

**African Leaders on Access and Benefit Sharing in  
preparation for the high-level segment of the 9th  
Conference of the Parties to the Convention on  
Biological Diversity**

**Meeting**

**Mahé, Republic of Seychelles, 10 - 12 April, 2008**

**R E P O R T**

Thursday - April 10, 2008

### Welcome by Mr. Selby Remy, MC, Seychelles

The MC highlighted the usefulness of ABS for Africa and its importance for social development and poverty alleviation.

**Dr. Ahmed Djoghla**f, Executive Secretary to the Convention on Biological Diversity (CBD), was unable to make it for the opening and his speech was read out on his behalf by Ms. Valerie Normand from the SCBD. Dr. Djoghla thanked Germany and Seychelles for organising the workshop to help prepare African negotiators for COP 9. Seychelles he added was an ideal venue for such a workshop as it strikes a balance between biodiversity and development. The 4th edition of the Global Environment Outlook (UNEP) has stated that the loss of biodiversity is a major threat to the planet and its people. The COP set up the ABSWG and mandated it to address ABS as the third objective of the CBD and to complete its work before 2010. In order to meet this deadline, awareness raising among all stakeholders is key. The Dutch German ABS Capacity Building Initiative has played a significant role in aiding the development of the African position. The Initiative has demonstrated that ABS is crucial for Africa and the challenge currently is the lack of comprehensive ABS national laws and regulations amongst some countries in Africa and the lack of capacity amongst the stakeholders. Dr. Djoghla concluded that in order to achieve an ABS regime by 2010 and to make the necessary progress towards this in COP 9 we will need political will, creativity and a spirit of compromise amongst the parties.

**H.E. Walter Lindner**, Ambassador of the Federal Republic of Germany, stressed on the importance of biodiversity and the need to develop a common African position on ABS prior to COP 9 and hoped that this preparation meeting will serve such a purpose.

**Sibi Bonfils**, Directeur Adjoint, Institut de l'Energie et de l'Environnement de la Francophonie (IEPF), provided the history of the IEPF and its impact on the environment since 1989. He highlighted its training activities focused on *capacity building* amongst the francophone countries.

**A Vision for ABS in Africa**, Keynote by Prof. Johnson Ekpere, Nigeria

**Opening** with the Environment Song « They Must Not Die » by Joe Sammy

**H.E. Joël Morgan**, Minister of Environment and Natural Resources of the Republic of the Seychelles, spoke of the spectacular biodiversity of the Seychelles whose history dates back to the time of Gondwanaland when India drifted off to Asia. This explains the extremely rare species in Seychelles such as the Jelly Fish tree of which there are only 30 left. Biodiversity in Seychelles ranges between extremes of gigantism (coco de mer) and dwarfism (frogs that can fit on your fingernail) Seychelles has a long record of environmental conservation. It was the 2nd country to sign the CBD and 45% of the limited land in Seychelles has protected area status. Climate change is a big challenge for small islands like Seychelles. In 2001 Seychelles received funding to develop its national legislation on ABS and completed it in 2005 with the assistance of the ITPGRFA. Seychelles believes that without a legally binding regime on ABS it cannot protect its biodiversity.

**Cocktails and snacks at the ICCS Lobby**

Downloads



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93 K

## The ABS Capacity Development Initiative

Friday - April 11, 2008

### Setting the Scene

**Illustrated walk through the programme**, by Claus-Michael Falkenberg, GTZ-Cameroon (facilitator)

Mr. Falkenberg introduced himself and outlined how he will be facilitating the sessions. He also presented the different stakeholders in the room (each country delegation included the minister+ country focal point) and added that Cameroon and Ethiopia were unable to attend. But on the whole we have 11 delegations who are present here (some of them will be here tomorrow). We have the co-chairs here and international and local resource persons and the francophony.

The first part of the session will be an introduction to ABS, the national delegations will speak of the constraints and challenges, then we move on to 3 examples of ABS. The first will refer to our excursion in the afternoon to Praslin island. Here we go to the Valle de Mai where we will discuss the issues relating to coco de mer and bioprospecting by the Venter Institute.

There will be a gala dinner in the evening hosted by the Govt of Seychelles.

Tomorrow we will discuss other two case studies - Novozymes from Kenya and Teff from Ethiopia. After this we will have an update by the co-chairs on the current state of play regarding ABS negotiations. Soon after we will have an expert panel that will deal with the difficult issues in the negotiations based on the case studies. Finally there will be an African co-ordination meeting to prepare for the high-level segment of the 9th COP.

**Objectives of the meeting and the format of the High-level Segment of COP 9**, presented by Dr. Jochen Flasbarth, Germany

Germany is honoured that we will be the hosts of COP 9 in Bonn. The time pressure is mounting if we need to have an international regime on ABS by 2010. 16 years after Rio all the three objectives of the CBD are yet to be adequately met. Countries have agreed that there is a need for an international regime on ABS. This implies that we need a very concrete Bonn mandate for legal negotiation for the next 2 years. The German chancellor has stated that she would like to see a regime on ABS with legally binding parts. She said everybody in the world knows that ethically we cannot go into any country and access barrels of oil from there. Likewise pharmaceutical companies must be aware that they cannot go into countries and access genetic resources without any sharing of benefits. For the first time in COP we want to invite ministers into the negotiations to push the parties to find solutions to some of the complex areas since it is the ministers who have the authority to have the final say.

This is no longer a Dutch German Initiative but also an African initiative since so many African countries have taken ownership of this initiative by participating in and collaborating with it so whole heartedly.

### The Context of Access and Benefit-sharing (ABS)

**Why the CBD needs ABS – the third objective as key factor for the success of the CBD**, presented by Dr. Ahmed Djoghlaif, SCBD

Seychelles as a country clearly demonstrates why CBD needs ABS. It has marked over 40% of its land as protected. The thousands of species of fish and the coco de mer here demonstrate the complexity and interrelatedness of life. IPCC has demonstrated that 30% of all known species will disappear by the end of the century and those countries and islands that have done very little to negatively impact the climate will unfairly suffer the most. Every minute 20 hectares of forest is disappearing. The first scientific study carried out in Seychelles in 1798 stated that every species and minerals on the land is worthy of attention.

## The ABS Capacity Development Initiative

If 2010 MDG targets have not been achieved there are reasons for it. And one of it would be the lack of an ABS international regime. But there are examples of good ABS such as the Novozymes case. Green companies are the future of the market and a number of companies are investing heavily into this. The consumers of the world are using their power to demand green and fair trade products. Some companies hesitate to indulge in biopiracy because it would lead to negative publicity and turn ethically aware consumers away from its products.

African countries have begun to fully participate and collaborate with the Dutch German Initiative and I have seen the results of this in the current ABS negotiations. I therefore pay tribute to the Initiative. I also thank the Co-Chairs for being here and ensuring that the participants will benefit from their experience. Germany has been deeply involved in aiding the development of a legally binding ABS regime and the German parliament yesterday has called for a day long session to discuss ABS in the context of COP 9 which is unprecedented.

I therefore strongly believe considering Germany's historical involvement in environmental issues there will be a new era after COP 9 in accordance with the motto of COP 9 - One Nature, One Future, Our World.

**Why the rest of the world also needs ABS: Genetic resources, business and development,** presented by Sem Shikongo, Namibia, and Dr. Andreas Drews, Germany

**Moderator:** Why is GTZ so interested and involved in this process?

**AD:** We have heard a lot on the loss and uneven distribution of biodiversity. Most of the hotspots of biodiversity are in developing countries and we know that it is crucial for sustaining the livelihoods of rural populations in Africa especially in the context of food security (agricultural diversity), medicines etc. At the same time biodiversity is important to develop medicines for everyone in the world.

**SS:** I agree with Andreas, in Namibia we are blessed with a biodiversity that is adapted to harsh climatic conditions. We have also a rich culture that is adapted to the use of biodiversity in the form of traditional knowledge that will contribute to the livelihoods and the development of medicines.

**Moderator:** Could you be more specific on the specific role of genetic resources?

**AD:** If we look at agricultural biodiversity its just wheat, maize and rice that supply most of the world's food supply, but we also know more than 30,000 of plant species that are used as food. So why should we restrict ourselves. The traditional farmers with land races are most adaptable to a changing world with the need for little external inputs. The value of the wild genetic coffee resources in Ethiopia goes from 450 million USD to 1.5 billion USD if it is adversely affected by loss of biodiversity and climate change.

**SS:** Namibia is a very dry country with a variable rain fall. We have only 8% of arable land and the problem of monoculture would imply crop failure in such a climate. The greater the diversity of genetic resources the greater the guarantee of food security in countries with climates such as Namibia.

**Moderator:** In terms of economics could you give us the value of these genetic resources in ABS?

**AD:** Though more than 35000 plant species are used worldwide for medicinal purposes but only 2000 species are being used in European markets. Over 70% of the pharmaceutical products based on plants. So obviously there is a great likelihood of benefits reaching developing countries.



## The ABS Capacity Development Initiative

**SS:** Unfortunately developing countries see very little of that money considering that we export these material in raw form and don't really get a share of the profits made from the end products. So the question for ABS is how we remedy this inequity. The Hoodia plant is an example of this where the problem is-how do we ensure that in the sales of the Hoodia, the San whose traditional knowledge is used get a share of the benefits considering that they have little knowledge of the development of products and international markets.

**The ABS principles of the CBD,** presented by Valerie Normand, SCBD

It is the equitable sharing of genetic resources that is of concern here. Art 15 of the CBD recognises the sovereignty of states. This implies that any access to GR must require PIC and MAT. Art 15 requires user countries to ensure equitable sharing of benefits stemming from research and use of these GRs.

Art 16 in the CBD deals with access to and transfer of technology stating that parties must take measures to ensure countries providing GRs have access to benefits.

Art 19 speaks of participation of countries providing GR in research and sharing of non-monetary benefits of GR.

Art 8 j states that countries must respect and preserve the knowledge and cultures and innovations and practises of indigenous and traditional communities by sharing the benefits of the use of such knowledge.

Ms. Normand also gave a history of the COPs leading to COP 9

The *Bonn Guidelines* are guidelines for states in developing national ABS regimes. It requires the participation of indigenous and local communities where the GRs are found in the process of access and benefit sharing. It provides for the different steps and stages for the development of such a system. It also provides a list of non monetary and monetary benefits that could be shared with providers of GR and associated TK when this is used by user countries.

Competent national authorities need to be designated who will authorise access to GR.

The guidelines also give process for the participation of indigenous and traditional stakeholders. Different countries are at different stages in developing ABS legislation and regulations. At present there are around 60 countries that are at various stages in development of ABS legislation. 93 countries have designated focal points of which 28 are African countries.

Capacity building was adopted by COP 7. Ms. Normand listed the *capacity building* measures that have been undertaken since.

### Brief statements by the Ministers

**Algeria:** We convey the regret of our Minister of Environment who is unable to be here. Africa through NEPAD needs to support the ABS process. We need an international binding regime on ABS. Algeria's situation is similar to that of other countries in terms of biopiracy. Algeria has set up a national center that is doing an inventory of our resources. We also have a draft law on these biological resources that is under review.

**Ivory Coast:** We convey the regret of our minister who is unable to attend this meeting. At the national level we have no legislation or provisions regarding ABS. We have a law concerning national parks but not with ABS. So we are open to biopiracy as in the case of Taumatin (sweetener). We have begun a project with the Dutch German project that applies ABS to our national parks.

## The ABS Capacity Development Initiative

We feel that ABS could give us an opportunity to provide for the long term funding of these parks. We are drawing lessons from experience on which to base our legal text for ABS. We have currently developed a legal text for ABS in the Teae national park and we want to develop legal texts for the other national parks.

**Egypt:** In Egypt we have an ancient civilisation. We also have rock art that indicates the origins of a variety of genetic resources. We have drafted the first law for regulating ABS in Egypt which was based on a participatory process that included indigenous and local communities, NPOs etc. We have also begun development initiatives with indigenous and local communities and have in turn documented their traditional knowledge.

**Kenya:** Kenya would like to propose that we go to Bonn in May to conclude some of the negotiations. Any ABS arrangements must be meaningful for local and indigenous communities. The concept of community participation in NRM has been with us for some time but it is yet to be translated into practice. Kenya already has a national ABS regime but we need capacity for this to be translated into action at the local level. We now have 'green lodges' in Kenya which is the result of the involvement of local communities.

**Madagascar:** 80% of Madagascar's population is rural and is dependant on natural resources. We have many users of traditional medicine who rely on natural resources. In 2002 the Malagasy vision was developed by the president of the republic. The action plan gives protection of the environment the pride of place. The goals 1 and 2 of the CBD have been met by Madagascar. But the 3rd goal has been neglected due to the lack of capacity and interest. We are currently developing a national policy concerning ABS.

**Namibia:** Namibia stands to lose millions of dollars from the lack of an international ABS regime to check the uncontrolled exploitation of genetic resources and traditional knowledge. The question we ask ourselves is whether we can use these resources in a way to generate profits? We cannot do this by ourselves, which is why we need to enter into agreements with those interests who have such resources and develop ourselves through technology transfer, research collaboration and *capacity building*. We therefore have a Namibian ABS bill that is due to be passed this year. Since this may take some time, in the meantime we have set up the Committee on Bioprospecting. We have also co-operated with other Southern African countries to jointly work towards conservation.

**Senegal:** We come to the negotiation with specific objectives and we need benefit sharing for the use of products. Climate change is the result of irrational exploitation of biodiversity. This environment has given both Europe and Africa an opportunity to co-operate as equals.

**Seychelles:** Seychelles is at its final stage for having its ABS law approved. We are proposing an Act with objectives: 1) facilitated access 2) limited access 3) benefit sharing. Seychelles is a prime location for bioprospecting which is why we have developed a precautionary approach to ABS. We welcome interest in our biodiversity but we have placed a moratorium on export of our GR until the act is passed in Parliament. The only exception is when we are clear of the use of the GR and the identity of the researcher. An example is the Busy Lizzy for which we have an ABS agreement. Seychelles has a single instrument (the current act) that includes both agricultural biodiversity and ecological biodiversity. Because we are small we are looking towards having a simple and easily implementable legislation. Nevertheless we do not have adequate capacity to monitor despite an ABS legislation which is why we need an international regime on ABS.

**Tanzania:** Currently Tanzania does not have an ABS legislation in place. The Environment Management Act however has a provision for the conservation and fair and equitable sharing of benefits arising from use of genetic diversity. The Minister is responsible to put guidelines in place to further this. In Tanzania we have an example of biopiracy from the Masaai's. The root of a particular tree is used for perfumes but no benefits flow to the community.

## The ABS Capacity Development Initiative

The challenges of ABS are there is inadequate awareness, absence of regulations, lack of capacity, lack of harmonisation between countries when it comes to transboundary resources. Areas of support includes a capacity needs assessment and the development of an inventory on all the known indigenous species and knowledge, a need for an information sharing system and the development of an awareness program on resources with economic value.

**Uganda:** Uganda has a set of regulations that provides for a competent authority (National Council of Science and Technology) that will oversee ABS. This authority will ensure that adequate PIC and MAT are met. The regulations provide for benefit sharing defining different types of benefits, conditions for revocation of permit and prohibition of transfer of resources to third parties. Challenges: 1) inability to distinguish between pure research and commercial research 2) lack of capacity 3) inability to enforce legislation beyond national borders 4) problem of ensuring how benefits trickle to local communities 5) cultural barriers since indigenous communities are not interested in what the government is offering as benefits 6) inability to track and monitor resources that have left the country (this is an area where the international regime can provide a possible solution) We feel that a massive sensitization process must take place across Africa on the issue of ABS. This depends on how we report the proceedings to the people in our countries. Uganda looks forward to a tracking system for genetic resources under the international regime. We need an effective enforcement system of the regime in case of breach of contract. ABS related judgement given in one country should be enforced in other countries. Certificate of origin is crucial and finally we need technology transfer in the form of research centers within the continent.

### Departure to the airport and transfer to Restaurant “Tante Mimi” on Praslin Island

### Bioprospecting experiences by the Seychelles

**The examples of Coco-de-Mer and marine bioprospecting**, presented by Denis Matatiken, Seychelles

**Marine Bioprospecting:** The Venter Institute from the US had undertaken an expedition to collect and map marine micro-organisms. They collected samples off the coast of Seychelles and now the results of their expedition are on a public database that has open access. The Venter Institute acquired a permit to access samples of marine micro-organisms in Seychelles water through the influence exerted by the US State Department on the Seychelles foreign ministry who in turn pressured the Seychelles ministry for the environment to provide Venter Institute with a permit. The problem however is that Seychelles currently lacks the capacity to monitor and track the use of its resources which implies that if information from the Venter database is used for commercial purposes then Seychelles wouldn't be able to gain any benefits from it.

**Coco de Mer:** The coco-de-mer kernels are currently exported to Singapore not as biotrade but to convert it into specific products (possibly as an aphrodisiac in Chinese medicine) and there is no clear information as to what it is being used for and hence no benefit sharing. In 2007 4800 kgs of coco-de-mer kernels was exported by a businessman from Seychelles. Coco-de-mer is also claimed to be used by Molton Brown a UK based company in manufacturing a moisturising lotion. Though the packaging of the lotion advertises that coco-de-mer is used in the lotion, the ingredients write up says that *cocos nucifera* is what is used. If the company is actually using coco-de-mer in its lotion then there is a clear case of benefit sharing. Seychelles however has not received any share of these benefits.

The name coco-de-mer is also used by the UK based company manufacturing women's erotica as a brand-name. This raises the question of whether such a move would prevent local Seychelles companies from being able to use 'coco-de-mer' as a brand name to sell their coco-de-mer products.



**Lessons learnt and national measures undertaken**, presented by Didier Dogley, Seychelles

Seychelles currently has a moratorium on the outflow of GR from the country until national legislation is in place. There are however a few exceptions where MTAs have been entered into with trusted partners. The process for developing ABS legislation in Seychelles began in 2004 and included all the different stakeholders. The drafters of the Seychelles draft ABS legislation differed from the various model laws that are in existence by excluding conventional use of GR by locals from ABS requirements. The Seychelles draft ABS law has relied on the CBD and the *Bonn Guidelines* and is currently before the parliament for approval.

The main problem confronted by Seychelles however is the inability to track and monitor the use of its GR in the absence of user country compliance legislation thereby making implementation of national legislation difficult beyond Seychelles borders difficult if not impossible. Seychelles therefore strongly supports a legally binding international regime on ABS. The unique aspect of Seychelles ABS legislation is that if a GR is found on private land then benefits from any ABS agreement regarding the commercial use of the said GR will be shared with the land owner.

### Questions and answers

### Transfer to Vallée de Mai

**Guided tour through the Coco-de-Mer palm tree forest and talk to the park authorities of the UNESCO World Heritage Site “Vallée de Mai”**





### Transfer to the Lemuria Resort

Refreshments and Informal exchange: Flip-flop talks at the pool side / beach

### Departure to the airport and transfer to the hotels

### Gala Dinner by the Government of the Seychelles at the Le Méridien Barbarons

### Downloads

	<a href="#">Mahe_04-08_Flasbarth.pdf</a>	151 K
	<a href="#">Mahe_04-08_GRValueUtilization.pdf</a>	765 K
	<a href="#">Mahe_04-08_Normand.pdf</a>	482 K
	<a href="#">Mahe_04-08_Praslin.pdf</a>	680 K



**Saturday - April 12, 2008**

### Recap of the previous day

Slide show with rapport on main findings, presented by Kabir Bavikatte, South Africa

### ABS and the Private Sector: African Examples

- Novozymes in Kenya
- Teff – an Ethiopian-Dutch Bioprospecting Case  
A film produced by German ZDF/3sat science magazine “nano”

### The ABS Negotiations: Status and Challenges

#### Rio – Johannesburg – Bonn: Highlights and milestones

Valerie Normand, SCBD

Presented on the Gap Analysis:

1. Not all countries provider and user countries have necessary legislation
2. Uncertainty amongst both providers and users due to lack of predictability
3. Difficulty in tracing and monitoring genetic resources once they have left the country
4. In situations of non compliance with laws of provider countries, access to remedies are not clear

Challenges:

1. Different types of GR used by different uses for different purposes
2. Lack of clearly defined ownership amongst providers

### The ABS agenda of COP 9 in Bonn

Fernando Casas and Timothy Hodges, Co-chairs of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing

We are working to affect a multilateral outcome in support of the domestic outcome. At the same time we are operating in a multilateral environment and need multilateral co-operation. African negotiators while being very capable need the ministerial support to ensure that their agenda is successful. The idea of ABS goes back to the time when we were negotiating the CBD. We were bringing together environment and development in the form of sustainable development. The three objectives of the CBD are interdependent- conservation, sustainable use and benefit sharing. The third objective cannot be delinked from the first two, it is a part of it. In the CBD we agreed upon a strategic plan and in 2010 we hope to have a draft international regime in the context of the MDGs and the core objectives of the CBD. One of the fundamental difficulties for negotiators is the lack of awareness in their home countries. This has been a failure and therefore a challenge to the ministers. We ask the ministers to help us to raise awareness. We also need a win-win situation at the COP 9 and everybody needs to get something out of this. Ironically it is not the habit of negotiators to identify the areas of commonality, they tend to identify differences to gain more leverage and this will change at COP 9

## The ABS Capacity Development Initiative

There is greater experience in making policy changes in developing countries than the developed countries and this is useful for us as co-chairs. There is a lack of clarity in the area of traditional knowledge, and this needs to be dealt with. We also need industry at the negotiation table because industry needs to change and they can identify how they will change in ways that feasible in terms of the market. We also need public research institutes at the table.

We spoke to ministers at the UNEP meeting in Monaco, and unless ministers step in at this stage and resolve the stalemates, it will be hard to go forward. COP is a political body and not a working group. Our problem is that subsidiary bodies like the working group are sending a lot of brackets to the COP and that will cause further problems.

Our intention in COP 9 is to get a clear sharp mandate (Bonn Mandate) for the working group to complete the negotiation and have a consolidated draft of the regime before COP 10. To do this we need a decision telling the working group what needs to be done. So we need a single basis for negotiation which was established in Geneva. In terms of ministerial involvement we need a personal commitment on the part of the ministers that they will ensure their full support for this initiative towards an international ABS regime by COP 10

### Questions:

- Have you taken into consideration the WTO position regarding the ABS regime?
- What is the WIPO link with the CBD in relation to ABS?
- Since a number of states need to still develop national legislation on ABS, would it be useful to develop a model legislation that these states can base their laws on?
- How will compliance be ensured in the international regime and how will it be monitored?
- What of compensation for past use of genetic resources?

### Answers:

This issues the CBD covers are also issues for WTO. But we have a mandate from the COP general assembly to develop an ABS regime.

ABS is not a trade negotiation, we aren't speaking of IPRs, though we have to recognise that there are trade and IPR related issues here. So we need to steer the CBD clear from these issues. In the TRIPS Council it is a point of agenda the relationship with the CBD, and it is a complex one and so also with WIPO.

The *Bonn Guidelines* are already there to help countries develop their national legislation and this should be sufficient.

We are concerned that many countries are waiting for the ABS regime in order to develop national legislation. But without some experience in developing domestic policy and legislation on ABS, it would be very difficult to realistically negotiate an international regime.

Regarding compliance this is something the negotiators would have to deal with when speaking of the regime. They have to identify gaps between the domestic world and the international world.

### Experts panel and open discussion: Africa and the ABS challenge

Samuel Diemé (Senegal), Dr. David Hafashimana (Uganda) and Sem Shikongo (Namibia)

## The ABS Capacity Development Initiative

### What are the main challenges for the COP 9 negotiations from the African position?

#### Samuel Dieme (Senegal):

- We are losing our GR and TK without getting anything in return
- The international regime is making headway faster than the local development of legislation. This is of serious concern since it should be up to us at a national level to have the necessary laws and regulations in place to support the international regime
- Our ministers need to become aware of this urgency
- We therefore need to create a lot of awareness raising at a local level

#### David Hafashimana (Uganda):

- In what capacity do we involve the Ministers in COP 9? Will they be in the contact group? If so how do we address the fact that contact group will be frank and hard negotiation while ministers need to be diplomatic?
- Delegations have held us at ransom in the previous meetings where they say they have to consult their capitals before they come to any conclusions- here we can avoid this since the ministers will be at COP 9 and they can get the necessary decision that we need to move forward
- African negotiators need to get a sense of where the other groups are heading and we need to return to the Johannesburg mandate on an international regime to ensure fair and equitable benefit sharing, because access has always been happening and will continue to happen

#### Sem Shikongo (Namibia):

- We need to know what we can live without and what we cannot live without? We currently have a wish list, but we need to be clear as to the things we are willing to give up, to get what we most want?
- We need a legally binding regime since the *Bonn Guidelines* are voluntary and insufficient to ensure compliance
- We need to be ready in Bonn to go beyond the mandate of legally binding regime- we need to also focus on 'scope' and have to take the necessary initiative in this regard
- We also have to look at the budget for future meeting since we hear that Japan plans to push for budget cuts
- Some LMMCs states overlap with the African Group and there are points of differences between these groups, so we need to bear this in mind
- We must continue at the national level to put in place necessary ABS national measures
- We need to take the initiative and bring more countries into a united negotiating block which will increase our leverage

### African coordination

#### Official position of the African group on the international regime on Access and Benefit Sharing under the Convention on Biological Diversity

The current document is a comprehensive statement of the position of the African Group of countries. This position has emerged as a result of intensive discussions within African Group at their co-ordination meetings during the six sessions of the Ad Hoc Open Ended Working Group on Access and Benefit Sharing negotiating the International Regime on Access and Benefit Sharing.

## The ABS Capacity Development Initiative

The current document speaks to the co-chair's paper emanating from the 6th Access and Benefit Sharing Working Group Meeting that took place in Geneva, Switzerland in January 2008. The co-chair's paper provides an outline of the issues regarding the International Regime on Access and Benefit Sharing on which a consensus has been reached (bricks) and issues which need further negotiations (bullets). This paper is available on the website of the secretariat of the Convention on Biological Diversity.

### Principles of ABS

The following are fundamental principles for access and benefit sharing that has emerged out of the debates around it so far:

1. States have sovereign rights over their biological and genetic resources
2. Activities that involve access to genetic resources and associated traditional knowledge should be in accordance with the Convention on Biological Diversity
3. Access to genetic resources and benefit sharing is vital for conservation and sustainable use of biodiversity
4. It is essential to establish conditions that facilitate access and support scientific research while honouring principles of prior informed consent, compliance and benefit sharing
5. It is essential to share fairly and equitably the benefits arising from the use of biological and genetic resources and associated traditional knowledge and their derivatives and products with the country of origin.
6. Essential to honour terms and conditions under which the genetic resources are acquired
7. Indigenous and local communities must be involved in all issues regarding access and benefit-sharing especially in cases where they traditional knowledge, innovations and practices are involved as it relates to biological and genetic resources their derivatives and products

### Objectives of the International Regime:

Effectively implement the provisions in Art 1, 8 (j), 15, 16 and 19 (2) of the Convention and its three objectives, specifically

1. By regulating transparent access to GR (genetic resources), associated TK (traditional knowledge), their derivatives and products
2. Ensuring conditions and measures for fair and equitable sharing of benefits arising out of the utilization of GR, associated TK, their derivatives and products to their prevent misappropriation and misuse.
3. To support compliance with provisions of the CBD with national laws and requirements, including PIC and MAT of countries of origin and countries legally providing genetic resources, associated TK and their derivatives

### Scope of the International Regime

The scope of the IR (international regime) on ABS shall among others include:

1. All relevant provisions of the CBD.
2. All BR (biological resources), GR, derivatives, products and associated TK, innovations and practices
3. All benefits arising from the commercial and other utilization of BR, GR, derivatives, products and associated TK, innovations and practices.
4. All benefits arising from the commercial and other utilization of BR, GR, derivatives, products and associated TK, innovations and practices from the coming into force of the CBD.
5. All continuing benefits arising from the commercial and other utilization of BR, GR, derivatives, products and associated TK, innovations and practices taken prior to the coming into force of the CBD.
6. All BR, GR, derivatives, products and associated TK, innovations and practices within national jurisdiction and of a transboundary nature.



## The ABS Capacity Development Initiative

The scope of the international regime on ABS shall exclude:

All species listed in Annex 1 of the ITPGRFA unless they are used beyond the purpose of the said treaty.

### Nature of the International Regime

The international regime should be legally binding. In addition, it should stress more co-operative enforcement between parties and not refer conflicts primarily to private international law, which is not only expensive, but also a strain on resource poor countries.

### Components of the International Regime

#### Fair and Equitable Sharing of Benefits

Conditions to promote and safeguard benefit sharing:

The IR on ABS shall ensure that measures and conditions are taken at the international level to promote and safeguard the fair and equitable sharing of benefits arising from the use of BR, GR, their derivatives, products and associated TK

1. Fair and equitable sharing of benefits arising from use of BR, GR, derivatives, products and associated TK
2. Minimum conditions and standards in IR for sharing of benefits
3. Access shall be linked to minimum benefit sharing arrangements
4. Benefit sharing for derivatives and products must be covered by IR
5. Multilateral benefit sharing options for BR and GR whose origin is not clear or transboundary BR and GR
6. Monetary and non monetary benefits for every use, in line with elements listed under appendix 2 of the *Bonn Guidelines*
7. Facilitating access to and transfer of appropriate technology by parties/ private sector on concessional and preferential terms
8. MAT must stipulate benefit sharing arrangements on derivatives and products
9. Benefits should be directed towards conservation and sustainable use of biodiversity and socio-economic development in countries of origin
10. Establish trust funds for trans-boundary genetic resources and associated TK
11. Ensure effective participation, involvement and inclusion of indigenous and local communities through PIC, MAT and benefit sharing processes

#### Access

The IR shall ensure that access to BR and GR, their derivatives, products and associated TK be conditional on fair and equitable benefit sharing arrangements, contributing towards socio-economic development of the country of origin/legal provenance, sustainable use of biological resources, transfer of appropriate technology associated with BR and GR, their derivatives, products and associated TK being accessed and shall be subject to:

1. National sovereignty
2. National competent authority
3. National legislation/requirement (Art 15.1 and 15.5 )
4. Environmentally sound uses
5. PIC and MAT from contracting party or as otherwise provided by national law/regulations/requirements
6. Sharing results of R and D and results commercialization and other utilization with provider countries
7. Transfer of appropriate technology associated with BR, GR, their derivatives, products and associated TK being accessed
8. Protection and enforcement of associated traditional knowledge and practices

## The ABS Capacity Development Initiative

### Compliance

The compliance mechanism of the international regime shall ensure that access to BR, GR, their derivatives, products and associated TK and benefit sharing mechanisms shall be mutually enforceable both in provider, user countries and other parties in conformity with CBD obligations and national law/regulations/requirements of provider country regarding access and benefit sharing.

Measures to ensure compliance shall include but not limited to the following:

- Reporting systems
- Tracking systems
- Speedy and effective enforcement of contracts in case of breach
- ABS related judgments passed in one party should be mutually enforceable in all other parties (liability and redress)
- Certificate of origin/source/legal provenance
- Certificate of compliance with national laws/ regulations/requirements and CBD obligations
- Disclosure of origin of genetic resources, derivatives, products and associated TK in IPR applications in all relevant fora
- Transfer of technology
- Sanctions for non-compliance

### Capacity Building

Capacity building measures shall be undertaken at all relevant levels in both user and provider countries to ensure effective implementation of the IR. Capacity building measures shall include but not limited to:

1. Establishment of a financial mechanism to address the issue of *capacity building*.
2. Development of capacity for legislation on ABS issues.
3. Enhancement of capacity of negotiators and stakeholders
4. Building of capacity for information and communications technology on ABS at all national focal points.
5. Building of capacity to prevent misappropriation, misuse and bio-piracy
6. Building of capacity of local and indigenous communities
7. Building of capacity of national focal points
8. Ensuring that national capacity self assessment will be the guideline for minimum *capacity building* requirements i
9. Capacity building should include, but not limited to valuation of genetic and other natural resources, valuation of TK and Innovations, negotiations of legal contracts, bio prospecting/associated research methods and relevant equipment for such research and taxonomic studies. Conservation and sustainable use of natural resources and inventorying/documentation of genetic resources and technologies for monitoring and tracking of genetic material.

### Traditional Knowledge

The IR shall include measures to ensure the full and effective participation and involvement of ILCs (indigenous and local communities) in decision making, PIC and MAT and the sharing of benefits arising from the use of their GR, innovations, practices and associated TK.

- The IR shall ensure a declaration to be made on the certificate of origin/source/legal provenance as to whether there is any associated TK and who the owners of the TK are
- The IR should recognise the rights of communities to control use including future use of GR and associated traditional knowledge in the context of benefit sharing agreements
- The IR shall ensure that measures for *capacity building* shall be undertaken among ILCs to ensure their effective participation in ABS related issues.

## The ABS Capacity Development Initiative

### Brief Overview on Other Agenda Items of COP 9

Jochen Flasbarth, Director Department of Nature Conservation, German Federal Ministry for Environment, Nature Conservation and Nuclear Safety

### Protected Areas (Life Web Initiative)

#### Forests

#### Biofuels

#### Biodiversity and climate

#### Innovative Financial Mechanisms

### Official Closing of the Meeting

**Minister Seychelles:** The meeting was highly successful for our position in COP 9. I am happy to say that we believe that Africa is well placed. I extend my sincere thanks on behalf of the participants to all of you who have made this happen. Now it is our responsibility to speak to our fellow ministers to establish the way forward. We have to do our part to protect our interests. The responsibility has been placed on us to be the champions for Africa and I wish to reaffirm that we will go into COP 9 with a business like attitude with what we would like to see in the future. I welcome the leadership of Germany and I welcome the restructuring of bureau. We are putting our trust in you co-chairs and executive secretary. We have a duty not only to our children but also for those who do not have a voice and for the species of plants and animals. On the part of the Seychelles government I give you my undertaking that we will do our utmost to further this process. I would like to extend an offer of the Seychelles to host more such expert meetings in the future.

### Informal beach barbecue at the Le Méridien Barbarons

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