

Epilogue

<p><i>Recommendations from the Workshop</i></p> <p>1. The need to harmonise provisions of TRIPS with the equitable benefit sharing and PIC provisions of the CBD (para. 3).</p>	<p><i>Decisions taken by the Fourth Conference of Parties (COP-4)</i></p> <p>Recognises the need for developing a common appreciation of the relationship between IPRs and relevant provisions of TRIPS and the CBD, particularly with regard to technology transfer; fair and equitable sharing of benefits arising from the use of genetic resources, including the protection of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity (Decision IV/15, para. 10).</p>	<p><i>Recommendations of the Panel of Experts on Access and Benefit Sharing</i></p> <p>IPR application procedures should require that the applicant submit evidence of PIC (para. 127). Joint ownership of IPRs should be pursued through contractual access agreements (para. 133 (d)). Concern was expressed that the scope of protection under IPR regimes may prejudice the legitimate interests of indigenous and local communities in respect of their knowledge, innovations and practices (para. 137).</p>	<p><i>Decisions taken by the Fifth Conference of Parties (COP-5)</i></p> <p>Reaffirmed the importance of ensuring that provisions of the CBD and those of international agreements related to intellectual property rights are mutually supportive (V/16). Called upon the WTO to acknowledge relevant provisions of the Convention and to take into account the fact that the provisions of TRIPS and the CBD are interrelated and to further explore this interrelationship (V/26). Invited relevant international organisations to analyse the relationships between IPRs and access to genetic resources and benefit sharing, and made particular reference to the need to require the provision of information pertaining to</p>
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<p>2. Pending enactment of suitable legislation, the adoption by states of voluntary measures such as codes of conduct and information and material transfer agreements (ITAs/ MTAs) to promote self-regulation by stakeholders (paras. 4 & 6).</p>	<p>Requests the Executive Secretary to explore the possibility of linking the clearing-house mechanism with relevant international and other organisations to access publicly available information on intellectual property rights which are based on biological resources (IV/8, para 6 (a)).</p>	<p>Noted that different objectives may require different instruments, and that over-emphasis on a single instrument such as access regulations may run counter to some objectives such as fair and equitable benefit sharing and facilitating access. A broader set of measures as an integrated regulatory package was recommended (para. 140).</p>	<p>the origin of genetic resources, if known, when applying for IPR protection (V/26). Requested the Convention Secretariat to apply for observer status on the TRIPS Council (V/26).</p>
<p>2. Pending enactment of suitable legislation, the adoption by states of voluntary measures such as codes of conduct and information and material transfer agreements (ITAs/ MTAs) to promote self-regulation by stakeholders (paras. 4 & 6).</p>	<p>The panel of experts established is to identify all relevant sources, including legislative, policy and administrative measures, best practices and case studies, including a range of biotechnologies, to promote the development of a common understanding of basic concepts and to explore all options for</p>	<p>Noted that in the absence of comprehensive legislation, voluntary measures including guidelines may help in realising the objectives of the Convention, and thus invited parties to promote their use (V/26).</p>	<p>Noted that in the absence of comprehensive legislation, voluntary measures including guidelines may help in realising the objectives of the Convention, and thus invited parties to promote their use (V/26).</p>

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	<p>access and benefit sharing mechanisms (IV/8, para. 3).</p>	<p>Recognised that even in the absence of national access legislation; contracts can be negotiated to reflect the spirit of the Convention and its objectives (para. 62).</p> <p>Stated that guidelines establishing standards for both providers and users of genetic resources and voluntary industry measures could assist Parties to supplement access legislation and support fair and equitable partnerships. Guidelines could differentiate between uses and contain MATs appropriate to each use (para 103).</p> <p>Suggested that some existing guidelines such as the Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit Sharing; the Micro-Organisms Sustainable Use and Access</p>	

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<p>3. The utilisation of practical experience arising from the adoption of voluntary initiatives and the consultation of a broad range of stakeholders when developing national legislation (paras. 5 & 15).</p>		<p>Regulation International Code of Conduct (MOSAICC); Swiss Draft Guidelines on Access and Benefit Sharing regarding the Utilisation of Genetic Resources; and the report commissioned by the Swedish Scientific Council on Biological Diversity on fair and equitable sharing of benefits from the use of genetic resources and traditional knowledge (UNEP/CBD/EP-ABS/Inf.1) could be adopted by Parties as appropriate (para. 119).</p>	
<p>3. The utilisation of practical experience arising from the adoption of voluntary initiatives and the consultation of a broad range of stakeholders when developing national legislation (paras. 5 & 15).</p>	<p>Requests the financial mechanism to give special emphasis to the assessment of legislative, administrative and policy measures; evaluation of strength and weaknesses of countries' institutional and human capacity; promotion of</p>	<p>Noting the need for greater accessibility to the great deal of information on access and benefit sharing already in existence, called on the Secretariat to facilitate access through the Convention's ClearingHouse Mechanism (CHM) (para. 73).</p>	<p>Reconvened the Panel of Experts to assess the experiences of users and providers and to identify approaches for involving stakeholders in access and benefit sharing processes (V/26).</p>

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<p>capacity building amongst stakeholders (IV/8, para. 4 (a)).</p> <p>Requests the Executive Secretary to compile information on access and benefit sharing arrangements and to disseminate such information in a standardised format through the clearing-house mechanism (IV/8, para. 6 (c)).</p> <p>Requests the Executive Secretary to prepare a background document on the review of implementation of measures to promote and advance benefit sharing arrangements, based on</p>	<p>Expressed the need for more user-friendly documents, and better access to examples of actual contracts, codes of conduct, voluntary guidelines, including those used by the private sector (para. 168).</p> <p>The experience gained in implementing existing guidelines be analysed and used to shape access legislation (para. 119).</p>	<p>Requested the Secretariat to explore experiences and possibilities for synergistic interactions resulting from collaboration in research, joint development and the transfer of technology following access to genetic resources (V/26).</p>	

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	<p>experiences submitted by Parties and relevant organisations (IV/8, para. 6 (d)).</p> <p>Requests the financial mechanism to give special emphasis to the formulation of access and benefit sharing mechanisms at the national, regional and sub-regional levels (IV/8, para. 4 (b)).</p>		

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<p>5. Adoption of initiatives for actively involving the private sector in self-regulation measures and the commercialisation of biodiversity through licenses, MTAs, ITAs (para. 8).</p>	<p>Invites the private sector to support efforts by governments to develop measures which facilitate the distribution of benefits arising from the use of genetic resources on mutually agreed terms and to update the Executive Secretary on a regular basis regarding their activities and experiences (IV/8, para 5).</p>		
<p>6. Greater attention to be given to conserving, cataloguing and using microbial diversity as sources of genetic material, and the training of biosystematists (para. 9).</p>		<p>Recommended the use of the Micro-Organisms Sustainable Use and Access regulation International Code of Conduct (MOSACC code) in adopting national measures with regard to the use of microbial genetic resources (Annex V).</p>	

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<p>7. Development of a regional network of resource persons/institutions (para. 10).</p>	<p>Establishment of a regionally balanced panel of experts appointed by Governments, composed of representatives from the private and public sectors and indigenous and local communities (IV/8, para. 3).</p>		
<p>8. Development of PIC and benefit sharing procedures applicable to in-situ, ex-situ and in-situ on-farm conservation methods. (para. 11).</p>		<p>Recognised that PIC provisions in access legislation should be flexible enough to accommodate different types, sources and uses of genetic resources (para. 118).</p> <p>Recommended that access legislation under development should anticipate the need for a particular PIC regime for plant genetic resources for food and agriculture, which may differ from other categories and uses of genetic resources (para. Annex V).</p>	

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<p>9. Recognition of the efforts of tribal and rural women and men in the field of in-situ on-farm conservation of agrobiodiversity (para. 11).</p>			<p>Recognised the vital role played by women in the conservation and sustainable use of biodiversity, and called for greater attention to be given to strengthening the role and participation of women of indigenous and local communities in the Convention's work programme (V/16).</p>
<p>10. Enaction of legislation by industrialised countries which supports the implementation of CBD's PIC and benefit sharing provisions (para. 12).</p>			<p>Noting that all countries are providers as well as recipients of genetic resources, urged recipient countries to adopt legislative, administrative or policy measures that support provider countries implement provisions in Articles 15, 16 and 19 (V/26).</p> <p>Recognised the need for user countries to explore possible measures to support PIC requirements in provider states. These measures could be regulatory or incentive-based, some of which relates to IPRs.</p>

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			<p>Suggested options include: improved means for the identification of the existence of prior art; monitoring of intellectual property right applications; development of mechanisms for the control of importation of genetic resources; certification schemes for institutions abiding by rules on access and benefit sharing; product approval and certification processes; Clearing House Mechanism; and establishment of processes for conflict resolution and arbitration concerning access and benefit sharing (para. 125).</p> <p>Recognised the need for user countries and organisations to implement measures that provide incentives or establish control mechanisms in order to secure the interest of providers over their resources. To this end, Parties are urged to pay particular attention to</p>

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<p>12. The need to record traditional practices and local biodiversity wealth to raise awareness of local biodiversity and to protect local communities' IPR rights (para. 13).</p>		<p>Noted that PIC of indigenous and local communities is dependent on the clear recognition and protection of their rights, knowledge and innovation and practices (para. 161). Felt there was a need to study the relationship between customary laws governing custodianship, use and transmission of traditional knowledge, on the one hand, and the formal IPR system, on the other. (para. 131 (a)).</p>	<p>their obligations under paragraph 7 of Article 15 of the Convention (para 151). Stated that traditional knowledge should be valued, given the respect and considered as useful and necessary as other form of knowledge (V/16). Emphasised the fundamental importance of ensuring the full and effective participation of indigenous and local communities in the implementation of Article 8(j) and related provisions (V/16).</p>

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		<p>Recommended that sui generis legislation to protect the knowledge, innovations and practices of local and indigenous communities could contain the recognition of ancestral community rights over knowledge, innovations and practices related to genetic resources; the recognition that such rights exist even where information may be in the 'public domain' and the principle that such rights may be collective in nature; recognition of the distinction between rights over genetic resources vested in the state and resources implies use of associated knowledge, innovations and practices; establishment of administrative and judicial review processes to resolve disputes regarding the granting of access on the basis of potential environmental, economic, cultural or social impacts; creation of benefit sharing</p>	<p>Established an Ad Hoc Open-ended Working Group to develop guidelines on relevant issues, including means for ensuring the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities (V/26).</p> <p>Requested Parties to develop registers of traditional knowledge, innovations and practices, taking into account strengthening legislation, customary practices and traditional systems of resource management (V/16).</p> <p>Requested that projects carried out in indigenous and local communities build capacities for dissemination and exchange of information on issues related to traditional knowledge, innovations and practices (V/16).</p>

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		<p>mechanisms/obligations to ensure equitable distribution of benefits among custodians, whether parties to access agreements or not; establishment of local and centralised registers of traditional knowledge, innovations and practices; and the creation of programmes and processes for strengthening traditional knowledge systems. (Annex VI).</p> <p>Recommended that traditional knowledge be protected as a trade secret or as a form of know-how as appropriate and may be subject to licensing. (para. 133 (d)).</p> <p>Identified the need for pilot projects that tested the means of protection of traditional knowledge based on existing IPRs, sui generis systems and customary laws. (para. 131 b)).</p>	<p>Reaffirmed the importance of systems such as sui generis and others for the protection of traditional knowledge of indigenous and local communities and the equitable sharing of benefits from its use.</p> <p>In calling upon international organisations such as the WTO and UPOV to examine the relationships between IPR provisions and the CBD's objectives, particular reference was made to issues regarding the value of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation of biodiversity and sustainable use (V/26).</p>

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<p>13. Creation of public awareness to stimulate political action (para. 14).</p>		<p>Recommended that national focal points for access and benefit sharing increase public awareness of the implications of the implementation of the Convention at the national level, in particular targeting key stakeholders such as academics and commercial users of genetic resources.</p>	<p>Noting the critical role of access to information in developing parity in the bargaining power of stakeholders, the Secretariat is requested to compile and disseminate information on user institutions; the market for genetic resources; non-monetary benefits; new and emerging mechanisms for benefit sharing; incentive measures; clarification of definitions; sui generis systems; and intermediaries (V/26).</p>

Note: The subject of access to genetic resources and benefit sharing was not considered at SBSTTA-4 and SBSTTA-5

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Synopsis of Current ABS Mechanism in South & South East Asia

<i>Country</i>	<i>Ratification of CBD</i>	<i>WTO Membership</i>	<i>Conservation Strategies/ Action Plans</i>	<i>ABS in National Conservation Strategy (NCS)/Biodiversity Action Plan (BAP)</i>	<i>ABS Initiatives</i>
<i>China</i>	Yes (1993)	Observer status	Country Biodiversity Study Report (1997)	<ul style="list-style-type: none"> ● Recognises China is a provider and user of genetic resources ● Recommends the formulation of domestic laws and regulations that protect genetic resources but also facilitate their access by other parties ● Recognises China's ethnically diverse population, recommends the protection of traditional knowledge and technology by amending the existing Patent Law to, amongst other things, afford protection to the large number of crop varieties and poultry and livestock breeds developed and used by communities 	<p>There is presently no national policy specifically on access to genetic resources and benefit sharing. The exchange of genetic resources is addressed under sectoral legislation as follows:</p> <ol style="list-style-type: none"> 1. Wild Plants Protection Regulation (1997) <ul style="list-style-type: none"> ● Protects germplasm resources ● Organisations and individuals that exchange germplasm with foreign entities are regulated by rules issued by the Ministry of Agriculture and the Ministry of Forestry 2. Detailed Enforcement Rules for the Regulation of Seeds Management of Crop Seeds:

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				<ul style="list-style-type: none"> ● Recognises the importance of protecting indigenous knowledge and technologies; their inventurisation; their further development and use; and the fair and equitable sharing of benefits arising from such use 	<ul style="list-style-type: none"> ● Recognises crop germplasm as the wealth of the state and places it under state protection ● Exchange of crop germplasm between countries will be administered by the Institute of Crop Germplasm Resources, Chinese Academy of Agricultural Sciences ● Requires organisations and individuals supplying crop germplasm to other countries to apply and get approval, and are also required to report regularly on crop types, quantities; and production locations

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					<p>3. Detailed Enforcement Rules for the Regulation of Seeds Management for Tree Seeds (1995)</p> <ul style="list-style-type: none"> ● Places tree germplasm under state protection ● Requires the exchange of tree seeds with other countries to be authorised by the institution designated by the Ministry of Forests <p>4. Regulation of Breeding Stock and Poultry Management (1994)</p> <ul style="list-style-type: none"> ● Poultry germplasm is protected by the state through a list of protected germplasm ● Export of such germplasm is subject to regulation <p>China's first National Report to the CBD acknowledges that current legislation does not comprehensively address all access and benefit sharing issues, and proposes the drafting of new genetic resources regulations</p>

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<i>Indonesia</i>	Yes (1994)	Yes (1995)	National Conservation Plan (1982)	<p>The 1982 National Conservation Plan sets out recommendations that are to be achieved in five-year periods. The main recommendations regarding access to genetic resources and benefit sharing include:</p> <p><i>1998-2003</i></p> <ul style="list-style-type: none"> ● Develop institutional structures and legal instruments for biodiversity use 	<p>China's first National Report to the CBD acknowledges that current legislation does not comprehensively address all access and benefit sharing issues, and proposes the drafting of new genetic resources regulations</p> <p>Access to genetic resources is currently regulated by the Cultural Practices Law No. 12 (1992)</p>

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				<ul style="list-style-type: none"> ● Develop a database on traditional knowledge related to conserving and using genetic resources ● Develop a policy for the protection of traditional knowledge ● Develop human resources, technical skills and the technology pertaining to prospecting ● Study, develop and implement fair benefit sharing in the use of biodiversity based on traditional knowledge and traditional plants ● Analyse the economic implications of fair benefit sharing patterns from the use of biodiversity ● Analyse the impact of the TRIPS Agreement 	

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				<p>2003-2020</p> <ul style="list-style-type: none"> ● Improve existing laws and policies on traditional knowledge ● Combine modern technology with traditional knowledge to manage genetic resources ● Strengthen research capabilities related to bioprospecting ● Develop human resources ● Develop a database on both national and international market demands for biodiversity products 	
Lao PDR	Yes (1996)	Observer status			There is currently a draft Decree on Biological Resources and Related Traditional Knowledge.

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Malaysia	Yes (1994)	Yes (1995)	Being formulated	<p>Although a NCS does not currently exist, several recommendations arose from the Workshop on Access and Benefit Sharing of Genetic Resources: International Perspectives and National Needs:</p> <ol style="list-style-type: none"> 1. Assess needs and opportunities ● Assess the current situation in the country with regard to needs and priorities, opportunities, resources and capacities ● Document prospecting and benefit sharing activities ● Raise awareness on access and benefit sharing ● Develop a national strategy based on findings of the above activities 	<p>There is presently no national policy specifically on access to genetic resources and benefit sharing, though one is being formulated.</p> <p>A procedure administered by the Economic Planning Unit of the Prime Minister's Department does exist for regulating access to genetic resources by foreign nationals. It requires those intending to conduct research to obtain permission from the Government of Malaysia.</p> <p>There is also a draft Agreement for Research, Collection and Utilisation of Biological/Genetic Resources for Environmental. Sound Uses.</p> <p>Some of the 13 states that constitute Malaysia, acting under Malaysia's Constitution, also have their own laws that address issues regarding access and the rights of indigenous peoples.</p>

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				<p>2. Access and benefit sharing legislation</p> <ul style="list-style-type: none"> ● Amend existing sectoral legislation and enact a separate law to address the gaps or loopholes ● Enact a national (Federal) framework law applicable to Peninsular Malaysia ● Enact a national (Federal) framework law applicable to the whole of Malaysia ● Enact model state legislation for the individual states to adopt ● Develop a Model Agreement for bioprospecting 	<p>The development of other initiatives may be proposed, namely:</p> <ul style="list-style-type: none"> ● A sui generis system of intellectual property rights to protect and reward indigenous knowledge and practices ● An access licensing scheme ● A model access agreement (see above) ● Revised government research guidelines ● A co-ordinating body ● Amendments to intellectual property law

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Maldives	Yes (1992)	Yes (1995)	National Biodiversity Strategy and Action Plan under preparation	Expected to be addressed in the Biodiversity Strategy and Action Plan developmental process.	No specific law on access to genetic resources and benefit sharing at present
Myanmar	Yes (1994)	Yes (1995)			Draft legislation on access to genetic resources and benefit sharing
Nepal	Yes (1994)	Observer status	National Biodiversity Action Plan nearing completion		Recommends the development of a national genetic resources programme to conserve agricultural and livestock resources. It is recommended that this be based on in-situ conservation and the establishment of plant genetic conservation and utilisation centre

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Pakistan		Yes (1995)	Biodiversity Action Plan (2000)		Draft policy on access to genetic resources and benefit sharing Draft Law for the protection of Traditional Knowledge
Philippines	Yes (1993)	Yes (1995)	National Biodiversity Strategy and Action Plan (1997)	Not clear	1. Executive Order 247 - for Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their By-products and Derivatives, for Scientific and Commercial Purposes; and for other Purposes 2. Department of Environment and Natural Resources Implementing Order 96-20 for Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources

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					<p>The fact that no research agreements have been signed subsequent to E.O. 247's entry into force has led to calls for reviewing national policy and regulatory mechanisms. However, no substantial developments have occurred in response</p> <p>Note: Traditional uses are exempted from E.O. 247.</p> <p>3. Indigenous Peoples' Rights Act 1997 (RA 8317):</p> <ul style="list-style-type: none"> ● Protects the rights of indigenous peoples over their traditional knowledge, including full ownership and control ● Provides for developing their technologies, practices and culture, including genetic resources

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<i>Sri Lanka</i>	Yes (1994)	Yes (1995)	Biodiversity Conservation Action Plan (1998)	<ul style="list-style-type: none"> ● Provide legal recognition to the sovereign right of the state over its biological resources, including genetic resources ● Develop a legal framework to regulate access to genetic resources and ensure fair and equitable sharing of benefits where genetic resources and related information is accessed by non-national organisations or individuals 	<ul style="list-style-type: none"> ● Allows for access to biological and genetic resources and indigenous knowledge within ancestral lands and domains so long as this occurs with the PIC of the communities obtained in accordance with customary laws of the community concerned <ol style="list-style-type: none"> 1. Draft legislation to: <ul style="list-style-type: none"> ● Recognise sovereign rights over biological and genetic resources ● Establish an access and benefits sharing procedure ● Create an administrative structure for implementing the access and benefit sharing procedure 2. Draft legislation to protect intellectual property rights

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Thailand	No	Yes (1995)	Thailand National Policy, Measures and Plan on the Conservation and Sustainable	<ul style="list-style-type: none"> ● Promote collaborative research to strengthen in-country research capacity ● Collect and document data on indigenous knowledge pertaining to biodiversity and develop a process for regulating access to this information 	<p>regarding traditional knowledge that is being currently documented</p> <ol style="list-style-type: none"> 3. Recommendations for harmonising the draft legislation with existing laws 4. Draft Code of Ethics to regulate commercial collaborations between local scientists and foreign parties 5. Draft model Material Transfer Agreement for commercial collaborations between local scientists and foreign parties
				<p>Among the objectives stated are:</p> <ul style="list-style-type: none"> ● To support the maintenance of traditional culture in biodiversity ● To ensure that communities and individuals who own 	<ol style="list-style-type: none"> 1. Regulation of the Office of the Prime Minister on Conservation and Use of Biodiversity Resources (2000) 2. Regulation on Access and Benefit Sharing in In-Situ and Ex-situ Forest Conservation Areas (1999)

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			Utilisation of Biodiversity 1998 - 2002	<ul style="list-style-type: none"> ● Knowledge on biological resources conservation, receive proper benefits from the use of such resources ● To promote awareness on the value of local knowledge and biological resources ● To support community rights to local biological resources and farmers' rights over varieties ● To extend capacity in conserving genetic resources of traditional biodiversity ● To develop microbial culture collections and seed banks to improve the protection and exchange of these genetic resources ● To promote cooperation between public and private agencies in research and development on biotechnology 	

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				<ul style="list-style-type: none"> To ensure Thailand receives appropriate technologies for the conservation and sustainable use of biodiversity 	No specific law or policy on access to genetic resources and benefit sharing at present
<i>Vietnam</i>	Yes (1994)	Observer status	<p>Vietnam Biodiversity Action Plan (1995)</p> <p>National Plan for Environmental Development (1991)</p> <p>National Conservation Strategy (1985)</p>	<p>Issues regarding access and benefit sharing do not appear to have been sufficiently addressed. Focus appears to have been on in-country genetic resource conservation.</p>	