

## The ABS Capacity Development Initiative



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Convention on  
Biological Diversity

### The International Treaty and the Nagoya Protocol: Supporting mutual supportiveness in the implementation of both instruments at the national level

#### Expert Workshop

*Organized by:*

**ABS Capacity Development Initiative**

*In collaboration with:*

**Secretariat of the Convention on Biological Diversity**

**Secretariat of the International Treaty for Plant Genetic Resources  
for Food and Agriculture**

*Hosted by:*

**Bioversity International**

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## Background

Following the adoption of the Nagoya Protocol (“NP”) in October 2010, the implementation of regulatory ABS frameworks at national level will need to ensure that the policy measures taken are consistent with the national implementation of the International Treaty for Plant Genetic Resources for Food and Agriculture (“ITPGRFA”). This need for harmonisation is reflected by the increasing number of requests for support from developing countries for setting up such coherent regulatory frameworks at national level.

The special nature of agricultural biodiversity is highlighted in several preambles, as well as Article 8 of the NP. Further, Article 4 deals with the relationship of the NP with other international agreements, including specialized access and benefit-sharing agreements, such as the ITPGRFA. The Governing Body of the ITPGRFA has repeatedly emphasized the necessity for close cooperation between the NP and the IT. The CBD Secretariat is currently focusing its efforts towards promoting the ratification and entry into force of the NP. This includes collaboration with the Secretariat of the ITPGRFA in the organization of capacity building workshops. The work of the ABS Capacity Development Initiative is focused on assisting countries in their efforts towards the ratification and implementation of the NP. Bioversity International provides technical assistance to countries implementing the multilateral system of access and benefit-sharing under the umbrella of the FAO/Treaty Secretariat/Bioversity Joint Capacity Building Programme for Developing Countries on the Implementation of the International Treaty and its Multilateral System of Access and Benefit-sharing.

The expert workshop explored the interfaces between the ITPGRFA and the NP and aimed to shed light on the potential issues for consideration with a view to promoting the harmonious implementation of the ITPGRFA and the NP. In addition to that, it endeavoured to identify basic parameters for national measures to achieve mutual supportiveness in the implementation of the two instruments. With a view to inform the discussions during the expert workshop, the following background papers have been developed:

- (1) In considering the interfaces between the NP and the IT, the Centre for International Sustainable Development Law (CISDL) paper discusses how both instruments can be implemented in a mutually supportive manner.
- (2) The Fridtjof-Nansen-Institute (FNI) in turn examines legal issues that arise from the operation of both instruments, as well as from the international regime on intellectual property rights.
- (3) Bioversity International prepared a draft analysis of national implementation efforts of the ITPGRFA’s multilateral system of access and benefit-sharing, highlighting the circumstances under which the interface with national strategies to implement access and benefit sharing norms pursuant to the Convention on Biological Diversity and the Nagoya Protocol are particularly important.

## Objectives

Against this background, the expert workshop aimed at increasing the understanding of the inter-linkages between the ITPGRFA and the NP and to support their implementation in a mutually supportive manner by actors involved in national implementation processes. It is expected that the outcomes of this workshop will be utilized in future capacity development activities of the workshop organizers. In order to support coherent messages the workshop was designed specifically to

- discuss and elaborate approaches for regulating access and benefit-sharing for Plant Genetic Resources for Food and Agriculture (“PGRFA”) at the national level; and
- further discuss and elaborate on the relation between farmers’ rights and the provisions of the NP on traditional knowledge associated with genetic resources.

## Outcomes

The workshop stimulated fruitful discussions between different actors involved in the implementation of the ITPGRFA and the NP and succeeded in gaining firm commitments to future collaboration.

On day 1, a number of presentations and discussions between experts delivered new insights on how to overcome the legal, policy and practical implementation challenges at the interface between the NP and the IT.

On day 2, a number of highly relevant case studies from Rwanda, the Pacific, Bhutan and Brazil demonstrated ways of effectively implementing the NP and the ITPGRFA at national level. The presentations were complemented by a panel discussion, at which experts from different fields agreed on the need for stronger collaboration and the establishment of trust between the parties.

On day 3, the ensuing discussions allowed the different groups that were represented at the workshop to agree on a number of actions that each would envisage completing within the coming year.

For instance, the **ABS National Focal Points** intend to create a framework for coordination between the two treaties' national focal points and, in some cases, a one-stop-shop for users. They further hope to contribute to the development of common messages and to develop common ABS procedures, among others.

**Treaty Focal Points** hope to start an active dialogue with NP focal points and other relevant stakeholders and to continue awareness-raising activities on the ITPGRFA in their respective countries, subject to available funding. They further hope to liaise with the ITPGRFA Secretariat, Bioversity International and the ABS Capacity Development Initiative for capacity development needs especially at regional level. In addition, they will initiate a policy discussion on non-Annex 1 crops in their respective countries, encourage private collections to be included into MLS, and include information on PGRFA into national ABS-CHMs.

The **SCBD and ABS Capacity Development Initiative** aim to pilot projects with Bioversity International in Rwanda, the Pacific, the Central Africa Forests Commission (COMIFAC) and the Caribbean Community (CARICOM) and to develop training modules regarding the scope and decisions. They further aim to build awareness and the capacity of ILCs and farmers through (i) cooperation with Natural Justice, (ii) specific training, and (iii) integration into the national programmes of GEF-SGP. Additional goals are to kick-start a tandem workshop at regional level for IT/NP focal points in cooperation with Bioversity; a FNI-study on links between NP and PGRFA; and to learn about IP instrument uses in the PGRFA sector from/with industry. The ABS Initiative will explore with Bioversity International the possibility of coordinating support in a few pilot countries and possibly sub regions for capacity building for a coordinated and coherent implementation of the ITPGRFA's multilateral system of access and benefit-sharing and the Nagoya Protocol.

The **Treaty Secretariat and Bioversity International** plan to publish a book and a number of papers/journal articles on MLS implementation as well as a handbook with options for IT/NP implementation, based on practical experiences. Wageningen University and Research Centre/Centre for Development Innovation (WUR/CDI) will develop a training course as part of establishing the first international centre of excellence on the ITPGRFA. Bioversity and the Treaty Secretary are supporting this work, and contributing to the development of the course curriculum. The Treaty Secretariat will also develop a learning module to raise awareness about the functioning of the multilateral system (as part of a series of such modules being developed by the Secretariat). The ITPGRFA Secretariat will aim to promote national benefit sharing funds based on collective approaches. Further

proposals included to encourage “return” flows of new materials put into the MLS to countries of origin for benefits of researcher and farmers and to document benefit sharing success stories, to be used in capacity development activities. The Secretariat further intends to regularize this collaborative process and to report to the Governing Body, including a possible donor call for a joint NP/IT capacity development proposal. Bioversity will explore with the ABS Initiative the possibility of coordinating support, starting in 2013, in pilot countries and sub regions, for capacity building for a coordinated and coherent implementation of the ITPGRFA’s multilateral system of access and benefit-sharing and the Nagoya Protocol.

The **private sector** while highlighting its already existing engagement for seed exchanges and technology transfer, expressed its willingness to consider project proposals from public institutions. It was further proposed to develop best practices on the use of genetic resources in breeding programmes and to develop an e-licencing platform to make IPRs available on FRAND terms (“Fair Reasonable And Non- Discriminating”).

Overall, the vast majority of participants emphasised that a mind shift is required from experts, policy makers, and donors to stop thinking about the CBD and environmental sector, or the IPTGRFA and the agricultural sector as “the other side”. Full implementation, it was agreed, should be had in mind by all, rather than focussing on the specific treaty or sectors in isolation.

It was further established that more integration and collaboration between competent authorities, within countries that are members of both instruments, will be vital in order to establish integrated, mutually supportive implementation of ABS systems in the future. This would be facilitated if joint funds could be established for joint implementation activities.

Additionally, all agreed on mutual trust being the essential element to the ABS process. However, there was disagreement on how such trust could be established, with some highlighting the importance of effective monitoring and compliance mechanisms for trust to exist.

# Minutes

Tuesday, 29th January 2013

## Welcome

**Michael Halewood** of **Bioversity International** welcomed the group to the Bioversity headquarters and thanked the ABS Capacity Development Initiative for organising the workshop, while highlighting the importance of collaboration and cooperation between organizations supporting national implementation of the NP and the IT.

**Kathryn Garforth** of the **Secretariat of the CBD**, after thanking the organisers, emphasized how vital the commitment of a diverse range of actors will be to the success of both treaties, in particular with respect to the forthcoming capacity building activities.

**Shakeel Bhatti** of the **Secretariat of the ITPGRFA** reminded the attendants of the long history of cooperation between the NP and the IT, as manifested by the memorandum of cooperation between the Treaty Secretariat and the CBD Secretariat. He underlined that, while a lot of capacity building for the IT's Multilateral System ("MLS") has already taken place on the ground, contracting parties working on implementation have often flagged the importance of clarifying the interfaces between the two instruments. He expressed his hope that this would be the first in a long series of cooperative events, which should be formally recognised by the respective treaties' constituents.

**Andreas Drews** of the **ABS Capacity Development Initiative**, after introducing the work of the Initiative, highlighted a number of open questions relating to interfaces between the NP and the IT. These would need to be clarified, especially when it comes to implementation at national level. He further stressed that, rather than focusing on the intricacies of the wording of the instruments, participants should always bear in mind the intention behind the legal text, which is to conserve and sustainably use biodiversity, contribute to food security and ensure that benefits derived from the utilization of genetic resources will be shared with the providers of such resources.

**Kathrin Heidbrink** introduced herself as the facilitator and presented a general outline of the agenda.

A brief introductory round followed.

## Presentations on the implementation status of the two instruments

*Nagoya Protocol on ABS: Linkages to the ITPGRFA and progress towards entry into force,*  
**Kathryn Garforth, Secretariat of the CBD**

The presentation recalled how the language of the ITPGRFA and the NP link to each other in their respective texts. It further reiterated the ABS-related targets in the CBD's Strategic Plan 2011-2020. The presenter then outlined the progress towards entry into force of the NP, including its status of ratification, the development of ABS measures, as well as the support provided to countries. Awareness raising measures, such as a series of policy briefs on the NP that are currently under development were then introduced and the 2013-2014 calendar with NP-related activities laid out.

*The International Treaty and the Nagoya Protocol: Supporting mutual supportiveness in the implementation of both instruments at the national level,*

Kent Nnadozi, Secretariat of the International Treaty

The presentation outlined in detail the relationship between the two international instruments, including their development, current status and interfaces. Importantly, it outlined the cooperation between the ITPGRFA and the CBD at international level, as well as joint workshops, events and activities. The presentation concluded by outlining key legal issues and practical issues for consideration, such as Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT), international certificates, as well as disclosure of origin of material and reporting. The key policy challenges were then introduced. The presenter's concluding thought was that the idea of the ABS regime is broader than the NP or the ITPGRFA individually. Therefore, he underlined that successful implementation will require mutual supportiveness of the different instruments and clear messages will have to be sent to policy makers.

Workshop participants then took the opportunity to ask a number of technical **questions** relating to the IT.

### **Presentations on the theory and practice of implementation**

*The interface between the Nagoya Protocol on ABS and the ITPGRFA at the international level: potential issues for consideration in supporting that both instruments are implemented in a mutually supportive manner at the national level,*

Jorge Cabrera, Centre for International Sustainable Development Law (CISDL)

It was the aim of the CISDL's presentation to highlight legal issues that are key to national implementation of the different ABS regimes. Following an introduction on how to ensure consistency and mutually supportive ABS frameworks, the presenter focused on case studies on the treatment of PGRFA and the MLS under the ITPGRFA from Norway, Bhutan, Peru and Costa Rica. He then went on to describe in detail the legal relationship between the NP and the IT, including

- the context for interpretation (Preamble);
- the relationship with other instruments (Art. 4);
- special considerations (Art. 8(c));
- protection of TK under the ITPGRFA (Art. 9); and
- monitoring utilization of GR (Art. 17).

The conclusion issued recommendations on how to promote the synergistic implementation of the two instruments.

*Legal Issues in the Crossfire between the International Treaty on Plant Genetic Resources and ABS under CBD/NP and IPRs,*

Morten Walløe Tvedt, Fridtjof Nansen Institute (FNI)

The FNI's presentation introduced the institute's current working paper, which examines legal issues arising from the operation of both the NP and the IT, as well as from the international regime on intellectual property rights. The presentation introduced a variety of detailed legal provisions and interfaces between the instruments, highlighting areas in need of clarification and providing interesting real life examples, for instance from Norway.

A **discussion** involving both presenters followed. Participants raised questions on specific legal issues that had been brought up in the presentations, such as the fact that the majority of resources were collected before the CBD came into force in 1993, gaps between NP and ITPGRFA interpretations, proof of legal origin, and whether non-Annex 1 PGRFA should now be covered by the NP, among others.

*National level implementation of the multilateral system: highlighting the interface with the CBD/NP,*

**Michael Halewood, Bioversity International**

This presentation reviewed eight steps that countries need to follow to implement the multilateral system. It highlighted where the interface between the ITPGRFA's MLS and the NP is particularly important and identified factors at or near that interface that are contributing to implementation challenges. Finally, it suggested some options for addressing these challenges in the future with particular emphasis on cooperation between departments with responsibility for implementing the CBD and the IPTGRFA in countries concerned.

By way of introduction the presenter stressed that all of the access and benefit sharing conditions under the multilateral system are encapsulated in the standard material transfer agreement (SMTA) which cannot be altered. He also stressed that ITPGRFA negotiators had also pre-agreed on the categories of materials to be included in the multilateral system. The relatively simple challenge for countries implementing the MLS (compared to countries implementing the NP) is to establish mechanisms for the use of the SMTA when providing facilitated access to the categories of PGRFA that are included in the MLS. He then described eight steps that countries needed to go through (either based on legal obligation or practical efficiency) to putting such systems in place. Step 1: member states need to ensure there is legal space for providing materials under the MLS, meaning, an absence of laws or policies that obstruct 'putting appropriate measures in place to provide access' He noted that the potentially most significant hurdle in this regard is national ABS legislation that extends to all PGRFA without making allowance for differential treatment of PGRFA in the ITPGRFA's multilateral system. The most common approach to resolving this issue in countries that have ABS legislation after becoming ITPGRFA member states is to 'carve-out' PGRFA in the multilateral system from the scope of the ABS legislation. Another possibility would be to use omnibus legislation, such as that used by Norway and Costa Rica, which anticipate the putting into place of specialized rules for the multilateral system. He noted however that there are still no examples of such approaches being actually completed and implemented.

Step 2 involved the confirmation of what PGRFA are automatically in the MLS, that is, 'under the management and control' of the national government 'and in the public domain'. He provided examples of PGRFA that clearly was (and was not) automatically included in the multilateral system. (E.g. Annex 1 PGRFA in a national genebank, which are not subject to IPR rights or agreements restricting the ability of the genebank to redistribute them generally are included; PGRFA managed by farmers in situ, on farm, generally are not automatically included). However, there may occasionally be difficult-to-decide cases, such as annex 1 PGRFA hosted by public universities and parastatals with their own board of directors. He presented a procedure (developed by Prof Gurdial Singh Nijar) that could be followed in such cases to clarify what is automatically in or out. Step 3 would be to take measures to encourage the voluntary inclusion of PGRFA in the MLS. The presenter stressed the importance of voluntary inclusions for the long term robustness of the multilateral system, and the fact that such inclusions represented materials moving from access and benefit sharing under the CBD and NP to the multilateral system. Furthermore, it was said to be important to confirm who can consider and authorise access to MLS PGRFA (Step 4), to share information on PGRFA in the MLS (Step 5), to establish rules for *in-situ* genetic resources (Step 6), to clarify what ABS rules apply to requests for Annex 1 PGRFA for non-food/non-feed purposes which are not covered in the ITPGRFA (Step 7), and finally, to boost users capacities to take advantage of the germplasm and information that is available through the multilateral system (Step 8).

The presenter stressed the importance of coordinated, harmonized, mutually supportive administration of ABS norms under the ITPGRFA and CBD/NP, particularly with respect to steps 1, 3, 5 and 7. He noted that in most countries, to date, there had not yet been sufficient levels of coordination between agencies responsible for implementation of the CBD/NP and ITPGRFA, with the result that progress implementing the ITPGRFA was sometimes slowed down or blocked, and that many people managing and conserving PGRFA were unclear

about what rules apply when, and to whom they should be turning for advice. He noted several factors contributing to this lack of coordination between the lead agencies, including low levels of awareness ABS issues in the countries concerned, and of the ITPGRFA in particular, low level of priority compared to other economic development activities, separate administration of the two agreements by different agencies, competition between those agencies for resources, sector-driven donor and technical support, a frequent disconnect between legalities and realities creating (sometimes unnecessary) confusion and trepidation on the part of PGRFA users, providers, conservers, different modus operandi and starting points for regulating access and benefit sharing under the ITPGRFA and CBD/NP, lack of trust between agencies and the environmental and agricultural sectors generally, and insecurity on the part of potential providers who fear, as a result of the above, being accused of making PGRFA available under the ITPGRFA when they should not have done so. The presenter advocated cooperation and coordination between donors, technical support agencies, and lead agencies within countries, as the best means to address these challenges.

*Strengthening national capacities to implement the International Treaty on Plant Genetic Resources for Food and Agriculture: The Genetic Resources Policy Initiative Phase II (GRPI 2),*

**Ronnie Vernooy, Bioversity International**

This presentation provided examples of how the GRPI 2 project, coordinated by Bioversity International, is attempting to address some of the challenges identified by Michael Halewood in its on-going work with eight countries. The presenter spoke about how to strengthen national capacities to implement the ITPGRFA and in particular outlined the work programme of phase 2 of the Genetic Resources Policy Initiative, a capacity development project. He described 5 research themes that are being followed in each country. The first theme aims to identify policy options and develop the requisite policy, legal, administrative and information-technology infrastructures and capacities to be able to participate in the multilateral system of the IT. The second theme investigates policy making networks within the countries concerned, analyzing which actors play key roles, and the possibility that some potentially key actors are not involved. A third research area concerns the extent of past, present and future dependence on PGRFA by countries as part of their agricultural research, economic development and adaptation to climate change-related stresses. The fourth research area examines mechanisms for linking farmers' organizations to the multilateral system, focussing on raising capacity of farmers (and NGOs) to take advantage of information and genetic diversity available through the multilateral system. The fifth area of research focussed on technology transfer needs, and technology transfer experiences to date, relevant to the sustainable use of PGRFA. The project is overseen by multi-stakeholder governance teams in each country, including representatives of ministries of agriculture, environment, research, academic research, breeders, civil society and farmers.

A broad **discussion** followed.

Participants asked how imports of PGRFA are being measured by participants in the countries supported by the GRPI 2 project. Michael Halewood replied that there are a number of potential information sources including CGIAR centre genebanks and breeders, national genebanks and breeding programmes and research programmes, community genebanks and farmer household surveys. Pulling all this data together allows participants to get a good sense of the extent to which a country has been benefiting from material coming in, and also about how many materials it makes available to users in other countries.

Others brought up the connection to climate change adaptation and the fact that seeds that are adapting to climate change need to be collected and saved. Can the MLS be used to facilitate that process? Michael Halewood replied that the point of the MLS was to achieve this kind of preservation and that the ITPGRFA creates policy support for this aim. The MLS provides a platform for collecting and pooling such genetic resources and making them

available to people. Other participants mentioned that in many regions climate change is happening so fast that crops cannot adapt, which is why sharing under the MLS is important. Others noted that the commercial seed system often results in less genetically diverse varieties being used. Sometimes these varieties are patented and not available for further breeding, with a reduction in the amount of materials overall that are available for use to breed for adaptation to climate change.

It was highlighted by other participants that the collaboration between Bioversity International and the Treaty Secretariat is very close, with short feedback loops, which contributes to the success of the undertakings.

Ronnie Vernooy remarked that many farmers are very willing to share their genetic resources but they often do not know about the opportunities to do so. This partially accounts for why voluntary inclusion of materials in the multilateral system is still relatively slow. Michael Halewood added that, now that with the NP there are likely to be (or could be) much clearer rules concerning access to genetic resources managed by indigenous peoples and local communities and associated traditional knowledge. In the longer run, it may be that those peoples and communities will be more willing to exercise their well-defined rights to share their resources. However, this is not going to happen until such legal certainty is created. He highlighted the present opportunity to create legal certainty by working in countries to implement the CBD/NP and the multilateral system in coordinated, mutually supportive exercises.

One private sector participant underlined that a lot of benefit sharing is already taking place – new varieties are being developed and people use them. A lot of them are freely available for further research due to the breeders' exemption in UPOV-inspired national plant breeders' right laws. She further emphasised that companies need clear rules and procedures and clear access points. Companies need to know who to contact and how to seek access to the genetic resources they would like to include in their breeding programs.

Another participant highlighted the importance of trust and that we can only build trust if we do understand that ABS is related to IPR – this, he said, must be accepted and taken into the equation by all.

On the interface with the commercial sector, it was further mentioned that at the recent German green week "Grüne Woche" it was announced that Germany will make some PBR protected plant varieties available under the MLS. It is hoped that other private holders will do the same and that governments will encourage them to do so under Article 11 of the ITPGRFA.

### **Wednesday, 30th January 2013**

Emile Frison, the Director General of Bioversity International welcomed the workshop participants via video conference facilities.

#### **Presentations on Managing access to genetic resources in national and regional genebanks: questions arising from experience**

*Managing access to GR's in national and regional gene banks: Experiences from Rwanda,*  
Jean Rwihaniza Gapusi, Rwanda Agriculture Board (RAB)

The presenter gave a brief introduction of Rwanda's geography and ecosystems before addressing the country's ABS-related frameworks. Both the ITPGRFA and the NP were ratified recently by Rwanda, presenting the opportunity to implement them in a complementary manner. The common framework is, among others, put into place through the establishment of a national gene bank, governed by an operational plan document. It

deals with ex-situ and in-situ conservation, as well as on-field work. Following an introduction of the gene bank's institutional framework, the presenter turned to consider actions that would need to be taken in the future and asked two questions for the audience to consider:

1. Looking at the gene bank as a pilot case, how can funds be raised in order to allow full operationalization? How far should the gene bank radiate?
2. How to best ensure national coordination of the different ministries (Agriculture, Environment, Education, Commerce, ...) implementing the two instruments?

A brief **discussion** followed, in which participants asked how the regional set-up could best be used to move ABS issues forward. Mr Gapus explained that, in terms of who decides on access, currently requests for genetic resources are addressed to the national Rwandan focal point, which channels information to the specific programme managers. The heads of programme do not generally have enough knowledge to take decisions on access by themselves – therefore more training is needed. The heads of programmes only provide the passport data. The SMTAs are filled in at a higher level by officials more familiar with the international treaties, and with the aid of the national focal point. It is not even entirely clear yet which national competent authority is responsible for which crops. However, at least the starting point will always be the gene bank.

*Managing access to genetic resources in regional gene banks: Questions arising from Experiences on Utilisation of PGRFA,*

Valerie Tuia, Secretariat of the Pacific Community (SPC)

The presenter briefly introduced the work of the Secretariat of the Pacific Community, which has 22 member countries and aims at sustainable conservation and the effective use of plant resources. The specific centre introduced in the presentation focuses on crops and trees of the pacific. Its activities include conservation, utilisation, virus indexing, distribution, research, capacity building and awareness-raising. There is also a Tree Seed Centre. The presenter mentioned that there are over 2,000 accessions to genetic resources from this centre each year, a good number of which include Annex 1 crops. A number of other plants that are commonly accessed were then introduced, such as banana, yam, sweet potato and vanilla. 53,550 plants have so far been distributed, a lot of others have been accessed from abroad by the centre. Outside of the pacific regions, access has mainly been provided to genetic resources stemming from the taro plant. Under the system established by the centre, the countries that accessed the genetic resources have to share all the end products of their research developments after a number of years. The material thus developed cannot be subject to plant breeders' rights. This is because distribution occurs as part of a project funded by the EU.

Finally, the challenges faced by the SPC were introduced. Challenges mentioned included identifying which genetic resources are covered under which instrument, and which ministry is to handle germplasm requests. A lot of countries were said to prefer the NP over the ITPGRFA because possible benefits will be channelled directly to the country.

Furthermore, with respect to TK it was said to be unclear whether to use the NP or the IT, as the latter does not give benefits to the local communities for their TK. Furthermore, the fact that private recipients often do not provide information on what is happening to the germplasm once it has been provided was identified as a problem. There was also said to be confusion on the definition of "commercialisation" in the SMTA.

In the ensuing **discussion** participants commented that providing genetic resources to farmers for direct use in cultivation does not fall under "research and breeding" and that this use therefore does not fall under the SMTA. One participant commented that in Germany, in such cases, a one page agreement is prepared, to be signed by the farmer, in which he agrees that he will not use the genetic resources received for research and breeding, and that he or she will not pass it on to others. That way, the potential loop-hole in the chain of benefit-sharing obligations that would otherwise be created by use of the SMTA from providers to recipients will be closed. The question was raised concerning what happens if such material is used by a farmer for breeding. In such cases, the farmers should obtain the materials using the SMTA. Ms Tuia responded that in the eyes of the SPC even direct

cultivation falls under the SMTA and that farmers are asked to sign it, in order to facilitate the operations, especially since it is usually hard to know if a farmer will be breeding (through selection) or using materials directly when they take such small quantities from genebanks. Obviously this may put farmers off, as the SMTA is very long. Ms Tuia commented that generally what happens is that the ministry of agriculture signs on behalf of the farmers, because it is not feasible for each farmer to sign. Furthermore, the presidents of the women's groups, which are established groups in the villages, do have the capacity to sign.

It was further mentioned that tracking materials is one of the major ABS challenges.

### Tentative answers to the workshop's main questions

#### Group work: Exchanging ideas and developing options

Five questions were distilled from the foregoing discussions. Each of the five tables in the room was asked to pick one question to discuss, note their results on a whiteboard and to present their suggestions to the other workshop participants. The five questions selected were the following:

1. How to address monitoring and compliance under the ITPGRFA and the NP through national measures in provider countries.
2. What should be done: harmonisation of existing laws with NP and IT, or something completely new?
3. How to improve the coordination and decision making (authorize access requests) between different ministries responsible for the two instruments?
4. How can countries clarify the scope of the two instruments, i.e. how to define the criteria for what is regulated at national level under which instrument?
5. How to implement Farmer's Rights under the Treaty and the TK related provisions of the NP at national level?

#### Plenary: Group presentations and feedback

1. **How to address monitoring and compliance under the ITPGRFA and the NP through national measures in provider countries.**

#### Notes on the whiteboard

- National measures regarding:
  - Monitoring:
    - Add conditions to SMTA
    - Sign/ratify Nagoya Protocol
  - Under IT: provider countries are not responsible for tracking/monitoring. This falls under the Governing Body? Secretariat at research organisations? (Policy/regulatory)
  - Under NP: additional conditions (operational): set up a special commission (multi-sectoral)
  - Compliance (legal matter)
    - IT: Compliance Committee: Parties, users, providers
    - NP:
      - Good contract (reporting, confidentiality)
      - Working with reliable parties

#### Presentation

According to this group, the most important challenges in relation to monitoring are practical challenges, and in relation to compliance legal challenges.

The genetic material under the multilateral system was said not to require monitoring by the providers. However, under the NP there is a stronger need for a monitoring system.

According to the presenter, there should be two levels of action: firstly, a policy/regulatory level, and secondly an operational level.

With respect to compliance, the discussion focused on whether there should be a compliance committee for the ITPGRFA at the national level. This would be similar to the inter-ministerial committee discussed by group 3 below.

It was noted that under the SMTA, recipients agree that a representative of the 3<sup>rd</sup> party beneficiary interests of the multilateral system may bring legal actions against recipients in cases of suspect non-compliance with the benefit-sharing provisions of the SMTA. FAO has agreed to operate as the 3<sup>rd</sup> party beneficiary in this respect.

The big difference between the two instruments was said to be that the compliance provisions of the NP require all countries to put monitoring systems (check points) in place at national levels. While there are enforcement mechanisms under the MLS, no monitoring is effectively taking place. Apart from formal mechanisms it was argued to be important to be able to rely on reputable institutions. However, the confidence that a good compliance system creates in providers was emphasised to be vital for easy access. It was also highlighted that checkpoints under the NP could possibly be used to monitor compliance with the MLS, if the checkpoints would require proof that PGRFA used was obtained legally. The SMTA could be used as proof. It was noted though, that someone using Annex 1 PGRFA without an SMTA would need to adduce other forms of proof that they obtained and are using the material legally.

## **2. What should be done: harmonisation of existing laws with NP and IT, or something completely new?**

### Notes on the whiteboard

- Because of the NP, it is timely to revisit existing laws & integrate the IT.
  - Stocktaking / gap analysis
  - Stakeholder consultations
  - Awareness-raising
  - Define needs for ABS legislation
- Existing legislation: Decide on revision/rewriting:
  - Cost/benefit
  - Transaction costs
  - Cultural aspects
  - Legislative conditions
  - Time
  - Political willingness
  - Funds
  - Availability of capacity
  - Institutional framework
- It can be a new area of cooperation between NP & IT

### Presentation

The group advocated that one should revisit existing laws and integrate both instruments. Countries should take stock of what they already have and what they are missing. Awareness-raising is vital in this context. If there is existing legislation, one can decide

whether to revise or rewrite. This will depend on the legislative conditions, cultural aspects, ministries, funds, capacity and the institutional framework.

### **3. How to improve the coordination and decision making (authorize access requests) between different ministries responsible for the two instruments?**

#### Notes on the whiteboard

- SMTA/access authorisation: build on recent practices.
- Delegation of powers to the director of the genebank.
- Non-Annex I crops: Herbariums and botanical gardens currently use non-standard MTAs (for non-food/feed)
- Don't expect the heads of genebanks to take the responsibility for making access decisions.
- Biosafety examples:
  - One option: Inter-ministerial committee to oversee coordination: to be composed of the ministries of science and technology, environment, agriculture and other stakeholders.
  - Second option: Commission creates general policies.
- Botanical gardens: MTA for research and breeding for non-feed (for *ex-situ* collections). Commercial use: country of origin.
- Inter-ministerial Committee: decision on general rules and provides advice in complicated cases.
- National competent authority: decides on a case by case basis, according to the orientation given by the Inter-ministerial Committee.
- *Ex-situ*: delegations from NCA in standard cases to genebank directors and other collection holders.
- *In-situ*: simplified/standard clauses for basic scientific research.

#### Presentation

In answer to the question, the group came up with the option to create an inter-ministerial committee at national level. This would be different from the national competent authority and decide on complicated issues. It would be composed of the ministries of sciences, agriculture, environment and perhaps representatives of the private sector and other stakeholders. National competent authorities would delegate standard cases to gene bank directors. There should further be simplified measured and standard clauses for *in-situ* use. It was said to be important to delegate the power to sign SMTAs to the directors of gene banks, if it is clear what crops fall under the SMTA. What is more complicated are resources that are not in the Annex I but that countries would nevertheless like to make available using the SMTA. In the Netherlands, for example, non-Annex species are distributed under SMTAs.

The group believed that the central element of the question is how to bring authorities in the areas of environment and agriculture together. Regular meetings between the two should be organised. One option would be to have a single committee. For instance, in the area of biosafety, there is a commission responsible for broad policy decisions, and the specific implementing organisations operate further below. This system has proved to be more efficient, than one organisation being responsible for everything.

For simplicity's sake it was said to be easiest to have the same general access conditions for all genetic resources stored in one gene bank. It would be useful to have one central authority to coordinate all access requests. The responsibility of a national focal point should not be to make political decisions – this should be made by a higher authority. Therefore, if access is granted by national focal point in standard cases, the decision should not be very

complex. In unclear cases a higher ministry should be available for consultation and formally decide. In other words, one should try and standardise procedures as much as possible. It is a vital component and an obligation under the NP to have these administrative procedures formulated at national level.

**4. How can countries clarify the scope of the two instruments, i.e. how to define the criteria for what is regulated at national level under which instrument?**

Notes on the whiteboard

- Not automatically in the MLS (but SMTA could be used for their transfer):
  - Non-Annex I
  - Other uses (non-food, feed etc.)
  - Post-CBD/ Subject to conditions for transfer
  - Pre-CBD
- Countries to decide:
  - Inter-ministerial consultation to provide general policy
  - At collection level: case-by-case decision-making.
  - Considerations: Harmonised regional approaches, policies
- MLS:
  - Annex I
  - For food & agriculture
  - For research and breeding
  - Under management & control
  - In public domain
- IT focal point to coordinate application of these criteria at national level

Presentation

The group pointed out that one must refer to taxonomic criteria in order to decide which crops fall under Annex 1 of the ITPGRFA. This requires application of criteria (management and control and public domain) at national level. This could be an exercise coordinated by the ITPGRFA focal points. What is not automatically included in the MLS could nevertheless fall under the system if it was so included voluntarily – this is again a policy decision at national level. Those who manage genetic resources and provide access must be provided with guidelines by governments on how to make access decisions. An inter-ministerial committee should not be set up every time a request is received. Instead, the government should provide others with enough information to take these decisions with confidence.

The group suggested that it would further be helpful to create harmonised regional approaches in order to make user access easier. Instead of using criteria, actors would benefit from guiding examples, based on real cases, as is currently done in Peru.

Others argued that under the ITPGRFA there is actually not a lot of discretion left to ‘interpret’ some of the key terms and phrases in the SMTA and ITPGRFA. The ITPGRFA’s governing body created the Ad Hoc Technical Advisory Committee on the SMTA and MLS. That committee has met four times and issued opinions on a number of issues, confirming criteria to be applied, and interpreting key terms used in the SMTA and in the ITPGRFA itself. The Governing Body could help create certainty by endorsing some of those opinions where some countries continue to feel that there is a lack of clarity to make progress.

**5.**

## **How to implement Farmers' Rights under the Treaty and the TK related provisions of the NP at national level?**

### Notes on the whiteboard

- No conflict between the two – complementary
- IT is weaker, very open/broad
- NP stronger with obligations for contracting parties but according to national legislation – requirements of PIC and MAT
- User measures related to TK in the NP
- National legislation should cover provisions for farmers' participation as provided in the ITPGRFA and NP
- National measures to implement would go a long way in covering farmers' rights but loophole in NP mentions ILCs in the ITPGRFA talks about farmers
- National process guidelines to help farmers implement/negotiate MAT
- Participation of farmers in decision-making at the national level
- Concerns: who can complain in case of non-compliance of the NP?

### Presentation

This group compared the text of article 9 IT, relating to farmers' rights and the TK provisions of the NP. Under article 9 ITPGRFA it is the responsibility of national governments to implement farmers' rights – but this is merely a recommendation – it says subject to national law. The NP provisions are very different, creating positive, concrete obligations to ensure that PIC is provided on MAT. The NP is broader because it covers ALL genetic resources, including PGRFA. On the other hand, some of the farmers rights provisions of the ITPGRFA, while weaker (i.e., subject to national law), are much broader than in the NP, for example the right for farmers to participate in national level decision making. Article 9 could be partially implemented when countries put in place mechanisms to require PIC and MAT for indigenous and local communities pursuant to the NP, provided those provision extend those rights to farmers per se. Further questions to be asked include: Who can claim that non-compliance has taken place? Do the provisions give direct rights to indigenous peoples to stake these claims? The negotiations on compliance mechanisms under the NP have not decided conclusively on these issues.

### **Panel discussion: Partners' perspectives in an arranged marriage**

A panel discussion was moderated by Andreas Drews, the five panellists representing different NP and IT/MLS perspectives. The below summarises each panellist's statements and points of view.

#### **Bert Visser, Centre for Genetic Resources, the Netherlands (CGN)**

As a collection holder you are both a user and a provider of genetic resources. We have found it increasingly difficult to obtain access agreements on collecting missions. This has limited the opportunity to improve our collections. About half of our stored material is accessed by other countries every year. This shows how important this exchange is at the international level.

On compliance – of course this is an important issue, as examples of bio-piracy are well known. Yet, those occurrences do tend to form a small minority and it is more important and more productive to turn this discussion not on misappropriation but on benefit-sharing that is serving the providers. From the perspective of the IT, it is important to develop an effective funding strategy on how providers can start to benefit from making germplasm available.

The SMTA is built on obligatory benefit sharing and somehow it has been difficult for voluntary benefit sharing to be organised.

The MLS intends to create a pool of funds and from that perspective it is very important to improve the functioning of the IT.

The use of TK is documented but farmers' varieties are rarely collected. Wild varieties are usually collected. This is done by contacting the competent national authority. An agreement is usually made that assures the free availability of the material.

If you want to deal with the interfaces of the two instruments you have to define the subject matter of both. It would help very much to define to which genetic resources each applies exactly.

#### **Anke van den Hurk, Plantum NL**

As a user you want to get access to genetic resources when you need them. Access needs to be quick. The ITPGRFA works well in the countries where it is implemented – unfortunately the number of countries this applies to is quite limited. This is a worry. We hope that the time of negotiation will end soon and implementation will start. Countries must really make clear what the rules and regulations are. People need to focus more on what to do next, develop pilot cases. Furthermore we should start to build trust. If a company signs something then the company will generally follow that, so we need not so much discussion on monitoring and compliance.

Money has not flowed back into the MLS but a lot of benefits are shared because new species are developed that ensure food security and they require less land, therefore aiding biodiversity. This value is underestimated. Further contributions include the fact that the private sector often pays for collecting missions etc., companies provide jobs. In the Dutch system the payments to gene banks are 10-15% in kind by the breeding companies.

The African Proposal on paying into the MLS is far too expensive from the point of view of private companies.

The MLS is a good approach for the seed sector. A standard contract is good because it allows quick access to materials.

The silver bullet solution would be a common SMTA applicable to all genetic resources.

Criticism from the audience: The new varieties developed by the private sector often require inputs that are only available in developed countries, while subsistence farmers are often not able to afford those inputs.

#### **Carlos Correa, University of Buenos Aires**

How can the protection of TK be balanced with the use and development of that knowledge? This has been discussed without agreement for the past 20 years. What is subject to the public domain? Is anything not subject to IPRs? This would mean that TK is part of the public domain. But there are still some rights to the knowledge by local communities. The NP has made that step forward, with respect to protecting TK by creating very clear rules which establish that, in order to access TK you need permission by the local communities. Knowledge that is already contained in literature, which has already been disclosed, constitutes a grey area.

Regarding the breeder's exemption, some companies will create patents on plant varieties, and they are not able to benefit from the breeder's exemption. There are some evergreening patents in the case of biotechnology – the company will introduce minor changes and this will prevent other users from accessing the resources. This is seriously undermining the system.

Regarding the funding under the MLS, following the African proposal (whereby recipients of the SMTA can choose to fall under an alternative mandatory financial benefit sharing scheme

set out in article 6.11) more money could become available – why is this option not being used?

How would do you involve local communities in the benefits of bio-prospecting? Farmers are involved in the local cultivation of some crops. However, so far we have not been able to work with indigenous peoples, because there are many uncertainties, such as who has the capacity to make final decisions and represents a group. When TK is in the public domain it is really unclear where the benefits should go.

There is no conflict between the ITPGRFA and the NP.

**Pierre du Plessis, Centre for Research Information Action in Africa Southern African Development and Consulting (CRIAA SA-DC)**

Most people involved in ABS realise how important access is. Reluctance to grant access nevertheless exists because it is very difficult to enforce your rights once the genetic resources leave the country.

You don't really need good laws to make good business. We have tried to be a good partner to companies and to provide access to our resources and this has been pretty successful. However, the income benefits need to be spread wider.

The silver bullet would be a global MLS that implies that anyone who benefits from biodiversity must pay for it.

**Jorge Cabrera, CISDL**

Costa Rica's approach to dealing with ABS has been successful in terms of technology transfer and capacity building – if not necessarily in monetary terms. The bilateral approach can work – but it does require a lot of investment in national capabilities. Unless you have the whole package you won't have a sustainable situation. With regards to the MLS, it can work but it requires some preconditions, such as political will to implement the system. In Costa Rica, this exists with regards to ABS, but not necessarily with regards to the ITPGRFA. Another precondition is the institutional cooperation between the different stakeholders in Costa Rica. A coherent national regulatory framework is important, but so is being a reliable partner and to build trust.

The silver bullet is common cooperation.

**Presentations on lessons learned from experience**

*ABS implementation in Bhutan: Sharing experiences,  
Tashi Dorji, National Biodiversity Centre*

The presenter introduced Bhutan as a country with strong conservation policies. In terms of the legal and policy environment on ABS, there was no clear mechanism in place prior to 2007. Then MTAs were instituted. Draft rules were put in place but no policy. This was developed and introduced in 2008. The ABS policy is still in draft form because it has to go through a very rigorous process. Once in place, access to genetic resources and or associated TK shall be divided into two phases: A scoping phase and an actualisation phase. The latter involves an actualisation permit, which will be facilitated by the national focal point and an access and benefit sharing agreement.

The ABS policy relates to the ITPGRFA insofar, as there is one policy relating to ABS and all genetic resources that are not under Annex 1 will fall under that. One agency, the NBC is responsible for access to all genetic resources. Therefore there is only one policy on ABS for Bhutanese genetic resources, all of which is channelled through one agency. Monetary benefits will go into an ABS fund, which will be used to enhance conservation. One product has already been created from an orchid, a face cream, and the company is paying into the ABS fund. The money also is used to develop and promote the cultivation of the orchid, so

that it does not have to be picked from the wild and to educate the locals not to collect the orchids from the wild.

There are further a few pilot seed banks but this project is still in the early stages. Challenges include a low level of national awareness of the CBD and the instruments, as well as lack of adequate technical, legal and financial resources and capacities. The positives are that Bhutan is a small country and there is a good working relationship between the different stakeholders. No SMTA has been signed so far. MTAs have been used to grant access.

*Implementing the International Treaty and CBD in Brazil,  
Juliana Santilli, Instituto Socioambiental*

Brazil is both a user and a provider country. It is highly dependent on staple crops from other countries. It was one of the first countries to ratify the CBD and has ratified the IT.

Ratification of the NP is on its way. Brazilian ABS law has been conceived in response to the CBD, not the IT. However, the “transfer” of genetic resources can be made under the MLS an exception in Brazilian law.

So far, only one Brazilian agricultural research organization, Embrapa, has made its collections available under the MLS. No voluntary inclusions have been made. Embrapa has only released raw and not developed germplasm. Of the resources in the database, 76% of the resources are actually exotic, not native to Brazil. Brazil's only contribution to the MLS is cassava – it has refused to put others, such as peanut. At the same time, it is keen to benefit from the MLS.

The benefit sharing fund has just approved a project by indigenous communities' gene banks and under this project resulting crops will have to be made available within one year. Under Brazilian ABS law, only crops covered by Annex 1 are covered by the MLS, all other have to follow the bilateral CBD approach.

Right now a new draft ABS law is being contemplated by the Ministries of Agriculture and Environment and this new system will cover all genetic resources, including PGRFAs. The intention is that all national transfers in the public domain will be transferred under the SMTA. A new benefit fund will be created. Monetary benefit sharing will be mandatory in all cases, not just when the product is patented unless the product will be in the public domain.

The other change is that the resulting money will not go to the owner of the land anymore but towards biodiversity conservation.

The issue of how to approach TK is still not clear. The agricultural ministry wants only government officials to be able to make access decisions. Under the new law all genetic resources will be considered public property, even if found on private land. Over the past twelve years only nine benefit sharing contracts were signed and almost no funds returned to biodiversity, because in the past this went to the private owners of the land. The consultation process for the new law did involve other actors, such as the ministry of trade and science and technology but the main role was taken by the ministries of environment and agriculture. With respect to private collections, a proposal is that only those private collections that make their own collections available will have facilitated access under the new system.

## Options for a way forward

In order to find options to render the work at the interface between the NP and the ITPGRFA more productive, the day started with an interactive exercise. Workshop participants were asked to identify themselves as belonging to one of the following groups:

- o ABS National Focal Points
- o Treaty Focal Points
- o SCBD and ABS Capacity Development Initiative
- o Treaty Secretariat and Bioversity International
- o Private sector

In a first **step**, participants were then asked to think of recommendations for all the other groups but their own. The idea was to come up with ways of how the others can make work at the interface of the ITPGRFA and NP more effective. Participants were asked to note down their individual suggestions to other groups on boards. Following the exercise, the boards included the following suggestions:

- o **ABS National Focal Points**
  - Create positive incentives for users of GR to contribute to conservation.
  - Enter into dialogue with their ITPGRFA pairs at country level and explain the NP provisions.
  - One final SMTA for all breeding activities, including ornamentals.
  - Develop joint proposals with ITPGRFA focal points for support by the ABS Capacity Development Initiative & Bioversity International.
  - Engage agricultural sector (research, training, extension, farmers) more directly in ABS policy & law development.
  - Develop guidelines / decision tree for users to know where to go for ABS with ITPGRFA focal points.
  - Collaborate with ITPGRFA focal point to enclose as many PGRFA in the multilateral system with all relevant data.
  - Need to stock-take what exists in the national sphere and initiate/coordinate the process of working towards a national ABS regime in harmony & the NP/IT.
  - Involve different users in the development of national ABS policies.
  - Coordinate at country level which focal point (ABS/IT) has sole and final authority over access to PGR.
  - Submit information, views, and experiences – in response to CBD sec notifications.
  - Coordinate with ITPGRFA focal points and come up with joint funding mechanisms which farmers/ ILCs can access directly for conservation & the sustainable use of GR.
  - Make use of available GEF funds.
  - Resolve key legal policy issues for more clarity / certainty.
  - Create awareness raising mechanisms at national level involving decision makers.
- o **Treaty Focal Points**
  - Coordinate at country level which focal point (ABS/IT) has sole and final authority over access to PGRFA!
  - One final SMTA for all PGRFA! In fact, all breeding activities, including ornamentals.
  - Initiate country level awareness activities on the IT.
  - Catch bio-pirates!
  - Start giving out SMTAs before the final implementation of laws.
  - Establish more coordination activities/meetings with other agencies/stakeholders (e.g. ABS focal points/ministries/farmer groups etc.).
  - Make extension of Annex 1 possible.

- Encourage private collections to be included in MLS.
  - Have coffee with NP focal points.
  - Involve researchers, including students, in practical implementation activities.
  - Make decisions makers in strong ministries of agriculture aware of necessity to collaborate with weak ministries of environment in implementing the ITPGRFA in harmony with the NP. Use momentum of NP ratification process.
  - Update, maintain national ITPGRFA webpage and link it to national CHM (ABS-CHM).
  - Collaborate with ABS focal point and enclose as many PGRFA in the multilateral system with all relevant information.
  - Involve different users in development of ABS policies including ABS focal points.
  - Collaborate with ABS focal points and establish a commission to oversee both NP & ITPGRFA issues.
- **SCBD and ABS Capacity Development Initiative**
- Clarify how NP works for PGRFA – promote pilot projects on exchange.
  - Recognize/promote that IPRs are fosters of innovation.
  - Development in cooperation with the treaty secretary, a handbook on possible options for harmonious implementation of the two instruments, to be used by CDB and ITPGRFA focal points.
  - Strengthen collaboration among regional organisations on implementation of NP/IT at the national level – assist countries in developing national laws with no conditions attached.
  - Integrate specific capacity building in the SMTA and IP into ABS Capacity Development Initiative plans.
  - Produce a documentary on ABS & ITPGRFA issues interfaces.
  - Work on exclusion of PGRFA from NP and let ITPGRFA take lead.
  - Organise consultation process on the scope of PGRFA vis-a-vis GR in general.
  - SCBD and ABS Capacity Development Initiative need to communicate and devise a coordinated approach to capacity building in ABS potent regions that have not awaited such opportunities can be included in order to develop global understanding of ABS.
  - Link/ coordinate with organisations directly working with farmers & local communities & together develop capacity building activities for famers
  - Consult with ITPGRFA Sec on ABS scope: all PGRFA or only Annex 1 under IT?
  - Identify and use existing training tools and materials.
  - Implement joint capacity building and awareness raising activities with ITPGRFA at the national level involving all stakeholders.
  - Promote regional cooperation for developing national ABS systems in countries of the region.
  - Work toward raising awareness of ILCs and farmers of their rights under NP and the IT.
  - Select pilot cases of at least 2 countries or regions that ratified both instruments for quick initiatives.
  - Support capacity building activities (NP) in countries where Bioversity International is supporting capacity building (IT) activities.
  - Call for proposals from both CBD/NP and ITPGRFA competent authorities for joint policy development.
- **Treaty Secretariat and Bioversity International**
- Promote multilateral approaches in NP (through Article 10).
  - Develop system to show all benefit sharing that takes place.
  - Help countries identify and integrate PGRFA into the MLS of the ITPGRFA.
  - Recognise that IPR fosters innovation.
  - Help countries to develop mechanisms to facilitate famers' access to MLS.

- Consult with SCBD: ABS scope is all PGRFA or only Annex 1?
  - Develop a training for all ITPGRFA & NP focal points based on handbook in cooperation with SCBD.
  - Secretariat: Support countries with practical tools & stepwise approaches (checklists). Resist cute and past approach in FAO CGRFA.
  - Participate in consultation on delineation of PGRFA.
  - More engagement in farmer's rights implementation: exchange of experiences and linkages with MLS.
  - Work on extension of Annex 1, including ornamentals.
  - Develop trigger points in the SMTA to realise BS obligations/goal in IT.
  - Develop guidelines for the inclusion in the MLS of in situ PGRFA, under the management and control of CT in the public domain (example crop wild relatives found in public federal lands and protected areas).
  - Collaborate with NP and CBD on a joint capacity building activities and awareness-raising on both NP & IT.
  - Take the bilateral ABS approach of the NP serious and develop interface policies e.g. of the Governing Body.
  - Need stronger communication/ dialogue & NFPs on the progress as well as in disseminating GB implementation at the national level.
- **Private sector**
- Oppose attempt by FAO ITPGRFA to hollow out NP.
  - Develop strategic supportive programmes with public institutions.
  - Suggest or develop pilots/create examples in target countries with international organisations, NFPSSs, companies.
  - Share monetary benefits with the ITPGRFA to make the ABS mechanics work.
  - Get involved in match-making.
  - Better explain what benefits (monetary/non-monetary) are being shared, and could be shared by the private sector.
  - Insist countries develop one-stop shops for ABS (IT/NP).
  - Develop CSR schemes for ABS and “leading by example champions”.
  - Continue to engage in multilateral processes and encourage further the private sector actors to get involved.
  - Support GMBSM (NP Article 10).
  - Develop novel ideas to contribute to benefit sharing on treaty implementation.
  - View small-scale farmers as part of the develop process & support them.
  - Support community seed banks technically & financially in pilot countries.
  - Make voluntary contributions to BS fund.
  - Develop more accessible technologies by farmers of developing countries as well as more easy access to IPRs.
  - Case studies on specific crops & specific countries of benefits derived through exploitation of breeder's exemption.

### **Plenary: Group presentations and feedback**

In a **second Step**, participants were asked to gather in their own groups. Based on the suggestions of others, as well as their own ideas from this workshop, they noted down what they as a group are ready and able to do in the foreseeable future, e.g. within one year. The following suggestions were noted down by the different groups on what they are able to do in the coming year (see below).

Further, in a **third step**, each group presented what they intend to do. The audience additionally offered hints, such as studies, possible partners and cases that may help the group to make it happen.

- o **ABS National Focal Points**

- Collect lessons about multilateral ABS (IT) – contribute to Article 10 consultations.
- Create/promote framework for coordination between two treaties/focal points – contribute to national measures to support conservation.
- Create a one stop shop for users.
- For the two focal points/those responsible for PGRFA & the CBD to be engaged in each other's discussions – interface.
- Engage in FAO CGRFA-14 as NP focal points (April 2013, see NP article 8).
- Contribute to the development of a common message – single communication.
- Develop common ABS procedures.

Participants commented that: It is unusual for national focal points to agree on a common approach. They should therefore try and feed this back to national/regional ministries.

Others mentioned that all of this is related to Article 8 of the NP. The key for this is the meeting in April mentioned above.

- o **Treaty Focal Points**

- Start/continue dialogue between IT/NP focal points & other relevant stakeholders.
- Start/continue awareness activities on ITPGR in our countries, subject to available funding.
- Liaise with ITPGRFA Secretariat and ABS Capacity Development Initiative for Capacity Development needs especially at regional level.
- Use SMTA for Annex 1 crops.
- Initiate policy discussion on non-Annex 1 crops in countries.
- Encourage private collections to be included into MLS.
- Include information on PGRFA into national ABS-CHM.

Participants highlighted the importance of having one focal point and a one stop shop. The NP focal point has the obligation to provide info on all genetic resources; therefore this should be the general focal point.

The ABS CHM is currently in a pilot phase, in which the focus is on national measures on ABS, national competent authorities, permits. The informal advisory committee meeting for this is foreseen to take place in June. There will be opportunity beforehand on the possible links that can be made under the treaty process or at national implementation level.

Further suggestions for the national focal points included to identify all stakeholders in a country affected by this issue. Secondly, one could identify which public collections are included under Annex 1 and what state are they in. What can be done if this is not at an ideal level?

There is a call coming now from the CBD Secretariat for comments on Article 10 of the NP. Since the ITPGRFA is currently the only functioning system in this area, it would be nice for ITPGRFA experts to liaise with their NP counterparts and to give input to this consultation, which comes out in May.

- o **SCBD and ABS Capacity Development Initiative**

- Pilot projects with Bioversity International
  - o Rwanda
  - o South Pacific
  - o COMIFAC
  - o CARICOM

- Develop training modules regarding the scope/decisions
- Build awareness & capacity of ILCs and farmers
  - Cooperation with Natural Justice
  - Specific training
  - Integrate into national programme of GEF-SGP
- Kick-start a tandem workshop at regional level for IT/NP focal points in cooperation with Bioversity
- FNI-study on link between NP and PGRFA
- Learning about IP instrument uses in the PGRFA sector from/with industry (good MATs)
- The SCBD was interested in the suggestion to develop a handbook in cooperation with the ITPGRFA Secretariat but is unlikely to have the necessary financial/human resources in the coming year.

Participants commented that the private sector should be more involved in the suggested pilot projects.

Furthermore, the importance of the CGRFA-14 meeting in April was highlighted, at which the African Group, for instance, is currently giving no input at all.

The ABS Initiative should further give advice on creating a “one stop shop” for users.

It was further mentioned that over the last half year the Netherlands facilitated a number of workshops on IPR in Africa. In addition a yearly course is organised on PGRFAs – there is still room for new participants. The ABS Capacity Development Initiative should further investigate what other parties are playing a role in this area. The ITPGRFA Secretariat is in the process of creating a number of publications and policy briefs on the issues.

- **Treaty Secretariat and Bioversity International**
  - Book on
    - MLS implementation
    - Benefits of participation
    - CSB
  - One handbook with options for IT/NP implementation (Bioversity International & Secretariats) based on practical experiences of key issues. Inclusion of in-situ materials and wild relatives.
  - This will then be used as input for training courses /workshops at national level, supported by the ABS Capacity Development Initiative/Bioversity
    - E.g. Wageningen University and Research Centre/Centre for Development Innovation (WUR/CDI) course
    - IT MLS module
  - Bioversity will coordinate a step-wise guide for IT/MLS implementation & related issues.
  - IT Secretariat will promote national benefit sharing funds based on collective approaches – international benefit – sharing funds based on this.
  - 2013: Four joint capacity development activities, 2 Secretariats / ABS Capacity Development Initiative / Bioversity International: in countries of common activities (sub-regions: West Africa, Central America, South Asia, Pacific).
  - Encourage “return” flows of new materials put into the MLS to countries of origin for benefits of researcher and farmers. Document benefit sharing success stories – use in capacity development activities.
  - FNI & Bioversity International: Document experiences, promote PIC/ MAT and collective approaches, community biodiversity funds, community seed banks, participatory plant breeding
  - IT PGRFA Secretariat: Make more accessible the outputs of the Ad Hoc Technical Advisory Committee on the SMTA and MLS through

- Websites
  - Compilations
  - User-friendly format
- Both Secretariats: regularize this collaborative process and report to governing bodies.
- Joint donors' call for joint NP/IT implementation proposals – support for joint policy/legal capacity development.
- **Private sector**
  - Commented that what they do already, in terms of exchange, is not seen enough. Just because the private sector makes money that does not make it evil.
  - The private sector is already engaging in technology transfer, support community seedbanks, develop small famers' communities as appropriate.
  - Bigger companies have foundations.
  - Smaller companies on project basis – both are already happening.
  - Pilots on match making will be looked into provided they fall into the companies' framework.
  - Willing to look into project proposals from public institutions.
  - Work on better explanations of BS taking place, including the breeder's exemption.
  - Development of best practices on use of GR in breeding programmes.
  - Insist that countries develop one-stop shop for ABS at national level and continue in multilateral processes
  - Develop e-licencing platform to make IPRs available on FRAND terms (Fair Reasonable And Non-Discriminating)
  - Encourage participants to look at Syngenta website: [www.sq-vegetables/elicensing.com](http://www.sq-vegetables/elicensing.com)

Participants commented that the private sector should keep records of cases where the breeder's exemption is being made use of, in order to demonstrate that benefit sharing is already taking place by the private sector to a large extent. This will of course be difficult because no PIC/ MAT are needed to take advantage of this exemption.

In terms of project proposals from public institutions, both the public and the private sectors are very diverse and there would probably be more of an impact if project proposals were developed jointly rather than only by the public sector. The question was raised, how actors can get one step further than project proposals? In reply it was argued that Syngenta has committed to investing one billion in projects in Africa over the coming 10 years. It would be good to be approached by the public sector in terms of projects to have this invested in.

Other participants encouraged breeding companies to join/emulate the German initiative of openly sharing the private sector's genetic resources.

### **Wrapping up: Conclusions and next steps**

In a fourth step the participants discussed what else needs to happen to make the work at the interface between the NP and the ITPGRFA more productive. The below summarises the different inputs that were made by various participants (and not necessarily subject of consensus):

- A mind shift is required from all experts. Need to think of the usefulness of the information that we provide to the other community rather than just thinking about the quality of the information that we receive.
- Stop thinking about the other side as the "other side".
- Don't always view yourself as a user of GR but also as a provider.
- Approach the issues in a way that is simple and practical.
- Dare to start the process, instead of getting stuck debating loopholes. Learn by doing.

- The most effective way of implementing the instruments is by doing it together. But the funding is separate. Is there a way that we can get the financial mechanisms to recognize that this is a package? Donors and funding mechanisms must be ready to fund joint implementation.
- Many countries have not yet put into place any regulations at all and won't implement the NP for a while. They should jointly implement the CBD (Article 15) and the ITPGRFA's MLS\_.
- However, many countries don't want to introduce new legislation because their existing legislation is already sufficient.
- The key to trust and making providers take the risk is the compliance system that is in place. Some participants argued that there is a real need right now to make an input into the compliance proposal by the European Commission.
- A participant from a private sector organization highlighted the fact that trust cannot be purely based on rules and regulations. While legal certainty contribute to trust, more than laws and obligations are required.
- Full implementation of all access and benefit sharing norms associated with all international agreements and national initiatives should be kept in mind and implemented in a harmonious manner – it is not a solution to favour “your” treaty.
- Work towards synergizing monitoring and compliance systems across the CBD/NP and the ITPGRFA.
- The approach to monitoring is however different in the two frameworks and that needs to be sorted out – there is a material difference in the functioning of these two systems.
- Necessity to establish platforms for exchange of national experiences.
- Political will is needed to make it happen.

In a fifth step upcoming opportunities, events and existing processes were discussed.

- Check and map suitable on-going capacity-building programmes to spread the message.
- Report to relevant intergovernmental bodies of ITPGRFA and CBD for acknowledgement.
- Make use of CBD's Strategic Plan, especially Aichi Target number 13.
- Awareness-raising activities in the context of UN Decade on Biodiversity.
- Repeat to relevant intergovernmental bodies of the ITPGRFA and the CDB.
- Side events at
  - CGRFA-14, Rome
  - GB -5, Oman
- Input to (joint if possible)
  - Expert meeting on ABS capacity building of CBD
  - Process on Art. 10 NP
  - ICNP-3
- Use suitable private sector events (trade fairs, meetings etc.): Bioversity International, the ABS Capacity Development Initiative and the private sector should use events like the Grüne Woche to raise awareness of the issues and the need for one stop shops; but will need to feed into specific events that aim at the target audiences, otherwise the inputs will get lost.
- Also input to meetings of regional agricultural research bodies and economic organisations.

## **Closing remarks**

### **Michael Halewood, Bioversity International**

Michael Halewood thanked all the participants for coming to this event and joked that it was great to have people from “the other side” at Bioversity International. Even if not all issues were resolved, the participants did make huge progress in setting off on a common path and coming to a substantially common understanding of the areas of interface in the implementation at national levels of the CBD/NP and the ITPGRFA’s multilateral system. He said he personally felt that the meeting was a very positive contribution towards establishing clarity, trust and a sense of mutually supportive purpose between the communities of people implementing the CBD/NP and the ITPGRFA. He expressed his hope to work together more closely from now on.

### **Kathryn Garforth, Secretariat of the CBD**

Kathryn Garforth announced that, over the period of the workshop two additional parties have acceded to the NP: Albania and the Federated States of Micronesia, which brings the total to 14 ratifications. She praised the workshop as having been very productive in terms of coming up with ways to resolve implementing challenges.

### **Kent Nnadozi, Secretariat of the IT**

Kent Nnadozi emphasised the strong demand for this meeting and called it the beginning of a process which will expand and from which other stakeholders will eventually benefit too.

### **Andreas Drews, ABS Capacity Development Initiative**

Andreas Drews thanked all conference participants and the hosts and both the Secretariats for asking the Initiative to host the process. He said that, with the workshop results being useful for the future of the two instruments, the workshop report would be turned into an Inf-doc for the Secretariats' information document.

## **Presentations**

*Day 1*

### **Nagoya Protocol on ABS: Linkages to the ITPGRFA and progress towards entry into force**

Kathryn Garforth, Secretariat of the CBD

### **The International Treaty and the Nagoya Protocol: Supporting mutual supportiveness in the implementation of both instruments at the national level**

Kent Nnadozi, Secretariat of the International Treaty

### **The interface between the Nagoya Protocol on ABS and the ITPGRFA at the international level: potential issues for consideration in supporting that both instruments are implemented in a mutually supportive manner at the national level**

Jorge Cabrera, Centre for International Sustainable Development Law (CISDL)

### **Legal Issues in the Crossfire between the International Treaty on Plant Genetic Resources and ABS under CBD/NP and IPRs**

Morten Walløe Tvedt, Fridtjof Nansen Institute (FNI)

### **National level implementation of the multilateral system: highlighting the interface with the CBD/NP**

Michael Halewood, Bioversity International

### **Strengthening national capacities to implement the International Treaty on Plant Genetic Resources for Food and Agriculture: The Genetic Resources Policy Initiative Phase**

Ronnie Vernooy, Bioversity International

*Day 2*

### **Managing access to GR's in national and regional genebanks: Experiences from Rwanda**

Jean Rwihaniza Gapusi, Rwanda Agriculture Board (RAB)

### **Managing access to genetic resources in regional genebanks: Questions arising from Experiences on Utilisation of PGRFA**

Valerie Tuia, Secretariat of the Pacific Community (SPC)

### **ABS implementation in Bhutan: Sharing experiences**

Tashi Dorji, National Biodiversity Centre

### **Implementing the International Treaty and CBD in Brazil**

Juliana Santilli, Instituto Socioambiental

# Agenda

Tuesday, 29<sup>nd</sup> January 2013

08.30 Registration

09.00 Welcome

- *Michael Halewood, Bioversity International*
- *Kathryn Garforth, Secretariat of the CBD*
- *Shakeel Bhatti, Secretariat of the IT*
- *Andreas Drews, ABS Capacity Development Initiative*

**Programme overview and getting to know each other**

- *Kathrin Heidbrink, moderator/facilitator*

10.30 Coffee / tea

11.00 Implementation status of the two instruments (presentations followed by Q&A)

- **The Nagoya Protocol on ABS**  
*Kathryn Garforth, Secretariat of the CBD*
- **The International Treaty on Plant Genetic Resources for Food and Agriculture**  
*Kent Nnadozi, Secretariat of the IT*

12.00 Lunch

13.30 Theory and practice of implementation (presentations followed by Q & A)

- **Where the NP and the Treaty meet – the legal perspective**  
*Jorge Cabrera, Centre for International Sustainable Development Law (CISDL)*  
*Morten Walløe Tvedt, Fridtjof Nansen Institute (FNI)*

15.00 Coffee / tea

15.30

- **National level implementation of the multilateral system: highlighting the interface with the CBD/NP**  
*Michael Halewood and Ronnie Vernooy, Bioversity International*

- **First Impressions**  
*Discussion*

17.00 End of day – Joint dinner in Rome (La Villetta)

**Wednesday, 30<sup>th</sup> January 2013**

**9.00      Managing access to genetic resources in national and regional genebanks: questions arising from experience** (presentations followed by Q & A)

- *Rwanda: Jean Rwihaniza Gapusi, Rwanda Agriculture Board (RAB)*
- *Pacific: Valerie Tuia, Secretariat of the Pacific Community (SPC)*

10.30     Coffee / tea

**11.00    Tentative answers to the questions**

- **Group work:** Exchanging ideas and developing options
- **Plenary:** Group presentations and feedback

13.00     Lunch

**14.30    Panel discussion: Partners' perspectives in an arranged marriage**

*5 panellists representing NP and Treaty/MLS perspectives – e.g. (all TBD/TBC)*

- *Bert Visser, Centre for Genetic Resources, the Netherlands (CGN)*
- *Anke van den Hurk, Plantum NL*
- *Carlos Correa, University of Buenos Aires*
- *Pierre du Plessis, Centre for Research Information Action in Africa Southern African Development and Consulting (CRIAA SA-DC)*
- *Manuel Ruiz, Sociedad Peruana de Derecho Ambiental (SPDA)*

15.30     Coffee / tea

**16.00    Lessons learned by experiences** (presentations followed by Q & A)

- *Bhutan: Tashi Dorji, National Biodiversity Centre*
- *Brazil: Juliana Santilli, Instituto Socioambiental*

17.30     End of day

**Thursday, 31<sup>st</sup> January 2013**

**9.00 Options for a way forward** (presentations followed by Q & A)

- **Group work:** Tentative recommendations for
  - ABS National Focal Points
  - Treaty Focal Points
  - SCBD and ABS Capacity Development Initiative
  - Treaty Secretariat and Bioversity International
  - Private sector

11.00 Coffee / tea

**11.30 • Plenary:** Group presentations and feedback

12.30 Lunch

**14.00 Wrapping up: Conclusions and next steps**

**Closing remarks**

- *Michael Halewood, Bioversity International*
- *Kathryn Garforth, Secretariat of the CBD*
- *Kent Nnadozi, Secretariat of the IT*
- *Andreas Drews, ABS Capacity Development Initiative*

15.30 Coffee / tea

16.00 End of workshop and departures

## List of Participants

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