

FIFTH MEETINGS OF THE WORKING GROUPS ON ACCESS AND BENEFIT-SHARING AND ON ARTICLE 8(J) OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 8-19 OCTOBER 2007

The fifth meeting of the *Ad hoc* Open-ended Intersessional Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) opens today in Montreal, Canada, and will continue until 12 October 2007. It will be followed by the fifth meeting of the *Ad hoc* Open-ended Working Group on Article 8(j) and related provisions, to be held from 15-19 October 2007 at the same location.

The Working Group on ABS will negotiate elements of an international regime on access and benefit-sharing (ABS) including: access to genetic resources; fair and equitable sharing of benefits arising out of their use; measures to support compliance with prior informed consent (PIC) and mutually agreed terms (MAT); an internationally recognized certificate of origin/source/legal provenance of genetic resources; capacity building; and indicators for ABS. Negotiations on the international ABS regime will continue at the Working Group's sixth session to be held from 21-25 January 2008, in Geneva, Switzerland.

The Working Group on Article 8(j) will consider, among other items: an action plan for the retention of traditional knowledge; traditional knowledge in the context of an international ABS regime; mechanisms to promote the participation of indigenous peoples; the development of *sui generis* systems for the protection of traditional knowledge, innovations and practices; and elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities. The Working Group's recommendations will be submitted to the ninth meeting of the Conference of the Parties (COP 9) to the CBD, to be held from 19-30 May 2008, in Bonn, Germany.

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 190 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.

Access to genetic resources, including facilitating access, PIC and 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 ABS was initiated at COP 4 (May 1998, Bratislava, Slovakia) when parties decided 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 and MAT, information needs and capacity building. The second meeting (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. COP 5 (May 2000, Nairobi, Kenya) established the Working Group on ABS to develop guidelines and other approaches on: PIC and MAT; participation of stakeholders; benefit-sharing mechanisms; and the preservation of traditional knowledge.

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).

The Convention's work under 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. 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 extended the Working Group's mandate to review progress in implementation; explored ways for increasing participation; and adopted a programme of work on Article 8(j), 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 WG 1: At its first meeting (October 2001, Bonn, Germany), the Working Group on ABS started developing the Bonn Guidelines on ABS and also: identified elements for a capacity-building action plan; 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 and draft guidelines 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); potential socioeconomic impacts of genetic use restriction technologies (GURTs); elements for *sui generis* systems 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 for indigenous and local communities.

ABS WG 3: At its third meeting (February 2005, Bangkok, Thailand), the Working Group initiated negotiations on an international regime on ABS. It also addressed: additional approaches to complement the Bonn Guidelines, such as an

international certificate of origin/source/legal provenance; measures to ensure compliance with PIC and MAT; and options for indicators for ABS.

ARTICLE 8(J) WG 4: At its fourth meeting (January 2006, Granada, Spain), the Working Group considered, *inter alia*: collaboration with the ABS Working Group; participatory mechanisms; elements for an ethical code of conduct for the respect of the cultural and intellectual heritage of indigenous and local communities; GURTs; and the composite report.

ABS WG 4: At its fourth meeting (February 2006, Granada, Spain), the Working Group considered: a draft text for the negotiation of the international ABS regime; additional approaches to complement the Bonn Guidelines, including an international certificate of origin/source/legal provenance; and measures to support compliance with PIC and MAT.

COP 8: At its eighth meeting (March 2006, Curitiba, Brazil), the COP decided to transmit the ABS WG 4 outcome to ABS WG 5 as well as the outcomes of an *Ad hoc* Technical Expert Group on a certificate of origin/source/legal provenance for the further elaboration of an international ABS regime. The COP requested the Article 8(j) Working Group to contribute to the mandate of the ABS Working Group and adopted a number of decisions, including on participatory mechanisms and *sui generis* systems for the protection of traditional knowledge.

INTERSESSIONAL HIGHLIGHTS:

WIPO MEETINGS: At recent meetings of the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (24-28 April 2006; 30 November - 8 December 2006; and 3-12 July, 2007, Geneva, Switzerland), members considered an international mechanism for the protection of traditional knowledge and folklore and the need for international regulation on genetic resources and traditional knowledge.

TRIPS COUNCIL: At recent meetings of the TRIPS Council (14-15 June 2006; 25-26 October 2006; and 5 June 2007, Geneva, Switzerland), members considered submissions regarding the relationship between TRIPS and the CBD, including disclosure of the source of biological materials and evidence of PIC and MAT in patent applications.

CBD EXPERT GROUP ON THE CERTIFICATE OF ORIGIN: The Expert Group (22-25 January 2007, Lima, Peru) discussed the feasibility and potential costs and benefits of different options for a certificate of origin/source/legal provenance.

UNPFII 6: At the sixth session of the UN Permanent Forum on Indigenous Issues (14-25 May 2007, New York) members urged UNPFII to prepare: a legal analysis on states, peoples and sovereignty and their relationship, scope and application in an international ABS regime; and a report on the social, cultural and economic impacts of commercialization of genetic resources and indigenous knowledge on indigenous peoples.

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: On 13 September 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) with 143 member states voting in favor, eleven abstaining, and Australia, Canada, New Zealand and the US voting against the Declaration.

UNITED NATIONS INTER-AGENCY SUPPORT GROUP ON INDIGENOUS ISSUES: Aiming to support indigenous and local community participation in the working groups on ABS and Article 8(j), this meeting (19-20 September 2007) addressed, among other items, implications of UNDRIP for the negotiation of an international ABS regime.