

# Mainstreaming Gender Equality and Equity in ABS Governance

Brendan Tobin, Lorena Aguilar



*Mainstreaming  
Gender Equality  
and  
Equity in ABS  
Governance*

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## Acronyms

ABS	Access to genetic resources and fair and equitable sharing of benefits
CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
COP	Conference of the Parties of the CBD
CSW	Commission on the Status of Women
ECOSOC	United Nations Economic and Social Council
FAO	Food and Agriculture Organization of the United Nations
FONAFIFO	Costa Rican National Fund for Forestry Funding
HIVOS	Humanist Institute for Development Cooperation
IGC	Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore of the WIPO
IUCN	The World Conservation Union
ILO	International Labour Organization
LLS	Livelihoods and Landscapes Strategy
INDECOPI	National Institute for the Defence of the Competition and the Protection of the Intellectual Property of Peru
MAT	Mutually Agreed Terms
PIC	Prior Informed Consent
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
TK	Traditional Knowledge
UN	United Nations Organization
UNICEF	United Nations Children's Fund
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
UNDG	United Nations Development Group
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund

UNPFII	United Nations Permanent Forum on Indigenous Issues
UNU-IAS	United Nations University, Institute of Advanced Studies
WIPO	World Intellectual Property Organization
WFP	United Nations World Food Programme
WG-ABS	Working group on Access and Benefit Sharing of the CBD

## Foreword

THE Convention on Biological Diversity (CBD) proposes the development of new relationships between nations, communities, initiatives, human groups and natural resources, based on co-responsibility, justice and equity. Gender equity and equality, in particular, are essential elements of any action to ensure the conservation of biological diversity.

Inequality has been seen as one of the primary indicators of unsustainable environmental pressures, while reduction of inequality has been equated with reduction of the environmental threats. Countering gender inequality and fostering healthy societies and a healthy relationship between humankind and the environment requires the mainstreaming of a gender perspective. To this end, the World Conservation Union (IUCN) is committed to this end, mainstreaming gender equity and equality in all relevant environmental law and policy.

IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. IUCN's mission is particularly relevant in the current context in which poverty and inequalities affect a large number of men and women around the globe. Between 1989 and 1991, the organization launched a process to mainstream gender equity and equality throughout the environmental sector. Since then, gender has gained prominence on the international scene, in word at least if not always in deed.

With a view to promoting gender in all aspects of the CBD's activities, the Office of the Senior Gender Adviser of The World Conservation Union (IUCN) is implementing the "*Gender Equity and Equality in the Access and Benefit Sharing of Biodiversity Resources*" initiative, funded by HIVOS. This initiative seeks to formulate recommendations for guidelines on ABS and gender focusing on issues of Prior Informed Consent, Mutually Agreed Terms and Benefit Sharing. This work also seeks to ensure that the global international fora involved in the implementation of the Convention on Biological Diversity (CBD) take gender equity and equality criteria into consideration.



This document seeks to provide an overview of the relationship between gender and realisation of the CBD's objectives, in particular, the third objective on the fair and equitable sharing of benefits derived from access to and use of biological and genetic resources and traditional knowledge. *Mainstreaming Gender Equity and Equality in ABS Governance* will serve as the basis for a methodological proposal to mainstream a gender equity and equality perspective into the processes involving the access and benefit-sharing of biodiversity resources, thus, achieving the objective of being fair, equitable and effective, as proclaimed by the CBD.

This document is intended to assist those engaged in promoting gender equity and equality in CBD actions: the CBD Secretariat, government and non-governmental institutions, the private sector, community groups, and research and teaching institutions.

It is also intended to assist parties and stakeholders to address gender related issues in the negotiation of an international ABS regime.

This paper continues to be a work in progress and the authors and IUCN would welcome your input and comments on its content, focus, style and conclusions.

This effort was possible thanks to the valuable contribution of experts in gender, environmental law and biodiversity. We wish to thank everyone involved in the process: Paula Zuñiga, Ariana Araujo, Pablo Duncan, Mónica Umaña, Eugenia Wo Ching, Jorge Cabrera, Lucrecia Pisquiy, Ximena Buitrón, Sonia Peña-Moreno, Daniel Klein, Manuel Ruiz, Yolaida Brown, Paz Bossio, Teresa Cruz, Itza Castañeda, José Carlos Fernandez, Jorge Cabrera, Ester Camac, Martha Liliana Jiménez, Alejandra Loria, Julianne Anoko, Maureen Vargas, Jeannette Gurung, Marcela Tovar, Tim Hodges, Aracelly Pazmiño, Ximena Buitron, Rebecca Pearl and Lucrecia Pisquiy.

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## **Introduction**

*“Gender inequality is more pervasive than other forms of inequality. It cuts across other forms of inequality so that it is a feature of rich as well as poor groups, racially dominant as well as racially subordinate groups, privileged as well as ‘untouchable’ castes... gender inequality intersects with economic deprivation to produce more intensified forms of poverty for women than men. Gender inequality is part and parcel of the processes of causing and deepening poverty in a society and must therefore constitute part and parcel of measures to eradicate poverty.”*

Kabber, N. 2003

WOMEN have, for centuries, played a key role in the conservation and management of biological resources. Women’s knowledge of biodiversity and its value for meeting the food, health, clothing and housing needs of their families, is crucial for securing the sustenance and development needs of a large sector of the world’s population. Their role takes on even greater importance amongst the poorest sectors of society where their knowledge and skills, regarding resources management, are responsible for meeting the basic necessities of countless millions.

Recognition by the international community of the importance of women for conservation and sustainable use of biodiversity, including their leading role in farming and forest conservation, as well as in the maintenance and development of traditional medicine, is widespread. International instruments are replete with references to women’s key role in these areas, as well as in combating poverty. International law and policy has established clear obligations upon states to protect against discrimination of women, and calls for adoption of measures to promote equity and secure equality. International instruments also make numerous commitments to promoting equity and fair

and equitable sharing of benefits derived from use of biological diversity <sup>1</sup>.

Women bear a large share of the burden for conservation and sustainable use of biological diversity and for sustaining families and communities, in particular the poor. Despite this, their contribution is frequently undervalued and their opportunities to influence law and policy, as well as, to participate in the design and implementation of development projects, are often minimal. Similarly, there are often limited opportunities for women to participate in benefit sharing arising from use of biological diversity and from their knowledge of its uses. Lack of clear legislative and policy guidance places undue reliance and responsibility on program managers, contract negotiators, community leaders and national authorities to mainstream gender in the design of projects, law and policy, as well as in distribution of benefits. Likewise, the lack of national policy means that negotiators in international forums have, for the most part, no guidance on what position to take on gender issues.

One of the key areas of international negotiation currently ongoing, which has significant importance for mainstreaming of gender into biodiversity regulation, is the negotiation of an international regime on access to genetic resources and benefit sharing (ABS). The negotiations being carried out in the Working Group on ABS (WG ABS) seek to develop an international ABS regime in the framework of the Convention on Biological Diversity (CBD). The regime will also cover biodiversity-related traditional knowledge (TK). A parallel process is ongoing at the World Intellectual Property Rights Organisation (WIPO) where the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore

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1. *Although the CBD refers to sharing of benefits derived from access to and use of genetic resources, the term has proved confusing and there have been many proposals for a system, which will ensure benefit sharing for use of any components of biological resources and any derivatives arising from that use. For the purpose of this article reference will be made primarily to access to and use of biological resources, and readers are invited to interpret this term in accordance with their own reading of the benefit sharing obligations arising under the CBD.*

(IGC) has been investigating modalities for the protection of TK. The current analysis of gender and ABS will focus primarily on negotiations of ABS under the CBD; however, many of the issues considered may be of relevance to TK protection as covered by the IGC process.

Key elements of any international regime on either ABS and/or TK will likely include measures to ensure: that access to resources and/or knowledge is made with the prior informed consent (PIC) of countries of origin and, in the case of TK, of relevant indigenous peoples and local communities, and; that the negotiations of mutually agreed terms (MAT) to regulate access and use of resources and knowledge ensure the fair and equitable sharing of benefits derived from use of biological resources and TK.

While efforts to secure the participation of indigenous peoples and local communities have steadily increased their level of involvement in the negotiation processes, there has been no similar effort to ensure equitable representation of women in the negotiation process. Although, the UN Conference on Environment and Development recognized women as “Major Group” in 1992, the lack of a strong united women’s forum at the CBD negotiations has left the interests of women as a major group largely off the agenda. The CBD has recently recognized the need to provide support for women as a major group and to assure greater attention and opportunity for their effective participation in the CBD process. Ensuring full and informed participation of women in the future work of the CBD and IGC is vital for the development of ABS and TK regimes which can secure gender equality and equity at all levels.

This paper will address the issue of gender and biodiversity in so far, as it relates to ongoing international negotiations relating to ABS and TK issues, in particular those relating to the development of an international ABS regime.

The paper is set out in five sections. Section I addresses the relationship between gender and biodiversity, with a view to building awareness of the key role played by women in resource management and benefit distribution.

Section II examines the rights of women to participate in the management and control of biodiversity and TK, under international human rights and sustainable development law and policy. Section III considers the treatment of gender under the CBD and the role of an international ABS regime in securing the rights of women over their resources and TK. Section IV reviews a number of proposals setting out recommendations for mainstreaming gender in ABS governance. It also suggests potential guidelines for the international community, national authorities and providers and users on gender and ABS. Section V draws some conclusions from the analysis of gender and ABS and TK governance. In particular, it concludes that unless gender issues are mainstreamed in decision-making related to ABS and TK it will prove impossible to achieve the CBD's objectives on equity and fair and equitable benefit sharing. It also makes some suggestions for future work of the international community on these issues.

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**Section I:**

*Gender  
and Biodiversity*

WHEN issues of gender equity and equality are raised, there is a general tendency to assume that what is being discussed are purely women’s issues. In fact, the debate on gender addresses both men and women’s issues, and the relationship between them. Identifying the gendered realities of societies and communities is now widely seen as being crucial to understanding and valuing the roles played by men and women in resource management. Development of appropriate conservation and sustainable use programs, projects, strategies, policies and laws, depends upon understanding the different relationships held by men and women in relation to their environment and resources. This includes the need to understand the roles played by men and women in securing the welfare of families, peoples, communities and society as a whole.

Despite growing awareness of the importance of mainstreaming gender into development policy making, there is still a chasm between rhetoric and action. Much work is still needed to ensure that women’s roles in environmental management are recognized, respected and equitably rewarded. As work begins on the negotiation of an international regime on ABS it is important to ensure, from the outset, that negotiators address the issue from a gender perspective. Building awareness of what constitutes a gender perspective and of the important role of women in conservation, sustainable use of biodiversity and of

TK, are preliminary steps in this process. Steps which will be addressed more fully in this section.

### **1.1 Towards a Gender Perspective on Biodiversity Management**

One of the first issues to be addressed in defining a gender perspective to biodiversity management is what is meant by gender. The term gender refers to socially constructed roles and opportunities associated with women and men, as well as the hidden power structures that govern relationships between them.<sup>2</sup> One definition states that gender is "... in essence, a term used to emphasize that sex inequality is not caused by the anatomic and physiological differences that characterize men and women, but rather by the unequal and inequitable treatment socially accorded to them. In this sense, gender alludes to the cultural, social, economic and political conditions that are the basis of certain standards, values and behavioural patterns related to genders and their relationship."<sup>3</sup>

Despite recent advances, it still remains the case that in most societies there are significant differences between the rights of women and men. These include, among others, differences in relation to land and resource rights, possibilities for advancement at work, salaries and opportunities to participate in and influence decision-making processes. The reality is that inequality between men and women is ingrained in social structures around the world. Overcoming these inequalities is one of the principal focuses of the gender debate. To the extent that gender based analysis seeks to highlight inequalities and promote revision of law and policy, and most importantly of the process for their development, it will of necessity tend to focus primarily on women's issues. In doing so, it does not seek to invert inequalities but rather to eliminate them in an attempt to eradicate inefficiencies, which undermine development and impede realisation of global human rights.

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2. *Aguilar, L. and Blanco, M. 2004*

3. *Riquer, F. 1993*

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Overcoming inequities and maximising opportunities for full and effective participation of all sectors of society, in policy and legislative development and implementation is considered crucial for achieving global sustainable development objectives and human rights. Addressing gender inequalities and promoting the adoption of a gender perspective in the development of law and policy, is therefore seen as a route to enhancing the collective welfare of societies and the global community. Where gender inequalities are enshrined in cultural practices, and/or national or customary law, resistance to change may be strong. Resistance in no small part exacerbated by fears that gains by women may signify loss by men of power, prestige and benefits.

Mainstreaming a gender perspective to biological resource management requires consideration of the relationships among women and men, and their interactions with the natural resources. It also requires understanding the role of gender equality and equity in securing development goals and human rights. The principal goal of mainstreaming a gender perspective into resource management is to overcome the historically disadvantageous situation of women to ensure the building of sustainable and healthy societies.

In order to achieve gender equality, there is a need to redress inequalities related to access to resources and promote equity in order to rectify the historical and social disadvantages experienced by women (See box 1).

### **Box 1. Gender Equality and Equity**

**Gender equality** entails the concept that all human beings, both men and women, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles, or prejudices. Gender equality means that the different behaviours, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male or female.



**Gender equity** means fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities. In the development context, a gender equity goal often requires built-in measures to compensate for the historical and social disadvantages of women.

Hence, both gender equity and equality must be pursued in a complementary manner where gender equality is the ultimate goal. In order to achieve gender equality, it is often necessary to empower groups that have limited access to resources. The achievement of gender equality is not a one-off goal. Because progress can all too easily be eroded, gender equity needs to be constantly promoted and actively sustained.

Source: Aguilar, L., Blanco, M. and Dankelman, I. 2006

## **1.2. Women's role in Biodiversity Conservation and TK Management**

The importance of women's role in biodiversity conservation, management and distribution of benefits derived from such use cannot be overestimated. Women play a key role in managing local biodiversity to meet food and health needs. In many countries, they also play a crucial role in managing agriculture and are the primary savers and managers of seeds. Furthermore, they are responsible for the control, development and transmission of significant traditional knowledge. As men are increasingly drawn to seen remunerated work away from their lands and resources, women's role in farming and in the management of family and community biological resources, as well as in the protection of TK is increasing.

A brief look at some of the statistics relating to women's role in biodiversity management serves as a sound reminder of why adopting a gender perspective is vital for conservation and sustainable use of global biodiversity.

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Women are the main producers of the world’s staple crops (rice, wheat, maize): providing up to 90 percent of the rural poor’s food intake and producing between 60 and 80 percent of food in most developing countries (See box 2). However, fewer than 10 percent of women farmers in developing countries own land.<sup>4</sup>

## Box 2. The Key Role of Women in Agriculture

Women account for half of the food production in developing countries. In some African countries, they have to walk 10 kilometres or more to fetch water and fuel. Much of the soil conservation in East Africa over the past decades has been carried out by women. In India, women provide 75 per cent of the labour for transplanting and weeding rice, 60 percent for harvesting, and 33 per cent for threshing.

Source: Press releases from the United Nations Information Centre in Sydney for Australia, New Zealand, and the South Pacific 1995

Up to 90% of planting material used in smallholder agriculture is derived from seeds and germplasm which women have produced, selected and saved.<sup>5</sup> Women farmers play a key role in the selection, improvement and adaptation of plant varieties often managing a very diverse range of varieties. For instance Rwandan women are reported to produce more than 600 varieties of beans, and Peruvian Aguaruna women, plant more than 60 varieties of manioc.<sup>6</sup> In many regions, women are also responsible for the management and reproduction of small livestock.<sup>7</sup>

Despite the availability of much information, there still exists a gender bias leading policy makers and development planners to view farmers as being primarily men, making it more

4. Heri, S. (n.d.)

5. FAO 2001

6. Kiørboe, E., et. al. 2005

7. FAO 2001

difficult for women to gain access to valuable resources such as land, credit and agricultural inputs, technology, extension, training and services that would enhance their production capacity.<sup>8</sup> The lack of gender-disaggregated data has resulted in a failure to properly understand women's contribution to agriculture and to their specific needs being ignored in policy-making.<sup>9</sup>

Women often have a more highly specialized knowledge of wild plants used for food, fodder and medicine than men.<sup>10</sup> Women provide up to 80% of the total wild vegetable food collected in many subsistence-based societies.<sup>11</sup> A study in Uttar Pradesh showed that men primarily use gathered forest plants for fodder and mulch for agriculture, and women's uses were more related to the household, e.g., medicines, tonics, cleansers, fiber, food and tools.<sup>12</sup>

Up to 80% of the population of some developing countries relies on traditional medicine as their primary source of health care. Women manage different resources and make different use of shared resources than men for traditional medicine. In Brazil, ethno-botanical surveys conducted in the Jaú National Park found that midwives were knowledgeable about certain plants, while traditional medicine men knew about others. Gendered knowledge also varies by class, age, and ethnicity, underscoring its complexity. Understanding the different knowledge of women and men in different socio-economic circumstances helps to determine appropriate and sustainable interventions<sup>13</sup> (See box 3).

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8. *FAO n.d*

9. *Ibid.*

10. *FAO 2001*

11. *Aguilar, L. 2004*

12. *Ibid*

### **Box 3. The Particular Knowledge of Wola Women and Men**

The Wola inhabitants of the highlands of Papua New Guinea, as well as other inhabitants of the region, establish plant divisions by men and women. Some crops are sowed and tended exclusively by women and others by men. But there are other crops that are indistinctly sowed and tended by men and women. Sugar cane, bananas and some tubers are in the care of men, while sweet potatoes, some vegetables and *Cucurbitaceae* are in the care of women. Wolas cannot explain this division; this is how their ancestors have taught them.

Source: Sillitoe, P. 2003

Women represent two-thirds of the world's poorest people.<sup>14</sup> In the past decade, the world has seen the continued increase in the percentage of women living in poverty, a trend known as the *feminisation of poverty*.<sup>15</sup> Nearly 80% of rural women in Asia, 60% in Africa and 40% in Latin America, for instance, are affected by increasing scarcity of fuelwood arising from environmental degradation, land conversion and overuse of resources.

Evidence suggests that women use their available economic resources differently than men. Men allocate a greater percentage of their income to personal use, while women tend to spend a greater percentage of their income on family welfare. In an extensive analysis of the relationship between gender and poverty eradication a series of national studies has shown that: in Rwanda members of female-headed households consumed 377 more calories per adult equivalent, per day, than male-headed households, with the difference bigger among lower-income households; in Gambia, control of cereal production by women added 322 more calories per adult per day; in Kenya and

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14. Globally, women make up 70% of the 1.3 billion people living in poverty. (UN-DPI 1997)

15. Marcoux, A. 1998

Malawi, moderate to severe levels of malnutrition were much lower among children in female-headed households than in male-headed households, and; in Cote d'Ivoire raising women's share of income reduced household expenditures on alcohol and cigarettes, but increased expenditures on food.<sup>16</sup> From a gender perspective, therefore, equitable benefit-sharing requires that women be involved in negotiation and project design processes, in order to ensure that the design and identification of expected benefits responds to their interests and priorities. This is considered crucial for family welfare and community development, especially in the poorest sectors of society.

The foregoing statistics help demonstrate the important role of women in biodiversity conservation and their dependence upon biodiversity for their welfare. It also shows that women are amongst the groups most likely to suffer from the erosion of or restriction of access to, biological resources. Despite the fundamental role played by women in farming, conservation of biodiversity and management of TK, they have, as a group, been largely marginalised in the development of law and policy in this area. Overcoming such marginalisation will require committed and sustained capacity development for administrators and no less importantly for women themselves (See box 4).

#### **Box 4. The Shallow Footprint: Invisible Agriculture of Women**

Indigenous women in Nepal and Bhutan are known to play a crucial role in decisions regarding what to plant and what seeds to use. But also in other seed-related activities, women supersede men: They select good seeds for the next season, basing their decisions on taste, colour, and resistance to diseases and insect pests, adaptation to soil, and agro-climatic conditions, and preserve them with a variety of traditional methods. Indigenous women also exchange seeds,

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16. *Kabeer, N. 2003*

and in some ethnic groups, grandmothers and mothers pass seed selection skills on to their daughters. Their special knowledge of the value and diverse uses of plants for nutrition, food security, health, and income determines which plant varieties should be conserved, based on their usefulness to the family and community. Women take into consideration a plant's multiple uses, providing a balance to the market-oriented pressures that emphasize high yields and uniformity

Although women's knowledge and contribution to agricultural production is substantial, it is, in general, not visible and not considered significant by agricultural professionals. Instead, agriculturalists portray traditional crop varieties as inferior, 'backward' crops that should be replaced by high social status crops requiring provision of seeds, fertilizers, pesticides, training, and technical advice from extensionists. As keepers of the knowledge related to these so-called 'marginal' crops, women themselves are marginalised in the process in societies that give increasing value only to those who can produce cash.

So despite and, perhaps, because of their intense involvement in seed supply systems, women's roles as custodians of local crop varieties and landraces have been greatly undermined by development planners, causing them to lose status and control over their resources. Modern crop varieties are developed to increase productivity and production, whereas women require multipurpose crops. They are rarely asked what their needs are. Packaged with attractive incentives, these new varieties are then delivered to men. Due to the biases of male extensionists, the widespread illiteracy of women, and obstacles to their mobility, rural women in both Bhutan and Nepal are frequently left out of the efforts to disseminate new information and seeds to farmers. The result is that women's crops are becoming marginalised, women are without access to the new skills imparted to their men folk, and the base of biodiversity and the indigenous knowledge for maintaining it are being narrowed down without women understanding the process or its consequences.

Source: Adapted from Gurung, J. 1998

### **1.3 Women's Special Condition**

In applying a gender perspective attention needs to be given to what has been called women's special condition, i.e. the social, economic and cultural factors and mechanisms which keep women in a situation of disadvantage and subordination with regard to men (See box 5).

#### **Box 5. Women's Special Condition**

Women's Special Condition consists of social, economic and cultural factors and mechanisms that maintain women in a situation of disadvantage and subordination with regard to men. Such subordination is expressed in varying manners depending on the historical and cultural context. Women's condition as a conceptual and operational tool for analysis entails consideration of material status, or the level to which her "practical needs" are met, such as access to water, electricity, housing, health care, employment and income-generating services. This concept connects women's material well being to the specific circumstances surrounding her social environment and the roles and responsibilities that society accords to women.

Source: USAID 2007

Action may be required of governments to compensate for inherent inequities arising from women's special condition. In relation to ABS and TK governance, this may include establishment of special measures to facilitate women's access to information, participation in PIC procedures or negotiation of MAT. It may also require the adoption of measures to impede or redress violations of rights, relating to biological resources or TK arising as a result of discrimination.

Eradicating discriminatory practices and developing meaningful opportunities for women's participation at all levels of decision-making will take time and effort. It will require commitment on the part of decision makers and women themselves. Securing this commitment will require, the adoption of policy and legislative measures, to ensure that women's participation and

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consultations with women provide them with an opportunity to affect the outcome of decision-making processes. Developing such processes and ensuring consistency and continuity, in regard to gender equality and equity, requires mainstreaming gender in policy making at all levels.

#### 1.4 Mainstreaming Gender <sup>17</sup>

Gender mainstreaming may be described as the process of assessing the implications for women and men of any planned action, policy or program, in all areas and at all levels. It is a strategy for making women’s and men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs. Thus, gender mainstreaming ensures that women and men benefit equally and inequality is not perpetuated.<sup>18</sup>

Gender mainstreaming is not only a question of social justice and human rights, but is necessary for ensuring equitable and sustainable human development by the most effective and efficient means. A gender mainstreaming approach does not look at women in isolation, but instead assesses the situation of women and men - both as actors in the development process, and as its beneficiaries.<sup>19</sup>

Gender mainstreaming is intended to bring the diverse roles and needs of women and men, to bear on the development agenda. Rather than adding women’s participation and a gender approach onto existing strategies and programmes, gender mainstreaming aims to transform unequal social and institutional structures, in order to make them profoundly responsive to gender. Gender mainstreaming, therefore, differs from a “women

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17. *The discussion of gender mainstreaming draws heavily upon The discussion of gender mainstreaming draws heavily upon : Aguilar, L. (2007). Addressing Gender Equity and Equality in the Landscape and livelihood initiative. Draft Document; and Aguilar, L., et. al (2007) Guidelines to Mainstream Gender Equity and Equality into Access and Benefit Sharing of Biodiversity Resources, IUCN. Discussion Paper for the International Workshop on Gender and ABS. Costa Rica.*

18. *Economic and Social Council 1997*

19. *Economic and Social Council 1997*



in development” approach in that, its starting point is a thorough and rigorous analysis of the development situation, rather than *a priori* assumptions about women’s roles and problems. Experience has shown that gender issues differ by country, region and contextual circumstances. At the same time, experience has also shown that rigorous, gender-sensitive analysis invariably reveals gender-differentiated needs and priorities, as well as gender inequalities in terms of opportunities and outcomes. Gender mainstreaming seeks to redress these problems.<sup>20</sup>

The use of a gender perspective requires analysis and understanding of the different roles and responsibilities, needs, and visions of women and men, as well as their respective levels of participation and influence in decision-making. It goes beyond mere recognition of differences towards building more equitable relations between women and men. Adoption of a gender perspective in biodiversity management, use and conservation requires actions to:

- Recognize that women and men have particular needs, interests, and aspirations, and each contribute in a different manner to the conservation, management and sustainable use of biodiversity resources.
- Make visible through differential analysis the respective contributions of men and women to the conservation, use and sustainable management of biodiversity.
- Ensure that women’s roles in biodiversity management are valued in their many social and economic dimensions.
- Recognise the importance of women’s traditional knowledge, innovations and practices regarding biological resources. This includes their knowledge about wild and cultivated resources and in particular knowledge of farming and harvesting methods and traditional medicine.

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20. Aguilar, L. 2007

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- Ensure women’s effective participation in decision-making at local and international levels. Biodiversity initiatives that exclude women as players or stakeholder groups ignore half of the world’s population and thus are less efficient and effective.
- Ensure that the design of projects, projects, law and policy is carried out with due attention to principles of human rights and social justice.<sup>21</sup>
- Ensure equitable sharing of benefits.

Efforts to mainstream gender in environmental governance have advanced in the last decade with organizations such as UNEP, IUCN, FAO, and UNDP developing action plans. FAO has been one of the leaders in promoting analysis of gender and biodiversity management with a focus on the role of women in agriculture. One study sponsored by FAO on gender and agriculture <sup>22</sup> suggests that a long-term strategy for the conservation, utilization, improvement, and management of genetic resources diversity for food and agriculture requires:

- Recognition that there are gender-based differences in the roles, responsibilities and contributions of different socioeconomic groups in farming communities.
- Recognition of the value of men’s and women’s knowledge, skills and practices and their right to benefit from the fruits of their labour.
- Sound and equitable agricultural policies to provide incentives for the sustainable use of genetic resources, especially through in situ conservation and improved linkages with ex situ conservation.
- Appropriate national legislation to protect “threatened” genetic resources for food and agriculture, guarantee their continued use and management by local communities, indigenous peoples, men and

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21     *Aguilar, L. et. al. 2007*

22.     *FAO 2001*

women, and ensure the fair and equitable sharing of benefits from their use.

- Improvement of women farmers' access to land and water resources, education, extension, training, credit and appropriate technology.
- Participation of women, as partners, decision-makers and beneficiaries <sup>23</sup>.

Initiatives have also been taken by international aid agencies and non-governmental organisations such as IDRC and GTZ and IUCN. In 1998, the IUCN Council adopted a Gender Policy. The policy states that "IUCN's commitment to gender equality and equity is Union wide and it should be an integral part of all policies, programmes and projects". It also recognizes that mainstreaming gender has implications for "management priorities and systems, organizational structure, culture and behaviour, programming and project cycle management...".<sup>24</sup> Action plans have also been adopted at the national level, as for example, by the National Fund for Forestry Funding in Costa Rica which has adopted a gender based action plan (See box 6).

### **Box 6. Costa Rica – National fund for Forestry Gender Action Plan**

In October 2002, Costa Rica's FONAFIFO (the National Fund for Forestry Funding) developed an action plan for gender promotion. The objectives of this action plan are:

**Development objective**

Ensure that gender equity is mainstreamed throughout FONAFIFO's activities.

**General objective**

Incorporate the gender perspective into the policies, manuals, procedures, regulations, strategies, programs, plans and

23. *Ibid.*

24. *IUCN (1998) Gender Policy. Retrieved from: [www.genderandenvironment.org](http://www.genderandenvironment.org)*

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projects implemented by FONAFIFO, both at internal and external levels of the institution.

**Specific objectives**

1. To have the necessary institutional structures and mechanisms to promote gender mainstreaming throughout FONAFIFO.
2. To implement and monitor permanent awareness and training processes on gender equity directed at decision-making and administrative staff.
3. To mainstream the gender perspective into FONAFIFO's human resource management.
4. To develop actions to promote gender equity projects and initiatives throughout FONAFIFO's institutional actions.

Source: Aguilar, L. 2002

In 2005, the United Nations Economic and Social Council (ECOSOC) adopted a resolution with a view to ensuring the mainstreaming of a gender perspective in all the policies and programs of the United Nations system.<sup>25</sup>

The ECOSOC resolution calls upon “all entities of the United Nations system, including United Nations agencies, funds and programs, to intensify efforts to address the challenges involving the integration of gender perspectives into policies and programs, including:

- Developing action plans with clear guidelines on the practical implementation of gender mainstreaming;
- Fully incorporating a gender perspective into program budgets;
- Ensuring continuous awareness raising and training on gender issues for all staff;
- Requiring gender analysis for both policy formulation and programmatic work;

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25. *ECOSOC 2005*

- Ensuring commitment by senior management to gender mainstreaming;
- Strengthening accountability systems for gender mainstreaming;
- Incorporating a gender perspective into operational mechanisms, such as those relating to the implementation of Millennium Development Goals;
- Continuing to support governments and to work with civil society in their efforts to implement the Beijing Platform for Action;
- Development and institutionalization of monitoring and evaluation tools and gender impact analysis methodologies, promoting the collection, compilation and analysis of sex-disaggregated data;
- Promoting mainstreaming of gender perspectives into key macroeconomic and social development policies and national development programs.”

It is intended that all United Nations bodies work to coordinate and cooperate for the sharing of methodologies and good practices; including through the development of tools and effective processes for monitoring and evaluation within the United Nations.

From October 2005 to February 2006, a review of five agencies—UNICEF, UNDP, UNFPA, WFP and ILO—was conducted in order to identify accountability mechanisms for implementing gender mainstreaming strategies.<sup>26</sup> Review of other bodies including the CBD is likely in the future.

The CBD has begun efforts to mainstream gender in its activities by establishing a gender focal point at the CBD Secretariat, and by beginning work on development of a gender action plan. The CBD will need to consider how to ensure that gender issues are mainstreamed in the ABS negotiation process and in the outcome of the negotiations, including in any legal regime or policy on ABS and related TK issues.

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26. *UNDG, N. 2006*

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Two fundamental impediments for the mainstreaming of gender have been identified in a seminal study on gender and poverty eradication.<sup>27</sup> These are lack of core competence of policy making bodies and limited consultation with primary stakeholders (See box 7).

### **Box 7. Impediments to the Mainstreaming of Gender in Policy Making**

Gender is not viewed as a ‘core competence’ of policy-making bodies, either in the international development community or at national and local levels. There is thus a lack of gender expertise in these bodies. Where such expertise exists, it tends to be found in either: (a) the sectors traditionally associated with gender and women’s issues; or (b) the programmes that directly address women’s concerns or gender equality efforts.

Limited consultation takes place with primary stakeholders. While having poor people participate directly in such consultations may take longer to achieve, the consultations have also failed to include, or have included in a very token way, organisations that work with the poor as well as those that work for gender equity goals. The ones consulted also tended to be those who already had a relationship with governments and donors.

Source: Kabber, N. 2003

Building the awareness and capacity of negotiators to address gender related issues and enhancing opportunities for full and informed participation of women in decision-making processes will be vital for securing a gender perspective in an international ABS regime.

### **1.5 Gender and Participatory Decision-making**

Women in many societies are faced numerous impediments which limit their participation in decision-making processes. These include cultural, social, economic constraints,

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27. Kabber, N. 2003

as well as, practical impediments such as: illiteracy, lack of access to information and a failure of policy makers and development planners to adopt a gender perspective –and to design enhanced opportunities for women’s participation. Impediments to participation are often more pronounced for women in rural and local communities and amongst indigenous peoples. Securing the participation of the most marginalised and traditionally unheard voices of women can provide key insights into the importance of biodiversity conservation, and sustainable use strategies. It may also provide a distinct perspective, from that of only men or sectors of society more closely aligned to market forces (See box 8).

### **Box 8. Impediments to Women’s Participation in Consultation Processes**

Suffering disproportionately from forest impoverishment, women, although reticent to take part in workshops, generally offered powerful voices. As caretakers of the health and nutritional needs of the family, women know and use many forest products and therefore can offer significant input towards recognizing both the subsistence and market benefits of forest management. For example, women knew how to prepare remedies for malaria when distance or cost prohibited access to pharmaceutical preparations. In hard times that prohibited purchase of store bought products, women ingeniously employed forest fruits combined with tree oils to make soaps. Women brought a voice of caution and thrift to timber negotiations, prohibiting disadvantageous deals and conserving fruit trees. When women of one community became involved inland-use decisions, they banned any further timber sales.

Source: Adapted from Shanley, P. 2002

In an interesting initiative to enhance local community participation in decision-making, women of local communities in the Capim river basin in Brazil established *Mulheres de Mata* in the early 1990’s. The organization’s objective was to secure access to relevant scientific data for local communities as

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an aid in decision-making. This experience showed: that women put different items on the agenda for discussion and review, that they need support and capacity building to participate, and that their extensive responsibilities in caring for their families can make participation difficult.<sup>28</sup>

One study noted that as indigenous women are frequently shy, to get them involved it might first be necessary to try one or more of a range of techniques such as:

- Visiting them at home.
- Contacting them through their formal structures (i.e. women’s clubs, mother’s clubs etc.).
- Use female personnel, interpreters and contacts. To enable approaching indigenous women without scaring the men, it is often necessary for female field personnel to work with the women, while the male personnel talk to the men:<sup>29</sup>.

For women from indigenous peoples and local communities, language is often a barrier to participation in consultation processes. In the Peruvian Amazon, for instance, consultations regarding natural resource exploitation have historically been conducted in Spanish, a language many indigenous women, in particular older women, do not speak. Developing functional participatory processes must therefore commence with a firm understanding of the reality of stakeholders and the conditions necessary to ensure opportunities for all affected. In order to secure the full and effective participation of indigenous peoples and local communities, in particular of women, the negotiation of an international ABS regime will require a commitment to fund timely, inclusive and local consultations. Guidance for development of such consultation processes may be drawn from other experiences, such as the elaboration of guidelines for participatory debates in other areas of natural resource exploitation, *e.g.* the oil and mining industries (See box 9).

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28. Shanley, P. 2002



## **Box 9. Proposed Criteria for Participatory Processes**

Participatory processes should be:

- Carried out in good faith: involving all affected peoples
- Timely: carried out prior to significant decision making
- Inclusive of all sectors of society affected with a bias to securing participation of marginalized sectors, in particular women, youths and elders;
- Locally inclusive
- Significant: must be substantive and result in real decision making
- Continuous
- Informed
- Facilitated
- Reported
- Respectful of the culture, laws, and representative organizations of indigenous peoples
- Equitable: ensuring benefit sharing reflects the desire of the indigenous peoples as a whole
- Non-coercive

Source: Adapted from Tobin, B., Noejovich, F. and Yañez, C. 1998

Processes for securing participation in international debates on biodiversity have, until now, failed to recognize women as a major group and to provide the support necessary to ensure promotion of gender-related issues at CBD. Recognition by the CBD secretariat of women as a major group and provision of funding for participation of women's representatives in future meetings of the CBD could help to overcome this historical oversight. Efforts will also be needed to promote consultation processes for women that build awareness of the importance of community consultation and subsequent national and regional consultation processes. In order for such processes to have any meaningful input into the negotiations on ABS they will need to

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commence early in the negotiation process and be adequately funded. The results of regional consultations should be presented by women’s re-representatives at the international negotiations and opportunities should be provided for exchanges between key negotiators and women’s representatives.

## **Section II:**

# *Human Rights and Sustainable Development*

GENDER issues have been the subject of much attention by the international human rights community. Priorities have included efforts to prevent violence against women, promote equality in the workplace, and secure reproductive rights. Attempts have also been made to address gender issues in environmental governance.

The importance of mainstreaming gender for realization of human rights, sustainable development and/or poverty eradication has been recognized in a series of international instruments. These include Agenda 21 (United Nations Conference on Environment and Development, 1992); the World Conference on Human Rights (1993); the Beijing Platform for Action (Fourth World Conference on Women, 1995); the 1997 Convention on the Elimination of All Forms of Discrimination Against Women<sup>30</sup>; the Millennium Declaration (2000), and; the Johannesburg Plan of Implementation (World Summit on Sustainable Development, 2002). Women's role in conservation and sustainable use of biodiversity has also been recognized in the Preamble to the CBD. Human rights instruments and environmental laws and policies of regional organisations such as the Organisation of American States, the European Council, the United African Organisation,

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30. *Aguilar, L., Blanco, M. and Dankelman, I, 2006*

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etc., may also serve as “...means to call upon governments to fulfil their obligations in terms of gender equity”.<sup>31</sup> However, despite this broad recognition of the importance of the gender perspective there is no single instrument that clearly defines the rights of women over their biological resources and related TK.

This section will examine, the treatment of gender in international human rights and environmental legislation with a view to identifying the current status of women’s rights to control, access and use their biological resources and TK, and to share the benefits derived from such use. Neither human rights nor environmental law alone provide a clear definition of rights over biological resources or TK. Thus, it is necessary to consider how these areas of law may interact to confer obligations on states to prevent discrimination and ensure equity in management of biological resources and TK.

## 2.1 Gender and Human Rights

International human Rights play an important role in promoting gender equality and equity. This includes both hard and soft law in the form of convention, UN Declarations and various international policy statements and actions plans. Gender issues are addressed most importantly in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the UN Declaration on the Rights of Indigenous Peoples, the UN Declaration on Human Rights, and the two UN Covenants on Civil and Political Human Rights and economic, social and cultural rights. A gender perspective informs Agenda 21, the Plan of Implementation of the World Summit on Sustainable Development, the Beijing Declaration and Platform of Action, and the Mileniumm Declaration. Gender issues have also been addressed, although tentatively, in international treaties relating to biodiversity such as the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture.

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31. *García, S. 1999*

### **2.1.1. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

The principal instrument for the protection of women's rights is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) adopted in 1979 by the General Assembly of the United Nations (UN).<sup>32</sup> An Optional Protocol to CEDAW, adopted by the United Nations General Assembly in December 1999, came into effect December 22, 2000.<sup>33</sup> The Optional Protocol establishes procedures whereby women may file complaints requesting investigation of violations of rights.

CEDAW, commonly referred to as a bill of rights for women, seeks to promote adoption of measures to secure elimination of different forms (and levels) of discrimination against women. CEDAW defines discrimination against women as: "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".<sup>34</sup> Even if an action, law or policy were not intended to discriminate, it may be discriminatory if such is its effect.<sup>35</sup>

In its preamble CEDAW, states that State Parties are bound to guarantee men and women equal opportunities in terms of economic, social, cultural, civil, and political rights. States Parties agree to incorporate the principle of equality of men and women in their national constitutions and/or other appropriate legislation, and to ensure, through law and other appropriate means, the practical realization of this principle.<sup>36</sup>

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32. As of April 2007 CEDAW had been ratified by 185 countries, <http://www.ohchr.org/english/law/cedaw.htm>

33. As of July 2007, the Optional Protocol to CEDAW had been ratified by 88 countries.

34. Article 1

35. Facio, A. 1996

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In a provision of much relevance to regulation of ABS and TK matters, the Convention obliges States Parties to take “all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development” and, “participate in the elaboration and implementation of development planning at all levels”, and “in all community activities”.<sup>37</sup> CEDAW also recognises that women should have equal rights to conclude contracts and to administer property.<sup>38</sup>

The cumulative effect of these provisions is to create obligations on countries regulating ABS and TK to ensure that women are granted equal opportunities and the conditions necessary to enable their: participation in decision-making; negotiation of ABS agreements, and equitable participation in benefit sharing. They may also be interpreted as, requiring states to ensure the fullest possible participation of women in law and policy making at the international level, where such laws and policies are necessary to prevent discrimination.

National implementation of CEDAW has occurred at various levels including incorporation in constitutional law. The Ugandan and South African constitutions, for example, contain significant provisions based on the Convention’s principles which guarantee women’s equality.<sup>39</sup> The courts have also begun to develop jurisprudence on gender equality with reference to CEDAW’s provisions. A presentation by the UN Special Adviser on Gender Issues and Advancement of Women, on the 25th anniversary of CEDAW’s adoption, drew attention to a number of cases in which courts had relied on the Convention. This included: decisions by the Supreme Courts of Nepal, directing the government to submit legislation to parliament to

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37. Article 14.2

38. Article 15.2

39. *Statement by Ms Rachel Mayanja, Assistant Secretary-General, Special Adviser on Gender Issues and Advancement of Women, On the occasion of the 25<sup>th</sup> Anniversary of the work of the Committee on the elimination of all Forms of Discrimination Against Women, New York, 23 July 2007.*

address discriminatory laws; Canada, on violence against women; and India, on sexual harassment in the workplace. Other cases included a decision by the Constitutional Court of Guatemala upholding a challenge to the penal code, which has provisions treating men and women differently, and a decision of the High Court of Tanzania that overruled elements of customary law which denied women the right to inherit and sell land.<sup>40</sup> These cases demonstrate the preparedness of courts to reference the Convention in a wide range of issues. It is conceivable that cases regarding ABS and/or TK issues may well appear before courts based upon discrimination against women, relating to access and use of biological or genetic resources and/or TK. This may, for instance, include discrimination under an ABS or TK agreement, under national law, or under customary law.

### **2.1.2 Gender and the UN Declaration on the Rights of Indigenous Peoples**

On the 13<sup>th</sup> of September 2007, after more than 20 years of negotiation the United Nations Declaration on the Rights of Indigenous Peoples (DECRIPS) was finally adopted. It received 143 votes in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). Although the UN Declaration is not a legally binding instrument it will be highly influential in defining the position to be taken by negotiators of an ABS regime.

DECRIPS specifically prohibits discrimination against women<sup>41</sup>, providing that all the rights and freedoms recognized in the declaration be guaranteed equally to male and female indigenous people.<sup>42</sup> This sets a standard which should inform the implementation of the Declaration.

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40. *Ibid.*

41. *Article 22.2 DRIP*

42. *Article 44*

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The Preamble to DECRIPS acknowledges the importance of indigenous knowledge, cultures and traditional practices for sustainable and equitable development and proper management of the environment<sup>43</sup>, DECRIPS recognizes indigenous peoples’ rights over the lands, territories and resources they have traditionally, owned, occupied or otherwise used or acquired.<sup>44</sup> It requires states to give legal recognition and protection to indigenous peoples rights over their lands, territories and resources. This is to be done with due respect for indigenous peoples customs, traditions and land tenure systems.<sup>45</sup> The Declaration obliges states to establish fair, independent, impartial, open and transparent processes, giving due recognition to customary law in order to adjudicate indigenous peoples land and resource rights.<sup>46</sup> This provision may be interpreted as requiring states to regulate indigenous peoples rights over their land and resources prior to granting any bioprospecting rights on their lands or over their resources.<sup>47</sup>

DECRIPS recognizes the rights of indigenous peoples to maintain, control, protect and develop their traditional knowledge and traditional cultural expressions. This includes amongst other things genetic resources, seeds, medicines, and knowledge of the properties of fauna and flora.<sup>48</sup> The Declaration recognizes the rights of indigenous peoples to maintain, control, protect and develop their intellectual property over their TK.<sup>49</sup>

For DECRIPS to be implemented fully will require recognition of the role of women in the conservation and sustainable use of biodiversity. and the protection of TK. As women hold much TK relating to biodiversity their interests will need to be reflected in any law and policy relating to its use. Women also have the right to be consulted prior to granting of rights for exploitation of resources on their territories and to share in benefits derived from access to and use of their TK.

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43. *DRIP Preamble, Paragraph 11*  
44. *Article 26.1 DRIP*  
45. *Article 26.3 DRIP*  
46. *Article 27 DRIP*  
47. *Tobin, B. 2007*  
48. *Article 31.1 DRIP*



Potential difficulties may arise in reconciling DE-CRIPS provisions prohibiting discrimination and those relating to self-determination. Amongst the rights which may conflict with a gender equality approach to implementation of the declaration are the right to define responsibilities of the individual to the community, to apply customary law to regulate community affairs, and to choose representatives to participate in decision making.<sup>50</sup> Finding the balance between individual and collective rights in a manner which enhances cultural integrity while securing the integrity of womens rights is a challenge which will require open mindedness, willingness to compromise and change, and commitment from all parties.

### **2.1.3 Human Rights and Customary Law**

Indigenous and local communities have consistently argued that their customary laws are *sui generis* systems of law developed over millennia, which have been tried and tested for the protection of their TK. They have also argued that customary law should govern issues of ABS related to the collection and use of resources from their territories. Support for this proposition has been widespread amongst organisations representing indigenous peoples and local communities. Both the CBD and IGC have discussed the need to recognise the role of customary law as a basis for measures to protect TK and regulate benefit sharing. Therefore, it is likely that customary law will continue to play a key role in defining the extent to which women are empowered, to control access to and use of their TK. It will also govern their opportunities to share benefits derived from any use of TK and biological resources.

Support for customary law systems is not, however, universal, and concerns have been aired regarding the potential for abrogation of basic human rights of women where there is strict adherence to customary laws and practices. It has, for instance, been argued by women's groups that traditional courts may

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50. Tobin, B. 2007

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discriminate against women, as “tradition, culture and custom in the main is defined by men, not women – therefore there is conflict about whose custom is being applied, especially given that custom is largely unwritten.”<sup>51</sup> In a case in Tanzania the courts decided to overrule customary law where its application would lead to breaches of human rights principles enshrined in CEDAW, and the African Charter on Human and Peoples Rights. These the court said were “... a standard below which any civilized nation will be ashamed to fall” (See box 10).

### **Box 10. Women’s Rights and Customary Law in Tanzania**

In *Ephrohim v. Pastory*, a woman brought a court challenge to the Haya customary law that prevented her from selling clan land. Holaria Pastory had inherited land from her father, through his will. But when she tried to sell it, her nephew applied to have the sale voided. Tanzania’s Declaration of Customary Law prohibited her sale of the land in its rules of inheritance, which states that “women can inherit, except for clan land, which they may receive in usufruct but may not sell.” Pastory argued that this violated the constitution’s Bill of Rights. The court relied on the Government’s ratification of CEDAW, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights, to find that women were constitutionally protected from discrimination, overruling customary law. The court stated that “the principles enunciated in the above named documents are a standard below which any civilized nation will be ashamed to fall.”

Source: WEDO 2003

51. *Submission made by the Fiji Women’s rights Movement and the Fiji Crisis Centre in a submission to the Beattie Commission on reform of the Fijian court system (cited in J. Corrin Care (n.d.) The Status of Customary law in Fiji Islands after the Constitutional Amendment Act 1997, Retrieved on October 1, 2007 from: [http://www.vanuatu.usp.ac.fi-journal\\_splaw/articles/Corrin1.htm](http://www.vanuatu.usp.ac.fi-journal_splaw/articles/Corrin1.htm))*

If customary law is seen as being in conflict with the realization of the basic human rights of women and other disadvantaged groups, this may prove an impediment to its recognition by the international community and foreign jurisdictions. In cases relating to ABS and TK, tenets of equity and human rights in general, would tend to require that women be entitled to control their knowledge and resources in the same manner and extent as men, and to share equitably in benefits arising from its use.<sup>52</sup>

The tensions between customary law and human rights instruments are not ones that will be easily overcome. Patriarchal systems, which have traditionally subjugated women, will not easily relinquish power and women long marginalised from decision making may find it difficult to fully participate and defend their interests. There is also a need for care to ensure that pressures for cultural change to comply with human rights principles do not have unintended negative impacts upon community welfare and in particular of the very sectors they seek to support.

It is important to remember that the customary laws and practices of indigenous peoples and local communities are as diverse as are indigenous peoples and local communities themselves. There needs to be much care, therefore, to avoid in generalisation which might tend to portray all customary legal systems as being discriminatory against women. While it is without question that women in many indigenous peoples and local communities find themselves in a position in which discrimination does occur, this is not the case in all peoples or communities.

It is noteworthy that the issue of gender has appeared more frequently in discussions relating to protection of TK within the Working Group on Article 8 (j) than in almost any other areas of the CBD's work. As the Working Group on 8 (j) has a very strong presence of indigenous peoples and local communities, it would seem to demonstrate their concern for respect of gender issues is, in fact, high.

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40. *Tobin, B. 2007*

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One result of the concern for gender related issues in the Working Group on Article 8 (j) has been the recognition in the Akwé: Kon Guidelines on environmental and social impact assessments<sup>53</sup>, of the vital role women play in conservation and their greater susceptibility to negative development impacts.<sup>54</sup> The guidelines highlight the need to secure the full and effective participation of women in policy making and implementation.

A distinguishing characteristics of indi-genous peoples and local communities, which is consistently raised as a reason for the design of *sui generis* regimes for the protection of their rights over TK and over biological resources, is their collectivism. The collective nature of their land, resource and knowledge, rights is resistant to the imposition of individualistic property rights regimes which could lead to the disintegration of communities and undermine their collective welfare. It has been pointed out that slavish adherence to and implementation of individualistic human rights may have an effect on community cohesion and undermine cultural integrity.<sup>55</sup> Developing means to ensure both individual and collective rights will require collaboration and capacity building amongst and within indigenous peoples and local communities, and with national and international regulators. Finding the optimal balance will require the informed and effective participation of women.

#### **2.1.4 Universal Prohibition on Discrimination**

Principles of equality and protection against discrimination are enshrined in major international human rights instruments including:

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53. Akwé: Kon Guidelines: Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.

54. Ibid.

55. Tobin, B. 2007

- The Universal Declaration of Human Rights, which accords protection to the rights of women for equality, prohibits discrimination and accords equality before the law.<sup>56</sup>
- The International Covenant on Civil and Political Rights, which prohibits discrimination<sup>57</sup>, promotes equality of women's and men's rights<sup>58</sup> and equality before the law.<sup>59</sup>
- The International Covenant on Economic, Social and Cultural Rights, which prohibits discrimination<sup>60</sup>; and calls for equality of women and men regarding the rights recognized by the Covenant.

These instruments though not, legally binding by themselves, are highly influential and together with CEDAW establish a clear prohibition on discrimination. Their relevance for ABS and TK regulation is: to further define the obligations of states to ensure that any laws and policies adopted in this area fully respect the rights of women to equal treatment before the law; to reinforce any obligations on states to secure fair and equitable benefit sharing; and to ensure participation in decision making regarding access to and use of resources and knowledge.

## **2.2 Gender and Sustainable Development**

At the international level, gender issues have been raised in numerous summits and conferences,<sup>61</sup> and there is

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56. Article 7

57. Article 2.1

58. Article 3

59. Article 26

60. Article 2.2.

61. *Gender issues have been raised in a wide range of summits and conferences including: Children's World Summit (New York 1990); United Nations Conference on Environment and Development, (Rio de Janeiro 1992); World Conference on Human Rights (Vienna 1993); International Conference on Population and Development (Cairo 1994); World Summit on Social Devel-*

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explicit reference to the rights of women in a range of international instruments.<sup>62</sup> Among these have been a number of global sustainable development agreements; including Agenda 21 and the WSSD Plan of Implementation which make commitments on gender and women. The relationship between women and environment has also arisen in relation to international agreements on women and gender equality, such as: the Beijing Platform for Action and its 10-year review, and the Millennium Declaration. The relationship between gender and biodiversity is covered in the CBD, the Leipzig Declaration and the International Treaty on Plant Genetic Resources for Food and Agriculture.

### 2.2.1 Agenda 21

Agenda 21, which establishes a blueprint for sustainable development, was adopted at the United Nations Conference on Environment and Development, in Rio de Janeiro in 1992. It includes a complete chapter on gender related issues, which calls upon governments to make necessary constitutional, legal, administrative, cultural, social, and economic changes in order to eliminate all obstacles to women’s full involvement in sustainable development and in public life. Agenda 21 recognizes the importance of the knowledge and traditional practices of women, and underscores the contribution women have made to biodiversity conservation.<sup>63</sup>

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(Copenhagen 1995); *Fourth World Conference on Women (Beijing 1995)*; *Second United Nations Conference on Human Settlements (Istanbul 1996)*; *World Summit on Food (Rome 1996)*; and *United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome 1998)*.

62. *These include the Cairo Action Program, Agenda 21, Copenhagen Declaration on Social Development, Copenhagen Action Plan, Istanbul Declaration on Human Settlements, Habitat Program, the Rome Declaration on World Food Security, Rome Action Plan on World Food Security, and The Vienna Action Program which contains a whole section entitled: “Equality of condition and the human rights of women.*

63. *Section 24.2 (c)*

Agenda 21 calls for the adoption of measures to translate its objectives into clear strategies.<sup>64</sup> This is to be achieved through government policies, national guidelines, and plans to ensure equity in all aspects of society, including women’s “key involvement” in decision-making and environmental management. It also recognises the importance of women’s traditional knowledge, and sets out obligations for states to seek PIC for the use of TK and to ensure equitable benefit sharing for its use.

### **2.2.2 WSSD Plan of Implementation**

The World Summit on Sustainable Development (WSSD) Plan of Implementation 2002, adopted in Johannesburg, promotes women’s equal access to and full participation in decision-making at all levels, on the basis of equality with men. It calls for mainstreaming gender perspectives in all policies and strategies, the elimination of all forms of discrimination against women and the improvement of the status, health and economic welfare of women and girls through full and equal access to economic opportunities, land, credit, education and health-care services.

### **2.2.3 Beijing Declaration and Platform for Action and Beijing + 10**

Two documents emanated from the IV World Conference on Women: the Beijing Declaration and Platform for Action. These documents establish a strategy and responsibilities for State Parties. The Platform for Action warns that: “the human rights of women, as defined by international human rights instruments, will only be dead words unless they are fully recognized, protected, applied, and effectively enforced, at national legal and practical levels, in family, civil, criminal, labour and commercial codes, as well as in administrative regulations” (Paragraph 218).

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64. Section 24 (f)

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Strategic Objective K of the Beijing Platform for Action commits to securing the active involvement of women in environmental decision-making; integrating gender concerns and perspectives in policies and programmes for sustainable development; and strengthening or establishing mechanisms at the national, regional and international levels to assess the impact of development and environmental policies on women.

In March 2005 at UN Headquarters, the 49<sup>th</sup> session of the Commission on the Status of Women (CSW), also known as “Beijing+10,” assessed progress made since the adoption of the Beijing Platform for Action. Beijing +10 was a call to action against discriminatory laws and other violations of women’s human rights. It specifically calls on Member States to enhance rural women’s income-generating potential; noting the importance of the agricultural sector, particularly in developing countries, and the importance of greater security of land tenure and property ownership for resource mobilization and environmental management.

## 2.2.4 Millennium Development Goals

At the 8<sup>th</sup> plenary session of the UN General Assembly in September 2000, countries adopted the Millennium Declaration, committing themselves to respect the equal rights of all without distinction as to race, sex, language or religion.<sup>65</sup> The UN also adopted the Millennium Development Goals (MDGs) which are referred as a blueprint for the realisation of the Millennium Declaration.<sup>66</sup> The MDGs promote poverty reduction, education, maternal health, gender equality, and aim at combating child mortality, AIDS and other diseases. The MDGs, with a target year of 2015, are an agreed set of goals that can only be achieved with the full commitment and collaboration of all actors.<sup>67</sup> Poor countries have pledged to govern better and invest in their people

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65. Article 4

66. Zakri, A. H., and B. Tobin (in print)

67. For a review of progress on the International Development Goals see [www.paris21.org/betterworld](http://www.paris21.org/betterworld).



through health care and education. Rich countries have pledged to support them, through aid, debt relief, and fairer trade.<sup>68</sup>

The Declaration identifies certain fundamental values to be essential to international relations in the twenty-first century. To secure their realisation signatories commit to:

- Assure equal rights and opportunities for women and men.<sup>69</sup>
- Promote equality between sexes and the empowerment of women as effective means to combat poverty, hunger and diseases, and promote a truly sustainable development.
- Ensure that all may take advantage of the benefits of new technologies, particularly information and communication technologies, and
- Secure the full implementation of the Convention on Biological Diversity.

The Declaration is of particular interest due to its linkage of human rights, the rights of women, and the rights that stem from the CBD. Taken together these establish a platform of fundamental interrelated values on gender, environment and human rights.

According to the 2005 United Nations Development Programme (UNDP) Human Development Report, gender continues to be “one of the world’s strongest markers for disadvantage”. Reducing inequality would, therefore, be instrumental in making progress towards achieving the MDGs.

### **2.2.5 CBD, Leipzig Declaration and International Treaty**

Apart from human rights instruments and the major agreements on sustainable development, there are a number of other international instruments that also link gender and biodiversity.

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68. Retrieved on July 21, 2006, from: <http://www.undp.org/mdg/>

69. Article 6

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The Preamble to the CBD recognises the important role played by women in the conservation and sustainable use of biodiversity. The Convention requires PIC for access and use of genetic resources and imposes an obligation upon states to promote the wider use of TK with the consent of indigenous and local communities; as well as, to ensure fair and equitable benefit sharing arising from use of TK. It does not, however, establish any provisions to specifically address this relationship and to secure the rights and interests of women over their resources and/or TK. Despite the lack of any direct reference to women’s rights there is room for interpretation of the provisions of the Convention in a manner which would oblige states to effectively protect the interests of women over their resources and knowledge. This issue will be discussed in more detail in Section III, below.

Both the Leipzig Declaration and the Global Action Plan for the Conservation and Sustainable Utilization of Genetic Resources (1996), draws the international community’s attention to the role women have played in the conservation and development of genetic resources. They express as a desirable objective, the equitable distribution of the benefits derived from the use of traditional knowledge, taking into account the contributions made by women, especially rural women. The Declaration also points out the imbalances between women’s responsibilities for conserving nature, the disadvantages faced, and their under-representation in decision-making venues.<sup>70</sup>

The International Treaty on Plant Genetic Resources for Food and Agriculture, of the United Nations Food and Agriculture Organization (FAO), seeks to ensure not only “the conservation and sustainable use of phytogenetic resources, but also the fair and equitable sharing of benefits arising out of their use, including monetary benefits resulting from commercialization”.<sup>71</sup> The Treaty stipulates that the governing body “should take note of appropriate decisions made by the Conference of the Parties to the Convention on Biological Diversity and other

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70. See Articles 248, 249 and 250.  
71. Esquinas, J. 2006

international organizations and treaty bodies on matters covered by this treaty.”<sup>72</sup> While the Treaty requires fair and equitable benefit sharing no specific measures exist to guarantee gender equity and equality in such distribution.

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72. *Part VII, Article 19*

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### Section III

## *Gender and the CBD*

THE Convention on Biological Diversity (CBD) has three principal objectives: the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.<sup>73</sup> A secondary objective of the Convention is to promote the fair and equitable sharing with indigenous and local communities of benefits derived from the use of their traditional knowledge, innovations and practices.<sup>74</sup>

Since its adoption, responsibility for regulation of ABS issues under the CBD has fallen primarily upon developing countries wishing to protect their national interests over genetic resources and the rights of their indigenous and local communities over traditional knowledge. The inherent limitations of national jurisdiction and the consequent difficulties to regulate use of resources and knowledge exported to third countries has led to the adoption of oftentimes bureaucratic ABS laws and policies; these have tended to stifle collection activities, and restrict research and development activities –including pure research by national and foreign scientists.

Now after almost fifteen years of trial and error in the development of national and regional ABS and TK law and

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73. *CBD Article 1*

74. *CBD Article 8 (j)*

policy, the CBD has accepted the need for an international regime to secure its objectives in this area. This section will examine the treatment of gender as it relates to ABS and TK under the CBD, and consider the possible role which negotiation of an international ABS regime may play in mainstreaming gender in ABS and TK governance.

### **3.1 Gender and ABS**

As mentioned earlier, the Preamble to CBD recognizes “the vital role that women play in the conservation and sustainable use of biological diversity and (...) affirms (...) the need for full participation of women at all levels of policy making and implementation for biological diversity conservation.”<sup>75</sup> Apart from this reference, the Convention makes no specific mention of the role and rights of women with regard to biological diversity. However, requirements in the CBD for Prior Informed Consent (PIC), Mutually Agreed Terms (MAT), and equitable sharing of benefits, in particular with regard to access and use of traditional knowledge, may establish avenues for promotion of gender equity in ABS and TK governance.

The Convention recognises the sovereign rights of states to regulate access to their genetic resources.<sup>76</sup> Access is to be on MAT<sup>77</sup> and subject to PIC of the Contracting Party, unless otherwise determined by them.<sup>78</sup> States are therefore free to adopt legislation that promotes gender equality and equity with regard to ABS and TK, and may include obligations for access to be made subject to PIC of landholders, indigenous peoples, and/or local communities. This is the case, for instance, in the Andean Community where regional law on ABS recognises the rights of indigenous Afro-American and local communities to make decisions about access to their TK.<sup>79</sup> Andean legislation also creates mechanisms for securing such rights by making

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75. *Preamble to CBD Paragraph 13.*

76. *Article 15.1*

77. *Article 15.4*

78. *Article 15(5)*

79. *Andean Community Decision 391*

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patent applications for products using TK directly or indirectly dependent upon demonstration of PIC for its use.<sup>80</sup>

In some cases indigenous peoples and local communities have pre-existing rights to the biological resources on their territories, including its genetic components. This is the case of indigenous peoples in some South Pacific Island countries. In such cases, rights to grant or deny PIC access to biological resources and their genetic components are not dependent upon an act of government but arise directly from the pre-existing property right. Indigenous peoples have argued strongly that the CBD should not be used to override pre-existing rights over biological resources, and have consistently proposed that they be referred to as rightsholders and not stakeholders in discussions relating to TK and biological resources on their lands.

The issue is less controversial with regard to TK and there exists an almost universal consensus, in word if not in practice, that access to and use of TK is dependent upon PIC of its custodians. Development of law and policy in this area has, however, trailed behind work on ABS and there are as yet only a handful of laws establishing rights over TK in favour of indigenous peoples and local communities. The most advanced of these is the Peruvian Law for protection of the collective knowledge of indigenous peoples, adopted in 2002. The law recognises TK as cultural patrimony and establishes obligations for the state to work for its protection. The Peruvian government has also established a national committee on biopiracy, which with the help of the National patent office (INDECOPI), has promoted investigation and denouncing of suspected biopiracy cases involving Peruvian genetic resources and/or TK.

Since the Convention's adoption, the principal focus of those promoting development of ABS and TK law and policy has been: first, to secure recognition of sovereign rights over resources; second, to develop measures to regulate PIC procedures; third, to adopt measures to protect TK; and fourth, to secure obligations for user countries to adopt measures to complement national ABS law and policy in providing countries.

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80. *Andean Community Decision 486*

Until now, there has been till now little opportunity and even less preparedness, for the introduction of another theme into the international ABS and TK debate. Especially one that brings to the table a new set of issues and promote the participation of a major group with potentially less cohesion than indigenous peoples and local communities. Gender, which crosses all countries, races, social groups, professions and beliefs, is an issue that countries, international institutions, and society in general must address. As reviewed earlier, numerous international instruments and bodies are now facing up to that challenge.

A number of countries, for instance Guatemala and Nicaragua have adopted laws and/or policy instruments that recognize the need to ensure gender equity in environmental management and benefit sharing (See box 11). However, these policies have been few and far between; and by and large the issue of gender equity and equality in relation to biodiversity management, and ABS in particular remains unregulated. As a result, women's interests and rights over their genetic resources and traditional knowledge continue to be marginalized.

### **Box 11: Gender and Benefit Sharing in National Law and Policy on ABS**

The National Strategy for the Conservation and Use of Biodiversity and Plan of Action (1999) is the main guiding policy instrument regarding biodiversity conservation and sustainable use in Guatemala.

One of the key guiding principles of the strategy is to ensure an equitable sharing of the benefits derived from the use of biodiversity. In this regard, "the benefits derived from the use of all components of biodiversity – ecosystems, species, genes – must be equitably distributed among Guatemalan citizens in accordance with their relations and rights over the component used, as well as the knowledge applied in its utilization. Equitable benefit sharing under the strategy requires consideration of gender, age, ethnicity, socio-economic level and place of origin".

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Nicaragua’s National Environmental Policy and Action Plan were enacted through Executive Decree 25 (2001). Its guiding principles are as follows:

- Natural resources and biodiversity are the common patrimony of society and thus the state and all citizens have the right to and obligation to ensure their sustainable use, accessibility and quality.
- Use of natural resources and the environment enhances the quality of life and reduces poverty and environmental vulnerability.
- Environmental management is understood within the context of social equity and gender respect, and is founded on prevention.
- Citizen participation is essential in environmental management.

Source: Lewis-Lettington, R.J., and Mwanyiki, S. (Ed). 2006

### 3.2 **Bonn Guidelines**

Lack of clear international governance has led to general discontent with the existing international ABS regime. Overly bureaucratic ABS measures which served to paralyse collection activities, were matched by a failure to adopt measures to prevent misappropriation and unjust enrichment arising from use of resources obtained without PIC or MAT. With a view to enhancing implementation of the CBD’s ABS objectives, COP 6, held in The Hague in 2002, adopted the “Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization”.<sup>81</sup> The guidelines set out detailed provisions for the development of national law and policy and for negotiation of ABS agreements. They also include proposals for so called user measures to be adopted by countries to ensure that use of imported genetic resources and TK is subject to PIC and MAT.

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81. *Secretariat of the Convention on Biological Diversity 2002*



The objectives of the Guidelines include: to promote conservation and sustainable use of biological diversity; provide a transparent framework for access and benefit sharing; provide capacity building for effective ABS negotiations; protect TK in accordance with domestic law and relevant international instruments; and contribute to poverty alleviation. The purpose of the Guidelines is to build capacity; promote appropriate technology transfer; provide financial resources for developing countries; promote knowledge and recognition of indigenous and local community innovation and practices, and contribute to poverty alleviation. Competent authorities are encouraged to provide assistance in connection with ABS negotiations, PIC and MAT requirements and procedures, monitoring, evaluation, application and overseeing of agreements. They are also encouraged to adopt mechanisms to secure the effective participation of indigenous and local communities and other stakeholders in such processes.

The Guidelines recognize that the “involvement of relevant stakeholders is essential to ensure the adequate development and implementation of access and benefit-sharing arrangements”.<sup>82</sup> They also recognise the importance of consulting and considering the views of stakeholders in each step of the process, including but not limited to, determining access, negotiating mutually agreed terms and the development of a national strategy on access and benefit-sharing. Stakeholder involvement is further promoted by providing information and support for capacity building.

The guidelines attempt to establish a basis for implementation of principles of equity to guide the PIC and MAT processes. However, unless consideration is given to mainstreaming gender in ABS and TK related processes, realisation of the equity objectives of the CBD and of the Bonn guidelines will prove difficult to fulfil. Of particular interest for promoting gender equity and equality are provisions relating to access to TK. These require that where there is access relating to TK the approval and

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82. *Part III, Clause 17*

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involvement of “the holders of traditional knowledge, innovations and practices should be obtained”.<sup>83</sup>

Women in indigenous and local communities often hold different knowledge than men, regarding the use of biological diversity, including: traditional medicinal knowledge; knowledge of the use of seeds, as well as; knowledge of conservation and sustainable use practices for biological diversity. With regard to women’s TK a strict reading of the guidelines would support the proposal that approval and involvement of women is required in PIC processes involving access to and use of their knowledge. The matter is made more complex for the collective nature of TK. For many indigenous peoples and local communities their knowledge is subject to the collective rights of the community or people as a whole, and is held by shamans, curanderos, women healers, etc., in trust for the community. In such cases various questions may arise regarding the extent to which women may be free to control access to and use of their TK. Similarly, questions arise regarding the extent to which their knowledge may be made accessible to third parties without their consent.

The relevant provisions of the Bonn Guidelines states, that the involvement and approval of holders of TK should be obtained in accordance with traditional practices, national access policies, and subject to domestic laws. This may not provide much support for women in that, as they are frequently excluded from decision-making under customary laws, national policies and domestic laws. However, obligations to respect international human rights agreements, including those under CEDAW, may be read as overriding any such inherent exclusion, and as requiring modification of both customary law and national law to secure women’s rights to control access to their own resources and knowledge.

Principles of equality and equity support women’s entitlement to participate in a manner equal to men in processes relating to ABS and TK, in particular their own but also in relation to TK which is collectively held by men and women.

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83. *Bonn guidelines Part IV, paragraph 31*

Equity would likewise require that women be entitled to participate in decision-making regarding men's resources and TK. At least to the same extent that men, are involved in decision-making regarding women's resources and knowledge.

As the interests of women are in many cases closely related to the overall interests of indigenous peoples and local communities, it is necessary to consider development of a strategy for the promotion of women's rights which is allied to and supportive of the realisation of indigenous and local community rights. At a meeting of the Global Biodiversity Forum held in Bonn in 2001, a series of recommendations suggested that any international regime should address gender rights, indigenous and local community rights and poverty alleviation, noting the relationship and interdependency of these issues (See box 16).

### **Box 16: Gender, Indigenous Peoples and Poverty Alleviation**

In order to develop an appropriate approach on ABS for local communities, indigenous peoples, NGOs, and in particular women, the following aspects have to be addressed:

- Raise awareness among communities about all aspects of ABS-policy and provide information and capacity-building on ABS-policy and legislation
- Build awareness on how ABS can be used for poverty alleviation as well as biodiversity conservation.
- Promote ABS mechanisms which generate benefits on the basis of social and economic and environmental criteria.
- Design ABS mechanisms carefully in order to provide appropriate incentives to support implementation of the CBD's three objectives and reduce poverty.
- Involve all stakeholders actively and equally in decision-making processes to develop ABS policy
- Promote and fund capacity building of indigenous and local communities to enable them to participate on a more equal footing with other stakeholders, and to enable their full integration in the decision-making process.

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- Given that traditional knowledge owes its existence solely to the indigenous and local communities that have developed it, policy for its protection must be based on their priorities.
- The negotiations about conditions on access and benefits must be undertaken directly between the final user and the provider of the genetic resource.

Source: Adapted from GBF 2001

The Bonn Guidelines were designed with a view to their progressive evolution over time. A detailed proposal setting out textual changes for incorporation of gender-related issues in the guidelines has been developed as part of a consultative project on Gender and ABS in Latin America.<sup>84</sup> Revision of the guidelines to include reference to gender-related issues would be a positive step in the mainstreaming of gender in ABS issues. However, the political landscape has changed dramatically since the adoption of the guidelines and attention is now firmly focused on the negotiation of international ABS regime by the CBD's Working Group on ABS (WGABS). This does not in itself signify redundancy for the Bonn guidelines, and to the extent that they may be incorporated by reference in any future regime, proposals to include appropriate references to gender equity and equality will remain valid.

A discussion on the negotiation of an ABS regime at the WGABS follows below. However, it is first necessary to consider the challenges to be faced in order to secure a gender perspective in PIC and MAT procedures.

### **3.3 Prior Informed Consent and Mutually Agreed Terms**

The concept of Prior Informed Consent was originally developed to address the rights of patients to know what

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84. Aguilar, L. et.al. 2007

ailments they have and the nature of any procedures, including issues related to surgery and the likelihood of recovery. The concept is based on the premise that everyone has a right to decide for themselves whether or not to allow themselves to be the subject of invasive surgery. With regard to ABS, the term is used to denote a right to be fully informed regarding the subject matter of any collection activity, the intended use to be made of resources, and the potential value of resources in the likelihood of commercial success. Such information is to be received in time for adequate consideration of the facts and consent, where forthcoming, is to be made without any undue pressure or coercion.

Mutually Agreed Terms are self-explanatory. The phrase is merely a manner of referring to what is traditionally referred to as a contract, in that it sets out terms and conditions for use of resources, benefit sharing arrangements, and any limitations on use of resources or knowledge, including restrictions on third party transfers.

For women to actively participate in decision making on PIC and MAT, they will need to be fully informed regarding the nature of the collection activity, the intended use to be made of resources, the potential values of resources, and benefit sharing opportunities including the range of potential benefits which may be negotiated. Women may also require capacity building to prepare them to participate in negotiation activities, and at a minimum be able to follow the course of negotiations and to make known their desired set of benefits and obligations for any agreement. Although women should not be seen as having a veto per se over ABS and TK agreements involving shared resources and TK, in order for their consent to be meaningful it must arise out of a process in which they are in fact in a position to influence the outcome.

In some cases involving access to genetic resources and/or TK, women's opportunities to participate may be curtailed by lack of information, time or capacity. Building processes which allow women the opportunity to overcome such impediments will be a prerequisite for ensuring equality and equity in ABS and TK affairs. Ensuring gender equity and equality in PIC and MAT

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procedures will, therefore, require that processes for negotiation and decision making are designed in a fashion that is conducive to women’s informed participation (See box 12).

### **Box 12. Enhancing Women’s Participation in PIC and MAT Procedures**

- In order to adequately communicate with women, it will not be enough to merely have information available in the local language. Due to gender-based discrimination, women often lag behind in literacy levels. Thus, communications will need to be in made in simple terms, or in terms that women understand.
- Efforts must be taken to overcome any assumption of homogeneity that may exist. For instance, “community interests” are often understood based solely on the input of men, without consideration of women’s opinions regarding the value of traditional knowledge or benefit sharing.
- A tendency may exist to only secure the opinion of wives of leaders or influential people, even though these women do not necessarily transmit the concerns and needs of women as a whole. What truly matters is the quality of women’s participation and whether or not their voices are heard and taken into consideration.
- Centuries of exclusion and discrimination cannot be changed as easily as “raising a hand” to take a vote. In formal meetings, women will often be underrepresented in relation to men. Innovative and inclusive processes, which enable women to voice their concerns and make sure they are taken into consideration, may be required.
- Quite frequently, power imbalances are generated in communities, groups, assemblies or other meetings. Such imbalance lead to attaching greater relevance to the opinions a formal hierarchy or to the role of a power holder within a group.

- PIC and MAT activities should take into account the special needs of women, for example the role women play at the beginning of the school year or at harvesting times, as well as difficulties women may face in participating during work days. Meetings should be held in a place that is most convenient for women.
- It is important to ensure not only the presence but also the effective participation of women. This may be enhanced through the application of gender-sensitive techniques and methods and the assistance of appropriate advisers.

Source: Adapted from Aguilar, L., et. al. 2007

### **3.4 Negotiation of an International Regime on ABS**

Despite the adoption of the Bonn guidelines at COP 6, many developing countries took the view that only a legally binding agreement of ABS could ensure the realization of the CBD's ABS objectives. Developed countries have generally taken a different stance, proposing that time should be given to ascertain the effectiveness of the Bonn Guidelines in securing effective global ABS regulation. In the end the position of developing countries won out and, almost before the ink was dry on the Bonn guidelines, the WSSD in Johannesburg (2002), called for; negotiation “within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, [of] an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources”.<sup>85</sup>

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85. *WSSD Plan of Implementation Paragraph 42 (o)* (Retrieved from: [http://www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/WSSD\\_PlanImpl.pdf](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf))

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COP 7, held in Kuala Lumpur in 2005, gave a mandate to the WG ABS to negotiate an international regime for ABS, and Article 8 (j). Negotiations on the regime formally began at the 3<sup>rd</sup> WG ABS meeting in Bangkok in 2005. Based on the discussions in Bangkok COP 7 adopted a decision setting out the issues to be considered in the negotiation of an international regime.<sup>86</sup> Several of these are of relevance for PIC and MAT associated with TK, and thereby with the interests of women in indigenous and local communities. These include:

- Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j).
- Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights.
- Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located.
- Customary law and traditional cultural practices of indigenous and local communities.
- Code of ethics/code of conduct/models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities.<sup>87</sup>

The 4<sup>th</sup> meeting of the working group elaborated a set of draft provisions for a regime that covered the potential objectives, scope, nature, and other elements. Among the numerous possible objectives, the draft provisions propose are the recognition of rights over TK and securing compliance with the

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86. *CBD Decision VII/19 D*



PIC of indigenous and local communities. It sets out a misappropriation based system for protection of TK and envisages: measures to ensure compliance with PIC of local and indigenous peoples; requirements for disclosure of origin and provision of evidence of compliance with PIC and benefit sharing obligations in intellectual property rights applications procedures; use of certificates of origin as a means to show a valid legal right to use TK; and development of a dispute settlement mechanism to help secure compliance and access to justice.

Misappropriation of TK is defined in the draft provisions as including:

1. Use of TK without compliance with the provisions of the international regime
2. Any acquisition, appropriation or utilisation of TK by unfair or illicit means
3. Deriving commercial benefit from the acquisition, appropriation or utilization of TK when the person using it knows or is negligent in failing to know that these were acquired or appropriated by unfair means
4. Other commercial activities contrary to honest practices that gain in equitable benefit from TK
5. Use of TK other than for the purposes for which it was accessed
6. Obtaining unauthorised information that can be used for the reconstitution of TK.<sup>88</sup>

These provisions are based largely upon the definition of misappropriation developed by the IGC<sup>89</sup>, which will be discussed further below.

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88. *CBD Decision VIII/4 Annex, Compliance and enforcement, draft provision 12*

89. *Points 2, 3, 4, and 5 set out above are based directly upon Article 1 of the revised draft provisions for protection of traditional knowledge: Policy Objectives and Principles, WIPO/GRTKF/IC/10/5*

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### 3.5 Gender and User Measures

In order to secure gender equality it is not enough to adopt laws and policies—these laws and policies must also be enforced.

One of the key demands of developing countries, indigenous peoples and local communities has been the adoption of international ABS and TK law and policy, which can prevent continued misappropriation of resources and knowledge—commonly referred to as biopiracy. Among the suggested measures to prevent biopiracy is a misappropriation-based regime to protect TK, described above. Also proposed are user measures to ensure compliance with PIC and MAT obligations and provide access to justice for those whose rights have been infringed.

Key elements of both the misappropriation regime and user measures include: disclosure of origin requirements in patent application procedures; standardized procedures for documenting the provenance of resources and of legal rights for its use in the form of certificates of origin, source, legal provenance or compliance; databases and registers to protect and conserve traditional knowledge and provide a basis for identification of *prior art*; measures to ensure access to justice, and; compliance measures.

Proposals for disclosure of origin seek to shift the burden of proof regarding the right to access and use biological resources and TK from countries of origin and indigeneous peoples and local communities, respectively, to the user.<sup>90</sup> Adoption of disclosure of origin systems will require amendment of international, regional and national intellectual property rights laws. These amendments will be necessary in order to prevent the granting of bad patents and to ensure that the use of biological resources and/or TK in the development of any product or process, plant variety, etc., is subject to PIC and MAT.

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90. Tobin, B. 1997

Disclosure of origin may, therefore, be harnessed to ensure compliance with the rights of women over their knowledge and resources. This will be the case where national law and policy requires that women provide PIC and MAT as a condition for the use of their TK and/or biological resources.

Certificates of origin have been proposed as a means to demonstrate the existence of PIC and MAT to access and use resources and TK, thereby facilitating compliance with disclosure of origin requirements.<sup>91</sup> The basic proposal is for the establishment of standardised procedures for recording where resources came from and where they went.

Under a certificate system, a code or unique digital identifier (UDI) may be linked to resources and/or knowledge. This code or UDI will provide the link to the specific terms and conditions associated with the certificate, which apply to access and use of the relevant resources and knowledge. The certificate would serve as evidence of compliance with obligations to obtain PIC and MAT under ABS and TK laws. A certificate may also signify compliance with obligations under customary law, etc. A certificate would not replace the need for a contract it would merely provide a means for demonstrating the existence of a contract and a right to use certain resources for certain uses without the need to provide access to confidential and voluminous contractual arrangements.

A certificate could conceivably include reference to the rights of women over specific resources and/or TK, and in such cases help identify the relevant terms and conditions relating to use of women's resources and knowledge. Developing means to help identify and track use of women's resources and TK would help empower women to control use of such resources and knowledge and to share in benefits derived from their use. The result would be to bring about gender equality and equity in the biological resource and TK trade.

There is an ever increasing use of databases and registers as a means to collate, store and protect knowledge

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91. *Ibid.*

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relating to biological diversity. Indigenous peoples and local communities have approached the issue of databases and registers with much caution and not a little suspicion. Placing information in databases, in particular those open to public access, may have the effect of placing relevant information in the public domain. Where TK is placed in the public domain this may result in a loss of rights to control the use of such knowledge and to share in benefits derived from its subsequent use. Databases and registers can, however, provide an important service in protecting against the erosion of knowledge. Women wishing to make use of databases and registers as tools to protect their rights over TK will need to be informed of both the strengths and weaknesses of such systems to protect TK.

Proposals on compliance measures frequently focus on the potential associated with alternative dispute resolution mechanisms, the role of customary law, and the potential utility of establishing an international TK ombudsman’s office. Any dispute resolution process and ombudsman’s office should have the capacity to address issues with a gender perspective where relevant.

### **3.6 Gender and Customary Law under the CBD**

During COP 7, customary law had been included amongst the issues for consideration in development of elements of a regime. However, customary law was notably absent from the draft prepared by the fourth WG ABS. This is in marked contrast to the draft provisions developed by the WIPO IGC<sup>92</sup>, which propose a mode of TK protection firmly linked to customary law.

The importance of customary law lies not only in its ability to regulate community activity in order to secure environmental sustainability, but also in its definition of the manner for applying traditional resource management skills.

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92. *Tobin, B. 2007*

Customary law is, in essence, both the law and the process for securing conservation and sustainable use of resources and knowledge.<sup>93</sup> In many cases, customary law is the de facto law, and national law has little if any influence on local actions unless supported by customary law and traditional authorities. Customary law is in essence one of three pillars of traditional resource management, the other two being traditional land tenure and traditional knowledge. In many societies, women's role in resource management is recognised and given special protection through customary law (See box 13).

### **Box 13. The Customary Law of Monad**

In the Chota Nagpur communities, in Central India, current social practices recognize women's knowledge about forests and agriculture. When the Munda (the chiefs) go from one city to another, their wives walk in front of them. The knowledge that women possess about seeds, herbs and plants is highly regarded at the household and community levels.

Women's knowledge about the root of one particular plant is used to make rice beer, the most sacred and popular drink. Their role in farmland preparation is just as important; they work side by side with the men in this activity and in land clearing.

Women's contribution to agricultural development is also confirmed by the "myth around the preparation of the first tillage", where the wife of the Supreme Being is described as the true inventor of tilling. Thus, women's right to the land and its products has always had a distinctive place in the customary law of Munda

Source: SERVINDI 2007

Gender has played little if any role in the development to date of the negotiating documents being managed by the WG ABS. Likewise, participation of women in the international negotiation process has not been addressed. Other than in relation to the participation of indigenous women amongst indigenous representatives funded by the CBD to attend meetings of the WG ABS, WG 8(j), COP, relevant expert groups, and other meetings

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related to development and adoption of an international ABS regime. Despite this indigenous peoples themselves have noted the existence of a “strong indigenous women’s advocacy group within the CBD process.”<sup>94</sup>

### 3.7 Gender and Article 8 (j)

The COP has recognized the vital role that women play in the conservation and sustainable use of biodiversity, and emphasised that greater attention should be given to strengthening this role and the participation of women of indigenous and local communities in the Article 8 (j) program of work.<sup>95</sup>

Protection of TK has traditionally been the responsibility of the Working Group on Article 8 (j) (WG 8 (j)). The working group has been given a mandate by the COP to prepare sui generis measures on protection of TK and is also working on a code of ethics relating to TK, both of which will be relevant for protection of women’s rights over TK. The WG 8(j) has established a comprehensive program of work that calls for the full and effective participation of women of indigenous and local communities in all activities of the program of work. More specifically, the program includes a task on promoting culturally appropriate and gender specific ways to document and preserve women’s knowledge of biological diversity.<sup>96</sup>

The WG 8(j) has been called upon to collaborate with the WG ABS on TK issues related to the negotiation of an international ABS regime. This creates opportunities for the WG 8(j) to influence the negotiation of any regime and to require that it provides adequate recognition of rights over TK including the rights of indigenous and local community women. As discussed earlier, the WG 8 (j) has been one of the bodies most open to discussion of gender issues. For instance, the Akwé: Kon Guidelines , developed by the WG 8(j), include recognition of the vital role

94. UNPFII 2007

95. Decision VI/16: Article 8(j) and related provisions

96. Secretariat of the Convention on Biological Diversity 2004

women play in conservation and the need to secure their full and effective participation in policy making and implementation.<sup>97</sup> This may demonstrate a greater awareness and acceptance of gender issues in the WG 8(j) than in the WG ABS. If this is the case, those wishing to promote recognition of gender in the ABS negotiations may wish to focus efforts on the WG 8(j), with a view to having that body make proposals on gender equity in benefit sharing to the WG ABS.

A comprehensive set of recommendations for incorporation of gender issues in the negotiations of an ABS regime was first made at COP 8, in Curitiba, in 2006. These included measures such as: the inclusion of gender experts in debates and preparation of relevant studies; establishment of a gender and biodiversity task force; capacity building; development of measures for valuing and making visible the role of women in conservation and sustainable use of resources and knowledge; and making any international regime compliant with human rights legislation, in particular CEDAW.<sup>98</sup> These recommendations are set out in full in Section IV.

### **3.8 Gender and Benefit Sharing**

Benefit sharing under the CBD may take the form of both monetary and non-monetary benefits. Over the years there has been a growing tendency towards increased emphasis on non-monetary benefits, which are seen as serving a greater purpose of national development and strengthening of local capacity to add value to resources. Non-monetary benefits may include capacity building, technology transfer, installation, development, access to the results of research, citation of custodians of knowledge as its source, among others (See box 15).

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97. *Ibid*

98. Aguilar, L., Blanco, M. and Dankelman, I. 2006

## Box 15. Examples of Non-monetary Benefits

- Involvement in the outcomes of the investigation.
- Involvement in product development.
- Support to women's groups for product development.
- Training and education initiatives based on the needs of, and especially designed for, women.
- Transfer to providers, in particular female providers of genetic resources, on fair and more favourable terms including under preferential conditions, if agreed upon, of knowledge and technology involving the use of genetic resources, including biotechnology, or which may be relevant to the conservation and sustainable use of biological diversity.
- Technology transfer and strengthening the capacity of women and men of indigenous and local communities to make use of technology conservation and sustainable use of their genetic resources and for community development.
- Investigation about the household cultivation of products and spices that hold considerable value for women, including agricultural and non-timber forest products, wild life and medicinal plants.
- Build recognition of women's TK relating to biodiversity.
- Capacity-building to develop leadership skills among women.
- Raise visibility and recognition of the role of women in the conservation and sustainable use of biodiversity.

Source: Adapted from the Secretariat of the Convention of Biological Diversity 2002

Gender mainstreaming in ABS requires establishment of meaningful opportunities for women to participate in benefit sharing, including through the design and negotiation of benefits as well as in their receipt, distribution and application. As noted earlier, women may have different priorities than men when determining the make up of benefits. Women will tend to focus more on the interests of the family and on benefits that



will secure family welfare, while men may tend to focus more on consumer items and personal interests. As a result, the manner in which benefits are defined, transferred and consumed will be of direct relevance to the equity and fairness of distribution. Provision of benefits in a manner that favours discrimination and precludes effective use of benefits for overall family welfare may in essence deprive women of their rights to a fair share of benefits.

Providing sharing opportunities that are in tune with women's realities, priorities and capacity may require the development of innovative means for holding and distributing benefits. This may also require the development of means to maximise the value and opportunities for benefits to be used, in a manner that generates further benefits. Involving experts in micro finance and in local community banking, such as the Grameen Bank, in the design of packages for management of monetary and non-monetary benefits may well serve to maximise benefits and assist in poverty alleviation. One of the first steps to securing access and equitable benefit sharing of genetic resources is to understand the impacts that social inequalities have on the use, management and conservation of biodiversity.

In societies as diverse as those that exist throughout the planet, people relate to natural resources in many different ways. The way they use, preserve, have knowledge about, and participate in the distribution of benefits offered by biodiversity is directly linked to their socio-economic status, gender, ethnicity, age, etc. It is especially important to understand that relations between men and women have an impact on access, use, management and control of genetic resources: both are familiar with different resources; both possess different knowledge about the same resources; both organize their knowledge in different manners; and both adopt different strategies for maintaining and transmitting their knowledge. Women for instance may develop and maintain a rich body of TK and management of resources associated with culinary practices with a distinct cultural flavour (See box 16).

## **Box 16. Traditional Practices of Mayan Women**

Investigations carried out with Yucateca Maya immigrant communities in the Quintana Roo area in México, indicate that Maya women located in urban centres continue applying indigenous traditions to their household plots or “solares”. These plots, part of their traditional practices, are used for a diversity of activities, such as the cultivation of a wide array of plants, small animal breeding, household workshops, outdoor cooking, social gatherings and child rearing. Migration to Quintana Roo in search of remunerated work did not preclude women from continuing to tend to household plots. Greenburg documents 140 plant species in 33 immigrant household plots. Of these, 49 species are commonly used in food preparation, including species from Yucatán, where they are disappearing due to urbanization. The plants cultivated by the women are closely linked to their cultural identity, and the distinctive characteristics of their cultural and ritualistic practices are maintained through the preparation of special meals to celebrate the cycle of life, such as weddings, 15th birthday parties, baptisms, etc.

Source: Adapted from Greenberg, L. 2003

## **Section IV:**

# *Mainstreaming Gender in ABS Governance*

DEFINING measures for securing gender equality in ABS requires the development of clear guidelines for a range of different actors. The Bonn guidelines provide recommendations for various parties involved in access and sharing of resources arising from biodiversity. Meanwhile the WG 8(j) is working on sui generis elements for regulation of access to TK and on an ethical code of conduct for TK. Gender mainstreaming would require that the Bonn guidelines, sui generis law and policy on TK, ethical code(s) of conduct for TK, as well as any international ABS and or TK regimes reflect a gender perspective in their provisions.

Various recommendations on how to mainstream gender in ABS governance have been put forward in recent years. This has included: the submission of recommendations on Gender and ABS by IUCN at COP 8; preparation of recommendations to CBD and the working groups on ABS and 8(j) by experts attending an international workshop on Gender and ABS in Costa Rica in June 2007; and preparation of Draft Guidelines on Gender and ABS, under a research program of the Office of the Senior Gender Adviser of IUCN.

This section sets out the various recommendations made by these initiatives and draws some conclusions for future work on mainstreaming gender in processes for ABS governance.

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#### 4.1. **Recommendations on Gender for an International ABS Regime**<sup>99</sup>

As part of its program of informing the CBD process, IUCN prepared a report on Gender and ABS, which was distributed at COP 8 in Curitiba in 2006. The report provided background information on gender and its relationship to the CBD and set out a comprehensive list of recommendations on how gender might be mainstreamed in the negotiations of an international ABS regime. These recommendations suggested:

- Inclusion of gender equity and equality as key elements in the discussions surrounding the international regime, for example by: inviting gender-environment experts and local women experts to participate in the discussions and debates; commissioning background studies; and building gender-specific capacity among negotiators and decision-makers at international and national levels.
- Establishment of a gender and biodiversity task force with participants from governments, indigenous communities and gender experts, to develop and monitor gender-sensitive ABS mechanisms.
- Identification of the interests, needs, and rights of women regarding genetic resources, through investigation, discussion and consultation processes.
- Capacity building and empowerment (technical, legal, financial) to allow women and men to effectively participate in the negotiations involving agreements on the access and sharing of benefits arising out of genetic resources. Information on gender aspects of ABS should be widely distributed and communicated.
- Design of mechanisms to make sure that the knowledge and contributions made by women are made visible and valued, in social and economic terms,

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99. *These recommendations are adapted from Aguilar, L., Blanco, M. and Dankelman, I. 2006*

in order to promote their effective participation in decision-making processes at local, national and international levels.

- Include gender specific information and ensure women's rights in mechanisms such as the disclosure of origin of genetic resources and related traditional knowledge.
- Integrate a gender-specific approach in mechanisms to guide sharing of monetary and non-monetary benefits, including gender budgeting.
- Assessment of consequences and implications of planned and established ABS regimes on women and men (gender impact assessment).
- Ensure compliance of ABS regimes with human rights frameworks, and international and national commitments on gender equality and equity, including CEDAW.

These recommendations provide a useful set of criteria to be considered in framing negotiations on ABS with a gender-perspective.

#### **4.2 Guidelines on Gender and ABS**

As the CBD begins the process of mainstreaming gender into all its spheres of action, it will need to consider how to achieve this end while responding to gaps in international biodiversity governance, including the gaps in the existing international ABS regime. One means to promote gender mainstreaming in ABS and TK governance would be to develop clear guidelines on gender and ABS that address various groups, including the SCBD, national authorities in provider and user countries, and applicants.

Based on a regional study of gender and ABS in Latin America, a set of draft guidelines on Gender and ABS were prepared and presented at the international workshop on ABS

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and Gender organised by IUCN in Costa Rica in June 2007. These draft guidelines which are set out below, may serve as the basis for the development of international guidelines on ABS and gender within the framework of any international ABS regime.

#### **4.2.1 Draft Guidelines on Gender and ABS**

##### **1 For the International Community, including CBD Secretariat**

- Promote observance of international legal instruments relevant to access to genetic resources and TK and the fair and equitable sharing of benefits derived from their use, particular those pertaining to gender equity and equality; as well as ensuring the observance of United Nations mandates on gender equity and equality.
- Promote the development and implementation of PIC and MAT processes that are in harmony with the human rights of women, in a manner that promotes equity and equality in ABS and TK governance.
- Develop a gender action plan for the CBD Secretariat that addresses ABS and TK issues. In developing and implementing such action plan, the CBD should seek partnerships with groups of women and organizations specializing in gender and ABS.
- Assist in securing participation of representatives of women as a major group in work groups, contact groups and expert panels that are part of the ABS negotiation process.
- Assume responsibility for and invite further preparation of relevant research, informational documents, guides and/or guidelines on gender and ABS.
- Develop a roster and database of experts on gender and ABS.

- Collect and disseminate experiences, knowledge and information related to gender and ABS, including through the clearinghouse mechanism.
- Urge States to provide capacity building and support for indigenous peoples and local communities, especially women, on the relationship between gender and ABS, and on gender sensitive PIC processes, contract negotiation for MAT and benefit sharing modalities and mechanisms.

## **2 For national authorities**

### **2.1 For States**

States should ensure strict observance of legal instruments or conventions governing the fair and equitable access and benefit sharing relating to biodiversity resources, with a view to ensuring gender equity and equality. To this end, states should:

- Adopt adequate measures, including legislative measures, to amend or revoke legislation, rules, uses, practices and customs that discriminate against women in relation to access to, use of, and benefit sharing associated with biological and genetic resources and their traditional knowledge.
- Take appropriate measures to eliminate discrimination and promote the modification of cultural practices, prejudices or other practices, whether arising from national law or policy, customary law and practices, or otherwise, that may prevent realisation of gender equity and equality in ABS and TK governance.
- Ensure the right of indigenous and local communities, particularly women, to participate in the development and implementation of processes relating to regulation, management, control and sharing of benefits related to access and benefit sharing of genetic and biological resources.

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- Ensure respect for and provide support for the rights of indigenous and local community women to obtain the necessary training, education, knowledge and technology in pursuit of a more equitable access to biological and genetic resources, as well as the capacity to add value to resources and TK and promote community welfare and development.
- Create conditions to promote women’s equitable participation in the planning and development of national biodiversity strategies and action plans (NBSAPs).
- Promote the establishment or strengthening of national and/or regional focal points and competent authorities, including coordinating committees for administering ABS and TK related issues and centers for alternative dispute resolution, and ensure they have action plans and guidelines on gender mainstreaming.

**2.2 For National or Regional Focal Point, Competent Authorities and ABS Coordinating Committees**

**(i) At Internal Level:**

- Ensure that ABS and TK applications comply with national legislation and international instruments safeguarding women’s rights and gender equity and equality.
- Develop an internal strategy or action plan to ensure gender mainstreaming into national activities and establish a gender focal point and/or unit within the national committees.
- Develop guidelines to promote gender equity and equality throughout ABS and TK processes, including permitting, negotiation, evaluation and processing of agreements, and determination, management and distribution of benefits.



- Promote awareness building and recognition of the importance and differential role of women's TK, combined with the development of and compliance with ethical codes for the investigation and utilization of biodiversity-related TK.
- Ensure the equitable representation of women from indigenous and local communities in national processes to enhance gender equality and equity.
- Create a database on gender and biodiversity experiences, knowledge and information, in collaboration with representatives of women's organisations and women of indigenous and local communities.
- Create a roster of national gender specialists (including mediators or facilitators) to provide support to consultation and participatory processes, as well as for negotiation processes.
- Recognize and promote greater awareness of gender-differentiated use and knowledge of biodiversity resources within social groups. In this sense, it should be accepted that women possess particular traditional knowledge, and conserve and use genetic resources in a distinct manner.

**(ii) Permit Granting Authorities**

- Ensure that the requirements involving applications and permits granted for investigation, access and use of genetic resources consider gender aspects.
- Provide gender training to indigenous and local communities to ensure that negotiations incorporate an appropriate gender equity and equality perspective.
- Ensure women's effective participation throughout the processes relating to access to biodiversity and genetic resources.
- Ensure women's involvement in data collection on biodiversity resources.

- Ensure that the parties involved in negotiation processes are aware of the importance of women’s knowledge and that proper consideration is given to their particular interests.
- Provide applicants for access to biological resources and or TK with guidance and advice on how to comply with gender guidelines and requirements relating to PIC and MAT processes, obtaining permits, carrying out investigation, etc.
- Provide guidance, advice and training to both women and men on negotiation strategies, opportunities and challenges in order to promote their active involvement in all stages of negotiation processes and ensure equitable sharing of benefits in terms of gender.
- Information provided, as well as the terms of access and use of resources, should take into consideration the values, customs, and gender relations of the supplying parties.
- To the extent possible, ensure that the providers of biological and genetic resources and/or TK have access to and the support of a gender-sensitive mediator or facilitator.
- In cases where national, bilateral or international regulations require certificates of origin, acknowledgement should be made as to the specific knowledge of and contribution made by women prior to granting such certificates.
- Actions should be taken to help ensure that benefits arising out of access and use of genetic resources are equitably shared between women and men of indigenous and local communities.

**3. For Providers**

- Review and modify customary practices, uses and socio-cultural patterns, as appropriate, in order to secure the full and effective participation of women

in decision-making and negotiation processes involving the use, exploitation and conservation of biodiversity as well as the resulting benefit-sharing.

- Recognize, make visible, and value women's roles within their communities, including the existence and importance of gender-differentiated knowledge of biodiversity resources. This includes acceptance of the fact that women possess particular traditional knowledge, and conserve and use genetic resources in a different manner.
- Ensure women's participation in data collection and negotiation processes.
- Create conditions for the effective participation of women in the negotiations leading to access to biodiversity resources. This means ensuring that the negotiation and decision-making discussions are arranged according to convenient schedules, and that the primary language of the discussions and other factors favour the attendance and effective participation of women.
- Seek the support of a gender-sensitive mediator or facilitator to accompany women in participatory and negotiation processes.
- Allow the participation of women's environmental or community organizations in capacity-building processes involving access and sharing of benefits arising out of biodiversity.

#### **4. For Users**

- Ensure compliance with the provisions of national and international law governing:
  - ABS and TK; and
  - Gender equity and equality.
- Comply with relevant professional, ethical and other codes of conduct on gender equality and equity

relating to ABS and TK.

- Recognize the existence of gendered use and knowledge of biodiversity resources. Given that women possess particular traditional knowledge and conserve and use genetic resources differently, they should be actively involved in decision making on biodiversity.
- Foster women's participation in data collection, information and negotiation processes.
- Ensure that the information provided in connection with scientific and legal matters related to ABS and TK is effectively furnished and transmitted to the women of indigenous and local communities.
- Cover the expenses of a gender-sensitive mediator or facilitator, who should be selected out of national committee lists, to advise and accompany women involved in the negotiation processes. In the absence of a national committee, a lawyer qualified to address gender aspects should replace the mediator or facilitator.
- Include in applications for intellectual property rights the country of origin of genetic resources and the origin of traditional knowledge, innovations and practices of indigenous and local communities, stating where appropriate which belong to women and which to men.
- Establish measures to avoid the utilization of genetic resources obtained without prior informed consent or contrary to the terms agreed with women providing such resources.
- When monetary and non-monetary benefits are generated, these should be equitably shared between women and men.
- Promote actions to overcome gender inequalities, including information-sharing and information-generation, participation, education, empowerment, technology transfer, organization, financial assis-

tance, training, etc.

### **4.3 International Workshop on Gender and ABS**

In June 2007, IUCN and partner organisations convened an international workshop on Gender and Environment in Costa Rica. The event brought together key experts in environmental law, gender issues and ABS and TK issues. The event, which was held over the course of two days, examined the status of gender mainstreaming under international law and recognized the rights of women to actively participate in and benefit from ABS and TK governance. The meeting featured a series of working group and plenary sessions aimed at developing specific gender recommendations for the CBD and negotiators of an international ABS regime. The recommendations outlined below are based on the chair's report of the meeting, which was drawn from both the plenary and working group sessions.

#### **4.3.1 Workshop Recommendations to the CBD**

- Take measures to ensure that gender is mainstreamed in the actions, activities and initiatives conducted under the CBD.
- Urge the Executive Secretariat of the CBD to develop a strategy for mainstreaming gender in its work.
- Recommend that Parties and the Executive Secretary of the CBD establish mechanisms to ensure an equitable participation of women in the various decision-making and discussion processes of the CBD, and request the gender focal point of the Secretariat to develop a methodology to ensure the follow-up of this mandate.
- Establish a Women's Major Group (such as the indigenous group recognized by the Conference of the Parties for the Convention on Biological Diversity). Financial support and capacity building will be required to implement this measure.
- Establish partnerships with institutions that have

expertise in gender mainstreaming in order to gain technical assistance in developing gender-related policies, plans of action, tools, and resources.

**4.3.2 Workshop Recommendations to WG ABS and WG 8 (j)**<sup>100</sup>

- Widen the interpretation of the reference to equity in the distribution of the benefits derived from access to biodiversity, which appears in the third objective of the Convention, so that it may include gender equity.
- Recognize that the fair and equitable sharing of benefits depends upon the full and effective integration of gender issues at all levels of decision-making regarding ABS.
- Integrate gender in the International ABS Regime.
- Ensure the full and effective participation of Women as a Major Group in the negotiation of the international regime. Financial support and capacity building will be required to implement this measure.
- Guarantee that the benefits derived from access to and use of genetic resources are equitably distributed between women and men.
- Analyze case studies in ABS in order to demonstrate the relevance of including the gender perspective in the implementation of the PIC and MAT mechanisms.
- Protect traditional knowledge differentiated by sex in an eventual sui generis system.

These recommendations call for mainstreaming of gender in the development of an international regime. They also highlight the need for CBD to recognise women as a major group for the negotiation process and signal that funding is critical for securing the adequate representation of women at the negotiations. Women’s representation as a major group is not to be

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100. Full text of report may be seen in Annex I

confused with the participation of women in national delegations. While this is to be welcomed and promoted, women on national delegations are often bound to present a state position, which

· I.	· II.	· III.	· IV.	· V.	·
· Gender and	· Human	· Gender and	· Mainstreaming	· Conclusions	·
· Biodiversity	· Rights	· the CBD	· Gender		·
·	·	·	·	·	·
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may not itself reflect a gender perspective.

## **Section V.**

# *Conclusions*

1. Women play a fundamental role in biodiversity conservation and sustainable use. Their knowledge, skills and labour are crucial for both agricultural and wild biodiversity management. Women manage resources differently than men and apply different criteria to determining the value of resources. Women maintain a unique body of traditional knowledge, which is particularly important for seed saving and for preservation of traditional medicine.
2. Men and women experience poverty differently, with female-headed families making up a disproportionate part of the world's poorest. Therefore, women's roles make them important societal actors when faced with biodiversity loss.
3. Although the importance of women's knowledge is widely recognized, a bias exists in only including men in development planning and project implementation. As a result, women's access to resources, including land, finance, and agricultural inputs, are limited. Since men are increasingly migrating away from home for alternative employment, women's role in conservation of biological diversity



- and protection of TK is increasing.
4. Women use the benefits derived from biodiversity resources to ensure family welfare to a greater extent than men. The effect of having women manage benefits is more pronounced in the poorest sectors, where female-headed families enjoy a higher level of nutrition than families in which men manage benefits. In order for ABS and TK regulation to have any significant impact on poverty, women must play a key role in defining and managing benefits, in particular benefits derived from use of their resources and knowledge.
  5. In order to redress ingrained discriminatory practices in all levels of society, there is a need to mainstream gender in development planning and implementation. A key challenge will be to secure the full and effective participation of women at all levels of decision-making and to ensure that their concerns and priorities are reflected in laws, policies, programs and projects that affect them.
  6. Gender mainstreaming has been the primary methodology for integrating a gender approach into any development or environmental effort. There is a growing movement towards the mainstreaming of gender in the actions of international organizations, aid agencies, NGOs, and at the country level. Ensuring the effective implementation of gender strategies and action plans will require a commitment to build the capacity of international organisations, governments, national authorities, international aid agencies, NGOs, indigenous peoples' organisations, local communities and of women themselves. It will also require a commitment to providing adequate opportunities and funding for women's participation at all levels.
  7. The rights of women to be free from discrimination may be seen as a fundamental human right

enshrined in international law. CEDAW obliges governments to take positive action to prevent discrimination against women and to adopt measures to ensure the Convention’s objectives. This includes the need to ensure the full and effective participation of women in decision-making processes in a manner equal to men. CEDAW’s principles are increasingly finding their way into national constitutions and law. The Convention has also been called upon to help resolve cases involving discrimination against women in courts around the world. The cumulative effect is a progressive expansion of the Convention’s influence and the establishment of precedents; which may serve to influence law and policy making, as well as judicial decision making on issues of ABS, TK and the rights of women.

8. Ensuring compliance with CEDAW requires addressing the inequities in state law and policy, as well as in development planning and implementation. It also requires governments to ensure that discrimination by the private sector, NGOs and other sectors is prevented and, when occurring, corrected. This includes discrimination that may arise due to the application of customary laws and practices of indigenous peoples or local communities.
9. In addressing potential conflicts that may arise between customary law and human rights law, it is necessary to take into consideration the need to protect community integrity and collective rights over resources and knowledge. Addressing the interaction between individual and collective rights will require the adoption of both gender and culturally sensitive perspectives. Any process seeking to balance such rights will need to be carried out with the informed participation of all sectors of the relevant group. Measures should be taken to en-

- sure that women have an opportunity to participate fully and effectively in any process, and to be free from intimidation. At the same time, any successful process will need to engage men and address their fears.
10. International instruments on sustainable development call for the fullest possible involvement of women in environmental decision-making. They recognise the valuable role of women in the conservation and sustainable use of biological diversity, including agricultural biodiversity and the importance of women's TK. Mainstreaming gender in policies and programmes for sustainable development will need to be supported by the development of means for monitoring the impact of development and environmental policies on women.
  11. Obligations to promote fair and equitable sharing of benefits derived from access to and use of biological diversity and TK are widely recognised in international law and policy instruments. No specific provisions exist in international legal documents that clearly identify women's rights to equitably share in benefits. However, analysis of existing international human rights instruments, and their relationship to the CBD and other relevant international instruments, reveals, that women are entitled to receive a fair and equitable share of benefits derived from access to and use of biological resources and TK, in particular where this involves women's resources and TK.
  12. International human rights law, sustainable development law and policy, and laws relating to management of biological diversity and benefit sharing mandate that gender issues be addressed in ABS and TK governance. In particular, governments are obliged to create equal opportunities for women and men to participate in decision making processes

- relating to the development of law, policy, programs, and projects relating to ABS and TK. Furthermore, women are entitled to protection of their rights to participate in relevant PIC and MAT procedures and to participate in both the design and implementation of benefit sharing arrangements.
13. The CBD recognises the importance of women’s role in conservation and sustainable use of biodiversity. It includes within its objectives the fair and equitable sharing of benefits derived from access to and use of genetic resources. It also requires governments to promote the wider use of TK and promote equitable sharing of benefits with indigenous and local communities in exchange for the use of their knowledge.
  14. Taken together with obligations under CEDAW, the provisions of the CBD create a firm basis for requiring governments to adopt measures to ensure gender equity in issues relating to ABS and TK. Development of law and policy for implementation of the CBD, and in particular its provisions on PIC, MAT and benefit sharing arising from access to and/or use of biological resources and/or TK, should be carried out with a gender perspective.
  15. Parties to CEDAW and the CBD are obliged to ensure that there is no discrimination against women arising either as a purpose or as a result of the adoption of ABS law and policy. As the majority of parties to CBD are also parties to CEDAW, negotiations on an international ABS regime and the development of international law and policy for the protection of TK related to biodiversity should be carried out with a view to mainstreaming gender in ABS and TK governance. To achieve these goals, efforts will be needed to organise national, regional and international consultative processes. These will need to be funded with the support of the international

- community and should be designed and facilitated with the support of gender communication experts.
16. To ensure realisation of the CBD's ABS objectives, women's participation needs to be secured at all levels of ABS and TK governance. This includes the preparation of law and policy, design of projects and programs, and their respective implementation. Women's, rights to negotiate contracts and share in benefits also needs to be secured. Ensuring gender equality and equity will require capacity building of relevant national authorities, administrative bodies, and judiciary and enforcement agencies, as well as of women themselves. It will also require commitments to funding at the national and international level.
  17. Measures to prevent misappropriation of TK, including disclosure of origin requirements, certification of origin/ source/ legal provenance of resources and/ or TK, and development of databases and registers, should be designed with a view to identification and recording of sex disaggregated information. Such information may help to ensure fair and equitable benefit sharing and to increase awareness of women's role in resource and knowledge management and development.
  18. In the design of benefit sharing provisions for ABS agreements, women's views should be taken into consideration. Where possible, benefit sharing packages for distribution of benefits derived from use of shared resources should provide support for women's needs, including those related to maintenance of family welfare and conservation of women's resources and knowledge.
  19. The link between poverty eradication, environmental sustainability, and gender mainstreaming is recognised in the Millennium Declaration. Gender continues to be one of the strongest markers for

- disadvantage and reducing inequality has been seen as a key indicator of success in the realisation of the MDGs. Securing women’s rights to participate in PIC and MAT procedures and in benefit sharing will help reduce inequality between men and women and support realisation of the MDGs.
20. Mainstreaming gender in ABS and TK governance requires political will and commitment to meeting international human rights and environmental law obligations.
  21. The CBD has now begun to mainstream gender in its activities. As part of that process it will need to ensure that the ongoing negotiations on an international regime on ABS are adequately appraised of the importance of approaching its work from a gender perspective. To this end, CBD will need to address the possibility of adopting measures to mitigate the historic marginalization of gender issues in the work of the WG ABS. Potential areas of action that the CBD may wish to consider include:
    - Adoption of a gender action plan to cover all the CBD’s activities, including ABS and TK related issues.
    - Carrying out of a status and trends analysis of women’s role in biodiversity conservation and sustainable use, and the nature and extent of women’s TK systems.
    - Preparation of guidelines for mainstreaming gender in ABS and TK governance at the international, regional, and national levels.
    - Development and funding of a global consultation with women on gender and biodiversity, with a specific focus on regulation of ABS and protection of TK.
  22. Negotiations on ABS and TK should incorporate a gender perspective from the start. Development of Gender and ABS guidelines could help the process

of mainstreaming gender in ABS and TK governance. Any guidelines should be developed as the result of a process involving the widest possible participation of both women and men. In order to ensure gender mainstreaming in negotiations of an international ABS regime, consultations on any guidelines on gender and ABS should commence as early as possible.

23. Guidelines may form part of an international ABS regime and should serve to identify binding legal obligations and consolidate relevant codes of conduct and other non-binding principles relevant to gender and ABS. Guidelines should cover as a minimum:
  - Actions to be taken by the international community, national authorities and administrative bodies, providers and users of biological and genetic resources and TK.
  - PIC, MAT and benefit sharing.
  - Treatment of women's resources and knowledge under user measures, disclosure of origin, certificates of origin and databases.
  - Provision for alternative dispute resolution, and
  - Capacity building on gender issues for relevant authorities and for women.
24. Mainstreaming gender in ABS governance is crucial for the realisation of obligations under human rights law, sustainable development law, and the CBD. In the end, meeting international obligations on gender equality and equity in relation to ABS and TK governance will be a win-win situation for all. Conversely, failure to do so will further delay the realisation of all three of the CBD's objectives and marginalise the Convention's role in helping to secure the MDGs, as well as for meeting the 2010 targets on reducing biodiversity loss.

## **Websites**

Several conservation organizations that are working at the national and international levels have specialized websites on the subject of gender and biodiversity. Below are some examples:

[www.generoyambiente.org](http://www.generoyambiente.org)

[www.energia.org](http://www.energia.org)

[www.wedo.org](http://www.wedo.org)

[www.unep.org/gender\\_env/](http://www.unep.org/gender_env/)

[www.fao.org/sd/links/gebio.htm](http://www.fao.org/sd/links/gebio.htm)

[www.wecf.org](http://www.wecf.org)

[www.earthaction.org](http://www.earthaction.org)



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## **Annex I**

### International Workshop on Gender Equity and Equality and Access and Benefit Sharing

Workshop Proceedings  
June, 2007

The initiative “Gender Equity and Equality in the Access and Benefit Sharing of the Biodiversity” implemented by the Office of the Senior Gender Adviser of the World Conservation Union (IUCN) and funded by the Humanist Institute for Development Cooperation (HIVOS), organized the “International Workshop on Gender Equity and Equality and Access and Benefit Sharing”.

More than 35 experts gathered for this workshop, held from June 5 to 6, 2007, in San José, Costa Rica. The main objectives of the event were: to carry out a discussion in relation to the promotion of gender equity and equality in access and distribution of the benefits derived from genetic resources; and to generate guidance, suggestions and recommendation to the CBD and the working groups on ABS and Article 8 (j) in relation to the mainstreaming of gender.

#### **In relation to the linkages between gender and ABS the participants of the workshop pointed out the need to:**

- Recognize that the Convention on the Elimination of all Forms of Discrimination Against Women (1979), the Declaration of Human Rights (1993) and the Beijing Declaration (1995), as well as Chapter 24 of Agenda 21 (1992), the Millennium Declaration (2000) and the World Summit (2005) encourages equal and effective participation by women on the basis of equal opportunity;

- Acknowledge that Paragraph 13 of the preamble to the Convention on Biological Diversity recognizes *“the vital role that women play in the conservation and sustainable use of biological diversity”* and affirms *“the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.”*
- Recognize that it is necessary to:
  - a) Redouble efforts to recognize the fundamental role of women in the conservation and sustainable use of biological diversity, and their right to a fair share of the benefits derived from the use of such resources.
  - b) Acknowledge the importance of the traditional knowledge, innovations and practices of women and their role in the protection, maintenance and development of their knowledge systems.
  - c) Recognize that poverty eradication requires a gender-focused approach in order to achieve sustainable development;
  - d) Promote the participation of women in decision-making processes at the local, national, regional and global levels;
- Consider that women’s skills and experience in biodiversity management and conservation are essential to meet the objectives of the CBD, and that women’s groups have shown themselves to be informed, energetic and effective agents for conservation;
- Acknowledge the appointment of a gender focal point within the SCBD as an important first step towards the integration of gender issues into the CBD.



### **Recommendations to the CBD**

- Take measures to ensure that gender is mainstreamed in the actions, activities and initiatives conducted under the CBD.
- Urge the Executive Secretariat of the CBD to develop a strategy for mainstreaming gender in its work.
- Recommend that Parties and the Executive Secretary of the CBD establish mechanisms to ensure an equitable participation of women in the various decision-making and discussion processes of the CBD and request the gender focal point of the Secretariat to develop a methodology to ensure the follow-up of this mandate.
- Establish a Women's Major Group (such as the indigenous group recognized by the Conference of the Parties for the Convention on Biological Diversity). Financial support and capacity building will be required to implement this measure.
- Establish partnership with institutions that have expertise in gender mainstreaming in order to gain technical assistance in developing gender-related policies, plans of action, tools, and resources.

### **Recommendations to the ABS and 8 (j) working groups**

- Widen the interpretation of the reference to equity in the distribution of the benefits derived from access to biodiversity, which appears in the third objective of the Convention, so that it may include gender equity.
- Recognize that the fair and equitable sharing of benefits depends upon the full and effective integration of gender issues at all levels of decision-making regarding ABS.
- Integrate gender in the International ABS Regime.
- Ensure the full and effective participation of Women as a Major Group in the negotiation of the international regime. Financial support and capacity build-

- ding will be required to implement this measure.
- Guarantee that the benefits derived from the access to and use of genetic resources are equitably distributed between women and men.
  - Analyze case studies in ABS in order to demonstrate the relevance of including the gender perspective in the implementation of the PIC and MAT mechanisms.
  - Protect the traditional knowledge differentiated by sex in an eventual *sui generis* system.

Created in 1948, the World Conservation Union (IUCN) brings together 84 States, 108 government agencies, 800 plus NGOs, and some 10,000 scientists and experts from 147 countries in a unique worldwide partnership. The Union's mission is to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. The Union is the world's largest environmental knowledge network and has helped over 75 countries to prepare and implement national conservation and biodiversity strategies. The Union is a multicultural, multilingual organization with 1,000 staff located in 62 countries. Its headquarters are in Gland, Switzerland.

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