

## RESUMED NINTH MEETING OF THE WORKING GROUP ON ACCESS AND BENEFIT-SHARING OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 10-16 JULY 2010

The resumed 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 Montreal, Canada. It was preceded by informal, regional and interregional consultations, held from 8-9 July 2010.

The first part of the ninth meeting was held from 22-28 March 2010, in Cali, Colombia. The Working Group suspended the meeting and agreed to resume it at a later date. Negotiations in Montreal are expected to focus on the revised draft protocol tabled by the Working Group Co-Chairs in Cali, to finalize the text by isolating and resolving outstanding issues and identifying and filling any gaps to ensure its integrity and balance. The Working Group aims to finalize the protocol text in time for its possible adoption at the tenth meeting of the Conference of the Parties (COP 10), to 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 established 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 and 4:** At its third and fourth meetings (February 2005, Bangkok, Thailand, and January 2006, Granada, Spain), the ABS Working Group produced draft text compilations to serve as the basis for future negotiations. It also considered additional approaches to complement the Bonn Guidelines on ABS, including an international certificate of origin/source/legal provenance, measures to support compliance with PIC and MAT, and options for indicators for ABS.

**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 and 6:** At its fifth and sixth meetings (October 2007, Montreal, Canada, and January 2008, Geneva, Switzerland), the ABS Working Group focused on the main components of the international regime on ABS, including fair and equitable sharing

of benefits, access to genetic resources, compliance, traditional knowledge and genetic resources, and capacity building. In Geneva, the Working Group produced 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. The three expert groups (concepts, terms, working definitions and sectoral approaches; compliance; and traditional knowledge associated with genetic resources) each met once between December 2008 and June 2009.

**ABS 7:** At its seventh meeting (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.

**ARTICLE 8(J) WG 6:** At its sixth meeting (November 2009, Montreal, Canada), the Working Group on Article 8(j) expressed detailed views on the international regime on ABS, for transmission to ABS 8.

**ABS 8:** At its eighth meeting (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.

**ABS 9 (FIRST PART):** At the first part of its ninth meeting (March 2010, Cali, Colombia), the Working Group conducted negotiations on the basis of a draft protocol, tabled as a Co-Chairs’ text and developed upon a request made during the Co-Chairs’ Informal Inter-regional Consultation held prior to the meeting. Following three days of contact group discussions which achieved progress on a number of issues, including benefit-sharing from derivatives and an internationally recognized certificate of compliance, an inter-regional group was established. Due to procedural wrangling, the inter-regional group did not enter into text-based negotiations. The Working Group eventually agreed to: suspend the meeting and convene a resumed session in July 2010; and forward the draft protocol text as revised during the meeting to the resumed session, with the understanding that the draft was not negotiated, is without prejudice to the rights of parties to make further amendments and additions to the text, and should be read together with the ABS 9 report reflecting parties’ views expressed at the meeting. After the meeting, the draft protocol was circulated to parties, in accordance with Article 28 of the Convention (Adoption of Protocols).

### INTERSESSIONAL HIGHLIGHTS

**WIPO IGC 16:** The 16th session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) of the World

Intellectual Property Organization (WIPO) (3-7 May 2010, Geneva, Switzerland) agreed on arrangements for intersessional working groups to support the IGC negotiations on an international instrument or instruments ensuring the effective protection of traditional knowledge, traditional cultural expressions and genetic resources.

**SBSTTA 14:** The 14th meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) (10-21 May 2010, Nairobi, Kenya) witnessed the launch of the third edition of the Global Biodiversity Outlook and adopted 18 recommendations to COP 10, including on: in-depth reviews of implementation of the programmes of work on mountain biodiversity, inland waters biodiversity, marine and coastal biodiversity, protected areas, biodiversity and climate change, and Article 10 (sustainable use); agricultural biodiversity, including biofuels; biodiversity of dry and sub-humid lands; forest biodiversity; invasive alien species; post-2010 outcome-oriented goals and targets; incentive measures; the Global Taxonomy Initiative; and the Global Strategy for Plant Conservation.

**WGRI 3:** The third meeting of the CBD Working Group on Review of Implementation of the Convention (WGRI) (24-28 May 2010, Nairobi), adopted 12 recommendations to COP 10, including: an updated and revised strategic plan for the post-2010 period, which remains bracketed pending resolution of financial issues and negotiations on ABS; a proposed UN decade on biodiversity 2011-2020; business engagement; a proposed biodiversity technology initiative; the multi-year programme of work of the Convention for the period 2011-2020; integration of biodiversity into poverty eradication and development; and a science-policy interface on biodiversity, ecosystem services and human well being.

**UNPFII 9:** Held under the special theme “Development with culture and identity,” the ninth session of the UN Permanent Forum on Indigenous Issues (UNPFII 9) (19-30 April 2010, New York) recommended that ongoing processes, including the ABS negotiations, recognize and integrate the relevance of indigenous knowledge systems, in accordance with the UN Declaration on the Rights of Indigenous Peoples; and reiterated to the CBD parties that recognition of the rights of indigenous peoples to control access to the genetic resources that originate in their lands and waters and to any associated traditional knowledge must be a key element of the proposed international regime on ABS.

**INTERNATIONAL CONFERENCE ON BIOLOGICAL AND CULTURAL DIVERSITY:** The “International Conference on Biological and Cultural Diversity: Diversity for Development – Development for Diversity” (8-10 June 2010, Montreal, Canada) adopted elements for a programme of work to be jointly implemented by UNESCO, the CBD Secretariat and other partners, on the links between biological and cultural diversity.

**AMCEN 13:** The 13th Session of the African Ministers’ Conference on Environment (AMCEN) (20-25 June 2010, Bamako, Mali) concluded with the adoption of the Bamako Declaration, developed to serve as the continent’s new roadmap for sustainable development and basis for strengthening the common negotiating position on climate change and biodiversity. A ministerial dialogue reviewed progress towards, *inter alia*, Africa’s development of a common negotiating position on ABS.