



In-Country Consultation Report

Cook Islands, 18-22 November 2013

Participants	Dr Andreas Drews, ABS Initiative Dr Daniel Robinson, University of New South Wales
Purpose	Stakeholder meetings regarding the new ABS Bill of the Cook Islands

Summary

A meeting with the traditional leaders (House of Ariki and Koutu Nui) showed that they have little knowledge on ABS and the Nagoya Protocol. However, some may have been involved in the discussions of the CIMTECH case (Te Tika). Their opinions on monetary benefits were mixed; some were sceptical about commercialisation but opted for educational benefits such as a research laboratory which also provides trainings. In terms of transboundary GRs and TK they stated a need for regional collaboration in Polynesia. The traditional leaders were very determined in their claim to be fully involved in the development of the ABS law.

Te Ipukarea Society (TIS), an environmental NGO, works with the traditional leaders quite often but is not involved in any ABS activities at the moment. The management of marine areas is an issue; the traditional leaders claim responsibility for marine protected areas. So far, there has been little research in these areas and hardly any marine bioprospecting. TIS suggested to be involved in ABS as institution transferring benefits to local communities.

In a meeting with government stakeholders, representatives of the National Environment Service (NES), the Ministry of Agriculture (MoA), the Seabed Minerals Commission and the Natural Heritage Trust were informed about ABS and the upcoming GEF project. There is a Research Committee/Council which is in charge of giving research permits, but which is not functioning well. There is a draft bill on ABS which will still take time to be finalised; basic, preliminary criteria for PIC and MAT are needed now so that permits can already be given. Regarding GRs collected in the context of Seabed Mining, it was suggested to link the Seabed Mining Act with the new ABS law. For proper monitoring, capacity building would be required.

The Ministry of Cultural Development has developed a Bill on Traditional Knowledge (TK) which is expected to enter into force soon. They have established a TK register to document traditional knowledge which can also be used to link researchers to TK holders. However, according to the traditions, healers are not allowed to trade their knowledge, and they also only pass it on within their families; this may be a constraint to ABS.

The NES intends to revise the draft ABS bill. It was agreed to minimise the PIC and MAT content in the law and elaborate the details in the regulations and forms of the permitting process. The ABS Capacity Development Initiative agreed to further provide assistance and advice.

The Prime Minister's Office (OPM) is in charge of the permitting processes which are handled by a research committee. They have very limited staff and could not take care of the ABS procedures on their own. It was suggested to have NES check the applications and give their recommendations to OPM who would on that basis provide their permits.



The Ministry of Agriculture is working closely with SGP in the frame of the ITPGRFA. The Cook Islands are sharing taro and banana varieties through the multilateral system and breed new varieties with support from AusAID. The MoA approves of the ABS draft bill and would like to be involved in the permitting processes when it comes to agriculturally relevant species and varieties. They also pointed out that the Ministries of Culture and Health might want to be involved, too.

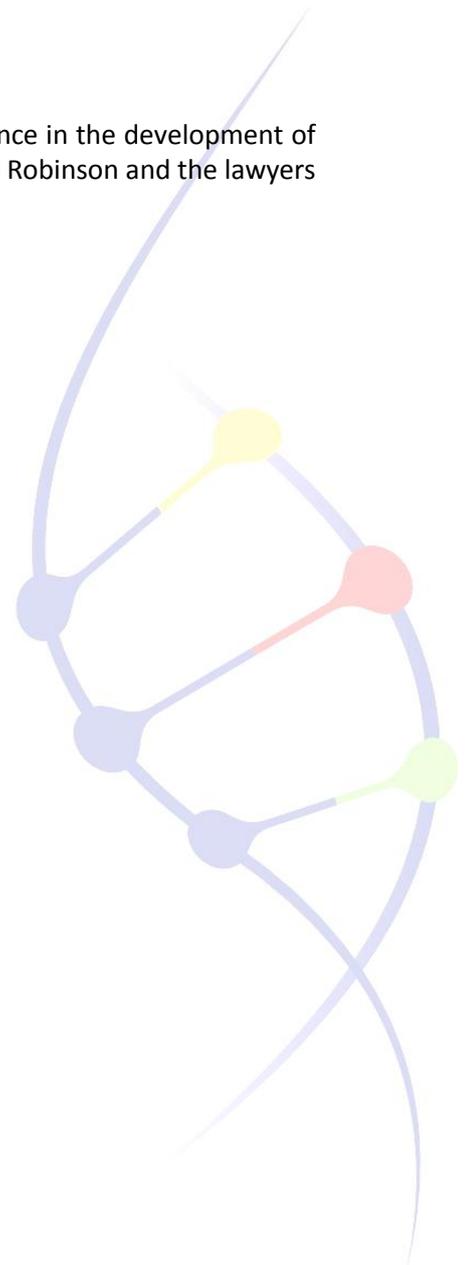
Due to a decline in sales, CIMTECH are currently not buying from the local growers, but sales are expected to pick up again. The company's main interest lies in the bone healing properties of *Hibiscus tiliaceus* on which research is done in collaboration with a US laboratory.

According to the Development Coordination Division at the Ministry of Finance, an ABS law will probably be approved by the cabinet relatively easily. They, too, recommended keeping the procedures simple as the NES' capacities are limited. They further recommended involving NGOs and the traditional leaders.

Outcomes / Follow-up

The ABS Capacity Development Initiative agreed to provide further assistance in the development of the ABS framework for the Cook Islands, namely through support by Daniel Robinson and the lawyers of the Initiative.

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Minutes of the stakeholder meetings

18 – 22 November 2013

1) Monday, 18 November 2013

10:00 Meeting with Aronga Mana (traditional leaders: House of Ariki and Koutu Nui)

Attendees: *Kaumaiti Travel Tou Ariki (President of the House of Ariki), Puna Rakanui (Advisor), Dame Margaret Karika Ariki (House of Ariki), Joe Vakatini Ariki (House of Ariki), Ted Nia (Koutu Nui), Nooroa Teina (Koutu Nui), James Heather (Koutu Nui), Noeline Browne (Koutu Nui), Vereara Maeva (Koutu Nui), Tupe Short (Koutu Nui), Elizabeth Munro (NES), Louisa Karika (Manager, NES), Ben Maxwell (NES), Moana Vaevae-Tetauru (NES)*

The traditional leaders received an introduction to ABS and the Nagoya Protocol and how they are linked to other legislations e.g. on TK, the Plant Genetics National Research Committee, deep sea mining or marine resources. Furthermore, the GEF-funded Cook Islands ABS Project and the draft ABS legislation were briefly presented and discussed.

During the discussions, the following points came up:

- **Monetary and non-monetary benefits:** There were different opinions on the value of non-monetary benefits. It was suggested that a law could stipulate that a certain percentage has to come back. It was noted that Taunga (healers) traditionally aren't allowed to be involved in trade and that hence their medicines cannot be traded; the idea of commercialisation comes from Western culture. Others noted that educational benefit may be even more important than monetary benefits; they said there should be a research laboratory in Cook Islands which would also provide trainings. Some were happy to see that through the CIMTECH product, Cook Islanders' knowledge is being shared with the world.
- **Access:** An Ariki (higher chief) said that the authority to provide access should rest with the House of Ariki or Koutu Nui as the clans are the owners of the land where the GR are found.
- **Transboundary GR and TK:** It has to be clear how benefits will be shared in these cases, e.g. with Tahiti; there should be regional collaboration in Polynesia.
- **Decision-making:** There are different authorities making decisions in this country; the relationships and hierarchies among them have to be respected. Generally, the consultation meeting was appreciated as sometimes the government only provides information but does not do consultations. The Aronga Mana wants the government to include them into any decision making and planning regarding the ABS law.

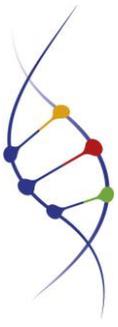
Members of Taunga Vairakau Maori (traditional healers/practitioners) were invited to this meeting, too, but did not attend.

13:30 Meeting with Te Ipukarea Society (TIS, environmental NGO)

In the past, TIS had some involvement with traditional medicines as member of the traditional medicines association, but is not involved in any ABS-related activities at the moment. They work with Koutu Nui and House of Ariki quite often; they note some factionalism among them. OPM hosts the research committee; Koutu Nui and House of Ariki are involved when relevant permits come up.

Gerald McCormack at Natural Heritage Trust was recommended as a relevant stakeholder.

Marine Protected Areas: There is a legal framework in place, but there are no rules or zones yet. There has been some research on the southern islands on marine ecosystems, but there has been little bioprospecting research so far. Traditional marine management is mainly near-shore in the



lagoons. The question was raised how this could be integrated into the legal framework; Ariki and Koutu Nui are claiming responsibility for the management of marine areas.

The question was raised how **CIMTECH** will transfer benefits to locals and it was suggested to involve TIS in that.

2) Tuesday, 19 November 2013

09:00 Meeting with government stakeholders

Attendees: William Wigmore (Ministry of Agriculture), Rima (Suma) Manavaikai (Ministry of Marine Resources), Paul Lynch (Seabed Minerals Commission), Katherine Evans (Crown Law Office), Gerald McCormack (TCA/Natural Heritage Trust), Kelvin Passfield (TIS), Ken Matheson (Company, Matheson Ent – CIMTECH contractor), Louisa Karika (IFD, Manager, NES), Elizabeth Munro (NES, Presenter, Coordinator), Moana Vaevae-Tetauru (NES, Notes & Media), and Ben Maxwell (NES)

The attendees received the same background information on ABS, related regulations and the CIMTECH project as the Aronga Mana the day before. In the subsequent discussion, there were questions about shared GRs and regional benefit-sharing. Regarding the CIMTECH case, it was noted that it was lucky that the researcher was a Cook Islander and that he was proactive in making an agreement with the Koutu Nui.

Agricultural plants and varieties: The Cook Islands are a member to ITPGRFA. Mr Wigmore mentioned that SPC holds 13 varieties of taro and 6 banana varieties from the Cook Islands which are made available to the multilateral system. Generally, the Cook Islands have a limited diversity of agricultural plant varieties; the country has probably accessed more than 50 taro varieties from the SPC centre.

Research Committee/Council: The committee has been in place for 30 years, but barely functions. The need was emphasised to develop some basic MAT criteria with the research committee so that permits can already be granted while the Nagoya procedures are not yet put into place nationally to prevent loss of opportunities. (Example: Danish marine bioprospecting application in 2012: The committee was not able to make an agreement, so the project went elsewhere)

Cook Islands ABS law: The ABS bill has existed in draft for six years (based on the Bonn Guidelines); NES is still not sure how to manage the consultation process which will be extensive. It was suggested to develop just a basic framework of PIC and MAT, while the regulations would contain the detailed elements. However, it was also mentioned that recently departments were asked to put through the act and regulations to the Crown Law Office at the same time. In the contracts with the companies it should be made very clear what purposes extracted materials may be used for.

Generally, it was criticised that so far no-one has been identified to drive ABS forward in the Cook Islands.

Seabed Mining and ABS: Paul Lynch suggested including ABS in the already existing Seabed Mining Act as genetic resources collected during exploration activities will be used for scientific research. He further suggested that seabed mining activities should be monitored also in terms of extraction of GR and ABS; for this, capacity building would be required.

Clan land/family land: If GR or aTK are accessed at a clan's land, they need to give their PIC. However, too many people from Aronga Mana on the committee were said to slow down the process.



14:00 Meeting with Ministry of Cultural Development

Several staff – Justine, Liz, Riki etc.

The Ministry developed a TK Bill with the support of WIPO which will go to Cabinet next month (December 2013). They have established a TK register which can be used to link researchers with TK holders. A presentation on the TK Bill was provided.

- The TK Bill establishes Are Korevo – **Houses of Knowledge** where people, usually Taunga (traditional healers) can register their traditional knowledge. Oral tradition is recognised here and will then lead to documentation and publishing. Trust and honesty are important to get Taunga to share their knowledge.
- Registering TK-holders will help to resolve disputes among clans who hold the same knowledge and identify beneficiaries in cases of ABS agreements.
- **Medicinal practices** are held and transferred within families. They give rights to use to others for practice, but the original person remains the TK-holder. The sharing of knowledge within families always involves a taboo; a healer may only be able to treat their own kids, for example. The belief is that only if the right person provides the knowledge the patient will be healed.
- **CIMTECH** is an interesting and relevant case. As there is money attached, people are now questioning who in the Koutu Nui were the ‘original’ knowledge holders and providers.
- **Publishing of documented information and access:** Some TK is already published in archives at Cook Islands, but not much. Different types of knowledge include secret/sacred knowledge, then also public/widely held knowledge. The registration will just collect the TK holders’ name and a basic description, full details will not be published. If the information is used as a lead to some research it will be up to individuals to negotiate with the individual TK holders.

16:00 Meeting with National Environment Service (NES)

The need to revise the draft Biological Research and Benefits Bill was discussed at length. There are many changes required - especially in terms of definitions and consistency. The Australian laws were discussed as a relatively streamlined process. It was agreed that it would be beneficial to minimise the PIC and MAT content in the law and push most of that material into detailed regulations and the forms that would specify the terms of a permit and minimum standards for contracts. A ‘statutory declaration’ was discussed as an option for ensuring compliance with a permit, even basic ones for academic type research. It was agreed that Dr Robinson would continue to assist/advise with also assistance from lawyers working for GIZ and the ABS Capacity Development Initiative.

A flow chart was developed and discussed at length. This flow chart was seen as a good way to determine the structure and flow of the Bill.

3) Wednesday, 20 November 2013

10:00 Meeting with Office of Prime Minister

Elizabeth (Chief of Staff) and Jo Bridger

The OPM administers a permitting process handled by a Research Committee involving members from several departments and including other stakeholders such as members of the Koutu Nui or House of Ariki. The Research Committee just looks after permissions and ensures reporting.

There should be a different process for cases like CIMTECH. These should go through the Business Trade and Investment Board (BTIB) and register their company and its activities.



Elizabeth doubts the Research Committee could take on extra roles. It is mainly composed of senior officials who are quite busy, plus a couple of others from civil society.

The research committee is a cabinet appointed committee. They have a gentlemen's agreement with the Department of Health about the passing on of applications for health research. Applicants can go to Health and then they inform OPM for a final sign off. So National Environment Service (NES) could get applications, go through a checklist, assess and then send off to OPM for a sign off with their recommendations for that particular application. This would be the preferred approach for OPM because they have minimal staff and permits are currently administered by Tina Samson – the assistant who has many other tasks to conduct.

They should use the Secretary General of the Crown Law's guidelines for drafting regulations and bills.

11:00 Meeting with Ministry of Agriculture

William Wigmore

Triggered by the taro leaf blight in Samoa, SPC has been strongly promoting exchange and breeding for food security in the country and the region. They established the Pacific GRs network which is important for food security and adaptation to climate change. In the context of the Samoan leaf blight, the Cook Islands have started breeding varieties of taro in collaboration with SPC and funded by AusAID. SPC also does some banana breeding in the Cook Islands. This also includes activities with the Department of Health. They are conserving their own varieties of taro, bananas and cassava, some of which originate in the Pacific and some in Colombia.

Researchers usually don't come to farmers for breeding purposes. If they did, their permit process would depend on their intentions. If the intention of use/breeding is for food security purposes in the region, then it is ok to provide access. If for commercial purposes in the US or Europe then they would have to question this.

There has been a shift towards using rice which has displaced taro consumption in the Islands. The reduced consumption and substitution is a health/nutrition concern. It also affects local demand and breeding. It is important to promote use and consumption of local varieties to conserve them. The Ministries of Education and Health have an important role here. School tuck shops have to change their ways.

The NES Draft ABS Bill makes sense. Ministry of Agriculture should be involved in the permitting process. The MoA could assess intent where it is access for an agricultural variety or for horticulture. The Ministries of Culture and Health would want to be involved in cases involving medicinal plants. Some plants may have more than one use/purpose; this has to be taken into account. There has to be a distinction between use for R&D and trade as a commodity.

14:00 Visit to CIMTECH

Ken Matheson

The CIMTECH facility was visited with Ken Matheson to examine recent activities. Recent cosmetic sales have slumped in mid-2012 and so production has stopped and they are not buying from local growers at the moment. Sales in Australia and New Zealand need to pick up. In the Cook Islands, they sell exclusively through CITC in the centre of town, and at the Pacific Resort Spa. Sales were very good after the launch and before Christmas. Just this month (November 2013) sales have picked up.

The issues with the name Te Tika for the CIMTECH cosmetics product line settled down pretty quickly once they explained to the family that it was to mean 'truth and integrity' rather than being a reference to the name of the former president of the Koutu Nui.



Graham Matheson, CEO of CIMTECH, has purchased large distils for the research on bone healing which are currently assembled to extract fractions of the basic plant extracts. These would then be sent to a laboratory in the US to determine what the active ingredients are. The hope is that this research will continue and result in a bone/joint healing product – the cosmetic part of the company is just one part.

18:00 Meeting with Ministry of Finance – Development Coordination Division

Peter Tierney, Development Coordination Manager

Peter highlighted the need to pair the ABS Bill at NES with a policy. There would not be buy-in unless a policy/statement of objectives is accepted by government and by Cabinet. He assessed that ABS is a relatively low risk – it is not high on the agenda of ‘development’ issues, but not low in terms of concerns. It may sail through without much concern. Important is that there is human capacity to administer the permitting procedure. A simple procedure on ABS would be beneficial. The NES has many tasks and not a great deal of staff and so that might help. NGOs might be important in the awareness raising and implementation. The Koutu Nui and Ariki are relevant stakeholders. Sometimes there are conflicts from these groups.

4) Thursday, 21 November 2013

10:00 Tinomana Ariki Investiture (paramount chief of Arorangi)

14:00 Interview with Tiariki Rongo

5) Friday, 22 November 2013

Interviews with four Koutu Nui members about the CIMTECH ABS agreement

Daniel Robinson interviewed Tiariki Rongo (on Thursday) and four members of the Koutu Nui about traditional medicines, CIMTECH and their perceptions of ABS.

These interviews were made anonymously but some key points can be made:

- One respondent noted that some traditional healers had expressed some concern about the CIMTECH – Koutu Nui agreement and CIMTECH using TK.
- 4 members of the Koutu Nui indicated that they were very happy with the monetary and non-monetary benefits of the CIMTECH-Koutu Nui agreement. One member noted that some Taunga had recently raised some concerns about the association of TK with monetary gain and benefits.