Access and Benefit-Sharing (Agenda item 17)

Eighth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP8), Curitiba, Brazil, 20-31 March 2006

Introduction

Access to genetic resources and benefit-sharing continues to be one of the most complex and important issues in the CBD agenda, having also permeated a series of other international organizations including the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO) and the United Nations Food and Agriculture Organization (FAO) and triggered extensive discussions at the regional and national levels.

The Expert Panel on Access to Genetic Resources and Benefit-Sharing (established by decision IV/8) and the Ad Hoc Open Ended Working Group on Access to Genetic Resources and Benefit-Sharing (established by decision V/26), have played a key role in supporting access and benefit-sharing discussions and contributing to progress within the CBD process. The Bonn Guidelines on Access to Genetic Resources and Benefit-Sharing (approved by decision VI/24), for instance, are an important instrument generated over the last few years as part of this process.

More recently, and as a result of the mandate in paragraph 44(o) of the Plan of Implementation of the World Summit on Sustainable Development (WSSD), an international regime on access and benefit-sharing is now under negotiation. The Ad Hoc Open Ended Working Group on Access to Genetic Resources and Benefit-Sharing met in Bangkok in early 2005 to start discussions regarding the international regime. In February 2006, the Working Group met again in Granada, Spain, to develop a text on the basic elements of an international regime on access and benefit-sharing in time for its consideration by Parties during COP 8.

The World Conservation Union (IUCN) welcomes the results and outcomes of the Fourth Meeting of the Ad Hoc Working Group on Access and Benefit-Sharing and would like to draw attention to the following issues.

Implementation of CBD access and benefit-sharing obligations and principles under the CBD

IUCN recognizes the advances and efforts made by Parties in the development of international, regional and national access and benefit-sharing policies and legal instruments. Since 1993, considerable, although still insufficient, progress has been made in implementing CBD obligations and principles especially through national laws and obligations. However, the effectiveness of national and regional measures has proven to be limited resulting in WSSD’s call for an international framework.

IUCN believes that clear and effective ABS frameworks both at the international and national levels should allow for:
ensuring the conservation and sustainable use of biodiversity;

- providing legal certainty;

- regulating access and sustainable use of genetic resources and benefit-sharing arrangements;

- protecting and strengthening traditional knowledge (TK) systems;

- maintaining and revitalizing TK and cultural diversity;

- including and empowering local communities and women through a prior informed consent (PIC) mechanisms and participation in the negotiation of national ABS frameworks and the international regime;

- strengthening domestic biotechnology and research programmes;

- contributing to the Millennium Development Goals (MDGs) and especially in the areas of poverty, food security and health.

In this regard, The World Conservation Union (IUCN) recommends that COP 8 calls on Parties to:

- strengthen efforts and provide support for the development and implementation of ABS policy and legal frameworks;

- give special attention to new technological developments in the areas of genetic engineering, genomics, bioinformatics, and their potential impact on ABS arrangements and governance.

Reports of the Meetings of the Ad Hoc Open Ended Working Group on Access to Genetic Resources and Benefit-Sharing, Bangkok, Thailand, February 14 – 18, 2005 (UNEP/CBD/COP/8/5) and Granada, Spain, 30 January – 3 February, 2006 (UNEP/CBD/WG-ABS/4/L.1)

IUCN praises the efforts made by the Ad Hoc Open Ended Working Group on Access to Genetic Resources and Benefit-Sharing and the progress made in complying with the mandate of the Plan of Implementation of WSSD and decision VII/19 of the CBD by identifying and developing the key elements and structure of the international regime on access to genetic resources and benefit-sharing. IUCN welcomes the reports of the last two meetings of the Ad Hoc Working Group. With regards to future activities of the Working Group, IUCN recommends that COP 8:

- adopts the recommendation of the Fourth Meeting of the Working Group on ABS to reconvene the Working Group to continue its work in accordance with the terms of reference contained in decision VII/19.D and subject to advances and progress made during, and guidance provided by COP8;

- establishes a schedule and work plan in order to expedite the negotiations process and clarify the type of outcome expected;

- ensures that the necessary funds are provided to support the continuation of the Working Group’s mandate to elaborate and negotiate an international regime on access to genetic resources 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 CBD.

The International Regime on Access to Genetic Resources and Benefit-Sharing: Draft Text (UNEP/CBD/WG-ABS/4/CRP.1/Rev.)

IUCN congratulates Parties on the initiation of the process to negotiate an international regime on access to genetic resources and benefit-sharing and the progress made. The first draft of the international regime elaborated by the Ad Hoc Working Group provides a starting point and baseline from which to further elaborate and specify the content of the international regime. In regards to this draft, IUCN recommends that COP 8 calls on the Working Group to:

- further elaborate on the definition of key concepts such as “genetic resources” and “derivatives” and clarify the exact meaning of “access to genetic resources” and the implications of expanding the definition to include derived or related products;
• clarify the reach and modalities for fair and equitable benefit sharing;

• identify within the existing draft international regime the key elements which will contribute to strengthening and consolidating international access and benefit-sharing obligations, particularly in areas where national legislation and regional frameworks face limitations as to the objectives and goals they can achieve;

• give due consideration to references in the international regime to issues and elements which are already addressed in existing international legislation, including CBD and the FAO International Treaty;

• concentrate negotiations on sections of the draft which address issues that deserve greater discussion and agreement among Parties. These issues include: implementation; monitoring and reporting; compliance and enforcement; access to justice; dispute settlement; protection of traditional knowledge; and disclosure of origin/source/legal provenance in the spirit of complying with the principles of PIC and Mutually Agreed Terms (MAT);

• consider measures that ensure that pre-CBD collections of genetic resources maintained in ex situ conservation centers, whose origin is known or easily identifiable, are governed by the fairness and equity principles proposed by the CBD and,

• develop concrete mechanisms to establish synergies and mutual supportiveness with other related processes and organisations such as FAO, the International Union for for the Protection of New Varieties of Plants, UPOV) WIPO and WTO in accordance with the provisions of the CBD, especially those contained in Articles 15 and 8 (j).

Further, IUCN calls on COP8 to:

• adopt the recommendation of the Working Group on ABS for the establishment of an ad-hoc technical expert group to elaborate options for form, intent, practicality, feasibility and costs of an international certificate of origin/source/legal provenance and report to the Fifth Meeting of the Working Group on ABS.

New technologies and disciplines which may have an impact on the implementation of the international regime and overall access and benefit-sharing obligations

IUCN calls the attention of Parties on the widening gap between new technologies and disciplines and policy making. The pace at which biotechnology (including genetic engineering), genomics, proteomics, nanotechnology and bioinformatics are progressing and generating new data and information in regards to biodiversity components, makes regulatory efforts and policy even more complicated and challenging. In this regard, it is revealing that the draft international regime in its current form, will probably have very limited implications for these rapidly evolving technologies which are nevertheless very closely related to access, use and management of genetic resources. In consequence, IUCN recommends that COP 8:

• calls on Parties to evaluate and assess the social, cultural, economic, scientific, political and legal implications of these technologies and their specific linkage to the international regime and consider whether the regime should establish basic principles and obligations addressing these technologies;

• requests the CBD Secretariat and other relevant organizations to produce a detailed report on the relation between these technologies and intellectual property, access to genetic resources, and research and development processes as well as on the international regulatory frameworks on ABS.

User measures as a means to ensure realization of CBD objectives in regards to access and benefit-sharing

IUCN welcomes the interest Parties have shown in exploring new means to realize the CBD access and benefit-sharing objectives. In this regard, consideration of “user measures” as a means to complement national policy and regulatory efforts of countries of origin, is a positive step in finding alternative mechanisms to ensure that interests of countries of origin are given due attention. User measures are also
innovative means to ensure that common but differentiated responsibilities of Parties to the CBD are appropriately met. IUCN recognizes that the Bonn Guidelines on ABS include specific references to user measures which should be further explored and developed into binding administrative, policy or legal measures. **IUCN recommends that COP 8 calls on Parties to:**

- **further assess** the institutional, financial and policy requirements for the development and implementation of user measures which may include: modifications to intellectual property systems to include requirements of disclosure of origin and legal provenance; development of national mechanisms to ensure appropriate access to administrative and judicial bodies to solve ABS related conflicts (including arbitration mechanisms); development of national systems to contribute to oversight and monitoring of contract authorizations; and other ABS instruments.

**Relationship with the Ad Hoc Open Ended Working Group on Article 8 (j)**

IUCN has developed a position paper on Article 8(j) that includes issues related to access and benefit-sharing. In the context of the ABS discussion, **IUCN urges COP8 to:**

- **establish** clear guidance and mechanisms for the collaboration and effective coordination between the Working Groups on Article 8j and ABS in the context of the negotiation of the international regime on ABS;

- **ensure** the full and effective participation of indigenous and local communities in the negotiation of the international regime on ABS through appropriate funding mechanisms and preparatory processes;

- **request** the Ad Hoc Open Ended Working Group on Article 8(j) to undertake a comprehensive assessment of the role and potential contributions of customary law principles (rights and obligations) and practices regarding access to and management of genetic resources located on the lands and territories of indigenous and local communities for the development of public policy on genetic resources and benefit sharing, and submit results to the attention of the Ad Hoc Open Ended Working Group on ABS;

- **call on** Parties to develop, implement and recognise national and local sui generis models for the protection of traditional knowledge, innovations and practices with the full and effective participation of indigenous and local communities.

**National access and benefit sharing competent authorities and/or focal points**

IUCN recognizes that a first step in promoting effectiveness and efficiency in the application of laws and regulations governing access to and use of genetic resources is identifying and assigning clear functions, competences and roles to the national competent authority on access and benefit-sharing whether this is an independent body or sectoral organs undertaking different functions. Therefore, **IUCN recommends that COP 8 calls on Parties to:**

- **designate** the national authorities responsible for managing access to and use of genetic resources and assign them with specific and precise competences and instruments to facilitate compliance with their functions and responsibilities.

**Additional recommendations**

IUCN further recommends that COP8:

- **requests** that the Working Group gives special attention to the development of indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits in the context of the achievement of the 2010 target and the MDGs;

- **adopts** the recommendation of the Working Group on ABS regarding the need to renew the request for accreditation of the CBD as an observer at the WTO.