

**Please provide to following details on the origin of this report on benefit sharing**

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Signature of officer responsible for submitting national report:	
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***Please provide summary information on the process by which this report has been prepared, including information on the types of stakeholders who have been actively involved in its preparation and on material which was used as a basis for the report***

Ad stakeholders: The members of the Austrian National Biodiversity Commission have been invited to participate in the preparation and discussion of this questionnaire. The National Biodiversity Commission was entrusted by the Federal Ministry of Environment in 1996 to coordinate and harmonize the numerous activities and programs as well as to promote the flow and exchange of information. This commission is composed of representatives from administrative departments (Federal Ministries and Provincial authorities), unions and management, science and non-government organizations (NGOs).

Ad material: Taking into consideration that the "brainstorming" at national, EU and global level with regard to the questions raised is still far from completed, the views presented have to be seen as preliminary.

Ad process: The Austrian Ministry of Agriculture, Forestry, Environment and Water Management involved the Austrian National Biodiversity Commission, where a discussion of the actions to be taken in the context of IPR, TK as well as access and benefit sharing took place. The final version of this questionnaire was discussed in the Austrian National Biodiversity Commission before it was sent to the SCBD.

General comment/Summary:

In support of the position of the European Union/Biodiversity Group on Intellectual property rights, access to genetic resources and benefit-sharing arising from their use Austria would like to state that the relationship between traditional intellectual property rights, access to genetic resources and traditional knowledge is a very complex issue and at the moment discussed very controversially at different fora.

There are already international obligations and national laws in this field, e.g. TRIPS-Agreement (Art. 27/3/b) or UPOV as a sui generis law.

The intellectual property system is in constant evolution. New challenges in technology but also changes in economic, social and cultural conditions require continuous updating.

Especially with regard to traditional knowledge we think that deliberations on the content and the scope as well as on possible ways of protection have just started. We therefore very much welcome recent activities of WIPO in this field, especially the creation of a new Intergovernmental Committee to discuss traditional knowledge and related questions.

With regard to benefit sharing arrangements: Access to natural genetic resources is free in Austria, as long as those animal and plant species are not protected through nature protection laws (e.g. endangered species, national parks), hunting laws, and, of course, private property rights, like privately owned gardens. If somebody gets financial support from the State for scientific research, e.g. a certain project, and makes profit with the results of this research, she or he has to pay back the subsidy only.

I. Please provide the views of your country on the following issues:

*Intellectual property and traditional knowledge related to genetic resources*

(a) How to define relevant terms including subject matter of traditional knowledge and scope of existing rights; <b>A clear and commonly agreed definition of the various terms seems to be essential before entering into further discussion.</b>
(b) Whether existing intellectual property rights regimes can be used to protect traditional knowledge; <b>Protection of objects emanating from traditional knowledge by e.g. geographical indications, designs or copyright should be taken into consideration.</b>
(c) Options for the development of <i>sui generis</i> protection of traditional knowledge rights. <b>Depends primarily on solutions in regard to question (a) - define terms - and to the question concerning the relationship between existing intellectual property rights and a possible sui generis system. Also the question at which level (national, regional, international) such a system should be installed would have to be tackled and solved.</b>
(d) The relationship between customary laws governing custodianship, use and transmission of traditional knowledge, on the one hand, and the formal intellectual property system, on the other;
(e) Means by which holders of traditional knowledge, including indigenous peoples, may test means of protection of traditional knowledge based on existing intellectual property rights, <i>sui generis</i> possibilities, and customary laws;
(f) How to ensure that granting intellectual property rights does not preclude continued customary use of genetic resources and related knowledge; <b>With regard to patents customary use and traditional knowledge have to be seen as prior art which should be taken into consideration during the application- or cancellation-procedure. In our view it is therefore necessary to support holders of traditional knowledge to create specific databases to enable patent examiners to search for prior art.</b>

*Intellectual property rights and access and benefit-sharing agreements*

(a) Ways to regulate the use of resources in order to take into account ethical concerns;
(b) Ways to ensure the continued customary use of genetic resources and related knowledge;
(c) How to make provision for the exploitation and use of intellectual property rights to include joint research, obligation to work any right on inventions obtained or provide licenses;
(d) How to take into account the possibility of joint ownership of intellectual property rights.

**(a-d) Article 15 of the Convention sets the principle of sovereignty of States on their biological resources and expresses the need to ensure equitable benefit sharing arising from the utilisation of these resources as well as of traditional knowledge. National governments are the competent authorities to grant access subject to national legislation. The legal framework concerning access and benefit sharing agreements as well as possible involved intellectual property rights has to be established by the government of the State granting access in compliance with the respective national legislation and international agreements.**

## Indicative Outline for Case-studies on Benefit Sharing Arrangements

To the extent possible case-studies should be short, succinct summaries of experiences of 15-20 pages (5 to 10 000 words). A case-study should focus on the planned/actual benefit-sharing arrangements and their outcomes, the reasons for the outcome and the lessons learned. Footnotes are welcome, if they provide useful sources for further information.

Case-studies should follow, to the extent possible, the proposed structure outlined below. However, as there will be structural differences between those case-studies related to policy and law and those describing concrete activities, such as the bio-prospecting arrangements with local or indigenous communities or the specific management of a protected area for those arrangements, not all sections of the questionnaire will be applicable to every case-study. The outline is therefore meant to be an indicative one. If an author of a case-study feels it is useful to include facts or conclusions not covered by the outline, the outline may be adjusted accordingly.

### 1. Overview (1 - 3 pages)

Summary of the case-study including

(a) Main actors involved: A short description of the different stakeholders, i.e. who was/is involved in the arrangements leading to benefit sharing (both providers and beneficiaries):

- Governments - national level and/or regional/local authorities;
- universities and research/training institutes;
- private company/entrepreneurs;
- non profit making associations/NGOs;
- local and/or indigenous communities/individuals;

(b) The ecosystem, species and genetic resources concerned;

(c) The type of benefit-sharing arrangements and the expected results: What kind of arrangements/partnership/relationship is the basis for action. This can be, for instance:

- a short term or long term arrangement;
- consist in a written and/or verbal contract/ agreement/ understanding (including umbrella agreements as well as specific arrangements);
- they might be individual, communal, or public agreements;
- it could also consist in the national, regional or local legislation or policy for genetic resource use.

(d) The time-frame addressed;

(e) Its relevance to the Convention ( e.g. which objective(s) or Article(s)), and to the decisions of the COP and/or to the recommendations of SBSTTA.

### 2. Description of the context (1 - 3 pages)

Description of the status of the ecosystem, the species and the genetic diversity relevant to the activities and benefit-sharing arrangements presented in the case-study. This should include a brief description of the situation regarding:

(a) The biological resources in question, including threats, pressures and trends as well as underlying causes, use and management;

(b) The physical environment in which the biological resources are located, including the factors mentioned under (a);

(c) The institutional and organisational structure of local communities and concerned institutions including their decision-making processes (as far as those communities or institutions are not stakeholders of the benefit-sharing arrangement);

(d) Where a legal or policy measure is the subject of the case-study, the relevant regional, national and/or local framework should be described.

### **3. Purpose/Objectives of the Benefit-sharing Arrangements (1 - 2 pages)**

A description of the reasons and objectives for the different actors to have entered into the benefit-sharing arrangements or to have set up the legal and policy measures. This section should include, inter alia:

- (a) The primary motivations/objective, for instance:
- Financial and/or employment;
  - Access to genetic resources (including systems of protection and property rights);
  - Access to knowledge, innovations and practices (including information exchange;
  - Improved understanding and awareness);
  - Access to research and training (acquisition of knowledge and skills);
  - Scientific and technical cooperation;
  - Commercialization/ trade;
  - Environmental protection;

(b) Whether the arrangements contribute to more general long term objectives such as social and economic development, livelihood security and well being, food security, trade, environmental protection;

(c) Where possible, the identification of whether the underlying motivation can be attributed to one or more of the objectives of the Convention (conservation, sustainable use and/or equity) and/or to specific obligations of the Convention i.e. decisions and recommendations.

### **4. Process for Establishing the Arrangements (1-2 pages)**

A brief description of how the arrangements were established and negotiated:

(a) To what extent did the different stakeholders participate in the negotiations regarding the benefits;

(b) What enforcement/compliance measures, if any, were included;

(c) To what extent did the different partners have the necessary skills for negotiating and bargaining (knowledge, information, access, bargaining skills).

### **5. Content and implementation of the arrangements (4-6 pages)**

Description of the activities relevant to the implementation of the benefit sharing arrangements, inter alia:

(a) The different inputs, contributions, actions and responsibilities, rights and obligations of each stakeholder/actor (the providers and the beneficiaries). The contributions could include, for example:

- Research assistance;
- Samples/accessions of plant/animal/microbial genetic resources;
- Information and/or knowledge, i.e. Of the ecosystem/genetic resources;
- Health care, welfare;
- Money, capital, markets, employment;
- Food supply;
- Environmental protection.

(b) the different benefits that each stakeholder derived from the arrangements. Include how these benefits were identified and assessed (indicators and process). The identified benefits arising out of the arrangements in relation to the objectives of the Convention could include:

- Direct/indirect;
- Short term/long term;
- Monetary/non-monetary;
- Individual/public (cross-reference where appropriate with section 4).

(c) The mechanisms for sharing benefits. Describe the modalities and mechanisms for transferring/sharing-out the benefits including:

- Directly or indirectly (for instance through a trust fund); time specific or over time;
- How do they reach the different partners, i.e. Mechanism of distribution in the community or in the nation state;
- How are they utilised to further benefit the stakeholders.

(d) Where the case-study relates to measures in policy and legislation:

- How will compliance with the new regulations be ensured?
- Which institutions will be responsible for the control or administration of the measures?

## **6. Policy, legislative and administrative context (2 pages)**

(a) How does the legislation and policy environment of the country influence the results and findings of the case-study, including application of national and community laws?

(b) Which specific regulations and/or policies were helpful and why?

(c) What specific policy, social, economic, cultural and environmental constraints have been identified and which need to be addressed at different levels. The assessment should consider, inter alia, the following areas:

- Access legislation, education, information, land tenure, intellectual property rights, traditional resource rights, administrative procedure, taxation, trade, investment, policies.

(d) Where the case-study is itself an example of policy or legal measures, this section could include reference to other relevant policies or legal or administrative issues that may influence the impact of the described case-study.

## **7. Impact on conservation (1-2 pages)**

This section should include:

(a) What kind of impact does the activity have (actual and or potential) on the conservation of biological diversity:

- On genetic and species diversity;
- On the ecosystem in general;
- On most important (e.g., keystone, indicator, economic or cultural) species;

(b) How was the impact identified and assessed (indicators, process)?

## 8. Policy relevant conclusions: lessons learned and replicability (2 pages)

This section should analyse:

- (a) Lessons learned
  - How would you assess the case-study with regard to the actual/potential effectiveness of the benefit-sharing arrangements?
  - Identify both negative and positive aspects which determine its success or failure.
  - Do you consider that the benefits were shared in a fair and equitable way? On what evaluation are you basing your assessment?
  - Identify the most important constraints to and opportunities for the identification and adoption of economically, socially and culturally sound benefit-sharing arrangements to promote the conservation and sustainable use of biological diversity
- (b) Transferability of the experience:
  - Assess whether the case-study could be considered representative and could be replicated . If so, what would you propose should be done differently now if there were the opportunity to replicate the experience: with the same/other actors; in the same environment/elsewhere; with the same/different genetic resources;
  - In addition specify what information is available and what further research may be needed to improve the case-study and to develop proposals for further replication;
  - What are the minimum institutional, ecological and socio-economic/market requirements that would have to be met to allow the experience to be replicated?
- (c) Possible policy advice for implementation:
  - Outline what policy conclusions and recommendations can be drawn from the case-study.