

## **EXPLANATORY NOTE FROM THE CO-CHAIRS OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING REGARDING THE PROVISIONAL AGENDAS FOR THE FIFTH AND SIXTH MEETINGS OF THE WORKING GROUP**

### **Introduction**

The purpose of this note is to convey the rationale from the Co-Chairs of the Working Group on Access and Benefit-sharing regarding the provisional agendas for the fifth and sixth meetings of the Working Group.

The attached provisional agendas were developed in conjunction with the Secretariat following a series of informal discussions with a number of Parties from various regions on possible strategic approaches to effecting substantive progress in the inter-sessional period, as mandated in decision VIII/4 A of the Conference of the Parties to the Convention on Biological Diversity.

### **Objective**

The provisional agendas are intended to assist the Parties by: (i) allowing greater opportunity for delegations' preparations for both the fifth and sixth meetings of the Working Group; (ii) improving the potential for a short, conclusive discussion of the respective agendas in the opening plenary sessions – in order to enable delegations to quickly move to more substantive matters; (iii) improving early understanding among Parties of where, from the Co-Chairs' perspective, various points of convergence lie among Parties regarding approaches to the agenda; (iv) implementing the Co-Chairs' working principles of transparency, openness, predictability and responsiveness.

These proposals, which have been approved by the Bureau of the Conference of the Parties, are made without prejudice to the final determination by the Working Group itself when it convenes at its fifth and sixth meetings.

The underlying approach, as reflected in the attached provisional agendas, will help ensure the Working Group meets its mandate as outlined in decision VIII/4 A of the Conference of the Parties and fully consistent with the terms of reference for the Working Group as set out in the annex to decision VII/19 D. The approach aims at ensuring the incorporation of both the results of previous Working Group meetings and inputs received since the eighth meeting of the Conference of the Parties (as prescribed in decision VIII/4 A).

### **Approach**

It is recommended that Parties consider a holistic approach to the fifth and sixth meetings, i.e., that they approach the meetings as two parts of one "single" session. Given the need to effect progress on key concepts and issues, and recognizing the limited time available to do so (in the Working Group meetings and between the two meetings), an integrated approach would facilitate a more rational division of issues across the two Working Group meetings, thereby ensuring that all issues of key interest to the various Parties receive sufficient attention.

Therefore, it is proposed that the issues to be addressed in the inter-sessional negotiation process be split between the two meetings, in order to ensure that each meeting focuses on different issues in a complementary fashion.

It is proposed that the agenda for fifth meeting of the Working Group devote attention to a number of key possible elements of an international regime. It is our hope that progress on the substantive elements of the regime will facilitate later discussion on the nature, scope and potential objectives at the Working Group's sixth meeting.

We would suggest that each of the meetings address the possible elements of an international regime on the basis of the elements listed in the terms of reference of the Working Group. However, rather than include the whole list of elements (many of which overlap), it is proposed to group them as clusters under a smaller number of thematic headings (e.g. fair and equitable sharing of benefits, access to genetic resources, compliance). It should be noted that employing such thematic headings would in no way disallow cross-thematic discussions such as the relevance of prior informed consent/mutually agreed terms (PIC/MAT) to the sharing of benefits. Similarly, for example, topics of particular interest to certain delegations (e.g., definitions of “misappropriation of genetic resources”, “facilitated access”, “derivatives” may be raised at junctures in the agenda under a general theme deemed most relevant by those delegations.

We draw to your attention two “horizontal” issues that appear in both provisional agendas, i.e., traditional knowledge and genetic resources, and capacity-building:

- It is proposed that the theme of “traditional knowledge and genetic resources” be included in the agendas of both meetings in order to allow for the required collaboration between the the Working Group on Access and Benefit-sharing and the Working Group on Article 8(j) and Related Provisions of the Convention. Given that the fifth meeting of the Working Group on Access and Benefit-sharing will be followed immediately by the fifth meeting of the Working Group on Article 8(j), the latter meeting will provide an opportunity to consider the outcomes of discussions on relevant aspects of the international regime at fifth meeting of the Working Group on Access and Benefit-sharing and make recommendations for consideration at the sixth meeting of the ABS Working Group.
- It is increasingly apparent that capacity-building is an issue of strong interest to many Parties and stakeholders, in both the context of current efforts to implement domestic ABS policy measures and potential future needs regarding international policy implementation at the national and regional levels. Given the direct correspondence between discussions on the elements of the regime and capacity building activities it is suggested that the Working Group take up this subject at both its fifth and sixth meetings.

Finally, the issue of indicators for access and benefit-sharing is listed as a separate item given the specific context for this subject is the Strategic Plan of the Convention, rather than the international regime per se.