

Sixth Pan African Access and Benefit Sharing Workshop

Limbé, Cameroon, 30th January – 3rd February 2012

OUTLINE

Organisers

Facilitated by the **Access and Benefit Sharing Capacity Development Initiative** and hosted by the **Cameroonian Ministry of Environment, Protection of Nature and Sustainable Development** and the **Central African Forest Commission**.

Background and short overview of the Workshop

Since 2006, the Access and Benefit Sharing (ABS) Capacity Development Initiative (ABS Initiative) has convened five Pan African workshops as well as numerous training courses and workshops with a regional or issue based focus, playing a critical role in building capacity on ABS issues in Africa. This Sixth edition of the Pan-African ABS Workshop took place after a transition year of fruitful activities addressing the challenges of a coherent, effective and harmonised implementation of the Nagoya Protocol on ABS adopted at the 10th Conference of the Parties to the Convention on Biological Diversity (CBD) in October 2010.

The success of this workshop was assured by the very enthusiastic participation of more than 110 participants from the African continent. During the first three days of the workshop, participants engaged in lively discussions on valorisation approaches and sustainable value chain development linking ABS, biotrade and scientific research on genetic resources (GRs). The field visit at the foot of Mount Cameroon allowed the participants to explore in greater detail the national case of the *Prunus Africana* value chain. The rich discussions on the exploitation and commercialisation of *Prunus Africana* showed clearly the need to develop appropriate legislative frameworks that will provide legal certainty with respect to ABS issues and ensure the protection of traditional knowledge (TK) associated with GRs.

The last two days provided participants with the opportunity to exchange views and valuable experiences on African and international processes relevant for national, sub-regional and regional ABS implementation. Further, participants discussed, based on a gap analysis report on the African Model Law (AML), the possibility of the development of practical guidelines for the implementation of the Nagoya Protocol in Africa. Finally, a proposal, coming from the expert workshop on ABS and Intellectual Property Rights (IPRs) in Addis Ababa, for the development of templates for Prior Informed Consent (PIC), Mutually Agreed Terms (MAT) and the International Certificate of Compliance formed the basis of fruitful debates.

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Objectives of this workshop

The overall objective of the first three days of the workshop was to provide the participants, including private sector representatives, a forum to:

- Explore national and regional experiences on the development of sustainable ABS value chains as well as approaches for addressing the transboundary nature of many biological and genetic resources, including, where relevant, associated TK.
- Discuss African and international processes relevant for national, sub-regional and regional ABS implementation and the need to consider the establishment of a Global Multilateral Benefit-Sharing Mechanism (GMBSM) (for further detail please see the workshop outline available to download on the ABS Initiative's website).

Day One

1. Welcome and Introduction

Dr Drews along with a panel of official representatives welcomed the participants and outlined the objectives of the workshop. Participants introduced themselves and gave a brief overview of their professional background and work to their neighbours.

2. From Marrakech to Limbé

Mrs Barbara Lassen from the ABS Initiative, Germany provided a detailed overview of the activities and work achieved since the Fifth Pan African ABS Workshop drawing attention to the shift of the ABS Initiative's work to practical activities for ABS national implementation such as providing support to national frameworks, undertaking a gap analysis of the AML, identifying ABS value chains that could provide successful models and supporting Bio-Cultural Community Protocols (BCPs). Mrs Lassen indicated that the importance of Communication, Education and Public Awareness (CEPA) on ABS had been highlighted throughout the year in expert meetings and sub-regional workshops and informed the participants about the early launch of an ABS CEPA toolkit and movie on ABS. Mrs Lassen concluded her presentation by giving a glimpse of the future of the ABS Initiative, underlining again the changes in areas and mandate. She gave a particular attention to the development of the Biodiversity and Protected Areas Management (BIOPAMA) project funded under the European Commission (EC) for African, Caribbean and Pacific (ACP) regions and implemented in co-partnership by the EC Joint Research Centre, the IUCN¹ and the GIZ² which will be responsible for the ABS component of the project. For further details, please refer to the presentation available for download on the ABS Initiative's website.

Following this, a **twenty minutes long film**, entitled *People, Plants and Profits - The Nagoya Protocol on Access and Benefit-Sharing in the context of three bioprospecting examples from Africa* and produced by the ABS Initiative, was presented to the participants. The movie illustrates the basic principles of ABS in the context of the Nagoya Protocol, with the help of three African cases (Hoodia (South Africa), Argan (Morocco) and Teff (Ethiopia)).

¹ The International Union for Conservation of Nature

² Die Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH

3. ABS Implementation in Africa: State of the Art

This first panel discussion highlighted how political circumstances influence different ABS implementation processes at the domestic level. Three panellists (Professor Ahmed Birouk (Morocco), Lacticia Tshitwamulomoni (South Africa) and Dr Naritiana Rakotoniaina (Madagascar) commented on the different situations in their respective countries. In South Africa, the current framework addressing ABS issues is being revised to incorporate the Nagoya Protocol which the country aims to ratify later this year. The ABS implementation process in Madagascar, on the other hand, has been quite challenging due to political instability. Nevertheless, progress was made and an ABS communication along with a work plan had been prepared with the support of the ABS Initiative to be submitted to the government. In Morocco, the ABS implementation process has accelerated since the Marrakech ABS workshop with the establishment of a special committee. Several competent authorities from various sectors, coordinated by the Ministry of Environment, are supposed to collaborate on the country's ABS implementation process. The three panellists further expanded on the significance of National Biodiversity Strategy and Action Plans (NBSAPs) in the development of their respective ABS legislation. In South Africa, the NBSAP process and the development of a relevant national legal framework for ABS were two parallel processes. In Madagascar, NBSAP and ABS implementation was described as a semi-integrated process, while in Morocco, both implementation processes had been integrated in the development of the country's national strategy.

The issues raised in the subsequent discussion were, among others, the following:

- Ratification of the Nagoya Protocol: it is not a requirement to have ABS legislation in place and countries have different approaches.
- For already existing ABS legislation, such as in South Africa, the Nagoya Protocol brings new obligations and requires modifications of the existing law accordingly.
- The involvement of Indigenous People and Local Communities (ILCs) differs from one country to another. In South Africa, any piece of legislation goes for consultation to all stakeholders, including ILCs. Morocco has 12 regions and tries to balance the representation and participation of ILCs in each region. ILCs were not represented up to now in Madagascar, but this issue is being addressed in the current work on new legislation.

4. Valorisation Approaches: Experiences with Non-Timber Forest Product Value Chains

Mr Chris Dohse from TreeCrops Ltd (TCL), Malawi, presented on the valorisation approach used for three Malawian wild plant products that TCL is currently trading: Baobab – a biotrade case, Strophanthus Kombé – illustrating TCL's internal benefit sharing scheme, and Phyllanthus Engleri – a potential ABS case. For further details, please refer to the presentation available to download on the ABS Initiative's website.

Mr Pierre du Plessis from the Centre for Research Information Action in Africa Southern Africa Development and Consulting (CRIAA SA-DC), Namibia, presented on Namibia's innovative national 'pipeline approach' which aims to pro-actively create sustainable economic opportunities based on harvesting, processing and trading indigenous plants and natural products. For further details, please refer to the presentation available to download on the ABS Initiative's website.

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The discussions resulting from this first set of presentations included, among others, the following issues:

- The trade of Baobab plant products does not fall under the ABS framework, as no research on the biological or genetic resource takes place.
- The benefit sharing scheme developed by TCL is not related to the Nagoya Protocol. The levy or premium paid is negotiated with the communities. These are generally not fixed except in Fair Trade cases. The communities then decide on how they want to spend the money. “ABS” in that context is therefore seen as a wider approach.
- To do some research, a PIC from the country of origin of the plant is necessary. For research on plants with no associated TK, a PIC is also required but not with respect to TK.
- The communities are generally less benefiting from the profits arising along the value chain. Improving the negotiation between the importers and exporters is therefore crucial. To do so, it is essential to have a good understanding of the market(s).
- To avoid any conflict, it is essential to set the terms of collaboration very clearly in the MAT.

Official Opening and Welcome Reception

The day ended with the official opening of the workshop and a welcome reception hosted by Cameroonian Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED) at the Seme Beach Hotel.

Day Two

Field Trip to Mount Cameroun: The *Prunus Africana* Case

1. Introduction to the *Prunus Africana*

Prior to the field visit to the *Prunus* area at Bokwongo Village where the participants had the opportunity to observe a demonstration of *Prunus* bark harvesting and visit the processing facility of the Mount Cameroon *Prunus* Management Company (MOCAP), a series of presentations introduced the *Prunus Africana* Case in the Cameroonian context at the University of Buéa.

Mr Henri Charles Akazou Zedong and Mr Samuel Eben Ebai from the Cameroonian Ministry of Forestry and Wildlife provided detailed information on the Mount Cameroon *Prunus* Management Plan, relevant aspects of the Forest Law and protected areas regulations. They further elaborated on the Convention on International Trade in Endangered species of Wild Fauna and Flora (CITES) regulations and indicated that export permits as well as certificates of origin were mandatory to export *Prunus*. As of 2011, regulations were revised and a resource management plan, among other requirements, also became compulsory for *Prunus* exporters. Taxes for regeneration depend on the quantity exploited and contracts have to be approved by government. The Ministry of Scientific Research advises the government on quota for exploitation through yearly reports. For further details, please refer to the

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presentations available to download on the ABS Initiative's website.

Mr Okenye Mambo from GIZ Cameroon presented a comprehensive overview of the *Prunus Africana* value chain. His presentation provided detailed information on the various actors and institutions involved with different agreements, processing of permits required at local, national and international levels for the export of *Prunus Africana*. Mr Mambo also shared insights on the nature of value adding and production schemes, whilst on the other hand, highlighting the lack of information provided by users on the product development process. He concluded with a list of the major international companies involved in the *Prunus* extract production and a summary of products of *Prunus* origin found in selected European countries. For further information, please refer to the presentation available to download on the ABS Initiative's website.

Mr al-Janabi presented a scheme of the value chain of the *Prunus Africana* from Cameroon to Europe while introducing two end products: the Poldanen and Prostatonin, medicines used in the treatment of benign prostatic hyperplasia. For further details, please refer to the presentation available to download on the ABS Initiative's website.

Mrs Galega and Mr Charles Ossou Zolo from MINEPDED, Cameroon, emphasised the need for a coherent ABS and Forest Governance Framework in Cameroon that will address cases such as the *Prunus Africana* case. They provided information on the national implementation of the Nagoya Protocol in Cameroon and the various actors involved in this process. The presenters concluded by exploring the interfaces between ABS and the current non-forest timber product regulations while highlighting ways and means to promote ABS in Cameroon. For further details, please refer to the presentation available to download on the ABS Initiative's website.

2. Reflecting on the *Prunus Africana* Case

The field trip was concluded by a Panel Discussion which took place at the University of Buéa. The discussions included, among others, the following issues:

- The role of communities: they are the best protectors of the *Prunus*, as they identify themselves with this resource.
- Prices for *Prunus*: are negotiated to the highest bidder of the market. In 2006, it was CFA³ 260/kg, in 2011, CFA 350/kg (for the communities).
- *Prunus* is traded mainly with Spain and France. The Ministry of Forest gives authorisations and sets export quotas. When authorisation is granted, intermediaries can choose in which forests they would like to work. Depending on user demands, the *Prunus* is provided in either chopped bark, bark powder or dry bark.
- Communities and intermediaries have no information about who is further involved in the value chain and how the bark is used further down the value chain (e.g. on research etc.).
- Disclosure of the origin is also of growing importance for final buyers/consumers and governments should aim for this requirement through, e.g. appropriate ABS legislation.

³ Franc of the African Financial Community

- Is *Prunus Africana* rather a biotrade case with some level of fair trade? Does it fall under the scope of the Nagoya Protocol? Who should provide PIC - the communities, the government or the intermediary?
- A classic market approach is inappropriate in the *Prunus* case as the market/value chain is not very clear. Proper information is difficult to find. Article 11 of the Nagoya Protocol becomes very important for a common approach to provide for a unified standard. Countries exporting the same GRs should work together to address price and other ABS related issues.
- Because of the possibility of synthesising each active component of any plant, companies/organisations will not need any PIC to put end products on the market.
- The end market price of *Prunus* is difficult to define. The market price of an end product such as Poldanen and Prostatonin is approximately €30 for a box of X tablets, each tablet containing X quantity of *Prunus*.
- Importance of developing sustainable value chains and developing relationships with the private sector: already some providers and users are committed to the sustainable use of *Prunus* and other resources in Cameroon. It is therefore essential to build on this and encourage further dialogue, workshops and elaboration of a strategy with all the stakeholders.

Day Three

1. Reflecting on the *Prunus Africana* Case (Cont.)

Mr Pierre du Plessis and Mr Julien Chupin, Independent Consultant, France, provided a private sector view on the *Prunus Africana* case and stressed the importance of developing sustainable value chains from providers to consumers and of involving the private sector in the process. Some of their more general recommendations for the utilisation of any GR that could trigger an ABS process were as follows:

- Find out if there is a legislation in the concerned supplying country – if yes, importance of compliance.
- Understand that the life cycle of an ingredient can last up to ten years (from research to market). If an active molecule is found, a new PIC needs to be established.
- Implement good practices – ILCs' involvement from the start is essential.
- Revise existing pricing strategies to generate higher benefits for the communities.
- Investigate where patents for each product exist.
- Reach out to consultants as they are specialised in this specific sector.
- Understand how the market works and which other products compete in that market segment.
- Understand the levels of value added in the production chain.
- Know who has the market authorisation to market a specific product and liaise with the holders of IPRs.
- Investigate the scale of the opportunity and the viability of the product.
- Find out what other extraction is done in the region with respect to other resources.
- Don't raise too high expectations when introducing ABS.

- Develop a good relationship with the private sector which could help with all the above issues/approaches.
- Develop a regional cooperation would also be useful around all these issues.

Dr Harmut Meyer, Independent Expert, Germany presented a generic value chain mapping tool and explained – using examples based on the existing utilisation of *Prunus Africana* and associated TK – current transfer paths of plants and associated TK between the different actors as well as the contract types and IPRs that are used by these actors. For further details, please refer to the presentation available to download on the ABS Initiative's website.

The following discussions highlighted the challenges to put all the aspects of a value chain into one model. However, it was suggested to develop a workshop specific to value chain analysis. Participants were invited to forward their additional comments on the generic value chain mapping tool to the ABS Initiative.

2. ABS and Non-Commercial Research

This Panel Discussion focussed on the opportunities and challenges encountered by non-commercial research to address ABS related issues. Focal Points and researchers were invited to provide their perspectives on the research collaborations presented.

Professor Simeon Kouam from the University of Yaoundé 1, Cameroon, provided a brief overview of the collaboration between the Universities of Yaoundé and Dortmund which main objective is to research biologically active chemical components of plants for possible use in drug development. He highlighted the institutional and national benefits of the research collaboration, such as the exchange of academic knowledge and skills development via a researcher and student exchange programme, the valorisation of natural resources and the contribution to improved public health. He concluded by underlining that, in the development and implementation of ABS policies and legislation, special considerations should be given to research. For further details, please refer to the presentation available to download on the ABS Initiative's website.

Dr Fernand Gbaguidi from the University of Abomey-Calavi, Benin, gave a brief overview of the research collaboration between the Universities of Abomey-Calavi and Louvain on the study of the different usage of medicinal plants in the traditional pharmacopoeia with a special attention given to plants traditionally used to treat malaria. He then indicated that this collaboration has been very fruitful and provided for, among others, three PhD programmes and a new laboratory with specialised equipment for the University of Abomey-Calavi. Dr Gbaguidi concluded by highlighting that ABS could be very beneficial to the successful establishment of research collaboration. For further details, please refer to the presentation available to download on the ABS Initiative's website.

The main issue raised by Prudence Galega, Cameroon and Bienvenu Bossou, Bénin, both ABS Focal Points in their respective countries, was the obvious communication gap between the relevant actors, such as the national government and the university of the provider country with respect to ABS, which needs to be addressed. Key ABS actors were largely absent in the institutional arrangements established in both collaborations. Further, no details about existing or planned patents were provided, though the research objectives seemed clearly to be commercial. Unfortunately, no benefits seem to come back to the broader communities though they play a major role in the preservation of the resources. Thus, institutional arrangements/contracts have to refer to ABS and clearly indicate when research

findings/results are based on TK. All stakeholders, especially the populations/ILCs concerned by the process, have to be involved from the beginning.

Dr Jean-Dominique Wahiche from the National Museum of Natural History, France, emphasised the three key aspects which relate to ABS. First, any valorisation contract of GRs needs to include provisions with respect to shared ownership of intellectual property, as well as to co-publications, knowledge and equipment transfer, student exchanges, capacity building etc. Further, one has to keep in mind that generally, this kind of basic research brings very little financial benefit in the end. Finally, you will always face challenges in terms of transfer/exchange of GR materials/specimens and traceability of these materials/specimens. There should be no transfer allowed to a third party without a new agreement and if valorisation takes place, the contract needs to be revised with all the stakeholders.

The discussion was then opened to the plenary. The following points, among others, were raised:

- The important role of traditional healers in introducing the knowledge has to be recognised, identified and regulated at national level.
- The commercialisation of GRs and associated TK is very complex; monetary benefits may occur, but the real success rate of a high return is very low.
- ABS can assist with the successful establishment of research collaboration and related contracts.
- Importance of defining TK and tradi-practitioner.
- The synthesising of active ingredients is a topic that has to be part of ABS discussions.
- From a health safety perspective, the exchange of information on plants between researchers and tradi-practitioners is important because warnings can be issued about the toxicity of some plants used or sold on the market.
- Importance of user measures to be put in place to address the issue of when there is a change of intent, i.e. when non-commercial research turns into commercial research.

3. Article 11 of the Nagoya Protocol and Transboundary Cooperation

Mr Chouaïbou Nchoutpouen from the African Central Forest Commission (COMIFAC), Cameroon, presented on the collaboration of ten Central African countries using the COMIFAC framework and its sub-regional convergence plan to implement Article 11 of the Nagoya Protocol and highlighted further opportunities for cooperation for ABS implementation in the sub-region. For further details please refer to the presentation available to download on the ABS Initiative's website.

Key points raised in the question and answer session that follows included:

- The COMIFAC recognises the importance of the ILCs and mentions them in one directive for their commitment to the sustainable management of forest systems in Central Africa. Ratifying the International Labour Organisation Convention 169 is, however, an individual matter for each country of the sub-region to decide upon.

- The COMIFAC approach is a good example to guide the African Commission and to enhance synergies in other sub-regions or regions.
- The drive and positive outcomes of the work of the COMIFAC result from a political will of the various governments.
- Article 11 does not prevent a country to deal individually with these issues and enter into ABS agreements. Countries can develop national frameworks that actually take into account ILCs from other regions, who share the same resources and/or TK.
- African countries must work together on ABS implementation and facilitate exchanges between each other.
- The COMIFAC is currently in the strategic and operational phase of the implementation process. It will now proceed with the development of directives and address the issue of access to shared GRs and determine the responsibilities of each party.
- The COMIFAC consulted all existing instruments (Bonn Guidelines, the AML, etc.) to draft a harmonised strategy for the region and sub-region that will address the issue of shared GRs and TK.

4. Article 10 of the Nagoya Protocol

Mr Morten Walløe Tvedt from the Fridtjof Nansen Institute, Norway, reported on the outcome of the deliberations and first preliminary discussions of first reflection meeting on the need for and modalities of a GMBSM under the Nagoya Protocol (Article 10) hosted by the Fridtjof Nansen Institute (FNI) in March 2011 in Lysaker, Norway. Mr Walløe Tvedt strongly emphasised that the discussions were in no way meant to lead to any agreement or, pre-determine and pre-empt the official deliberations on this issue which are scheduled to take place during the second meeting of the Open-ended Ad-Hoc Intergovernmental Committee for the Nagoya Protocol (ICNP-2) on ABS later this year⁴. For further details, please refer to the presentation available to download on the ABS Initiative's website.

The following points were raised during the subsequent question and answer session:

- Transboundary GRs are not the issue in Article 10. Article 10 was introduced to open a door to discuss what can be done with regard to GRs accessed before the Nagoya Protocol.
- Benefit sharing is not only in exchange for access. It is for conservation of biodiversity within the objectives of the CBD. Article 5.1 needs to comply with it. These are two compelling arguments for having such a Multilateral Benefit Sharing Mechanism.
- Article 10 aims to open ways to discuss the utilisation of GRs even if there is no PIC – the preservation of biodiversity is the incentive for such a multilateral system. The nature/format of the fund needs to be discussed. Article 10 is not meant to challenge the right/obligation for individual PIC/MAT. It aims to create an incentive for users of GRs outside regular PIC and MAT schemes to do what the Nagoya Protocol is encouraging – i.e. the sustainable use of biodiversity.

⁴ Walløe Tvedt, M. (2011). A report from the First Reflection Meeting on the Global Multilateral Benefit sharing Mechanism, Fridtjof Nansen Institute 10/2011 (available at <http://www.fni.no/doc&pdf/FNI-R1011.pdf>)

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- Article 10 will be a gradual process– bringing the idea of a multilateral approach and countries together to redistribute the resources equitably.
- The GMBSM could be used as an innovative mechanism to foster a green economy.
- It is not possible to grant PIC for GRs from the high sea, or for genomes that are common to most organisms.
- Some EU countries will probably not require a PIC. Germany is a concrete example of a country that does not require a PIC in its national framework.
- Article 10 was introduced with regard to the GRs where the origin is unknown. The African Group should discuss this issue to make a concrete proposal on this article.

5. Panel Discussion

The subsequent Panel Discussion addressed both Article 10 and 11 of the Nagoya Protocol, and looked at the transboundary issues and the creation of a GMBSM in the context of a regional and harmonised approach to the implementation of the Nagoya Protocol. The discussions included, among others, the following issues:

- Implementing practical measures in the sub-region for countries to cooperate is essential, especially with regard to transboundary issues.
- The experience of the COMIFAC could be used in other regions. Such a regional approach would foster a harmonised implementation of the Nagoya Protocol.
- All countries under the COMIFAC have adhered to the recognition of the rights of ILCs and they have been involved in the COMIFAC decision process and the management of GRs.
- ILCs should not only be involved when it is convenient for parties but when relevant.
- The Southern Africa Development Community (SADC) has not been very proactive with regard to ABS with the exception of the development of PhytoTrade.
- Political will is a fundamental element for the cooperation between countries to develop the relevant means and expertise. Building political capacity is necessary to see such political decisions and will emerging. The example of the COMIFAC illustrates this very well.
- Each ethnic group has its own TK. Only few ILCs share the same TK. It is therefore important to identify this first.
- No consensus was achieved during the reflection meeting on the need for and modalities of a GMBSM, but developing this mechanism, step by step, first as a voluntary mechanism, is strongly recommended.
- PIC cannot be obtained for GRs accessed prior to the Nagoya Protocol but if these GRs still generate benefits, they will be considered.
- A multilateral mechanism could be a solution for companies/organisations to contribute and compensate for not being able to do a PIC or any other agreements.
- ILCs should not only be involved when it is convenient for parties but when relevant.
- There should be always an effort made to get PIC. Entering into an agreement with a particular community with respect to a specific TK should not prevent another community or other communities to enter into agreements as well. However, problems come when IPRs are involved: *Hoodia* is a very good example. The Nama people in Namibia, who also shared related TK, were forced to pay benefits to the

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San. The issue was finally resolved, but it was not an ideal way to deal with the situation.

Day Four

1. The ABS Process: “Where are we at international level?”

Mr Olivier Rukundo from the Secretariat of the CBD, Canada, reported on the establishment of the ICNP as an interim governing body for the Nagoya Protocol, as well as gave a brief overview of upcoming meetings. Mr Rukundo also reported on the status of signatures and ratifications of the Nagoya Protocol and informed the participants that the CBD is considering another approach to assist countries in their ratification process. For further information, please refer to the presentation available to download on the ABS Initiative’s website.

In the subsequent discussion the following issues/comments were raised:

- The SCBD is executing a medium-sized project funded by the GEF to provide support for the ratification and the early entry into force of the Nagoya Protocol through a series of awareness-raising and capacity building activities. However, it is important to note that this fund is not intended to support concrete ratification implementation processes and activities at the national level.
- To speed up the ratification process, the SCBD is also promoting the Nagoya Protocol on ABS and visiting countries. It generally takes a few years for a protocol to come into force. Countries have different approaches to ratification, different legislation and internal procedures. Financial support from GEF for this will be discussed in the next session.
- Rio+20’s main theme is the green economy. However, neither ABS in general, nor the Nagoya Protocol are part of the green economy while the Nagoya Protocol represents the first protocol for payment for ecosystem services. How far will ABS and the Nagoya Protocol be integrated in Rio+20?
- SCBD is planning a series of events, among others, the global summit of negotiators. ABS will be one of the items to be discussed. The CBD is also setting up an ABS Pavilion for Rio+20.

2. ABS at the Global Environmental Fund

Mr Jaime Cavalier gave a brief overview of the Global Environmental Fund (GEF) and highlighted that GEF grants were provided to developing countries and countries with economies in transition for projects related to, among others, biodiversity, climate change and land degradation. He then explained that the System for Transparent Allocation of Resources (STAR) and the Nagoya Protocol Implementation Fund (NPIF) were the two separate financial mechanisms to support ABS implementation. The STAR provides funds under the biodiversity allocation to carry out activities to comply with the provisions of the Nagoya Protocol. The NPIF focuses on opportunities leading to ABS agreements between users and providers, technology transfer components and the engagement of the private sector. For further details, please refer to the presentation available to download on the ABS Initiative’s website.

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The key discussions points were the following:

- Participants expressed their dissatisfaction with regard to the change of policy by the GEF Secretariat on the use of the NPIF and highlighted that this fund should also support the ratification process of the Nagoya Protocol.
- Process: Applications can be submitted to the GEF throughout the year; importance of contacting the GEF Operational Focal Point for approval.
- Requirements to apply to the GEF:
 - a) Eligibility: Any member state of the United Nations (UN) or signatory of the United Nations Conventions.
 - b) Funds: Financing non-refundable.
 - c) Requirements: Co-financing of the recipient country, project must address national priorities, incremental funding for 'global environmental protection'.
- A special allocation for ABS under the next STAR is very unlikely going to happen.

3. African Model Law: Gap Analysis

Mrs Galega introduced this session by reading the African Union Statement which highlighted the need to revise the AML, particularly taking into account the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Nagoya Protocol on ABS. Participants were invited to critically discuss the gap analysis report and its recommendations with the view to developing an instrument that will assist African countries in their national ABS implementation processes and foster an ABS regional approach.

Peter Munyi, Kenya, and Dr Marcelin Tonye Mahop, England, as well as Professor Johnson Ekpere, Nigeria, Pierre du Plessis, Namibia and Kabir Bavikatte, South Africa presented the Gap Analysis Report on the AML, which extensively examines relevant instruments and developments related to ABS at the global, continental and regional levels since the adoption of the AML in 2001. The report identifies key gaps and variances with respect to:

- Biological resources, GRs, derivatives and products;
- Benefit sharing;
- Transboundary cooperation and transboundary GRs;
- TK associated with GRs; and
- Special considerations for research, emergencies and PGRFA.

Finally, the report proposes two potential approaches to be considered with respect to the future of the AML:

- 1) Amend the existing AML taking into account that it will be a long process, as a complex political and bureaucratic process of endorsement and validation is needed; or,
- 2) Keep the AML as it is and rather work on developing a set of guidelines that could work alongside the AML: practical guidelines on the implementation of the Nagoya Protocol in Africa, which keep the standard and spirit of the existing AML.

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For further details, please refer to the presentation and the full gap analysis report available to download on the ABS Initiative's website.

Further, Mrs Galega and Mr du Plessis recapped the key messages that came out of the gap analysis presentation and invited the participants to decide on the two propositions to move this work forward. The following is a summary of participants' first impressions and recommendations with regard to the two suggested approaches:

- A number of countries have found the AML important and followed it to inform their own legislation. Is the time constraint a reason good enough to go with the guidelines?
- The AML is a living document done since a number of years which needs to be updated and integrate the Nagoya Protocol. However, guidelines are also needed to implement the protocol. They could encapsulate the essence of the AML while at the same time incorporate any relevant developments and international processes that have happened since the adoption of the AML.
- Due to the time constraint, the second option is more realistic. It will need to include lessons learnt from successful and unsuccessful cases so as to assist countries to implement their own national laws.
- The AML or guidelines are both voluntary. Guidelines would therefore be a more sensible and timely option to address ABS implementation at national level.
- Guidelines will be useful for countries in their ABS national implementation and will offer enough flexibility to account for their national circumstances.
- Considering the international context and the number of issues in the Nagoya Protocol that need clarification, adopting guidelines will be more flexible and faster while leaving open the possibility for revision and the development of more specialised guidelines.
- A set of harmonised standards is needed, especially regarding transboundary issues. Standards will be more convenient for user countries and stops them from addressing their request to other countries.
- The AML is the only document of its kind in Africa. Guidelines could allow addressing the current needs while informing a parallel process of amending the AML for a more harmonised and effective implementation of the Nagoya Protocol in the region.

Participants were invited to give any further feedback and comments on the practical way forward to the ABS Initiative in writing.

4. African Coordination on Articles 10 and 11 of the Nagoya Protocol and other Issues (Closed Meeting)

Further, a closed coordination meeting of the African Group for the preparation of the ICNP-2 on ABS took place.

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Day Five

1. ABS and Intellectual Property Rights

Dr Susanne von Saint André from the ABS Initiative, Germany, presented the results of the Expert Meeting on ABS and IPRs, Addis Ababa, held in September 2011, which mainly explored, identified and examined the various links between ABS and IPRs and the practicality of Intellectual Property (IP) instruments along the value chain. In particular, she drew participants' attention to the outcome of the brainstorming exercise on the content of MAT, PIC, and the International Certificate. She indicated that after deliberations, the participants of the meeting in Addis agreed to translate the results of their group work into templates for PIC, MAT and the International Certificate, as well as corresponding handouts for practical use. For further details, please refer to the presentation available to download on the ABS Initiative's website.

Dr Susanne Heitmüller from the ABS Initiative, Germany, explained to the participants the different steps of the consolidation of the group work results, i.e. the different draft lists of elements for PIC, MAT and the International Certificate resulting from the brainstorming exercise in Addis Ababa. Basically, repetitions were eliminated; similar points clustered under one heading etc. She further pointed out that the list of elements for PIC, as well as MAT was very exhaustive. A comparison with the Bonn Guidelines, which include, for example, a comprehensive list of elements for PIC, showed that all of them were covered. With respect to MAT, it will be important to identify the essential elements and distinguish them from those who only become relevant in specific situations and contexts. With respect to elements for the International Certificate, Dr Susanne Heitmüller pointed out, that Article 17 paragraph 4 of the Nagoya Protocol was the main point of reference. In this context, however, many issues remain open and need to be further elaborated. For further details, please refer to the presentation available to download on the ABS Initiative's website.

Finally, participants were invited, in small groups or individually, to provide their feedback and/or additional inputs and comments on the consolidated draft lists of elements of PIC, MAT and the international certificate. At the end of the exercise, participants were informed that all their inputs will be integrated in the current work and further incorporated in the development of generic draft templates (application form for PIC, contract for MAT and a form for the international certificate) and corresponding handouts explaining related policy options. Dr von Saint André indicated that all draft documents will be submitted to a peer review process before presenting the first revised drafts at the 11th Conference of the Parties to the CBD later this year.

In the subsequent discussion the following points were highlighted:

- Importance of understanding the linkages between ABS and IPRs and how PIC, MAT and the International Certificate put forward the interface with IPRs.
- Importance to build African capacity in the field of IPRs.
- Importance to explain the linkages with regard to disclosure (How need disclosure requirements to be integrated in PIC, MAT and other permits?).
- Only some countries include a disclosure requirement in their patent system. The World Intellectual Property Organisation needs to help advancing the discussions, while, in the meantime, tools such as PIC, MAT and other permits need to address these issues and advance the discussion on IPRs.

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- IP is very complex and there are very few legal IP experts. Templates for MAT, including relevant IP clauses with explanations, would be therefore very useful and help avoiding unbalanced contractual arrangements.
- Importance to also consider TK in the context of IPRs and highlight what the commonalities and links are.
- Importance that templates and corresponding hand-outs address the issue of non-parties. Though it is a policy decision that countries need to take, they will need to set some rules and clauses for dispute settlement and give recommendations on how to address compliance issue in this specific context.
- The generic templates plus corresponding handouts could be an integral part/ or annexed to the guidelines for the implementation of the Nagoya Protocol in Africa (to be developed in light of the results of the AML gap analysis report).

2. The International Treaty on Plant Genetic Resources for Food and Agriculture

The common presentation of Mr. Kent Nnadozie from the Secretariat of the International Treaty, Italy, and Mr Rukundo introduced the ITPGRFA, its scope, its links to the CBD and interfaces with the Nagoya Protocol on ABS while providing a comprehensive overview of the Multilateral System of Access and Benefit Sharing and the Funding Strategy under the Treaty. For further details, please refer to the presentation available to download on the ABS Initiative'.

A short discussion included, among others, the following:

- The ITPGRFA specifies that the use of the material should be used for research, breeding, planting. Any material cannot be utilised for any other use – it would be a breach of the contract.
- The ITPGRFA aims to mirror the CBD and to be implemented without threatening the food security of a country. There is a need to continuously share and exchange PGRFA within the system.
- It is the obligation of countries to put in place some measures to protect associated TK and the related sharing of benefits.

2. ABS Initiative: Way Forward

Dr Drews provided a brief overview of the ABS Initiative's programme and work plan for 2012 highlighting the extension of its work to the Caribbean and the Pacific Regions while fostering a South- South exchange within the regions.

3. Meeting Evaluation

4. Thanks and Closure

After a series of closing remarks, the General Secretary of the MINEPDED thanked the ABS Initiative, the supportive institutions as well as all the participants for such a fruitful week and officially closed the Sixth Pan African ABS Workshop.

End of the Sixth Pan African ABS Workshop

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