

**Regional Workshop on Access to
Genetic Resources, Benefit
Sharing and its links to
Traditional Knowledge, IPRs and
Gender**

Kathmandu, Nepal

19 - 21 April 2004

**Organised by IUCN Regional Biodiversity
Programme, Asia & IUCN Nepal Country
Office**

Report on
**Asia Regional Consultation on “Access and Benefit Sharing : Relevance of
Traditional Knowledge and IPRs for an International Regime”**

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Introduction

One of the key activities of focus for the IUCN Regional Biodiversity Programme, Asia has been that of Access and Benefit Sharing (ABS). Beginning 1998, the Programme is working on the issue and have helped several countries in the Asia region to address the issue of ABS through supporting development of draft frameworks on ABS, capacity development to address the issues, providing legal training on issues of linkages to traditional knowledge and IPRs and organizing meetings and workshops. Currently, the Programme is undertaking implementation of a project entitled, “Supporting the Global Biodiversity Agenda” setting the priorities on development of the ABS arrangements and identify key issues for the negotiation of international regime on ABS in the context of CBD.

The prime objective of the aforementioned activity is to provide policy options for the implementation of paragraph 44 (O) of the WSSD Plan of Implementation which establishes a mandate to negotiate, within the framework of CBD, an international regime on ABS. The development of such a regime is expected to consider related global processes of WTO, WIPO, TRIPS and the International Treaty on PGRFA.

With this in mind, the Asia regional consultation was organized with the objectives mentioned in the report but with an overarching theme of recognizing the role of traditional knowledge and IPRs in the development of the regime and the role of gender in such processes.

Objectives of the workshop

1. Provide an overview of key developments and current status of ABS arrangements and negotiations in international for a with special emphasis on three key aspects: TK/IPR's, gender equity and ABS arrangements, and PIC experiences and challenges.
2. Share national/regional experiences in the implementation of ABS frameworks with particular emphasis on three aspects mentioned above.
3. Establish key operational/practical means of guaranteeing proper synergies between different processes and instruments addressing ABS/TK and IPR's issues such as WIPO, WTO and FAO.

4. Identify loopholes and challenges for effective ABS arrangements at the national and regional levels.
5. Set a framework on key issues and regional priorities for the negotiations of the International regime on ABS, with particular emphasis on the three aspects mentioned in objective 1.
6. Identify specific capacity development needs as well as key policy and legal instruments that are required in order to:
 - Strengthen the participation of countries in the IPR negotiation process
 - Provide elements for the development and implementation of potential interim measures on ABS at the national/regional levels.

Participants at the workshop

About 42 participants from 8 countries in Asia participated in the workshop. These include CBD focal points, policy makers, researchers, academics, NGOs, CBOs, farmer organizations, representatives of agencies like IDRC, UNDP and others.

Workshop Agenda and Structure

Details of the agenda can be found in the annexure to this report. Efforts were made to ensure at least 50% of the time was dedicated to group discussions and consultations. All participating countries were requested to make presentations on country status and trends on issues of ABS, TK, IPRs and the national thinking on the development of the international regime. Experiences from countries on issues of addressing TK and relating to IPRs, regional frameworks for ABS formed a part of the presentations.

Key outcomes of the workshop

Based on the presentations made and group discussions held, the following is the set of outcomes from the workshop as they relate to:

- Lessons learnt from national/regional experiences with particular emphasis on TK, IPRs, equity and PIC
- Key challenges of ABS experiences
- Regional priorities and options for the negotiation process
- Capacity development needs at national level
- Follow-up actions and future plans

Outcomes of discussions

Linking TK and ABS through an International Regime

Considering the elements of discussions and decisions of CBD COP 7 on the issue of development of an International Regime on ABS (IR),

Recognising the need for elaboration of the process, scope, elements of the IR, the participants at the consultation agreed for the following recommendations to be considered by the CBD AHTEG on ABS at its forthcoming meeting on ABS (February 2005),

While the process of developing the IR is subject to further discussions under the AHTEG, Parties should make all attempts to begin implementing the Bonn Guidelines on ABS. Such measures would provide the needed experience to shape and strengthen the IR in such a way that it is composed of several legally binding and voluntary measures.

In order to consider national and regional actions on the implementation of Bonn Guidelines, countries in Asia must agree for common approaches, where possible, to develop capacities, share knowledge and information, network expertise and secure finances. Regional and national institutions that have expertise on issues of ABS, TK and IPR must form a coalition to support this initiative.

Considering the scope of the IR, it is being recommended that it should be legally binding in order to ensure compliance and implementation in an effective manner. However, experiences on implementing the Bonn Guidelines, national and regional actions should be considered in designing the 'bundle of options'.

Reflecting on the elements of the IR as agreed at the CBD COP7, the participants feel that the following should be considered during the forthcoming AHTEG meeting on ABS on furthering the development of the IR:.

- Systems should be put in place to ensure that the information on ABS application and decision making should be considered after consultations between National/Provincial Authority and the providers of resources
- Provision of incentives on access fee or concessional access for uses that are environmentally friendly would encourage environmentally sound uses of genetic resources. National and regional frameworks on ABS must provide such provisions. However, for effectively implementing these provisions special attention should be given for identifying such uses in the PIC, MAT and MTA applications in addition to clauses under compliance.
- While access to genetic resources could be provided for environmentally sound uses, EIA, BIA, risk assessment procedures, as applicable, that would be followed in development and use of the resources should be a mandated requirement, including for biotechnology applications

- Even though a point of contest, derivatives should be part of ABS discussions and therefore the MATs should encompass references and provisions for including derivatives and their uses
- The issues of disclosure of origin, traceability have relevance to discussions on derivatives. Mechanisms should be put in place such as MTAs to ensure information on derivatives and products are identified, even during the negotiation of access.
- Countries of origin of resources should have provisions to retain the right of use of derivatives in addition to requesting benefits arising out of use of derivatives from third parties.
- Considering the relevance of ABS in achieving the Millennium Development Goals, encouraging access to genetic resources in ways they contribute to realization of MDGs through identification of how the access, subsequent use and benefits arising should receive attention. Such benefits could be shared for achieving poverty reduction, including social services
- Common landscapes and biodiversity at transboundary levels offer opportunities for cooperation and some times conflicts. Encouraging regional cooperation within and in between countries to promote common frameworks for ABS should be a priority. Such frameworks can provide the needed guidance for national actions on ABS and development in addition to regional/sub-regional ones
- Establishment of policies and management systems to promote benefit sharing at local and provincial levels is critical for achieving the benefits of IR regime and its implementation. Measures to promote this can include development specific ABS regimes at provincial and district levels that are complimentary to the International Regime as well as national regime. Capacity building and creating an enabling environment to facilitate the above elements should receive immediate attention.
- Awareness and capacities for implementation of compliance regimes are key to achieving development and implementation of the IR. Technical and financial support in addition to sharing of experiences is important for achieving this.
- Compliance is also better achieved through transparency and clarity on the obligations of both providers and users. Guidelines on compliance should be developed as soon as possible.
- Monitoring of compliance is the responsibility of both the providers, users and the stakeholders involved in the ABS transactions. Concerned National Authority should also provide guidance on evaluation of compliance mechanisms.

- Monitoring of compliance issues should be carried out by an independent set of experts – on the lines of the ‘Compliance Committee’ on Cartagena Protocol.
- In addition to the above, PIC should include ways of compliance and redress mechanisms.
- Certificate of origin/legal provenance should be the principles based on which the ABS regime can be discussed and negotiated
- Consideration of IPR applications should have details of disclosure of origin/legal provenance. Source cannot be an element for considering IPR applications.
- Countries’ ABS regime should be responding to issues of protecting TK and promoting conservation through legal/non-legal measures of protection.
- The dispute settlement and /or arbitration should be guided by international law within the context of CBD. In addition, at local and national levels alternate mechanisms for dispute settlements and / or arbitration should be developed. These can be based on customary law and statutory law.
- Develop sub-regional frameworks on ABS that includes elements of the International Regime identified earlier
- Establish “Regional and Sub-regional CHM on ABS’ with participation from Governments, NGOs, CBOs and other stakeholders
- Create an ‘Asia Regional Forum on Indigenous Knowledge and Sustainable Development’
- Support establishment of regional network on ABS practitioners who will provide support for the development of the International Regime. The CBD Secretariat and AHTEG are requested to involve participants from this network
- Strengthen institutional capacities sharing experiences on existing national and regional policies and regulatory frameworks on ABS by compilation, synthesis, analyses and publication of case studies, experiences.
- Undertake economic valuation of genetic resources and associated traditional knowledge for both use and non-use values.
- Develop public education and awareness raising material on issues of ABS in local languages.
- Elaborate and suggest the rights of national governments and communities on PIC for effectively developing and implementing the Regime. Assessment and elements of the rights should be identified before PIC is provided. Guidelines on what these rights are should be developed.

- Assess relationships between the International Regime on ABS and ITPGRFA, WIPO, TRIPS, Plant Variety Protection, CITES. Regional and national relevance of the relationships and conflicts should be identified and suitable adjustments be made at policy and implementation levels
- Suggest development of regional and bilateral free trade agreements that should be responsive to the International Regime and the national policies on ABS, especially in trade dealing with biodiversity including genetic resources
- Exchange scientific expertise and standardization of assessments, inventory and monitoring at regional levels.
- Enhance transboundary cooperation on control of illegal trade in biodiversity.
- Support establishment of regional institution and /or strengthen the existing regional institution for networking, capacity building and exchanging experiences.
- Support establishment of a 'Regional Network of Academia and NGOs in Asia' to support actions on development and implementation of the Regime as well as raise the 'Voice of Asia'.
- Establish 'Regional Network on Technology Transfer and Incubation', for ensuring effective technology transfer and cooperation between countries in Asia
- Establish 'Regional CBD Focal Point Forum' to discuss and take forward the implementation options from CBD COP and SBSTTA for effective regional cooperation and sharing of experiences.
- Develop training programmes for legislators, judiciary, media, local communities and others on issues of ABS including on PIC, MAT, compliance and communication.
- Raise financial support for implementing some of the above action. Support from multilateral and bilateral donors, including GEF should be sought. Countries should cooperate on development of regional actions and projects.

Priorities for National Action

- Review existing plans, laws, policies dealing with ABS, TK, IPRs as well as biodiversity to assess the need for incorporating the elements of protection and use of genetic resources as well as associated traditional knowledge.
- Definitions of key terms dispense misconceptions on issues and meanings. Clear definitions of terms will be a pre-requisite for a legally implementable guidelines/ bill.

- Definitions of terms such as community, user is critical for compliance with issues of PIC, MATs.
- Development and operationalisation of structures such as National Biodiversity Authority to implement the provisions of ABS, TK and IPRs must consider participatory approaches. Representation of diverse stakeholders on such institutional entities enhances the transparency and credibility of the institution as well as supports effective implementation of national actions.
- Considering the need to protect the TK from IPR claims, a Prior Art Database (PAD) should be created at the national level. The PAD can be governed by the national IPR regime that is compatible with provisions of related international Conventions and Agreements.
- The role and relevance of issues such as ABS and TK for poverty reduction, both economically & culturally, through participatory local development planning must receive priority national attention. National Programmes of Action such as PRSPs should be cognizant of these issues and respond to them during implementation.
- Blending of modern and traditional means of documenting and using the knowledge, developing technology, creating markets, assessing experiences and using the wisdom creates a sustainable national capital for development and prosperity. Means to encourage this should be found both through formal and informal systems.
- Creation of local human resource capital to document, use and exchange genetic resources, knowledge and technology enhances the sustainable of efforts to protect and use local resources and practices. Such 'local conservation corps' must receive support and recognition.
- Training in methods of documentation of information and knowledge in a manner that is easy and transparent provides opportunities for enhancing the usefulness of national actions on ABS and TK protection. Such training should be a part of capacity building exercises.
- Local community, families, persons consent must be required by all outsiders to access TK while nationals can be exempted to access genetic resources and associated knowledge for research purpose
- Prior Informed Consent (PIC) is not exclusive community claim but rather a source of "understood" origin.
- PIC may specify the percentage of benefit sharing among stakeholders
- PIC can also document cultural preconditions associated with access to the resources and knowledge.

- National action to digitise all public information should receive attention before attempts are made to register community based information and knowledge.
- The national level institution involved with supporting action on ABS should set up a Biodiversity Information System (BIS) to record, analyse and provide information of sharing of genetic resources and associated traditional knowledge.
- The BIS may also be used to monitor compliance of ABS
- The BIS may publicise only the species & village/ community/ persons name, not uses.
- Public hearing on environmental and cultural risks associated with providing access should be encouraged.
- The national authority such as NBA must prevent, penalise any attempts of biopiracy, including violation of provisions of the ABS agreement (PIC. MATs)
- The NBA must be accountable to community who are holders of the knowledge and information.
- Benefit sharing agreements negotiated through NBA must include shares for the community as per PIC as well as others
- Benefits can be shared not as one time royalty but annual grants to Community Gene Fund, that can be created at national level, for:
 - continued conservation, monitoring & sustainable use
 - training for eco-technology & market access
 - Assessment & recognition of TK users
- ABS must be integrated in national development planning especially into sectors such as agriculture, health, trade, tourism and education.

Capacity Building and Information Sharing at Nation and Regional Levels

Capacity building

- The participants emphasized that the approach to institutional and individual capacity building must be:
 - Issue-based;
 - Knowledge-based; and
 - Focused on measures that provide a multiplier effect, such as training trainers.

- While the issues on what capacities to be built and where are complex to address due to the intricacies of the issues involved in access, benefit-sharing, TK and IPRs, the participants identified five that are fundamental:
 - the capacity to document and consolidate the traditional knowledge base;
 - the capacity to carry out bioprospecting and to monitor it;
 - the capacity to scientific validate TK;
 - the capacity to add value to genetic resources and to TK;
 - the capacity to market the products that result from adding value to genetic resources and TK in ways that protect as well as promote local knowledge and livelihoods.

- Identifying which stakeholders need education and training on the issues that are fundamental for ABS, TK, and IPRs is critical as well as complex, since their needs are varied. Specific and tailor-made programmes are needed for local communities (teachers, traditional healers, health workers, government officials), researchers, planning professionals, lawyers, judges, students, academic and research faculty, and public sector professionals including technical experts in sectoral ministries and line agencies. Each target group must receive targeted orientation on issues relevant to them as well as those impacting them.

- Skills assessments are indispensable for determining needs that in turn will facilitate design of appropriate training modules. Based on the issues identified, participants feel that the following specific skills are those on which capacity building efforts in Nepal need to be focused:
 - Survey and interviewing;
 - Archiving;
 - Computer programming;
 - Negotiation;
 - Communication;
 - Resource conservation;
 - Collection and preservation of samples of biological and genetic resources;
 - Standardization; and
 - Marketing.

Information sharing

Recognising the need to link capacity building with information sharing, the participants stressed the need to:

- undertake assessment of what has already been documented and where, before documenting further. Traditional knowledge inventories already available must be used;
- transmit back to local communities, in their own languages, whatever is documented;
- develop materials in local languages, explaining in laypersons' terms the issues at the global level that have an impact at the community level, particularly the rationale for documenting TK, how the documented knowledge will be protected and how it may be used;
- develop materials on the issues involved in ABS, TK and IPRs that are appropriate for both primary and secondary formal education and ensure that they are used in the public education system;
- develop policy and implementation briefs for policymakers on the CBD and WTO and the issues involved in reconciling ABS, TK, and IPRs;
- create networks to share information about what is being done at village, district and national levels so that there can be coordination among all actors;
- create a feedback loop that channels information from the local level through the sub-national, national and regional levels to the global level and back again;
- use both formal and non-formal modes of communication, including video, music and dance, for disseminating information;
- recognize traditional knowledge and practices as part of the national heritage to encourage local communities to pro-actively engage in conservation, and in using and sharing the benefits of their traditional knowledge;
- reduce the generational information gap between the holders of traditional knowledge and the youth of local communities;
- ensure that information is communicated among local communities and the research, value-adding and marketing sectors.

Participants made the following recommendations for *actions at national level*:

- Reverse the current focus on a one-way process of information extraction to emphasize returning information to community level and develop mechanisms to ensure that this is achieved;
- Designate one central coordinating institution for access, benefit-sharing and traditional knowledge on the CITES model – a management authority with several scientific/technical authorities as required;
- Define “bioprospecting” in the draft policy and bill on access to genetic resources and benefit-sharing;
- Develop a national agenda for capacity building and information sharing;
- Monitor and evaluate implementation of national and local actions and convene a follow-up conference within one year to assess progress on the recommendations and commitments made in the workshop.

Participants felt that those who participated in the workshop should commit themselves and their institutions to network to identify all other organizations and individuals in the country working in the field of traditional knowledge, access and benefit-sharing to create a body of “prime movers” that will advocate documentation, protection, and valuation of traditional knowledge associated with genetic resources.

Participants made the following recommendation for *action at regional level*:

- Create a regional and/or sub-regional clearinghouse that enables technical networking on traditional knowledge, including scientific assessments of applications of traditional knowledge, as well as on genetic resources, and in particular benefit-sharing arrangements.

National actions on protecting Traditional Knowledge and Promoting ABS

- Recognizing the need to developing a national Access and Benefit Sharing (ABS) regime for protecting genetic resources (GR) and promoting associated TK, the participants feel that ABS country planning should:
 - review existing plans, laws and policies dealing with ABS, TK, IPRs and biodiversity;
 - clearly define all terms as a prerequisite in a legally implementable guidelines /bill so as to dispense misconceptions on issues and meanings;
 - consider community as local and traditional resource users;
 - consider benefit in terms of use (national) & export, monetary & otherwise; and
 - represent diverse stakeholders including communities, industries, researchers and relevant government departments, in participatory fashion, in the development and operationalisation of structures such as National Biodiversity Authority (Proposed National Genetic resource Conservation Authority in the Draft AGRBS Bill of Nepal) to implement the provisions of ABS, TK and IPRs.

- The participants feel that “benefits” should be (re) defined so as to:
 - prevent possible biopiracy & future losses which could be achieved through developing Prior Art Databases (PAD);
 - reduce poverty, both economically & culturally, and should be achieved through participatory local development planning; and
 - ensure availability of new knowledge, technology, markets, experience & wisdom to both local TK practitioners & modern science and technology; blending of modern and traditional systems creates a sustainable national capital for development and prosperity.

- Recognizing the need to protect GR and associated TK and to protect them from IPR claims, documentation of GR and TK is considered indispensable. Capacity building for the documentation in a manner that is easy and transparent provides opportunities for enhancing the usefulness of actions on TK protection as well as ABS mechanisms. The participants feel that the documentation process should focus on the following:
 - community needs must be prioritized first during documentation & then consider the needs of external users
 - local community members must be trained as “task team” to document, use and exchange GR, knowledge and technology; and
 - documentation format must be simple & include information on GR’s characters, origin, availability, use, methods/processes, significance & conservation.

- Prior Informed Consent (PIC) of local community, families and persons should be a must while accessing TK information. The participants feel that:
 - communities or traditional knowledge holders’ consent must be required by all outsiders to access TK while nationals can be exempted to access GR for research purpose;

- PIC is not exclusive community claims but rather a source of “understood” origin;
 - PIC may specify percentage of benefit sharing among stakeholders; and
 - PIC can also document cultural preconditions associated with access to the resources and knowledge.
- National actions to digitize biodiversity and TK related information should receive attention. National level institutions dealing with issues of biodiversity conservation and ABS mechanisms (such as the proposed National Genetic Resources Conservation Authority in the Draft AGRBS Bill of Nepal) should develop a Biodiversity Information System (BIS) to record, analyse and provide information on sharing of GR and associated TK. The participants suggest that the BIS development should consider the following:
- digitize all public information as a first step;
 - share this public domain information with community during Community Biodiversity Register (CBR) development and ask if they can add to it;
 - publicise only the species & village/ community/ persons name but not the uses of various biological and genetic resources; and
 - develop the BIS as a system also to monitor compliance of ABS.
- Keeping in view that the agreements with regard to ABS mechanisms need to be finalized by the national level authority. The participants suggest that:
- ABS should be based on PIC as well as agreements with respect to sharing of GR/TK and associated benefits;
 - the national authority must conduct public hearing with respect to environmental, social & cultural risk assessment associated with providing access before ABS finalisation;
 - the national authority must prevent and penalise any attempts of biopiracy, including violation/ bypass of the provisions of the ABS agreement such as PIC and Mutually Agreed Terms (MATs);
 - the national authority should consider sharing of benefits not as one time royalty but as annual grants to Community Gene Fund for:
 - continued conservation, monitoring & sustainable use;
 - training for eco-technology & market access;
 - Assessment & recognition of TK users; and
 - the national authority must be accountable to the knowledge holders as well as the community based organizations(CBO) / NGO who can independently monitor the activities at local level.
- The workshop participants recommend that the ABS should be integrated in national development planning as well as regional level planning. The National and Regional Planning should consider the following:
- ABS must be integrated into various sectors especially in agriculture, health, biotechnology, trade, tourism & education;
 - member countries of South Asian Association for Regional Cooperation (SAARC) need to establish a Clearing House Mechanism (CHM) to settle disputes and to decide on the GR and TK that are shared by two or more member countries; and
 - future efforts on TK protection may spread to land (such as soil and minerals) and water resources.

Annexure 1

Agenda



Regional Workshop on Access to Genetic Resources, Benefit Sharing and its links to Traditional Knowledge, IPRs and Gender

Organised by IUCN Regional Biodiversity Programme, Asia
& IUCN Nepal Country Office

Hotel Godavari, Kathmandu

19 – 21 April 2004

Draft Agenda

19 April 2004

09:00 – 10:30 Inauguration

10:30 – 11:00 Tea/Coffee

Session 1 – Policy Arena

11:00 11:30 Overview presentation on International Regime (Presentation of outcomes from COP 7) *The discussions and outcomes of CBD AHTEG on ABS and the COP 7 meeting* **Balakrishna Pisupat, IUCN Asia**

11:30 12:00 TK, ABS and legal issues
Overview presentation of issues of regulatory regimes and legal issues global, regional and national perspectives
Patricia Moore, IUCN Asia

12:00 12:30 Discussion

12:30 14:00 Lunch

Session 2 – Sharing of country experiences in TK and ABS

The country presentations will focus on:

National and community perspectives on TK documentation and/or implementation of ABS principles. This session will cover : Needs and challenges, policy & legal framework, safeguarding the rights of TK holders, experience in undertaking TK documentation (participatory, cost-effective, reliable), community benefits and incentives, focal agencies and gaps.

14:00	14:20	India	Utkarsh Ghate, FRLHT
14:20	14:40	Sri Lanka	Ranjith Mahindapala, IUCN
15:40	15:10	Pakistan	Rashid Anwar, NARC
15:10	15:30	Discussion	
15:30	16:00	Tea/Coffee	

Session 3

15:30	15:50	Philippines	Theresa Mundita Lim, DENR
15:50	16:10	ASEAN	Theresa Mundita Lim, Philippines
16:10	16:30	China	Xue Dayuan, SEPA
16:30	16:50	Nepal	K C Poudel, MoFSC
16:50	17:10	Vietnam	Nguyen Ming Cong, IUCN
17:10	17:20	Bangladesh	Munzurul Hannan Khan
17:20	18:00	Discussion	

20th April 2004

Session 4 – Linking ABS and TK

09:00	09:20	Challenges and Opportunities for TK Documentation and Registration: Procedures for community participation and benefit <i>Findings from Nepal's review work</i> T B Shrestha and Sagendra Tiwari
09:20	09:40	Outcomes of the WIPO IGC meeting on TK <i>Links the outcomes of the Intergovernmental committee on TK under WIPO meeting in March to the International regime</i> Patricia Moore
09:40	10:00	Role of gender in ABS, TK and IPR Balakrishna Pisuapti
10:00	10:40	Panel Discussion :Challenges and Issues on Documenting TK and issues of IPR <i>Utkarsh Ghate and Balakrishna Pisuapti</i>
10:40	11:20	Tea/Coffee

Session 5 Group Discussions

11:20	17:00	Group work
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Group 1 National actions on protecting TK

Using Nepal as a case study, the group will discuss and recommend ways to integrate the issues and discussions of the workshop into National actions for documenting and registering TK related to biodiversity.

Group 2 Linking TK and ABS through a Regime on ABS

Using the outcomes of the COP 7 meeting and issues on international regime, this group will discuss the elements for a regime, mainstreaming issues into the Bonn Guidelines and national actions

Group 3 Capacity building and information sharing

The group will discuss issues of capacity building, issues of information – sourcing, usage and availability besides focusing on regional action.

13:00 14:00 Lunch

14:00 17:00 Group discussions continues

21st April 2004

Session 7

09:00 11:00 Group work continues

11:00 12:00 Presentation of group discussion outcomes

12:00 13:00 Discussion and closing

13:00 14:00 Lunch

