



HIGHLIGHTS FROM THE SECOND EXPERTS' PANEL ON ACCESS AND BENEFIT-SHARING TUESDAY, 20 MARCH 2001

On the second day of the second meeting of the Experts' Panel on Access and Benefit-Sharing under the Convention on Biological Diversity (CBD), delegates met in two working groups and smaller contact groups throughout the day. Working Group I (WG-I) addressed assessment of user and provider experience in access to genetic resources and benefit-sharing (ABS) in morning and evening sessions, with four drafting groups meeting in the afternoon to discuss prior informed consent (PIC), benefit-sharing, intellectual property rights (IPR) and traditional knowledge, and capacity building. Working Group II (WG-II) met in morning and brief afternoon sessions to review draft points on the involvement of stakeholders in ABS.

WORKING GROUP I – USER AND PROVIDER EXPERIENCES

In the morning, WG-I considered a Chair's summary of points that emerged during yesterday's discussion. The summary includes headings on: 1) legislative, administrative or policy measures related to access, with subheadings on strategies, access legislation, use of terms, national focal points, competent national authority, PIC, user measures, user/provider measures and conflict resolution; 2) ABS arrangements, with subheadings on benefit-sharing, material transfer agreements, mutually agreed terms (MAT), and commercial and non-commercial use of genetic resources; 3) cross-cutting issues, with subheadings on IPR, traditional knowledge, traceability and tracking, and incentives and economic evaluation; 4) complementary options, with subheadings on guidelines and other approaches, the nature of guidelines, capacity building, and awareness-raising; and 5) links between the CBD and other international fora.

Experts reacted to the draft summary, suggesting that elements be prioritized and that the group follow the mandate of identifying elements and types of guidelines, including suggestions given by the first Experts' Panel. A number of experts expressed general support for the text. Specific comments involved, *inter alia*: adding reference

to the Global Biodiversity Information Facility; linking focal points to user measures; deleting reference to registers, records and certifications; emphasizing capacity building; deleting the section on complementary options to avoid duplication of points to be defined under Agenda Item 3.3 (Complementary Options); differentiating users into categories; noting the difficulty of identifying countries of origin; and including IPRs along with references to patents.

The Chair proposed creation of small drafting groups to outline a range of options addressing issues related to: PIC; IPR and traditional knowledge; benefit-sharing; and capacity building and awareness-raising. Several experts also agreed to draft a preamble. One expert noted that capacity building is not a separate issue but an integrated part of all sections, and another proposed addressing capacity building within each topic.

In the afternoon session, WG-I reviewed progress made in the drafting groups on the basis of their reports. The group on PIC addressed as key elements: identification of the person who gives consent; user responsibility; PIC and capacity building; and other possible elements, including traceability and tracking of sources of material, specification of country of origin in patents and other forms of IPR, conflict resolution, and the role of national focal points and competent national authorities. The group on capacity building stressed: the need for its prioritization; awareness as a prerequisite; the necessity of funding; use of CBD procedures as vehicles for obtaining capacity; the need for incentive structures; indicators to monitor progress; sharing of best practices; and the need for an Action Plan. Three areas of capacity building were identified: empowerment to undertake CBD procedural matters, empowerment to protect indigenous and local community knowledge and resources, and empowerment in technical areas enabling countries to undertake sustainable use of their own biological resources. The group on IPR, traditional knowledge and ABS stressed: introduction of requirements on existing IPR procedures; protection measures for traditional knowledge, innovations and practices; proper application of the current IPR system to avoid the inappropriate granting of a patent; and the need for awareness and capacity building at all levels. The group recognized work undertaken by the Working Group on Article 8(j) and the FAO,



and suggested that the Working Group on ABS invite the World Intellectual Property Organization to share its expertise. The group on MAT and benefit-sharing stressed: joint research and technology transfer; incentive measures; MAT and contractual approaches, including legal certainty, low transaction costs and provisions on user obligations; benefit-sharing options and mechanisms, including financial compensation and non-monetary benefits; and experiences of different industry sectors regarding user and provider experience relating to benefit-sharing arrangements. The group suggested that the issue be examined in parallel with PIC.

During a late evening session, WG-I discussed text produced by a drafting committee charged with integrating the results of the four drafting groups. On capacity building, participants clarified language on measures taking into account different jurisdictional and sectoral context adding examples of specific contexts. On PIC, experts clarified language on the users' responsibility to demonstrate they have satisfied PIC requirements when accessing genetic resources and traditional knowledge. The group also agreed to remove brackets from text on monitoring and enforcement. Regarding IPRs, traditional knowledge and ABS, discussion revolved around introducing requirements on IPR procedures. Participants agreed to delete reference to the World Trade Organization (WTO) in the context of protection of traditional knowledge and add language on the need to ensure a continued flow of information between the CBD and the WTO on matters related to ABS. Experts agreed to replace reference to medium-term benefit-sharing with reference to milestone payments. They also discussed: market creation, financial incentives and trust funds with reference to non-monetary benefit-sharing; language on tracking and commercial intent; and user and provider related activities of the national focal points. Many editorial comments were also made.

WORKING GROUP II – STAKEHOLDER INVOLVEMENT

During a morning session, WG-II continued its deliberations on a series of draft points on approaches to stakeholder involvement in ABS processes, focusing on three specific areas: identification of stakeholders; examples of involvement; and identification of approaches for stakeholder involvement. Regarding identification of stakeholders, one expert reiterated the need to consider the range of stakeholders involved at each stage of the ABS process, which will differ according to: development of national biodiversity strategies and action plans, national legislation, implementation of legislation and negotiation of ABS contracts. He called for clarity and guidance to industries and users to understand which stakeholders are involved at the contract negotiation stage. Another participant proposed text on the need for a high degree of participation of indigenous people throughout the ABS process, when their knowledge, territories and biological resources are involved. Another added specific reference to distribution of benefits in this regard. It was also proposed to note that no contractual negotiation should be completed without the sanction of the appropriate ministry or governmental agencies. Regarding a list of relevant stakeholders, WG-II agreed to include reference to: farmers, foresters and their organizations; governmental finance ministries and agencies; and national and international organizations involved in genetic resources conservation.

Regarding the section on examples of involvement, the group agreed to refer to specific lessons raised in the case studies presented during the opening Plenary on Bolivia, India and South Africa. Regarding the section on identification of approaches for stakeholder involvement, and particularly the needs of specific stakeholders, experts proposed references to: scientific and legal advice; long-term capacity-building programmes; potential funding agencies outside the GEF, including multilateral and bilateral sources, industry and civil society organizations; and the particular situation and needs for those involved in contractual negotiations. Delegates also made a number of other textual and organizational changes to the document.

WG-II met briefly in the afternoon to raise the issue of how concerns regarding stakeholder involvement could be translated into principles for guidelines or complementary options for work on ABS under the CBD. The group then adjourned.

The draft document identifies major stakeholders as being users, providers and governmental bodies controlling use. While acknowledging that stakeholders are case-specific, users and providers may include ministries and government agencies; regional and provincial government agencies; relevant national and international organizations; the industrial sector; scientific and academic communities; people's organizations; farmers, foresters and their organizations; traditional healers; local and indigenous communities; relevant NGOs; non-organized elements of civil society; and the media. Examples of stakeholder involvement included consultative processes in South Africa, the Philippines and Costa Rica. Lessons learned from these experiences relevant to most ABS arrangements are: increased stakeholder involvement results in more effective and sustainable results, but also in increased transaction costs; balancing these two requires interactive flexible approaches to management and decision-making and proactive leadership; cost-effective involvement of stakeholders can be furthered by careful preparation, identifying relevant stakeholders and integrating them into the process. Identification of approaches for stakeholder involvement, in particular indigenous and local communities and the private sector, include: greater information availability, especially regarding scientific and legal advice; increased support for capacity-building provided by the GEF, as well as multilateral and bilateral donors, industry and civil society; establishment of committees composed of a broad range of stakeholder representatives; and establishment of focal points and national competent authorities to reduce user transaction costs and to facilitate user access.

IN THE CORRIDORS

With time running short and the list of points on user and provider experiences running long, WG-I divided into drafting groups to further organize and prioritize the elements tabled during yesterday's session. While many of the issues are not new, in the words of one expert, "repetition is the mother of education." Others criticized such running over the same old ground, noting some confusion over the meeting's actual purpose and outputs.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am in Room 5 to review the results of the Working Group discussions and consider complementary options to address ABS within the CBD framework.