

## ABS-4 HIGHLIGHTS: MONDAY, 30 JANUARY 2006

The fourth meeting of the *Ad hoc* Open-ended Working Group (WG) on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) opened on Monday, 30 January, in Granada, Spain. In a morning plenary, delegates heard opening statements and reports, and addressed organizational matters. A Committee of the Whole was established, which met in the afternoon to initiate negotiations on an international regime on ABS.

### OPENING PLENARY

Suboh Mohd Yassin (Malaysia), on behalf of the President of the CBD Conference of the Parties (COP), opened the meeting, calling for significant progress in the negotiations on an international ABS regime before COP-8.

Ahmed Djoghlah, CBD Executive Secretary, noted that the limited progress in operationalizing the benefit-sharing pillar of the Convention, is generating legal uncertainty and impacts on long-term investment. He hoped that the meeting will be a breakthrough in forging a partnership with present and future providers and users of nature, to contribute to poverty alleviation, peace and security.

Antonio Serrano, Spain's Secretary General for Lands and Biodiversity, said a binding international regime on ABS would contribute to biodiversity conservation, poverty alleviation and biotechnology development. Noting that the Bonn Guidelines and the gap analysis tabled for the meeting represent a positive first step, he underscored the need to identify the scope and instruments of the future regime.

**ORGANIZATIONAL MATTERS:** Delegates elected Margarita Clemente (Spain), as WG Chair; Antonio Matamoros (Ecuador) as Rapporteur; and confirmed the COP Bureau as WG Bureau.

Delegates then adopted the meeting's agenda (UNEP/CBD/WG-ABS/4/1) with an amendment to discuss indigenous and local community participation in the ABS regime negotiations. Regarding organization of work (UNEP/CBD/WG-ABS/4/1/Add.1), they agreed that a Committee of the Whole, to be chaired by WG Chair Clemente, will negotiate an international regime on ABS, with the understanding that contact or informal groups may be established as appropriate.

Delegates also established a Friends of the Chair group to be chaired by Norway, to address the issue of indigenous participation. WG Chair Clemente said the Friends of the Chair group will be open-ended, and include seven indigenous representatives, along with governments.

The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) recommended that the Article 8(j) WG elaborate the elements of the regime relevant to the protection of traditional knowledge, and requested creation of an advisory group to review progress in the negotiations and provide expert advice to the ABS and Article 8(j) WGs.

**STATEMENTS:** Ethiopia, on behalf of AFRICA, stressed that the ABS regime must be legally binding, and suggested using the draft protocol text submitted by Ethiopia and endorsed by Africa (UNEP/CBD/WG-ABS/4/INF/3), as a basis for negotiations. Austria, on behalf of the European Community and its 25 Member States, and Bulgaria, Romania, Croatia, Bosnia and Herzegovina, and Serbia and Montenegro (EU), suggested focusing on: narrowing down the list of options developed at ABS-3; achieving mutual supportiveness between the regime and existing international agreements and processes; and addressing the participation of indigenous and local communities.

Kiribati, on behalf of ASIA AND THE PACIFIC, stressed the need for: a coordination mechanism between the ABS and Article 8(j) WGs; a mandatory regime to avoid biopiracy; and a COP-8 recommendation to the Global Environment Facility to support ABS activities. Canada, on behalf of JUSCANZ, expressed their will to work towards a positive outcome, based on enhanced understanding and respect for one another's vision.

Venezuela, on behalf of LATIN AMERICA AND THE CARIBBEAN, reiterated the need to move from recommendations to commitments, and recognized that the regime requires binding elements and should ensure the protection of traditional knowledge. India, on behalf of the LIKE-MINDED MEGADIVERSE COUNTRIES, prioritized clear definition of the elements of an international regime, suggested that the regime should reinforce the rights of indigenous communities, and emphasized the role of national legislation in regulating access to genetic resources. The IIFB recommended that the international regime reflect international human rights norms, include measures for the repatriation of genetic resources and associated traditional knowledge from *ex situ* collections to traditional knowledge holders, and address transboundary genetic resources. The INTERNATIONAL CHAMBER OF COMMERCE highlighted the interest of the private sector in the success of the negotiations.

**REPORT OF THE ARTICLE 8(J) WORKING GROUP:** SPAIN reported on the outcomes of the fourth meeting of the Article 8(j) WG. Highlighting the WG's role in the development of an international regime on ABS as stated in COP Decision

VII/19 (ABS), the EU, supported by NORWAY, called for expanding the mandate of the Article 8(j) Advisory Group to contribute to ABS negotiations.

**REPORTS ON THE BONN GUIDELINES: JAPAN** highlighted the completion of national guidelines on user measures to support compliance with prior informed consent and mutually agreed terms. CHINA reported on the integration of the Bonn Guidelines in existing legislation and progress in drafting a national ABS law. The CZECH REPUBLIC underlined a national survey of ABS implementation and supporting activities for ABS in the areas of agriculture, forestry and botanical gardens. AUSTRALIA emphasized the importance of non-monetary benefit-sharing, offering to share its experiences in the development of a software-based tool for registering access to genetic resources.

THAILAND, MALAWI and ZAMBIA reported on national activities for the implementation of the Bonn Guidelines, and the EU on the establishment of an online portal on ABS. PAKISTAN highlighted progress in identifying mobile indigenous communities as potential beneficiaries of an ABS regime. LEBANON noted its draft national law on ABS, which incorporates elements of the Bonn Guidelines. SWITZERLAND and CANADA emphasized the importance of gathering and evaluating experience in implementing the Bonn Guidelines.

The CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH highlighted evidence that uncertainty about implementation of the CBD and the Bonn Guidelines for different categories of plant genetic resources impacts on public sector research, and welcomed the entry into force of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

#### **COMMITTEE OF THE WHOLE**

**INTERNATIONAL REGIME ON ABS: General statements:** Chair Clemente opened discussions on the status of negotiations on an international regime (UNEP/CBD/WG-ABS/4/2, 3, and INF/3 and Add.1).

Cautioning that chances to realize benefits are rapidly diminishing, PERU urged a focused and practical debate on a legal mechanism to operationalize benefit-sharing. MEXICO said the WG should focus on identifying the minimum binding instruments needed to complement the Bonn Guidelines, such as a certificate of origin and measures in user countries. SWITZERLAND proposed a pragmatic approach identifying the needs that must be met at the international level following a gap analysis, and highlighted its proposal to the World Intellectual Property Organization on the determination of origin of genetic resources and traditional knowledge, and the need to work on a certificate of legal provenance.

CHINA called for an open discussion allowing for further gap analysis, defining the scope and priorities for the WG, and providing technical groundwork for negotiations. The REPUBLIC OF KOREA said the regime should be practical and transparent, facilitate cost-effective access, and be consistent with existing international instruments. AUSTRALIA prioritized refining the scope of the regime and, with the EU, narrowing down the options while seeking consistency with other international instruments and institutions. The EU also said the regime could be composed of one or more free-standing or already existing instruments and institutions.

The BAHAMAS and GRENADA underscored the need to include capacity building in the regime. COSTA RICA noted efforts to apply ABS rules at the national level, highlighting the need for an international regime. MONGOLIA cautioned against creating a cumbersome regime that may impede ABS.

Noting that a regime focusing only on facilitating access will generate mistrust, COLOMBIA said the regime should address the inequitable situation of indigenous communities and stop biopiracy.

GRENADA, INDONESIA and SOUTH AFRICA supported a binding instrument, with EGYPT calling for a "Granada protocol," while the EU and COSTA RICA preferred an instrument combining binding and non-binding elements.

The ITPGRFA stressed that optimum utilization of genetic resources is crucial for halving the proportion of people who suffer from hunger and addressing environmental challenges.

**Elements of the regime:** GRENADA, COLOMBIA, BRAZIL and MALAYSIA supported using the African submission as a basis of negotiations, while PERU and AUSTRALIA opposed, concerned by the proposal's reference to a protocol and the lack of agreement on the legal nature of the regime. THAILAND and SWITZERLAND considered the African proposal premature, and the EU preferred working on the documents prepared by the Secretariat.

Chair Clemente then called for comments on the elements to be included in an international regime on the basis of the Annex I of the WG on ABS Recommendation 3/1 (UNEP/CBD/WG-ABS/4/2). COLOMBIA, UGANDA and MALAYSIA cautioned that commenting on all elements will lead to repetitive discussions and result in an overloaded document impeding productive negotiations. MEXICO suggested discussing whether elements should be binding or non-binding. PERU proposed focusing discussions on elements related to access in light of new technologies for the appropriation of genetic resources, a certificate of origin/source/legal provenance, and minimum standards for compliance in user countries.

The EU stressed equal attention to access and benefit-sharing, calling for clear, transparent and cost-effective procedures to facilitate access. On benefit-sharing, she proposed measures that take into account monetary and non-monetary benefits, and differentiate commercial from non-commercial uses of genetic resources. MALAYSIA said that facilitated access is subject to the overriding principles of the CBD, including national sovereignty over genetic resources, access for environmentally sound uses, and uses that do not run counter to the CBD's objectives. NORWAY stressed the importance of access procedures that increase legal certainty on biodiversity uses, defining triggers for benefit-sharing, capacity building, and technology transfer. Discussions will resume on Tuesday.

#### **IN THE CORRIDORS**

At the outset of the ABS Working Group meeting, many a delegate seemed eager to achieve concrete results in the lead-up to COP-8 in March. Hurdles were encountered early in the day, however, when delegates spent much time choosing the text to be used as basis for their negotiations. Taken by surprise by the speedy move of the African group tabling a draft protocol text, some were quick to insist on working through the long list of elements in the text originating from ABS-3 instead, thereby opting for flexible rather than fast-track negotiations. Some participants were heard wondering whether an accord between some major negotiating groups may help get the ball rolling.

Many were content by the decision to entrust the controversial issue of indigenous participation to a Friends of the Chair group as a conciliatory move allowing for its serious consideration. Meanwhile, one puzzled Bureau member was seen searching for other delegates from his region, questioning whether insufficient funds prevented almost an entire regional group from participating in this important debate.