

CBD

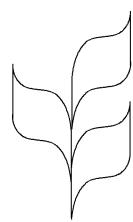


Distr.
GENERAL

UNEP/CBD/WG-ABS/3/4

15 November 2004

ARABIC
ORIGINAL: ENGLISH



/ -
*
:
/
" : /
-
"
"
"
"
"
:
(")
)
. (UNEP/CBD/COP/6/INF/4
()
/
/
-

() " " (WTO) (FAO)

1	: () <i>Access to genetic resources:</i> Possibility given by provider to user(s) to acquire information and samples of genetic resources for declared way of utilization and under agreed terms.	
	: <i>Access to genetic resources:</i> Access for research and for use of genetic characteristics of biodiversity resources without possession.	

") .()

	<p><i>Access to genetic resources:</i> means the permission to acquire and use genetic resources.</p>	
-	<p>(Acceso a los recursos genéticos : es la acción mediante la cual una parte interesada habiendo cumplido con todos los requisitos legales correspondientes en la legislación nacional e internacional, hace uso de los recursos genéticos. La autorización correspondiente es personal e intransferible y deberá ser otorgado por la autoridad nacional competente siempre y cuando se compruebe fehacientemente que existe consentimiento previamente informado de parte del poseedor o dueño del recurso a accesar y que existen los suficientes mecanismos de control y seguimiento al uso que se le dará a esos recursos.)</p>	
	<p>() :</p> <p><i>Benefit-sharing :</i> Taking part on benefit(s) of any kind arising from utilization of genetic resources.</p>	
	<p>Benefit-sharing: Monetary advantages sharing deriving or not from exploitation of these genetic resources between possessors country and users, but also at the level of possessor country in taking into account local communities and traditional knowledge.</p>	
	<p>Benefit-sharing: means the sharing of benefits arising from the use, whether commercial or not, of genetic resources, and may include both monetary and non-monetary returns.</p>	

-	<p><i>(Participación en los beneficios:</i> es una obligación que debe cumplirse en toda acción de acceso a recursos genéticos o al conocimiento tradicional que exista. Esta obligación se deriva de la Convención en Diversidad Biológica. Esta participación debe ser justa y equitativa y para que cumpla con estos requisitos esenciales, deben existir previo al otorgamiento de los permisos respectivos acceso a información, plazos para que el proveedor del recurso analice en forma independiente esa información y definición de mecanismos de control sobre el uso que se le dará a los elementos objeto del acceso).</p>	
	<p><i>Commercialization – The fact to buy and to sell some goods.</i></p>	
	<p><i>Commercialization:</i> means applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval and/or the sale of any resulting product.</p>	
-	<p><i>(Comercializacion:</i> aprovechamiento económico de recursos genéticos o del conocimiento tradicional).</p>	
	<p>(Les notions de commercialisation et de mise en marché existent toutes les deux en droit communautaire. Toutefois, la notion de mise en marché est plus largement utilisée et intègre la notion de commercialisation. Cette dernière est par ailleurs déclinée de manière différente selon les domaines couverts.)</p>	

(-	<p><i>(Derivados : molécula, combinación o mezcla de moléculas naturales, incluyendo extractos crudos de organismos vivos o muertos de origen biológico, provenientes del metabolismo de seres vivos).</i></p>	
	<p><i>Derivatives: Body gotten by the transformation of another.</i></p>	
(-	<p><i>(Proveedor del componente intangible : persona que a través del contrato de acceso y en el marco de esta Decisión y de la legislación nacional complementaria está facultada para proveer el componente intangible asociado al recurso genético o sus productos derivados).</i></p>	
	<p><i>(Proveedor del recurso biológico : persona facultada en el marco de esta Decisión y de la legislación nacional complementaria, para proveer el recurso biológico que contiene el recurso genético o sus productos derivados).</i></p>	
)	<p><i>(Provider: Natural or juridical person providing genetic resources to user(s) under generally determined conditions.</i></p>	
	<p><i>Provider: The entity authorized to provide genetic material or traditional knowledge for various uses, that is supposed facilitated the access to resources to the lowest cost and condition the access in all transparency.</i></p>	
	<p><i>Provider: means any individual or organization, whether governmental or non- governmental, that provides genetic resources.</i></p>	

-	<p style="text-align: center;">)</p> <p style="text-align: center;">(</p> <p>(<i>Proveedor</i>: es una persona física o jurídica que es responsable, posee o es dueño de bienes donde se encuentren los recursos genéticos que quieren accesar. Igualmente son las personas o grupos de personas (Pueblos Indígenas o comunidades campesinas y locales) que son responsables del conocimiento tradicional).</p>	
	<p>(Plants de legumes)</p> <p style="text-align: center;">)</p> <p style="text-align: center;">:" " (</p> <p style="text-align: right;">92/33/CEE</p> <p style="text-align: center;">" "</p> <p style="text-align: right;">/</p> <p>(Dans le contexte particulier de la commercialisation des plants de légumes et des matériels de multiplication de légumes autres que les semences (Directive 92/33/CEE du Conseil, UE) « fournisseur » est défini comme : « toute personne physique ou morale qui exerce professionnellement au moins une des activités suivantes ayant trait aux matériels de multiplication ou aux plants de légumes : reproduction, production, protection et/ou traitement et commercialisation. » Cependant, la notion de fournisseur n'est pas présente dans toutes les directives.)</p>	
	<p>User: Natural or juridical person requesting genetic resources for research, breeding or education; if not agreed otherwise.</p>	
	<p>User: The entity that exploits the genetic materials to commercial or research ends.</p>	
-	<p style="text-align: center;">-</p> <p style="text-align: center;">-</p> <p>(<i>Usuario y parte interesada</i>: es quien solicita el acceso, sea persona física o jurídica, nacional o extranjera interesada en obtener el acceso a los recursos genéticos o al conocimiento tradicional. Este obtendrá un derecho personalísimo que por lo tanto es intransferible).</p>	

	:) . ((Les termes d'utilisateur ou de produit sont désormais des termes génériques, qui apparaissent à de multiples reprises dans un grand nombre de textes dans différents secteurs sans y être définis à aucun endroit (Code de la Consommation, Code de la santé publique).
	/ : <i>Stakeholder:</i> Subject involved and/or interested in study, conservation and utilization of genetic resources.	
	: <i>Stakeholder :</i> Participants in a contract.	
	: <i>Stakeholder:</i> means an individual, organization or group whether formal or informal, affected by, or with an interest in, the activities relating to the acquisition, use or supply of genetic resources. Stakeholders involved in conservation and the granting of collecting permits and prior informed consent for access may include relevant departments of government, local authorities, private individuals such as landowners, indigenous peoples, local communities, farmers and non-governmental organizations. Stakeholders such as these are often described in law relating to access and benefit-sharing;	
	: <i>Ex situ collection -</i> Collection of genetic resources conserved out of their natural occurrence.	

- /) (/	: “ <i>Ex situ collection</i> ” a collection of genetic material for agriculture maintained outside their natural habitat”.	
-	: “ <i>Ex situ collection</i> ” means a collection of plant genetic resources for food and agriculture maintained outside their natural habitat.	
	: <i>Ex situ collection</i> : means managed, documented biological material maintained in conditions other than <i>in situ</i> .	
	: <i>Ex situ collection</i> : means managed, documented biological material maintained in conditions other than <i>in situ</i> .	
	: <i>Voluntary nature</i> : Qualification of an act makes freely without constraint.	

	:	
	(<i>Pais de origen del recurso genetico</i> : país que posee los recursos genéticos en condiciones in situ, incluyendo aquellos que habiendo estado en dichas condiciones, se encuentran en condiciones ex situ).)

"

"

-

:(

)

()"

()

"(/ -)"

".(E/CN.4/Sub.2/AC.4/2002/3, para 52) /

Tebtebba

".(E/CN/.4/Sub.2/AC.4/2004/4, 8 July 2004, par.12) /

"(a) No specific national definitions of the terms referred to above in the context of biodiversity in Belgium;

(b) Belgium would like to mention the basic common understanding of the meaning of the principle of free, prior and informed consent reached by participants in the United Nations Workshop on Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights (held in Geneva from 5 to 7 December 2001), which is: "the right of indigenous peoples, as land and resource owners, to say no to proposed development projects at any point during negotiations with Governments and/or extractive industries" (E/CN.4/Sub.2/Ac.4/2002/3, para. 52).

This is mentioned back in the preliminary working paper on principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept submitted by Mrs. Motoc and the Tebtebba Foundation at the twenty-second session of the Working Group on Indigenous Populations, 19-23 July 2004 (E/CN.4/Sub.2/AC.4/2004/4, 8 July 2004, par.12)."

()

"Definitions of terms eventually adopted should not be a substitute for the definitions of the national legislation of countries of origin of the genetic resources. These legislations, in accordance with Article 15 (1) of the Convention, must always prevail. Brazil has a legal framework that defines some of the terms related to access to genetic resources, access to traditional knowledge associated to genetic resources and has been developing some others."

/

UNEP/CBD/WG-ABS/3/1/Add.1

/

()
() (")
")
" " :) ()
". ("

"It is not essential at this time to address use of terms, definitions and/or a glossary, due to the early stage of negotiations on an international regime.

Previously, the issue of use of terms arose in the context of the Bonn Guidelines to ensure that they would be user friendly. ABS discussions have moved on from a narrow focus on the Guidelines, even though the Guidelines are an important part of the international ABS regime. Discussions in Thailand are expected to focus on the crucial conceptual level. Whether or when use of terms, definitions or a glossary will be required will necessarily depend on the outcome of those conceptual discussions.

Nevertheless, we support a full discussion of this issue at the third meeting of the Ad Hoc Open-ended Expert Group on Access and Benefit-Sharing under Sub-Working Group II in order to come to a common understanding about when this type of discussion might become more appropriate. We do not support the creation of an expert group at the third meeting of the Ad Hoc Open-ended Expert Group on Access and Benefit-Sharing, as set out in UNEP/CBD/WG-ABS/3/1/Add.1, paragraph 17, as this would divert attention from the important conceptual analysis which the Working Group on Access and Benefit-Sharing will be undertaking. Furthermore, if at any point terms were to be discussed, we would propose that it would be more appropriate in an open-ended context.

At this time, Canada is therefore not providing either existing national definitions or other relevant definitions of the terms cited in decision VII/19 B, nor are we suggesting additional terms that need to be addressed. We would also like to note that Canada recently embarked on a domestic policy initiative for access and benefit-sharing which will address issues related to definitions in a Canadian

legal and socio-economic context. As is the case for other countries, our perspective on definitions for the international regime will be guided in large measure by our domestic deliberations.

We are of the view that all of the terms previously proposed for discussion are: (i) adequately defined by the ordinary meaning of the term (e.g. voluntary nature, “access” in “access to genetic resources”); (ii) clear from their use in the Bonn Guidelines or would be made clear in any material transfer agreement (MTA) (e.g. benefit-sharing, commercialization, derivatives, provider, user, stakeholder); or (iii) defined in the Biodiversity Convention itself (e.g. “genetic resources”, “*ex situ*”).

“The EC does not support the development of further definitions for additional terms, including ‘arbitrary restrictions’ which are normally defined under trade law. The EU believes that the compilation of a glossary containing definitions already used in multilateral environmental agreements and other relevant multilateral agreements, codes of conduct, guidelines, guiding principles, etc. would be helpful. Such glossary would usefully encourage stakeholders’ endorsement and use of the Bonn Guidelines throughout a wide range of sectors.”

:(
))

11)

" :) "

• (11)

:)

. (

:

(".)

(La pratique qui prévaut généralement en matière de rédaction juridique consiste à :

- Donner, en les regroupant dans un même article, des définitions aux termes susceptibles d'avoir, dans le contexte de la loi ou de l'accord international, une acceptation différente ou plus précise que celle qu'elle a dans d'autres contextes. Elles y sont alors précédées d'une formule du type «aux fins du présent traité» (exemple: «collection *ex situ*»).

– Consacrer un article complet à définir un concept, qui donne généralement son titre à cet article (exemple: la Convention sur la diversité biologique définit l'accès aux ressources génétiques);

- Ne pas définir les termes dont l'acceptation courante s'applique au contexte de la loi ou du traité en cause (exemple : notion d'utilisateur).)

: ()

"

/

“As part of a study commissioned by the German Environment Ministry consultants will explore whether definitions can be found in German legislation. The study will be finalized by the end of September 2004.”

: ()

. () (ITPGRFA)

“An interesting discussion on definitions has taken place in the ITPGRFA (FAO) circles. It is important to look at their findings as a basis for further discussion. A list of their definitions should be available soon.

Of particular interest to our discussion:

- Definition of commercialization is problematic. What are the criteria for commercialization? A similar discussion is taking place in the FAO expert discussion on standard MTA.

Definition of benefit-sharing has never been defined properly. This is the conclusion drawn by the FAO Commission on Genetic Resources about “non-monetary benefit-sharing”. Interestingly, benefit-sharing is usually applied to those goods that are difficult to define ‘concretely’, like water and the environment.”

“Relevant definitions pertaining to genetic resources will be developed under the forthcoming legislative proposal on access to genetic resources and benefit-sharing.”

: ()

“Spain has no definitions beyond what is the text of the Convention on Biological Diversity itself. Some regional laws ...have attempted to establish a framework for ABS decision-making but the bills that are being discussed are all very careful in preventing the introduction of definitions.”

“Certainly, with the aim of speaking a common language and to avoid misunderstandings, a comparative analysis is required of the existing definitions in different countries relative to the following terms and expressions: access to genetic resources, benefit-sharing, commercialization, derivatives, supplier, user, interested, *ex situ* collection, voluntary nature.

(Ciertamente, con los fines de hablar un lenguaje común y evitar malentendidos, se requiere un análisis comparativo sobre las definiciones existentes en diferentes países relativas a los siguientes términos y expresiones: acceso a recursos genéticos, participación en los beneficios, comercialización, derivados, proveedor, usuario, interesado, recolección *ex situ*, carácter voluntario).

: (FAO)

/ ()

"It should be understood that all terms, definitions and/or glossary developed for the Bonn Guidelines apply only for the purposes of those guidelines.

A number of the terms specified in paragraph 1 (a) of decision VII/19 B appear in the International Treaty on Plant Genetic Resources for Food and Agriculture, of which one is defined for the purposes of the Treaty:

'Ex situ collection' means a collection of plant genetic resources for food and agriculture maintained outside of their natural habitat'

In addition, a standard Material Transfer Agreement is being developed for the implementation of the Multilateral System of Access and Benefit-sharing under the Treaty, in the context of which the question of definitions will be considered."

(«Este punto lo consideramos importante ya que a través de esos conceptos, se define un modelo específico de acceso a los recursos genéticos. Por lo tanto, una consulta como esta, debe responder a criterios de información previa para que exista amplia participación, justicia y equidad ya que en la mayoría de las oportunidades, las consultas obtienen respuestas de únicamente, los respectivos gobiernos. Consideramos que, para que exista un proceso como el mencionado, deben implementarse a nivel nacional y desde el Secretariado de la CDB, mecanismos que aseguren en primer lugar acceso a la información para que luego los diversos grupos, en especial Pueblos Indígenas, comunidades campesinas y locales así como ONGs, puedan participar. Una vez implementados estos mecanismos deberán definirse de igual forma cómo se incorporaran o no las diversas contribuciones y cómo se hará llegar los documentos enriquecidos mediante este proceso de participación a quienes formaron parte de este proceso. La participación debe buscarse y construirse más allá de las vías electrónicas ya que el acceso a las mismas siempre es limitado»).