



HIGHLIGHTS FROM THE SECOND EXPERTS' PANEL ON ACCESS AND BENEFIT-SHARING MONDAY, 19 MARCH 2001

On the opening day of the second meeting of the Experts' Panel on Access and Benefit-Sharing under the Convention on Biological Diversity (CBD), delegates met in Plenary to hear opening remarks and address organizational matters. Presentations were then delivered on: assessment of user and provider experience in access to genetic resources and benefit-sharing (ABS); identification of approaches to involvement of stakeholders in ABS; and complementary options to address ABS in the CBD framework. Later in the afternoon, delegates met in two working groups to consider user and provider experience, and approaches to stakeholder involvement.

Editor's Note: As a matter of policy, the Earth Negotiations Bulletin does not directly attribute statements in informal discussions when requested to do so.

PLENARY

CBD Executive Secretary Hamdallah Zedan opened the meeting and proposed, with the Panel's agreement, retaining the officers from the first Experts' Panel held in October 1999 in Costa Rica, including Co-Chairs Jorge Cabrera Medaglia (Costa Rica) and Martin Girsberger (Switzerland) and Rapporteur Maureen Wolfson (South Africa). Co-Chair Medaglia welcomed participants and stressed their collective responsibility to produce a successful report.

Hamdallah Zedan thanked the government of Switzerland for financial support. He outlined the Panel's establishment and activities, and noted that this meeting's report would be submitted to the *ad hoc* open-ended working group on ABS, meeting in October 2001 in Bonn, to develop guidelines and approaches for assisting Parties and stakeholders on ABS matters.

The Secretariat introduced the meeting's draft agenda UNEP/CBD/EP-ABS/2/1, which was adopted. Following a suggestion from the floor, seconded by Co-Chair Girsberger, the Panel decided to: devote the morning session to presentations by experts; divide into two working groups to address assessment of user and provider experiences in ABS, and identification of approaches to involvement of stakeholders; and address complementary options to address ABS in the CBD framework in Plenary, on Wednesday, 21 March.

The WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) reviewed: WIPO's mandate and tasks; activities related to intellectual property and genetic resources; and the recently formed Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The Committee will address: contractual agreements for access to genetic resources; legislative, administrative and policy measures to regulate ABS; multilat-

eral systems for facilitated ABS; and the protection of biotechnological inventions. The FAO reviewed progress to date on the revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU). She highlighted the IU's initial development as a voluntary agreement, negotiations under the FAO to create a binding agreement in harmony with the CBD, and relevant CBD COP decisions.

PRESENTATIONS

Sally Petherbridge (Australia) described Australia's relevant national legislation and a Commonwealth Public Inquiry on access to biological resources, noting efforts to develop a nationally consistent approach at the federal and state levels. She outlined inadequacies in federal natural resource legislation regarding access issues, particularly benefit-sharing considerations. She highlighted a scheme for access permits and benefit-sharing contracts and reviewed findings from the Commonwealth Inquiry, underlining needs for simplicity, accessibility, efficiency, model contracts, clear authority, public input, accountability and recognition of monetary and non-monetary benefits. She then noted case examples of ABS in federal territories and future steps for legislative developments at the federal level.

One expert asked about coverage of incoming genetic resources from abroad, and she said that this was not in the Inquiry's terms of reference, but a concern being addressed by the agricultural department and under the IU.

Beatriz Zapata Ferrufino (Bolivia) discussed implementation of Decision 391 of the Andean Pact and inclusion of ABS in the Bolivian National Biodiversity Strategy and Action Plan (NBSAP). Decision 391 was adopted in 1997 and provides the foundation for a framework regulating access to genetic resources in Bolivia. She outlined the context, scope, relevant actors and institutional framework of the decision, noting four requests for access and one contract granted. She also presented the components of the NBSAP, with the objectives of conservation and sustainable development, and noted development of the Andean region's economic potential through ensuring benefit-sharing and empowerment of actors. She stressed the need to better define property rights and rights on traditional knowledge.

One participant highlighted the need to expand views on intellectual property rights (IPR), and Ferrufino agreed that coordination of indigenous knowledge with access to plant genetic resources should be explored further.

Shri R.H. Khwaja (India) overviewed ABS in India, in the context of its NBSAP. He outlined features of the Biological Diversity Bill 2000, addressing access to genetic resources by foreign individuals or companies. He then referenced other national experiences, including: traditional knowledge networks and their use by the formal sector with

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prior informed consent (PIC); the National Innovation Foundation recognizing creativity at the grassroots level; and the Traditional Knowledge Digital Library, aiming to prevent patenting of the traditional uses of medicinal plants, by placing them in the public domain. WIPO then outlined recent initiatives on the protection of traditional knowledge, namely the Global Intellectual Property Information Network and the Traditional Knowledge Task Force in the framework of the International Patent Classification.

Maureen Wolfson (South Africa) outlined national consultation processes used in the development of the South African White Paper for the conservation and sustainable use of biodiversity. She highlighted formation of a steering committee and multi-stakeholder reference group, stakeholder briefings and a national consultative conference during the White Paper's development. These helped to raise awareness, strengthen capacity, improve networking and coordination, and introduce new perspectives. She noted problems moving from the White Paper to legislation, including lack of leadership, vision and clarity in governmental roles and mandates, while highlighting the present consultation process to develop legislation.

Alwin Kopse (Switzerland) outlined Switzerland's draft guidelines on ABS regarding utilization of genetic resources. He described an open and broad process-based approach, engaging relevant sectors of society and serving as a starting point in addressing access issues at a multilateral level. He highlighted issues of responsibility and PIC, and stressed flexibility, predictability and a level playing field.

Kerry ten Kate (UK) introduced the Common Policy Guidelines for Participating Botanical Gardens on Access to Genetic Resources and outlined the process of the project, including reviewing all existing sets of guidelines, identifying common elements and best practices, examining the CBD and other model laws, and producing and reviewing guidelines. She stressed the need to define the nature of required guidelines and supportive measures to meet all circumstances, avoid duplication and add value, as well as the need for clarity and flexibility.

WORKING GROUP I – USER AND PROVIDER EXPERIENCES

Working Group I (WG-I) shared user and provider experiences and identified elements for guidelines to assist ABS regimes. Many experts highlighted national experiences related to: different levels of jurisdiction and sectoral legislation in federal states; lack of information regarding IPR issues; the need to develop government awareness and societal consensus; traditional knowledge databases; identification of stakeholders and beneficiaries; community permission for access; resolution of conflicts over mutually agreed terms; and establishment of trust funds.

Experts discussed the role of intermediaries and functions of different parties. One expert raised questions on technology transfer and capacity building from a user's point of view. The need to establish national focal points and information networks to allow for users' identification were cited as preliminary steps toward building capacity and raising awareness. Experts noted that the CBD allows for further refinement in the user-provider terminology, stressed the lack of information regarding intermediaries at the national level, and emphasized the need to systematize voluntary measures and codes developed by national institutions and universities. Some encouraged alliances among research institutions in developed and developing countries and aid programs to prepare for contracts with industry.

Participants then discussed the issue of distinction between research for academic and commercial purposes, noting in some cases contracts incorporating provisions for future commercialization. One expert stressed her country's interest in repatriation of knowledge on plant genetic resources. It was also noted that: universities and botanic gardens increasingly undertake commercial activities, although the majority of them do not; all access agreements should cover the possibility of the research developing commercial interest; academic research may be funded by a company; governments can provide consent under the condition that only academic research is performed; institutions lending collections material for academic research

purposes could ask for the consent of the country of origin; and the transfer of samples to a company or the application for a patent are signals of commercialization. One expert noted potential effects of restrictions on academic research. National experience regarding delegation of authority to universities to sign agreements with researchers was highlighted.

Participants also stressed the need to: develop simple guidelines given the limited capacity of many administrations to cope with approving all access agreements; link development of legislation to capacity building; draw from other sectors' experience on market creation; develop awareness; consider transaction costs; and resolve whether source country or request country laws should apply. Regarding traceability and tracking, participants highlighted: technical limits; the particular case of micro-organisms; and users' responsibility for record-keeping. It was also noted that contracts provide the legal basis, but compliance often depends on trust.

WORKING GROUP II – STAKEHOLDER INVOLVEMENT

Working Group II (WG-II) addressed identification of approaches for involvement of stakeholders in ABS processes, referencing document UNEP/CBD/EP-ABS/2/2. Participants distinguished among users, providers and protectors of genetic resources, as well as among those with specific rights or direct involvement (e.g. national competent authorities, industry, local stakeholders) and those with a more general interest (e.g. NGOs). Experts suggested use of such categories to differentiate the roles and weights that stakeholders have within ABS discussions, although one argued that all stakeholders should have equal input. Another expert noted that different stages in the ABS process (e.g. legislative development vs. contract negotiation) will involve different stakeholders with different capacity needs.

Several experts underscored information exchange and capacity building for effective involvement of stakeholders, especially local and indigenous communities. Regarding such communities, participants highlighted specific concerns, including low levels of organization for national participatory processes, poor understanding of ABS issues, political alienation, and the need to consult multiple community members and not just a single traditional healer/representative. A participant highlighted the benefits of including all persons within a geographic area in developing biodiversity registers, rather than focusing on particular communities, groups or sectors. One expert highlighted that users, such as companies, generally have little knowledge of the local context, preferring to deal with a single actor/institution. Another suggested development of multi-stakeholder negotiating commissions. Experts also addressed, *inter alia*: comparative advantages of regional capacity-building approaches; the role of print and electronic media; and stakeholder involvement in developing NBSAPs and national legislation.

IN THE CORRIDORS

Participants highlighted the difference in political climate between the current panel and its first session, which was marked by political discord over mandate, scope and IPR issues from the start. Some suggested that intervening ABS discussions at COP-5 and the upcoming working group meeting have taken the political weight off the experts' shoulders. Others commented that user and provider experiences and stakeholder involvement are simply not politically charged issues.

THINGS TO LOOK FOR TODAY

WORKING GROUP I: WG-I will meet at 10:00 am in Room 5 to continue discussions on user and provider experiences and identify elements to be considered in the guidelines.

WORKING GROUP II: WG-II will meet at 10:00 am in Room 6 to continue discussions on stakeholder involvement and identify elements to be considered in the guidelines.

PLENARY: Plenary will reconvene at 3:00 pm in Room 3 to hear reports from the Working Groups.