

**LIVESTOCK KEEPERS,
BIODIVERSITY,
INDIGENOUS KNOWLEDGE,
INTELLECTUAL PROPERTY**

27 March – 2 April 2006

Bellagio, Italy

Convention on Biological Diversity (CBD)

■ Article 1

“The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the **conservation of biological diversity**, the **sustainable use of its components** and the fair and equitable sharing of the benefits arising out of 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.

CBD: Article 15

On Access to Genetic Resources

- **Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.** (Article 15.1)
- Access, where granted, shall be on **mutually agreed terms** and subject to the provisions of this Article. (Article 15.4)
- Access to genetic resources shall be subject to **prior informed consent** of the Contracting Party providing such resources, unless otherwise determined by that Party. (Article 15.5)
- Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 **with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources** with the Contracting Party providing such resources.
 - Such sharing shall be upon **mutually agreed terms.** (Art. 15.7)

CBD: Article 8 (j)

Each Contracting Party shall.....

- “ **Subject to its national legislation**, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application **with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices**”

Bonn Guidelines

- Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation was adopted at the VI Conference of the Parties of the CBD in April 2002 as a guide for countries drafting national legislations on ABS

See www.biodiv.org/decisions/default.asp?lg=0&m=cop-06&d=24)

Criticism:

- Voluntary and not binding...anything in the guidelines can be ignored...it is not an international system

Negotiations on International Regime (IR) on ABS

- Heads of States agreed at the 2002 World Summit on Sustainable Development to “**negotiate** ... an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources”
- In 2004 the CBD Conference of Parties in Decision VII/19 D mandated the ABS WG to “**elaborate and negotiate** the nature, scope and elements of an international regime on access and benefit-sharing with the aim of adopting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and the three objectives of the Convention”.

Negotiations on International Regime on ABS

- 3rd Working Group on ABS in February 2005 in Bangkok, it was agreed that the ABS WG4's task is **"further elaboration and negotiation by Parties"** [UNEP/CBD/WG-ABS/3/7 Decision 3/1 para. 2].
- UN General Assembly in December 2005 has reiterated the call "to continue ongoing efforts towards elaborating and negotiating an international regime".

Current Negotiations on ABS

- 4th Working Group on ABS met in Spain in February 2006
 - Outcome
 - **draft elements of the international regime were formulated after strenuous efforts by developing countries and despite objections and resistance by most developed countries**
 - This draft entitled "International Regime on Access and Benefit Sharing" and annexed to the recommendation, is entirely bracketed reflecting lack of consensus over the notion of one instrument.
 - Agreement was reached on a recommendation was forwarded to the 8th meeting of the Conference of the Parties (COP8) in March in Curitiba, Brazil for the next phase of work, and on a draft that will be the basis for future negotiations.

Current Negotiations on ABS

- The contentious issues that keep countries deeply divided include (among many others):
 - the need for a new instrument
 - whether it should be legally binding
 - the inclusion of derivatives and products of genetic resources and associated traditional knowledge
 - disclosure requirements in applications for intellectual property rights; and enhanced participation of indigenous and local communities in the ABS negotiations

Current Negotiations on ABS

- Elements (with brackets) for the international regime include:
 - Access to genetic resources [and derivatives and products]
 - [Recognition and protection of] traditional knowledge associated with genetic resources [derivatives and products]
 - Fair and equitable benefit-sharing
 - [Disclosure of legal provenance/origin/prior informed consent and benefit sharing]
 - [Certificate of origin] [International certificate of origin/source/legal provenance]
 - Implementation, monitoring and reporting
 - [Compliance and enforcement]
 - Access to justice
 - [Dispute settlement mechanism]
 - Capacity building [and technology transfer]
 - [Institutional support]; [Non-Parties].

Important Components of IR on ABS

- **Linkage between the work of the ABS Working Group and the Article 8(j) Working Group**
- **Prior informed consent** is the foundation for matters relating to access to biological resources, both at the level of the State and of indigenous peoples and local communities.
 - An essential feature of PIC is the right to say No.
- Benefit-sharing rules and arrangements must also ensure the **protection of the rights of indigenous peoples and local communities**.
- **Central focus of the international regime must be fair and equitable benefit sharing**, including the establishment of principles, standards and implementing mechanisms (international, regional and national).
 - **Access is primarily a matter for national regulation**, as clearly spelt out in Article 15(1) of the CBD.

Intellectual Property & ABS

- Is there a conflict between TRIPS (World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights) & the CBD
 - One argument (developed countries)....no conflict since patenting leads to commercialization therefore to benefits leading to BS....thus nothing needs to be done
 - Another argument (developing countries).....patenting of inventions based on GR allowed (if fulfills the criteria of patentability)...but there is no criteria of BS on mutually agreed terms and PIC....TRIPS is silent about CBD objectives
 - General developing countries' view is that.... IP systems should promote CBD objectives, and the underlying mutuality of interest that should exist between the providers of genetic resources, mainly in developing countries, and the users who are mainly based in developed countries.
 - Article 16(5) CBD - implementation of IPRs not to run counter to objectives of the CBD

Intellectual Property & ABS

- Disclosure of Origin in patent applications
 - re: disclosure of source/country of origin of the GR, evidence of PIC and evidence of BS
 - a battle in the TRIPS Council pushed by a group of developing countries
 - transboundary nature of the problem.....need binding international solutions
 - being strongly resisted by developed countries especially the United States....in favor of contractual approach
 - there is a mandate in the current World Trade Organization negotiations to deal with this issue urgently.....it is not clear whether they will be any outcome..... but then these negotiations have been going on for years

BS: Some Problems

- There are difficult decisions for countries: both practical and conceptual, in putting benefit sharing into practice.
 - (1) The resources in question are often not “owned” by anyone in particular, but are the heritage of one or more communities, which are not necessarily cohesive, or all living in one country.
 - (2) While some genetic resources can be traced to very specific areas and habitats, in other cases they comprise components from many countries, in which case BS arrangements will be totally impractical.
 - (3) Because of the diversity of national circumstances or indeed those within nations in relation, for example, to their cultural, economic or institutional conditions, it is very difficult to devise legislation and practices which cover that diversity in ways that facilitate implementation of such measures.

Source: UK Commission on IPRs

Indigenous/Traditional Knowledge & Animal Breeding?

- Each set of GR may have been dealt with differently by communities and societies, but international law has not gone that far.
- The CBD covers all genetic resources so the international regime would cover Animal GR.
- Q: Whether the thrust of the CBD/International Regime would meet the situation of Animal GR or whether the FAO International Treaty is the preferred option.
 - Maybe a combination is required, depending on the nature and rights over those GR.
- We need to understand the nature of Animal GR and the Industry profile at work first
- Engaging in the CBD process would be important!