

NGO - Statement

Ad Hoc Open-Ended Working Group on Access and Benefit Sharing, Bonn, Oct. 26, 2001

1. Voluntary Guidelines

The purpose of the voluntary guidelines developed by this working group can only be to give guidance to governments when developing national legislation, in both user and provider countries. Furthermore, these guidelines should not be used to facilitate access in countries without national ABS regulation. To ensure an effective implementation of the CBD and specifically its ABS provisions, legally binding instruments have to be developed and implemented at least on a national level. Such instruments must recognise the rights, customary laws, and practices of indigenous peoples and local communities.

2. Stakeholders

We support the statement of the International Indigenous Forum on Biodiversity to clearly distinguish between rights holders and stakeholders, each group with different rights and responsibilities. The customary rights of indigenous peoples and local communities over biological and genetic resources, as well as their rights over traditional knowledge, must be recognised in order to meet the objectives of the Convention. This also applies with concepts such as Farmers' Rights as recognised by the International Undertaking. We recommend that these rights be fully acknowledged in the implementation of the CBD, including through the full participation of such groups in all processes of the Convention.

3. PIC

Prior Informed Consent is an inherent and collective right of indigenous peoples and local communities, which includes the denial of access or other activities when they contradict their traditions and beliefs. Therefore the ABS process must recognise these rights and develop mechanisms for their successful realisation. Changes in the agreed use of the resources should require a new PIC process with involvement of the original providers.

4. Benefit Sharing

Benefits, which arise from access and use of genetic resources and traditional knowledge should serve the objectives of conservation and sustainable use of biological diversity. Moreover, any benefit sharing arrangement must be fair and equitable and contribute to poverty alleviation.

5. IPRs

IPRs, especially patents, can be counter to CBD objectives. By its very nature, patenting of genetic resources, meaning privatisation of genetic resources and monopolisation of their use will lead to a restriction of use rather than to facilitation, as the CBD requires. We call upon the CBD Parties to ensure that IPRs shall not be granted if they constrain or even block the

further access to the genetic resource. The CBD should influence the IPR systems and not vice versa, in order to achieve its objectives.

The disclosure of geographic origin and PIC are unquestionable principles for the entire genetic resource use process. Disclosure of PIC in patent applications is crucial to prove that the applicant has acquired the genetic resource lawfully and not through biopiracy. Finally, disclosure of geographic origin enables indigenous peoples and local communities, ethnic groups, farmers, and citizens to monitor the fate of their genetic resources.

Countries should support the development of community-based measures to protect traditional knowledge based on customary laws and practices. They should establish national legal and policy frameworks, based on a bottom-up approach, to ensure that these measures are respected.

6. Relationship between CBD and Trade Agreements

CBD Parties must ensure that the Convention's objectives and obligations are not subordinated to WTO agreements and regional trade agreements

7. For upcoming consideration

The CBD will have to address the following issues:

- collaboration with other international fora dealing with the potential problems concerning access to and use of human genetic resources;
- potential responsibilities concerning plant genetic resources that may not be covered by the multilateral system of the International Undertaking;
- increase coordination between the existing and emerging legal national and international instruments on human rights, particularly on indigenous peoples and recognition of the right to self-determination of indigenous peoples;
- increase influence of the CBD in other international fora, which may be obstacles to achieving CBD goals.

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- Berne Declaration (EvB), Switzerland
 - BUKO Agrocoordination, Germany
 - Church Development Service - An Association of the Protestant Churches in Germany (EED), Germany
 - ECOROPA
 - German NGO Forum Environment & Development (FUE), Germany
 - Greenpeace International
 - Institute for Ecology and Action - Anthropology, Cologne (infoe), Germany
 - Klima-Buendnis (Climate Alliance), European Secretariat
 - Krystyna Swiderska (International Institute for Environment and Development (IIED)), UK
 - Maria Fernanda Espinosa (The World Conservation Union (IUCN))
 - Paul Sanchez-Navarro (World Wide Fund for Nature (WWF))
 - South-East Asia Regional Institute for Community Education (SEARICE), Philippines