



CGRFA Bulletin

A Summary of the Special Information Seminar - "Policies and Arrangements for Access and Benefit-sharing for Genetic Resources for Food and Agriculture"

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POLICIES AND ARRANGEMENTS FOR ACCESS AND BENEFIT-SHARING FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 17 OCTOBER 2009

On Saturday, 17 October 2009, in the prelude to the twelfth regular session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-12), a special information seminar was held at the headquarters of the UN Food and Agriculture Organization (FAO) in Rome, Italy. The event, titled "Policy Arrangements for Access and Benefit-Sharing for Genetic Resources for Food and Agriculture," offered delegates and observers, along with experts, the opportunity to discuss one of CGRFA-12's agenda items, access and benefit-sharing (ABS) for genetic resources for food and agriculture (GRFA).

Participants addressed the status and challenges of ABS, with presentations on the: status of the negotiations on the international regime on ABS; food security and ABS; recent developments in intellectual property law and policies; and the impact of climate change on GRFA. There was also a panel discussion on the use and exchange of GRFA, which includes the domains of plant, animal, forest and microbial genetic resources and biological control agents. After brief statements by relevant experts, a lively discussion followed on the many issues raised. The event came to a close with a sense of anticipation on how the discussions would feed into CGRFA-12, with one delegate expressing satisfaction over the relevance and importance of the seminar for informing the upcoming Commission session. Chaired and facilitated by Bert Visser, Commission Chair (the Netherlands), the event was well-attended by delegates and observers to CGRFA-12, and showed the broad range of interest in ABS and the issues it seeks to address, including food security and biodiversity conservation.



Bert Visser, Commission Chair (the Netherlands)

ABS for GRFA be considered as a whole. He closed noting that the discussion could take two possible paths: a contribution to the development of the international regime on ABS, or development of a separate regime.



Alexander Müller, Assistant Director-General of FAO

Alexander Müller, Assistant Director-General of FAO, noted the need for an open and frank debate on ABS for GRFA, and stressed its importance, saying it will feed into the Commission and other fora. He also highlighted the need to inform political parties and ministries of the current debate relating to ABS to help build understanding and cooperation and lay the ground for good decision making.

ACCESS AND BENEFIT-SHARING: STATUS AND CHALLENGES

STATUS OF THE NEGOTIATIONS OF THE INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING:

Timothy Hodges, Co-Chair of the Convention on Biological Diversity (CBD) *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (Canada), discussed the status of the negotiations of the international regime on ABS (international regime) within the framework of the CBD, explaining that while progress has been slow, there have been a number of achievements, including adoption of the "Bonn roadmap" at COP-9. He highlighted challenges in the negotiations, such as engaging the users and providers of genetic resources, as well as regulatory challenges, including whether an international regime could be established before domestic ABS plans are implemented. Hodges emphasized



Timothy Hodges, Co-Chair of the CBD Ad Hoc Open-ended Working Group on Access and Benefit-sharing (Canada)

OPENING SESSION

Commission Chair Bert Visser welcomed participants to the seminar, saying it is a notable moment since it is the first time that the issue of ABS for GRFA across the various domains will be addressed within FAO. Noting that discussions will feed into CGRFA-12, Visser emphasized that the event will strengthen the debate on ABS. He underscored that while it is important to pinpoint the different needs of various genetic resource domains, participants should seek commonalities to ensure

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that inability to develop an international regime would be a failure for all and bring CBD into question, further noting that lack of a regime would prevent both conservation and realization of benefits from genetic resource use.

FOOD SECURITY AND ABS: Gurdial Singh Nijar, University of Malaya, Malaysia, highlighted food security and its relationship to ABS for GRFA. He underscored: the interdependency between countries and the increased need for ABS for food security; the challenge of protecting states' sovereignty without creating the conditions that may undermine food security and prevent access; how national ABS laws impact food security; the need to highlight the distinctive features of genetic resources; and the role of ongoing international negotiations in providing balance and opportunity for cooperation. He also emphasized a study done by FAO in 23 countries on national ABS laws. In that respect, Nijar noted that: no law, with the exception of two regional laws, listed food security as an objective; the scope of laws is crucial, including resources and activities; and many laws do not provide fee exemptions for indigenous users, farmers or breeders.



Gurdial Singh Nijar,
University of Malaya
(Malaysia)

RECENT DEVELOPMENTS IN INTELLECTUAL PROPERTY LAW AND POLICIES: Carlos Correa, University of Buenos Aires (Argentina), discussed recent developments in intellectual property law and policies. He emphasized the role of article 27(3)(b) of the 1994 Agreement on Trade-related Aspects of Intellectual Property Rights

(TRIPS), which obliges parties to provide for the protection of plant varieties by patents or a *sui generis* system or any combination of these, noting that most countries rely on the 1991 International Convention for the Protection of New Varieties of Plants (UPOV) *sui generis* system. With respect to first generation patents, based on the use of genetic engineering, he discussed the "evergreening of patents" where pharmaceutical companies develop minor changes to the original patent to preserve monopoly on the ingredient. He noted that second generation patents rely on conventional breeding methods. Correa also discussed: the scope of absolute and use-bound protection patent protection and research exemptions, including the use of protected varieties for further breeding; and derivatives. In summarizing, he asked: how the "inventive step" is applied; when is a process essentially biological; how can native traits be patented; what is the role of competition laws; and how can countries use TRIPS flexibilities to promote research and breeding.



Carlos Correa,
University of Buenos
Aires (Argentina)

THE IMPACT OF CLIMATE CHANGE ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE:

Emile Frison, Bioversity International, discussed the impact of climate change on genetic resources. He presented the hypothesis that climate change will lead to an increase of countries' levels of interdependence on genetic resources. He described the following findings, including that: climate change

rates will likely exceed the adaptive capacity of a broad range of crop and forage varieties, although with respect to microbes and aquaculture that is less conclusive; a mismatch between climate change rates and adaptive capacities will require adaptation of production systems; and the impact of climate change on pathogenic microbes is the corollary. He emphasized that: there will be opportunities for making use of the diversity of crops and varieties; international cooperation is key especially for poor countries; and the international regime should reflect interdependence and support international cooperation and the work of the CGRFA.



Emile Frison, Bioversity
International

Participants: cautioned against negotiating an international regime that deals with biologic diversity as a whole, instead of by sector; emphasized the urgent need to address the interconnectedness between climate change and agriculture; highlighted the need for flexibility in an international regime so that sectors and subsectors can maintain authority; responded to the statement that international regime negotiations are a "complete mess" as there is still a lack of consensus and time is short; highlighted seed legislation that protects smallholder farmers with seed-sharing systems to adapt to climate change; and the interlinkages between ABS and intellectual property rights (IPR).

USE AND EXCHANGE OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE

TRENDS ON EXCHANGE OF AND RELIANCE ON GENETIC RESOURCES IN THE VARIOUS SECTORS:

A panel discussion on the use and exchange of GRFA took place in the afternoon. Shakeel Bhatti, Secretary of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), discussed the field of plant GRFA, noting that the ITPGR: is the first fully operational ABS system to facilitate access in agricultural resources and ensure sharing of benefits; was tailor-made to implement the CBD and food security objectives; and has found ABS solutions to issues that the international regime is trying to address, including on IPR and the need for access to ensure food security.

Sena De Silva, Network of Aquaculture Centres in Asia-Pacific, Thailand, noted that 50% of global production of aquatic animals for human consumption is derived from aquaculture and the number is predicted to increase up to 60-70% by 2030. De Silva noted that most of these occur in Asia, adding that it is obvious that in such a scenario the exchange and use of aquatic genetic resources will increase. He noted that aquatic genetic resource management could learn from other sectors since they have a long way to go to ensure food security and adapt to climate change. He noted the lack of south-south exchange, and said that compared to larger sectors, aquatic genetic resources are in their infancy and require help from other sectors to mature.

On microbial genetic resources, Tom Dedeurwaerdere, Catholic University of Louvain, Belgium, noted that research and sharing practices on micro-organisms are recent, informal and in conflict with ABS national laws or those that are currently being negotiated. He also stressed the importance of genomics for ABS and said that micro-organisms are relevant



Panel discussion on the use and exchange of GRFA. L-R: **Jacque Brodeur**, International Organisation for Biological and Integrated Control of Noxious Animals and Plants, Canada; **Jarkko Koskela**, Bioversity International; **Irene Hoffmann**, Animal Production Service, FAO; **Tom Dedeurwaerdere**, Catholic University of Louvain, Belgium; **Sena De Silva**, Network of Aquaculture Centres in Asia-Pacific, Thailand; and **Shakeel Bhatti**, Secretary of FAO ITPGR.

to agriculture and multifunctional. In response to a participant, he said that multifunctionality is a difficult issue and cautioned against treating micro-organisms in the same way across the various fields.

On animal genetic resources, Irene Hoffmann, Animal Production Service, FAO, highlighted that the economic benefits come from five major domesticated species and that the exchange of genetic material is mostly from north to south because of food security. Responding to a participant's question, she noted that there are patenting issues that have implications for exchanges for ABS.

Jarkko Koskela, Bioversity International, discussed forest genetic resources, noting the sector's similarity to aquatic genetic resources in that it relies on utilizing wild or semi-wild tree populations. Responding to a question about trends on exchange of, and reliance on, genetic resources, Koskela noted that: planted forest areas have increased over the last decade; the trend is likely to continue; and climate change could impact this trend.

Jacque Brodeur, International Organisation for Biological and Integrated Control of Noxious Animals and Plants, Canada, noted that biological control is a method of controlling pests with natural predators, adding that in biological control the genetic resources are the biological agent itself. Brodeur made the distinction between classical and augmentative biological control, and said there is a growing awareness of ABS policies and its impact on biological control, noting that this method of pest control would come to an end without access to these resources.

One participant noted the critical role of the Commission and the opportunity for FAO and CBD to work together in advancing agriculture for food security in climate change negotiations. Participants also: expressed satisfaction that ABS is seen as important and emphasized the need for a regime that is fair and equitable; noted that the current negotiating text on scope does not allow for discussing the needs of agriculture in the context of ABS; and highlighted that there are costs involved in ABS and thus resources cannot be offered for free. Another participant noted that genetic resources have unique features and the existing multilateral approach may not be the best one but it is the only track available. He called

for: flexibility; the use of a protocol to address the issues not covered by the CBD; and using existing agreements and provisions, such as "opt-out" clauses to help define a future regime. One participant noted that the sub-domains, including animal, aquatic and forest genetic resources, do not need a separate treaty, but that standards and model arrangements could be used, and that the Commission can "fill in" the international regime in ways that are consistent with the CBD. Another participant added that the CBD offers a lot of flexibility on how to address ABS within the various domains.

SPECIFIC MEASURES NEEDED IN SUB-DOMAINS:

Concerning biological control agents, Brodeur noted that a lack of trust in ABS relating to biological control is a "false problem," and therefore called for a solution based on a sectoral approach that includes flexibility. Dedeurwaerdere noted the need for policy support from intergovernmental bodies when moving from informal to formal arrangements for ABS.

Hoffmann noted that animal genetic resources are under private ownership and not in the public pool. On forest genetic resources, Koskela noted that ABS legislation is being developed in a number of countries, but that the next step is to examine how they are implemented since they can restrict the movement of forest genetic resources, especially for research purposes. De Silva said countries are only now beginning to realize the need for ABS regimes for the aquatic sector to ensure food security, poverty alleviation and biodiversity preservation. Visser noted that the ITPGR is clearly working and that specific measures need to be sub-domain-specific, and it is therefore important to recognize that the CBD offers sufficient flexibility.

MULTILATERAL APPROACHES IN SUB-DOMAINS:

One participant emphasized knowledge as an engine for science and research, and noted it should be made available to everyone. Bhatti highlighted the pros and cons of the standard material transfer agreement and the ITPGR Multilateral System. Participants highlighted: that benefits from genetic resources should flow to small-scale farmers; and the need to have a platform that can mobilize expertise, suggesting the Commission can fill that role.

Chair Visser closed the meeting at 6:02 pm.