



FIRST MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING 22-26 OCTOBER 2001

The first meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-Sharing opens today at the International Congress Centre Bundeshaus in Bonn, Germany. The Working Group was established by the fifth Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) to develop guidelines and other approaches for access to genetic resources and benefit-sharing (ABS), specifically with regard to: prior informed consent and mutually agreed terms; roles, responsibilities and participation of stakeholders; relevant aspects relating to *in situ* and *ex situ* conservation and sustainable use; mechanisms for benefit-sharing; and means to ensure the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities. Such discussions are also supposed to consider ongoing work of relevance under the World Intellectual Property Organization (WIPO).

Delegates are expected to convene in two sub-working groups. Sub-Working Group One will discuss: the development of draft guidelines on ABS. Sub-Working Group Two will discuss the role of intellectual property rights (IPR) in ABS arrangements; and other approaches to ABS including the development of an action plan for capacity building, with specific attention to assessment and inventory of biological resources, contract negotiation, legal drafting, and means for the protection of traditional knowledge associated with genetic resources. The Working Group's recommendations will be forwarded for consideration to CBD COP-6 (8-19 April 2002; the Hague, the Netherlands).

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, 181 countries have ratified the Convention. The three goals of the CBD are to promote the conservation of biodiversity, the sustain-

able use of its components, and the fair and equitable sharing of benefits arising from the 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.

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 Panel of Experts 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 was to develop a common understanding of basic concepts and to explore options for ABS on mutually agreed terms,

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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 Intersessional Meeting on the Operations of the Convention (ISOC) to provide input into COP-5.

ISOC: The ISOC convened in Montreal, Canada, in June 1999, where delegates, *inter alia*: conducted preparatory discussions on ABS arrangements to provide guidance to COP-5; made recommendations for the preparation, composition and agenda of the Experts' Panel on ABS; and made recommendations for future work to develop a common appreciation of the relationship between IPR and relevant provisions of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

ABS-EP1: The first meeting of the Experts' Panel on Access and Benefit-Sharing met in October 1999, in San José, Costa Rica. 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. Significant discussion revolved around issues of IPR and the use and terms of contractual ABS agreements. The Panel developed a set of recommendations, which included general conclusions and specific points on prior informed consent, mutually agreed terms, 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 *Ad Hoc* Open-ended Working Group to develop guidelines and other approaches on: prior informed consent; mutually agreed terms; 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 Experts' 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.

ABS-EP2: The second meeting of the Experts' Panel on Access and Benefit-Sharing met in March 2001, in Montreal, Canada. The Panel produced a report and conclusions on: user and provider experience in ABS processes; approaches for stakeholder involvement in ABS processes; and complementary options to address ABS within the CBD's framework, including possible elements for guidelines. The meeting's progress was generally viewed as satisfactory, although many experts acknowledged that difficult issues on IPR and prioritized elements within the guidelines had been deferred to the Working Group on ABS for actual negotiation. The Panel's report and conclusions have been forwarded as an input (UNEP/CBD/WG-ABS/1/2) into this meeting of the Working Group on ABS.

INTERSESSIONAL HIGHLIGHTS

CGRFA-EX6: The sixth extraordinary session of the Commission on Genetic Resources for Food and Agriculture met from 24 June to 1 July 2001, in Rome, Italy, to conclude the revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU), the first comprehensive, international instrument to facilitate ABS for plant genetic resources for food and agriculture (PGRFA). The session concluded the IU's negotiation, reaching agreement on a number of outstanding issues, including: coverage of the Multilateral System (MS), ABS, *ex situ* PGRFA held within the Consultative Group of International Agricultural Research Centres, and legal and institutional issues. Agreement was not reached on the definitions of PGRFA and genetic material, the patenting of genetic parts and components, the IU's relationship with other international agreements and the list of crops for inclusion in the MS. The bracketed text has been forwarded for final deliberation to the FAO Conference, scheduled for 2-13 November 2001.

WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY: The first session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, took place in Geneva, from 30 April to 3 May 2001. The Intergovernmental Committee was established by WIPO's 26th General Assembly in October 2000. The first session discussed access to genetic resources and benefit sharing; protection of traditional knowledge, innovations and creativity; and the protection of expressions of folklore, including handicrafts. The meeting's report summarizes statements made by governments and observers, which will serve as an input into the Intergovernmental Committee's second session (10-14 December 2001; Geneva, Switzerland).

GERMAN NATIONAL SESSION OF THE GLOBAL BIODIVERSITY FORUM: This session of the Global Biodiversity Forum (GBF) was held from 19-21 October 2001, in Bonn, Germany, to address issues regarding ABS within the context of German environmental and development policies and strategies. Working groups focused on: poverty reduction, food security and biodiversity; access to genetic resources and community participation; and the role of IPR in equitable benefit-sharing. The results will serve as an input into: the Working Group on Access and Benefit-sharing; the 17th GBF to be held prior to the second meeting of the Working Group on Article 8(j) (4-8 February 2002; Montreal, Canada); and the 18th GBF to be held prior to CBD COP-6 (8-19 April 2002; the Hague, the Netherlands).

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am, where delegates will hear opening remarks from: CBD COP-5 Bureau President, Noah Katana Ngala, Minister of Environment and Natural Resources of the Republic of Kenya; CBD Executive Secretary, Hamdallah Zedan; a representative of the host government; and Co-Chair of the Experts' Panel on ABS, Jose Cabrera Medaglia (Costa Rica). A report from the GBF is expected. The Plenary will also address organizational matters.