico currently under analysis in Congress. Its current draft contains additional definitions on this issue.”

B. Organizations

The International Union for the Protection of New Varieties of Plants (UPOV)

“UPOV has not developed any views on whether additional terms need to be considered, but would draw attention to the fact that the UPOV Convention has defined the terms “breeder”, “breeder’s right” and “variety” in the 1991 Act and would have concern that any use of these terms with a different definition would cause confusion.

(Extract from Article 1 of the 1991 Act of the UPOV Convention)

“Breeder” means the person who bred, or discovered and developed, a variety; the person who is the employer of the aforementioned person or who has commissioned the latter’s work, where the laws of the relevant Contracting Party so provide, or the successor in title of the first or second aforementioned person, as the case may be.

“Breeders right” means the right of the breeder provided for in this Convention (1991 Act of the International Convention for the Protection of New Varieties of Plants).

“Variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes; distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged”

PhRMA

“With respect to the invitation to submit information on “other relevant definitions” of the terms listed in the Notification, PhRMA does not believe that any of the listed terms are used as “terms of art” in the pharmaceutical or biotechnology sectors. Moreover, PhARMA is not aware of any express definitions within these sectors.

At the session of the Working Group in Bangkok, it appeared that some participants held the view that the listed terms are “undefined” because they were not expressly defined in the Convention or its *acquis*. As we understand the law of treaties, the view is incorrect. Article 31 of the Vienna Convention on the Law of Treaties provides that terms are given their “ordinary meaning ...in their context and in the light of its object and purpose.” In other words, these terms are given their “dictionary” meanings that are most relevant in the context of the Convention. Consequently, all terms used in the Convention are defined to have their ordinary meaning. No further definition is needed unless the drafters intend to use the word in a manner other than its ordinary meaning.

Given the lack of express definitions of the listed terms in the Convention, any glossary of the terms used in the Convention or its *acquis* may only explain the ordinary or dictionary definition of these terms, until the Parties agree to amend or supplement the Convention or its *acquis* with regard to these terms. Definitions from other sources (e.g. regional agreements, national laws) that do not reflect the ordinary meaning of the terms as used in the Convention are not relevant. Moreover, in our view, it is premature to define these terms expressly until the nature of the obligations in any international regime on access and benefit-sharing are established.”
