

# **IMPLEMENTATION OF THE NAGOYA PROTOCOL ON ABS AND THE ITPGRFA: AN AU PERSPECTIVE**

*MAHLET TESHOME*

**AFRICAN UNION COMMISSION**

**DEPARTMENT OF**

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# The AU in a Nut Shell

- **From the OAU to the AU:**
  - 1963: Towards independence, safeguarding territorial sovereignty and integrity of MS
  - 1999: Sirte Declaration calling for a new AU (to accelerate the process of integration of Africa, empowerment of states in the global economy and address the multi faceted social, economic and political challenges facing the continent)
  - 2001 Lome Summit (Constitutive Act), 2001 Lusaka Summit (roadmap on implementation of AU) and
  - 2002 Durban Summit (launched the AU, 1<sup>st</sup> Assembly)

## The AU in a Nut Shell...cont'd

- **Organs of the AU:**

1. Assembly
2. Executive Council
3. Specialized Technical Committees
4. Peace and Security Council
5. The AU Commission
6. The Pan African Parliament
7. The Judicial and Human Rights Institutions
8. The Financial Institutions
9. The Permanent Representative Committee
10. The New Economic Partnership for Africa's Development (NEPAD) Agency
11. The Economic Social and Cultural Council
12. The Regional Economic Committees

# Support in matters of Biodiversity

- OAU Model Laws:
  - on Safety in Biotechnology ;and
  - on the Rights of Local Communities, Farmers, Breeders, and for Regulation of Access to Biological Resources

developed in the absence of current legally binding international regimes (NP, ITPGRFA, CPB ) and regional initiatives (ARIPO, OAPI, PAIPO );

- Adoption of the ITPGRFA
- Adoption of the Nagoya Protocol on ABS in Oct 2010
- Gaps and variances exist
- **Focus on the OAU Model Law on Access to Biological Resources**

## Support in matters of Biodiversity ...cont'd

- Lack of clear coordination in matters of biodiversity and ABS at the continental level
- Agreement to develop a gap analysis report- Model Law still useful as it mainstreams the priority needs of African countries
- NP focuses largely on national implementation whilst some elements still remain in the international arena
- Need to develop guidelines to be annexed to the Model Law to assist MS in domestication and implementation of the NP on ABS

# MOVE FROM TECHNICAL TO POLITICAL

- September 2012: AMCEN adopted a decision on the establishment of a coordination mechanism for negotiations on Biodiversity (Model of the UNFCCC)
- ***AMCEN further endorsed the ongoing work on the development of the AU Implementation Guidelines***
- January 2013: AU Assembly of Heads of State and Government adopted the AMCEN report including the process on the development of the Guidelines and expects updates on the matter
- ***2015-anticipated endorsement of Draft Guidelines by AMCEN***
- 2015- anticipated endorsement by the AU Assembly

# The Draft AU Guidelines on ABS: Its Structure

## Part One: Policy Framework

- A) 'Principles' of the envisaged 'Coordination'
- B) 'Policy Guidance'-on direction to AU Member States on national implementation against a harmonized regional standard proposed by the AU Guidelines

## Part Two: Guidelines for the Coordinated Implementation

- Hands on tool for implementers of the Nagoya Protocol i.e., National Competent Authorities and related organs of AU Member States

# The Draft AU Guidelines on ABS: Its Purpose

- To provide policy and strategic guidance to support the implementation of the Nagoya Protocol in Africa
- To facilitate ABS implementation in Africa
- To facilitate coordination and cooperation between African countries and African stakeholders



# The Draft AU Guidelines on ABS: Its Purpose

- To provide practical guidance on how national ABS systems can be implemented in a regionally coordinated manner
- 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
- Facilitate the establishment of common African ABS standards

## The Draft AU Guidelines on ABS: Policy Guidance

- To cooperate to develop compatible continental and regional procedures for granting PIC, concluding MAT and monitoring compliance by users (as per these Guidelines for e.g.)
- To *promote sustainable use* of GR and aTK *by instituting transparent and functional access* regulations
- To ensure *PIC and MAT* required for access to GR (unless expressly waived)=having physical access to GR *including from ex-situ collections should not legitimize utilization*

## The Draft AU Guidelines on ABS: Policy Guidance

- Ensuring the PIC/involvement/approval of ILCs is obtained where they have the established right (absence of such domestic measure should not imply that this required measure is not required or has been granted)
- Ensuring regulation of access to TK and that MAT has been established (absence of such regulations should not imply that PIC/approval/involvement of communities concerned is not required or has been granted)

# The Draft AU Guidelines on ABS: Policy Guidance

- Ensure provisions for requiring PIC and MAT access to and utilization of *naturally occurring biochemical derivatives* (Art. 2 of NP) and for access to aTK relating to use of such derivatives
- Exemption from domestic regulation acquisitions relating to trade in commodities and where such access does not result in use as GR (as per Art. 2 of NP), however *eventual change of intent needs to be notified and required procedures met*

# The Draft AU Guidelines on ABS: Policy Guidance

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

## The Draft AU Guidelines on ABS: Policy 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*

## The Draft AU Guidelines on ABS: Policy Guidance

- Transboundary cooperation in instances where GR and aTK are sourced from two or more countries: the minimum benefit sharing terms to be included in MAT
- Support the creation and effective implementation of the GMBSM
- Provision with the MAT obliging any user *who applies for IPRs* or product marketing authorization to disclose summary of application, the origin, source of GR and aTK and *declare* necessary ABS requirements are complied with

## The Draft AU Guidelines on ABS: Policy Guidance

- Encourage compliance through the use of checkpoints and internationally recognized certificates of compliance as well as regular and systemic information exchange
- 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*

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**For further information**

**Contact details:**

Departments of HRST

Tel:+251115182071

Fax:+251115182072

E-mail: [mahletk@africa-union.org](mailto:mahletk@africa-union.org);

Website: [www.au.int](http://www.au.int)