The logo of the African Union, featuring a map of Africa in the center, surrounded by a circular border with a gear-like pattern. Below the map are five interlocking rings.

AU Guidelines for the Coordinated Implementation of the Nagoya Protocol on ABS

SUB-REGIONAL WORKSHOP ON ABS FOR ANGLOPHONE AFRICA

26-30 SEPTEMBER 2016, NAIROBI, KENYA

Brief Background

ABS mechanisms->incentives to conserve and sustainably use GR ->enhancing the contribution of biodiversity to development and human well-being



Nagoya Protocol creates better legal certainty and transparency for providers + users of GR

establishing clearer +transparent conditions for access to GR

helping to ensure benefit-sharing when GR leave the country providing them for utilization in other countries

Brief Background

- ▶ Implementation of the NP at domestic level is hence key to show the intended effects
- ▶ The African Union (AU) Guidelines on ABS provide strategic and practical step-by-step directions and tools to AU Member States for a coordinated implementation of the NP.
- ▶ The Strategic Guidelines were adopted by the Policy Organs of the AU (2015 by AMCEN and the Exec. Council).



AU Assembly on the AU Strategic Guidelines on ABS

- ▶ **ADOPTS** the African Union Strategic Guidelines 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 (ABS Strategic Guidelines) contained herein below; **RECOGNIZING THAT it provides the basis for the development of Practical Guidelines** for the Coordinated Implementation of the Nagoya Protocol with a view to facilitate ABS implementation in Africa and to ensure coordination and cooperation;
- ▶ **ENCOURAGES** African Union Member States to become Parties to the Nagoya Protocol and to adhere to these ABS Strategic Guidelines in the implementation of the Nagoya Protocol at the national level;
- ▶ **CALLS UPON** all indigenous and local communities and all relevant stakeholders to take these ABS Strategic Guidelines fully into account when implementing access and benefit-sharing activities in Africa;
- ▶ **REQUESTS** the African Union Commission, in collaboration with the Regional Economic Communities, to establish a coordination mechanism for the implementation of the Nagoya Protocol in Africa;
- ▶ **URGES** African Union Member States to allocate financial and other resources to support efforts towards the coordinated implementation of the Nagoya Protocol and the fulfilment by Member States of their obligations under other agreements related to access and benefit-sharing;
- ▶ **CALLS UPON** the African Union Commission to facilitate the coordinated implementation of the Nagoya Protocol on ABS in Africa in accordance with the Practical Guidelines for the implementation of these Strategic Guidelines;
- ▶ **FURTHER CALLS UPON** development partners and all other relevant actors to provide financial and technical support to the African Union Commission, African Union Member States, indigenous and local communities and all relevant stakeholders for the implementation of the Nagoya Protocol in accordance with these ABS Strategic Guidelines.

The AU Guidelines on ABS: Its Structure

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Part 1: Sets out the Strategic Framework/Guidelines

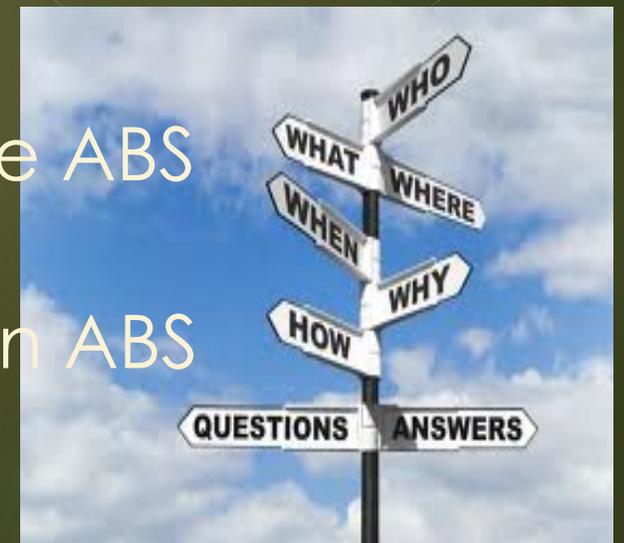
- ▶ ‘Principles’ of the envisaged ‘Coordination’
- ▶ ‘Policy Guidance’-on direction to AU Member States on national implementation against a harmonized regional standard as proposed by the AU Guidelines
- ▶ Focus on facilitating and ensure coordination and cooperation in the implementation of the Nagoya Protocol in Africa.



The AU Guidelines on ABS: Its Structure

Part 2: Practical 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
- ▶ **Annexes of the Practical Guidelines include:**
 - ❑ Sample application form for a permit to utilise 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



AU Strategic Guidelines: Its Standing

- ▶ Not legally binding: represents a political consensus by AU Member States on how to implement the Nagoya Protocol.
- ▶ In particular, Guidelines commit Member States to:
 - ❑ Establish compatible access procedures;
 - ❑ Exchange information on users who divert African resources and strictly regulate these in all African countries;
 - ❑ Cooperate in the process of elaboration of common African standards for benefit-sharing; and
 - ❑ Strengthen the rights of ILCs.
- **Provide a supplementary tool of reference, forming the basis for development of the Practical Guidelines which facilitate the consistent implementation of the Nagoya Protocol**

The AU Strategic Guidelines: Policy Guidance

Provides policy guidance against **six** key issues:

1. Awareness raising and information sharing on ABS Procedures
2. Access for Utilization
3. Benefit Sharing
4. Monitoring and Compliance
5. Protection and promotion of TK and aTK on GR, community and farmers' rights, and economic development
6. Capacity building/development and technology transfer

1: Awareness raising and information sharing

- ▶ Information sharing in the **ABS-CH** on national laws, regulatory, policy and administrative measures regarding requirements for PIC, use of GR and aTK as applicable
- ▶ Awareness raising **on the Nagoya Protocol with ILC** and all relevant stakeholders to facilitate compliance with domestic legislation or regulatory requirements
- ▶ Encourage **sharing of information between countries** and with ILCs and relevant stakeholders through the establishment of data base and or clearing house mechanisms as appropriate

2: Access for utilization

- ▶ MS shall take domestic regulatory and administrative steps to ensure that transparent and functional access regulations are in place to promote sustainable utilization of GR and aTK
- ▶ Having physical access to GR, (including from ex situ collections) does not imply that PIC for their utilisation has been granted or is not required. Utilisations without PIC and without the establishment of MAT are considered illegitimate. Member States (as countries of origin) shall cooperate to enforce their sovereign rights in this regard
 - The same consideration applies to ILC when they have the established right over GR and aTK
- ▶ PIC and MAT required for access to utilize naturally occurring biochemical derivatives (as defined in Art. 2 of the NP) and aTK associated with such derivatives

2: Access for utilization

...cont'd

- ▶ Acquisitions or **trade in commodities** provided such acquisition or trade is **not intended for** and does not result in the **utilisation of such commodities as GR** (per definition of Art. 2 of the NP) is *exempted* from domestic legislation or regulatory requirement for ABS
- ▶ *Exemption* from domestic legislation or regulatory requirements on ABS, the sustainable **customary use and exchange** of GR and aTK within and amongst indigenous and local communities (per Art. 12.4 of NP)
- ▶ **Mutually supportive implementation** of the ITPGRFA and the NP for Member States who are Parties to both instruments (per Art. 4.3 and 4.4 of NP)
- ▶ Encourage research which contributes to the conservation and sustainable use of biological diversity to: **simplified access for non-commercial research**, to **present and imminent emergencies** and to support the use of GR and aTK for food, agriculture and food security

3: Benefit Sharing

- ▶ Member States shall share information and coordinate their policies with a view to establishing transparent, fair, equitable and uniform benefit-sharing standards that uphold the intrinsic, cultural and socio-economic values of GR and aTK (and shared as appropriate with ILCs when holding such resource and knowledge)
- ▶ Where GR and aTK may be sourced from two or more countries, Member States concerned shall endeavour to cooperate and coordinate on the minimum benefit-sharing terms to be included in MATs governing the utilisation of such shared GR and aTK.
- ▶ Member States shall support the creation and effective implementation, at the national and international levels, of a Global Multilateral Benefit-Sharing Mechanism (as foreseen in Art 10 of the NP)

4: Monitoring and Compliance

- ▶ Provide and implement monitoring measures by instituting check points and internationally recognized certificates of compliance + through regular and systematic information exchange
- ▶ To facilitate information exchange the AUC shall establish a database of ABS information in consultation of Member States and ILC Focal Points of MS
- ▶ MATs shall always include a provision obliging any user who applies for IPRs or product marketing authorisation resulting from the utilisation of GR and aTK to disclose the origin and source of any GR or aTK used in the creation of such IP or products, and to declare whether PIC has been obtained and MAT have been agreed in compliance with the domestic ABS requirements of the provider country
- ▶ MS shall seek to provide PIC for access to GR or aTK only to users who are domiciled in their own jurisdiction, or in the jurisdiction of a Party to the Nagoya Protocol that has adequate compliance and mutual support measures in place.
- ▶ Member States may use regional dispute settlement bodies in cases of non-compliance.

5: Promotion and Protection of TK

- ▶ MS shall safeguard the **collective rights of ILCs and of farmers** to their traditional livestock breeds and crops (including the right to derive economic development benefits from the utilisation of their GR and aTK)
- ▶ MS through domestic legislation encouraged to **direct benefits towards promotion of conservation and sustainable use of biodiversity and improvement of the livelihoods of ILCs** (per Art. 9&12)
- ▶ Utilisation of GR **does not exceed sustainable harvesting limits**, deplete biological resources or threaten the sustainability of biodiversity at the genetic, species or ecosystems levels

6: Capacity Building, development and Technology Transfer

- ▶ Cooperation towards development of human resources and institutional capacities to effectively implement the NP
- ▶ MS shall also ensure that benefits arising from the utilisation of GR and aTK, especially non-monetary benefits, contribute to national and regional capacity building and technology transfer
- ▶ MS shall adopt mechanisms that create legal rights for ILCs and resource custodians over their GR and aTK when such rights do not already exist
- ▶ MS shall ensure there is support and guidance on negotiations on MATs between ILCs and users, and subsequently monitor fulfilment of the agreed terms

For further information

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