



HIGHLIGHTS FROM THE EXPERTS' PANEL ON ACCESS AND BENEFIT-SHARING MONDAY, 4 OCTOBER 1999

On the opening day of the meeting of the Experts' Panel on Access and Benefit-Sharing, delegates met in a morning Plenary to listen to opening remarks, address organizational matters and hear presentations on the substantive agenda items: access and benefit-sharing arrangements for scientific and commercial purposes; review of legislative, administrative and policy measures at national and regional levels; review of regulatory procedures and incentive measures; and capacity building. Following a short afternoon Plenary, delegates met in four working groups with each group focusing on one of the substantive agenda items.

Editor's Note: While participating experts are appointed by governments, they speak in their own capacities. For the purpose of brevity, experts' remarks are attributed by country in the following report.

OPENING PLENARY

Opening Remarks: Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity (CBD), welcomed participants to the Panel and thanked the Governments of Costa Rica and Switzerland for co-hosting the meeting. He noted the importance of the Panel for advancing the access and benefit-sharing (ABS) process and said it provides an opportunity to explore basic concepts and options for ABS on mutually agreed terms (MAT), including guiding principles, standards and codes of best practices. He underlined that this is not a negotiating exercise but a meeting of experts to define concepts and ways and means to put them into practice with respect to the CBD.

Rodolph Imhoof, Ambassador of Switzerland to Costa Rica, emphasized that this joint initiative between the Governments of Costa Rica and Switzerland would provide significant contributions to establishing guidelines for access to genetic resources and benefit-sharing.

Walter Niehaus, Costa Rican Vice-Minister of Foreign Affairs, emphasized the importance that Costa Rica places on biodiversity conservation, noting that one-third of its national territory is protected. He stressed the need to improve legally defined policies to protect biodiversity resources and highlighted the recently adopted Costa Rican Law on Biodiversity. He called for dialogue between all stakeholders and emphasized the role of the private and public sectors, intermediary institutions and local communities in bringing about consensus.

Carlos Manuel Rodriguez, Interim Costa Rican Minister of Environment and Energy, noted that the issue of benefit-sharing and access to genetic resources is one of the most important aspects of biodiversity conservation, and said there is a need to adopt guidelines in order to control access to these resources. He underscored the need for better defined codes and models, both ethical and legal, to address ABS issues.

Organizational Matters: The Plenary elected Jorge Cabrera Medaglia (Costa Rica) and Martin Girsberger (Switzerland) to serve as Co-Chairs of the Panel and Maureen Wolfson (South Africa) to serve as Rapporteur. The Plenary adopted the provisional agenda (UNEP/CBD/EP-ABS/1/1) as presented by Jo Mulongoy, CBD Secretariat. On the organization of work, Co-Chair Girsberger proposed that four working groups convene in the afternoon to discuss the four substantive agenda items. Several experts, including those from NORWAY, PERU, INDIA and ARGENTINA, noted overlap between the topics and questioned dividing them between groups. After lengthy deliberations on how to proceed, it was agreed that each group would address one of the four substantive topics and that the Secretariat would determine experts' participation in each group based on regional representation and areas of expertise.

Introduction of Substantive Items: A.H. Zakri, University of Malaysia, and Charles Barber, World Resources Institute, introduced the item on ABS arrangements for scientific and commercial purposes. Zakri noted that the Panel should review and evaluate examples of existing contractual arrangements for access to genetic resources, including: types of benefits that may be shared; types of mechanisms for sharing benefits; and the range of potential beneficiaries. He also distinguished between monetary benefits, including up-front payments, royalties and bioprospecting fees, and non-monetary benefits, including participation of nationals in research activities, support for conservation activities and information exchange.

Kerry ten Kate, Kew Royal Botanical Gardens, outlined the review of legislative, administrative and policy measures at national and regional levels. She emphasized the importance of voluntary measures, such as common policy guidelines. On trends, she also noted the importance of the consolidation of collecting activities, the growing role of intermediaries, recourse to ex situ collections, material transfer agreements and legal acquisitions of samples. On future scenarios, she highlighted the need for simple access laws, distinction between scientific and commercial use, and policies, guidelines and codes of conducts. In closing, she suggested the Panel should consider, inter alia, a few, strong recommendations for COP-5; options for ABS; lessons learned; and calls for information.

José Carlos Fernández Ugalde, ECOSUR, introduced the review of regulatory procedures and incentive measures. He stressed that the efficiency of mechanisms should be the focus of discussions. He highlighted significant material and social costs for enforcement of access regulations and said restrictive regulations would lead to high administrative costs and promote illegal transfers and thus inhibit implementation of the Convention's objectives. He underlined the need for simplicity and clarification of the issues to facilitate understanding among all relevant stakeholders as well as for compatibility at local and national levels, particularly in issues dealing with prior informed consent (PIC) and equitable benefit-sharing.

Estherine Lisinge Fotabong, WWF Cameroon, highlighted capacity building needs and stressed the importance of partnerships between providers and users of genetic resources at all levels. She noted that for benefit-sharing provisions to work effectively, actions must be tailored not only to support the States and their indigenous and local communities supplying genetic resources, but also the users of the resources. On legislative and policy frameworks, she noted the need for improved capacity in legal drafting, negotiations and contracts at the government, community, NGO and private sector levels. She also emphasized the need to develop capacities for biological assessment and inventories to ensure that provider countries have the ability to assess and evaluate biological and genetic resources. She added that a database of genetic resources is essential and that specific capacity needs include taxonomy, storage, cataloguing and inventory management. On institutional capacity, Fotabong noted that specific country needs include institutional analysis and legal drafting, institutional and financial strengthening, information and awareness-raising, and technology transfer. She said efforts to develop national capacities to regulate access to genetic resources should focus on information systems, education, training, funding and mediation.

In the following discussion on the agenda items, Co-Chair Medaglia asked experts to detail issues to be considered in the working groups. INDIA underscored the need to address: the definitions of PIC and MAT; the promotion of disclosure of country of origin; the transaction costs of regulatory procedures; and the promotion of equitable benefit-sharing with specific attention to technology transfer. The RUSSIAN FEDERATION emphasized addressing contractual agreements and codes of conduct and the definition of genetic resources. PAKISTAN supported discussing the establishment of an international institute to further debate issues surrounding ABS and to build developing countries' capacity to address these issues. ARGENTINA emphasized training for national focal points. PERU emphasized the need for legal certainty for PIC and MAT. FRANCE called for the consideration of intellectual property rights (IPR) and how they impact biodiversity. DENMARK emphasized development of a simple and practical PIC procedure. GERMANY said access and compensation must be discussed. KENYA called for consideration of when benefits accrue, when they become shareable and who will share the benefits. The EU underscored consideration of the practical implications of transfer agreements. ETHIOPIA stressed that the Panel should provide recommendations to guide national implementation of the CBD. Several experts, including NORWAY and the US, underscored the need to clarify what the Panel is expected to produce.

WORKING GROUPS

Access and Benefit-Sharing Arrangements for Scientific and Commercial Purposes: This group focused on PIC, MAT and the promotion of disclosure of the country of origin. Experts called for defining PIC and capacity building for its implementation. They underscored the importance of a procedure that would allow national focal points to grant PIC quickly and not inhibit research. One expert called for a simple interim PIC procedure. Others noted the need to determine when and at what level PIC must be obtained. On MAT, experts called for defining research and commercial use. Others expressed concern that access regimes could inhibit scientific research and called for capacity building for research. One expert noted increased negotiating costs from highly regulatory MAT regimes. On ways to promote disclosure of the country of origin, one expert empha-

sized that a patent seeker must demonstrate that genetic resources were obtained in a legal manner. Another noted that patent applications should not be the only means for disclosing country of origin.

Review of Legislative, Administrative and Policy Measures: This group identified key issues for further elaboration during the week. They felt that PIC should be addressed in the context of levels (international, national, sub-national or local) and by user (providers, intermediaries and users). They recommended addressing user measures, such as disclosure of country of origin in patents, mandatory permits from provider countries and guidelines. They emphasized the importance of establishing focal points for PIC. They recommended that the Panel consider several aspects of access legislation, including the need for simple, clear legislation, scope (genetic resources and associated information), uses (scientific and commercial), regional collaboration, the balance between legislative standards for MAT and flexibility, and capacity building. The group also discussed the importance of IPR/*sui generis* regimes, the role of intermediaries, how to work with non-Parties, and mechanisms for benefit-sharing. The group suggested the Panel identify options for ABS, lessons learned and information gaps.

Review of Regulatory Procedures and Incentive Measures: This group discussed the need to distinguish between different types of genetic resources, such as materials, knowledge and derived products, as well as their different uses, to facilitate the formulation of more consistent legislation. Experts emphasized important considerations when formulating regulatory procedures and incentive measures, including the need to reconcile the objectives and mechanisms of legislation, harmonize national and multilateral processes, and balance sustainable use and conservation. Discussions also highlighted countries' experiences in identifying the problems and objectives of access legislation. Problems identified included inconsistencies in national and multilateral policies, a lack of appropriate enforcement mechanisms and a lack of coordination between different sectors. Experts also debated whether efforts to develop national access legislation should be sector-specific to avoid contradicting ongoing multilateral negotiations on access to genetic resources.

Capacity Building: This group furthered the discussion from the morning session on capacity building. One expert underlined the importance of capacity-building measures such as the Global Taxonomy Initiative, the CBD Clearinghouse Mechanism and the GEF. Another expert expressed concern about the gap between users and providers as well as on significant gaps in the areas of legal expertise, negotiations, technological developments and information sharing. There was agreement that the GEF and other funding mechanisms need to simplify their capacity-building initiatives. One expert noted that the GEF is in the process of simplifying its procedures so that more funding can be made available. Another stressed the need for greater education and awareness at the ground level, particularly in small island developing States. The group concluded by noting the need for an international legal system to address problems that arise between stakeholders.

IN THE CORRIDORS

Some experts expressed mixed opinions as to what could be accomplished this week and stressed the need to keep political issues at arm's length if the Panel is to succeed in delivering a final product that will facilitate COP-5 discussions. The division of delegates into small groups exacerbated some of these concerns, as many felt that sharing their expertise in Plenary could have been more productive.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am to consider the outcomes of Monday's four working group discussions.

WORKING GROUPS: The working group on ABS arrangements will meet at 9:00 am to finalize its work. Following the Plenary session, delegates are expected to divide into two working groups to discuss substantive issues.