

Sixth Pan African Access and Benefit Sharing Workshop

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

OUTCOME

ABS Implementation in Africa: State of the Art

- Ratification of the Nagoya Protocol is not a requirement to have ABS legislation in place.
- For already existing ABS legislation the Nagoya Protocol brings new obligations and requires modifications of the existing law.
- Valorisation Approaches
- To do research, PIC from the country of origin of the plant is necessary. For research on plants with no associated TK, 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 avoid any conflict, it is essential to set the terms of collaboration very clearly in the MAT.

Recommendations for the utilisation of GR that could trigger an ABS process

- 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.

ABS and Non-Commercial Research

- 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 traditional 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 traditional 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.

Article 11 of the Nagoya Protocol and Transboundary Cooperation

- 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 AU 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 AUML, etc.) to draft a harmonised strategy for the region and sub-region that will address the issue of shared GRs and TK.

Article 10 of the Nagoya Protocol

- 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 Global Multilateral Benefit Sharing Mechanism.

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The ABS Capacity Development Initiative

- 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.
- 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.

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

- 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.

ABS at the Global Environment Facility (GEF)

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:

- Eligibility: Any member state of the United Nations (UN) or signatory of the United Nations Conventions.
- Funds: Financing non-refundable.
- Requirements: Co-financing of the recipient country, project must address national priorities, incremental funding for ‘global environmental protection’.

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African Union Model Law: Gap Analysis

- A number of countries have found the AUML important and followed it to inform their own legislation.
- The AUML 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 AUML while at the same time incorporate any relevant developments and international processes that have happened since the adoption of the AUML.
- 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 AUML 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 keeps them from addressing their request to other countries.
- The AUML is the only document of its kind in Africa. Guidelines could allow addressing the current needs while informing a parallel process of amending the AUML for a more harmonised and effective implementation of the Nagoya Protocol in the region.

ABS and Intellectual Property Rights

- 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.
- 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 AUML gap analysis report).

The International Treaty on Plant Genetic Resources for Food and Agriculture

- The ITPGRFA specifies that the use of the material should be used for research, breeding, planting.
- The ITPGRFA aims to mirror the CBD and to be implemented without threatening the food security of a country.
- It is the obligation of countries to put in place some measures to protect associated TK and the related sharing of benefits.

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