

New Delhi Ministerial Declaration of Like Minded Megadiverse Countries on Access and Benefit Sharing

We, the Ministers for Environment and the Delegates from Bolivia, Brazil, China, Colombia, Ecuador, India, Indonesia, Kenya, Madagascar, Malaysia, Mexico, Peru, Philippines, South Africa, and Venezuela, who met in New Delhi from 20-21 January 2005:

Reaffirming that States have sovereign rights over their own biological resources;

Taking note of and committing to meet the objectives of the Convention on Biological Diversity namely conservation of biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of their use;

Recognising that economic and social development and poverty eradication are the first and overriding priorities of developing countries;

Recalling the Cancun Declaration of February 2002, creating the Group of Like Minded Megadiverse Countries as a mechanism to promote a common agenda relating to the conservation and sustainable use of biological diversity;

Acknowledging that the Group of Like Minded Megadiverse Countries holds nearly 70% of the global biological diversity, associated with our cultural wealth and diversity, and which must be preserved and utilized in a sustainable manner;

Acknowledging further the 'Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilisation', adopted in April 2002 by the sixth Conference of the Parties (COP) to the Convention on Biological Diversity;

Recognising the Johannesburg Plan of Implementation (JPOI) of September 2002, calling for action to negotiate within the framework of the Convention on Biological Diversity, an international regime to promote fair and equitable sharing of benefits arising out of the utilization of genetic resources and associated traditional knowledge;

Recalling the Cusco Declaration of November 2002 urging the development of an international regime on access to genetic resources and traditional knowledge and benefit sharing arising from their use;

Taking note of the Action Plan adopted by the Group of Like Minded Megadiverse Countries during the seventh COP to the Convention on Biological Diversity in Kuala Lumpur in February 2004;

Recalling the decision VII/19 of the seventh Conference of the Parties to the Convention on Biological Diversity, mandating the Ad-hoc Open Ended Working Group on Access and Benefit Sharing to elaborate and negotiate an international

regime on access and benefit sharing with the aim of adopting an instrument / instruments to effectively implement the provisions of Article 15 and Article 8(j) and the three objectives of the Convention;

Have agreed as follows:

1. To renew our commitment as a Group to consolidate consultation and cooperation, and to develop strategies on various issues relating to conservation of biological diversity and sustainable use of its components for the benefit of our countries and peoples;
2. To join efforts as a Group for effectively negotiating the development of an international regime on access and benefit sharing, including legally binding instrument(s) in the forthcoming meetings of the Ad-hoc Open ended Working Group under the aegis of Convention on Biological Diversity, so as to safeguard the interests of our countries and peoples;
3. To ensure that the international regime to be developed on access and benefit sharing, includes inter alia the following elements: prior informed consent of the country of origin; mutually agreed upon terms between the country of origin and user country; mandatory disclosure of the country of origin of biological material and associated traditional knowledge in the IPR application, along with an undertaking that the prevalent laws and practices of the country of origin have been respected, mandatory specific consequences in the event of failure to disclose the country of origin in the IPR application;
4. To explore the feasibility of developing coherent national approaches for regulating access to genetic resources and associated traditional knowledge, including for ensuring fair and equitable benefit sharing arising from their use;
5. To jointly further work towards creating the Megadiverse Cooperation Fund, to support projects in member countries that meet the objectives of the Group;
6. To continue consultations, including through electronic means, for developing consensus among the Like Minded Megadiverse Countries for developing common positions and presenting as far as possible joint proposals under the Convention on Biological Diversity, as well as other multilateral agreements relevant for conservation and sustainable use of biological diversity; and
7. To call upon the member countries to consider the recommendations made by the Experts during the LMMC meeting at Delhi as given in the Annex for acceptance by their respective governments with a view to reach a consensus by the group of LMMCs before Ad-hoc Open Ended Working Group meeting in Bangkok in February 2005.

We express our appreciation to the Government of India for hosting this meeting.

New Delhi, 21st January 2005

ANNEX of New Delhi Declaration (as finalized during meetings of LMMCs in Bangkok in February 2005)

Recommendations

General considerations:

Decision VII/19 decided to mandate the Ad-hoc open ended working group on Access and Benefit Sharing to elaborate and negotiate an international regime on access to genetic resources and benefit sharing with the aim of implementing Articles 15 and 8(j) and the three objectives of the Convention.

1. Nature

The international regime should be legally binding and may have non-legally binding elements. The international regime should reinforce the national legislations, where they exist.

2. Scope

The scope of the Legally binding instrument (LBI) should apply to :

- a. access to genetic resources;
- b. fair and equitable sharing of benefits arising out of utilization of genetic resources and their derivatives and their products in the context of mutually agreed terms;
- c. protection of traditional knowledge, innovations and practices associated with genetic resources and their derivatives.

3. Objectives

- a. To prevent the continued misappropriation and misuse of genetic resources and their derivatives to ensure that fair and equitable sharing of benefits flow to the countries of origin of the genetic resources, and to reinforce national legislation.
- b. To provide effective protection of the rights of indigenous and/or local communities in relation to their traditional knowledge associated with genetic resources and derivatives subject to the national legislation of the countries where these communities are located.
- c. Establish international measures to support the aforementioned objectives.

4. Relationship with national legislation

The International Regime should reinforce the implementation of national legislations.

5. Elements

Among the elements listed in the annexe to Decision VII/19 of the Conference of the Parties, the LMMCs stress that the LBI should **primarily** focus on the following:

- I. Measures to ensure compliance by users with national legislations of the countries of origin or countries providing genetic resources where that country has satisfied conditions which qualify it to be considered as country of origin on access and benefit sharing, prior informed consent and mutually agreed terms;
- II. Measures to ensure compliance with prior informed consent of, either:
 - (a) indigenous/and or local communities for the access to their traditional knowledge, innovations and practices associated with genetic resources and/or associated knowledge and their derivatives; and/or,
 - (b) country(s) of origin for the access to genetic resources associated to TK.
- III. Measures to ensure compliance with mutually agreed terms on which genetic resources were granted.
- IV. Measures to prevent unauthorized access and use of genetic resources, their derivatives and associated TK, innovations and practices.
- V. Measures to ensure and guarantee monitoring, compliance and enforcement of rights of countries of origin of genetic resources and their derivatives, whether established by national legislations or otherwise, by users and their countries through the international regime.
- VI. Disclosure of legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights;
- VII. Internationally recognized certificate of legal provenance of genetic resources that should include evidence of compliance with access legislation (including prior informed consent and mutually agreed terms);
- VIII. The requirements to obtain the certificate will be nationally defined, considering the provisions in the CBD;
- IX. Vision of the Certificate: a standardized code that accompanies the biological material and is passed to all extracts, derivatives or information, through the least expensive channels, in a way that it can be shown at specific and relevant checkpoints in the R&D process (including product approval and intellectual property). There should be high cost of non-disclosure in order to induce users to behave legally.

The specific conditions for access should be included in a clearing house, so that users/authorities / interested parties can check the conditions.

- X. Criteria for international recognition of the certificate shall be established in the LBI.
- XI. Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2 of the Convention;
- XII. Recognition and protection of the rights of indigenous and/or local communities over their traditional knowledge associated to genetic resources, subject to the national legislation of the countries where these communities are located;
- XIII. Monitoring, compliance and enforcement.
- XIV. Rules for access to and transfer of technology on the basis of Article 16 of the Convention.
- XV. Measures for benefit sharing including inter alia, monetary and non-monetary benefits and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits;
- XVI. Rules to strengthen the international cooperation in particular South-South Cooperation;
- XVII. Building of human, institutional and scientific capacities including for putting in place the legal mechanism, taking into account Articles 18 and 19 of the Convention;
- XVIII. An institutional mechanism for implementation of LBI.

