



## HIGHLIGHTS FROM THE SECOND EXPERTS' PANEL ON ACCESS AND BENEFIT-SHARING WEDNESDAY, 21 MARCH 2001

On the third day of the second meeting of the Experts' Panel on Access and Benefit-Sharing under the Convention on Biological Diversity (CBD), delegates met in a morning Plenary session to address complementary options and elements for guidelines regarding access to genetic resources and benefit-sharing (ABS). A drafting group then met to develop text incorporating comments from the morning and submitted an outline for review during an evening Plenary session.

### PLENARY

**WORKING GROUP REPORTS:** Co-Chair Martin Girsberger (Switzerland) opened the morning Plenary, calling for reports from the working group chairs. The chair of WG-I reported on progress made in consideration of examples of user and provider experience outlined in UNEP/CBD/EP-ABS/2/L.2. He stressed an overall emphasis on capacity building as the essence of ABS. Regarding prior informed consent (PIC) and relevant elements, experts emphasized: national focal points; identification of who provides consent; user responsibility; and the relationship between user consent and capacity building. On mutually agreed terms (MAT), they highlighted clarity, minimizing transaction costs, providers' and users' obligations, and utility of different contractual arrangements for different providers and users. Under intellectual property rights (IPR), discussion focused on patenting procedures as possible tracking means, IPR as indicators of commercial intent, and strengthening information exchange between the CBD and relevant activities under the World Intellectual Property Organization (WIPO) and other organizations.

The chair of WG-II introduced the Working Group's report contained in UNEP/CBD/EP-ABS/2/L.1, highlighting the documents' three sections: identification of stakeholders, examples of stakeholder involvement and identification of approaches for stakeholder involvement. She highlighted work on the identification of specific stakeholders, and WG-II's principal findings regarding approaches to stakeholder involvement.

**COMPLEMENTARY OPTIONS TO ADDRESS ABS:** Discussion then focused on Agenda Item 3.3, complementary options to address ABS in the CBD framework. Co-Chair Jorge Cabrera Medaglia (Costa Rica) emphasized that identifying a package of alternative approaches to address countries' needs is considered to be one of the Panel's main contributions. He suggested that the morning's discussion focus on identifying guidelines, while other complementary measures, such as contractual agreements, capacity creation and infor-

mation exchange, could be addressed later. He proposed dividing the discussion on guidelines into comments on characteristics and on elements.

**Characteristics:** Many experts stressed the need for: flexibility regarding stakeholders and use of genetic resources in each case; simplicity; transparency; and user-friendliness. Many also emphasized that the guidelines should assist countries in developing and implementing a regulatory regime, maintaining a balance between simplicity and sufficient level of detail. It was noted that a set of short, voluntary guidelines could be supported by more detailed background papers and annexes providing examples of material transfer agreements (MTA) and contractual agreements. Participants discussed whether to use a broad framework or a sectoral approach. One expert said the guidelines should be stage-related, taking into account different stakeholders and their role in the different stages of the process. A participant presented the WIPO guide for developing countries on licensing in biotechnology as a useful model. Others highlighted the need to: take into account indigenous and local communities; create a system for user and provider contact; remain consistent with existing international agreements; and take into account the negotiations for the revision of the International Undertaking (IU).

One expert noted that guidelines should be related to CBD work plans and programmes in biodiversity for consistency, must be voluntary in nature, and would require a testing procedure for adequate and effective development. Another expert said that a system defining relationships between users and providers would entail a complicated web of relationships. He noted that organizations and other entities play a critical role in conservation and provision of scientific information, and should not be seen simply with regard to commercial transactions.

**Elements:** One expert presented a draft outline for contents and elements of the guidelines, noting the need for a guideline on sources of obligation pertaining to national law. Her suggested elements included: a rationale for guidelines; acquisition of both *in situ* and *ex situ* resources, including key aspects of PIC (role of the national focal point and national competent authorities, identification of stakeholders, processes for seeking consent, distinguishing between processes for academic and commercial use); basis for use; consistency of terms for acquisition and supply; annexes containing illustrative examples; monetary and non-monetary benefits; identification of beneficiaries; benefit-sharing for use of materials acquired prior to the CBD's entry into force; and management, including tracking, traceability, staff and technology. One expert added that the guidelines should address cross-cutting elements on: the role of stakeholders; capacity development; property rights issues; and traditional knowl-



edge and different forms of incentives. Codes of conduct, which could include the principles of transparency and accountability, were proposed by one expert.

Regarding management and legislation, one expert suggested that in the initial development of national strategies, governments and stakeholders should clarify the relevant actors involved in any contractual negotiations to facilitate the involvement of interested commercial users. Others emphasized: traceability of genetic resources; adaptive management schemes, incorporating monitoring, evaluation and feedback loops; and flexible and transparent guidelines to increase capacity and coordination while reducing transaction costs. Some experts highlighted the difficulty of distinguishing between commercial and academic use, given ever-increasing links between the two sectors, with one suggesting alternative criteria regarding public availability of results and specimens. A distinction was drawn between genetic resources considered broadly, belonging to the State and those that have been modified or improved, which are subject to national intellectual property laws.

Regarding benefit-sharing, experts emphasized: use of benefits to strengthen research communities in provider countries; the need for benefits to go to the country of origin; problems with imbalance in distribution; benefits in the form of capacity building to improve sustainable conservation; examination of COP Decisions IV/10 and V/15, on incentive measures; and attention to short-term benefits. On capacity building, experts highlighted: training, especially for implementation of the guidelines; access to information; public education; use of the guidelines to supplement lack of negotiating capacity; and generation of benefits and value-added products to address larger poverty issues.

Regarding *ex situ* and *in situ* resources, one expert noted the need to indicate types of resources covered and harmonize treatment of various types, and to enable States to ensure that benefits would be used appropriately (i.e. for conservation processes). Several delegates highlighted *ex situ* collections held by the Centres of the Consultative Group on International Agricultural Research. Experts also addressed participation in other resource exchange networks, work with Centres regarding negotiations on the return of collections, and ensuring that benefits go to the country of origin and not the holding institution. On intellectual property issues, one expert mentioned the need to consider intellectual property clauses in contractual agreements and the interface between access legislation and patent laws.

Regarding indigenous and local communities, experts called for: distribution of benefits to these communities, especially to support *in situ* conservation efforts; provision of legal protection and rights for indigenous knowledge and territories; improved access to *ex situ* collections; and involvement in technology transfer. Experts also discussed: existing instruments relevant to PIC, including International Labour Organization Convention 169 and the Draft Declaration on the Rights of Indigenous Peoples; the importance of user perspectives to ensure compliance and achieve PIC; the issue of liability and redress arising from use of genetic resources; and how States with common resources can cooperate, especially regarding benefit-sharing frameworks.

Co-Chair Girsbirger announced formation of a drafting group to produce text based on these discussions. The drafting group then met throughout the afternoon and early evening.

**Indicative Outline:** Plenary reconvened in the evening and experts reacted to a draft indicative outline of elements for guidelines on ABS. The chair of the drafting group introduced the outline, noting that it: provides a broad context; addresses scope and principles in a broadly applicable framework; defines objectives and key features; and elaborates four elements, including steps in the process, roles and responsibilities of stakeholders, benefit-sharing, and cross-cutting elements including capacity building and IPR in ABS. The group recognized that this document should serve as a basis, but not the sole basis, for creating guidelines.

Regarding the context, several experts commented on language stating that the guidelines would assist countries that have not developed ABS measures, noting that they would be useful to providers as well as users and could also assist countries that had already developed ABS measures. Several others further noted that the guidelines could enhance or improve existing policies, and could also be directed at corporate and other entities that might be involved. Regarding a question on text stating that multilateral approaches to PIC, MAT and benefit-sharing may be appropriate for particular categories of genetic resources, one expert noted that this was meant to prevent restriction of other endeavors such as the IU. Regarding stakeholders, an expert requested that protectors be identified as well as users and providers.

Within discussions on the elements of the guidelines, concern was expressed over vague terminology under key features with specific regard to acceptability, consistency with other international approaches, coherence with other measures and adaptability. It was noted that such terms would need to be further explained and refined. Regarding roles and responsibilities, it was noted that the role of the national focal point could overlap with that of the competent national authority. Wording was also provided that competent national authorities be responsible for: determining access applications; advising on PIC and MAT requirements; assisting in negotiating processes; and ensuring sustainable use of resources and equitable distribution of benefits among users and providers. Experts also discussed the issue of responsibility of users regarding transfer of genetic resources to third parties. Regarding benefit-sharing, experts suggested language on conflict resolution and guidance on negotiating benefit-sharing arrangements. With regards to cross-cutting issues, language on incentives and ABS was proposed.

The document as provisionally approved serves as an indicative outline for guidelines on ABS. Regarding context, the outline addresses broad arrangements for ABS, including international guidelines and other complementary measures, such as: codes of conduct; model agreements; access guidelines developed by other organizations; indicators; information exchange mechanisms; and capacity building. Regarding the scope and level of detail of guidelines, it addresses, *inter alia*: use of terms; a broad framework to be elaborated through more specific documents; entities; type of genetic resources; customary use by indigenous communities; associated traditional knowledge; and locational and geographical issues. Regarding the elements of guidelines, it addresses objectives, key features and elements. On objectives, it outlines: facilitating access and ensuring fair and equitable sharing of benefits; contributing to conservation and sustainable use of biodiversity; building capacity; and promoting awareness of CBD implementation. On key features, it outlines: the guidelines' voluntary nature, flexibility, simplicity, transparency and user-friendliness; reduction of transaction costs; acceptability; consistency with other international approaches; coherence and supportiveness of other measures; adaptability; and ability to evolve. On elements, it outlines: steps in the process, including PIC and MAT; roles and responsibilities of stakeholders, including national focal points, competent national authorities, users and providers; benefit-sharing, including types, timing and distribution of benefits, and mechanisms for benefit-sharing; and cross-cutting elements, including capacity building and IPR.

### IN THE CORRIDORS

As momentum in the discussions increased with a morning brainstorming Plenary on elements for potential guidelines, many noted the significant challenge ahead of integrating diverse points on character, principle, process, roles and other matters. Some believed the best output this Panel could produce would be a framework to organize the range of elements presented, which could provide the basis for further elaboration by the upcoming Working Group on ABS.

### THINGS TO LOOK FOR TODAY

**PLENARY:** Plenary will convene at 10:00 am in Room 3 to review draft reports on each agenda item.