

THE **ABS**
CAPACITY
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L'INITIATIVE DE
RENFORCEMENT
DES CAPACITES
POUR L'**APA**

Report
Webinar

“Choice of suitable legal instruments“
Thursday, 4 June, 2020 at 14h CET Microsoft Teams

Points raised after the presentation of Mr. Olivier Rukundo: ***Introduction – setting the scene.***

- The African Union guidelines call for “standardized” procedures to avoid a race to the bottom. Common cooperation mechanisms should lead to coherent implementation of the Nagoya Protocol. Article 11 of the Nagoya Protocol provides a basis for a basis collaboration (transboundary cooperation), “when the same genetic resources are found *in situ* within the territory of more than one Party.”
- Even if a country has legal instruments in place, it is important to have transboundary mechanisms in place to deal in particular with shared traditional knowledge and genetic resources.
- For transboundary resources – that shall be commercialized – it could be beneficial to develop a regional, common economic approach to reach markets.
- To avoid a race to the bottom it is necessary to think about harmonization of ABS standards to regulate the use of genetic resources and associated traditional knowledge. Proper mechanisms for the involvement of local communities are also needed.

During the Webinar, Kenya and Namibia were invited to share their experiences and respective approaches in the choice of legal instruments to support the implementation of the Nagoya Protocol. The following provides a short summary of points raised during the discussions that followed the country presentations.

- **Timing for the development of legal frameworks:** In relation to timing, it was noted that the process of developing national legal frameworks can be a long and complex (can take up to 3 years and above)
- **Setting up coordination mechanisms:** A key challenge encountered relates to the fact that natural resources are governed under different ministries. Coordination mechanisms are not always easy to establish and implement.
- **Taking stock of existing relevant legislations:** A key step to undertake is to take stock of existing legal provisions and relevant information in relation to the implementation of these legal frameworks. This is important to avoid conflicts, contradictions in the application of different laws and regulations.
- **Generating understanding and awareness at community levels:** One critical step is also to put in place ways and means to generate understanding and awareness at community levels. This is important to ensure that stakeholders take ownership of the process through a participatory approach in which their inputs, views and concerns are duly considered.
- **Genetic resources accessed and used before the entry into effect and application of legal frameworks:** Technically access and use that have taken place before a legal framework comes into force are not covered by the frameworks in question. Some countries developed approaches to deal with the topic by defining terms for utilization of genetic resources. The approaches consist of setting up incentives for the user to come back and negotiate once more. In the ongoing discussion for the development of the Post-2020 Global Biodiversity Framework, some countries have proposed a global benefit-sharing fund for such cases, where PIC and MAT have not been agreed on.
- **Ways of covering traditional knowledge-related provisions in national ABS frameworks:** One can refer to IP tools in the ABS legislation. The scope of IP laws is often very narrow. They deal with certain aspects of ABS but not all the requirements set out in the Nagoya Protocol. Another approach is to facilitate the acknowledgement of requirements related to traditional knowledge and the customary laws of local communities through Biocultural Community Protocols (BCPs.)
- **Considering and integrating the issue of digital sequence information (DSI) into national legal frameworks:** This is a very complex topic that can, as one presenter suggested, be handled through the proper management of intellectual property norms and principles. The other approach, as has been done in one of the two countries, is to include digital information related to genetic resources in the scope of national legal framework. Detailed procedures as to how to implement such provision have to still be worked out.

Additional information as mentioned during the discussion:

- Link to the publication “Implementation of the Nagoya Protocol - Fulfilling new obligations among emerging issues” by Evanson Chege Kamau

<https://www.bfn.de/fileadmin/BfN/service/Dokumente/skripten/Skript564.pdf>