

NINTH MEETING OF THE WORKING GROUP ON ACCESS AND BENEFIT-SHARING OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 22-28 MARCH 2010

The ninth meeting of the *Ad hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) begins today in Santiago de Cali, Colombia. It was preceded by an indigenous and local community negotiators meeting, a Co-Chairs Informal Inter-regional Consultation, two days of regional and inter-regional consultations, and a Co-Chairs open-ended informal consultation.

The meeting will continue negotiations on an international regime on ABS, with a view to agreeing on a draft protocol. In accordance with Decision IX/12 of the Conference of the Parties (COP), the Working Group is instructed to finalize the international regime and submit for consideration and adoption by COP 10 an instrument/instruments to effectively implement the provisions in Articles 15 and 8(j) of the Convention and its three objectives. ABS 9 is the last meeting of the Working Group before COP 10, which will be held from 18-29 October 2010, in Nagoya, Japan.

A BRIEF HISTORY OF THE CBD AND ABS

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 193 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.

CBD Article 15 addresses access to genetic resources, including facilitating access, prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing. Related articles refer 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. The expert panel held two meetings (October 1999, San José, Costa Rica; and March 2001, Montreal, Canada) and developed a set of recommendations, including on PIC, 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.

ABS 1: At its first meeting (October 2001, Bonn, Germany), the Working Group on ABS developed the draft Bonn guidelines on ABS, identified elements for a capacity-building action plan, 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 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 negotiating, within the CBD framework, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

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 produced 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. 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.

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 Fernando Casas (Colombia) and Timothy Hodges (Canada), their notes on proposals made at the meeting and their reflections on progress made.

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, and instructed the ABS Working Group to finalize the international regime and to submit an instrument/instruments for consideration and adoption by COP 10.

EXPERT GROUP ON CONCEPTS, TERMS, WORKING DEFINITIONS AND SECTORAL APPROACHES: This group (2-5 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; sector-specific characteristics of ABS arrangements; and options and approaches for taking these different characteristics into account to bring coherence to ABS-related practices in different sectors.

EXPERT GROUP ON COMPLIANCE: This group (27-30 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 research with non-commercial intent.

ABS 7: At its seventh meeting (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. Despite procedural obstacles, mostly related to the structure of the negotiating document, the Working Group proceeded with consolidating submissions on compliance, benefit-sharing and access.

EXPERT GROUP ON TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES: The 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.

ARTICLE 8(J) WG 6: At its sixth meeting (2-6 November 2009, Montreal, Canada), the Working Group on Article 8(j) worked towards concluding negotiations on an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities, and expressed detailed views on the international regime on ABS, for transmission to ABS 8.

ABS 8: At its eighth meeting (9-15 November 2009, Montreal, Canada), the Working Group addressed operative text on all components of the regime, and discussed its legal nature. The meeting adopted the Montreal Annex, consisting of a single, consolidated draft of the international regime, and a second annex on proposals for operational texts left in abeyance for consideration at ABS 9. The Working Group also established an intersessional process leading up to ABS 9, including: a Friends of the Co-Chairs group; a Co-Chairs’ Inter-regional Informal Consultation; and a series of regional consultations.

INTERSESSIONAL HIGHLIGHTS

36TH FAO CONFERENCE: The 36th Conference of the UN Food and Agriculture Organization (FAO) (18-23 November 2009, Rome, Italy) adopted a resolution on ABS policies and arrangements for genetic resources for food and agriculture inviting the CBD to take into account the special nature of agricultural biodiversity and consider sectoral approaches to allow for differential treatment of different sectors of genetic resources.

WIPO IGC 15: At its fifteenth session (7-11 December 2009, Geneva, Switzerland), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) of the World Intellectual Property Organization (WIPO) reviewed draft provisions for the protection of traditional cultural expressions and traditional knowledge, and considered options for future work on intellectual property and genetic resources, on the basis of IGC’s renewed mandate to begin text-based negotiations for an international instrument/instruments on genetic resources, traditional knowledge and traditional cultural expressions.

CONSULTATION ON ABS AND THE STRATEGIC PLAN: Organized by the United Nations University Institute of Advanced Studies in consultation with the Working Group Co-Chairs and UNEP, the Informal Experts Consultation on ABS and the Strategic Plan (18-19 December 2009, Yokohama, Japan) examined the draft strategic plan to highlight the role of ABS in achieving the CBD mandate, and articulated relevant headline indicators and sub-indicators.

ABS FRIENDS OF THE CO-CHAIRS MEETING: The Friends of the Co-Chairs meeting (26-29 January 2010, Montreal, Canada) addressed several issues related to: access, benefit-sharing, compliance, and the relationship between them; derivatives; traditional knowledge; and implementation questions.

ABS CO-CHAIRS INFORMAL INTER-REGIONAL CONSULTATION: The meeting (16-18 March 2010, Cali, Colombia) was held in order to identify concrete solutions to facilitate and accelerate ABS 9 negotiations. As a result, the Co-Chairs prepared a draft protocol and a draft COP decision to be circulated prior to ABS 9.