

Cusco Declaration on Access to Genetic Resources, Traditional Knowledge and Intellectual Property Rights of Like-minded Megadiverse Countries

PREAMBLE

We, the State Ministers and high-ranking representatives of Bolivia, Brazil, China, Colombia, Costa Rica, Ecuador, the Philippines, India, Indonesia, Kenya, Malaysia, Mexico, Peru, South Africa and Venezuela assembled in Peru's Urubamba Valley, Cusco, on November 29, 2002.

Reaffirming the Cancun Declaration of February 18, 2002, by which means we decided to create the "Group of Like-Minded Megadiverse Countries" as a consultation and cooperation mechanism in order to promote our common interests and priorities related to the conservation and sustainable use of biological diversity.

Recognizing the sovereign rights of the States over their natural resources according to the provisions of the Convention on Biological Diversity and our commitment to meet its objectives.

Highlighting that conservation and sustainable use of biological diversity as well as the environmental services provided by the ecosystems have a strategic value for sustainable development.

Recognizing the outcome of the World Summit on Sustainable Development, in particular, the Johannesburg Declaration on Sustainable Development and the Plan of Implementation and within the Plan of Implementation paragraph 42 (o) approved September 4th, 2002;

Acknowledging the UNDP initiative on access and benefit sharing of genetic resources and its potential contribution to the objectives of the Like-Minded Megadiverse countries;

Highlighting the Declaration on Conservation and Sustainable Use of Biological Diversity of the Group of Like-Minded Megadiverse Countries, held in Johannesburg on September 3rd, 2002, which sets out the importance of an international regime to effectively promote the fair and equitable sharing of benefits arising from the use of biodiversity and its components, as well as to promote the development of a sui generis regime to protect traditional knowledge associated to biological diversity, taking into account the principles of the CBD;

Considering the "Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising from their Utilization" adopted during COP VI of the CBD, as a useful first step in an evolutionary process for the development of access and benefit sharing regimes;

Recognizing the national instruments aimed at guiding our countries in regulating access to genetic resources and benefit sharing and protection of traditional knowledge, and subregional and regional instruments to these effects, which include inter alia the Andean Community, Decisions 391 and 486; and the Organization of African Union (OAU) Model Law on the Protection of the Rights of Local Communities, Farmers, Breeders and for the regulation of access to biological resource;

Underlining the importance of the relationship between cultural diversity and biological diversity which is one of the most relevant aspects of our heritage as megadiverse countries;

Recognizing that poverty in Megadiverse countries can be eradicated through conservation and sustainable of biological diversity, in accordance with the objectives of the Millenium Declaration;

Further recognizing the crucial role played by women as depositaries and resource managers or traditional knowledge in the eradication of poverty;

DECLARE:

The central importance of genetic resources to Megadiverse Countries, who are countries of origin and centers of biodiversity of those genetic resources as well as of the applications of these resources in technological, economic and socio-cultural development.

The importance of paragraph 19 of the 4th WTO Doha Ministerial Declaration of December 20th, 2001 which instructs the TRIPs Council to examine the relationship between the TRIPs Agreement and the CBD and the protection of traditional knowledge and folklore;

That the mechanisms of access to genetic resources and traditional knowledge must ensure the conservation and sustainable use of biological diversity and distribution to the countries of origin of all types of benefits including monetary benefits, technology transfer, development of value added products and improvement of economies in favour of our people, particularly our local communities;

Our support of the ongoing work within the Convention of the Biological Diversity on Article 8 (j) and related provisions;

Our commitment to enhance the efforts of the Group to promote negotiations, within the framework of the Convention on the Biological Diversity and bearing in mind the Bonn Guidelines, of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources;

That it is necessary to promote bioprospecting and biotechnology in a manner consistent with sustainable use of biological resources, in accordance with national laws and policies and to prevent biopiracy and illegal access to genetic resources and traditional knowledge;

That we need to continue to promote the development of a sui generis regime to protect traditional knowledge, based on IPRs and other instruments and mechanisms of a different nature;

Our commitment to promote the in situ conservation of our biological resources;

To look forward to the conclusions of existing processes on the protection of traditional knowledge including those under the World Intellectual Property Organization and the Convention on Biological Diversity, that shall take into account and fully respect the rights of the countries of origin over their own natural resources as well as those of the traditional knowledge of the indigenous and local communities;

AGREE ON THE FOLLOWING ACTIONS:

To convey the need to formulate a strategy and Plan of Action which contains targets, objectives, activities and means, including, financial resources, to develop our joint coordination towards the consolidation necessary to reach our objectives.

To strengthen and/or establish a mechanism for cooperation and exchange of information among our countries including case studies and development of projects in areas such as legal regimes applicable in each country regarding property rights of genetic resources and traditional knowledge and, to promote cooperation and exchange of information, inter alia, technology

transfer, and capacity building among our countries as well as the exchange of successful experiences in enforcement of laws and regulations;

To strengthen national and regional processes in order to incorporate elements contained in this Declaration, in national policies and regulations, especially regarding genetic resources, traditional knowledge and intellectual property rights;

To promote prior discussions and consensus among the Like-Minded Megadiverse Countries to enable us to present joint proposals in the international fora;

To establish an ad-hoc working group open to all the Like Minded Megadiverse Countries, to present a proposal to be submitted to the next meeting of the Group, to be held in Malaysia in 2003, containing mechanisms to guarantee the fair and equitable sharing of benefits derived from the use of biodiversity and associated traditional knowledge which shall take into account inter alia:

- the need to recognize the sovereign rights of countries of origin over their own biological resources, including genetic resources;
- the need to guarantee the full protection of the rights of indigenous and local communities over their traditional knowledge so that their heritage is not accessed and used without their consent or without the due benefit sharing arrangements; and
- the need to present, prior to the issuance of patent, a prior informed consent agreement with the country of origin of the genetic resources and proof of the legal provenance of genetic resources and/or traditional knowledge that are used in or are a part of an invention;
- study and expedite the establishment of multilateral provisions within the framework of the present Declaration;
- invite UNEP and other organizations to support the activities stated under this Declaration;

To urge the Conference of the Parties to the Convention of Biological Diversity to initiate without delay the negotiations within the framework of the Convention, for an international Regime to promote and safeguard the equitable sharing of benefits arising out of the utilization of genetic resources, called for by the World Summit on Sustainable Development;

We express our appreciation to the Government of Peru for hosting this Ministerial Meeting.

Cusco, November 29th, 2002