



Earth Negotiations Bulletin

ABS-EP2
FINAL

A Reporting Service for Environment and Development Negotiations

Online at <http://www.iisd.ca/biodiv/abs2/>

Vol. 9 No. 190

Published by the International Institute for Sustainable Development

Monday, 26 March 2001

SUMMARY OF THE SECOND EXPERTS' PANEL ON ACCESS AND BENEFIT-SHARING: 19-22 MARCH 2001

The second meeting of the Experts' Panel on Access and Benefit-Sharing (ABS-EP2) under the Convention on Biological Diversity (CBD) was held from 19-22 March 2001, in Montreal, Canada. Fifty government-appointed experts and 23 observers from intergovernmental and non-governmental organizations, academia, the private sector, and indigenous and local communities attended the meeting. The Panel met in Plenary sessions and two Working Groups to discuss and produce conclusions on: user and provider experience in access to genetic resources and benefit-sharing (ABS) processes; approaches for stakeholder involvement in ABS processes; and complementary options to address ABS within the CBD's framework, including possible element for guidelines. The Panel's report and conclusions will be forwarded to the first session of the *Ad Hoc* Open-ended Working Group on ABS, scheduled for 22-26 October 2001, in Bonn, Germany.

A BRIEF HISTORY OF THE CBD AND ACCESS AND BENEFIT-SHARING

The CBD, negotiated under the auspices of the United Nations Environment Programme (UNEP), was opened for signature on 5 June 1992, and entered into force on 29 December 1993. To date, 180 countries have ratified the Convention. The three goals of the CBD are to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from use of genetic resources. The Convention contains provisions on access to genetic resources and the sharing of benefits arising out of their use. These are contained in Articles 15 (Access to Genetic Resources), 16.3 (access to and transfer of technology that makes use of genetic resources), 19.1 (participation in biotechnological research on genetic resources) and 19.2 (access to results and benefits from biotechnologies). These provisions address both users and providers of genetic resources. According to its medium-term programme of work, the Conference of the Parties (COP) to the CBD considered ABS at its second, third, fourth and fifth meetings.

COP-2: At its second meeting in Jakarta, Indonesia, in November 1995, the COP adopted Decision II/11, requesting the CBD Executive Secretary to further elaborate a survey of measures taken by governments to implement Article 15.

COP-3: At its third meeting in Buenos Aires, Argentina, in November 1996, the COP considered a compilation of views from Parties on possible options for developing national legislative, administrative or policy measures, as appropriate, to implement Article 15. In Decision III/15, the COP urged governments to submit relevant information on possible elements for guidelines and other measures for the implementation of Article 15. Based on this and other COP-3 decisions, the CBD Executive Secretary called for case studies on ABS mechanisms to prepare a synthesis for COP-4.

COP-4: At its fourth meeting in Bratislava, Slovakia, in May 1998, the COP addressed matters related to benefit-sharing, including: measures to promote and advance the distribution of benefits from biotechnology in accordance with Article 19 (Handling of Biotechnology and Distribution of its Benefits); means to address the fair and equitable sharing of benefits arising out of the use of genetic resources; and the compilation of Parties' views on possible options for developing national legislative, administrative or policy measures to implement Article 15. In Decision IV/8, the COP established a regionally balanced Experts' Panel on ABS, to be appointed by governments and composed of representatives from the private and public sectors, as well as representatives of indigenous and local communities. The Panel's mandate is to develop a common understanding of basic concepts and to explore options for ABS on mutually agreed terms

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(MAT), including guiding principles, guidelines and codes of best practices for ABS arrangements. In Decision IV/16, on institutional matters and the programme of work, the COP decided to hold a preparatory discussion on access to genetic resources at the June 1999 Intersessional Meeting on the Operations of the Convention (ISOC) to provide input into COP-5.

ISOC: The ISOC convened in Montreal, Canada, from 28-30 June 1999, immediately following the fourth session of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). ISOC delegates conducted preparatory discussions on ABS arrangements to provide guidance to COP-5; discussed future work on *ex situ* collections acquired prior to the CBD's entry into force; made recommendations for future work to develop a common appreciation of the relationship between intellectual property rights (IPR) and relevant provisions of the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); and made recommendations for the preparatory, composition and agenda of the Expert Panel on ABS.

ABS-EP1: The first meeting of the Experts' Panel on Access and Benefit-Sharing met from 4-8 October 1999, in San José, Costa Rica. COP Decision IV/8 called for the establishment of a regionally balanced Panel of Experts on ABS, which received guidance from the ISOC. The meeting, co-hosted by the Governments of Costa Rica and Switzerland, focused on four items: ABS arrangements for scientific and commercial purposes; legislative, administrative and policy measures at the national and regional levels; regulatory procedures and incentive measures; and capacity building. The Panel developed a set of recommendations, which included general conclusions and specific points on prior informed consent (PIC), MAT, information needs and capacity building.

COP-5: At its fifth meeting in Nairobi, Kenya, in May 2001, the COP adopted Decision V/26, which established an Open-ended *Ad Hoc* Working Group to develop guidelines and other approaches on PIC; MAT; roles, responsibilities and participation of stakeholders; aspects of *in situ* and *ex situ* conservation and sustainable use; mechanisms for benefit-sharing; and the preservation and maintenance of traditional knowledge. COP-5 also decided to reconvene the Expert Panel on ABS to provide input on user and provider experiences and stakeholder involvement to the Working Group. Decision V/26 also addresses *ex situ* collections acquired prior to the CBD's entry into force, IPR and relevant provisions of the TRIPS Agreement.

REPORT OF THE EXPERT PANEL

CBD Executive Secretary Hamdallah Zedan opened the meeting on Monday, 19 March, 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.

Zedan then thanked the Governments of Switzerland and the UK 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, which will meet 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 identify complementary options to address ABS in the CBD framework in Plenary.

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; multilateral 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.

The opening Plenary then heard presentations from six experts regarding the Panel's agenda items. Experts then met in two working groups during Monday afternoon and Tuesday, 19-20 March. Working Group I, chaired by L.V. Kalakoutskii (Russian Federation), addressed the assessment of user and provider experiences in ABS processes. Working Group II, chaired by Anoja Wickramasinghe (Sri Lanka), discussed approaches for stakeholder involvement in ABS processes. Delegates reconvened in Plenary on Wednesday, 21 March, to discuss complementary options to address ABS within the CBD framework, including possible elements for future guidelines. The closing Plenary on Thursday, 22 March, reviewed draft conclusions on these three substantive items.

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.

EXPERT PRESENTATIONS

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

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.



Shri R.H. Khwaja (India) reviewed the status of ABS legislation in India, in the context of the NBSAP. He outlined features of the Biological Diversity Bill 2000, addressing access to genetic resources by foreign individuals or companies, including: approval from a National Biodiversity Authority; deposition of monetary benefits in a Biodiversity Fund; and requirements for pre-approval before applying for IPR for an invention based on a resource obtained from India. He then referenced other national experiences on medicinal plants, traditional knowledge networks and their use with PIC of the knowledge holder, the National Innovation Foundation recognizing creativity at the grassroots, and the Traditional Knowledge Digital Library.

Maureen Wolfson (South Africa) outlined national consultation processes used in the development of the 1997 South African White Paper for the conservation and sustainable use of biodiversity. She reviewed the formation of a steering committee and a multi-stakeholder reference group, involving government agencies from the federal and provincial level, NGOs and funding agencies. During the White Paper's development she highlighted stakeholder briefings throughout the country, invitations for participation and a national consultative conference, which helped to raise awareness, strengthen capacity, improve networking and coordination, and introduce new perspectives. She highlighted obstacles in funding and the importance of involving stakeholders from the start, including in the design of the process. She noted problems with subsequent movement from the White Paper to legislation, including lack of leadership, vision and clarity in governmental roles and mandates. She concluded by highlighting the present consultation process to develop legislation and two provincial stakeholder consultation processes.

Alwin Kopse (Switzerland) outlined the history and contents of the Draft Guidelines on ABS prepared by Switzerland on the utilization of genetic resources, which were designed to provide guidance for governments and stakeholders involved in ABS. He described an open and broad process-based approach, addressing steps including: activities leading to access, the process of research and development, and consequent work and commercialization. Kopse stressed issues of responsibility, flexibility, predictability and a level playing field, and outlined considerations for PIC, including: minimum standards to ensure predictability, the role of competent national authorities, participation in decision-making and benefit-sharing, and avoidance of measures that would impede traditional use of genetic resources.

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, and examining the CBD and other model laws, before producing and reviewing the guidelines. Ten Kate proposed use of a "package approach," incorporating a national ABS strategy, laws, guidelines, indicators, illustrative model agreements and capacity-building programmes. 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

On Monday, 19 March, Working Group 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 MAT; and
- establishment of trust funds.

Experts discussed the role of intermediaries and functions of users and providers. They cited the need to establish national focal points and information networks to allow for users' identification 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 programmes to prepare for contracts with industry.

Participants then discussed distinction between research for academic and commercial purposes, noting the case of contracts incorporating provisions for future commercialization. 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 the potential effects of restrictions on academic research. 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.

On Tuesday, 20 March, in a morning session, Working Group I considered a summary of points by Chair Kalakoutskii that emerged during the previous day's discussion. They suggested that elements be prioritized and that the group follow the mandate of identifying elements and types of guidelines, incorporating 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;
- differentiating users into categories;
- noting the difficulty of identifying countries of origin; and
- including IPR along with references to patents.

The Chair proposed creation of four 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, Working Group 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 provides 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 and traditional knowledge 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 CBD's Working Group on Article 8(j) and the FAO, and suggested that the Working Group on ABS invite WIPO 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 on Tuesday, Working Group 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 contexts, adding examples of specific contexts. On PIC, experts clarified language on the users' responsibility to demonstrate that they have satisfied PIC requirements when accessing genetic resources and traditional knowledge. Regarding IPR and traditional knowledge, discussion revolved around introducing requirements on IPR procedures. Participants agreed to delete reference to the 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 national focal point activities related to users and providers. Many editorial comments were also made.

On Wednesday, 21 March, the Chair of Working Group I reported to the Plenary on progress made in consideration of examples of user and provider experience, as outlined in document UNEP/CBD/EP-ABS/2/L.2. He stressed an overall emphasis on capacity building as the essence of ABS. Regarding PIC and relevant elements, he noted

emphasis on: national focal points; identification of the person providing consent; user responsibility; and the relationship between consent and capacity building. On MAT, he highlighted clarity, minimizing transaction costs, providers' and users' obligations, and the utility of different contractual arrangements for different providers and users. Under IPR, he said that 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 WIPO and other organizations. Given general agreement on the issues within Working Group I, the Plenary agreed to defer further discussion on the document until the closing Plenary.

On Thursday, 22 March, the results of Working Group I's deliberations, as contained in the draft report of the meeting (UNEP/CBD/EP-ABS/2/L.3), were discussed by the Plenary. One expert noted inclusion of points from the output of the first Experts' Panel that were not actually discussed by the second, and all agreed to include language stating that this Panel adopted its conclusions taking into consideration the conclusions of the first Panel.

Regarding the section on capacity building, changes were proposed by many in a paragraph calling for approaches aiming to strengthen relevant stakeholders in a number of areas. One expert added reference to administrative and policy measures to language on legislation, negotiations, MAT and IPR. A number of experts called for clarification of reference to protection of indigenous and local communities' knowledge and resources. One proposed, and all supported, use of CBD language on "protection of genetic resources and associated traditional knowledge, innovations and practices." One expert called for deletion of reference to patenting in relation to scientific and technical areas, and all agreed to replace it with reference to IPR. In a paragraph on funding, experts added reference to multilateral, bilateral and regional organizations.

Regarding the section on legislative, administrative or policy measures, in a paragraph on distinctions among various categories of genetic resources, experts agreed to specify existing national or international measures and to add a new sub-paragraph distinguishing between end-users and intermediaries in creating ABS contractual arrangements.

Regarding PIC, participants agreed to clarify language on timing as a possible element of guidelines, referencing timing involved in obtaining PIC, including related to changes in use of accessed genetic resources. They also discussed levels of requirement and agreed to include national, provincial or local levels. The same specification was made with reference to competent national authorities, to avoid referring to levels of jurisdiction. It was stressed that users need to document the source and origin of materials accessed. On MAT and benefit-sharing arrangements, it was noted that language was drawn from pre-existing material and that reference should be made to source and country of origin. Participants also agreed to include: provisions on user and provider obligations in MAT, and participation in research processes; and health benefits for source and country of origin, benefits for conservation and restoration of biodiversity, and food security benefits in consistency with the IU and other FAO activities under types of non-monetary benefits.

Regarding IPR, experts debated whether to specify country of origin and/or source, and made other textual amendments.

FINAL REPORT: The final text in UNEP/CBD/EP-ABS/2/L.3 includes sections on: capacity building; legislative, administrative or policy measures on ABS; PIC; MAT and benefit-sharing arrangements; and IPR, traditional knowledge and ABS.



Capacity building is prioritized and should form the essence of the work on ABS. The text states that awareness is a prerequisite, funding is a necessity and an action plan is needed. Under legislative, administrative or policy measures on ABS, the text emphasizes that they should be based on clear national strategies and tailored to the circumstances and needs of individual countries. It distinguishes among various categories of genetic resources, and stresses consistency with international obligations. Text on PIC outlines key elements, national focal points, competent national authorities, identifying who gives consent, user responsibility, and PIC and capacity building. Under MAT and benefit-sharing arrangements, aspects of contractual arrangements are defined, monetary and non-monetary benefits are elaborated, elements for guidelines and other approaches for benefit-sharing mechanisms are addressed, incentive measures are noted, and different sectors are considered. Under IPR, traditional knowledge and benefit-sharing, the text invites submission of information; notes that the Panel examined issues related to patents, protection measures for traditional knowledge, building trust among providers and users, and contractual agreements; recognizes that traditional knowledge and ABS are related; notes that plant genetic resources for food and agriculture are addressed under the FAO; and invites information sharing with WIPO and the WTO.

WORKING GROUP II – STAKEHOLDER INVOLVEMENT

On Monday, 19 March, Working Group II met to address 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 differentiating among 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 would involve different stakeholders with different capacity needs.

Several experts underscored information exchange and capacity building for effective stakeholder involvement, especially local and indigenous communities. Regarding these 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. 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 participant 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.

On Tuesday, 20 March, Working Group II continued its deliberations on a series of draft points developed by the Working Group Chair. The draft points focused 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 NBSAPs, national legislation, implementation of legislation and negotiation of ABS contracts. Another participant stressed the need for a high degree of participation of indigenous people, when their knowledge, territories and biological resources are involved. It was also proposed to note that no contractual negotiation

should be completed without the approval of the appropriate ministry or government agency. Regarding a list of relevant stakeholders, Working Group 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 a 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 of those involved in contractual negotiations. Delegates also made a number of other textual and organizational changes to the document.

After a brief afternoon session on how to address concerns regarding stakeholder involvement in principles for guidelines or complementary options for work on ABS under the CBD, the group adjourned.

In Plenary, on Wednesday, 21 March, the Chair of Working Group II introduced the Working Group's report, as contained in UNEP/CBD/EP-ABS/2/L.1, outlining the document's three sections: identification of stakeholders, examples of stakeholder involvement and identification of approaches for stakeholder involvement. Given general agreement on the document within Working Group II, experts agreed to postpone the document's consideration until the closing Plenary.

During the closing Plenary on Thursday, 22 March, experts discussed conclusions on stakeholder involvement in ABS processes, as contained in UNEP/CBD/EP-ABS/2/L.3. On the list of potential stakeholders, experts proposed inclusion of intermediaries and governmental agencies addressing the environment, culture and rural development. Experts also proposed recognizing experiences from Australia, Bolivia and India highlighted in the presentations during the opening Plenary. Regarding the value of stakeholder involvement, delegates agreed to reformulated language recognizing that stakeholder involvement is directly related to the facilitation of ABS and that the more stakeholders are involved the more effective and sustainable the results. Other textual amendments were made and the conclusions were approved.

FINAL REPORT: Conclusions on stakeholder involvement in ABS processes, contained in document UNEP/CBD/EP-ABS/2/L.3, are divided into three sections: identification of stakeholders, examples of stakeholder involvement and identification of approaches for stakeholder involvement. Regarding identification of stakeholders, the report notes the need to first distinguish stakeholders that may be involved in a process to identify approaches for such participation. It states that the major types of stakeholders are users and providers, who can only be identified on a case-by-case basis, although they may include: relevant ministries and government agencies; regional and provincial level government agencies; relevant national and international organizations; the industrial sector; scientific and academic communities; people's organizations; farmers, foresters and their organizations; traditional healers, their associations and communities; indigenous and local communities; NGOs; non-organized elements of civil society; the media; and intermediaries.

Regarding examples of stakeholder involvement, the report highlights specific national consultative processes in the preparation of NBSAPs and ABS systems. The report also notes, *inter alia*, that:

- the stakeholders involved and the level of their involvement in



different stages varies from case to case;

- the more that all stakeholders are involved the more effective and sustainable the results;
- increased stakeholder involvement results in higher transaction costs; and
- balancing maximization of participation and minimization of costs requires iterative, flexible approaches to management and decision-making, proactive governmental leadership and support for marginalized stakeholders.

Regarding approaches for stakeholder involvement, the report highlights the particular need to integrate indigenous and local communities and the private sector. It also notes that a broad range of stakeholders could be involved in developing NBSAPs and more limited numbers in contractual negotiations. It further emphasizes governmental approval of contractual negotiations and high levels of participation of indigenous and local communities when their knowledge, territories and biological resources are involved. The report concludes by highlighting general needs for stakeholder involvement, including:

- more information, especially scientific and legal advice;
- support for capacity building, including development of information packages, skills and capacity regarding MAT and contractual arrangements, as well as longer-term programmes and support from the GEF, multilateral and bilateral donors, industry and civil society;
- committees involving a broad range of stakeholders; and
- focal points and competent national authorities to reduce transaction costs and facilitate access.

PLENARY – COMPLEMENTARY OPTIONS TO ADDRESS ABS

On Wednesday, 21 March, the Plenary discussed complementary options to address ABS in the CBD framework. Co-Chair Medaglia emphasized that identifying a package of alternative approaches to address countries' needs is considered to be one of the Panel's main outputs. He suggested that the morning's discussion focus on identifying guidelines, while other complementary measures, such as contractual agreements, capacity creation and information exchange, could be addressed later. He proposed dividing the discussion on guidelines into comments on characteristics and on elements.

On 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 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 roles in different stages of the process. 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 IU. One expert noted that guidelines should be consistent with CBD work plans and other biodiversity-related programmes and would require a testing procedure for adequate and effective development. Another expert said that a system distinguishing between users and providers would entail a complicated web of relationships. He further noted that organizations and other entities play a critical role in conservation and provision of scientific information, and should not be seen as commercial actors.

On elements, one expert presented a draft outline for contents and elements of the guidelines. Her suggested elements included: a rationale for guidelines; acquisition of both *in situ* and *ex situ* resources, including key aspects of PIC; basis for use; consistency of terms for acquisition and supply; monetary and non-monetary benefits; identification of beneficiaries; benefit-sharing for use of materials acquired prior to the CBD's entry into force; management, including tracking, traceability, staff and technology; and annexes, containing illustrative examples. One expert added that the guidelines should also address cross-cutting elements on: the role of stakeholders; capacity development; IPR issues and traditional knowledge; and different forms of incentives.

Regarding management and legislation, one expert suggested that governments clarify the relevant actors involved in any contractual negotiations to facilitate the involvement of interested commercial users in the development of national strategies. 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.

Regarding benefit-sharing, experts emphasized:

- use of benefits to strengthen research institutions in provider countries;
- the need for benefits to go to the country of origin;
- imbalanced 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 (e.g., for conservation processes). Several delegates highlighted *ex situ* collections held by the Centres of the Consultative Group on International Agricultural Research (CGIAR). Another participant stressed the need for a high degree of participation of indigenous people, when their knowledge, territories and biological resources are involved. 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 IPR, 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 Labor Organization Convention 169 and the Draft Declaration on the Rights of Indigenous Peoples; the importance of user perspec-



tives to ensure compliance and achieve PIC; the issue of liability and redress arising from use of genetic resources; and cooperation among States with common resources, 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.

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.

Regarding the context, several experts commented on language stating that the guidelines would assist both countries that have and countries that have not developed ABS legislation, noting that they would be useful to providers as well as users. Several others further noted that the guidelines could enhance or improve existing policies, and could also be directed at other entities that might be involved. Regarding a question on multilateral approaches to PIC, MAT and benefit-sharing for particular categories of genetic resources, it was 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. 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.

During the closing Plenary on Thursday, 22 March, experts discussed the revised outline and conclusions, as contained in UNEP/CBD/EP-ABS/2/L.3. Experts agreed to clarify language regarding broad arrangements for ABS, stating that the package should include and be guided by a national strategy, and that multilateral approaches to benefit-sharing may be appropriate for particular categories of genetic resources. Experts agreed to state that the guidelines should not infringe on customary practices and usages of indigenous and local communities, and to emphasize the principle of national sovereignty over genetic resources. One expert highlighted the concerns of indigenous communities, stating that they should not be forced to provide genetic resources.

Regarding elements of guidelines, one expert added reference to identifying outputs of regional workshops on ABS as relevant information. On objectives, experts agreed to add language on promoting adequate transfer of technology to countries and indigenous communities. On MAT, experts specified the distinction between the needs of different users and providers to access. On competent national authorities, reference to monitoring and assessment and/or advising with relation to enforcement was added. On user responsibility, the issue of documenting the source versus the origin of materials generated some debate. One expert suggested including both terms, while another

noted that some users do not have information on the origin of some of the material they hold. Reference to the source and/or origin was agreed. On capacity building, experts agreed to add reference to technology transfer.

On IPR in ABS, experts agreed to add a new sub-paragraph on the rights of the country of origin of genetic resources and their components and parts, and to add language on traditional knowledge, innovations and practices, taking into account the work of the working group on Article 8(j). The group also debated issues related to traceability and indigenous knowledge placed in the public domain. One expert proposed a new sub-paragraph on measures to ensure traceability by introducing specification of country of origin/source of genetic materials in patent applications. Another noted similar language in a paragraph regarding IPR in the section on user and provider experiences. Other experts cited a need for input on such issues by WIPO. Several experts preferred language on measures to ensure that information related to traditional knowledge and genetic resources placed in the public domain are properly taken into account in existing IPR procedures. Many disagreed on reference to traditional knowledge in the public domain. With no agreement, the original text was retained.

On incentive measures, one expert proposed reference to relevant COP Decisions IV/10 and V/15 and reference to valuation methods. These and other textual amendments were accepted.

FINAL REPORT: The final text, included in UNEP/CBD/EP-ABS/2/L.3, addresses context; scope and level of detail of the guidelines; elements of the guidelines; and cross-cutting elements. 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:

- use of terms;
- a broad framework to be elaborated through more specific documents;
- type of genetic resources to be addressed, excluding plant genetic resources for food and agriculture covered by the IU and human genetic resources;
- customary use by indigenous communities and national sovereignty over genetic resources;
- genetic resources and associated traditional knowledge and innovation;
- different locational and geographical contexts (terrestrial and aquatic, including marine, ecosystems); and
- treatment in accordance with CBD Article 15.3 on genetic resources not acquired in accordance with the CBD.

Regarding the elements of guidelines, the report addresses objectives, key features and elements. On objectives, it outlines: promoting adequate transfer of technology to countries and indigenous communities; 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 and ease of use to maximize their utility, practicality, acceptability, and complementarity with other international approaches. 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, IPR in ABS and incentive measures.

The report recognizes that capacity building should be the main thrust of work, and addresses awareness-building and technology transfer, including practical action plans for their operationalization, and information exchange. Under IPR, the following elements are to be taken into consideration:

- the results of the Working Group on Article 8(j);
- the rights of the country of origin;
- IPR provisions to safeguard stakeholder rights within ABS contractual arrangements;
- relevant national and regional intellectual property laws and standards;
- use of IPR and other measures for the protection of traditional knowledge;
- measures to strengthen capacity needs of holders of traditional knowledge to enforce their rights; and
- measures to ensure recognition and consideration of genetic resources and associated traditional knowledge in existing intellectual property procedures.

Under incentive measures, the document references: COP Decisions IV/10 and 15; identification and mitigation or removal of perverse incentives; use of economic and regulatory instruments; valuation methods as a tool to inform users and providers; and market creation.

CLOSING PLENARY

On the morning of Thursday, 22 March, Co-Chair Medaglia opened the closing Plenary, and the rapporteur, Maureen Wolfson introduced the meeting's report, UNEP/CBD/ABS-EP/2/L.3, including conclusions on the three agenda items. Co-Chair Medaglia reviewed the process for reaching agreement on the main items within previous Plenary and Working Group discussions, which had reached provisional agreements on the conclusions. Experts reviewed the document, providing both substantive and textual comments, and then adopted the report.

CBD Executive Secretary Hamdallah Zedan expressed his hope that the Panel's report would be useful for the meeting of the *Ad Hoc* Open-ended Working Group on ABS in October 2001, in Bonn. He highlighted the utility of the discussions for clarifying issues, emphasizing that the results were an expression of expert views and not negotiations. Co-Chair Medaglia thanked the Working Group Chairs, presenters, participants and Secretariat for their work, and then adjourned the meeting at 2:30 pm.

THINGS TO LOOK FOR

CSD-9: The ninth session of the Commission on Sustainable Development will be held in New York from 16-27 April 2001. This session will focus on: atmosphere; energy/transport; information for decision making and participation; and international cooperation for an enabling environment. The topic of the multi-stakeholder dialogue segment will be energy and transport. For more information, contact: Andrey Vasilyev, Division for Sustainable Development; tel: +1-212-963-5949; fax: +1-212-963-4260; e-mail: vasilyev@un.org; Internet: http://www.un.org/esa/sustdev/csd9/csd9_2001.htm#. For information for major groups, contact Zehra Aydin-Sipos, Division for Sustainable Development; tel: +1-212-963-8811; fax: +1-212-963-1267; e-mail: aydin@un.org.

CSD-10 (PREPCOM-I): The tenth session of the Commission on Sustainable Development, acting as the first session of the Preparatory Committee for the 2002 World Summit on Sustainable Development,

will be held in New York from 30 April - 2 May 2001. For more information, contact: Andrey Vasilyev, Division for Sustainable Development; tel: +1-212-963-5949; fax: +1-212-963-4260; e-mail: vasilyev@un.org; Internet: <http://www.un.org/rio+10/index.html>

IUCG-6: The Sixth Meeting of the Contact Group on the Revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture will be held in Spoleto, Italy, from 23-28 April 2001. For more information, contact: Clive Stannard, CGRFA, FAO; tel: +39-06570-55480; fax: +39-06570-56347; e-mail: clive.stannard@fao.org; Internet: <http://www.fao.org/ag/cgrfa/meetings.htm>

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE: This committee, established by the World Intellectual Property Organization, will have its first meeting in Geneva from 30 April to 3 May 2001. For more information, contact: WIPO Information Center, tel: +41-22-338-8181; fax: +41-22-338-8810; e-mail: information.center@wipo.int; Internet: <http://www.wipo.org>

INTERNATIONAL CONFERENCE ON BIODIVERSITY AND SOCIETY: This conference, organized by Columbia University and UNESCO, will be held in New York from 22-25 May 2001. For more information, contact: Christine Alfsen-Norodom, tel: +1-212-854-9449; fax: +1-212-854-6309; e-mail: ca320@columbia.edu; Internet: <http://www.earthinstitute.columbia.edu/events/events/biodiversity.html>

WORKSHOP ON FINANCING BIODIVERSITY AND BIOSAFETY: This workshop, co-organized with UNEP, is tentatively scheduled to be held in Cuba in June 2001. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

FIRST INTERNATIONAL SYMPOSIUM ON BIODIVERSITY AS A SOURCE OF NEW MEDICINES: This meeting, organized by the University of Valle, will be held in Cali, Colombia, from 16-19 August 2001. For more information, contact: Ligia Pabon; tel: +57-2-233-02461; e-mail: ligpabon@univalle.edu.co; Internet: <http://www.biofarmacongress.com/congresx.htm>

ICCP-2: The Second Meeting of the Intergovernmental Committee for the Cartagena Protocol on Biosafety will take place in Montreal or Nairobi from 1-5 October 2001. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

FIRST SESSION OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING: This meeting will be held in Bonn from 22-26 October 2001. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

SBSTTA-7: The seventh session of the CBD's Subsidiary Body for Scientific, Technical and Technological Advice will meet in Montreal from 12-16 November 2001. For more information, contact: CBD Secretariat, tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

CBD COP-6: The CBD's Sixth Conference of the Parties will be held in the Hague from 8-19 April 2002. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>