

## SECOND MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING TO THE CONVENTION ON BIOLOGICAL DIVERSITY: 2-6 JULY 2012

The second meeting of the Open-ended *Ad Hoc* Intergovernmental Committee for the Nagoya Protocol (ICNP) on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (CBD) begins today in New Delhi, India. It was preceded by a capacity-building workshop on ABS, co-organized by the Secretariats of the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), held from 30 June – 1 July 2012.

The meeting will continue consideration of items discussed at ICNP 1, including: modalities of operation of the ABS clearing-house; measures to assist in capacity building, capacity development and strengthening of human and institutional capacities in developing countries; measures to raise awareness of the importance of genetic resources and associated traditional knowledge; and cooperative procedures and institutional mechanisms to promote compliance with the Protocol and address cases of non-compliance. In addition, it will consider the need for, and modalities of, a global multilateral benefit-sharing mechanism; elaborate guidance for the financial mechanism and for resource mobilization for the Protocol's implementation; develop a budget for the biennium following the Protocol's entry into force; and prepare for the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol by considering its rules of procedure and a draft provisional agenda.

### A BRIEF HISTORY OF THE ABS PROTOCOL

The Nagoya Protocol on ABS was adopted at the tenth meeting of the Conference of the Parties (COP) to the CBD on 29 October 2010, in Nagoya, Japan. The objective of the Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biodiversity and the sustainable use of its components. The Protocol has 92 signatures and 5 ratifications to date. It will enter into force 90 days after the deposit of the 50th instrument of ratification.

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 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.

**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 (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 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.

**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 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.

**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.

**2009-2010 NEGOTIATIONS:** The ABS Working Group met four times between COPs 9 and 10 (April 2009, Paris, France; November 2009, Montreal, Canada; March 2010, Cali, Colombia; and July 2010, Montreal), assisted by expert, informal and regional consultations. During the first two meetings, delegates consolidated a draft. In Cali, the Working Group Co-Chairs circulated a draft protocol text but due to procedural wrangling the meeting was suspended. The resumed meeting in Montreal, using the interregional negotiating group (ING) format established in Cali, worked on the draft protocol text, reached agreement on non-controversial provisions, and made progress on certain difficult issues, including the relationship with other instruments and compliance with domestic ABS requirements. Delegates also identified key issues that required further compromise, including scope and pathogens, derivatives and the concept of utilization of genetic resources, and mechanisms to support compliance. An additional meeting of the ING convened in September 2010, in Montreal, but several key issues remained outstanding.

**COP 10:** Immediately prior and during COP 10, held from 18-29 October 2010, in Nagoya, Japan, the ING continued negotiations. Towards the end of the meeting, informal ministerial consultations were held to discuss a compromise proposal put forward by the Japanese COP Presidency, where agreement was reached on a package relating to the remaining outstanding issues, including: the concept of utilization and derivatives, and related benefit-sharing; the provision on scope; non-arbitrary access procedures; traditional knowledge-related issues, including a provision on publicly available traditional knowledge that was eventually deleted; special considerations with regard to human, animal or plant health emergencies and food security issues; the issue of temporal scope and a related proposal on a multilateral benefit-sharing mechanism to address benefit-sharing for genetic resources and traditional knowledge that occur in transboundary situations or for which it is not possible to grant or obtain PIC; and compliance-related provisions on checkpoints, information requirements and the internationally recognized certificate of compliance. The COP adopted the clean text of the Protocol as part of a "package" including also the new CBD Strategic Plan 2011-2020 and a decision on activities and indicators for the implementation of the Strategy for Resource Mobilization. It also established the ICNP to undertake the preparations necessary for the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol (COP/MOP).

**ICNP 1:** At its first meeting, held from 5-10 June 2011, in Montreal, Canada, the Committee adopted four recommendations initiating work on: the modalities of operation of the ABS clearing-house; measures to assist in capacity building, capacity development and strengthening of human and institutional capacities in developing countries; measures to raise awareness of the importance of genetic resources and associated traditional knowledge; and cooperative procedures and institutional mechanisms to promote compliance with the Protocol and address cases of non-compliance.

#### INTERSESSIONAL HIGHLIGHTS

**WORKING GROUP ON ARTICLE 8(j):** Held from 31 October – 4 November 2011, in Montreal, Canada, the seventh meeting of the CBD Working Group on Article 8(j) (traditional knowledge) adopted recommendations on, among other items: Tasks 7, 10 and 12 (benefit-sharing from, and unlawful appropriation of, traditional knowledge) of the Article 8(j) Work Programme; development of elements of *sui generis* systems for the protection of traditional knowledge; mechanisms to promote the effective participation of indigenous and local communities in the work of the Convention, including a report of an expert group meeting of local community representatives; Article 10(c) (customary sustainable use) as a new major component of work on the Article 8(j) work programme; and development of indicators relevant for traditional knowledge and customary sustainable use.

**EXPERT MEETING ON COMPLIANCE:** Held from 28 February – 1 March 2012, in Montreal, Canada, the meeting heard presentations by other treaty secretariats with a view to learning from experiences in relevant international fora, and worked towards reaching a common understanding on draft elements and options for procedures and mechanisms on compliance, including: their objectives, nature and underlying principles; institutional mechanisms, namely a compliance committee, and their functions; and procedures in relation to the compliance committee.

**WIPO IGC:** Following a renewal of its mandate by the General Assembly of the World Intellectual Property Organization (WIPO) (26 September – 5 October 2011, Geneva, Switzerland), the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) held its 20th session focusing on genetic resources (14-22 February 2012, Geneva), which consolidated the negotiating document; and its 21st session (16-20 April 2012, Geneva), which made progress on the draft articles on the protection of traditional knowledge, identifying areas of convergence and issues requiring further clarification and discussion.

**SBSTTA 16:** Held from 30 April – 5 May 2012, in Montreal, Canada, the 16th session of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) adopted 15 recommendations, including two packages of recommendations on marine and coastal biodiversity, and biodiversity and climate change. It also considered its relationship with the recently established Intergovernmental Platform for Biodiversity and Ecosystem Services, and held an in-depth review of the work programme on island biodiversity.

**RIO+20:** Held from 20-22 June 2012, in Rio de Janeiro, Brazil, the UN Conference on Sustainable Development (UNCSD, or Rio+20) outcome document entitled "The Future We Want," noted adoption of the Nagoya Protocol and invited CBD parties to ratify or accede to it, so as to ensure its entry into force at the earliest possible opportunity. It also acknowledged the role of ABS in contributing to the conservation and sustainable use of biodiversity, poverty eradication and environmental sustainability.