



HIGHLIGHTS OF ABS WG-1 TUESDAY, 23 OCTOBER 2001

Delegates to the first meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) under the Convention on Biological Diversity (CBD) met in two Sub-Working Groups throughout the day. Sub-Working Group I (SWG-I) continued discussions on the draft international guidelines on ABS, and Sub-Working Group II (SWG-II) reviewed a Chair's draft for an action plan for capacity building and then discussed approaches to ABS other than guidelines.

SUB-WORKING GROUP I

SWG-I Chair Birthe Ivars (Norway) suggested following the structure of document UNEP/CBD/WG-ABS/1/3 as outlined in Annex I. On the guidelines' key features, IRAN, on behalf of the G-77/CHINA, supported deletion of acceptability and noted that application by providers and users is subject to the definition of terms.

GENERAL PROVISIONS: On use of key terms, participants agreed to defer discussion. On the guidelines' scope, the G-77/CHINA suggested, *inter alia*, that all genetic resources except human genetic resources are covered. AUSTRALIA, CANADA, SWITZERLAND and the US suggested exclusion of PGRFA covered by the IU. TUNISIA suggested reference to genetic resources of plants, animals and microorganisms, as well as their parts and genes. Delegates debated whether the scope should cover both pre- and post-CBD material. Some delegates requested deletion of some or all of the elements determining the scope, while others opposed. POLAND proposed language on the purpose of use and on promotion of scientific collaboration.

On objectives, the G-77/CHINA suggested, *inter alia*, that the non-discriminatory access framework should apply to users other than the nationals of the providing country. CUBA, with BOLIVIA, BRAZIL, HONDURAS, PAKISTAN and PERU, proposed deletion of reference to non-discriminatory frameworks, and the US, supported by SWITZERLAND, suggested "transparent" frameworks. Many said that technology transfer should be promoted in the providing country. The EC and the G-77/CHINA suggested ABS strategies as part of national biodiversity strategies. SWITZERLAND, with CANADA and TOGO, called for reference to stakeholders. BOLIVIA, CUBA and TANZANIA called for promoting capacity building that is not confined to ABS. COLOMBIA proposed language on strengthening the Clearing-House Mechanism (CHM) as a cooperation mechanism. PERU proposed new objectives on: recognition of rights of indigenous and local communities; and food security, health security and cultural integrity.

On the relationship with other CBD provisions and work programmes, THAILAND, on behalf of the ASIAN COUNTRIES, suggested deleting reference to the Global Taxonomy Initiative. On the relationship with other international legal

regimes, UGANDA, on behalf of the G-77/CHINA, supported by the EC, proposed that application of guidelines be mutually supportive of relevant international instruments and the FAO's work on genetic resources, and take into account relevant work by WIPO. BRAZIL and CHINA opposed reference to the International Undertaking, noting that it covers a specific list of crop genera and does not apply to ABS guidelines.

ROLES AND RESPONSIBILITIES OF USERS AND PROVIDERS: On national focal points, CUBA, supported by many, called for deletion of language stating that the national ABS focal point should also be the CBD focal point. The EC said that focal points should be communicated to the CBD Secretariat and, supported by THAILAND, to the CHM.

On national authorities, delegates debated language on the legal power of the national authority to grant prior informed consent (PIC). The G-77/CHINA suggested requiring applicants to provide evidence of national registration in home countries. POLAND suggested adding improvement of indigenous and local communities' awareness and capacity. JAPAN suggested clarifying the relation between central government and local governments or communities. The EC and PERU called for participatory mechanisms at the national level.

On users' and providers' responsibilities, CUBA, supported by the G-77/CHINA, questioned references to documentation of terms. CANADA called for consistency with Article 8(j) and noted many countries are both users and providers. SWITZERLAND, supported by the EC and MEXICO, said that users' responsibilities should be more practical and specific. PAKISTAN proposed reference to capacity-building requirements. EL SALVADOR called for clarification in cases where the origin of the genetic resource is not the provider. The EC said that use of material should be in accordance with the terms under which it was acquired.

PARTICIPATION OF STAKEHOLDERS: CANADA proposed reference to a "country-specific" rather than "case-by-case" basis. BOLIVIA and PERU said representatives of those directly involved, including indigenous communities, should form the consultative committee.

PRIOR INFORMED CONSENT: BELGIUM, on behalf of the EU, supported by AUSTRALIA and EL SALVADOR, said PIC should be subject to national legislation. VENEZUELA proposed deleting references to restrictions based on objective criteria and to different levels of government, with AUSTRALIA opposing the latter. The US said that restrictions on access should be transparent and noted that central governments are not necessarily managers of genetic resources. POLAND proposed including minimum costs of handling as a basic principle and noted that *ex situ* collections should not be subject to national sovereignty. BOLIVIA and BRAZIL noted that no distinction is needed between *in situ* and *ex situ* collections with regard to the competent authority granting PIC. MEXICO proposed adding elements of transparency and

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non-discrimination and supported a minimum of required written information. BURKINA FASO and TUNISIA rejected language on possible future uses.

The G-77/CHINA proposed, *inter alia*, language stating that any intended change of use, including transfer to third parties, shall require a new application. CANADA highlighted the importance of identifying PIC elements. WWF noted that PIC should be strongly related to local communities and the INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) said that all community members should participate in the decision. Many textual suggestions were also made.

MUTUALLY AGREED TERMS: JAPAN stipulated timeframes of benefit-sharing on a case-by-case basis. The G-77/CHINA preferred deleting language on negotiation of reasonable timeframes and proposed, *inter alia*, clarification of "contributions to local economies" as a non-monetary benefit. The IIFB called for empowering local communities to revitalize traditional knowledge. The EU suggested specifying benefits in an annex. CAMEROON proposed patents as a benefit-sharing mechanism. CANADA highlighted multiple implications of rights, and concessional and preferential terms.

OTHER PROVISIONS: Delegates noted that some prescriptive statements contained in the section are not in accordance with the guidelines' voluntary nature. SWITZERLAND called for a mechanism to guarantee monitoring of implementation, stressing a certification system. CANADA said implementation mechanisms should focus on incentives, and that compliance, sanctions, remedies and dispute resolution should refer to contracts only.

SUB-WORKING GROUP II

ACTION PLAN FOR CAPACITY BUILDING: SWG-II delegates addressed a draft action plan for capacity building, which includes a preamble and an annex with sections on: the objective; key areas; processes; and means of implementation. After some discussion a section on coordination was added.

Preamble: Discussion centered around convening a workshop to address capacity building for ABS. Regarding timing, most delegates wanted the meeting prior to COP-6, with many suggesting it be held with the Working Group on Article 8(j) in February 2002. Some delegates requested further clarification of the meeting's mandate and composition. Several delegates stressed that it be open-ended, that it include indigenous experts and the GEF, and that government experts be familiar with their countries' needs.

Objective: The EU proposed adding reference to the guidelines' appropriate implementation. COLOMBIA expressed concern given their voluntary nature, and HAITI proposed moving the reference to the preamble.

Key Areas: MEXICO, with ANTIGUA AND BARBUDA and COLOMBIA, recommended that language on institution building reflect institutional strengthening over creation. Regarding assessment, inventory and monitoring of biological resources, delegates proposed references to Decisions IV/1(a), V/9 and the Global Taxonomy Initiative. CANADA noted the utility of common taxonomic standards and nomenclature across countries. THAILAND proposed reference to inventories of traditional knowledge.

On valuation of genetic resources and market information, UNCTAD proposed reference to production and marketing strategies. Regarding inventories of existing legislative measures and development of legislation, COLOMBIA proposed reference to case studies and pilot projects. Regarding information systems and management, the CZECH REPUBLIC proposed reference to the CHM. Regarding public education and awareness, SAINT LUCIA proposed deleting reference to the private sector. Regarding means to protect traditional knowledge, several delegates highlighted the need for coordination with the Working Group on Article 8(j).

ANTIGUA AND BARBUDA and MADAGASCAR highlighted the need to address monitoring and evaluation mechanisms, as well as indicators. IUCN proposed the use of indicators at all stages of the ABS process. The IIFB reiterated its request for reference to capacity building and recognition of indigenous peoples' rights.

Processes: Regarding identification of capacity needs, COLOMBIA noted that needs vary among different levels, as well as between users and providers. GERMANY suggested addition of awareness raising, and CANADA and COLOMBIA requested reference to the GEF's guidelines for national capacity self-assessment.

Regarding integration of ABS capacity building into national biodiversity strategies, the EU suggested adding other related initiatives and strategies. Regarding identification of existing initiatives, BRAZIL and COLOMBIA prioritized the national level, and ALGERIA suggested reference to the private sector. An INDIGENOUS REPRESENTATIVE requested reference to "indigenous peoples" under the element's coverage. HAITI proposed a new element on establishing indicators for monitoring capacity-building implementation.

Means of Implementation: COLOMBIA proposed reference to scientific and technical cooperation with respect to the CHM, and HAITI suggested including dissemination through CD-ROMs and hardcopies. UNCTAD proposed identification of best practices through workshops. Regarding model agreements and codes of conduct, delegates agreed to terminology on sectors, uses and users. Regarding stakeholder involvement, GERMANY proposed reference to the work programme on Article 8(j). An INDIGENOUS REPRESENTATIVE proposed that participation be "full and effective." On a roster of experts, CANADA called for clarity on its formation and an INDIGENOUS REPRESENTATIVE highlighted the need to include expertise on traditional knowledge.

COSTA RICA and the EU proposed an element referring to national focal points and competent authorities. HAITI suggested reference to south-south cooperation.

Coordination: CANADA suggested that Parties be encouraged to provide voluntary submissions through the CHM or in their national reports. The EU supported both voluntary submissions and national reports. BRAZIL and COLOMBIA resisted including such language on national reports, cautioning against revisiting COP-5's debates on their content. UNCTAD proposed reference to submissions by international organizations. Delegates discussed use of indicators and recognized the need for further work given their complexity.

OTHER APPROACHES: SWG-II Chair José Medaglia Cabrera (Costa Rica) introduced the relevant section of document UNEP/CBD/WG-ABS/1/3 on approaches to ABS other than guidelines. The EU supported the document's view that guidelines are part of a package including codes of conduct, model agreements, indicators, capacity building, information exchange, along with national ABS strategies. COLOMBIA, with ALGERIA, BRAZIL and HAITI, stated that such approaches are more relevant to SWG-I, and that SWG-II should simply acknowledge them.

IN THE CORRIDORS

As discussions over the guidelines' voluntary nature arose in both groups, some participants alleged that overt political and negotiating concerns were taking precedence over the need to establish an exemplary and illustrative tool for countries lacking ABS frameworks. Some highlighted that such issues were often being raised by those with national frameworks already in place, which highlights the need for clear distinctions on the voluntary nature, proposed use and target audience of the guidelines. In this regard, others also noted that the guidelines should not have an undue orientation for possible commitments on provider countries in comparison to guidance for users. A few participants suggested that such concerns contributed to SWG-II's reluctance to address codes of conduct, model agreements and indicators in any depth.

THINGS TO LOOK FOR

SUB-WORKING GROUP I: SWG-I will meet at 10:00 am in the Plenary hall to review a Chair's draft on the draft guidelines.

SUB-WORKING GROUP II: SWG-II will meet at 10:00 am in the Wasserwerk Building to discuss the role of IPR in implementing ABS arrangements. Revised draft recommendations on capacity building and other approaches are expected.