NEEDS AND OPTIONS FOR ABS IMPLEMENTATION IN AFRICA: RECOMMENDATIONS OF THE "REGIONAL ABS CAPACITY-BUILDING WORKSHOP FOR EASTERN AND SOUTHERN AFRICA"

In support of the recommendation of the 3rd meeting of the ABS Working Group in Bangkok to enhance stakeholder awareness and capacity on all levels the Dutch Directorate-General for International Cooperation (DGIS)[1] and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH[2] in cooperation with the Ethiopian Institute of Biodiversity Conservation (IBC) organized the first *Regional ABS Capacity-Building Workshop for Eastern and Southern Africa* (2.-6.10.2005, Addis Ababa, Ethiopia).

The workshop was seeking to exchange experiences gained in bioprospection cases, to reflect on appropriate instruments of fair sharing of benefits and to discuss existing national approaches and mechanisms for the implementation of the ABS requirements of the Convention on Biological Biodiversity (CBD) and the Bonn Guidelines respectively. Beside legal and institutional aspects at the national level, local participation in the prior informed consent (PIC) process as a prerequisite for achieving benefit-sharing with local resource and/or knowledge providers was playing an key role in the discussion as this directly contributes to poverty alleviation of local and indigenous communities.

The aim of the workshop was twofold:

1. To foster an **open exchange between stakeholders** based on existing local, national and regional initiatives and experiences and
2. To create an **understanding how local, national and international regulations depend on each other** to be effective in implementing the third objective of the CBD.

Specific objectives of the workshop were:

- **To explore** the implications of the existing international framework regulating ABS and experiences with bioprospecting cases in the region for the implementation of ABS regulations at the national and local level.
- Considering that bioprospecting is on-going in the region **to identify** gaps and hindrances at the local, national and international level to effectively regulate access to genetic resources and related traditional knowledge and ensure the sharing of benefits.
- Recognizing the different dimensions of poverty **to analyse** how benefits, which accrue in the context of bioprospecting, alleviate poverty of local and indigenous communities and **to explore**, which instruments and processes at the national and international level could be essential to further ABS as an instrument for poverty alleviation.
- **To elaborate** recommendations for policy makers, NGOs and other relevant actors in the region for the development of national and regional strategies for the creation and implementation of efficient ABS regulations, including participatory processes and institutional and regulatory requirements.
- **To contribute** to the preparation of those participants of the workshop, who will attend the next meeting of the ABS Working Group in January 2006.

[1] DGIS is one of four Directorates-General of the Netherlands Ministry of Foreign Affairs.
[2] GTZ was co-organizing this workshop on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ).

RESULTS

The workshop was actively attended by 50 participants from 15 different countries, mainly from the region itself. The meeting opened a platform for a real and effective multi stakeholder dialogue: as pointed out by many of the participants, this was the first time that representatives of local communities, NGOs, national legislation, science and politics reached the objective to talk *with* each other and not *about* the others on ABS and related issues.

Led in open discussions, the dialogue during the five workshop days was substantively goal oriented towards a common understanding of the actual and future bandwidth of what ABS is or should be. In several working groups a broad range of cases of bioprospection and biopiracy were presented by affected stakeholders as first hand information, geographically wide spread highlighting the diversity of ABS issues: from “core” ABS examples such as industrial utilization of locally preserved genetic codes to the limits of today’s cornerstones of the Bonn Guidelines, touching trade aspects of entire living species as exploitable genetic pools and possible common legal fields with other treaties such as the International Treaty on Plant Genetic Resources (ITPGR), Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The diversity of presented cases revealed and emphasized the different ethical and cultural perspectives to biological and genetic resources and associated property and use rights by different stakeholder groups – especially the differences between European influenced national legislation and traditional perspectives of local communities. Furthermore, drafted and already implemented legislations on ABS in Eastern and Southern Africa have not only been introduced to the participants – it was also discussed and assessed how far these very first examples match the needs and requirements of the different stakeholder groups.

In the course of the presentations and discussions it became obvious that many ministries, and other key stakeholders, such as indigenous and local communities, environmental NGOs as well as educational and scientific institutions, have a role to play in the successful implementation of the ABS regulations under the CBD. In order to use the specific strength and potential of the stakeholders to adequately implement the obligations under the CBD there is a continuous need at all levels for institutional strengthening, capacity-building, and further financial support.

The documentation of these cases and pieces of legislation on the workshop website (www.abs-africa.info) is a first step towards a **common knowledge base** on the reality of ABS on the African continent, which among others can

- be used to identify needs and options for regulations at the local, national and international level,
- stimulate cross-boarder cooperation between institutions (research, governance) and stakeholder groups,
- help to clarify terms and definitions, and
- be used to identify capacity-building and awareness raising needs for the different stakeholder groups.

Furthermore the participants of the workshop highlighted the responsibility of countries with users of genetic resources under their jurisdiction: The implementation of measures to prevent misappropriation of genetic resources and disrespect of foreign legislation is key for functioning and efficient national ABS regimes in provider countries.

It was also reiterated that the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (AU Model Law) does not allow for the patenting of life forms. National and international legislation should be adapted accordingly.

Finally many participants expressed deep concerns about ongoing research on and use of human genetic resources. Discussions of the international ABS regime need therefore to address human genetic resources related research, information and ABS.

NEXT STEPS

The workshop has shown that diverse capacity and implementation gaps regarding ABS regulation exist in many Eastern and Southern African Countries. Short and medium strategies for capacity building, advocacy and awareness raising are necessary to address these needs.

Based on the workshop recommendations and the articulated requirements the Dutch and German Development Cooperation are considering to support the following activities as first steps:

- Side event at the ABS WG in Granada to present and discuss the workshop results.
- Side event at COP 8 in Curitiba to launch a brochure on bioprospecting experiences including the workshop recommendations and feedback from Granada.
- Website serving as a platform for regional information exchange (including facilitated discussion fora), linked to CBD ABS Portal.
- Lobbying for ABS consideration in order to achieve better coherence anmongst different sector policies.
- Further asses and define capacity-building needs of different stakeholder groups.
- Identify topics and formats for future capacity-building workshops complementary to other ongoing ABS initiatives in the countries / region.
- Identification of innovative ways of hands-on knowledge exchange on ABS at and between all levels.

RECOMMENDATIONS

1. Need for ABS-Regulations

Problem: The CBD gave countries sovereignty over their biological resources. Several countries in Africa are yet to adopt comprehensive legislation governing ABS. Lack of legislation has led to unregulated access to biological/genetic resources without obligations for benefit-sharing, PIC or MTA. There are often only weak or even no sanctions in ABS regimes at national and international levels.

Recommendations:

- African countries should establish and strengthen national legislation on ABS on biological/genetic resources and implement relevant national legislation.
- CBD Article 20 (Financial Resources) and Article 21 (Financial Mechanism [GEF]) provides for facilitating support by CBD of such activities. Parties must take the initiative to access this funding window.
- Document ABS expertise in the region for capacity-building and the exchange of relevant skills.
- For the effective national level implementation of ABS regulations countries need to consider how these interact with other obligations under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the Agreement on Trade Related Intellectual Property Rights (TRIPs) under the World Trade Organisation (WTO), the relevant agreements under the World Intellectual Property Organisation (WIPO), etc.

2. Cross Boarder Resources

Problem: Numerous biological/genetic resources are distributed in or shared by several countries, i.e. devil's claw in Botswana, Namibia and South Africa; Basmati rice in Bangladesh, India, Malaysia, Sri Lanka, and Pakistan, Red Maasai Sheep in Kenya, Tanzania, and Uganda. These shared cross-border resources pose ABS problems for the range states, regarding sovereign rights and ownership, diversity of local names and traditional uses, access, bioprospecting, patenting, benefit-sharing, and marketing. Bioprospectors may take advantage of this situation through bilateral negotiations and agreements.

Recommendations:

- With the support and involvement of regional and sub-regional organizations range states should develop harmonized ABS regulations to enhance cross-boarder cooperation and common goals for the use of genetic resources including their conservation, sustainable use and related benefit-sharing opportunities.
- Research and development centres of the range states should study and establish the levels of variation within and between species, composition of species or varieties/ breeds, and the extent of distribution of the cross-border resources.
- National and local governments as well as ABS National Focal Points should involve NGOs to promote the implementation of regional ABS regulations for cross-border resources.

3. Definitions

Problem: The CBD provides definitions for ”biological resources”, “genetic resources”, and “genetic material”. But these definitions are a result of negotiated compromises and are not necessarily very clear or precise. As countries try to create and implement national ABS systems, they grapple with the scope of the system, as they need to define and elaborate what the system includes.

Recommendations:

- At the international level the ABS Working Group needs to continue its work on the agenda item ”use of terms”
- At the national level countries need to clarify the scope of the ABS system: Where does ABS start and end? What is the relationship between Farmers' Rights, Plant Breeders' Rights community rights, intellectual property rights, patents, etc.

4. Stakeholder Participation and Benefit-Sharing

Problem: Indigenous and local communities are custodians of many biological/genetic resources and holders of the associated indigenous/traditional knowledge. However, ownership and use rights are often not clearly defined or even recognized by national governments.

Furthermore, indigenous and local communities are often very weak organisational wise in trying to raise awareness and empowerment on CBD and ABS issues.

Recommendations:

- Ensure recognition and participation of relevant indigenous and local communities at all stages of ABS negotiations: Ensure ownership and/or use rights on biological/genetic resources and traditional knowledge, and then consider them primary beneficiaries. Means of implementation depend on national legislation on property rights of Government, local communities and individuals.
- Build capacities of indigenous and local communities on governance and the sustainable use of biological and genetic resources and improve their knowledge about ABS mechanisms and negotiations skills.
- Ensure non-monetary and monetary benefits derived from ABS agreements contribute to poverty alleviation among relevant indigenous and local communities.
- Governments must provide clear guidelines through appropriate legislation to ensure the development of fair and equitable ABS agreements including mechanisms to speed-up up-front payments, milestone payments, conditional licensing etc.
- Fair and equitable guidelines must address environmental, health, cultural, social and economic issues on the transfer and commercialisation of biological and genetic resources as well as traditional knowledge.

5. Transparency and Accountability including Codes of Conduct / Ethics

Problem: Many developing countries have enacted legislation or made regulations and policies to regulate ABS. In some countries, ABS regulatory frameworks are effective and respected by both nationals and foreigners. However, some foreign institutions and companies from developed countries disregard these national regulations that govern access to biological/genetic resources and/or associated indigenous/traditional knowledge. Such institutions

and companies get access by directly using their economic might, while in some cases bioprospecting/biopiracy occurs under bilateral agreements or projects meant to address socio-economic empowerment in rural areas.

For functioning regulations and effective participation, all stakeholders need to be able to see how ABS decisions are made and need to be informed about the decisions that have been made.

Recommendations:

- Governments need to act in a transparent and accountable manner while creating, implementing and administering ABS systems/frameworks.
- There must be full disclosure, transparency and accountability in ABS undertakings at the local level by government institutions and users/scientists.
- Countries should identify users of biological/genetic resources within their jurisdiction and facilitate and encourage them to develop or abide in a Code of Conduct/Ethics such as the Micro-Organisms Sustainable Use and Access Regulation International Code of Conduct, FAO's International Code of Conduct for Plant Germplasm Collecting and Transfer, or the Principles on Access to Genetic Resources and Benefit-Sharing for Participating Institutions (for botanical gardens and herbaria)."
- CBD Working Groups on ABS and Article (8j) should call on the private sector and scientific users of biological/genetic resources to develop and adopt institutional codes of conduct/ethics as well as accountability and monitoring mechanisms.

6. Traditional Knowledge and Science

Problem:

In many countries interaction between the government and local communities is minimal. Often there is no appreciation of the fact that local communities are resource owners and managers as well as owners of basic environmental knowledge.

Modern science does not pay sufficient respect to indigenous and traditional knowledge, resulting in a widening gap of interaction and information.

Recommendations:

- Develop mechanisms that link scientific work to local people's livelihoods.
- Scientific programmes should use indigenous knowledge as basic primary science and be transformed to knowledge management programmes, including both science and local and indigenous knowledge. Donor funded programmes supporting biodiversity related research should acknowledge this.
- Develop strategies to communicate scientific work, and results and recommendations to local communities.

7. Capacity-building Needs

Problem:

The situation in many countries can be described as follows: considerable lack of understanding of relevant issues dealt with by the CBD, the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO); poor understanding of the critical issues in relation to ABS and biosafety; inadequate capacities of institutional frameworks relevant for the regulation of ABS; lack of adequate skills on the valuation of biological/genetic resources; lack of general awareness on ABS issues.

Despite the agreed CBD Action Plan on Capacity-building for ABS (COP decision VII/19), real efforts for capacity-building are by far not sufficient.

Recommendations:

- Capacity-building is needed at institutional and human resource level. Most neglected are presently local based stakeholder groups, so they should get priority.
- More emphasis needs to be given to regional capacity-building approaches. Building networks and trust by regional workshops (as the one in Addis) could be an effective element of such capacity-building.
- Develop and initiate awareness and capacity-building programmes for relevant issues in the context of ABS, biosafety, intellectual property rights, resource valuation, ground truthing, etc.
- Create functioning institutional frameworks for the regulation of ABS.
- Develop user-friendly information packs on ABS related issues.

8. Cooperation in Capacity-Building

Problem: As scientific analysis reveal most of the few capacity-building efforts for ABS on the African continent address the level of national policy and regulation. As often, local people are at the end of the row and where their capacity-building needs have been taken into consideration this happens usually in a top down approach.

Recommendations:

- There is need for cooperation in capacity-building at all levels in order to enhance informed decision making, transparent agreements, acceptance and open participation. For instance running and future biodiversity programmes – including protected area conservation, eco-tourism, reforestation, agroforestry, etc. – at province, district and community level should contain ABS awareness or implementation elements involving all stakeholders concerned.
- Considering firstly the own potential of Africa itself, there is a need for interactive North-South and South-South approaches in capacity-building. A starting point could be a regional knowledge network or mentoring system of local communities to exchange first hand ABS practices and regulation approaches. Such a network could occasionally also benefit from experiences gained by legislators and scientists of the Eastern and Southern African region.
- New curricula for training institutions / civil society on current issues and new language / terminology evolution on ABS have to be developed.

9. General Information and Resource Accounting Gaps

Problem: In Africa national and regional information on the availability, distribution and abundance of biological/genetic resources is scattered and with considerable gaps. Little information is available on the real custodians of biological/genetic resources. Such gaps entail serious consequences for sustainable use and management of biological and genetic resources. ABS policy development is therefore in many cases not supported by a profound knowledge of the resource status.

Biological and genetic resources leave source countries through various channels, which include individual involvement in research undertakings as a way of biopiracy.

Often local communities are not sufficiently aware of the biological and genetic resources they have. This is due to cultural differences and biased interest based on specific attachment to certain resources. Illiteracy levels are high, which is a set back on any awareness raising and capacity-building on ABS. Furthermore, the possibilities to increase public awareness about the status of biodiversity using modern communication tools and mechanisms is limited among all classes of people.

Recommendations:

- Need for country-to-country resource inventory audit and evaluation through gradual resource inventory/monitoring exercises using modern methods such as GIS, digitised maps and gene mapping to assess rates of use, enhance accountability and safeguard against biopiracy with a known resource baseline.
- Unify fragmented databases at national/regional level to provide for a strong monitoring instrument of biological and genetic resources.
- Document indigenous/traditional knowledge in special local databases without publishing it, thus leaving the knowledge under local/national protection.
- Carry out mass education/awareness on the importance of databases about biological and genetic resources of individual countries to avoid any abuse out of ignorance, to highlight the economic potential and as a tool for decision making of policy makers.
- Ensure that high level administrative and policy levels are aware of the situation at the ground regarding the changes in the status of biological and genetic resources.
- Need for devolution of relevant information to increase awareness at all levels equally and to improve stakeholders' accountability to help reducing the misappropriation of biological resources.

10. NGOs Role in the Commercialisation of Biological/Genetic Resources

Problem:

Local and international NGOs have been helpful in complementing efforts of many developing countries to achieve sustainable development and in the promotion of wise management of the environment. Furthermore, NGOs have been helpful in assisting developing countries negotiators to understand political, technical and scientific aspects underlying critical issues during intergovernmental UN meetings.

However, the positive aspects of NGO assistance is being overshadowed by the growing involvement of some NGOs in the commercialisation of and profit generation based on biological/genetic resources. It has also been sadly observed that activities of such NGOs are killing the ABS approach by promoting biopiracy activities.

Recommendations:

- National governments should stop at once the involvement of any NGO in the commercialisation of biological/genetic resources.
- National governments should enforce the code of conduct of NGOs regarding ethical action and their involvement in activities that undermine the ABS regimes.
- Capacity-building on ABS should benefit both local, national and international NGOs.
- National governments should involve NGOs in developing and implementing ABS policies, regulations and laws.

11. Civil War Situations

Problem: Civil war situations lead to a total break down of law & order. High poverty levels are leading to resource over-exploitation and additionally bad governance and some international institutions exploit local people of their biological resources. Compliance to CBD principles is difficult due to a number of pressures. Inappropriate livestock restocking after situations of war as well as drought is a major cause of a loss of farm animal diversity.

Recommendations:

- Through sub-regional bodies the African Union (AU) needs to help stop civil wars quickly.
- AU and UN need to improve their responses to war situations in Africa and provide post war assistance to implement the CBD and other conventions to help conserve the natural resource base
- AU and UN must ensure the accountability of international organizations that abuse and indiscriminately overexploit natural resources during war situations.

Further information on the process can be obtained at the workshop website www.abs-africa.info such as presented bioprospecting cases, (draft) legislations, keynotes, participants list and the agenda of the workshop.

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