

# African Ministers Conference on Access and Benefit Sharing

## Conference

**Windhoek, Namibia, 8 – 10 March, 2010**

## REPORT

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implemented by



Monday - March 8, 2010

### Opening Ceremony

The opening ceremony was attended by all the dignitaries to the Conference and addressed by the President of the Republic of Namibia, His Excellency, Hifikyponye Pohamba, the Minister of Environment and Tourism from Namibia Honorable Netumbo Nandi-Ndaitwah, the Minister of Environment from Denmark, Honorable Karen Ellemann and the Deputy Minister of Water and Environmental Affairs of South Africa, Honourable Rejoice Mabudafasi. Other notable delegates to address the Opening session were Dr. Bakary Kante, Director of the Division of Environmental Law and Conventions (DLEC) of UNEP, on behalf of Executive Director of UNEP and Dr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity.

The ceremony began with the Namibian National Anthem and the African Union Anthem.

The Chairperson of the Session and Director of Ceremonies, the Permanent Secretary of the Ministry of Environment and Tourism, Government of Namibia, **Mr. Kalumbi Shangula**, welcomed the Honorable President and Ministers to the Conference on Access and Benefit Sharing in African Countries.

In his introductory remarks, Mr. Shangula informed members that the meeting will serve as preparation for the conference meeting to be held later this year in Negoya in Japan. He said that Namibia is honored to host representatives from 41 countries including 3 European countries - Germany, Denmark and Sweden.

He then invited the Honorable Minister of Environment and Tourism of Namibia, **Ms. Nandi-Ndaitwah** to the podium to deliver the Welcome Address.

The Honorable Minister welcomed all the dignitaries to the conference that was being held in support of the ongoing negotiations for an *International regime* on Access and Benefit Sharing. She brought to light the well-known fact that for many communities in Africa, the ecosystem is the greatest and the most reliable service provider of food, shelter and health care and that its loss results in the loss of livelihoods, genetic biodiversity, cultural biodiversity and undermines food and health security of the society at large. The Minister thanked the Honorable President and all the colleagues from the various countries for making time to attend the conference. She thanked the Danish Government for the financial support to make the event possible. She concluded by congratulating all the women of the world on the occasion of International Women's Day.

The Director of Ceremonies thanked Honorable Ms. Netumbo Nandi-Ndaitwah for the warm welcome. He wished all women a happy Women's Day as well. Mr. Shangula stressed the importance of Diversity. He informed the August gathering house that there were simultaneous translations in Portuguese and French.

The next speaker, **Honorable Karen Ellemann**, Danish Minister for Environment was invited to the podium.

Honorable Karen Elleman in her speech highlighted the international ABS Regime, its importance and benefits and the core idea of 'fairness'. There is a shared understanding among all of us here that the use of the world's genetic resources must be regulated to ensure fairness for all. The need for senses building is important to reach an agreement in Japan. She stressed that the new regime must be founded on the fundamental principle of sovereignty. The Honorable Minister also called for local inclusion to help empower poor rural communities and pointed out that the need for pragmatic solutions and consensus building is urgent.

## The ABS Capacity Development Initiative

The Director of Ceremonies thanked Honorable Elleman for her statement since all countries were looking forward to an agreement in order to sustain cultural resources (agreements). He also thanked the Danish for their hospitality in Copenhagen during their meeting in 2009.

Honorable **Rejoice Mabudafasi** was then called to the podium to deliver her Speech.

In her speech she highlighted the importance of the Conference.

The MC thanked Ms. Mabufasi for her speech and went straight into welcoming **Dr. Bakary Kante**, on behalf of the executive Director of the United Nations Environmental programme from Senegal.

Dr. Kante's speech highlighted the importance of climate change for the entire world. Kopenhagen was synonym of climate change during the last conference.

This was followed by **Dr. Ahmed Djoghlaif**, Executive Secretary of the convention on Biological Diversity delivering his address. He praised Namibia for its various achievements on the environmental front. He said, as the famous Namibian proverb provides, "Elephants carry each other." This is what this meeting is about, and we hope this wisdom of the people of SADC region will inspire and guide the outcome of the Nagoya meeting. The Aichi-Nagoya Protocol on Access and Benefit-sharing, to be adopted on 29 October this year, will be a powerful tool to translate the objectives of the Convention into reality and achieve the Millennium Development Goals through the establishment of a global partnership between the owners and the users of genetic resources for the benefit on life on Earth, the people of the world and the future of tomorrow's children.

This was followed by the Introduction of **His Excellency, President Hifikepunye Pohamba** to deliver his keynote address.

The Honorable President reminded all about the day being international Women's Day. He also pointed out that 2010 was also declared as the year of Biological Diversity and therefore expressed hope that this would motivate all to ensure that the objectives of the UN Convention on Biological Diversity is addressed. He also referred to the achievements in the previous conferences where 59 constituencies benefited. He implored the gathering to continue with the momentum and the work done since 2002 to bring an internationally accepted Access and Benefit Sharing regime in this International Year of Biodiversity. He shared some of the efforts being made by Namibia to ensure that indigenous communities can share in the benefits of the exploitation of indigenous plants like the hoodia.

The sharing of benefits and facilitation of equitable access to biodiversity can also serve important social, economic and ecological purposes. The President pointed out that the matter of ownership must also form part of the discussion. For the sake of our planet and for the future generations, the necessary paradigm shift must take place so that all the stakeholders can work together to achieve the desired results. There would be no better gift to the people of the world in this Year of Biodiversity than an agreement on a fair and equitable international regime on Access and Benefit Sharing, the President said.

He concluded by officially opening the Conference.

The opening ceremony concluded with the African Union Anthem and the Namibian National Anthem. The Director of Ceremonies thanked the President for his statement as well as declaring the Conference of African Ministers on Access and Benefit Sharing (ABS) opened. He also expressed his appreciation for the statements by speakers as a great starter to the Conference. He also thanked the audience for their attentiveness and support as well as the interpreters who made the communications possible during the first part of the session. All members were requested to raise for the African Union Anthem and the Namibian National anthems where-after the President departed.

## Introductory Expert Statements

The conference continued with **introductory expert statements**. The Honorable Minister Nandi-Ndaitwah requested that the statements be done from tables in order to prepare for negotiations.

Dr. Bakary Kante, Director of the Division of Environmental law and Conventions (DELIC) of UNEP was the first presenter of his statement. He had to address the question:

### 1. Where does ABS come from and why is it important?

Dr. Bakary started his statement by saying that the ABS is based on equity and ethics, it is important for the adoption of a national Regime.

The first question he addressed was: How can we deal with the development of capacity? He answered it by saying that over the past two decades it has been captured under plant, food and agriculture. The concept for ethics and equity becomes very important. It is something which is difficult to deal with ABS in itself. The concept of global food is replaced with public knowledge. Inclusion thereof is in Article 5 of the Convention.

ABS within the CBD – Development and subsequent implementation of the National Regime for ABS.

### 2. Why is ABS important for Africa?, presented by Peter Munyi, Chief Legal Officer of ICIPE

This presentation highlighted the realities, perspectives for research and development and results. The realities are that Africa harbours numerous resources of all kinds – genetic resources, biodiversity, MR, etc. In fact the continent is the centre of origin of many resources. These resources and the knowledge have been used to treat diseases and to add value to industrial products. There is misappropriation of resources in Africa. All African countries are part of the CBD. Hence 57% of the CBD parties is constituencies from Africa. However, only 9% of 53 African countries that are listed have national ABS measures in place, 44 have no measures in place. Very little R & D, value addition relating to GRs is taking place in the continent. He also presented statistics on value addition to GRs by the Africa Insect Science for Food and Health. He further highlighted the Perspectives and Results by saying that legal certainty is a key constituent to any ABS regime. AMCOST's efforts must be completed by putting in place an appropriate international regime on ABS to be followed by effective national implementation efforts. Value addition must occur at the local/national level. He presented statistics on shares of world researchers by principal regions/countries, 2002 and 2007 which shows that most research is taking place elsewhere and most researchers are not located in Africa. He also presented a breakdown of R&D investments in Africa, Asia and the Pacific on the GERD by sector of performance, 2007 which indicates that more private sector R&D investments must be attached into the continent. In the perspectives and results it demonstrated that Africa must contribute more financially in national and international R&D. In conclusion he stated what an international regime on ABS will mean:

- Attendant institution of effective national implementation measure on ABS.
- An increased R&D spending at the national and international level.
- Institution of efforts to attract foreign and private sector-led R&D investments in Africa.
- Enhancement of local capacity levels to add value to generic resources.
- Rethinking of the current technological paradigm.

## The ABS Capacity Development Initiative

**3. Why is ABS Regime important for African Indigenous and Local Communities?**, presented by Lucy Mullenkey, Executive Director of the Indigenous Information Network (IIN)

This presentation started with reference to the significant meaning of the poster on the podium. The presenter expressed appreciation for the work by the organizers to select the three different pictures which tell a million stories. In the first poster, the young indigenous San children are looking and sharing a resource, which is held by the youngest of them all. Their knowledge and experience on that resource is not new to them, they have learnt from their parents and elders. It is even more important to see that the youngest among them is controlling the whole resource while the others have to wait and negotiate carefully. This is actually what we have all been doing the past few years negotiating this ABS regime.

The Hoodia plant in the middle signifies our resources in the continent which are shared among communities across borders and the last picture is a good example of the ecosystem which is rich and diverse in our continent. The ecosystem helps to bring us together to call for unity to protect and conserve our biological and genetic resources.

Indigenous and local communities like the San on the poster, often have deep understanding of their environment and its ecology. They know numerous ways of using wild plants and animals - as food, medicine and clothing. They have also developed a variety of cultivation techniques for large numbers of plants. This knowledge forms an important basis for the conservation of global biodiversity and for its sustainable use.

Indigenous and local communities of Africa have been at the forefront reaffirming their role in sustainable development. The contributions and solidarity from different countries in the region on different environmental processes has been encouraging. This has continued to grow and strengthen the discussions at all levels. There is a strong need therefore to continue to accord indigenous and local communities in Africa full and effective participation within the Convention on Biodiversity process to ensure that their rights and concerns are fully taken into account in the ongoing negotiations and beyond.

It is in this perspective that decision *IX/12 paragraph 18* of the Conference of the Parties to the Convention on Biological Diversity specifically encouraged Parties, other Governments, international organizations and all relevant stakeholders to provide the ways and means to allow for sufficient preparation and to facilitate full and effective participation of indigenous and local communities in the process of the negotiation and elaboration of an international regime on Access and Benefit Sharing.

History takes us back to as early as 1999 when the African commission on human and peoples' rights started debating on the situation of indigenous populations and communities in the continent. Since 2001 representatives from these communities have been attending every session of the commission to date.

In the environmental processes, the African indigenous and local communities have been visible starting from the local, national, sub-regional, regional and international process, this includes UNEP's Governing Council, different intercessional meetings and conferences of parties to the conventions like the convention to combat desertification, Climate change and to the convention of biological diversity which has been of great interest and the most attended. Since 1998 we have been keenly following and attending the process of the convention as African indigenous and local communities together as a family. This convention on biological Diversity is very important, as you all know this is the convention that recognizes and clearly supports the traditional way of live, for indigenous and local communities, as clearly written in Article 8j and related provision of the convention. In the last few years, we have effectively participated as Africa indigenous and local communities because of the generous and kind support by the secretariat of the convention.

## The ABS Capacity Development Initiative

Since 2005 we have as indigenous and local communities participated in the ABS Capacity Development for Africa Initiative, which has continued to increase our collaboration with our government's representative in the region. This has added value to our knowledge and support at all levels in the continent. The work that we have been undertaking together on the process of the international regime has been important for indigenous and local communities in ensuring that traditional knowledge and customary laws are safeguarded in the discussions of the international regime. This clearly reaffirms that Africa as the continent of ethnic diversity, customary law and practices values the importance of Traditional Knowledge as lead to the conservation of Biological and Genetic Resource. This has enhanced the recognition and support of Indigenous and local communities' as knowledge and rights holders. Giving hope and motivation for the communities who have for many centuries played role of custodianship for Biological and genetic resources and therefore a need to ensure their continuous, participation in resource management and their inclusion to access granting procedures and benefit-sharing as source for livelihood incomes.

In the African model legislation for the protection of the rights of local communities, farmers and breeders, and for the regulation of access to biological resources of 2000 reaffirms African Union commitment in safeguarding the rights of all communities in the quest to conserve their Biological and Genetic resources. It is necessary to protect and encourage cultural diversity, giving due value to the knowledge, technologies, innovations and practices of local communities with respect to the conservation, management and use of biological resources.

And as we join others in reaffirming the recommendations submitted to you in this meeting, we do remind you all that the Preamble of the African model law further states that "It is the duty of the State and its people to regulate access to biological resources and to community knowledge and technologies"; which gives us strength to call on the Ministers to ensure the protection of traditional knowledge in ABS legislations and take measures to effectively involve indigenous and local communities in all ABS related decision making processes.

We further join the team to request the Ministers to invite the African Union, sub-regional organizations and development partners to assist in the implementation of the International Regime and to provide support for *capacity development* of the African experts on ABS.

Indigenous and local communities of Africa join together urged the Ministers, to make adequate budgetary allocations for the effective implementation of national Access and benefit sharing legislations and the promotion of activities relevant to *capacity development* of all concerned stakeholders including local communities at local and national level. This should include activities such as: The development of long and short-term *capacity building* measures for Indigenous and Local Communities with regards to:

- Negotiations at all levels
- Enhancing the understanding of the International Regime
- Awareness creation and information dissemination
- Development of technical (such as scientific and legal) expertise on Genetic Resources and Traditional Knowledge
- Training on participatory research, data collection, documentation and storage of Genetic Resources and Traditional Knowledge.

The ABS Capacity Development for Africa is not over. There is more beyond Nagoya and she urged the Ministers to continue supporting the region and ensure that participation of Indigenous and local communities in Africa is visible and enhanced.

The presenter expressed hope that the European partners will continue their support for Africa and recognize the existence and support of indigenous and local communities in Africa and therefore set aside a budget for *capacity development* and participation as it has done in other continents of Latin America and Asia.

## The ABS Capacity Development Initiative

As Indigenous and local communities we will continue to count on the support of both UNEP and the secretariat of the convention on biological diversity for our work at all levels. She expressed hope that Ministers give recognition and support in the roles on the protection of our traditional knowledge and customary laws as key to the conservation of Biological and Genetic resources, goes along way in reaffirming your commitment in the WSSD in Johannesburg where you included clearly in the political declaration and affirmed “the role played by indigenous peoples in sustainable development”.

The presentation concluded by alerting all present about world Women’s day and the theme of 2010 which is **Equal rights, equal opportunities: Progress for all.**

### Technical Inputs

A Presentation on the historical background and inputs of the negotiations on the international regime on access and benefit sharing was given by Worku Damena Yifru, Secretariat of the Convention on Biological Diversity (SCBD).

He started by talking about ABS in Practice over the last 15 years. Gaps that may be addressed by the ABS Regime was the following:

The outline which included the provisions of the Convention on Biological Diversity (CBD) on access and benefit sharing, ABS in Africa, the negotiating of the International Regime which included Mandate/process and Content/main elements, ABS in practice and ABS in practice over the last 15 years, ABS timeline, Capacity building, ABS in Africa, the international regime – its Nature, scope, objective and main components, CBD provisions.

The presentation mentioned the fact that all African countries are part of the CBD. It was addressed at the OAU workshop on medical plants and the protection of indigenous knowledge in Kenya, Nairobi from 14 to 17 April 1997.

African countries with national laws on ABS are Kenya, Ethiopia, Malawi, South Africa and Uganda. The provisions of the CBD has three objectives namely Conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits from use of generic resources. Fundamental principles that underpin the *International regime* are:

- Sovereign rights over generic resources
- Facilitating access to generic resources
- Prior informed consent
- Sharing benefits in a fair and equitable way and
- Mutually agreed terms

He continued with the core benefit-sharing obligations and the ABS in practice which stated the different generic resources, why it is used for as well as the different users operating in different sectors. Intermediaries in either provider (National Competent Authority) and user country (Industry, Research Institutes, Universities) should have prior informed consent which means they must have mutually agreed terms between themselves on non-commercial or commercial utilization of GR (e.g. basic research, research and development, development of new pharmaceuticals, biotechnological products) as well as benefit sharing (monetary and non-monetary, e.g. royalties, technology transfer, training, etc.).

ABS has been in practice over the past 15 years at national and regional level and global level. At national and regional level the primary focus has been on the provider side the ABS and at global level the primary focus is on compliance, enforcement and capacity-building (e.g. negotiating). He highlighted the Gaps that may be addressed by the Internal Regime and the ABS timeline.

## The ABS Capacity Development Initiative

He also referred to the ABS in Africa which outlines the following:

- All African countries are Parties to the CBD;
- OAU/STRC- workshop on medicinal plants- protection of indigenous knowledge- Nairobi, 14-17 April, 1997;
- OAU/AU model law on ABS- considered at the 68<sup>th</sup> session of the Council of Ministers of OAU in Ouagadugu, Burkina Faso, 4-7 June 1998 (CM/Dec. 402-432 (LXVIII));
- Declaration of the Africa Group at COP 5, which, among other things, encouraged the adoption of ABS laws at national level;
- African Convention on the Conservation of Nature and Natural Resources ('the 1968 Algiers Convention' as revised and adopted in 2003) (ABS provisions- paragraph 2 (j & k) Article IX, paragraph 2, Article XVII).

The main components of the International Regime as pointed out by the speaker included the following:

- Fair and equitable sharing of benefits
- Access
- Compliance
- Traditional knowledge associated with genetic resources
- Capacity-building

He then discussed the Nature, objective and scope individually. He concluded his presentation by discussing the Main components also individually under basic issues and concepts, broad areas under discussions, basic issues and concepts as well as an answer on how the International Regime should address the main components of the national regime.

This was followed by a presentation on the Status of the intersessional consultation process by Fernando Casas and Timothy Hodges, co-chairs of the ABS Working group, whereby an organogram of the process from Bonn to Nagoya was shared. Information on the shape of the regime was shared as well- principles: transparency, adaptability, fairness, flexibility, predictability, efficiency, simplicity and reciprocity.

## The ABS Capacity Development Initiative

**Tuesday - March 9, 2010**

Field Trip: Visit of ABS related business (Katutura) and research facilities (National Botanical Research Institute) in Windhoek

Participants were explained how the National Botanical Research Institute (NBRI) collects and maintains a wide variety of plant material and data. Participants witnessed firsthand how the NBRI also conducts plant related research and provide botanical information to the general public. The National Botanical Research Institute is home to many plants and fruit like Hoodia, Devil's Claw and Marula occurring in Namibia that are well known for their medicinal properties or which are being used in the production of cosmetics, essential oils, flavouring agents and beverages.

Official Reception

An official reception hosted by the Namibian Ministry of Environment and Tourism took place in the evening where dignitaries and experts further exchanged in an informal setting.

**Wednesday - March 10, 2010**

**African-European Ministers Exchange**

Facilitated by Geoff Burton (United Nations University - Institute of Advanced Studies, UNU-IAS) and Sem Shikongo (ABS Intersessional Coordinator and Spokesperson of the African Group, Namibia)

**Introduction**

A dialogue between European and African Ministers on the perspectives for the international regime on ABS and its implementation took place and was guided by the following inputs:

- Overview on positions and interests
- Focused case presentations

The African-European exchange on ABS was facilitated by Sem Shikongo, ABS Intersessional Coordinator and Spokesperson of the African Group, and Geoff Burton of the United Nations University – Institute of Advanced Studies. They introduced the Ministers and delegates present to the aims of the session and its modality. It was clarified that the aim was not to negotiate but to improve one another's understanding of the key underlying issues that are likely to challenge the IR-ABS. It was explained that the modality of the session was for five case studies to be presented which each explored different aspects of the complexity of ABS. It was hoped that these case studies would stimulate ABS related discussion between the two sides. These discussions were to be carried out under Chatham House Rules.

**Proceedings of the African-European Ministers Exchange**

**Item 1 - Case Studies**

A case study on the Global Taxonomy Initiative (GTI) and the issues, challenges and opportunities for non-commercial research and ABS, was first to be presented. It was described that the results of research were essential to many aspects of the CBD, especially the management of biodiversity. Non-commercial research is also typically accredited by the publication of results and is therefore clearly outside of ABS. In addition non-commercial research has good standards for detailed documentation of origin and transfer of resources.

## The ABS Capacity Development Initiative

A diagram showing the flow of material and benefits from a BIOTA project in Kakemega forest in Kenya was then presented. The complexity of flows was emphasised and it was reported that there was limited involvement of communities in the provision of resources as these were being taken from a protected area. The main challenge mentioned was the need to be able to draw a line between commercial and non-commercial research, while the main opportunities were the huge scope for discovering unknown resources, particularly in Africa, and the non-monetary benefits accruing to communities.

The presentation of the case study prompted much discussion. This centred around two main areas: the ways in which communities benefit from the GTI and the issue of non-commercial research becoming commercial and opening up opportunities for bioprospecting and biopiracy. In the case of the GTI, it was suggested that this is an important vehicle for identifying new opportunities in the realm of biodiversity. It was reported that under the BIOTA project in Kenya, some sort of technology transfer and *capacity development* was occurring. This was however difficult to quantify as it took the form mainly of non-monetary benefits such as equipment, employment, scholarships and openly shared results. It was suggested that a transparent tracking mechanism and the question of change of intent were key with regard to non-commercial research becoming commercial and the associated issue of trust and access to justice. It was suggested that at a certain point in the process, intent will become commercial, the IR-ABS needs to be able to step in at this process. It was also suggested that the IR-ABS should incorporate the premise at the outset that all research can lead to commercial activity, then take the necessary steps so that this cannot occur. This was not agreed with from the academic viewpoint as elaborate access regulations are likely to impede the regular and rapid exchange of biological resources which is often necessary for non-commercial research. Several of the European representatives confirmed that they would continue scientific cooperation and *capacity development* regardless of the outcome in Nagoya, as part of efforts to build trust that has been eroded by past malpractices. An offer to share a recently developed government strategy to regulate marine bioprospecting was also made by one of the European countries.

The next case study presented was from Benin, where the government was having difficulty in certifying herbal medicines produced by traditional healers that were mainly used to treat malaria. It enlisted the help of the University of Louvain in Belgium to assist it with setting up a local laboratory in Benin, where samples of the medicines could be tested for toxicity and harmlessness. The project covered four years with the Belgian University supplying 80% of the work equipment. In addition capacity was built in the School of Pharmacy and a number of certificates were issued to traditional healers, where the medicines were found to be efficient and harmless, with benefits provided to the local communities. The University is also assisting with clinical studies, after which patents may be established, and with branding and labelling of the medicines. A problem encountered was that the certificates involved many plants that were close to extinction. This point attracted much discussion and it was clarified that it had become necessary to train traditional healers and communities as to the need to use these plants sustainably. For this reason botanical gardens were set up for the endangered plants. This example clearly shows the interlinkages of the CBD objectives in practice.

5A project in Madagascar set up by the International Cooperative Biodiversity Group (ICBG) was the next case study to be presented. The project began in 1999 with the aim of collecting plant material that could be used in research by a variety of companies. The aim of the project was to share the benefits emanating from the diversity of medicinal plants in Madagascar to generate economic growth, and to preserve the endemic nature of plant genetics in that country. It was intended to investigate the medicinal potential of the plants to deal with diseases such as HIV/AIDs, cancers as well as cardiovascular conditions, and also their agricultural potential in terms of ingredients for pesticides and insecticides. An inter-ministerial committee (IMC) issues the certificates and provisions for the relevant companies to carry out research on the resources. The samples are collected on an ad-hoc basis involving local communities and are processed in Madagascar. 50% are sent on to the Virginia Polytechnic Institute and State University in the US, with the other 50% remaining in Madagascar. In terms of benefit-sharing, financial payments are made upfront to communities, and part of the revenue is also managed by the IMC which decides on funding projects at micro level such as storage facilities, potable water systems and marketing support.

## The ABS Capacity Development Initiative

It was reflected that the issue of access to research results and the issuing of patents must be made more clear with the country of origin, as approximately 250 plant species had already been sent to Virginia without ample information as to what has become of these species. This also shows the need for international certificates to improve tracking. Technology transfer and benefit-sharing needed to be more implicit and further elaborated as the ad-hoc nature of sampling was eroding TK. The situation where communities served as mere collectors with results remaining confidential caused much concern among the ministers. Strong national legislation as a means to further develop Madagascar was considered essential in this context.

The cases of Marula and Hoodia in Namibia and Southern Africa were next to be explored. The case of marula began when the owners of traditional knowledge about marula kernels came together and organised the Eudufano Women's Cooperative in Northern Namibia. They then requested assistance from the Namibian government to commercialise the marula oil product. The government contracted the NGO CRIAA SADC to do research, in conjunction with others such as the University of Namibia, into the properties of marula oil. It was subsequently found that the oil was characterised by high antioxidant properties and that unless this information was protected, it could be patented by others. Discussions were held at this stage with other communities who traditionally use marula in the SADC region. Phytotrade Africa took on the work and formed a partnership with the French company Aldivia, who developed and patented the marula oil. The patent is co-owned by the Southern African Marula Oil Producer's Network (SAMOPN) (held in trust by Phytotrade Africa) and Aldivia. The EWC has preferential access for supplying marula kernels for the patented oil, on the basis of Namibia's pioneering role in developing the patent.

The case of Hoodia was then explained as a good example of the complexity of ABS. Its story begins in the 1960s, while Namibia was under South African rule, when the South African administration began collecting TK from ethnic groups. One example of such knowledge was the use of hoodia by the San people as an appetite suppressant. Many years later this information was researched further by the CSIR (Council for Scientific and Industrial Research) which found no signs of toxicity in the resource. This led them to take out a patent which was initially licensed onto Pfizer. When it emerged that there had been no PIC or MAT or benefit-sharing with the San, the CSIR were put in a difficult position and signed a deal with the Hoodia San Council in South Africa, in spite of the fact that the original TK came from Namibia. The San hoodia council in South Africa recognised the transboundary nature of hoodia and benefit-sharing is now paid by them to WIMSA (Working Group of Indigenous Minorities in Southern Africa) from where it is distributed to San communities in Namibia and Botswana as well as South Africa. The Nama group also claims TK to hoodia and this claim is supported in Namibia by the government. Meanwhile Unilever took over the patent from Pfizer and invested EUR40 million in it as a diet food product before dropping it. The flow of raw material is now complex: there is a black market but with little wild harvesting, there are large established plantations organised by Unilever, and there are both independent smallscale growers as well as the various hoodia grower's associations. There are a wide variety of market channels used and benefits received by these players. In the discussions it was clarified that there were also patents on properties of hoodia relating to ulcers and diabetes, but that its appetite-suppressant property was best known. The need to help African countries to be able to defend their patents was also made clear.

### Item 2 - Dialogue on the perspectives for the implementation of ABS and its implementation

The floor was then duly opened to the European representatives who expressed their gratitude for the invitation to the conference. Their particular commitment to a single legally binding IR-ABS instrument in the form of a protocol was confirmed. However it was affirmed that there would be a meeting of all European environmental ministers on the coming Monday (15th March) where a final decision would be taken by the EU on that issue. It was also expressed that clear obligations for compliance in the IR-ABS are desirable from the EU standpoint, and that benefit-sharing must support the other two objectives of the CBD. These commitments were welcomed by the African position, which called for the recognition of other salient points. These included that countries were at different levels of development, which would have a bearing on what could and could not be compromised on.

## The ABS Capacity Development Initiative

The ability to be able to enforce the IR-ABS was quoted as being particularly important from the African position, with technology transfer through value addition and job creation being important additional elements. Furthermore experience in Africa has shown that when communities are given incentives to manage resources sustainably, that this will occur. Therefore it was considered very important that ABS and the fair and equitable sharing of benefits was linked to the conservation and sustainable use of biodiversity.

It was further raised that Africa has depended on biological resources for thousands of years for survival. These resources have been abundant but are now becoming more scarce, because of their usefulness at worldwide level. Given this situation, proper systems must be put in place to ensure sustainable development. The benefits from these resources, both social and scientific, need to be seen clearly, as communities will not be able to conserve resources if their basic survival is threatened. This was clearly linked to *capacity building* so that the IR-ABS could be effectively implemented post-Nagoya. The need for a strong compliance measure was also emphasised so that providers could access justice, especially after resources had left their borders. In addition this process should not be expensive nor burdensome for resource-constrained African countries. The understanding of misappropriation and misuse was declared as being central to the compliance issue. Particular concern was raised about the plundering of marine resources and the dumping of waste within the territorial waters of weak countries, and also with regard to marine resources that are found beyond national jurisdictions. Lastly it was suggested that the conservation and sustainable use of biodiversity would contribute significantly to negating other pressing threats such as climate change, desertification and alien invasive species. Therefore fair and equitable benefit-sharing, and its potential to support the conservation and sustainable use of biodiversity, was arguably noted as the most important environmental issue of today.

From the European side, the commitment of countries such as Norway and Germany to scientific cooperation, *capacity building* and technology transfer would continue regardless of the outcome post-Nagoya. It was recognised that benefit-sharing needs to go beyond purely monetary benefits, and that indigenous local communities should be given special attention by the IR-ABS. With regard to compliance and access, the respect of EU for national sovereignty was beyond doubt. The EU was not looking for unconditional access to genetic resources but it would be difficult for them to take action against companies where there were unclear or non-transparent laws and procedures in provider countries. Thus what was required was clear, transparent and sound legislative measures on the part of both user and provider countries. Reference was also made to new legislation in Norway where all relevant stakeholders operating in Norway were obliged to respect Norwegian laws. This would also allow for Norwegian companies and institutions operating in breach of another country's laws in that country to be tried by the relevant country under Norwegian law. Its commitment to share policies regulating access to marine resources and issues such as marine pollution was also reaffirmed. For marine resources outside of territorial waters, it was suggested that regional fisheries commissions, such as SAFC (South Atlantic Fisheries Commission) and NAFC (North Atlantic Fisheries Commission), be engaged to deal with this issue.

The multiplier effect of sustainable use and conservation of biodiversity in terms of income generation for communities as well as increasing resistance to climate change and desertification was further recognised by the African side. The value of TK needs to be recognised in this regard but there is also a need for nationally appropriate technology transfer, based on nationally identified needs and priorities, to drive this process. While many African countries are currently without ABS legislation, those that have legislation are also in need of support with tasks such as the negotiation and drafting of legal agreements and litigation, and ensuring that loopholes in the framework are fixed. The requirement that the use of misappropriated resources be covered by the IR-ABS, was again expressed and its link to access standards was noted. Clarity was sought as to what exactly the EU means by minimum access standards. A request for the EU position on disclosure requirement and its implications for compliance and enforcement was also made as this is seen as an important requirement of the African position.

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The European side reaffirmed that they respect national sovereignty to allow access to genetic resources and associated traditional knowledge. The EU has promised to follow up on biopiracy cases, but it notes that legal action from the EU will be more realistic if sound and transparent legal and administrative systems are operational in provider countries. These systems will also make it easier to see if and where rules have been breached. A default system proposed by Mexico to help countries without such legislation was referred to and it was stated that it was EU policy to assist the Least Developed Countries (LDCs) to establish these systems. With regard to disclosure, it was noted that the EU proposed a mandatory disclosure requirement for patents in WIPO in 2004. Since then, Denmark and Germany have included such requirements in their legislation. The view was expressed that IPR belongs to other fora such as WIPO and TRIPS and cannot really be addressed through the CBD/ABS framework. Also if it becomes compulsory to have PIC, then the origin of the genetic resources and associated TK would already be known. The European representatives then made a request for an explanation of the African position on derivatives.

Derivatives were described as being an important focus of the African position as they represent a product of genetic and biological resources that attract commercial value. For example cotton is not only valued for its seed, but there are a multitude of other spin-off products. Also ecosystems in Southern Africa were used as a wider example of a derivative, where communities are now benefitting from the conservation of biodiversity in conservancies and national parks. This shows that where incentives for conserving and sustainably using biodiversity are provided, that communities will become involved and partners to the process. Thus the inclusion of derivatives in the IR-ABS will facilitate linkages between the three objectives of the CBD.

The European representatives thanked their African counterparts for their explanation. They urged the African representatives to go back to their countries and explain about ABS issues in their countries and the interlinkages between biodiversity conservation and poverty alleviation, and increasing resilience to climate change and desertification. This included the need for African ministers to engage with other line ministries on ABS issues, and the need to include biodiversity and ABS considerations in national strategies aiming at poverty alleviation and development. For their part, the European representatives resolved to bring back the messages from the Conference to their ministerial counterparts.

The moderators succinctly summed up the main points of the discussion. These included:

- Mutual recognition of the desire for a single legally binding IR-ABS in the form of a protocol
- Agreement from both sides that compliance and benefit-sharing needs to be at the heart of the IR-ABS
- Access standards are seen from the EU side as a benchmark to achieve compliance, while the African concerns about misappropriation and misuse and their links to access to justice and fairness were noted
- A requirement for disclosure is agreed by both sides
- Derivatives have been a divisive issue for many years, the importance of the issue to the African group was highlighted
- Technology transfer was a recurring theme in the discussions, and is at the heart of the IR-ABS. The need for nationally appropriate technology transfer (monetary and non-monetary) that will make a difference to local communities is an important priority area. The commitment of several European countries to continue their cooperation with African countries, irrespective of the outcome of Nagoya, was reassuring for African countries.

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### Item 3 - Concluding remarks and closure of the meeting

Concluding remarks were received from many of the countries represented at the conference. From the African side, these centred mainly on thanking the Namibian Government for hosting the meeting and providing such warm hospitality. The African working group was congratulated for the comprehensive work they had achieved during the previous week. It was generally felt that the African position had been well advanced during the meeting and that it is now well equipped for the upcoming negotiations. It was suggested to spread the information from the conference to AMCEN and the AU secretariat so that absent countries and ministers would be briefed. The European ministers were also thanked for their commitment and the good will shown during the conference. The Government of Denmark also received special mention for funding the conference and the GTZ was thanked for its role as sponsor of the ABS Capacity Development Initiative for Africa. For their part, the European ministers and representatives thanked Namibia for the warm hospitality received and the professional way in which the conference had been run, and also congratulated the Co-Chairs on the excellent job they had done in moderating the discussions. They were heartened by the positive atmosphere of the conference and noted more and more alignment between the EU and African positions, which was noted as encouraging. They were also highly appreciative of the case studies which were demonstrated to them and provided them with an excellent introduction to the complexity of the ABS issue from the African side. They assured the conference that the messages they received would be brought back to their ministerial counterparts in the EU.

#### **Closing of the meeting**

Dr. Kalumbi Shangula, Permanent Secretary of the Namibian Ministry of Environment and Tourism, thanked the government of Denmark for funding the conference, and also thanked AMCEN and all other ministers and delegates who were able to participate in the conference. He wished all in attendance a safe journey home and officially closed the African Ministers Conference on ABS.

One key feature of the Ministerial conference was that African Ministers held internal/closed sessions, which led to validation and adoption of an official and common position of the African Group in the current negotiations on the international regime on ABS.