

SIXTH MEETING OF THE WORKING GROUP ON ACCESS AND BENEFIT-SHARING OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 21-25 JANUARY 2008

The sixth meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) will be held from 21-25 January 2008 at the Palais des Nations in Geneva, Switzerland. In a continuation of the fifth meeting of the Working Group, which took place in October 2007, the Working Group will proceed with the elaboration and negotiation of an international regime on ABS, under the co-chairmanship of Fernando Casas (Colombia) and Timothy Hodges (Canada).

Discussions are expected to focus on issues related to: compliance, including measures to support compliance with prior informed consent (PIC) and mutually agreed terms (MAT), an internationally recognized certificate of origin/source/legal provenance, and monitoring, enforcement and dispute settlement; traditional knowledge and genetic resources; capacity building; and the nature, scope and objectives of the international regime.

The results of the deliberations of the Working Group will be submitted for consideration by the Conference of the Parties (COP) to the CBD at its ninth meeting, to be held from 19-30 May 2008, in Bonn, Germany.

A BRIEF HISTORY OF THE CBD AND ABS

The Convention on Biological Diversity, negotiated under the auspices of the UN Environment Programme, 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, MAT and benefit-sharing are addressed by CBD Article 15, with related articles referring to access to and transfer of technology (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 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 expert panel 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. COP 5 (May 2000, Nairobi, Kenya) established the Working Group on ABS to develop guidelines and other approaches on: PIC; MAT; roles, responsibilities and participation of stakeholders; benefit-sharing mechanisms; and the preservation of traditional knowledge. The second meeting of the expert panel 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, including possible elements for guidelines.

ABS 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.

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).

WSSD: In the Johannesburg Plan of Implementation, the UN World Summit on Sustainable Development (WSSD) (September 2002, Johannesburg, South Africa) called for negotiation, within the CBD framework, of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. The WSSD call was reaffirmed at the 57th session of the UN

General Assembly (December 2002, New York) and the 2005 UN World Summit (September 2005, New York), as well as at the subsequent sessions of the UN General Assembly.

MYPOW: Following the WSSD call, 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 2: At its second meeting (December 2003, Montreal, Canada), the ABS Working Group debated the process, nature, scope, elements and modalities of an international ABS regime, and also considered measures to ensure compliance with PIC and MAT, and capacity building. It also adopted recommendations on experience with the Bonn Guidelines and other approaches for implementing the CBD provisions on ABS.

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 elaborate and negotiate an international ABS regime and set out the terms of reference for the negotiations.

ABS 3: At its third meeting (February 2005, Bangkok, Thailand), the ABS Working Group produced a document with several options for the design of 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.

ABS 4: At its fourth meeting (January-February 2006, Granada, Spain), the ABS Working Group continued talks on an international ABS regime and agreed on a recommendation and a draft text to serve as the basis for future negotiations. The Working Group also considered 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), following a lengthy controversy over the status of the ABS 4 outcome, the COP decided to transmit it to ABS 5, along with the outcomes of a Group of Technical Experts on a certificate of origin/source/legal provenance, for the further elaboration of an international ABS regime. The COP also requested the Working Group on Article 8(j) to contribute to the mandate of the ABS Working Group on issues relevant to traditional knowledge.

EXPERT GROUP ON THE CERTIFICATE: The Group of Technical Experts on an internationally recognized certificate of origin/source/legal provenance (January 2007, Lima, Peru) discussed the feasibility, implementation challenges and potential costs and benefits of different options for a certificate of origin/source/legal provenance.

ABS 5: At its fifth meeting (October 2007, Montreal, Canada), the ABS Working Group considered substantive elements of an international regime on ABS, including: access to genetic resources; fair and equitable sharing of benefits; compliance with PIC and MAT; an internationally recognized certificate of origin/source/legal provenance; traditional knowledge and genetic resources in the context of ABS; indicators; and capacity building. Delegates also discussed

two informal documents tabled by the Co-Chairs and debated whether they should be appended to the report of the meeting: the Co-Chairs' notes on proposals made at the meeting; and their reflections on progress made. The report of the meeting states that the Co-Chairs' notes on proposals made at the meeting and their reflections on progress made were the sole responsibility and under the sole authority of the Co-Chairs and would be circulated to parties as information documents (UNEP/CBD/WG-ABS/6/INF/1 and 2).

INTERSESSIONAL HIGHLIGHTS

ARTICLE 8(J) WG 5: At its fifth meeting (15-19 October 2007, Montreal, Canada), the CBD Working Group on Article 8(j) adopted a series of recommendations to be forwarded to CBD COP 9 on: the UN Permanent Forum on Indigenous Issues; indicators for traditional knowledge; the progress report on implementation of the Article 8(j) work programme; the composite report on the status and trends of traditional knowledge; the traditional knowledge action plan; elements for the development of *sui generis* systems for traditional knowledge protection; and an ethical code of conduct. Delegates did not reach agreement on a recommendation on inputs by the Working Group to the negotiation of an international regime on ABS, due to divergence of views with regard to both procedural and substantive issues, including misappropriation of genetic resources and disclosure of origin.

TRIPS COUNCIL: At the TRIPS Council meeting held from 23-24 October 2007, the group of least developed countries supported the proposal to amend the TRIPS Agreement to include a mandatory requirement for the disclosure of origin of biological resources and/or associated traditional knowledge in patent applications in order to ensure consistency with the CBD. The amendment has been proposed by a group of developing countries led by Brazil and India, and has received the support of the African Group.

ITPGR GB 2: The second session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (29 October – 2 November 2007, Rome, Italy) addressed a series of items, including implementation of the funding strategy, the material transfer agreement for non-Annex I crops, cooperation with the Commission on Genetic Resources for Food and Agriculture (CGRFA), and sustainable use of plant genetic resources. Following challenging budget negotiations, the meeting adopted the work programme and budget for 2008/09. It also adopted a resolution on farmers' rights, as well as a joint statement of intent for cooperation with the CGRFA.

FIFTH TRONDHEIM CONFERENCE ON BIODIVERSITY: The fifth Trondheim Conference on Biodiversity (29 October – 2 November 2007, Trondheim, Norway) convened under the theme "Ecosystems and people – biodiversity for development – the road to 2010 and beyond." Through scientific studies, policy presentations and practical case studies, participants discussed why biodiversity is an important component of sustainable development and poverty alleviation. The Conference adopted a set of conclusions and recommendations, which will be transmitted to the thirteenth meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice, to take place from 18-22 February 2008, in Rome, Italy.