Community-to-Community Exchange on ABS and Traditional Knowledge

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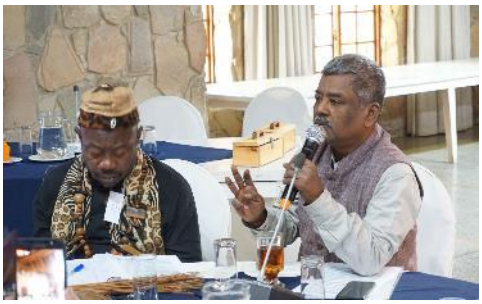
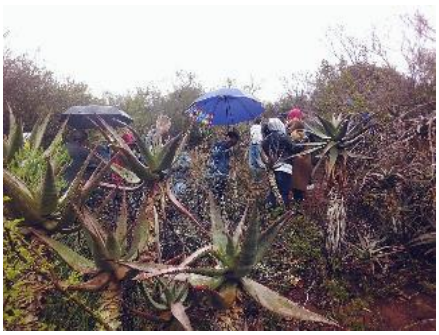




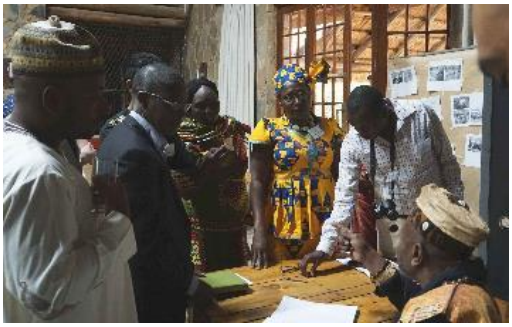
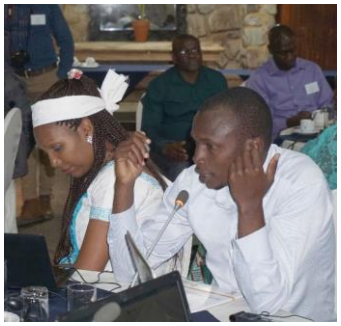


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Acronyms and Abbreviations

ABS	Access and Benefit-sharing
ABS-CH	ABS Clearing-House
AU	African Union
BaCH	Biodiversity and Community Health (the UNU-IAS BacH Initiative – see below)
BCP	Biocultural Community Protocol
BIDC	Biomanufacturing Industry Development Centre (CSIR, South Africa)
CBD	Convention on Biological Diversity
CNA	Competent National Authority
CSIR	Council for Scientific and Industrial Research (South Africa)
DEA	Department of Environmental Affairs (South Africa)
DST	Department of Science and Technology (South Africa)
GR	Genetic Resources
FRLHT	Foundation for the Revitalisation of Local Health Traditions
IIN	Indigenous Information Network
IKSDCs	Indigenous Knowledge Systems Documentation Centres
IPLCs	Indigenous Peoples and Local Communities
IRCC	Internationally Recognised Certificate of Compliance
KCHDC	Khoi Cultural Heritage Development Council
MAT	Mutually Agreed Terms
NGO	Non-governmental organisation
NIKMAS	National Indigenous Knowledge Management System
NRS	National Recordal System (South Africa)
PIC	Prior Informed Consent
TK	Traditional Knowledge
TKDL	Traditional Knowledge Digital Library (India)
UNU-IAS	United Nations University for the Advanced Study of Sustainability

Background

Indigenous Peoples and Local Communities (IPLCs) are the custodians of their lands and natural resources. Their traditional knowledge and practices, embedded in their cultural heritage, play an important role in the conservation and sustainable use of biodiversity, as do their customary laws and local governance structures.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (Nagoya Protocol) to the Convention on Biological Diversity (CBD) brings opportunities as the first legally binding international framework that gives certain rights to IPLCs over their traditional knowledge (and partly over genetic resources), including the right to prior informed consent (PIC). The Nagoya Protocol also encourages governments to respect the customary laws of IPLCs and community protocols.

The implementation of the Nagoya Protocol holds potential for the realisation of the rights of IPLCs to their resources and knowledge, the generation of local benefits from the utilisation of genetic resources and traditional knowledge, and better recognition of the customary governance and cultural values of IPLCs. However, the explicit recognition of the rights of IPLCs implies that countries need to, among others, provide for transparent, effective and culturally appropriate processes for PIC, empower communities to enter into negotiations with users of genetic resources and associated traditional knowledge, ensure that traditional knowledge is protected from unlawful appropriation and support the development of truly fair and mutually beneficial agreements.

The first Community-to-Community Exchange and Capacity Development Workshop for Traditional Knowledge Holders was organised in 2015 in Bangalore, India by the United Nations University Institute for the Advanced Study of Sustainability (UNU-IAS) Biodiversity and Community Health (BaCH) Initiative and the Access and Benefit-sharing Capacity Development Initiative (ABS Initiative) in collaboration with a broad range of partners. The event brought together participants from India and Africa and was regarded as highly successful. In 2018, the ABS Initiative, Natural Justice, the Indigenous Information Network (IIN) and ABS Canada collaborated to conduct a follow-up event in South Africa, extending the original scope to a South-North exchange. The event was hosted by the South African Department of Environmental Affairs (DEA). South Africa is the country with the longest standing national access and benefit-sharing (ABS) framework in the region. There are several examples of ABS agreements with IPLCs, as well as numerous other initiatives concerning the protection and valorisation of biodiversity and traditional knowledge, including traditional knowledge documentation. South Africa's experiences therefore provide an excellent opportunity to learn about possibilities and challenges in implementing the Nagoya Protocol, especially with regard to advancing the realisation of IPLCs' rights.

Approach and Objectives

Peer-to-peer learning among experts and practitioners in communities is an effective and engaging approach to catalyse the dissemination of ideas. It can further enable better strategizing at the local level, since community members are often better able to convey and understand challenges in a practical manner. Taking into account the diversity of local experiences and innovations concerning

ABS-relevant issues both in Africa and across the world, learning exchanges among experts and practitioners in communities bear great potential for IPLCs.

Against this background, this Community-to-Community Exchange on ABS and Traditional Knowledge aimed to achieve the following objectives:

- Increase the understanding of the CBD and the Nagoya Protocol and the advances in their national implementation;
- Learn first-hand about successes, challenges and innovations related to ABS implementation from communities and other actors in South Africa;
- Exchange and discuss the experiences of participants from other countries of the Global South and North;
- Provide an opportunity for renewing and developing partnerships among participants from different communities and countries.

The topics covered through discussions and field visits included, among others:

- Negotiation and implementation of ABS agreements related to traditional knowledge;
- Local valorisation of biological resources;
- Documentation, protection and revitalisation of traditional knowledge;
- Research ethics and relationships between communities and research institutions;
- Development and implementation of Biocultural Community Protocols (BCPs).

Participants

In total, 69 participants – representatives of IPLCs, civil society organisations and holders of traditional knowledge – from 15 countries in Africa, as well as from India and Canada, attended this community-to-community exchange. Representatives of relevant government bodies, public research institutions, civil society and the private sector in South Africa also participated in the discussions and activities as resource people. Simultaneous interpretation between English and French was provided throughout the plenary sessions of the workshop.

Outcomes

Over eight days of intense exchange and learning, participants gained new insights and learnt about good practices from concrete projects to take home and share with their communities. New projects also emerged as a result of discussions as well as lessons learnt from past and current experiences. One interesting observation that stood out among many was that although IPLCs are from different countries and continents, the issues they face are the same. Hence, most IPLCs will be able to refer to the outcomes of the discussions held during this second community-to-community exchange on ABS and traditional knowledge. Finally, participants highlighted the importance of working on both traditional knowledge- and conservation-related issues simultaneously because both have to be protected, preserved and promoted.

The event started with a workshop day in Pretoria entirely dedicated to the South African ABS system and the National Recordal System (NRS) developed by the Department Science and Technology (DST). A subsequent visit to the Council for Scientific and Industrial Research (CSIR) provided concrete examples of how this system plays out in practice. Afterwards, participants were divided into three groups and travelled to the Northern Cape, Western Cape and Mpumalanga. On site, they visited projects and discussed with local communities regarding the protection, documentation and utilisation of their traditional knowledge and valorisation of natural resources. During the remaining workshop days, participants had the opportunity to discuss the highlights from the field trips with the larger group, share experiences from their own communities, and receive inputs from international and national experts. On the last workshop day, participants gained useful insights on how to develop a BCP.

Constructive discussions, group exercises, field visits and other activities contributed to:

- An increased knowledge of the basic principles of ABS in the context of the Nagoya Protocol and its implementation in South Africa;
- The exchange of concrete and practical experiences in the valorisation of biological resources and associated traditional knowledge;
- Highlighting the importance for IPLCs to explore the economic opportunities different sectors can offer to harness the potential of their biological resources and associated traditional knowledge;
- A better understanding of the reality of research and the different steps of the value chain from the research and development stage to the end product;
- A better understanding of existing approaches to the documentation of traditional knowledge, in particular the South African NRS, an integrated system developed for the protection, preservation, documentation, revitalisation and valorisation of traditional knowledge associated to biological resources for the benefit of IPLCs;
- Insights in South African IPLCs' experiences with ABS agreements, e.g. regarding types of benefits and negotiation strategies;

- Fruitful discussions on how to better involve IPLCs in ABS processes, build their capacity on ABS-related issues and empower them to successfully negotiate fair and equitable ABS agreements;
- Through concrete case studies, a better understanding of what a BCP is all about and the important role it can play in empowering IPLCs in all matters related to ABS and beyond;
- Maximising the learning curve of participants on a wide range of ABS issues of their choice thanks to an open space forum;
- Renewing or developing new partnerships among participants from different communities, countries and industry sectors.

Process

Opening

This second community-to-community exchange on ABS and traditional knowledge started with a few words of welcome from the organisers.

Lena Fey from the ABS Initiative extended a warm welcome to all the participants on behalf of the ABS Initiative to this much anticipated workshop. She also thanked Natural Justice, IIN, ABS Canada, the Christensen Fund and the South African DEA for making the organisation of this workshop possible. She then wished the participants fruitful exchanges and sharing of knowledge and experiences.

Lesle Jansen from Natural Justice also welcomed all the participants and briefly introduced Natural Justice highlighting the important work done in support to the legal empowerment of IPLCS, particularly in the area of ABS and the national implementation of the Nagoya Protocol. In so doing, Natural Justice provides information, training and assistance on ABS and the protection of traditional knowledge, including through the development of community protocols and by facilitating dialogue with relevant actors.

Lucy Mulenkei from the IIN warmly welcomed the participants to the second edition of the community-to-community exchange. She indicated that the IIN was working directly with indigenous groups from rural areas to address various issues such as environmental conservation, women's rights, health, cultural preservation and land rights. She then thanked all the partners who made this workshop possible and wished all the participants a week of fruitful exchanges and mutual learning.

Natalie Feltman from the DEA was pleased to welcome the participants in Pretoria for this important workshop. She highlighted that South Africa has been implementing ABS laws since 2008. She further stressed that there have been some successes and some challenges, especially in identifying knowledge holders. She also wished everyone a fruitful workshop and a pleasant stay in South Africa.

Introduction and Thematic Background

Setting the Scene

Access and Benefit-Sharing: the Concept

Following the screening of the short explanatory movie titled 'ABS Simply Explained', *Lena Fey from the ABS Initiative* provided a brief introduction to the core principles of the concept of ABS contained in Article 15 of the CBD. She highlighted that the Nagoya Protocol, which entered into force in 2014, serves as a legal framework to articulate the 'quid pro quo' that underpins the CBD in which 'resource-rich countries' facilitate access to genetic resources to 'technology-rich countries' in exchange for the fair and equitable sharing of the benefits derived from their utilisation. The Nagoya Protocol introduces specific measures to support compliance with domestic legislation or regulatory requirements of the provider country and contractual obligations as reflected in obtaining PIC and establishing mutually agreed terms (MAT). Member states are obliged to establish a competent national authority (CNA). When the CNA issues an access permit, it subsequently uploads relevant information about that permit to the ABS Clearing-House (ABS-CH), which in turn will issue a corresponding internationally recognised certificate of compliance (IRCC). The Protocol also requires each member state to designate checkpoints; in the country where the utilisation of a genetic resource is taking place, they use the

information provided on the ABS-CH to help monitor whether users have complied with the providing country's ABS legislation. Finally, it is important to note that access provisions contained in the Protocol are also applicable to traditional knowledge held by IPLCs when it is associated with genetic resources, strengthening their ability to benefit from the use of their knowledge, innovations and practice. The ultimate aim of the Nagoya Protocol is to promote the use of genetic resources and associated traditional knowledge while providing opportunities for fair and equitable sharing of benefits to create incentives to conserve biological diversity and sustainably use its components.

Indigenous Peoples and Local Communities and the Nagoya Protocol

In the second part of her presentation, *Lena Fey from the ABS Initiative* focussed on the relevance of the Nagoya Protocol and ABS for IPLCs. The Protocol acknowledges for the first time in international law the inextricable link between the use of genetic resources and traditional knowledge. This means that when their rights are recognised in national law, IPLCs have the right to grant PIC and negotiate MAT for the access to genetic resources under their custodianship and to their traditional knowledge associated with genetic resources. The Protocol also recognises IPLCs' customary laws, community protocols and procedures with respect to traditional knowledge associated with genetic resources. It calls for Parties to support IPLCs in the development of community protocols, minimum requirements for MAT and model contractual clauses for benefit-sharing and to not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and among IPLCs, including across borders. The African Union Strategic and Practical Guidelines for a Coordinated Implementation of the Nagoya Protocol in Africa (AU Guidelines), adopted in 2015, reiterate the importance of IPLC-related measures in the Nagoya Protocol. In particular, they underline the role of governments in supporting IPLCs in negotiating MAT, strengthening the legal rights of IPLCs over their genetic resources and associated traditional knowledge and developing IPLCs' capacity to engage in ABS for livelihoods. It is important for IPLCs to understand that how ABS is implemented is decided at national level. The Nagoya Protocol and the AU Guidelines only provide some orientation. Nevertheless, the recognition of the rights of IPLCs in these two instruments can serve as a strong lever for IPLCs to play an active role in the development of national ABS frameworks. ABS can indeed provide opportunities for IPLCs to strengthen their rights over their genetic resources and associated traditional knowledge and to benefits from their use. It is therefore essential for IPLCs to be proactive in establishing partnerships and developing value chains to have a say in the development of national ABS systems and to benefit from their resources and knowledge.

Plenary Discussion

In the plenary, participants discussed further how ABS is relevant to IPLCs and how to use national legislation to their advantage. The following points were made:

- IPLCs must be fully engaged in the development of ABS legislation. Doing so will not only give a voice to their communities with regard to matters that concern them but also allow them to better understand the multiple issues at hand.
- The Nagoya Protocol does not deal with the issue of protection and documentation of traditional knowledge. However, it does recognise the unique circumstances where traditional knowledge associated with genetic resources is held in countries. This may be oral, documented or in other forms, reflecting a rich cultural heritage relevant not only for the

sustainable livelihoods of IPLCs but also for the conservation and sustainable use of biological diversity. The issue of protection and documentation is discussed further below.

- The IRCC is generated based on the information contained in the permit issued in the providing country. Depending on national legislation, this permit is issued either by the ABS Focal Point or the CNA. The IRCC helps the checkpoint in the country where the resource is being utilised to verify that the user has duly complied with the providing country's ABS legislation.

The South African ABS System

South Africa's Implementation Status of the Nagoya Protocol on ABS

Lactitia Tshitwamulomoni from the DEA provided a comprehensive overview of the current South African ABS legal framework, including a detailed description of the requirements to be fulfilled to access and use genetic resources and traditional knowledge for non-commercial and commercial research.[1] She informed the participants that this framework, in place since 2008, was currently being revised to meet the new obligations set out under the Nagoya Protocol, upgrade the existing permitting process to an electronic permitting system for more efficiency and improve current provisions related to benefit-sharing obligations. Ultimately, the aim of the entire revision process is to put in place a national ABS system that is not only addressing the CBD and the Nagoya Protocol, but also contributing to achieving Aichi Target 16 related to the entry into force of the Protocol and its effective implementation at national level as well as Aichi Target 18 on the protection of traditional knowledge, innovations and practices of IPLCs. In line with the above, South Africa has established an ABS Focal Point, a CNA, a publishing authority (in charge of providing information on the ABS-CH) and designated several checkpoints (the patent office, ports of entry and exit, the provincial permit issuing authorities and the DEA itself). With regard to the protection of traditional knowledge, a National Recordal System of Indigenous Knowledge, unique to the circumstances of South Africa, has also been developed and is discussed further in the next section of this report. By September 20, 140 benefit-sharing agreements have been approved and 94 permits have been issued, 88 of which for commercial research in various sectors (cosmetic, medicine, agriculture and nutraceuticals). Finally, *Ms Tshitwamulomoni* gave an overview of awareness raising and capacity building activities carried out by the DEA and highlighted the main lessons learnt so far, focussing on the urgent need to establish an international system to monitor and track the movements of genetic resources in user countries to ensure compliance with ABS laws in place in provider countries.

Plenary Discussion

In the subsequent discussion, the following points were raised:

- *The designation of checkpoints:* South Africa is one of the few countries to have already designated a number of checkpoints, which together form a whole system of control. Although those are already operational, they have not yet been published on the ABS-CH. South Africa is currently looking at establishing more checkpoints.

[1] Chapter 6 of the National Environment Management Biodiversity Act (or NEMBA) of 2004 and the Bioprospecting, Access and Benefit-sharing (BABS) regulations adopted in 2008 are the main legislative tools constituting the South African regulatory framework that gives effect to the ABS concept introduced by the CBD.

- *The use of 'indigenous biological resources' vs. 'genetic resources' in South Africa's national legislation:* The main reason for this is that 'genetic resource' is often solely understood as DNA material, whereas IPLCs' traditional knowledge does not refer to DNA, but to the entire organism and/or parts thereof. The South African legislation underlines this aspect using a broad definition of biological resources that also includes genetic resources. Unlike many other countries' ABS systems, however, the South African ABS legislation only applies to biological resources regarded as *indigenous* to South Africa, thus excluding species that were introduced e.g. during the colonial period.
- *Benefit-sharing agreements and traditional knowledge*: Traditional knowledge plays a particular role in the South African ABS system. Whenever an indigenous biological resource is accessed, a benefit-sharing agreement has to be negotiated with the holders of traditional knowledge associated with that specific resource – no matter if the user is utilising that traditional knowledge or only the resource itself. This has strongly contributed to IPLCs being involved in ABS cases as beneficiaries.
- *The importance of political will to implement a national ABS regulatory framework:* The South African government has always been fully committed to the national implementation of ABS. The provisions of the Constitution are consistent with the ABS concept contained in the CBD. No effort was therefore needed to convince policy makers of the importance of ABS, and the DEA has gained considerable ABS expertise in the past years.
- *Awareness raising for IPLCs:* In South Africa, the ABS system is centralised. However, the DEA has the responsibility to collaborate with the different regions and the various communities located in each region. ABS-related documentation is translated into the eleven official languages. An annual awareness-raising and capacity building strategy on ABS is also in place to engage with all the communities so that none is left out.
- *Permits, monitoring the utilisation of genetic resources and benefit-sharing*: Permits related to bioprospecting or commercial research on and export of indigenous biological resources, including for non-commercial research as well as biotrade, are issued by the DEA (Minister). Permits related to non-commercial research are issued by Members of the Executive Councils or MECs of the Provincial Departments of Environmental Affairs. Users are required to report on the outcomes of their research every two years. Benefits, monetary or non-monetary, are decided on a case-by-case basis by the parties to a benefit-sharing agreement. They range from short- and medium- to long-term benefits, such as up-front payments, access fees, milestone payments, training, education, collaboration, capacity building and technology transfer, licence fees, royalty payments, joint ventures, co-authorship. A combination of monetary and non-monetary benefits is usually agreed upon and formalised by benefit-sharing agreements.

Protecting and Promoting Traditional Knowledge in South Africa

South Africa's National Recordal System for Indigenous Knowledge

The National Indigenous Knowledge Systems Office Team of the DST presented on the legal protection of indigenous knowledge in South Africa using the NRS. They first provided an overview of the legal

and policy landscape which facilitated the effective development of the NRS, focussing on the Indigenous Knowledge Bill, which is currently in the last stages of being passed into an Act. The primary objective of the Bill is to protect indigenous knowledge from unauthorised use, misappropriation and misuse, and regulate the fair and equitable distribution of benefits from its commercial use. In addition, the Bill is an enabling instrument for indigenous communities of South Africa to exercise their rights, formal or informal, over their knowledge and for the recognition of indigenous knowledge as prior art under intellectual property laws. The presentation then focussed on the NRS, an initiative of the DST, which aims at recording, documenting, preserving, protecting and promoting South Africa's indigenous knowledge for the benefit and economic development of local communities. The NRS collects indigenous knowledge in local languages through Indigenous Knowledge Systems Documentation Centres (IKSDCs) and records it in various multi-media formats. To do so, the NRS is supported by the National Indigenous Knowledge Management System (NIKMAS), a custom-developed software system containing a semantic digital library that serves as a secured repository for all the information collected. Overall, the NRS creates a legal framework that can legally protect indigenous knowledge as intellectual property belonging to knowledge holders and ensure the fair and equitable sharing of benefits arising from indigenous knowledge in line with the South African ABS national legislation, customary laws and international law. Complementing the Indigenous Knowledge Bill, the NRS proposes both a positive and defensive protection of indigenous knowledge and seeks to protect it from misappropriation using the patent system.

Plenary Discussion

The following is a summary of the main points discussed in the plenary:

- *Community participation in the NRS initiative*: Although the development of the NRS is a project initiated by the government, the collection of indigenous knowledge uses a bottom-up approach, taking the entire value system of knowledge holders into account (culture, beliefs, spiritual aspects, customs, rituals and traditions). Local communities have also been involved in the design of the repository system. Furthermore, the writing of text of the Indigenous Knowledge Bill has been a collaborative and community-led process. Inputs were collected through workshops and consultations before submitting the Bill to Parliament for approval.
- *The role of the IKSDCs*: IKSDCs have been established in all the nine South African Provinces (Eastern Cape, Free State, Gauteng, KwaZulu Natal, Limpopo, Mpumalanga, Northern Cape, North West and Western Cape). IKSDCs are pivotal in the preservation, management and granting of access to indigenous knowledge. They are established as local vehicles for facilitating the process of collecting indigenous knowledge within communities that is then captured in NIKMAS with the aim to preserve, promote and disseminate it for the primary benefit of the community, research and innovation.
- *Accessibility of the NRS*: The system offers three levels of access – free (knowledge that is already in the public domain), restricted access (authorised access to limited details of indigenous knowledge that is classified as confidential) and confidential access (authorised access to full details of a specific indigenous knowledge). Because the role of the NRS is to prevent placing undisclosed indigenous knowledge into the public domain, access to indigenous knowledge collected has very strict rules and procedures and is continuously monitored. Several levels of agreements are required from potential users who wish to access

the repository (e.g. the use of a license to access a specific traditional knowledge). In the case of a request to access indigenous knowledge associated with genetic resources, all relevant legal agreements, including a benefit-sharing agreement are necessary.

- *The Indigenous Knowledge Bill and the protection of unrecorded indigenous knowledge:* There is no obligation for individuals or communities to register their knowledge on NIKMAS. Doing so is completely voluntary. However, the Indigenous Knowledge Bill can only protect recorded knowledge. Any stolen unrecorded knowledge will not be protected by the Bill.
- *The NRS and international patent offices*: The NRS has been designed to give special access to international patent offices to prevent misappropriation of South Africa's indigenous knowledge and the granting of erroneous patents.

Visit to the Council for Scientific and Industrial Research of South Africa: Traditional Knowledge-Based, ABS-Compliant Research

Introduction to the Field Visit to the Council for Scientific and Industrial Research (CSIR)

Dr Sechaba Bareetseng from the Southern Africa Network for Biosciences (SANBio) provided participants with some background information on the CSIR's role in helping to unlock the full potential of indigenous knowledge associated with South Africa's unique biodiversity for the benefit of knowledge holders and local communities. The CSIR collaborates with indigenous communities and traditional health practitioners on the use of medicinal plants and the identification of natural ingredients to develop and commercialise, based on scientifically proven safety and efficacy data, novel functional foods, herbal remedies, cosmetics, nutraceuticals and other wellness products. Highlighting the importance of an enabling legal framework for this type of collaboration, *Dr Bareetseng* explained the different requirements to comply with to obtain a bioprospecting permit in South Africa while indicating the main pieces of legislation to take into consideration. These include the Biodiversity Act of 2004 and related regulations,[2] whose requirements to obtain PIC and establish MAT and a benefit-sharing agreement protect the rights of IPLCs, the Patent Amendment Act of 2007 and the soon to be adopted Indigenous Knowledge Bill. Finally, four ABS case studies (*Lippia javanica*, *Siphonochilus aethiopicus*, *Monsonia angustifolia* and monatin) on the successful collaboration between the CSIR and indigenous knowledge holders were presented, all of which having already delivered some non-monetary and monetary benefits used for community development projects.

Visit to the Biomanufacturing Industry Development Centre at the Council for Scientific and Industrial Research

During their visit to the CSIR Biomanufacturing Industry Development Centre (BIDC), participants were taken on a guided tour of the research and development labs and bioprocessing facilities. Launched in 2016 and funded by the DST and the Jobs Fund of the Development Bank of Southern Africa, the BIDC is a hub for innovation in the biomanufacturing sector specifically dedicated to supporting small-, medium- and micro-enterprises in developing their biotechnology projects or concepts into commercially viable products. To address the challenge of moving from research and innovation to product development, the BIDC provides access to a series of resources, skills and infrastructures. Their

[2] See footnote 1 above.

expertise is complemented by the high-end analytical equipment and technical expertise within the CSIR Biosciences Unit. The current incubation model promoted at the BIDC allows indigenous knowledge holders to access ready-to-use biomanufacturing facilities. The BIDC helps ensure that their projects are feasible and provides support with research and product development, formulation and scientific validation, labelling and packaging, scaling up, process optimisation, regulatory support, training and capacity building. Successful examples of commercialised products based on indigenous knowledge (herbal products, cosmeceuticals and nutraceuticals) were presented to the participants, illustrating the value of bringing together biodiversity, indigenous knowledge and scientific innovation to create business and economic opportunities as well as employment at the local level.

Plenary Discussion and On-site Observations

The following is a summary of the main issues discussed in plenary prior to the site visit and during the guided tour of the BIDC facilities at the CSIR:

- *Origin of the collaboration between the CSIR and the traditional health practitioners*: Traditional health practitioners generally approach the CSIR. In fact, the collaboration between the CSIR and the traditional health practitioners on the use of medicinal plants can be traced back to the late 80s and has led to the identification of a number of traditional herbal remedies while stimulating research.
- *Ensuring benefit-sharing*: A Memorandum of Understanding (MoU) and a benefit-sharing agreement were signed between the CSIR and the Traditional Healers Committee in 1999 and 2003, respectively. Both agreements ensure that the rights of traditional health practitioners as providers of indigenous knowledge to share financial benefits derived from any commercial exploitation of any innovation are protected. Traditional health practitioners agreed to provide their knowledge exclusively to the CSIR because of its willingness and capacity to manage and keep such information confidential and to add value to traditional medicines through scientific validation and the development of commercially viable products.
- *Protecting indigenous knowledge:* For the majority of innovations based on indigenous knowledge, trade secret protection is more relevant than disclosure of the manufacturing method in a patent application. It would be too difficult and expensive to control whether someone is using your patented manufacturing method. However, if during the research and development process a promising molecule is discovered, a patent would be the most appropriate form of protection.

Field Visits

Introduction to the Field Visit

Following the first day that set the scene of ABS in South Africa, the field visit provided participants with opportunities to discuss with local communities and learn hands-on about the protection, documentation and utilisation of their indigenous knowledge and natural resources. The participants were divided into three groups. Group A travelled to Upington in the Northern Cape to meet with the South African San Council. Group B travelled to Oudtshoorn and Herbertsdale in the Western Cape to meet with the Khoi Cultural Heritage Development Council (KCHDC) and the Herbertsdale Aloe Tappers Cooperative. Group C travelled to Bushbuckridge in Mpumalanga to meet with the Kukula Traditional

Health Practitioners Association. Both Group A and C also had the opportunity to visit the Mothong African Heritage Trust in Mamelodi in the outskirts of Pretoria. Each group was asked to designate a rapporteur and a photograph to report back on their respective field visit. To help them in this task, each group was encouraged to pay attention to topics such as the valorisation and documentation of traditional knowledge, research ethics and community protocols. Two guiding questions were provided as follows:

- What are good ideas and good solutions that you have seen in relation to the protection, documentation and utilisation of traditional knowledge and biological resources managed by local communities?
- Are there any questions arising from what you have seen?

Overview of Indigenous Communities and Sites Visited

The South African San Council, Upington, Northern Cape

The South African San Council is a non-governmental organisation (NGO) working on the protection and preservation of traditional knowledge and the benefit-sharing arising from its utilisation in the interest of four San communities. Acting as a provincial recordal system office for the DST, the San Council helps document traditional knowledge of the San communities. Furthermore, they published a Code of Ethics to guide researchers when engaging with the San communities. At the San Council's office, participants also met with *Ouma Katrina Esau*, who is one of the last remaining native speakers of the N/uu language and has been playing an active part in its revitalisation.

The Khoi Cultural Heritage Development Council and the Potskerf Indigenous Knowledge and Heritage Research Centre, Oudtshoorn, Western Cape

The Khoi Cultural Heritage Development Council (KCHDC) is an organisation representing 19 Khoisan traditional houses. Their Potskerf Indigenous Knowledge and Heritage Research Centre in Oudtshoorn focusses on indigenous knowledge and heritage research. It also acts as a provincial office for the NRS of the DST, documenting indigenous knowledge of local communities. The KCHDC was also engaged in the development of a BCP, which was presented to the participants of Group B during the field visit. Participants also visited the Witfontein Plant Nursery, which is run by KCHDC in collaboration with Rastafarians and bush doctors and serves as a training site for traditional healers.

The Herbertsdale Aloe Tappers Cooperative, Herbertsdale, Western Cape

The Herbertsdale Aloe Tappers Cooperative runs a processing facility for *Aloe ferox*. Group B visited the aloe tapping site and witnessed the harvesting of the plant. *Aloe ferox* is a succulent plant which is found between Mossel Bay and Riversdale in the South of the Western Cape. It is a unique source of high quality bitter sap, bitter crystal and gel, all of which is used in many products worldwide.

The Kukula Traditional Health Practitioners Association, Bushbuckridge, Mpumalanga

Bushbuckridge is situated in the Kruger to Canyons Biosphere Region, which is well known for its high levels of biodiversity. The Kukula Traditional Health Practitioners Association developed their BCP around the conservation and sustainable use of indigenous medicinal plant species. Group C met with

the Kukula Traditional Health Practitioners in their medicinal plant nursery where they cultivate medicinal plants in high demand that can be easily propagated and species classified as endangered with the overall aim of stewarding and sustainably managing and harvesting medicinal plants for the benefits of the wider community.

The Mothong African Heritage Trust, Mamelodi, Pretoria (Tshwane) Gauteng

The Mothong African Heritage Trust is a community-run conservation site which collaborates with the University of Pretoria and other institutions on the cultivation of different commercial plant species. They also run a botanical garden presenting local plant species and a bird sanctuary. Groups A and C visited those sites guided by the traditional knowledge holder who founded this initiative.

Reflecting on the Field Visit

Back to the plenary in Pretoria, each group gave a brief account of their respective field visit, which can be found in Annex 1, 2 and 3 of this report. Together, they further discussed and reflected on what they had seen and learnt during their visit to the different sites. The most important observation made by all the groups was that IPLCs all over the world share many of the same challenges. These are, among others:

- *Land rights and access to resources:* Access to land and natural resources is inextricably linked to the generation and preservation of traditional knowledge associated with genetic resources. The lack of recognition of the rights of IPLCs to their ancestral lands, territories and resources as well as displacement and land grabbing have severe consequences on IPLCs' traditional ways of life, sense of place and identity. Securing land rights is therefore critical not only to keep traditional knowledge alive but also for the conservation and sustainable use of biological diversity.
- *Knowledge loss:* As touched upon above, the loss of traditional knowledge is due to the erosion of the ecosystem that keeps it alive as a result of (i) the undermining of communal land tenures; (ii) the limited access to plants associated with traditional knowledge held by IPLCs in protected areas and private lands – exacerbating economic vulnerability of IPLCs as is the case with the Herbertsdale Aloe Tappers community; (iii) loss of transmission due to a lack of interest in traditional knowledge among the youth; (iv) lack of documentation of traditional knowledge; (v) death of traditional knowledge holders before their knowledge has been transmitted or documented.

Other issues identified were:

- *Lack of awareness-raising about ABS and BCPs:* The low level of awareness of ABS and other legal instruments, particularly in vulnerable communities, is a concern. More awareness raising at all levels is necessary. NGOs could play a key role.
- *Exchange of experiences and learning from other communities:* Community-to-community exchanges could be a very cost-effective way to build IPLCs' capacity on a wide range of topics from understanding ABS, developing a BCP, protecting traditional knowledge, etc., to learning how to put in place a sound business plan. For example, the rooibos farmer communities could

provide some useful guidance on a number of topics to the Herbertsdale Aloe Tappers community. Transmission, sharing experience and knowledge are essential.

- *Valorisation:* ABS has raised high expectations which have not come to fruition yet. It is therefore essential that IPLCs explore other avenues to harness the potential of their biological/genetic resources and associated traditional knowledge. This could be, for example, setting up community enterprises instead of solely focusing on ABS agreements with foreign users. The approach offered by the CSIR, discussed earlier, could be a good starting point.

Access and Benefit-Sharing Agreements

Setting the Scene from a South African Perspective

Placing particular attention on the hoodia case and the rooibos/Nestlé case, *Roger Chennells from Chennells Albertyn* provided a comprehensive presentation on the experiences gained from various South African ABS agreements negotiated over the last two decades and the lessons that can be drawn from them. Noting the importance of an adequate ABS legislation and the recognition of the rights of IPLCs, these are, among others:

- Establish trust between the different parties to a contract;
- Avoid any ambiguity regarding who owns the knowledge and who is the bioprospector;
- Be well informed about your counterpart in the negotiation (this is a prerequisite to negotiating fair benefits!);
- Clearly define all essential terms to avoid any misinterpretation and confusion;
- Clearly state the intentions and commitments of all the parties;
- Clearly define how benefits will be calculated and shared between all the beneficiaries. The governance of the proceeds must be rigorous, transparent, fair and equitable;
- Ensure that the wording of the agreement does encompass any future biological and technological discoveries;
- Ensure that the ABS agreement is enforceable in the user's country;
- Review the terms of the agreement regularly;
- Every case is different – define your objectives and develop a strategy;
- It helps to have allies – work with the government;
- Bear in mind that any ABS agreement reached sets a precedent for future agreements to be negotiated.

Rooibos Restitution: So What Happened After 'Nestlé'?

Following the screening of the trailer of the documentary 'Rooibos Restitution', *Lesle Jansen from Natural Justice* gave an update on the latest developments in the rooibos case. Participants were informed that years of advocacy and struggle to protect the rights of the San and the Khoi peoples have come to a key stage with, on the one hand, the signing of a historic benefit-sharing agreement with food giant Nestlé, and on the other hand, the landmark decision taken by the Rooibos Industry to also enter into negotiations with the San and the Khoi. While the first monetary benefit instalments have been received from Nestlé, another major outcome is the formal recognition and identification of the San and Khoi as the original holders of the traditional knowledge associated with rooibos. Key factors to such successful outcomes are, among others, community mobilisation; the development of

a BCP which helped the San and Khoi communities to organise themselves and take concerted decisions; the enabling South African legislative environment, including the clear recognition and protection of the traditional knowledge held by IPLCs; on-going training of the communities on ABS-related issues as well as the proactive support by committed specialised lawyers and the relevant government authorities.

Panel Discussion: ABS Agreements with IPLCs – Experiences from the Rooibos Case

During this discussion the panellists, who were all involved in the negotiations leading to the rooibos ABS agreement, shared their experiences with the participants. They also reflected on the different lessons learnt and discussed the challenges faced, particularly with regard to benefit-sharing. The following is a summary of the main issues debated during the panel and plenary discussions:

- *Formal recognition of the original traditional knowledge holders:* It is important to note that because they are not recognised as indigenous peoples of South Africa and do not live on their ancestral land anymore, the Khoi had a difficult time to prove that they were holders of the traditional knowledge associated with rooibos. The formal recognition of the San and the Khoi as traditional knowledge holders by the South African government is therefore very important. It gave both communities, particularly the Khoi, their dignity back. Their culture is now alive and valuable and their youth have better opportunities for the future.
- *Legal assistance to IPLCs:* One of the main lessons learnt is that every negotiation is different and brings with it a number of challenges. One has to be patient and prepared. Negotiating with more knowledgeable and skilled people usually representing the interests of powerful international companies like Nestlé is difficult. It is therefore essential that IPLCs look for legal assistance to protect their rights, defend their own interests and ensure that what is agreed is fair and equitable for all the parties involved. Government support is also essential, particularly in areas where IPLCs need additional skills and knowledge such as, for example, economics and finance. Hiring a consultant to research any other information on the user may also be useful. Finally, lawyers must ensure that the traditional knowledge associated with the genetic resource utilised is protected at all cost.
- *Benefit-sharing:* The identification of all the beneficiaries is essential but can be a very arduous process. In the rooibos case, the monetary benefits will be shared between three communities: The San, the Khoi and the community of farmers who has preserved the resource and is also considered as traditional knowledge holders. The sharing of the monetary benefits within the different Khoi communities is challenging. Different options are considered such as the setting-up of a trust for all the communities or an individual trust for each community, but none has been chosen as yet.

Local Valorisation of Biological Resources

Group Exercise

Participants were asked to look back at the different cases of local valorisation of biological resources and associated traditional knowledge they had seen during the field visit and reflect on examples of good practices.

Reporting Back

The overall feeling was that despite the great potential of many resources held by IPLCs, there was a general lack of valorisation. IPLCs tend to have a defensive position that limits any project of valorisation of those resources. Most projects, like the nursery of the Kukula Traditional Health Practitioners in Bushbuckridge or the Mothong African Heritage Trust in Mamelodi, are done from a conservation and sustainable use perspective with the purpose of transferring knowledge to the younger generation. The Aloe Tappers in Herbertsdale were the exception as they are already exploiting the aloe by producing crystals, powder, gel and juice, which have already attracted considerable market interest. Women in the community have created a recipe for jam made out of aloe leaves once the juice and the pulp have been extracted. What is left of the plant after this additional use is given as fodder to animals. In total, the community has elaborated six different products out of *Aloe ferox*. However, as long as issues such as access to land, markets and funds are not addressed it remains difficult for communities to realise the potential of their resources and traditional knowledge.

Market Place: Local Valorisation of Biological Resources

In this session, seven examples of local valorisation of biological resources associated or not associated with traditional knowledge were showcased in plenary and subsequently presented in the form of a "market place". Participants were invited to walk around and discuss the different cases of valorisation with the different presenters at their "market stands". These were the following:

- Senegal: Shea butter and handmade soap, presented by *Juliette Bidiar from the National Association for the Safeguarding of Bassari Art and Culture*
- Cameroon: The Mondia value chain project, presented by *Helen Agendia from the Lewoh Women Cooperative Society*
- India: The Traditional Healers Association, Chhattisgarh, India, presented by *Vaidya Nirmal Kumar Awasthi*
- Morocco: Argan and the products of the cooperative of Tiboudrarin Noudar, presented by *Mina Ardem*
- Namibia: Ximenia and the products of the Tulongeni Twahangana Cooperative, presented by *Magdalena Samwel*
- Namibia: *Sclerocarya birrea* & *Citrillus*, valorising of biodiversity for commercial purposes presented by *Leena Shikongo from the Eudafano Women's Cooperative*
- Namibia: Devil's claw, presented by *Max Muyemburuko from the Muduva Nyangana Conservancy and Community Forest*

Traditional Knowledge Protection and Documentation

Indian Traditional Knowledge of Health and Healing

Hariramamurthi Govindaswamy and Unnikrishnan Payyappallimana from the Foundation for the Revitalisation of Local Health Traditions (FRLHT) in India provided an overview of different

methodologies, systems and databases complementing each other and dedicated to the revitalisation of India's rich and diverse local health knowledge and traditions for self-reliance in primary health care. These include, among others, documenting and assessing the efficacy and safety of herbal remedies using a methodology called rapid assessment of local health traditions; collecting literature evidences from the Indian pharmacopoeia; assessing prior learning and training traditional healers in community to manage primary health care; establishing a voluntary certification scheme for traditional healers and creating an innovation platform using traditional knowledge databases. The overall vision of this multi- and transdisciplinary approach is to achieve a universal and affordable health care system.

The Kani Model – ABS before Rio

Anoop Pushkaran Krishnamma from Kerala Kani Community Welfare Trust presented on the case of the Kani community of southern India and their traditional knowledge associated with the anti-exhaustion property of the plant called *Trichopus zeylanicus subsp. travancoricus*, also known as 'arogyapacha' in the local language. The Kani's 'ABS experience' started in 1987 when they agreed to share this knowledge with scientists from the All India Coordinated Research Project on Ethnobiology. In 1996, the Tropical Botanic Garden and Research Institute developed the medicinal use of arogyapacha into a drug called Jeevani and transferred the formulation and technology for production and distribution to one of the largest Ayurvedic manufacturing companies in India in exchange of royalties, half of which were paid into a fund for the Kani community. It must be noted, however, that many elders from the community felt that their traditional knowledge, which includes the knowledge about arogyapacha, is sacred and should have never been shared. This pre-CBD ABS case illustrates the importance of bringing traditional knowledge and ABS into mainstream discussions and raise awareness of its potential at the community level.

Panel Discussion: Protection and Documentation of Traditional Knowledge

The aim of this panel discussion was to discuss the advantages and risks of traditional knowledge documentation as well as the South African and Indian experiences in setting up systems to document traditional knowledge, including lessons learnt. The highlights of the discussion can be summarised as follows:

- *Types of intellectual property protection for traditional knowledge:* Two types of intellectual property protection are possible. A defensive protection has the objective to stop anyone outside the community from acquiring intellectual property rights over traditional knowledge. For example, the Indian Traditional Knowledge Digital Library (TKDL) is a defensive instrument, while the South African NRS uses a combination of a defensive and positive approach. The latter allows for the valorisation of traditional knowledge and furthers community development.
- *Risks of traditional knowledge documentation:* Documenting traditional knowledge carries its own intellectual property risks and opportunities. Understanding the different available options and approaches – defensive or positive or a combination of both – prior to embarking on a process of documenting traditional knowledge is therefore critical. Documentation of traditional knowledge, while helpful for safeguarding and conservation, must therefore be done with the right intellectual property strategy in mind and considerations must be given to

the holders of these resources and to the specific circumstances of a country. The Indian model cannot be replicated in other countries. Each traditional knowledge recordal system has to be unique, adapted to the circumstances of the respective country.

- *Importance of documenting traditional knowledge:* IPLCs do not like to reveal their traditional knowledge because this knowledge is held as sacred. There is a lack of trust in documentation, but there is also a fear that this knowledge is going to be lost if not documented. In India, to cultivate trust, traditional knowledge is documented in local languages and never translated or published in English. It is also important to protect the language and the culture to protect traditional knowledge.
- *Shared knowledge and benefit-sharing:* A large portion of traditional knowledge is shared knowledge, while only a very little portion is secret or held by individuals. Benefit-sharing from the utilisation of shared knowledge is difficult to apply based on the provisions of the Nagoya Protocol, since it is often unclear who would be the parties to a benefit-sharing agreement. One possibility to distribute benefits fairly among a broad range of knowledge holders is to establish a trust.

Open Space

In this session, participants were given the opportunity to freely discuss and exchange experiences on issues of their choice or themes that participants believe not enough put forward in the workshop. The discussions were held in self-managed groups.

Creation of the Agenda and Organisation of Self-Managed Reflection Groups

Participants were invited to share their ideas and concerns with all other participants and propose discussion topics of their own choice. Following the collection of the different themes proposed and their distribution in different meeting rooms, each initiator of a theme was invited to chair the session s/he proposed. In total, participants discussed eight different themes:

- Revitalisation, recognition and certification of prior learning of healers.
- How to negotiate ABS? Exchange of thoughts and ideas on how ABS negotiations could be approached strategically.
- Providing IPLCs legal support and representation of IPLCs to assist them in their interactions with third parties.
- Traditional knowledge and intellectual property: How can traditional knowledge, which is intangible in nature, be protected?
- Women empowerment: How can women play a part/role in discussions related to ABS, land issues, etc.?
- Land Issues and IPLCs: Reflecting on the way forward.
- Continuation of the South-South dialogue started in India in 2015: Find a way on concretising and building on the decisions that were taken and how to follow through.

- Workshop outcome statement: Developing some sort of outcome statement or vision on the way forward that all participants could agree on.

Since the 'open space' discussions were self-organised, the workshop organisers did not document their outcomes. The outcomes of the 'open space' sessions "Traditional Knowledge and Intellectual Property" and "Workshop Outcome Statement", documented by the facilitators of these discussions, can be found in Annex 4 and 5, respectively.

Biocultural Community Protocols

(Biocultural) Community Protocols – What are they?

In this presentation, *Barbara Lassen from Natural Justice* focussed on the use of BCPs to facilitate the establishment of ABS agreements involving IPLCs and their role in simplifying and clarifying interactions between IPLCs and third parties in relation to the utilisation of traditional knowledge associated with genetic resources. BCPs are community-led instruments, developed through culturally rooted and participatory decision-making processes. They articulate community values, procedures and priorities as contained in the traditional practices and customary norms of a community. A BCP thus defines who the community is and what its governance structure is. It may include, among others, obligations regarding the conservation and sustainable use of biodiversity; challenges faced by the community; a reference to relevant rights in national and international law; and elements of PIC, MAT and benefit-sharing. A BCP is therefore a tool that assists IPLCs in formulating clear conditions, procedures and rules of engagement for external actors, such as governments, businesses, academics, research institutes and other public or private entities, who seek to access a community's resources or knowledge for commercial or non-commercial research. In other words, a BCP provides a helpful interface between customary and national law, creating clarity, legal certainty and fostering compliance. They can be used as dialogue tools to document traditional knowledge and raise awareness about rights of IPLCs to land and natural resources while providing a coherent voice to communities and strengthening their governance and value systems.

Sharing Experiences with Developing Biocultural Community Protocols

- *Biocultural Community Protocol of the Sacred Forest Gbêvozoun, Benin:* The main objective of this BCP is to contribute to the sustainable management of the sacred forest "Gbêvozoun" by affirming and recognising the rights of the community of "Degbe Aguinninnou" and their history of managing the sacred forest. The protocol includes community directives and measures aiming at preserving the community's culture and environment, and to guarantee economic and social benefits from any interventions on their natural resources – in particular the genetic resources of the sacred forest and associated traditional knowledge. The BCP is accompanied by a community biodiversity register, which documents wild species as well as local agrobiodiversity and related traditional knowledge.
- *The Mariarano Community Protocol, Madagascar:* Seven neighbouring local communities, all of them providers of *Cinnamosma fragans* in the communes of Mariarano and Betsako in the Boeny region, have come together to develop this community protocol. Through their community protocol, the communities clarify their own decision-making process on access to

and use of biological and genetic resources over which they have customary or legal rights. The objective is also to ensure that biotrade operators and researchers act responsibly and ethically in relation to access permits and the equitable sharing of benefits arising from the utilisation of the resource. In addition, the protocol also establishes the local communities' vision to protect the traditional knowledge they hold.

- *Biocultural Community Protocol for Attaqua Oudtshoorn and Kannaland Indigenous Khoi Community, South Africa:* The KCHDC engaged with the DST in 2014, through the NRS Indigenous Knowledge Systems (IKS) project, to draft a BCP. The motivation was born from research done on the indigenous knowledge with regard to medicinal plants and traditional foods, and the limited access the community has to the biological resources associated with their traditional knowledge. The BCP defines who they are as a community, how they are organised, what their key priorities are as well as which key procedures external actors should follow when interacting with them.
- *Biocultural Community Protocol of the Khwe Community, Bawabwata National Park, Namibia:* The Khwe community, one of the historical San communities living inside Bwabwata National Park, is not formally recognised as a cultural community within the Namibian traditional authority framework. Due to restricted access to their customary resources located inside the Park, the intergenerational transfer of traditional knowledge is not occurring as it should leading to the erosion of their language, culture, traditions and way of life. The BCP was developed with the aim to help the Khwe community revive their sense of place and identity. It also includes elements to address ABS-related issues and a community biodiversity register which identifies the traditional knowledge held by the community.
- *The Endorois Community Protocol, Kenya:* The Endorois Community's main objective in developing this BCP is to clarify the decision-making process of PIC in the context of upcoming ABS agreements and beyond. Some environmental aspects will also be brought in as the protocol will contribute to the development of the Integrated Management Plan of the Lake Bogoria Natural Reserve, which is foreseen to integrate ABS-related issues.

BCP Group Exercise – Part I

Participants were asked to form a group for each of the five BCP examples described above. Led by case givers, each group was asked to reflect on the experience of developing a BCP. A few guiding questions were provided as follows:

- What was the reason to develop your protocol?
- What is the content of the protocol?
- How did you do it/how are you doing it?
- Has the development of the protocol been useful? How?
- What was difficult/is still difficult?

The results of group discussions and their inputs have been aggregated and summarised in the table below, with the exception of the reasons to develop a BCP, which are indicated in the summary of each BCP description above.

Elements	Approach	Benefits	Challenges
Description of the community, its identity, its origin, its values Explanation of the relationship between IPLCs, land, and resources Governance structure Customary laws, community code and by-laws Rules of engagement & modalities for ABS and related issues Description and mapping of customary lands, defining sacred sites Biodiversity register	Identify and involve all the communities and all the actors concerned (women, men, elders & youth) in the development of the BCP and build consensus Community meetings and consultations External support and legal advice Make use of existing rights and laws (e.g. in resource governance) that support your position Link BCP with a local development plan Be strategic, and be patient!	Better awareness/sense of the value of the local resources (economic and cultural) Empowerment to negotiate (standing) Facilitated access to land and resources Participation in training & capacity building events Research interest in local resources Conservation of local resources Sense of collective ownership of the process (with a common objective) Preservation of cultural heritage Impact at national and local level A BCP can be a door-opener to start conversation with government on more sensitive issues (e.g. land issues) A BCP is flexible and a living document	Lack of recognition/ political will from government and local authorities (administrative recognition) Lack of human resources Lack of financial resources Lack of local capabilities (illiteracy, language issues) Lack of trust Conflicting interests between and within communities Cultural heterogeneity (e.g. due to in-migration) Finding partners for support (financial, process facilitation, governments, NGOs, industry) Sorting out who is entitled to which rights and who belongs to the community Expectation management (e.g. regarding monetary benefits) Implementation in the longer term – how to keep the BCP alive?

BCP Group Exercise – Part II

Participants were asked to reflect in their groups on the three questions below and provide one or two suggestions per questions.

1. How to upscale / disseminate BCPs (more community protocols in more countries)?
2. How to support the communities (how can we help)?
3. How to achieve more recognition (what can we do for the way forward on this issue)?

The results of the group discussions and their inputs are summarised in the table below:

Upscaling & Dissemination	Community Support	Recognition
Prepare the ground work with communities, civil society organisations, partners and ABS Focal Points Collaborate with local agency & experts in developing BCPs Targeted advocacy and solidarity (local communities, educational institutions, indigenous organisations, leadership for traditional authorities, including women groups) Connecting BCPs to existing national laws/legal frameworks Raise awareness at all levels (IPLCs, etc.) Promote community-to-community exchange Inform and sensitise policy-makers about BCPs at the COP (side events to raise awareness) and other relevant international processes Organise sub-regional workshops for different stakeholders (governments in particular)	Assist with documentation Translate the documents into different languages Mapping of resources Capacity building Connect communities with experts Support communities with similar experiences Communities providing support to each other – community-to-community exchange, advocacy and solidarity Analyse laws & policies as well as analysis of the lessons learnt during the past 10 years of developing BCPs and share results with communities BCPs should be used as instruments of/for development (example of the San story, BCP has to move beyond ABS, the story of the communities to be more broad to harness the benefits of this tool, including community-to-community exchanges) Funding & non-financial support Develop/transfer skills Partnership development (universities, research institutes, etc.) Identify and build the capacity of NGOs working in this areas Sustainable funding resources and technical support to build IPLCs' capacity	Work with local, national & regional governments Work within national legislation Participation at all levels Certification of traditional knowledge holders (to recognise their expertise in healing and knowledge) Intergovernmental collaboration/cooperation Raise awareness and sensitise decision-makers at all levels (local, national, regional) Administrative recognition Involve local authorities in the process as observers Win local authorities' commitment Take into account BCPs in the different legal frameworks relevant to the management of natural resources and the rights of IPLCs National workshops on BCPs for all stakeholders

Conclusion and Way Forward

In this final session of the workshop, participants reiterated their interest in continuing working together to advance the commitments made at the first edition of the community-to-community exchange that took place in Bangalore in 2015. These were as follows:

- promote awareness of the Nagoya Protocol in our communities;
- encourage our countries to take legislative steps to include the customary rights of indigenous peoples and local communities in their ABS regulations;
- commit ourselves, alongside our governments, to encourage the documentation of traditional knowledge at the local and national level.

Representatives from the South African DEA also committed to have a domestic process to debrief, discuss and debate further, possibly using the same exchange format, the issues raised during this community-to-community workshop with all the relevant stakeholders. Finally, participants agreed to complement the above commitments with a list of 17 outcome statements produced during one of the 'open space' sessions. These do not constitute a formal declaration but they could be recalled at the next community-to-community exchange and be built upon between now and then. The 17 outcome statements are listed in Annex 5.

Closure

Presentations

The full list of presentations made during the workshop is available here to download.

Day 1

Access and Benefit-sharing: The Concept – Lena Fey, ABS Initiative.

South Africa's Implementation Status of the Nagoya Protocol on ABS – Lactitia Tshitwamulomoni, South African Department of Environmental Affairs.

Legal Protection for Indigenous Knowledge Using the National Recordal System – Shumi Pango, Kedi Apane and Tom Suchanandan, South African Department of Science & Technology.

Council for Scientific and Industrial Research: ABS Case Studies – Sechaba Bareetseng, South African Council for Scientific and Industrial Research (CSIR).

Day 4

Field Visit: Mamelodi & Upington – Group A.

Field Visit: Southern Cape – Group B.

Field Visit: Bushbuckridge & Mamelodi – Group C.

Access and Benefit-Sharing: Some Perspective – Roger Chennells, SASI/Chennells Albertyn.

Rooibos Restitution: So What Happened after 'Nestlé'? – Lesle Jansen, Natural Justice.

Day 5

Association pour la Sauvegarde de la Culture et de l'Art Bassari, Sénégal – Juliette Bidiar, Association pour la Sauvegarde de la Culture et de l'Art Bassari (ASCAB).

Mondia Value Chain Project, Lebialem Highlands, Cameroon – Helen Agendia, Lewoh Women Cooperative Society.

Traditional Healers Association Chhattisgarh, India – Vaidya Nirmal Kumar Awasthi.

La Coopérative Tiboudrarine Noudrar, Maroc – Mina Ardem, Coopérative Tiboudrarine Noudar.

Tulongeni Twahangana Cooperative Ltd, Namibia – Madgalena Samwel, Tulongeni Twahangana Cooperative Ltd (TTC).

Valorising of Biodiversity for Commercial Purpose, Namibia – Leena Shikongo, Eudafano Women's Cooperative.

Devil's Claw, Namibia – Max Muyemburuko, Muduva Nyangana Conservancy and Community Forest.

Indian Traditional Knowledge of Health & Healing – Unnikrishnan Payyappallimana, UNU-IAS and Foundation for the Revitalisation of Local Health Traditions (FRLHT), India.

Voluntary Certification for Traditional Healers – Hariramamurthi Govindaswamy, FRLHT, India.

Lessons Learnt from the Kani Model – Anoop Pushkaran Krishnamma, Kerala Kani Community Welfare Trust.

Day 6

Protocoles Communautaires – Barbara Lassen, Natural Justice.

Biocultural Community Protocols – Lena Fey, ABS Initiative.

Agenda

Monday, 03 September 2018: Introduction & Thematic Background	
08:00	**Registration**
08:30	**Welcome and Introduction**
09:30	**Setting the scene**
10:00	Coffee / Tea
10:30	**The South African ABS system**
11:30	**South Africa's National Recordal System for Indigenous Knowledge**
12:30	Lunch
13:30	**Field visit preparation**
14:00	**CSIR / SANBio: TK-based, ABS-compliant research**
15:15	Coffee / Tea and transfer to CSIR
16:15	**Visit to CSIR: TK-based, ABS-compliant research**
18:00	End of Programme

Tuesday, 04 September 2018: Field Visits I		
Group A – Northern Cape: **Visit to Mothong Community Trust, Mamelodi** **Flight to Upington**	**Group B – Western Cape:** **Flight to George** **Visit to Witfontein Plant Nursery & KCHDC, Potskerf Project, Oudtshoorn**	**Group C – Mpumalanga:** **Flight to Nelspruit** **Meeting with Kukula Healers, Bushbuckridge**

Wednesday, 05 September 2018: Field Visits II		
Group A – Northern Cape: **Meeting with San Council & Ouma Katrina Esau** **Flight to Johannesburg**	**Group B – Western Cape:** **Visit to Herbertsdale Aloe Tappers Cooperative** **Flight to Johannesburg**	**Group C – Mpumalanga:** **Flight to Johannesburg** **Visit to Mothong Community Trust, Mamelodi**

Thursday, 06 September 2018: Reporting back; ABS Agreements	
09:00	**Reporting back from field visits**
10:00	Coffee / Tea
10:30	**Reporting back from field visits**
12:30	Lunch
14:00	**ABS Agreements**
15:30	Coffee / Tea
16:00	**ABS Agreements**
17:30	End of Programme

Friday, 07 September 2018: Local Valorisation; TK Documentation; Open Space	
09:00	**Local Valorisation of Biological Resources**
10:30	Coffee / Tea
11:00	**Local Valorisation of Biological Resources**
12:00	Lunch
13:30	**TK Protection / Documentation**
15:30	Coffee / Tea
16:00	**Open Space**
18:00	End of Programme

Saturday, 08 September 2018: BCPs	
09:00	**Biocultural Community Protocols**
10:15	Coffee / Tea
10:45	**Biocultural Community Protocols**
13:00	Lunch
14:00	**Conclusions & Way forward**
15:30	End of Workshop

List of Participants

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Annex 1: Field Trip Group A

FIELD VISIT REPORT – GROUP A (Mamelodi & Upington)

Unnikrishnan Payyappallimana and Karimu Unusa

4th September 2018

The Group A visited Mamelodi at a mountain site to see a project of rehabilitation by a traditional healer and also visited his place of practice. The group also proceeded to Upington to meet the San Council. The objective of the visit was to see ABS in practice, valorisation of traditional knowledge and traditional knowledge documentation as practice in the field by IPLCs. In Mamelodi, the group visited the rehabilitated mountain and the place of practice (clinic) of a traditional healer.

At the mountain (rehabilitated site)

The group was welcomed at the foot of the mountain by a very jovial traditional healer Dr Ephraim Mabena, his wife Mabel Mabena (who is also a healer) and the administrator of Mothong, Mamorake Moila. The son of Dr Ephraim Mabena was also present and followed the group through the field visit and documented everything through the use of a digital camera.

The group was led through the process of rehabilitation by Dr Mabena and the others. At the site, Dr Mabena told the group how the process started with a dream from his grandfather asking him to rehabilitate the mountain called Magalies Mountain. He equally told the group that the mountain (Magaliesberg) was a dumping ground (of refuse) for the entire municipality. The rehabilitation process to say the least is very successful and now the healer has put up a garden of traditional plants (use for traditional knowledge) and a nursery. The place is manned by 8 workers and has so far provided employment to 80 persons. Equally at the site there are visible holes on a wall dug by the healer. The healer told the group that holes are inhabited by birds called bee's eaters. At the vicinity of the rehabilitation process, there is a hut where meetings and briefings can be held. Dr Mabena also told the group that there is a borehole that supplies water to the site. On the difficulty he is facing, the traditional healer told the group about soil erosion, lack of volunteerism and scarcity of water on top of the mountain. The environment was very clean and no paper could be found anywhere around the vicinity. The environment is well protected with solid fences.

In briefing the group on who are the users of the rehabilitated mountain, Dr Mabena told the group that he receives students, researchers and universities. He equally told the group that the site serves his clinic and other healers for supply of medicine. Dr Mabena had future plans for the site.

Future Plans

The charismatic healer told the group that he has entered into a consortium with about 8 institutions to build a plant to process the plants that are harvested from the garden and the surroundings. It is equally a future plan that the site should be serving as a seed bank and that the site should be also transformed into a centre of excellence where students and researchers shall be referred to for their academic needs. The traditional healer did not hide his intention of writing a book which he has entitled "When the Mountain Calls". The visit on the top of the mountain ended with a beautiful group

photo on the top of the mountain with an admirable view of Mamelodi city from where the group moved to the place of practice of Dr Mabena.

The clinic of Dr Mabena

At the clinic of Dr Mabena, the group was welcome at the entrance by a burning herb from the healer meant to drive away ill luck according to the healer. The group was further divided into sub groups of tens and walked barefooted into the clinic. The healer briefed the group on how he practices his trade and also walked the group into the different rooms of the clinic.

In the rooms, one could see traditional values very visible and in another room the healer showed the group some aspect of modern medicine which he combines with traditional knowledge in his practice. The healer equally took the group to a room where he displayed his medicines. In that room, one could see various medicines all well packaged and labelled. There were clear aspects of valorisation of traditional knowledge at the clinic.

Lessons learnt

The rehabilitation of a mountain that was a dumping ground for the entire municipality and now the most beautiful environment is an indication that it is never late to rescue the degrading environment. If Dr Mabena can do it then it is possible to be done anywhere and everywhere.

Another lesson learnt is that rehabilitation is labour intensive and demands a lot of resources (both human and material).

It was equally learnt that a conservation process does not need the involvement of everybody and much resources especially in the beginning. It can be started by an individual and others can join.

Participants also learnt at the place of practice of the healer that modern medicine can be practiced alongside traditional knowledge.

Challenges

There were some challenges noted in the course of the field visit especially during the questions and answers session with Dr Mabena.

The healer hinted the group on the difficulty of getting volunteers to do some of the work at the rehabilitated mountain and also the limited financial resources to employ workers. He equally raised the challenges related to scarcity of water on the top of the mountain and the problem of erosion.

The group noted the limited documentation of traditional knowledge at the mountain and at the clinic. The group also noted the lack of involvement of the community at the rehabilitated site and at the clinic.

The field visit at Mamelodi ended with lunch at the clinic and a hug from the healer to every member of the group and we departed to the airport to continue to the excursion to Upington to meet with the San Council.

5th September 2018

On the second day, the group visited the San Council in Upington. Leana Snyders, Director of the San Council, and her team welcomed the participants. Community leaders like Mr Collin Louw and Prince

William Peterson were part of the team. After giving an overview of the development of the council, two projects viz. traditional knowledge documentation and the Research Code of Ethics were shared. The San Council is an outcome of discussions starting from 1996 involving communities in South Africa, Namibia and Botswana. The South African part was consolidated in 2001 with the objectives of protection of rights and promotion of San culture of the communities such as Khomani, /Xam, !Xun, Khwe. This development was also triggered by the hoodia experience where the communities felt short-changed. There are five principles that the Council adheres to: honesty, fairness, justice, respect and process. Over the years, there have been several ABS agreements instituted by the San Council with the communities and bioprospectors. The San Council works with a multi-stakeholder platform – communities, San Institute, Khomani San Foundation Development Forum etc. There is a three-tier system which includes the national hub, provincial and community councils. There is a ten-member steering committee with representatives from three communities. The Council is aiming for a good women representation. Currently, there are three women who are members of the committee. There were many consultations and ABS agreements developed from 2014. The organisation of San Council, especially with participation and representation of the communities has faced several challenges. The presentation shared major developments and challenges of the Council over two decades.

The Indigenous Knowledge Systems Documentation Centre project was started as part of the National Recordal System among San communities by the Council. Extensive documentation of traditional medicine, food practices and other traditional knowledge areas has been carried out. The documentation formats, prior informed consent forms and detailed documentation methodology were shared. The field documentation process was shared during the presentation. Points were made regarding the overall vision for the documentation of traditional knowledge, and in response it was said that the main objective currently is to claim rights over the traditional knowledge by documenting and utilising this for ABS processes.

The San Code of Ethics is another major outcome of the San Council programme. It was felt that there is high appropriation by both researchers and companies of traditional knowledge in the Kalahari Desert area, and this should be prevented by bringing in a code of conduct for researchers. The idea was seeded in 1996 with the WIMSA Media and Research Policy. This was further developed in a participatory process by the traditional leaders of the !Xun, Khwe and !Khomani groups of San with the support of the San Council. According to the San Code of Research Ethics, there are principles outlined such as respect, honesty, justice and fairness, care and attention to research protocol and processes. This process was also linked to a larger global process called “Global Code of Conduct for Research in Resource-poor Settings” under the Trust Project for Equitable Research Partnerships, which was set up in 2015 in a global meeting in Cape Town. The San Council team has presented the San Code of Research Ethics and the challenges faced by the communities in research partnerships in various international forums. The San Council team has also been a key policy advocate in the multilateral policy processes for indigenous community- and traditional knowledge-related research partnerships. In the research code, there are strict guidelines for logo use, access to communities, and developing research partnerships.

Information on different ABS agreements was shared during the meeting including the challenges with the hoodia case. The ABS example of Elev8, a product developed from the community’s traditional knowledge in partnership with Zembrin, was also shared during the meeting. The team said that this has been a mutually respectful case of ABS and a true partnership agreement. Questions were asked

about the threat to medicinal and nutritional plants and the need for conservation. The team responded by saying that the San Council has good conservation measures and cultivation practices. The Council also works in tandem with the national government policy processes and guidelines.

Three video presentations were made during the meeting related to various aspects of ABS. Participants gave feedback that it is a well-conceived model to follow in their respective regions and there is an immediate need for documenting traditional knowledge as well as developing strong research ethics. Some participants expressed concern over the disintegrating traditional structures in their communities and the challenges in organising and assuring participatory processes for revitalising traditional knowledge.

There was another presentation on the N/uu language rediscovery and revitalisation programme, which is being done since 1996. Ms Katrina Esau, the person who has been behind the programme, made a presentation with the help of Mr David van Wyk. A tale of a rabbit and a tortoise was narrated in N/uu language by Ms Katrina to the group, which generated great interest among the participants. There were around 25 speakers of the language in the region, but currently only 4 remain and all of them are above 80 years of age. They are currently working to teach children and have established a centre for excellence for the language. Today it is recognised in the constitution, but not included yet as an official language. A book has been released about the basics of N/uu. The team also shared a play being developed to showcase Katrina Esau's life, which is going to be presented in Cape Town shortly.

Before departing from Upington, David van Wyk also took the group on an informal visit to the Kalahari-Oranje, which provides information about the history of the San in the region. The group arrived back in Pretoria by 9 PM.

Annex 2: Field Trip Group B

Witfontein – Oudtshoorn – Herbertsdale in Western Cape South Africa

Sabine Zajderman

Group B travelled to George to start the field visit. On their way to Oudtshoorn, participants visited the Witfontein Indigenous Medicinal Plant Nursery run in collaboration with traditional healers and Rastafarians. In Oudtshoorn, participants met with the Khoi Cultural Heritage Development Council (KCHDC) at the Potskerf Indigenous Knowledge and Heritage Research Centre, where they had a very informative discussion on the development of the Attaqua Biocultural Community Protocol (BCP). Participants also discussed the role of the Centre in the documentation of indigenous knowledge and its contribution to the South African National Recordal System (NRS). The field trip ended with a visit to one of the *Aloe ferox* harvesting site of the Herbertsdale Aloe Tappers Cooperative where the group witnessed the 'tapping' process, as it is known, whereby the bitter sap is removed from the plant.

Witfontein Indigenous Medicinal Plant Nursery

The Witfontein Indigenous Medicinal Plant Nursery is a project initiated by Cape Nature in 2006. One of the main objectives of the project is to release the pressure from the illegal harvesting of wild resources in protected lands to meet the growing demand for traditional medicines. The Nursery therefore plays a critical role in protecting such limited resources within protected areas and providing medicinal plants for local traditional healers. Apart from the production process, the project has a strong environmental educational focus directed towards re-entrenching the cultural value of indigenous plants to traditional healing practices and to reinforce this through on-going engagement with traditional healers. The nursery is now well established with a large selection of indigenous medicinal plants and is co-managed with traditional healers and Rastafarians. It also serves as a training site for traditional healers. Traditional healers can access those resources according to a few rules and can obtain a permit to collect small plant specimens in the mountain of the nature reserve.

The Khoi Cultural Heritage Development Council and the Potskerf Indigenous Knowledge and Heritage Research Centre, Oudtshoorn, Western Cape

The Khoi Cultural Heritage Development Council (KCHDC) is an organisation representing 19 Khoisan traditional houses. Their Potskerf Indigenous Knowledge and Heritage Research Centre in Oudtshoorn focusses on issues related to indigenous knowledge and heritage research. The Centre also acts as a provincial office – officially called Indigenous Knowledge Systems Documentation Centre (IKSDC) – for the NRS of the Department of Science and Industry (DST). The Centre, like other IKSDCs, is pivotal in the preservation, management and granting of access to indigenous knowledge. Such activities usually include, among others:

- To collect, document, and disseminate information on various components of indigenous knowledge within, but not limited to, the following themes: African traditional medicine and indigenous foods;

- To research and organise displays on various aspects of indigenous knowledge systems (IKS). For example indigenous games linked to mathematics, fermentation of beer (linked to chemistry) and indigenous technologies and metallurgy, etc.;
- To integrate IKS with other forms of knowledge, including science as part of mainstreaming and valorisation, as well as its significance and recognition in the knowledge economy;
- To conduct training programmes and design materials on IKS for development workers in indigenous communities, practitioners and traditional knowledge holders;
- To conduct interdisciplinary research on IKS;
- To develop cost-effective and reliable methodologies for recording indigenous knowledge;
- To assist in the formulation of policies and design technical assistance programmes based on indigenous knowledge.

Supported by Natural Justice and the DST, via the NRS – Indigenous Knowledge System Project, the KCHDC engaged with the Attaqua Cultural House of Oudtshoorn and Kannaland (ACHOK) in the documentation and development of a BCP. The motivation to start this process emerges from research done on the indigenous knowledge of the Attaqua Khoi community with regard to medicinal plants and traditional foods, and the limited access the community has to plants associated with their traditional knowledge. The BCP defines who the Attaqua Khoi are as a community, how they are organised, what their key priorities are and which key procedures external actors are to follow when interacting with the community. It also describes their values and cultural relationship with their land and resources. In short, the BCP aims at helping to ensure that the rights of the community, as indigenous knowledge holders, are recognised and at strengthening the negotiating capacity of the Attaqua Khoi to establish fair and equitable access and benefit-sharing agreements with third parties. The BCP will be revised every three years. The whole process was said to be re-awakening of the Khoisan culture and its language, which it will help to preserve and pass down to young generations.

The Herbertsdale Aloe Tappers Cooperative, Herbertsdale, Western Cape

Aloe ferox is a succulent plant indigenous to South Africa, which is found between Mossel Bay and Riversdale in the south of the Western Cape. Its leaves have been harvested by Khoi and San communities for centuries. The 'tapping' process, whereby the sap is removed from the plant, as well as the traditional knowledge associated with it have been passed down from generation to generation. *Aloe ferox* is a unique source of high quality bitter sap, bitter crystal, powder, and gel, all of which are now used in many products worldwide for their medicinal and cosmetic properties.

The Herbertsdale Aloe Tappers Cooperative, mainly composed of members of the Khoisan community, uses a traditional and environmentally friendly method of tapping the bitter sap. This method consists in cutting approximately 20 – 30 of the lower leaves from a mature plant and place these leaves in a circle around a plastic-lined hole dug in the ground, with the cut ends towards the centre of the circle. This allows the dark brown and bitter sap to be drained out of the leaf into the hole. The sap is then collected and processed into aloe lump or aloe crystal. The leaves also yield non-bitter gel with moisturising and soothing properties and other by-products such as juice, extract powder, leaf powder, inner fleshy fillet and inner fillet liquid, which can be used for a wide range of applications with all sorts of health benefits. Harvest taking place once a year, this traditional tapping method stimulates the plant to grow new leaves.

The increasing demand for *Aloe ferox* could render the harvesting of the plant one of the main alternative livelihoods for the poor rural communities of the Cape region. However, tappers from the Cooperative harvest most of the *Aloe* on private lands with a third of the profits they make paid to the owners of these lands. To make matters worse, the processed *Aloe* is sold at rock bottom prices to middlemen having a real monopoly on its trade. The tappers' main objectives are to get a better return on the raw material sold and to receive lands to domesticate the *Aloe* plants. They are also looking for getting some government support.

Challenges

Among others

- Lack of access to finance;
- Lack of access to land and resources which prevents IPLCs to realise the full potential of ABS or bio-trade;
- Lack of women and youth participation;
- Lack of official recognition of the Khoisan as indigenous people;
- Lack of recognition of traditional healers/indigenous therapists;
- Loss of traditional knowledge;
- Confusion in identity and sense of belonging of the Khoisan people;
- Disconnection of the communities of tappers from their ancestral lands and resources exacerbating their economic vulnerability.

Lessons Learnt

Among others:

- The importance to link the traditional use of plants to the conservation and use of biological diversity;
- The importance to keep indigenous languages alive – when a language disappears, a culture and its associated traditional knowledge disappear;
- The crucial role of women, as knowledge holders, in the use and transmission of traditional knowledge;
- Strengthening local and traditional knowledge systems and their transmission mechanisms to the youth, especially by old people and, as mentioned above, women;
- Developing a BCP is an on-going process and a very important first step towards the protection of traditional knowledge and therefore against biopiracy;
- Developing a BCP helps communities to be better structured, organised to interact with government and other third parties; and
- As much as it is important that indigenous communities work together for the recognition of their rights, it is important that they work with government to advance the debate on those issues.

Annex 3: Field Trip Group C

Visite de Terrain (Groupe C)

Jazzy Rasolojaona

Leçons apprises

- La formation en association est souvent un bon moyen pour les communautés locales et les peuples autochtones de créer une synergie d'action pour avoir plus d'influence dans les négociations avec les parties extérieures.
- Les Protocoles Communautaires permettent aux communautés d'aborder les questions d'APA et de se préparer aux négociations futures qui peuvent se passer dans ce cadre. Ces outils donnent également aux communautés l'occasion de clarifier le déroulement du processus CPCC et CCCA à leur niveau, et de mettre en avant leurs droits coutumiers.
- La documentation est un procédé propice pour la préservation des connaissances traditionnelles, mais elle peut ne pas convenir à toutes les communautés (aussi variées sont-elles dans leur forme, culture, etc.) Parfois, les communautés (comme les tradipraticiens de Bushbuckridge) optent pour garder le maintien et la transmission de leurs connaissances à travers leurs propres cultures (secret de famille, chansons, etc.)
- L'APA remet sur la table les questions qui ont été mises de côté alors qu'elles ont de grandes importances dans la vie des communautés locales et les peuples autochtones (ex : le droit foncier traditionnel, l'usage coutumier des ressources, la reconnaissance des droits coutumiers, etc.)
- L'appui d'institutions extérieures et du gouvernement paraît crucial pour le renforcement des capacités des communautés locales en matière d'APA et de protection/valorisation des ressources génétiques et des connaissances traditionnelles associées.

Questions en suspens

Comment créer plus d'opportunité de collaboration/partenariat entre les détenteurs de connaissances traditionnelles et les institutions de recherche et les entreprises pour la valorisation de ces connaissances traditionnelles ?

Cas 1 : Tradipraticiens Kukula, Bushbuckridge

Discussion avec les tradipraticiens, les points saillants :

- Formation des tradipraticiens locaux en une association vers 2009
- Développement d'un Protocole Communautaire facilité par NATURAL JUSTICE.
- Utilisation du Protocole Communautaire comme base de discussion pour permettre aux tradipraticiens d'avoir accès aux plantes médicinales situées dans les forêts autours du Park Kruger (sous certaines conditions procédurales et celles liées au mode de collecte durable des ressources).
- Protocole Communautaire axé également sur l'accès et l'utilisation des connaissances détenues par les tradipraticiens.

- Protection des connaissances traditionnelles : garder les connaissances secrètes, cette valeur est transmise aux enfants à travers des chansons traditionnelles.
- Révision du Protocole récemment, inclusion d'élément nouveau : code de conduite dans la pratique du métier de tradipraticiens.
- Discussion sur la collaboration entre les gestionnaires du Park Kruger et les villageois riverains : domestication des plantes médicinales, identification des plantes médicinales du Park, appui au développement d'activités génératrices de revenus et d'autres moyens/systèmes de compensation par rapport à la limitation de l'accès aux ressources du Park, éducation environnementale, etc.
- Visite du site de plantation des plantes médicinales.

Cas 2 : Mamelodi

✓ Visite du site de plantation des plantes médicinales, surtout des plantes indigènes
✓ Visite du bureau de Dr. Ephraim Mabena (tradipraticien) et discussion

Points pertinents de la discussion :

- Production et vente de produits commercialisables basés sur les connaissances traditionnelles, en collaboration avec diverses universités, institutions de recherche et avec l'appui du gouvernement.
- Problème de reconnaissance du métier de tradipraticien par le Ministère de la santé.
- Difficulté à accéder à certaines ressources utilisées pour la médecine traditionnelle, besoin de permis au préalable auprès des autorités administratives compétentes.
- Documentation des connaissances à travers des enregistrements audio, vidéo, écriture de livre. Ce travail est effectué avec l'appui du fils et d'autres partenaires. Toutefois, aucun système de protection des connaissances enregistrées n'a encore été réfléchi, en attendant, elles restent secrètes.
- Transmission des savoirs à la jeune génération voulant pratiquer le métier.

Annex 4: Open Space Report "Intellectual Property and Traditional Knowledge"

Thème : « Propriété Intellectuelle et Connaissances Traditionnelles »

De Majesté MVONDO

Synthèse de la Réflexion des Participants au Groupe

Les échanges ont commencé par un bref rappel des uns les autres autour des termes PI ou propriété intellectuelle, CT(a) ou connaissances traditionnelles (associées aux ressources génétiques), DPI ou droits de propriété intellectuelle, puis les types de DPI.
Dès lors le groupe a réfléchi autour des grands axes suivants:

1. Les défis à relever
2. L'objectif recherché
3. Les pistes à parcourir
4. Les cas pratiques à exploiter
5. Les recommandations

Sur les Défis de la Propriété Intellectuelle par Rapport aux Connaissances Traditionnelles

La réflexion a tourné autour des questionnements tels que:

- Comment accorder la PI aux CT qui sont intangibles ?
- Comment donner la PI aux CT alors qu'elles sont tombées dans le domaine public ?
- Comment permettre la PI à un groupe/ collectivité/ communauté et non à un individu ?
- Il faut à tout prix donner la PI aux CT pour les sécuriser.
- Il faut reconnaitre et respecter les droits coutumiers, les CT et les expressions culturelles.

Sur l'Objectif Recherché

Les participants ont trouvé que l'objectif est de protéger et reconnaitre la PI aux détenteurs collectifs des CT que sont les communautés, et sécuriser une quelconque appropriation usurpée par des tiers.

Sur les Pistes à Visiter avec les Différentes Expériences

Il a été pensé qu'il faut:

- Adopter un système *sui generis* qui s'harmonise avec le système moderne de PI et s'adapte aux CT et aux expressions culturelles collectives.
- Prendre en compte les lignes directrices de l'Union Africaine dans la mise en œuvre de l'APA, en élaborant ce dispositif.

Sur les Cas Pratiques à Prendre Comme Appui / Exemples

Il a été retenu entre autres qu'il faut avoir des documentations spéciales telles que :

- Les bibliothèques digitales
- Les registres avec accès conditionné
- Les indications géographiques (protocoles bioculturels communautaires)
- Les banques de données en langue traditionnelle

- L’utilisation des noms culturels des CT et des ressources biologiques ou des ressources génétiques (masaï, saro, kpwem, argan…)

Sur les Recommandations

Il a été pensé qu’il faut urgemment:

- Une réelle volonté politique de la part de chaque pays ;
- Élaborer des procédures et un système *sui generis* de suivi des CTa, des ressources biologiques, des ressources génétiques ;
- Promouvoir et améliorer les initiatives locales existantes qui protègent les CTa et les différentes ressources locales ;
- Mettre en place un dispositif de veille dans chaque pays pour le respect des dispositions retenues ensemble ; et
- Assurer une assistance juridique aux communautés locales et autochtones.

Annex 5: Outcome Statements

- Recognise TK holders and empower them in the ABS process
- Government support the communities to document, record and conserve their knowledge about biodiversity
- Before any engagement or negotiation with IPLCs, respect should be paid to the IPLCs
- Need stronger international cooperation between IPLCs with respect to TK and ABS
- There is a need for capacity building on intellectual property rights for IPLCs to understand
- Need for capacity for IPLCs on negotiation skills
- IPLCs should understand the legal arguments surrounding TK and genetic resources in their countries
- IPLCs should familiarise themselves with the companies + research laws governing TK
- The domestication of the Nagoya Protocol is the backbone for negotiation
- When there is no access to and control of land by IPLCs, there will be no resources and no benefit-sharing
- IPLC cooperation is a foundation for success
- *Sui generis* disposals are important for the intellectual property special measure to secure TK associated to GR (political will)
- We need the recognition of women at all levels
- Recognition of women's rights in property
- We demand equality in leadership and decision-making processes at all levels
- Need for international and regional networks to advocate for women's socio-economic development.