

SEVENTH MEETING OF THE WORKING GROUP ON ACCESS AND BENEFIT-SHARING OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 2-8 APRIL 2009

The seventh meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) begins today and will continue until 8 April 2009, at UNESCO headquarters, in Paris, France. The meeting will continue the negotiation of an international regime on ABS, focusing on operational text on the objective, scope, compliance, fair and equitable benefit-sharing, and access.

In accordance with decision IX/12 of the Conference of the Parties (COP), the Working Group is instructed "to finalize the international regime and to submit for consideration and adoption by the Conference of the Parties at its tenth meeting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and its three objectives, without in any way prejudging or precluding any outcome regarding the nature of such instrument/instruments." COP 10 will be held from 18-29 October 2010, in Nagoya, Japan.

A BRIEF HISTORY OF THE CBD AND ABS

Negotiated under the auspices of the UN Environment Programme, the CBD was opened for signature on 5 June 1992, and entered into force on 29 December 1993. There are currently 191 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, prior informed consent (PIC), mutually agreed terms (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 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.

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.

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.

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 draft text to serve as the basis for future negotiations. The Working Group also considered 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 instructed the ABS Working Group to complete its work with regard to the international ABS regime at the earliest possible time before COP 10, to be held in 2010, under the co-chairmanship of Fernando Casas (Colombia) and Timothy Hodges (Canada). 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. 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. Delegates also discussed two informal documents tabled by the Co-Chairs, their notes on proposals made at the meeting and their reflections on progress made, and concluded they were under the sole authority of the Co-Chairs and would be circulated to parties as information documents.

ARTICLE 8(J) WG 5: At its fifth meeting (October 2007, Montreal, Canada), the Working Group on Article 8(j) did not reach agreement on a recommendation on inputs from 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.

ABS 6: At its sixth meeting (January 2008, Geneva, Switzerland), the ABS Working Group focused on the main components of the international regime, including fair and equitable sharing of benefits, access to genetic resources, compliance, traditional knowledge and genetic resources, and capacity building. The Working Group made considerable progress in producing a short and concise working document on the international regime, consisting of sections on the main components and lists of items "to be further elaborated with the aim of incorporating them in the international regime" in the case of agreement in principle, or "for further consideration," in the case of disagreement or need for further clarification.

COP 9: At its ninth meeting (May 2008, Bonn, Germany), the COP adopted a roadmap for the negotiation of the international regime, ensuring that the ABS Working Group will meet three times before the 2010 deadline for completion of negotiations. The COP also established three expert groups on: compliance; concepts, terms, working definitions and sectoral approaches; and traditional knowledge associated with genetic resources. It instructed the ABS Working Group to finalize the international regime and to submit an instrument/instruments for consideration and adoption by COP 10, and transmitted to ABS 7 the working document produced at ABS 6 as amended by the COP, as the basis for further negotiation.

INTERSESSIONAL HIGHLIGHTS

TRIPS COUNCIL MEETINGS: At the TRIPS Council meetings held on 17 June 2008 and from 29-30 October 2008, in Geneva, Switzerland, issues related to a possible amendment of the TRIPS Agreement to be in line with the CBD remained contentious. Such an amendment would require the disclosure of origin of biological resources or traditional knowledge in patent applications. The TRIPS Council also discussed the issue of granting observer status to the CBD, and noted that consultations on this matter will be held with the CBD Secretariat.

WIPO IGC 13: Held from 13-17 October 2008, in Geneva, Switzerland, the 13th session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) of the World Intellectual Property Organization (WIPO) ended with no agreement, due to divergent views on future work, regarding the composition of three proposed intersessional working groups on traditional knowledge, traditional cultural expressions, and genetic resources, the timing of the sessions, and whether or not to make the three meetings concurrent.

WORKSHOP ON ABS IN NON-COMMERCIAL RESEARCH: Held from 17-19 November 2008, in Bonn, Germany, this workshop discussed: the relationship between non-commercial and commercial research; communities of practice involved in non-commercial research; benefits from, and potential risks of, non-commercial research; standardized ABS agreements and procedures for non-commercial research; and actions needed to build trust between researchers and provider countries.

EXPERT GROUP ON CONCEPTS, TERMS, WORKING DEFINITIONS AND SECTORAL APPROACHES: This group of technical and legal experts met from 2-5 December 2008, in Windhoek, Namibia. The expert group addressed: the different ways of understanding biological resources, genetic resources, derivatives and products and the implications of each understanding for the main components of the international regime; different forms of utilization of genetic resources in relation to sectoral and sub-sectoral activities; sector-specific characteristics of ABS arrangements; and the range of options and approaches for taking these different characteristics into account that may bring coherence to ABS-related practices in different sectors.

VIENNA WORKSHOP ON TRADITIONAL KNOWLEDGE AND ABS: This workshop was held from 15-17 December 2008, in Vienna, Austria. Guided by three fictional ABS scenarios designed to match real-life procedures, participants discussed matters of concern to indigenous peoples and local communities in relation to traditional knowledge and the international ABS regime, and identified issues that will require further discussion.

EXPERT GROUP ON COMPLIANCE: This group of technical and legal experts (27-30 January 2009, Tokyo, Japan) considered public and private international law measures to: facilitate access to justice and access to courts by foreign plaintiffs; support mutual recognition and enforcement of judgments across jurisdictions; and provide remedies and sanctions in civil, commercial and criminal matters, to ensure compliance with national ABS legislation. The group also addressed: voluntary measures to enhance compliance by users of foreign genetic resources; whether an internationally agreed definition of misappropriation and misuse of genetic resources and associated traditional knowledge could support compliance; compliance measures that take account of the customary laws of indigenous and local communities; and compliance measures for research with non-commercial intent.