

AU GUIDELINES FOR THE COORDINATED IMPLEMENTATION OF THE NAGOYA PROTOCOL IN AFRICA

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BACKGROUND: Nagoya Protocol

- Adoption of Nagoya Protocol in October 2010 was by consensus based on compromise – some key African negotiating positions were not included in the final text
- African Ministers present in Nagoya nevertheless agreed to its adoption, believing Africa could use national flexibilities in a coordinated way to safeguard our interests

BACKGROUND: African Model Law

- Nagoya Protocol also raised questions about status of 2001 *OAU Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources*
- Developed before NP and ITPGRFA
- Study in 2011-12 identified gaps and variances
- 6th Pan-African ABS workshop mandated AUC to lead development of AU Guidelines on Nagoya Protocol to complement Model Law

BACKGROUND: Coordination

- Lack of clear African coordination mechanism in biodiversity and ABS matters
- AU Assembly decision of January 2011 included biodiversity in AU priorities
- September 2012: AMCEN 14 adopted a decision on the establishment of a coordination mechanism for negotiations on biodiversity (based on climate change model)

BACKGROUND: Process

- AMCEN 14 also endorsed ongoing work to develop AU Guidelines
- January 2013: AU Assembly adopted AMCEN report, including development of Guidelines
- First draft presented at 7th Pan-African ABS workshop – extensive stakeholder comments
- Expert Meeting in October 2013 separated *Policy Framework* from *Step-by-step Guide*, further developed *Policy Framework*, deferred full validation until peer reviewed

- December 2013 - Revised Policy Framework sent to all ABS Focal Points & stakeholders for inputs
- Experts/Peer reviewers group established by the AUC, call for nomination of experts by RECs
- February 2014, Addis Ababa: Experts Workshop on draft AU Guidelines
 - Composed of ABS focal points, experts in charge of regional initiatives on ABS, experts from RECs, experts from Secretariats of CBD and ITPGRFA, experts from research and academic institutions, experts from ILCs and the AUC (HRST and DREA)

EXPERTS WORKSHOP OUTCOME

- Discussed the 1st complete draft AU guidelines comprised of:
 - Policy Framework
 - Step-by-step Guide
 - Annexes
- Redrafted & restructured the document & made proposals for amendments

PROCESS: Validation Workshop

- Validation workshop on AU Guidelines held 11-14 August 2014 in Addis Ababa
- Policy Framework and accompanying Guidelines were modified and validated
- AU Policy Framework (and accompanying Guidelines) will be presented for formal adoption at the next AMCEN meeting (2-6 March, Cairo, Egypt)

AU Guidelines: Structure

Two separate but inter-related parts:

African Union Policy Framework for the Coordinated Implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation

which provides the basis for

African Union Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa

(a hands-on tool for African implementers of the Nagoya Protocol)

AU Guidelines: General Objectives

- To provide policy and strategic guidance to support the implementation of the Nagoya Protocol in Africa
- To facilitate coordination and cooperation between African countries and African stakeholders around ABS implementation
- To provide practical guidance on how national ABS systems can be implemented in a regionally coordinated manner

AU Guidelines: General Objectives

- To encourage utilization of Africa's GR and aTK to support regional objectives and strategies on human resource development, technology transfer, scientific and technical capacity building, food security and economic growth, while encouraging conservation and sustainable use of natural and human capital, including the rights of ILCs
- To facilitate the establishment of common African ABS standards

Content of Policy Framework

- Objective: Policy and strategic guidance for the coordinated implementation of the Nagoya Protocol
- Use of terms (key definitions, terms, interpretation)
- Coordinated approach to procedures, awareness raising and information sharing
- Coordinated approach to access for utilisation
- Coordinated approach to benefit sharing
- Coordinated approach to monitoring and compliance
- Coordinated approach to traditional knowledge associated with genetic resources, community and farmers' rights, economic development, capacity building and technology transfer for sustainable use and conservation

Content of Guidelines & Annexes

- Step-by-step guidelines providing detailed technical guidance and background considerations
- Primarily aimed at Focal Points and other stakeholders involved in developing and implementing ABS systems at national and local levels (designed to leave a large degree of **national discretion and flexibility**)
- Annexes include:
 - model application form for a permit to utilize GR and/or aTK
 - outline of a basic ABS agreement
 - commentary on key elements of a complete ABS agreement
 - Basic principles for community involvement in ABS

Policy & Technical Guidance

- Cooperate to develop compatible continental and regional procedures for granting PIC, concluding MAT and monitoring compliance by users
- Promote sustainable use of GR and aTK by instituting transparent and functional access regulations
- Ensure PIC and MAT are required for access to GR (unless expressly waived) = having physical access to GR including from ex-situ collections or commodity trade does not legitimize utilization

Policy & Technical Guidance

- Ensure PIC or approval and involvement of IPLCs is obtained where they have established rights to grant access (absence of domestic measures does not imply PIC is not required or has been granted)
- Ensure regulation of access to TK and that MAT has been established (absence of domestic regulations does not imply that PIC of communities is not required or has been granted)

Policy & Technical Guidance

- Require PIC and MAT for access to and utilization of naturally occurring biochemical derivatives (Art. 2 of NP) and for access to aTK relating to such derivatives
- Exempt from domestic regulation acquisitions relating to trade in commodities where such access does not result in utilisation as GR (as per Art. 2 of NP)
- Change of intent must be notified and required ABS procedures complied with

Policy & Technical Guidance

- Encourage customary use and exchange of GR and aTK within and among IPLCs
- Encourage mutually supportive implementation of the ITPGRFA and the NP
- Promote and encourage research that contributes to the conservation and sustainable use of biodiversity through simplified access (non-commercial research), pay due regard to present and imminent emergencies, support use of GR for food and agriculture and food security in Africa

Policy & Technical Guidance

- Cooperate and coordinate policies towards establishing transparent, fair, equitable benefit sharing standards that uphold intrinsic, cultural and socio-economic values of GR and aTK
- Encourage development of sectoral and cross-sectoral model contractual clauses for MAT, codes of conduct, guidelines and best practices and standards for benefit sharing

Policy & Technical Guidance

- Encourage compliance through the use of checkpoints and internationally recognized certificates of compliance as well as regular and systemic information exchange mechanisms
- Provision of GR and aTK for utilization only to users domiciled within AU member state jurisdiction, or within jurisdiction of a Party to the NP that has adequate compliance and mutual support measures in place

Way Forward: Next Steps

- AMCEN 15 (2-6 March 2015, Cairo, Egypt): Validated AU Policy Framework and accompanying Guidelines to be tabled for formal adoption
- 25th Ordinary Session of the Assembly of the African Union (8-15 June 2015, South Africa)

Way Forward: Resources

- AUC requires additional resources to:
 - Establish mechanism for coordination of African participation in biodiversity negotiations
 - Coordinate and build capacity for national implementation of the *AU Guidelines* on ABS
 - Train African officials and stakeholders involved in ABS implementation
- Kampala workshop suggested all AU Member States contribute small share of their GEF 6 STAR allocations – UNEP to leverage at least 2:1 match from non-STAR GEF sources



Is this suggestion for resource mobilisation supported by the 9th Pan-African ABS Workshop?