

BIA Technical Exchange Series - Session N°10:

BIA Training Package on negotiating and drafting of Mutually Agreed Terms

Date: Thursday, 08.07.2021

Time: 13:30 – 15:00 CET

Venue: Video conference via MS Teams

Content and Context

For ABS partnerships to work and for ensuring that enforceable obligations on the user under his jurisdiction are created, ABS contracts must be negotiated and concluded so that they are valid, implementable and enforceable. Considering the central role of contracts in any functioning ABS system, it is key for the conclusion of workable ABS value chains, transactions and partnerships to build on a sound understanding of the main elements of ABS contracts and contract law. Fair and equitable benefit-sharing arrangements that can establish long-term trustful relationships and value chains between providers and users of genetic resources and associated traditional knowledge will only work through sound and robust contracts that meet the above-mentioned requirements.

Current practice reveals that there are many examples of ABS contracts that are not legally enforceable. Experiences have shown that the choice of language used in contracts can in some instances render them void, impractical or unenforceable. Negotiating partners must know the strengths and limits of contracts law to be able to negotiate and draft workable contracts. In addition, ABS contracts must meet the standards of commercial contracts to produce commercial results. Thus, a step towards developing successful ABS contracts is to enhance drafting abilities of parties to the contracts.

In addition to the legal knowledge, an understanding of the valorising of biological and genetic resources is essential for a successful negotiation of fair benefit sharing, well-informed decisions-making and for ensuring economic benefits for all parties involved in ABS Agreement.

Therefore, the BIA technical experts developed a training package that targets the implementation of the core legal mechanism Access and Benefit Sharing (ABS) for making economic benefits from bioprospecting and at the same time contributing back to the long-term conservation of biological diversity and sustainable use. This capacity building is designed as blended learning, including an e-learning phase which covers general ABS contract topics, followed by two multi-day physical trainings, covering biodiversity-based valorisation/value chains and country- and case-specific ABS contractual training content. After the trainings, the e-learning platform can be used by the trainees as follow-up and continuous alumni learning.

Agenda

Moderation: Tobias Dierks (ABS-Initiative)

Time	Content	Presenter
14:00-14:10	Welcome and short introduction	Moderator
14:10-14:35	Training package on Negotiation and Drafting ABS contracts: <i>General concept</i> <i>Step 1: Preparatory e-learning</i> Q&A session	Anja Teschner (BIA)
14:35-14:55	<i>Step 2: National valorisation training</i> Q&A session	Suhel al-Janabi (BIA)/ Anja Teschner (BIA)
14:55-15:15	<i>Step 3: National contract training</i> <i>Step 4: Alumni platform</i> Q&A session	Morten Walløe Tvedt (BIA / ABS lawyer)
15:15-15:30	<i>Training preparation: What needs to be done next?</i> Q&A session	TBD
15:30	Way forward	Anja Teschner (BIA)

Minutes of the discussion and exchange

Q&A Session 1: Training package on Negotiation and Drafting ABS contracts: General concept

Step 1: Preparatory E-Learning

Q: A webinar participant asked what happens with the e-learning, if there is an internet cut-off or if a participant does not have access to the internet.

A: It was confirmed that the online training can be stopped at any time, it is also ensured that the progress made by the participants is saved, so that they do not need to start again when they face problems with the internet.

A: The webinar can be completed within one month, which means that if community members wish to participate, it could be organized that they go to a facility with internet access to complete the training in one day

Q: Another participant asked whether the materials remain available after one month and whether it could also be shared with other people that might be interested in the online training.

A: At the moment, the e-learning will only be accessible for invited participants, but the materials will be available for them after the completion of the training. It is envisaged to discuss with the BIA countries whether the e-learning materials will be made available to others as well and in what format.

Q: Another participant raised the question about the link between the e-learning phase and the in-person training.

A: The e-learning was designed as the first phase of a longer continuous learning process. The e-learning is integrated to the rest of the course and sets the frame. The idea was to take out the basics and put it in the e-learning phase so that the on-site training becomes even more targeted and valuable for the participants.

Step 2: National valorisation training

Q: How can we reach community members for our training concepts?

A: We hope that physical training will be possible, and we will focus on making the national valorization training in presence. If this is not possible, we will ensure that there is a facility with internet access where community members can go to.

Q: Concerning the issue of sustainable use and environmental management plan, how can we link ABS to conservation and in what way is this considered for the valorization training?

A: The sustainability aspect can be enshrined in the Mutual Agreed Terms and of course we need to ensure that whatever we do is not detrimental to the environment which we also included in the aspects to consider when concluding MATS

Q: I wanted to know if we are also talking about the training of trainers, who will receive the training and in a second step will have the capacity in the countries to train members in the community in a physical manner?

A: At the moment, the training package is not really structured as a training of trainers, but for people who will really apply the knowledge in ABS negotiations. But of course, we would also like to have multipliers among the participants so that they can bring the knowledge forward within their own networks.

A: We also thought about how to involve the people on the ground, and we are going to develop an additional module for this training that specifically is aimed at IPLCs.

Step 3 and 4: National contract training and Alumni Platform

Q: Can I ask how long the Alumni Platform will be able to exist, as the other trainings are only there for a limited amount of time.

A: The alumni platform will be open for a long time – if you have gone through the online and physical training you can be an alumnus as long as you want. We will then see with time if it could be its “own platform” or it stays strongly linked to the trainings.

Training preparation: What needs to be done next?

Q: Which participants will be selected for each of the different steps of the training

A: The idea was to have the same participants for all four steps of trainings that we just presented. It is really conceived as a package where knowledge will be consistently built up.

Q: What will the participants learn during the field visits for the valorization trainings.

A: If you look at what was presented for the value chain processes, the idea is to identify a sight of our pool of industry players where we can do a field visit so that participants see the actual activities on the ground – this is to really put everything in practice and to see the first levels of the value chain. This will also help in making the trainings more tangible.

Q+C: I just wanted to give a word of caution about the depth of understanding that people need to have about the later downstream steps in the value chains in order to negotiate realistic MATs. It is quite complicated and you have to be a bit humble about what you will be able to teach rural communities about the contractual implications of product development and international property rights in a range of industrial sectors with rapidly changing technological developments and market conditions. It is important to teach people what they can and do understand and on which aspects they need technical advice on before they should make a contractual commitment.

A: Thank you for giving us this summary and reminding us of this important aspect. Even if this is conceived as a four-step training process it will be impossible to cover everything

Next webinars

Note: The BIA Team decided to not have a webinar every month but to follow the demand of what is wanted the partners. Demands and needs will be discussed in the Jour Fixes in each of the project countries.