

SIXTH MEETING OF THE WORKING GROUP ON ARTICLE 8(J) OF THE CONVENTION ON BIOLOGICAL DIVERSITY AND EIGHTH MEETING OF THE WORKING GROUP ON ACCESS AND BENEFIT-SHARING: 2-15 NOVEMBER 2009

The sixth 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 Montreal, Canada, and will continue until 6 November 2009. It will be followed by the eighth meeting of the *Ad hoc* Open-ended Working Group on Access and Benefit-sharing (ABS), to be held from 9-15 November 2009.

The Working Group on Article 8(j) will consider: views on the international regime on ABS; mechanisms to promote the participation of indigenous and local communities; the development of *sui generis* systems for the protection of traditional knowledge, innovations and practices; elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities; and a multi-year programme of work on the implementation of Article 8(j) and related provisions. The Working Group's recommendations will be submitted to the tenth meeting of the Conference of the Parties (COP 10) to the CBD, to be held from 18-29 October 2010, in Nagoya, Japan.

The Working Group on ABS will continue the negotiation of an international regime on ABS, focusing on operational text on the nature of the regime, traditional knowledge associated with genetic resources, and capacity building. It will also consider further text negotiated during its seventh meeting on compliance, fair and equitable benefit-sharing, and access. The COP instructed the Working Group to finalize the international regime and to submit for consideration and adoption by COP 10 an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and its three objectives.

A BRIEF HISTORY OF THE CBD, ARTICLE 8(J) AND ABS

The CBD entered into force on 29 December 1993. There are currently 192 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.

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. The expert panel developed a set of recommendations, including on prior informed

consent (PIC), mutually agreed terms (MAT), approaches for stakeholder involvement and 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.

The Convention's work under Article 8(j) (traditional knowledge) commenced at COP 3 (November 1996, Buenos Aires, Argentina). COP 4 adopted the terms of reference for an open-ended working group on Article 8(j).

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

ABS WG 1: At its first meeting (October 2001, Bonn, Germany), the Working Group developed the draft Bonn guidelines on ABS and identified elements for a capacity-building action plan.

ARTICLE 8(J) WG 2: At its second meeting (February 2002, Montreal, Canada), the Working Group 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 intellectual property rights (IPRs).

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. 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 on fair and equitable benefit-sharing.

ABS WG 2: At its second meeting (December 2003, Montreal, Canada), the 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 Working Group on ABS to negotiate an international regime on ABS and agreed on the terms of reference for such a negotiation. The COP also adopted the Akwé: Kon Guidelines.

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 Working Group on ABS; 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 instructed the Working Group on ABS to complete its work with regard to the international ABS regime at the earliest possible time before COP 10; and requested the Working Group on Article 8(j) to, *inter alia*, contribute to the mandate of the Working Group on ABS.

ABS WG 5: At its fifth meeting (October 2007, Montreal, Canada), the Working Group considered substantive elements of an international regime on ABS and discussed two informal documents tabled by the Co-Chairs.

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 inputs to the negotiation of an international regime on ABS, due to divergence of views with regard to both procedural and substantive issues.

ABS WG 6: At its sixth meeting (January 2008, Geneva, Switzerland), the 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 progress in producing a short and concise working document on the international regime.

COP 9: At its ninth meeting (May 2008, Bonn, Germany), the COP adopted a roadmap for the negotiation of the international regime before the 2010 deadline. The COP decided that the Working Group on Article 8(j) should work on: guidelines for documenting traditional knowledge, a plan of action for retention of traditional knowledge; participatory mechanisms for indigenous and local communities in the Convention; elements of *sui generis* systems; elements of the ethical code of conduct; and further work on the composite report.

EXPERT GROUP ON CONCEPTS, TERMS, WORKING DEFINITIONS AND SECTORAL APPROACHES: This group (December 2008, Windhoek, Namibia) addressed: the different ways of understanding biological resources, genetic

resources, derivatives and products and the implications of each understanding; 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.

EXPERT GROUP ON COMPLIANCE: This group (January 2009, Tokyo, Japan) considered measures to: facilitate access to justice by foreign plaintiffs; support recognition and enforcement of judgments across jurisdictions; and provide remedies and sanctions 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 could support compliance; compliance measures that take account of customary laws; and compliance measures for non-commercial research.

ABS WG 7: At its seventh session (2-8 April 2009, Paris, France), the Working Group focused on operational text on the objective, scope, compliance, fair and equitable benefit-sharing, and access. The meeting encountered several procedural obstacles, most of which related to the structure of the negotiating document. With regard to substance, the most controversial debate was whether to include viruses and pathogens in the scope of the regime.

INTERSESSIONAL HIGHLIGHTS

UNPFII 8: The eighth session of the UN Permanent Forum on Indigenous Issues (18-29 May 2009, New York, US) focused on implementation of the UN Declaration on the Rights of Indigenous Peoples and also addressed climate change, land tenure, and the relationship between indigenous peoples and corporations.

ITPGR GB 3: The third session of the Governing Body (GB) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) (1-5 June 2009, Tunis, Tunisia) agreed to: a set of outcomes for implementation of the funding strategy, including a financial target of US\$116 million for the period July 2009 to December 2014; resolutions on implementation of the Treaty's Multilateral System of ABS and farmers' rights; and establishment of an intersessional process to finalize compliance procedures by GB 4.

EXPERT GROUP ON TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES: This group (16-19 June 2009, Hyderabad, India) addressed legal and technical issues concerning: the relationship between access to genetic resources and associated traditional knowledge; customary laws of indigenous and local communities regulating access to genetic resources and associated traditional knowledge; and measures to ensure compliance with PIC and MAT.

WIPO GA: The General Assembly (GA) of the World Intellectual Property Organization (WIPO) (22 September-1 October 2009, Geneva, Switzerland) agreed that the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore would undertake negotiations with the objective of reaching agreement on a text of an international legal instrument/instruments, and submit it to the 2011 General Assembly.

CGRFA 12: The twelfth regular session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the Food and Agriculture Organization (19-23 October 2009, Rome, Italy) adopted the Strategic Plan 2010-2017 for implementation of its multi-year programme of work, and a resolution on policies and arrangements for ABS for genetic resources for food and agriculture.