

OUTCOMES

Expert Group Meeting of the Like-Minded Group of Megabiodiverse Countries

Access to Genetic Resources and Benefit Sharing, the International Regime on ABS

New Delhi, India

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Access to Genetic Resources and Benefit Sharing, the International Regime on ABS

Outcomes of Group Work On Issues of

- (1) National Experiences
- (2) User Measures and Certification Systems
- (3) Linkages between ABS, TK and IPR

Legal Issues, National, Regional ABS Regimes and the IR

- While there is an agreement on the need for further development of the IR, participants felt that understanding national contexts and priorities are critical for further debates.
- Since, like Bonn Guidelines, the IR will be considering national interests, priorities and capacities – one of the preliminary requirements will be to ensure better preparedness of countries. Capacities to undertake such preparatory exercises are critical
- With COP 7 deciding the need to build capacities of all countries on ABS issues, participants underlined the need to initiate action on capacity building for ABS

With some countries having experiences on developing and implementing legal and other ways of addressing ABS issues there is a need to undertake an assessment of the usefulness of ABS regimes on accruing benefits and their sharing. Participants were apprehensive of the time and resources spent on developing a 'perfect' system

• Participants felt that since IR is to provide an overall guidance on issues of ABS it should not be too detailed since such discussions might delay the development and adoption of IR. Participants felt that issues such as PIC, MAT and the related are to be defined within national context, the IR should only provide the guidance.

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• The need for a set of in-terim measures such as developing a user-manual was suggested

• With the need to assess local issues on ABS, IPRs and the related, participants called for a critical assessment of the relationship between Bonn Guidelines and the national regimes – where available

• Capacities for development and implementation of national ABS regimes vary from country to country. However, elements of such capacities related to legal, regulatory, policy and institutions can be common. Discussions under the IR should consider these after reflecting those identified under the Bonn Guidelines

• The linkages to other processes such as ITPGRFA, WIPO, WTO, UPOV and others in IR debates are evident. However, such linkages also need to be identified at national level. Efforts should continue to undertake such task

- Participants recognised the need for the IR to consider options for legal and other existing voluntary measures, since in many countries such a combination of legal and non-legal measures seems to be effective. It is important to realise, however, that the participants agreed for the need that the IP should be legally binding.
- User-guides and lessons learned through Bonn Guidelines will help better understanding of issues that are implementable and those not. Such activities at national level are very relevant

With concerns raised by countries on the voluntary nature of Bonn Guidelines and related implementation issues, the participants felt that the international regime could help the countries, who do not have procedures in place, to enforce some minimal set of laws to tide over the period which would be required to have these procedures. Further, it was stressed that while the IR recognises the national regimes it should also guarantee some benefit sharing principles.

Participants discussed the need for building capacities of communities and policy makers on issues of elements of user measures and common basic information for certification systems

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Stressing the fact that ABS measures, including user measures and certification systems, should not stop research and development for public good – the participants called for measures to differentially regulate public funded research from privately funded research.

A call for furthering the understanding of impacts of new technological interventions in prospecting and product development was given. It was suggested that such studies should be undertaken soon.

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The International regime should
acknowledge the need for a standardized certificate, ensuring the compliance of national legislations, but which is required to proceed further in applying for IPRs. Development of such measures and systems should protect national and local interests.
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ABS, TK and IPRs

The participants considered the question of why the IR is required and suggested that with the voluntary nature of Bonn Guidelines many countries are concerned about the lack of efforts for the development of national legislations on protection and use of biodiversity. These are compounded by the lack of efforts to formalise systems related to bioprospecting and protecting associated traditional knowledge.

The participants also recognised increased access and use of biological and genetic resources as well as associated traditional knowledge, during the recent years. This recognition meant that there is a need for a set of common principles and a minimum set of rules on which countries can pursue the activities on prospecting and benefit sharing with a clear and mutually beneficial legal basis.

- While insufficient capacities are one of the key reasons for non-compliance and/or furthering the ABS debates on a practical level, participants felt that the IR could assist in better realisation of usefulness of the Bonn Guidelines as an interim point for national actions on ABS. The participants stressed the need for similar capacities to be built for users in addition to providers of genetic resources. However, with increasing need to link ABS debates with those of IPRs and TK, the IR is seen as a mechanism to specify on how such linkages can be translated into operational principles.

- With the understanding that linkages between ABS, TK and IPRs are essential elements of discussions under the IR, participants also recognised that the specifics of developing actions to enforce the linkages need to be the decision of countries
- Recognising the above, the participants felt that the IR could include binding and non-binding measures

- National actions and capacities to inventorise genetic and biological resources are key to develop national actions on ABS in a more efficient manner. Countries need to prioritise actions under this issue soon, so that the value (monetary and non-monetary) of biodiversity can be better understood and appreciated. Such information is needed not only to implement ABS provisions at local level but also to operationalise the linkage issues between ABS, TK and IPRs.
- Experiences of countries on issues of creation of databases and inventories on genetic resources and traditional knowledge need analyses as well as sharing for countries to further develop debates on ABS, IPR and TK issues.

- Identifying the emerging issues, the participants underlined the need to synthesise experiences, analyse lessons learnt so far at global, regional, national and local levels to ensure that debates under IR are neither polarised nor open-ended.
- Emphasising the need for clear and better use of terms and definitions under the IR discussions, participants called for more emphasis on use of terminology in defining the linkages between IR and other processes such as the ITPGRFA (eg. relationship between COP decisions on agrobiodiversity and IT issues of food security)

- With more emphasis at national level on access to resources in non-traditional areas such as coastal and marine biodiversity and deep sea-bed genetic resources, the participants called for better understanding of the options.
- Though a point of contention, participants recognised the need to debate on access to resources collected pre-CBD.

- Finally, the participants suggested the need for LMMC network to come with a clear position statement – based on these discussions – that are:
 - Cognizant of the national, regional and other regulatory processes;
 - Suggest proposals on process, nature, scope and elements of the IR;
 - Identify problem areas and suggest prioritised actions and policy options;
 - Recognise substantive points of similarities and differences on the above, and;
 - Use available options in other fora for furthering the IR and ABS debates.