

**Access
and
Benefit
Sharing**

**The Dutch-German
ABS Capacity Development Initiative
for Africa**

**Workshop Report of
the „Certificate of Origin / Source / Legal
Provenance” in the African ABS Discussion**

**A workshop hosted by the
Institute for Biodiversity Conservation
Addis Ababa, Ethiopia
28 to 30 March 2007**

Index

1. The Dutch-German Capacity Development Initiative for ABS in Africa	3
1.1 ABS – an unresolved issue	3
1.2 The Dutch-German ABS Capacity Development Initiative for Africa	3
2. Workshop Review	5
2.1 Background – the Lima Expert Group	5
2.2 The Addis Workshop Aims	5
2.3 Participants	6
2.4 Workshop programme	6
Annex	
On the Concept of Certificate of Origin/Source/Legal Provenance - Proposal for an African Common Position	8

1. The Dutch-German Capacity Development Initiative for ABS in Africa

1.1 ABS – an unresolved issue

“The fair and equitable sharing of the benefits arising from the utilization of genetic resources” is one of the three objectives of the Convention on Biological Diversity (CBD).

This objective was included in the CBD at the insistence of developing countries, where approximately 80% of global genetic resources are found and benefit-sharing was especially envisaged to happen between the suppliers of genetic resources in the South and the users of these resources in the North. The aim was to establish a mechanism that puts developing countries in a position to market their genetic resources profitably in future and thus to provide an economic incentive for the sustainable use of local biodiversity.

Since the CBD's adoption, ABS issues have been raised and discussed primarily at political level at venues including the sessions of the Conference of the Parties (COP), CBD working groups and workshops in developed and developing countries. So far, however, the potential for ABS mechanisms to contribute to poverty alleviation has barely been realized, also because the only guidelines for a functioning mechanism, known as the Bonn Guidelines have no binding force. Without national legislation there is no framework on which local communities in rural areas, where poverty is most prevalent can base claims - for their equitable share of benefits arising from the utilization of genetic resources, be it from national governments or from the private sector.

So far, only few and sometimes even incoherent recommendations have been elaborated based on the outcomes of international workshops dealing with issues such as the cross-border transfer of genetic resources, disclosure of information, participation and cooperation among all stakeholders, and the preservation of traditional knowledge.

By resolution of the last COP in Curitiba, Brazil in 2006, negotiations for an international ABS regime, which may range from voluntary commitments to a protocol to the CBD, have to be concluded by 2010. If ABS mechanisms are to contribute to poverty reduction, enforceable ABS regulations at national, regional and international level are essential. This includes provisions on land and property rights, access to resources, national and international market mechanisms and profit sharing, as well as the recognition of traditional knowledge and intellectual property, and disclosure obligations in the countries utilizing genetic resources. How far regulations are to be legally binding should be decided based on the specific context.

1.2 The Dutch-German ABS Capacity Development Initiative for Africa

Building on these insights, the Directorate General for International Cooperation (DGIS) of the Netherlands Ministry of Foreign Affairs and Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH (the latter acting on behalf of the German Federal Ministry for Economic Cooperation and Development, BMZ) have joined forces to build human and institutional capacity in developing countries to deal with complex ABS issues. The focus has been set on Africa – where the need for capacity development by international comparison is greatest and demand has been articulated by several countries: from supporting national and regional legislative processes to strengthening African positions on ABS at the relevant international negotiations under the CBD, WTO and WIPO.

In cooperation with the Ethiopian Institute for Biodiversity Conservation, DGIS and GTZ held an orientation workshop in Addis Ababa in 2005. Building on this workshop, recommendations were presented at several meetings of the CBD Working Group on ABS in Spain in January and at a joint information session at the 8th COP in Brazil in March 2006. Furthermore, an ABS Capacity-Building Needs Assessment was carried out to develop the possible instruments for an effective capacity development programme for Africa.

Based on these experiences and on the positive feedback from African partners, the joint *Dutch-German ABS Capacity Development Initiative for Africa* was launched. On basis of regular steering group meet-

ings, DGIS and the supra-regional GTZ programme “People & Biodiversity – Implementing the Biodiversity Convention” are responsible for the concept and implementation of the Initiative until 2010. The Secretariat of the CBD (SCBD) and the French Development Cooperation (Coopération française) are supporting partners of this Initiative.

The goal of the Capacity Development Initiative is to inform and support stakeholder groups in Africa focusing on the development and pilot implementation of ABS regulations. The involvement of the private sector is considered as a key success factor for the Initiative. Measures and activities carried out by the Initiative are based on needs assessments and practical experiences of bioprospecting case studies in all regions of Africa:

- **Multi-stakeholder workshops** to identify priorities for ABS capacity development in a participatory manner with different stakeholder groups;
- Thematically and/or stakeholder-focused **training courses** on the basis of needs analyses;
- **Peer-to-peer knowledge transfer** both at national and at local levels within different African countries, as well as internationally, e.g. between private-sector and governmental decision-makers;
- **ABS best practices with the private sector** including lessons learned in order to identify additional participants and potential investors for the utilization of resources;
- **Knowledge management** and information transfer within the different stakeholder groups at national level and on a pan-African and international basis;
- Regional **background studies** in order to set priorities and identify needs or to explore issues in greater depth;
- Active **inputs** by African representatives to ABS meetings at **UN level**.

With these measures the Initiative will not only **strengthen the knowledge** of all relevant stakeholders on ABS relevant matters and **build a network** of African ABS experts drawn from all relevant stakeholder groups, but will also implement the CBD *Action Plan on Capacity-Building for Access to Genetic Resources and Benefit-Sharing*, which was adopted by COP 7 in February 2004, in a tailor-made manner to the African needs. In the long run the Initiative can be considered as an iterative process that supports the vision of ABS as a powerful instrument to reduce poverty in Africa positively impacting on:

- **increased awareness** of African policy makers and legislators on ABS matters, especially their cross sectoral nature and their potential for poverty alleviation.
- a meaningful **participation of all relevant stakeholders** at all stages of the negotiation, development and implementation of ABS regulations – at the international, national and local level.
- to improved **regional cooperation** on ABS issues among African countries
- development of **partnerships for business opportunities**

By achieving these direct impacts the initiative will contribute in the long-term indirectly to achieving food security and the MDGs via the fair and equitable sharing of benefits generated from the use of biological/genetic resources.

For further information on the Initiative, please visit: www.abs-africa.info

2. Workshop Review

2.1 Background – the Lima Expert Group

Within the Convention on Biological Diversity many insiders are considering the so called *International Certificate of Origin/Source/Legal Provenance* a potential pillar of a future International Regime on Access and Benefit Sharing. Based on the current CBD debate COP VIII in Brazil has decided to convene a Group of Technical Experts on an internationally recognised certificate of origin/source/legal provenance. This Group met from 22nd to 25th January 2007 in Lima, Peru and was tasked to provide technical input to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (WG-ABS) on the following issues:

1. Consider the possible **rationale, objectives and the need** for an internationally recognised certificate of origin/source/legal provenance;
2. Define the potential **characteristics and features** of different options of such an internationally recognised certificate;
3. Analyse the **distinctions** between the options of certificate of origin/source/legal provenance and the **implications** of each of the options for achieving the objectives of Articles 15 and 8(j) of the Convention;
4. Identify associated **implementation challenges**, including the practicality, feasibility, costs and benefits of the different options, including mutual supportiveness and compatibility with the Convention and other international agreements.

One of the main common findings of this internationally composed expert group was – especially in order to better facilitate access to genetic resources for research purposes – the recommendation to more and better explore the option of a “*Certificate of Compliance*” with national ABS regulations.¹

2.2 The Addis Workshop Aims

Based on the current CBD discussion the Lima recommendations had especially from the African viewpoint to be brought into a regional context in order to elaborate an African position. With a view to also empowering African stakeholders and negotiators in the upcoming negotiations on the “International Certificate of Origin/Source/Legal Provenance” a regional workshop was held in Addis Ababa, timely only two months after the Lima Expert’s meeting. This gathering was not only meant to provide an information update and exchange on the current national and international processes but also to build hands-on capacity by discussing concrete examples of bioprospecting cases in Africa. A couple of bioprospecting cases – taking examples from the chemical, the pharmaceutical and the food sector – served as a basis for a “reality check” how the recommendations of the Expert Group on a Certificate of Origin/Source/Legal Provenance could be actually implemented in the African context.

Hence the strategic objectives of this workshop were to:

1. **Facilitate the information flow** to all African stakeholders concerned. As one of the central instruments for the International ABS Regime under discussion, an “International Certificate of Origin/Source/Legal Provenance” will eventually impact on all transactions of genetic resources and associated traditional knowledge as well as permitting and product registration systems including intellectual property registration. Therefore, all stakeholder groups must be able to participate in the discussion on an informed basis.

¹ A concise background document prepared by the Secretariat of the CBD that outlines the details of that meeting is available: (<http://www.biodiv.org/doc/meetings/abs/absgte-01/official/absgte-01-02-en.doc>).

2. **Contribute to a common position** of the African Group by analysing the Experts Group's recommendations against African bioprospecting experiences. This "reality check" was designed to provide insight into the needs and requirements of African stakeholders to improve ABS towards more equitable and fair transactions of biological/genetic resources and benefit-sharing agreements.

2.3 Participants

40 stakeholders from all regions of Sub-Saharan Africa participated at the workshop. Experts from Ethiopia, Madagascar and Mozambique who had attended the Lima meeting reported back to the workshop their specific viewpoints. The other participants included ABS National Focal Points and representatives of Competent National Authorities for ABS, negotiators in the last meeting of the ABS Working Group, staff of national research and development institutions, NGOs from the local, national and regional level, staff of international institutions, as well as relevant international private sector representatives including farmers and breeders.

2.4 Workshop programme

On the first day, participants were warmly welcomed by the GTZ workshop convenors and were addressed by the Ethiopian State Minister of the Ministry of Agriculture and Rural Development and a representative of the CBD Secretariat. Equipped with a couple of research questions on gene flow, the participants were given a guided tour through the gene bank of the Institute of Biodiversity Conservation and a presentation by the Institute's Director General on the Ethiopian ABS legislation. In the afternoon, participants heard from the representative of the Secretariat of the CBD and the African experts who attended the Lima meeting and had a lively discussion on the applicability of the Lima recommendations on the African continent.

The second day was dedicated to the "reality check". It centred on three bioprospecting cases: *Hoodia gordonii* from Southern Africa, *Prunus africana* from Cameroon, and *alkaliphilic bacteria* from Kenya. Participants were split into three moderated groups discussing how a *Certificate* in this particular case might have facilitated the process and might have contributed to ensure benefit-sharing. In the afternoon, participants made a field visit to a teff cereal farm about 70 km out of Addis Ababa, getting in direct touch with farmers exchanging information about production, storing and breeding methods. A highlight in the field was the presentation of a couple of teff products from the Netherlands (such as muesli bars, beer, bread and noodles) to the Ethiopian farmers including a discussion of their viewpoints on these goods.

Later the group watched a film about the Dutch-Ethiopian Teff ABS Agreement and engaged with a controversial panel discussion on the issues that included all relevant stakeholders of this case: representatives from the Farmers Association, Institute of Biodiversity Conservation, Health and Performance Food International (HPFI) and the Ministry of Agriculture and Rural Development.

The final day began with working groups reporting back about their discussion's results of the three bioprospecting cases. Specifically, the groups provided their specific input on four elements of the certificate:

1. **Rational / Need / Objectives:** what would be the value added of a certificate?
2. **Name:** should it be a certificate of origin, source, legal provenance or compliance?
3. **Characteristics and features:** should it be voluntary or mandatory, what should it include, and who should regulate it?
4. **Implementation challenges:** how should benefits, costs and practicability issues be dealt with?

The afternoon session focussed on feeding the working groups' output into a set of recommendations for a common African position. A task force composed of participants from all stakeholder groups drew up a

draft set of recommendations, which was further worked on in the entire plenary. The final recommendations were elaborated based on high quality, comprehensive and sometimes also conflictive discussions. They are reflecting now the agreed view of all participants. Only in one case - the name of the certificate – no common definition was agreed: some preferred to name it certificate of “origin and/or source” while others called for the more comprehensive “origin and source.”

Finally, participants decided to refine outcomes and recommendations of this workshop by an independent consultant in order to obtain a proposal for an African common position on the Certificate. Prof. Ekpere elaborated a report on this issue taking into consideration former workshop outputs and recommendations. For more information please see the report of Prof. Ekpere in the Annex.

The final evaluation revealed that the participants were very satisfied with all workshop elements: the results, the moderation, the methodology and the learning experiences they gained.

Annex

On the Concept of Certificate of Origin/Source/Legal Provenance:

Proposal for an African Common Position

By

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Briefing paper for African Delegates to the ABS meeting, Montreal, Canada

October, 2007

Executive Summary

This briefing paper is prepared to provide an elaboration on and explanation of the concept of Certificate of Origin/Source/Legal Provenance to the African delegates attending the 5th meeting of the Working Group on Access and Benefit Sharing, (ABS) in Montreal, Canada. The purpose is to give information on the discussions so far at the international level on the subject as well as inform the delegates of the recommendations of an African Expert Workshop held in Addis Ababa, Ethiopia, March 28 to 30, 2007. It is envisaged that this briefing will enable the African Delegates negotiate from an informed and knowledge base and a coordinated African common position.

The on-going negotiations on Access and Benefit Sharing (ABS), pre-supposes that a certificate of origin/source/legal provenance is an important instrument of a future international regime on access and benefit sharing. Consequently, the Conference of Parties VIII meeting in Brazil, convened a Group of Technical Experts on an "Internationally Recognized Certificate of Origin/Source/Legal Provenance " The Group, tasked to provide input to the Ad-hoc open ended Working Group on access and benefit sharing, met in Lima, Peru to deliberate on the following issues:

- Possible rationale, objectives and the need for an internationally recognized certificate of origin/source/legal provenance
- Potential characteristics and features of such an internationally recognized certificate of origin/source/legal provenance
- Distinctions between the options of certificate of origin/source/legal provenance and the implications of each of the options for achieving the objectives of Articles 15 and 8(j) of the Convention
- Associated implementation challenges

The report of the Lima GTE meeting provided the basis for a workshop of African Experts in Addis Ababa, Ethiopia, on March 28 to 30, 2007, to craft an African viewpoint and elaborate an African Common Position. The objective of the workshop was to:

- Facilitate information flow, to African stakeholders concerned, on the on-going debate on the need for an internationally recognized certificate of origin/source/legal provenance
- Contribute to the crafting of an African Common Position during the negotiations in Montreal in October, 2007 and beyond

The outcome and recommendations of this expert workshop is the subject matter of this briefing. After three days of deliberations, the workshop came to the following conclusion:

- An internationally recognized certificate of origin/source/legal provenance is required
- The **name** of the certificate should be either certificate of origin and source OR certificate of origin and/or source
- The certificate should be mandatory and binding
- The scope should be broad and cover traditional/community knowledge
- It should specify details consistent with requirements for access and benefit sharing and follow appropriate procedure for application

The workshop identified a number of implementation challenges including:

- Establishment and harmonization of ABS regimes
- Defining the period of validity of the certificate
- Interpretation and understanding of other related agreements
- Capacity for implementation
- Awareness creation
- Adjudication of disputes
- High costs of establishment
- Trans-boundary occurrence and migratory nature of some resources
- Availability of up-dated data/database

This briefing pape suggests the need for African negotiators to craft an African Common Position from a perspective of knowledge and commitment to the objectives of their national policies and interest, based on the recommendations of the Addis Ababa workshop.

1. Introduction and Background

The working Group on access and benefit sharing was set up by the Conference of Parties at the fifth meeting in 2000, with the mandate to develop guidelines and approaches to assist parties and stakeholders in addressing matters on access and benefit sharing. The working Group successfully negotiated the Bonn Guidelines on access and benefit sharing in 2002. The Working Group realizing that a package of measures would be necessary to address the various needs of parties and stakeholders in the implementation of access and benefit sharing was also aware that other approaches could be considered as complementary in the implementation of the Bonn Guidelines and access and benefit sharing provisions of the Convention.

The issue of an international certificate of origin was considered within the framework of the Convention in December 2003 as a potential approach to assist with the implementation of access and benefit sharing provisions of the Convention.

The Conference of Parties at its seventh meeting in 2004, agreed on the need to further examine other options, including an international certificate of origin/source/legal provenance, with particular emphasis on the operational functionality, and cost effectiveness of such an international certificate. The Technical Working Group was **further mandated to negotiate an international regime on access and benefit sharing**, the terms of reference of which included an “**an internationally recognized certificate of origin/source/legal provenance**” of **genetic resources and associated traditional knowledge**.

The meeting of the Group of Technical Experts on an internationally recognized certificate of origin/source/legal provenance in November 2006, decided to set up an expert committee to explore and elaborate possible options, without prejudicing their desirability, for the form, intent and functioning of an internationally recognized certificate of origin/source/legal provenance and analyze its practicality, feasibility, costs and benefits, with a view to achieving the objectives of Article 8(j) of the convention.

1.1 The Terms of Reference of the Group included:

- a) Consideration of the possible rationale, objectives and the need for an internationally recognized certificate of origin/source/legal provenance
- b) Definition of the potential characteristics and features of different options of such an internationally recognized certificate
- c) Analysis of the distinction between the certificate of origin/source/legal provenance and the implications of each of the options for achieving the objectives of Article 15 and 8(j) of the convention
- d) Identification of associated implementation challenges, including the practicality, feasibility, costs and benefits of the different options, including mutual supportiveness and compatibility with the convention and other international agreements.

In parallel with the work of the Convention, a number of studies were carried out and workshops/meetings held to discuss various approaches to the implementation of a certificate of origin/source/legal provenance on access and benefit sharing. This briefing paper presents an overview of the various discussion and recommendations at the various fora with a view to providing information that could be useful to the African Ministers in crafting a common position on access and benefit sharing in general and “certificate of origin/source/legal provenance” in particular.

It is common knowledge that Africa holds one of the largest reserves of biological diversity in the world. This expansive resource is currently threatened by a number of factors, some of which includes bio-piracy, unregulated bio-trade, unsustainable exploitation and use as well as natural disaster. The situation therefore calls for appropriate measures for conservation, protection and sustainable use. It is in this

context that the negotiations on access and benefit sharing in general and the concept of certificate of origin/source/legal provenance in particular are relevant. Africa is conscious that if it must play an active part of the larger negotiation to preserve its heritage.

1.2 The concept, potential rationale, objectives and need for an internationally recognized certificate of origin/source/legal provenance

The concept of a certificate has been described as a type of passport or permit which would accompany the genetic resource(s) along the entire chain of the access and benefit sharing process and allow the verification of the legitimate use of the resource(s) at various stages of the process. It would therefore accompany the genetic resource(s) from the collection point until the scientific publication and/or marketing of the product.

The principal objective of an internationally recognized system of certificate of origin/source/legal provenance would be to enhance traceability of genetic resources from the moment they have been accessed and therefore ensure transparency. It would also ensure compliance with the access and benefit-sharing provisions of the Convention as well as confirm that legal requirements for acquisition of the genetic resource(s) in the country of origin or provider country have been met. If checkpoints are established along the utilization chain of genetic resources, the certificate, gives providers the assurance that the resource(s) are used in conformity with their national access requirements while providing the resource users the certainty and predictability that the resources have been obtained following due legal process. It is envisaged that the process will enhance trust between providers and users of genetic resources as well as allow for the development of a less restrictive national access procedure, facilitate access, reduce cost and provide evidence that users are meeting access requirements.

2. Key issues in the Report of Group of Technical Experts.

2.1 The Group of Technical Experts met in Lima, Peru, from January 22 to 25, 2007 and discussed the following key issues:

- 1.1.2 The potential rationale, objective and need for an internationally recognized certificate of origin/source/legal provenance based on submissions by stakeholders as well as available literature
- 2.1.2 Definition of the potential characteristics and features of different options of such an internationally recognized certificate
- 3.1.2 Analysis of the distinctions between the options of certificate of origin/source/legal provenance and the implications of each of the options for achieving the objectives of Article 15 and 8(j) of the Convention on Biological Diversity
- 4.1.2 Implementation challenges, including the practicality, feasibility, costs and benefits of the different options including mutual supportiveness, and compatibility with the Convention and other international agreements.

The Group during its deliberations observed that any option considered should contribute to the objectives of the Convention. It noted that all countries are both providers and users and that national legal systems alone are not sufficient to guarantee benefit sharing once genetic resources have left the provider country. It is in this respect that the certificate as a part of a broader access and benefit-sharing regime be an important tool to reduce this limitation.

2.1.1 Distinctions between the options of Certificate of Origin/Source/Legal Provenance: Implications for achieving the objectives of Article 15 and 8(j)

The report noted that it has been generally suggested that the certificate could be a certificate of origin, a certificate of source, a certificate of legal provenance or a combination thereof. It has also been suggested that it could be a certificate of compliance.

a) Certificate of Origin of genetic resources

The term “origin” is used in the Convention to imply “a country of origin of genetic resources”. Article 2 states that the term “means the country which possesses those genetic resources in *in-situ* conditions”. It would therefore seem to follow, therefore that a certificate of origin would indicate the country where the genetic resource is collected from *in-situ* sources. The certificate would be granted by a competent national authority in the country of origin and would provide evidence that national access and benefit sharing requirements including prior informed consent have been met. The certificate of origin, in this context, will assist in achieving the objectives of Article 15 on access to genetic resources *in-situ*.

b) Certificate of source of genetic resources

Paragraph 3 of Article 15 stipulates that for the purpose of the Convention, “the genetic resources being provided by a Contracting Party as referred to in this Article and Articles 16 and 19 are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resource in accordance with this Convention”.

In a restrictive sense, a certificate of source could refer to a source that is not a country of origin in geographical terms. It could also encompass both countries of origin or countries that have acquired the resource in accordance with the Convention. It would therefore simply indicate the place where the genetic resource is obtained. If the resource were obtained *in-situ*, the source would be the geographical origin of the resource, if it is obtained from an *ex-situ* collection, the source would be the collection.

If the source were the country of origin, the certificate would indicate that prior informed consent of the national competent authority was obtained, and the objective of Article 15 would have been met.

If the source is a collection and the resource was accessed by the collection after the entry into force of the Convention, the certificate delivered by the competent authority of the provider country would provide evidence that the resource was accessed in accordance with Article 15.3 of the Convention.

With respect to certificate of origin or source, it has been suggested that the identification of the origin or source may be challenging and expensive to verify, particularly where a specie exists in more than one jurisdiction.

c) Certificate of legal provenance

A certificate of legal provenance would provide evidence that the resource has been obtained in accordance with the legal requirements of the country from which the resource was accessed and would be delivered only by countries that have set up appropriate legal instruments for this purpose. Such a certificate would therefore provide evidence that the genetic resource was accessed in accordance with Article 15 of the Convention.

It has, however, been suggested that the term could be construed in some jurisdictions to mean legal title or ownership. This interpretation may be confusing where a government may not have the right to transfer ownership, but can only grant access. In this case, a certificate of legal provenance may not be useful and could be misleading.

The alternative was to consider the “certificate of compliance” option, which could support the implementation of Article 15. Such a certificate would be issued by a national competent authority authenticating that the user has fulfilled all requirements set out in national legislation. This provides evidence that access is consistent with the objectives of the Convention. It would not replace the need for contracts containing mutually agreed terms.

1.1.2 Distinction between each of the options and implications for achieving the objectives of Article 8(j)

The issue of how a certificate system may cover traditional knowledge was not adequately discussed by the GTE due to its complexity. Article 8(j) provides that

“Each Contracting Party shall as far as possible and as appropriate

- j Subject to its national legislation, respect, preserve and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity and promote their wider application with the approval and involvement of holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovation and practices”*

The GTE observed that certifying the origin of traditional knowledge might be difficult to determine without adequate indigenous infrastructure in place. Some of the challenges include the fact that:

- a** The origin of traditional knowledge associated with genetic resources may be found in one community living across borders
- b** The same traditional knowledge may be used by more than one community and it may be difficult to obtain approval of diverse communities without adequate indigenous infrastructure
- c** The source of traditional knowledge associated with a genetic resource used in the development of a particular product will be easier to identify, but it will not provide that the source is the exclusive owner(s) or holder(s) of that traditional knowledge. Depending on national legislation, the certificate may not provide adequate evidence that the approval or prior informed consent of the owner(s) or holder(s) of the traditional knowledge was granted with respect to the use of the traditional knowledge
- d** Provided in countries that have adopted national legislation to address access to traditional knowledge of indigenous and local communities. Evidence of legal provenance for traditional knowledge could only be Such a system may not cover all cases of traditional knowledge associated with genetic resources

2.1.3 Potential characteristics and features of an internationally recognized certificate

Irrespective of the option chosen, the structure of a certificate should include the following:

- **Nature of the certificate**

A certificate of origin/source/legal provenance should be voluntary or mandatory

- **Scope**

A certificate of origin/source/legal providence should cover genetic resources envisaged in Article 15(3) of the Convention which provides “that the genetic resources covered by the access and benefit sharing articles of the Convention are only those that are provided by Contracting Parties that are countries of origin of such resources or by Parties that have acquired the genetic resources in accordance with the Convention”.

The certificate may not apply to:

- Trans-boundary transfer of genetic resources
- Genetic research for basic research purposes
- Genetic resources covered under multilateral systems e.g. The FAO International Treaty on Plant Genetic Resources for Food and Agriculture

- **Form**

The certificate could take on the form of either:

- A paper
- Barcode
- Alphanumeric code
- Virtual on-line certificate

The certificate should have an internationally recognizable format, though not necessarily standardized. It should be simple, homogenous and practical. Security features should be established for verification of authenticity, and entail low administrative costs.

The certificates could be registered in a central registry or clearing house of certificates based in an international institution to enable verification and provide information on specific conditions under which the genetic resource was accessed and may be transferred.

- **Information to be contained in a certificate**

A certificate of origin/source/legal provenance should contain the following information:

- Particulars of the provider and user
- Particulars of the indigenous and local communities parties to the agreement
- Details of genetic resource s or traditional knowledge

- Details of the approved use which may be made of the resources
- Details on any restrictions on use
- Period of the agreement
- Conditions related to the transfer of rights to third parties
- Details of the issuing authority

In addition, it has been suggested that the following information should be included:

- International serial listing
- Country of origin
- User country, including details of user country institution
- Taxonomic identification
- Issuing date
- Information for the identification of the material

- **Subject matter of a certificate**

Certificates could be granted for:

- The access contract and all materials collected under it
- A specific collection activity
- All samples of a specific specie or genus
- An individual collection or sample

- **Process**

The national competent authority of the provider country would issue the certificate. At the time access is granted, as evidence of compliance with access and benefit sharing requirements. Specific requirements regarding the delivery of the certificate may vary from country to country depending on national legislation on access and benefit-sharing.

- **Controls**

In order to ensure that access and benefit sharing requirements are being met throughout the life cycle of the genetic resource, particularly after the genetic resource has left the provider country, the certificate could be controlled at various points. The checkpoints or controls could include:

- The border
- Patent offices
- Registration points for other types of commercial applications not covered by intellectual property rights

- **Institutional measures**

The establishment of an international certificate of origin/source/legal provenance would require a number of institutional arrangements with human, technical and financial implications.

- **National level**

There would be need to establish a national competent authority and institutional mechanisms to issue the certificate through appropriate legislative/regulatory measures and verify/monitor certificate of origin delivered by the competent authority in user countries through check points or controls.

- **International level**

At the international level, a certain amount of harmonization may be required to set minimum criteria for obtaining the certificate such as the identification of the origin/source/legal provenance of the genetic resource and/or traditional knowledge and prior informed consent of the national competent authority in the provider country.

In addition an international registry/clearing house/data base for information exchange will be required.

- **Compliance**

Appropriate mechanisms should be established to ensure that national competent authorities can sanction users that do not obtain the certificate or violate obligations attached to the certificate. Such a mechanism of compliance cannot, however, replace the need for mutually agreed terms, which stipulate terms of use, subsequent transfer and benefit sharing.

3. Implementation Challenges

The Group of Technical Experts identified a number of implementation challenges, some of which include:

- The concern by the international research community that a certificate system may not be cost effective and may be detrimental to the research process on genetic resources
- The cost associated with institutional infrastructure (national and international) may be prohibitive
- Harmonization of the needs and interests of providers and users, including the research community, the private sector, provider countries and indigenous/local communities etc.
- Taxonomic expertise at national and international levels
- National and international coordination mechanisms
- Compatibility with the Convention, other International Treaties under the multilateral system and interface with the World Trade Organization (WTO).

4. Elaboration of the Addis Ababa recommendations

4.1 Introduction and background

Within the current CBD debate an “**International Certificate of Origin/Source/Legal Provenance**” is considered by many as a potential ‘pillar’ of the International Regime on Access and Benefit Sharing. In accordance with COP decision VIII/4 C a Technical Experts Group on an “internationally recognised certificate of origin/source/legal provenance” met from 22nd to 25th January 2007 in Lima, Peru. The Expert Group was tasked to provide technical input to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (WG-ABS) on the following issues:

1. The possible **rationale, objectives and the need** for an internationally recognised certificate of origin/source/legal provenance;
2. The potential **characteristics and features** of different options of such an internationally recognised certificate;
3. The **distinctions** between the options of a certificate of origin/source/legal provenance and the **implications** of each of the options for achieving the objectives of Articles 15 and 8(j) of the Convention;
4. Identify associated **implementation challenges**, including the practicality, feasibility, costs and benefits of the different options, including mutual supportiveness and compatibility with the Convention and other international agreements.

Five African experts from Algeria, Ethiopia, Madagascar, Mozambique, and Niger had been nominated as members of this group. Against this background and to empower African stakeholders and negotiators to have a “hearable” voice in the upcoming negotiations on the “International Certificate of Origin/Source/Legal Provenance” a workshop was held in Addis Ababa, Ethiopia on March 28 to 30, 2007. The objectives of the workshop were to:

- Provide African stakeholders information on one of the central instruments an “International Certificate of Origin/Source/Legal Provenance” currently under discussion at the International ABS negotiations and assess its eventually impact on all transactions of genetic resources and associated traditional knowledge as well as product registration systems including intellectual property registration. It is important for the African Group and all stakeholder groups to participate in the discussion on an informed basis.
- Contribute to a common position of the African Group by analysing the recommendations of the Technical Experts Group against African bioprospecting experiences. Such a “reality check” will provide insight into the needs and requirements of African stakeholders to improve ABS towards more equitable and fair transactions of biological/genetic resources and benefit-sharing agreements.

Over 40 stakeholders from all the regions of sub-saharan Africa attended the workshop which was hosted by the Ethiopian Institute of Biodiversity Conservation. National experts from Ethiopia, Madagascar and Mozambique who attended the Lima meeting reported to the workshop. The other participants comprised national ABS focal point staff, representatives of competent national authorities for ABS, negotiators in the last meeting of ABS Working Group, staff of national research institutes, and national and regional NGOs.

4.2 Outcome of the Workshop

After three days of intensive deliberations, the workshop came to the following conclusions:

- **Rationale**

An International certificate of “**Origin and Source**” or “**Origin and/or Source**” is required in order to address the inadequacy of national legislation and enhance the implementation of Articles 15 and 8(j) of the Convention.

Such a certificate will:

- Ensure disclosure of source and origin and other information as appropriate
- Identify countries, communities and localities
- Ensure legal certainty
- Facilitate benefit sharing
- Enhance and facilitate the conservation, protection and sustainable use of biological resources and
- Monitor and facilitate access to genetic resources and scientific research

- **Name**

The nomenclature could be either:

- Certificate of origin and source or
- Certificate of origin and/or source

Explanatory text. *The certificate could be designated as either of the above options depending on the directive principle and national objective of Government, national policy, legislative and culture of legal draughtsmanship of member states. In essence, however, the implication is that the “certificate” identifies and specifies a geographical location and source of a given biological/genetic resource which may be the same or spatially differentiated.*

Characteristics and features

- **Nature**

The certificate should be mandatory and binding

- **Scope**

The certificate should cover:

- traditional knowledge
- Ex-situ collections
- Derivatives and new products
- Genetic resources and associated community knowledge, innovations and practices
- Intended use

- **Content and format**

The certificate should specify

- Details of the certificate holder, applicant and use
- Country of origin and/or source
- Traditional knowledge holders and country of origin of traditional knowledge, innovation and practices
- Conditions of transfer to third parties
- That prior informed consent (PIC) has been obtained and appropriate mechanisms for equitable sharing of benefits agreed to
- Where possible, indicate the scientific and/or local name of the genetic resource or biological material

- **Procedure**

The certificate should prescribe that:

- Applications should be submitted to the competent national authority
- Procedure for prior informed consent (PIC) of communities should be established in provider countries
- An International clearing house mechanism be established
- Checkpoints should be provided in both provider and user countries and at the international and regional levels

- **Implementation Challenges**

These include:

- Establishing and harmonising ABS regimes in provider and user countries
- Defining the period of validity
- Interpretation and understanding of other international agreements in relation to certificate of origin or origin and/or source
- Capacity to monitor and trace genetic resources in the implementation of access and benefit sharing regimes
- Awareness creation and information sharing
- Adjudication of disputes relating to certificate of origin and/or source
- High cost involved
- Transboundary shared resources and migratory species
- Participation of relevant stakeholders during ABS negotiations
- Availability of updated data/database

5. Essence of this briefing.

The essence of this briefing is to commend to you as principal negotiators of Africa to the next Conference of Parties, the need to craft an African Common Position and fully discuss **“The major differences between the GTE and the Addis Ababa recommendations” with due consideration for the special interest of Africa that the certificate should be:**

- Named; “certificate of origin or certificate of origin and/or source” (*see explanatory notes*)
- Mandatory and binding
- Include traditional/community knowledge, ex-situ collections and derivatives of new products
- Specify knowledge holders
- Include procedure for the establishment of PIC in provider country

6. Concluding Remarks

It is common knowledge that the African Group delegates to the Convention on Biological Diversity and the various Conference of Parties meetings have always played a leading role in the direction of discussions and final outcomes of these meetings. This is as it should be, because the Group has always crafted a common position and negotiated from a position of knowledge and facts. The negotiations on access and benefit sharing should not be different. The issue of an internationally recognized certificate of origin/source/legal provenance should be negotiated from a position of the compelling interest of Africa as a group and repository of the world largest biological diversity and genetic resources.