

## FOURTH MEETINGS OF THE WORKING GROUPS ON ARTICLE 8(J) AND ON ACCESS AND BENEFIT-SHARING OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 23 JANUARY – 3 FEBRUARY 2006

The fourth meeting of the *Ad hoc* Open-ended Intersessional Working Group on Article 8(j) and related provisions of the Convention on Biological Diversity (CBD) opens today in Granada, Spain, and will continue until 27 January 2006. It will be followed by the fourth meeting of the *Ad hoc* Open-ended Working Group on Access and Benefit-sharing (ABS), to be held from 30 January to 3 February 2006.

The Working Group on Article 8(j) will consider several issues including: progress in the implementation of the Convention's programme of work on Article 8(j); the composite report on status and trends regarding traditional knowledge; the international regime on ABS; participatory mechanisms for indigenous and local communities; an ethical code of conduct for the respect of the cultural and intellectual heritage of indigenous and local communities; and Article 8(j)-related indicators of progress towards the CBD target to significantly reduce the rate of biodiversity loss by 2010. It will also continue developing elements for *sui generis* systems for the protection of traditional knowledge, and considering potential socioeconomic impacts of genetic use restriction technologies (GURTs).

The Working Group on ABS will continue negotiations on an international regime on ABS. It is also expected to further consider: other approaches to complement the Bonn Guidelines on ABS, including an international certificate of origin/source/legal provenance; measures to support compliance with prior informed consent of the party providing genetic resources and mutually agreed terms on which access was granted; use of terms; and ABS indicators of progress in the implementation of the Convention's Strategic Plan.

The recommendations of the Working Groups will be submitted to the eighth meeting of the Conference of the Parties (COP-8) to the CBD, to be held from 20-31 March 2006, in Curitiba, Brazil.

### A BRIEF HISTORY OF THE CBD, ARTICLE 8(J), AND ACCESS AND BENEFIT-SHARING

The CBD, negotiated under the auspices of the UN Environment Programme (UNEP), was opened for signature on 5 June 1992, and entered into force on 29 December 1993. There are currently 188 Parties to the Convention, which aims to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.

Article 8(j) of the CBD states that its Parties will, subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity; promote their wider application with the approval and involvement of knowledge-holders; and encourage the equitable sharing of benefits arising from the utilization of such knowledge. Related provisions address the customary use of biological resources in accordance with traditional cultural practice (Article 10(c)), information exchange (Article 17.2) and cooperation in the development and use of technologies (Article 18.4).

Access to genetic resources, including facilitating access, prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing are addressed by CBD Article 15, with related articles referring to technology access and transfer (Article 16.3), and handling and distribution of benefits of biotechnology (Article 19).

The Convention's work on Article 8(j) commenced with COP-3 (November 1996, Buenos Aires, Argentina) calling for an intersessional workshop to advance work on implementation of Article 8(j). The workshop was held in November 1997 in Madrid, Spain, and suggested terms of reference for an open-ended working group on Article 8(j), which were later adopted by COP-4 (May 1998, Bratislava, Slovakia).

COP-4 also addressed ABS, deciding to establish a regionally-balanced expert panel (EP) on ABS, whose composition and agenda were discussed at an intersessional meeting on the Operations of the Convention (June 1999, Montreal, Canada). The first meeting of the EP on ABS (October 1999, San José, Costa Rica) developed a set of recommendations including general conclusions and specific points on PIC, MAT, information needs and capacity building.

**ARTICLE 8(J) WG-1:** The first meeting of the Working Group on Article 8(j) (March 2000, Seville, Spain) considered elements for a programme of work on Article 8(j), and also addressed forms of protection for traditional knowledge.

**COP-5:** At its fifth meeting (May 2000, Nairobi, Kenya), the COP established the Working Group on ABS to develop guidelines and other approaches on: PIC; MAT; participation of stakeholders; benefit-sharing mechanisms; and the preservation of traditional knowledge. It also extended the mandate of the Working Group on Article 8(j) to review progress in implementation and explore ways for increased participation. A programme of work on Article 8(j) was adopted, comprising elements and tasks on: participatory mechanisms; status and trends of traditional knowledge; traditional cultural practices for conservation and sustainable use; benefit-sharing; exchange and dissemination of information; and monitoring and legal elements.

**ABS EP-2:** The second meeting of the EP on ABS (March 2001, Montreal, Canada) addressed user and provider experience in ABS processes; approaches for stakeholder involvement; and complementary options to address ABS within the CBD framework.

**ABS WG-1:** At its first meeting (October 2001, Bonn, Germany), the Working Group on ABS developed the draft Bonn guidelines on ABS and also: identified elements for a capacity-building action plan; called for an open-ended workshop on capacity building for ABS; and considered the role of intellectual property rights (IPRs) in the implementation of ABS arrangements.

**ARTICLE 8(J) WG-2:** At its second meeting (February 2002, Montreal, Canada), the Working Group on Article 8(j) considered: an outline for the composite report on the status and trends of traditional knowledge; recommendations for the conduct of cultural, environmental and social impact assessments; participatory mechanisms; and the effectiveness of existing instruments impacting the protection of traditional knowledge, particularly IPRs.

**COP-6:** At its sixth meeting (April 2002, The Hague, the Netherlands), the COP adopted the Bonn Guidelines on ABS and also considered: other approaches, including capacity building; the role of IPRs in the implementation of ABS arrangements; and the relationship with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO). The COP identified actions to be taken with respect to the integration of Article 8(j) into CBD thematic work programmes, and adopted the outline of the composite report.

**WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT:** In the Johannesburg Plan of Implementation, the UN World Summit on Sustainable Development (September 2002, Johannesburg, South Africa) called for negotiation, within the CBD framework, of an international regime for benefit-sharing.

**MYPOW:** Following the call of the 2002 World Summit, the Open-ended Intersessional Meeting on the Multi-Year Programme of Work for the CBD COP up to 2010 (March 2003, Montreal, Canada) recommended that the ABS Working Group consider the process, nature, scope, elements and modalities of an international regime on ABS.

**ABS WG-2:** At its second meeting (December 2003, Montreal, Canada), the ABS Working Group debated the process, nature, scope, elements and modalities of an international regime on ABS, and also considered measures to ensure compliance with PIC and MAT, and capacity building.

**ARTICLE 8(J) WG-3:** At its third meeting (December 2003, Montreal, Canada), the Working Group considered: recommendations from the UN Permanent Forum on Indigenous Issues (UNPFII); GURTs; elements for a *sui generis* system for the protection of traditional knowledge; participatory mechanisms; the Akwé: Kon guidelines for the conduct of cultural, environmental and social impact assessments; and the composite report.

**COP-7:** At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the COP adopted the Action Plan on capacity building for ABS, mandated the ABS Working Group to negotiate an international regime on ABS and agreed on the terms of reference for such a negotiation. The COP adopted the Akwé: Kon Guidelines and a series of decisions regarding participatory mechanisms.

**ABS WG-3:** At its third meeting (February 2005, Bangkok, Thailand), the ABS Working Group initiated negotiations on an international regime on ABS. It also addressed: additional approaches to complement the Bonn Guidelines on ABS, such as an international certificate of origin/source/legal provenance; measures to ensure compliance with PIC and MAT; and options for indicators for ABS.

## INTERSESSIONAL HIGHLIGHTS

**UNPFII-4:** The fourth session of the UNPFII (16-27 May 2005, New York) focused on the Millennium Development Goals (MDGs), and in particular Goal 1 (eradicating poverty) and Goal 2 (primary education for all). The Forum recommended a human rights-based approach to development, the full and effective participation of indigenous peoples in MDG-related programmes, and convening a technical workshop on indigenous traditional knowledge.

**WORKSHOP ON THE AKWE: KON GUIDELINES:** At this workshop (30 May-2 June 2005, Tokyo, Japan), conducted by the CBD in partnership with other UN organizations, participants adopted a declaration on the role of sacred natural sites and cultural landscapes in biodiversity conservation.

**WIPO MEETINGS:** The eighth session of the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) (6-10 June 2005, Geneva, Switzerland) reached no agreement on an international mechanism to protect traditional knowledge and folklore. The WIPO General Assembly (26 September-5 October 2005, Geneva, Switzerland) extended the IGC mandate and established a voluntary fund to support indigenous participation in the IGC work.

**UN WORKING GROUP ON INDIGENOUS POPULATIONS:** The 23rd session of the UN Working Group on Indigenous Populations (18-22 July 2005, Geneva, Switzerland) focused on "Indigenous peoples and the international and domestic protection of traditional knowledge." The session considered a legal paper offering guidelines on the implementation of the principle of free, prior and informed consent, and reviewed draft principles and guidelines for the protection of the heritage of indigenous peoples.

**WORKING GROUP ON REVIEW OF IMPLEMENTATION:** The *Ad Hoc* Open-ended Working Group on Review of Implementation of the CBD (5-9 September 2005, Montreal, Canada) made recommendations on the implementation of the Convention and its Strategic Plan, including the review of processes, financial mechanism and work programmes.

**ABS EXPERT WORKSHOP:** Aiming to contribute to the negotiations on an international ABS regime, the International Expert Workshop on ABS (20-23 September 2005, Cape Town, South Africa) identified issues requiring further clarification, including the regime's objective, scope, structure and elements.

**TECHNICAL WORKSHOP ON INDIGENOUS TRADITIONAL KNOWLEDGE:** Convened following a recommendation of the UNPFII, this workshop (21-23 September 2005, Panama City, Panama) identified indigenous perspectives and experiences, gained a better understanding of the various UN and international programmes relating to indigenous traditional knowledge, and adopted recommendations addressed to the UNPFII, intergovernmental organizations, governments, indigenous peoples and academia.

**SBSTTA-11:** At its eleventh meeting (28 November-2 December 2005, Montreal, Canada), the CBD Subsidiary Body on Scientific, Technical and Technological Advice addressed, among other issues, the goal and targets regarding ABS of the provisional framework for future evaluation of progress of the Strategic Plan, adopted by COP-7.

**TRIPS COUNCIL AND WTO MINISTERIAL:** At recent meetings of the TRIPS Council (8-9 March, 14-15 June and 25-28 October 2005, Geneva, Switzerland), members disagreed on the relationship between TRIPS and the CBD, and the need for disclosure of the source of biological materials and related traditional knowledge in patent applications. At the WTO Ministerial meeting (13-18 December 2005, Hong Kong), the final declaration states that the WTO Director-General is requested to intensify the consultative process on the relationship between TRIPS and the CBD, and the General Council shall take any appropriate action no later than 31 July 2006.