



THE ABS
CAPACITY
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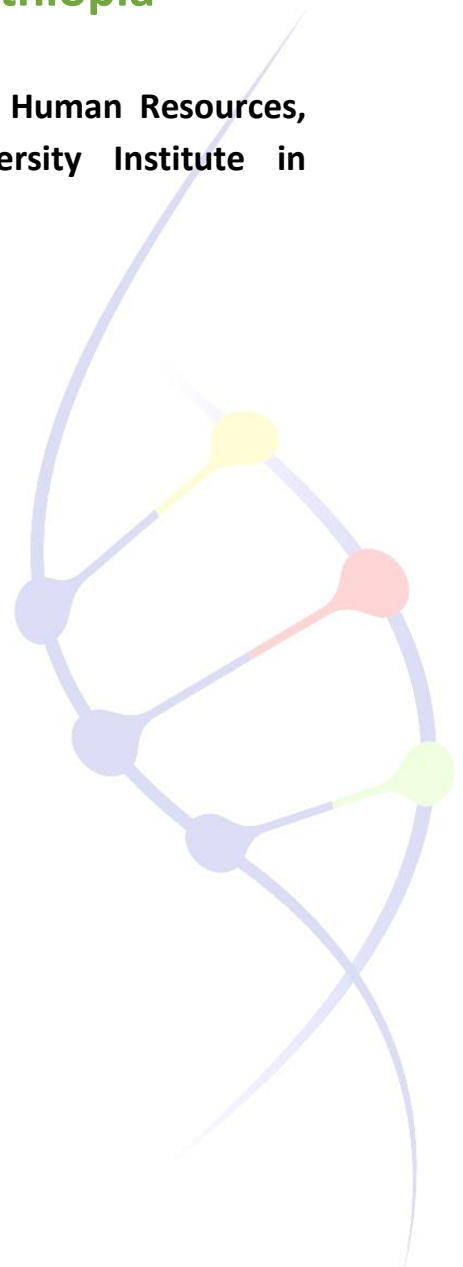
L'INITIATIVE DE
RENFORCEMENT
DES CAPACITES
POUR L'APA

9th Pan African ABS Workshop

23rd - 27th February 2014, Addis Ababa, Ethiopia

Hosted by African Union Commission / Department of Human Resources, Science and Technology and the Ethiopian Biodiversity Institute in cooperation with the ABS Capacity Development Initiative

REPORT



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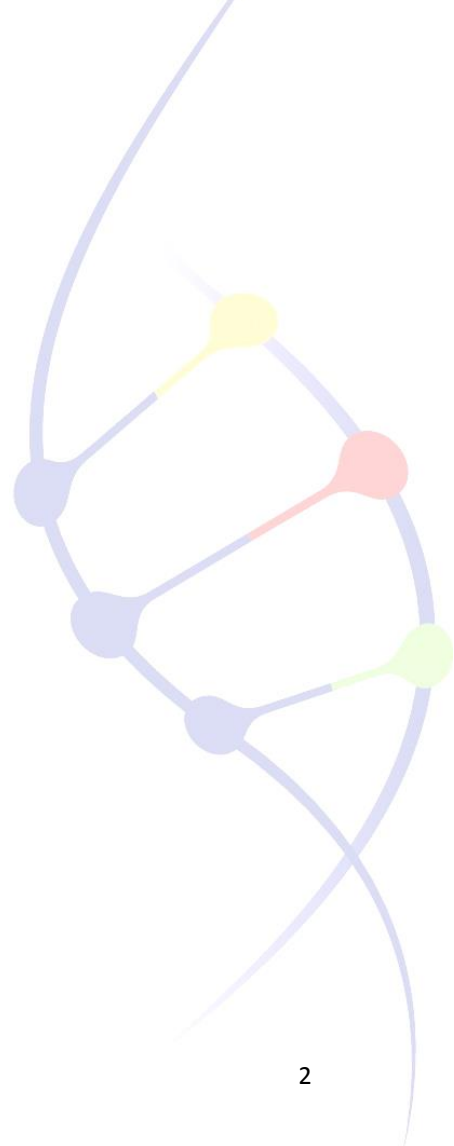
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Outline

Background

Since 2006, the ABS Capacity Development Initiative (ABS Initiative) has convened eight Pan-African ABS Workshops, as well as numerous training courses and multi-stakeholder workshops with a regional or issued-based focus in Africa. Since the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (Nagoya Protocol) in 2010, the ABS Initiative has increased its support for the development of national Access and Benefit-Sharing (ABS) frameworks. With the entry into force of the Nagoya Protocol in October 2014, the task for African governments, and specifically the 26 African Parties, to set up new or adapt existing national ABS regimes becomes apparent and urgent.

To provide additional guidance to African governments, the ABS Initiative supported the Department of Human Resources, Science and Technology of the Africa Union Commission (AUC) in developing and validating the African Union Guidelines for the coordinated implementation of the Nagoya Protocol in Africa (AU Guidelines). The AU Guidelines, consisting of two documents, one focussing on strategic policy issues, the other on technical step-by-step guidance, were validated by a technical experts' workshop in August 2014 and will be submitted for adoption at the 15th African Ministerial Conference on the Environment (AMCEN) in March 2015.

Key challenges encountered in national implementation of the Nagoya Protocol beyond the legal work comprise effective and context-specific ABS strategies enabling the best possible valorisation of genetic resources and associated traditional knowledge as well as information and participation of Indigenous Peoples and Local Communities (IPLCs) and all relevant stakeholder groups.

Objectives

With this context in mind, the main objectives of the 9th Pan-African Workshop were to:

- Update on international, regional and national processes related to ABS;
- Conduct an ABS baseline assessment as a basis for national needs assessments and further capacity development cooperation supporting the implementation of the Nagoya Protocol;
- Information on key elements of national ABS frameworks as e.g. implications of different business models; valorisation, protection of traditional knowledge; and implication of the EU Regulation N° 511/2014 on Compliance Measures for Users from the Nagoya Protocol for provider countries;
- Provide participants with insights about an Ethiopian ABS agreements on the use of extracts from endemic *Aloe debrana* to replace synthetic oils in the production of coffee sacks ;
- Present the draft of the AU Guidelines and provide an overview of the process leading to their development; and
- Discuss options for a coordinated approach to ABS implementation in Africa.

Participants

The workshop brought together 73 participants from 36 African countries, including ABS National Focal Points, representatives of relevant regional and international (research) institutions, non-governmental agencies, IPLCs, as well as representatives of the private sector involved in biotrade and bioprospecting.



Outcomes

With the recent entry into force of the Nagoya Protocol in October 2014, the 9th Pan African ABS Workshop was specifically aimed at facilitating the exchange of views and experience with a view to identifying needs and priorities of African countries in the implementation of the Nagoya Protocol. During the five day workshop, participants were provided with a wide range of practical information on a number of critical and emerging issues to consider when developing national ABS legislation, all of which revealed the complexities, multifaceted and evolving nature of ABS. Group exercises provided participants with the opportunity to put into practice this newly acquired knowledge and expertise. The design of effective ABS systems in Africa was the subject of profound and rich discussions, which revealed a major convergence of opinion on the need for a coordinated approach to ABS implementation in Africa. The presentation of the draft of the AU Guidelines highlighted opportunities to advance a more coherent and concerted approach to ABS and generated fruitful and stimulating discussions on the different options for a coordinated approach to ABS in Africa. A possible opportunity to mobilise resources through the Global Environment Facility (GEF) for purposes of developing a regional project to support the implementation of the AU Guidelines was presented and discussed. Finally, the field trip to the G-Seven Trading & Industry PLC Factory (G-Seven or the Company) in Akiki, South of Addis Ababa, allowed the participants to explore, through a very informative ABS national case on the *Aloe debrana*, the success story of an endogenous genetic resource which became essential for the Ethiopian coffee export, providing economic opportunities for local communities and beyond.

The workshop with its constructive exchanges, group reflections, and activities provided the participants with:

- A better understanding of the synergies between the different international and regional processes relevant to the implementation of the Nagoya Protocol in Africa;
- An overview and a better understanding of the various synergies between the ABS Initiative, the United Nations Environmental Programme (UNEP) and the GEF and support available to advance ABS implementation nationally and regionally;
- A better understanding of the linkages between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA or the Treaty) and the Nagoya Protocol, and the importance of developing mutually supportive processes and promoting synergies between them;
- A baseline information of the progress made towards the ratification and the implementation of the Nagoya Protocol in the region since the 5th Pan African ABS Workshop in Marrakech, including trends and priorities for capacity building;
- A better understanding of the EU ABS Regulation and its implications for provider countries;
- Comprehensive information on African biodiversity and traditional knowledge in the patent system and their economic potential;
- A better understanding of the emerging issues and realities of the valorisation of genetic resources in the different sectors and key elements to consider to develop effective ABS regulatory frameworks and coordinated ABS systems in Africa;
- An improved understanding of the different options on how to valorise and protect traditional knowledge associated with the use of genetic resources; and
- A better understanding of the benefits of a regional and coordinated approach to the implementation of the Nagoya Protocol in Africa and the need for resource mobilisation.



Process

Opening

Andreas Drews, Manager of the ABS Initiative, welcomed the participants and the donors to the 9th Pan African ABS Workshop, and thanked the AUC and the Ethiopian Biodiversity Institute (EBI) for co-hosting the event. Mr Drews highlighted that this meeting was happening at a critical juncture in the life of the Nagoya Protocol, taking place shortly after the Nagoya Protocol entered into force on 12th October 2014 and after the successful conclusion of the first Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol (COP-MOP 1) held from the 13th to the 17th of October 2014 in Pyeongchang, Republic of Korea. He indicated that Parties to COP-MOP 1 agreed upon a Strategic Framework for Capacity Building and Development which provides a solid frame for the ABS Initiative's next programme phase. Mr Drews informed the participants that all these developments, coupled with the results of an external evaluation of the ABS Initiative's work in 2014, had led to the conclusion that the Initiative will further shift the focus of its work to concentrate on targeted support to national level activities such as the development of sound and functioning ABS regulatory frameworks, the development of ABS-compliant value chains and the participation of IPLCs in ABS processes. Mr Drews was also very proud to announce the finalisation and technical validation of the AU Guidelines which he hoped would be adopted by AMCEN and endorsed by the AU Summit. Finally, Mr Drews warmly welcomed the Agence Française de Développement which officially joined the ABS Initiative in December 2014 as a donor to support ABS activities in Africa and wished the participants a week of fruitful discussions.

Gemedo Dalle, Director General at the Ethiopian Biodiversity Institute, was very pleased to welcome the participants to this new edition of the Pan African ABS workshop on behalf of the Ethiopian Government. He emphasised the importance of ABS for Ethiopia. He pointed out that Ethiopia's rich biodiversity and traditional knowledge were offering many ABS and biotrade opportunities with great potential to improve the livelihood of rural communities. He further stressed that the Ethiopian legislation on ABS makes sure that the consent of IPLCs is provided for the use of their genetic resources and the traditional knowledge associated with them and that benefits are fairly and equitably shared. Mr Dalle concluded by highlighting that the Nagoya Protocol was a unique instrument to achieve the third objective of the Convention on Biological Diversity (CBD) and that Ethiopia was committed to its implementation and to supporting the work of the ABS Initiative.

Beatrice Njenga, Head of the Department of Human Resources, Science and Technology at the African Union Commission, expressed a warm welcome to all the participants. She drew attention to the role played by the AUC in the coordination and development of the AU Guidelines which pave the way for a coherent and concerted approach to ABS in Africa. Mrs Njenga highlighted that it was now important to maintain the momentum of the recent coming into force of the Nagoya Protocol. She then wished that the results of this week of discussions would bring the realisation of all efforts to advance its implementation through a coordinated approach and a united African voice a step closer.

Kathrin Heidbrink and Hughes Quenum of the ABS Initiative, facilitators of the workshop, provided an introduction to the workshop, including the methodology and organisation of the work planned for the five days of the workshop.



Access and Benefit-Sharing Update

Introduction

The objectives of this first session were to bring participants up to date with the latest developments on international and African processes related to ABS and informally assess progress made in participating countries towards the ratification and the national implementation of the Nagoya Protocol since the 5th Pan African ABS Workshop in Marrakech in 2011. This first session also provided the opportunity for the ABS Initiative to present a summary of the work achieved in 2014.

From Cotonou to Addis

In this opening presentation, *Lena Fey of the ABS Initiative* gave a detailed overview of the ABS Initiative's efforts and activities carried out since the last Pan African ABS workshop in Benin to support the development and implementation of national ABS legal and regulatory frameworks in Africa. As in previous years, through diverse workshops, events, training courses, research studies and pilot projects, the ABS Initiative supported various African countries in their national process to ratify and implement the Nagoya Protocol; promoted the exchange of experiences and best practices between countries as well as dialogues between all stakeholders involved in ABS processes; built the ABS capacity of a wide range of stakeholders, including IPLCs; furthered the establishment of sustainable ABS value chains; and championed regional coordination and cooperation. Most importantly, for this year Pan African workshop which particularly focussed on coordination and cooperation, the ABS Initiative carried forward its support to the AUC with respect to the development and validation of the AU Guidelines which main objective is to strengthen the ability of African governments to ensure a more coordinated implementation of the Nagoya Protocol in the region.

African Processes

Hartmut Meyer of the ABS Initiative reported on the outcomes of the UNEP ABS Capacity Building Project for Africa financed through the 4th funding cycle of the GEF and executed by the ABS Initiative. The project consisted in a bulk of activities to support ABS implementation and ABS capacity building, including the training of government officials, IPLCs, and other stakeholders involved in ABS processes in six African countries, namely Cameroon, Kenya, Madagascar, Senegal, South Africa and Mozambique. Participants from the selected countries, who had been involved in the management of the activities, were invited to share some of the highlights or main achievements of these projects. They reported that the key outcomes were, among others, the development of country specific ABS Toolkits that some countries translated in different languages to reach as many communities as possible; the development of a draft law and regulations on ABS; the development of a study on the analysis of ABS legislation which resulted in the ratification of the Nagoya Protocol and the realisation of the importance to involve all stakeholders concerned in ABS processes, including IPLCs. The project activities also served at identifying business potentials for genetic resources in the six countries, the preliminary results of which were to be critically reviewed at a later stage in a presentation dedicated to valorisation. The next step is to disseminate lessons learnt and good practices.

Kamar Yousuf of the UNEP Regional Office for Africa provided information on the various UNEP-implemented GEF-funded ABS projects. She informed that UNEP was currently supporting 32 Parties to the CBD, including 27



African countries, to ratify and implement the Nagoya Protocol through several projects implemented at global, sub-regional and national levels. These projects include, for example, providing support for the ratification of the Nagoya Protocol at global level. This work, which contributed greatly to the entering into force of the Nagoya Protocol in October 2014, involves, among others, assisting countries to carry out a rapid national capacity needs assessment, raising awareness of key stakeholders on the opportunities and implications resulting from ratifying the Nagoya Protocol, monitoring and evaluating progress while capturing lessons learnt for implementation and follow-up purposes. At sub-regional level, UNEP uses a similar approach to provide support for the ratification and implementation of the Nagoya Protocol to the Member States of the Commission des Forêts d'Afrique Centrale (COMIFAC). At national level, Kenya is receiving support for the development of a microbial biotechnology industry in line with the Nagoya Protocol while Gabon is getting support for the implementation of a National Strategy and Action Plan on ABS. The next steps are to increase the number of ratifications; assist countries in utilising the AU Guidelines in their efforts towards putting effective ABS measures and mechanisms in place; work with partners to compile best practice examples and lessons learnt; and support countries seek funding for implementation through, for example, the GEF-6.

Finally, *Lesle Jansen of Natural Justice, Lawyers for Communities and the Environment (Natural Justice)* provided a detailed overview of the African Biocultural Community Protocol (BCP) Initiative undertaken by Natural Justice in partnership with ETC Compass, the Centre for Indigenous Knowledge & Organisational Development (CIKOD) and supported by the ABS Initiative. The main objectives of the African BCP Initiative is to generate lessons and build good practice on BCP development as these could prove useful when engaging with communities, particularly in the context of ABS. BCPs are community-led instruments, developed through culturally rooted and participatory decision-making processes. They articulate community values, procedures and priorities as contained in a community's traditional practices and customary norms. BCPs thus define who the IPLCs are as a community and what their governance structure is. They include, among others, obligations regarding the conservation and sustainable use of biodiversity; challenges faced by the communities; a reference to relevant rights in national and international law; and elements of prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing. A BCP is therefore a tool that assist IPLCs formulate clear conditions, procedures and rules of engagement for external actors such as ABS Focal Points, businesses, academics, research institutes and other entities who seek to access traditional knowledge associated with genetic resources for research and development (R&D) and commercialisation. In other words, a BCP helps to create clarity, legal certainty and compliance. They can therefore being used as dialogue tools, to document traditional knowledge, create awareness of community rights, entitlement and resources while providing a coherent voice for the communities and strengthening governance structures in the community.

Plenary Discussion

The plenary discussion that followed this first round of presentations focussed on the various challenges for the ABS Initiative to provide assistance to all countries and on the importance of partnering with agencies and other organisations involved in providing support for the ratification and implementation of the Nagoya Protocol. For example, the UNEP/GEF ABS Capacity Building Project for Africa has greatly contributed to the development of national best practices on the implementation of the Nagoya Protocol. Participants were informed that the current partnership between the ABS Initiative and UNEP will be carried out in the next future with the view to increase synergies and ensure a good coordination between the various projects and maximise funds. This will also entail identifying needs for support in both Francophone and Anglophone African



countries to avoid duplication of activities. The need to share experience gained and lessons learnt was pointed out. Participants' attention was drawn to the fact that although UNEP could assist in accessing GEF funding, it was up to the countries to request this support from the UNEP. Finally, participants further inquired on the legal status of BCPs. It was highlighted that although BCPs did not have a legal standing per se, they were recognised under Article 12 of the Nagoya Protocol which places an obligation on its Parties to support the development of such an instrument in relation to access to traditional knowledge associated with genetic resources. Participants learnt that community protocols were also acknowledged in the soon to be adopted AU Guidelines. Countries could therefore decide to recognise their legal standing in their national legislation.

International Processes

Erie Tamale of the Secretariat of the Convention on Biological Diversity (SCBD) provided a short overview of the main outcomes of COP-MOP 1. The presentation focussed on five key decisions with direct implications for the region and highlighted elements that Parties agreed to implement. These key decisions concerned the establishment and modalities of operation of the ABS Clearing House (ABS-CH); matters related to the financial mechanism; resource mobilisation for the implementation of the Nagoya Protocol; measures to assist in capacity-building and capacity development; and measures to raise awareness of the importance of genetic resources and associated traditional knowledge. Some of the concrete actions that COP-MOP 1 invited countries to take include: designation of ABS-publishing authorities and national authorised users; submission of mandatory and other relevant information to the ABS-CH; prioritisation of ABS projects during programming of the GEF-6 national allocation; integration of ABS into National Biodiversity Strategies and Action Plans (NBSAPs) and development cooperation plans/priorities; capacity-building strategies and initiatives; assessment and submission of capacity-building needs and priorities to the ABS-CH; implementation of the awareness-raising strategy for the Nagoya Protocol and sharing information on the progress and experiences through the ABS-CH.

Kent Nnadozie of the Secretariat of the ITPGRFA presented a short overview on the linkages between the ITPGRFA and the Nagoya Protocol and reported on the main outcomes of the Tandem Workshop for National Focal Points on the harmonious implementation of the Treaty and the Protocol organised in partnership with the ABS Initiative and held in June 2014 at the FAO Headquarters in Rome. The objectives of the workshop were to increase the understanding of the interface between the Nagoya Protocol and the ITPGRFA's multilateral system of ABS; provide more clarity and technical advice on core issues at the interface such as PIC, MAT, permits and international certificates, disclosure of origin, etc.; and discuss how to collaborate efficiently and join forces to elaborate approaches that will allow for a more effective and mutually supportive implementation of these two treaties. The workshop also highlighted the importance to reiterate how ABS could contribute to biodiversity conservation and sustainable use and issued a number of recommendations. These essentially emphasised the need to repeat such workshop to capitalise on the results and expand its participation to other focal points in order to increase the synergies that exist among international treaties. Other recommendations included, *inter alia*, the need for both convention secretariats to continue joint activities and the need to develop and disseminate information and training materials.

Begoña Venero Aguire of the World Intellectual Property Organisation (WIPO) updated the participants on the results and state of negotiations at the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC) regarding the stalled negotiations of an international legal



instrument(s) on the effective protection of genetic resources, traditional knowledge and traditional cultural expressions. The work of the IGC was described as embracing a profound and unprecedented rethinking of intellectual property instruments and concepts to ensure the effective protection of traditional knowledge associated with genetic resources. The ultimate aim is to develop a model of protection for traditional knowledge or indigenous knowledge within the existing international intellectual property system that addresses the different features of traditional knowledge. In other words, protecting traditional knowledge through a special system based on the kinds of rights, measures, principles and trade-offs that are found in the international intellectual property system and adapted to respond to the multifaceted nature of traditional knowledge. Although this process raised challenges on many levels, the role played by the African Group in this historical developing country-led process in intellectual property was highlighted and commended. The presentation then discussed in more detail the current status of the IGC's text(s) and articles related to the protection of traditional knowledge, highlighting the main technical and policy issues to resolve including defining (a) the policy objectives, (b) the scope of the subject matter (i.e. definition of traditional knowledge), (c) who are the beneficiaries, (d) the scope of rights and (e) what exceptions and limitations on those rights are ought to be. The presentation also touched on the intellectual property issues correlated with the utilisation of genetic resources and traditional knowledge associated with genetic resources and on the issue of disclosure requirements in patent applications. Finally, participants were informed that although the different texts, as developed during IGC 26 and IGC 27, were transmitted to the 2014 WIPO General Assembly, no decision on the programme of the work of the IGC was made for 2015. Its role should be clarified at the next WIPO General Assembly later this year.

Plenary Discussion

The following is a highlight of the issues discussed in the plenary:

- *ABS-CH Mechanism*: Some participants requested some clarification about how the information available in the ABS-CH may be used and by whom. They were informed that information submitted to the ABS-CH will be publicly available and accessible by any interested user. Therefore, Parties should not include any confidential data in their submissions to the ABS-CH. Parties are also invited to designate a publishing authority for publishing official national records. The publishing authority may also designate one or more national authorised users to prepare draft records for review and authentication prior to publication. Participants were also informed that the SCBD was conducting a series of webinars to train as many countries as possible on the use of the ABS-CH. If a country needs one-on-one support, a targeted tutorial, still by way of a webinar, can also be provided.
- *GEF System for Transparent Allocation of Resources (STAR)*: Few participants pointed out that the funds available under GEF-STAR would probably not be sufficient to cover all the needs and inquired whether any decisions were made to make additional funds available. They were told that GEF support for national ABS activities would have to come from their GEF national allocation since the Nagoya Protocol Implementation Fund (NPIF) was discontinued. Participants highlighted that, considering the limited availability of financial resources, the mapping of capacity building needs was all the more important. Attention was then drawn to the fact that GEF expanded constituency workshops were organised regularly in order to keep GEF national focal points, convention national focal points and other key stakeholders abreast of GEF strategies, policies and procedures and to encourage coordination. These events also



provide an opportunity for sharing lessons and experiences from the GEF projects and their integration within national policy frameworks. It is therefore important that participants stay in touch with their GEF National Focal Points to benefit from the information shared in these meetings.

- *ITPGRFA*: Participants inquired whether there was any pilot project on the ground that could help gain a practical understanding of the development of mutually supportive processes and promote the collaboration between the ITPGRFA and the Nagoya Protocol. They were informed that on-going projects were currently unfolding to this effect in three different countries, including the introduction of a programme of work with the AUC to assist in facilitating these processes. However, more clarification is needed on the entire array of work and arrangements between the two treaties to issue clear guidelines on their concomitant implementation. It was highlighted that the Treaty itself contained practical and useful guidance to consider when developing national legislation on the access and utilisation of plant genetic resource for food and agriculture. More information on these issues can also be provided by the Fridtjof Nansen Institute which works in this area since many years.
- *IGC Negotiation*: Few participants requested some clarification with respect to the debate on the different degrees of protection of traditional knowledge. It was indicated that although the difference between the traditional knowledge that is secret and traditional knowledge that is in the public domain or publicly available still needs to be defined, positions on their protection differ. While one position is that both types of traditional knowledge should be strongly protected, the other position pushes for a distinction between the two and a lesser protection for the latter. The slight distinction made between traditional knowledge that is in the public domain, i.e. available to all, and traditional knowledge that is publicly available, i.e. that PIC from a traditional knowledge holder is identifiable and could still be required and potential benefits arising from this utilisation shared with the traditional knowledge holder, adds another layer of complexity to the debate. Participants were further explained that, for example, if some traditional knowledge is part of the description in the claim of a patent that has been granted, this description becomes publicly available when patent rights expire. Hence, the importance of describing some forms of traditional knowledge as publicly available.

Country Updates

Country Group Exercise

Participants were divided into country groups and invited to fill up a baseline assessment questionnaire which was designed based on the Eight Fields of Action and the To Do's List developed during the 5th Pan African ABS Workshop in Marrakech in 2011. Participants were cautioned on the fact that this exercise did not constitute a real and fully fleshed-out capacity development assessment or a scientifically sound survey. Nevertheless, the results will provide the ABS Initiative with a good indication of where the countries are at this moment time in their national implementation of the Nagoya Protocol.

Overall, the objectives of this exercise were to:

- Compare the results of the country's self-assessment exercise on the status of ABS implementation and capacity building requirements done in Marrakech few months after the adoption of the Nagoya Protocol and assess progress made to advance its national implementation four years later;



- Identify trends, gaps, needs and priorities in terms of capacity building and ABS implementation;
- Serve as a baseline for further capacity development activities to be included in the programme of work of the ABS Initiative and of other organisations supporting ABS implementation;
- Serve as a self-reflexion exercise for the participating countries to assess their progress;
- Establish a framework methodology for countries to use to self-assess progress on a regular basis.

Reporting Back

The information provided by each country group was collected and put into spread sheets and graphics. The results for each Field of Action were then presented to the participants against the results of the self-assessment and capacity building requirements exercise done in Marrakech. The following is a summary of the first analysis of the results as presented to the participants. It highlights key trends and priorities for capacity building and integrates brief contributions made from the floor during the presentation of the results.

- *Ratification and Implementation*: The exercise revealed that 22 countries out of the 37 African countries participating in the exercise had ratified the Nagoya Protocol. Such results showed that although ratifying the Nagoya Protocol was still high on the agenda of a number of countries, the implementation of the Nagoya Protocol had now become the priority.
- *Defining Overall ABS Policy/Strategy/ies*: The results showed that the systematic integration of ABS in NBSAPs and other national plans had taken place in most countries. In terms of capacity building needs, most countries highlighted that their main priority was to develop a communication strategy.
- *Putting in Place Domestic ABS Legislation*: The results showed that there was an increase of activities in all the countries in relation to the establishment of a national regulatory framework. Creating legal certainty is therefore high on the agenda of many countries. A majority of countries indicated that they needed support to carry out a gap analysis of existing legislation and/or to draft or revise ABS regulations. Some others highlighted the importance to put in place interim/temporary measures while national ABS frameworks are being developed in order to avoid situations where genetic resources and traditional knowledge are accessed freely. Such measures will help to address the various demands for access while at the same time providing practical experience to advance the national implementation process.
- *Stakeholder Identification and Analysis*: Results showed that countries had adopted different strategies to identify relevant stakeholders, raise awareness about ABS and define the role and responsibilities of each stakeholder. However, more proactive action in terms of engagement and participation of relevant stakeholders in the consultation process is needed.
- *Establishing Institutional Arrangements*: Most countries indicated they had set up an ABS National Focal Point. Nevertheless, support is still needed with the setting up of national ABS Committees and Competent National Authorities. Support is also particularly needed with respect to the establishment of checkpoints.
- *Dealing with Traditional Knowledge Associated to Genetic Resources*: All countries expressed a number of concerns and requested more information on the various options for the protection and documentation of traditional knowledge. They also highlighted the need to enhance awareness and build the capacity of communities, relevant ministries, stakeholders and agencies on all these issues.



- *Dealing with Transboundary Issues*: Some concerns were also expressed with regard to transboundary issues. However, the results showed the willingness of most countries to establish cross-border protected areas and bilateral mechanisms for collaboration through, for example, sub-regional organisations such as the COMIFAC. Considerations were also given to the importance to refer to the AU Guidelines which are an instrument that focusses on transboundary issues.
- *Valorisation Strategy*: The results showed that developing a valorisation strategy was essential for most countries. Preliminary assessment of the value of biodiversity as well as developing national and regional strategies to promote the use of biodiversity for value creation and economic development were high on their priority list.

Option for a Coordinated Approach to Access and Benefit-Sharing in Africa

Introduction

The first part of this session aimed to provide an overview of the content of the AU Guidelines and of the process that led to their development. It was also meant to initiate a discussion on a possible opportunity to mobilise resources through the GEF to develop a regional project in view of supporting the implementation of the AU Guidelines. The second part of the session sought to raise participants' awareness about a range of critical issues to consider when developing national ABS regulatory frameworks, setting the scene for more in depth-discussions at a later stage in a session entirely dedicated to building effective and coordinated ABS systems.

Presentation of the African Union Guidelines on Access and Benefit-Sharing

Pierre du Plessis and Olivier Rukundo of the ABS Initiative jointly presented the final draft of the AU Guidelines. They first gave a detailed account of the background and key milestones that marked the development of the AU Guidelines. They explained that the AU Guidelines were developed through a highly participative and consultative process in which all stakeholders (government officials, IPLCs, and other relevant interested parties) were involved. The process was put in motion by conducting a gap analysis of the Organisation of African Unity Model Law in 2011. AMCEN 14 officially endorsed the on-going work by the AUC on the AU Guidelines. The first draft of the Guidelines was presented at the 7th Pan-African ABS Workshop in February 2013. Extensive stakeholder comments were received and taken into account. A first Expert Meeting was organised in October 2013 to further discuss the draft. A second Expert Meeting followed in February 2014, which resulted in the redrafting and restructuring of the document in light of comments and proposals received from stakeholders. The amended AU Guidelines were validated at a Validation Workshop held at the African Union in August 2014. The presentation then concentrated on the structure, general objectives and the content of the AU Guidelines. The AU Guidelines, developed with the support of the ABS Initiative, consists of two separated but inter-related parts. The first part, the *African Union Policy Framework for the Coordinated Implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation* provides policy and strategic guidance for the coordinated approach to the implementation of the Nagoya Protocol in Africa. The second part, the *African Union Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa*, is a practical hands-on tool and step-by-step guide providing detailed technical guidance and background considerations to assist the development and implementation of ABS systems at national and local levels. The AU Guidelines therefore aim to facilitate



coordination and cooperation between African countries and African stakeholders around ABS implementation; provide practical guidance on how national ABS systems can be implemented in a regionally coordinated manner. The presenters further noted that the coordinated approach to the implementation of the Nagoya Protocol in Africa outlined in both documents was intended to make coordinated use of national flexibilities contained in the Protocol to avoid a situation where African countries end up being played off against one another in a race to the bottom. Mr du Plessis and Mr Rukundo concluded their presentation by informing the participants that the Policy Framework document had been submitted to AMCEN 15 for endorsement and that the accompanying Guidelines were also submitted to be noted by AMCEN 15.

Proposal for Resource Mobilisation

Following their presentation on the AU Guidelines, *Mr Plessis and Mr Rukundo* presented a proposal for resource mobilisation. They explained that the way forward to start coordinating and building capacity for national implementation of the AU Guidelines first implied assisting the AUC in mobilising additional resources. They informed the participants that one suggestion, made at the Sub-Saharan Capacity-Building Workshop on the Implementation of the Nagoya Protocol held in Kampala, Uganda, in June 2014, was that AU Member States could contribute a small share of their GEF 6 STAR allocations and that UNEP could leverage these resources at least 2:1 from non-STAR GEF sources to develop a regional project to support the implementation of the AU Guidelines. Participants were invited to reflect on this proposition and share at a later stage in the workshop if they would consider officially recommending such an approach to the Ministers attending AMCEN 15 for a formal endorsement.

Plenary Discussion

A number of participants felt that they did not have enough information on the development and validation process of the AU Guidelines to brief their ministers on this proposal. Others considered that they did not have the mandate to make such decision. Few participants required some clarification about the type of activities that would be undertaken through such a project. They were informed that, if this proposal was accepted, the planning and nature of the activities would be determined by the amount of resources mobilised through the small countries' contribution made via the GEF-6 STAR Allocations. This means that to be able to plan the first activities, a certain number of countries would have to participate in this scheme. The other participants agreed on the concept of a coordinated approach and pointed out to their peers that this resource mobilisation proposal would preserve the African states' ownership of a coordinated implementation process.

Strategic Considerations for African ABS Systems

Hartmut Meyer of the ABS Initiative raised awareness about the implications of ABS Regulations in user countries for provider countries. To do so, he provided an overview of key elements for consideration in the EU ABS Regulation and the emerging ABS system in the European Union (EU) through a comparative analysis of the EU ABS Regulation, the French Draft Bill on Biodiversity, the German Bill on implementing the obligations arising from the Nagoya Protocol and implementing the EU ABS Regulation and the current Danish Act on Sharing Benefits Arising from the Utilisation of Genetic Resources. The EU ABS Regulation is a law of general application adopted in 2014. It is binding in its entirety and directly applicable in all EU Member States. However, some measures at EU Member State level are necessary to supplement it. Therefore, although subsequent national legislation must be consistent with the EU ABS Regulation and not replace its provisions,



some variations in implementation and administrative issues may be observed between Member States. Overall, the EU ABS regulation provides for a compliance mechanism using a due diligence approach largely relying on the lawful behaviour of the users during the phase of utilisation. Oversight of the EU and its Member State is minimal. Most importantly, issues of compliance with MAT during the phase of commercialisation are not covered by the EU ABS Regulation. Mr Meyer concluded by highlighting key aspects of particular significance for provider countries as follows:

- The compliance system of the EU ABS Regulation will only apply to users in the EU those who have accessed genetic resources or associated traditional knowledge in countries with an ABS system in force and being Party to the Nagoya Protocol.
- Benefit-sharing obligations for users in the EU will exclusively arise from specific MAT provisions in ABS contracts, not from the EU ABS regulations.
- Without effective ABS systems, signed ABS contracts and ratification of the Nagoya Protocol in provider countries, users of their genetic resources and associated traditional knowledge in the EU are not bound to any ABS obligation by the EU laws.

Paul Oldham of One World Analytics provided an overview of the results of a series of country studies on biodiversity and traditional knowledge in the patent system for the six African countries selected in the UNEP/GEF ABS Capacity Building Project for Africa presented earlier. The studies were initiated as part of one activity of the project aiming at identifying the economic and business potentials of genetic resources in the six countries and also formed part of a wider project on the economic valuation of genetic resources and value chain analysis in Africa. Reports on Namibia, the COMIFAC countries and Morocco were later added to the overall research. The presentation focused on the cutting-edge methodology used to review and identify empirical data on the presence in the patent system of genetic resources and traditional knowledge from the six countries. Key aspects of particular significance for provider countries were highlighted as follows:

- Mobilisation of taxonomic information is vital for monitoring and economic valuation.
- Capacity building and training in tools and methods to monitor the utilisation of genetic resources and associated traditional knowledge is essential to ensure compliance under the Nagoya Protocol and identify development opportunities.
- Increasingly large volumes of digital data on biodiversity and economic value present major opportunities for ABS monitoring and valuation but require additional methodological development targeted to the needs to Africa.

Begoña Venero Aguire of the WIPO outlined, through examples of national initiatives, the different options available to countries for creating national systems for the protection and utilisation of traditional knowledge. She highlighted that intellectual property tools and principles could be used to prevent unauthorised or inappropriate uses of traditional knowledge by third parties. However, understanding the difference between a defensive and a positive approach to the protection of traditional knowledge is critical. A positive approach means granting rights that empower communities to promote the traditional knowledge, control their uses by third parties and benefit from their commercial exploitation. A defensive approach means preventing people outside the community from acquiring intellectual property rights over their traditional knowledge. When developing a system for protection and valorisation of (associated) traditional knowledge, it recommended that countries take the following key aspects into consideration:



- There are many options available for creating national systems for the protection of traditional knowledge: Policy initiatives, legislative initiatives, practical mechanisms (databases, registers, etc.).
- Each country should assess a number of issues before deciding what to do, such as: Is it necessary? Is it the right time? What would be protected? What for? Who should be involved? Who would be responsible for conducting the process/managing government coordination? Who would be responsible for implementation? What is the problem that needs to be addressed? What options are there? Would a feasibility study be necessary? Is there a need for consultations?

Suhel al-Janabi of the ABS Initiative, Christine Akello of National Environmental Management Authority in Uganda and Lucy Mulenkei of the African Indigenous Women Organisation in Kenya jointly presented a synthesis of the outcomes of the 4th ABS Business Dialogue that took place in Copenhagen late January 2015. The first part of the presentation focussed on scientific developments and changing markets and their implications for the implementation of ABS regulations, and more particularly for the nature of benefits that could be negotiated. The second part of the presentation provided an African perspective on the results of the group discussions and the elaboration of a set of recommendations, the objectives of which were to inform the development of comprehensive national ABS regulatory frameworks that effectively address the specificities of the various sectors and continuous scientific advances. The recommendations also encouraged, among others, the development of sector specific guidance, defining standard procedures and disseminating of good practices and examples of model clauses, contract, certificate and permits. The presenters concluded by highlighting key aspects of particular significance to development of effective ABS regulatory frameworks. These were the following:

- Regulators and providers need to understand the diverse and dynamic nature of utilisation of genetic resources and associated traditional knowledge by the different sectors.
- ABS regulations and MAT need to take into consideration the different access patterns and benefit-sharing models depending on the sectors and size of user.
- Development of pro-active valorisation strategies including consideration of intellectual property aspects, development of basic R&D structures and capacity building on business models and market opportunities are vital to turn provider countries into business partners.

Plenary Discussion

- **EU ABS Regulation:** Reflecting on the approach taken by the EU ABS Regulation, participants concluded that it was imperative for African countries to ratify the Nagoya Protocol and put in place national ABS legislation as soon as possible. Participants also highlighted the importance of establishing comprehensive ABS agreements when dealing with EU users to compensate for the number of shortcomings observed in the EU ABS Regulation. A MAT should therefore include provisions for, among others, benefit-sharing; intellectual property rights (IPRs), including IPRs on products derived from genetic resources and (associated) traditional knowledge; disclosure requirements; third party transfer; dispute resolution; and a definition of traditional knowledge associated with genetic resources which will enable providers to deal with misappropriation if such issue arises at a later stage. Some participants then inquired whether there was a possibility for recourse in the situation where the synthesised version of an active molecule has been



patented. They were informed that the synthesis of active compounds or molecule as defined in the Nagoya Protocol was beyond access as regulated by the Protocol. Such issues, therefore, must also be covered in the MAT, including any subsequent IPRs that may arise from such utilisation.

- **Valorisation:** All participants agreed that the results of the patent and market studies clearly demonstrated the relevance of the Nagoya Protocol. They also stressed that the results presented were taking the ABS debate to a new level, raising a whole new set of issues, particularly with respect to genetic manipulation. Participants then sought clarification regarding the methodology used and asked whether it would be made available. They were told that some tools were currently being developed to make the technology used in this research freely available to African countries.
- **Protection of (associated) traditional knowledge:** Participants then discussed the advantages and shortcomings of the different options for the protection of traditional knowledge and agreed that there was 'no one size fits all' approach to do so. Some pointed out the complexity of dealing with transboundary traditional knowledge. Others emphasised that the documentation of traditional knowledge should be handled very carefully and developed with the consent and participation of traditional knowledge holders who needed to clearly understand what documenting traditional knowledge meant. They suggested using different levels of access to information contained in databases to reduce the risk of misappropriation. Furthering the debate, ARIPO informed the participants that the Swakopmund Protocol will soon be operational and offer IPLCs various options to register their traditional knowledge. ARIPO will therefore become a repository of traditional knowledge. This means that registered traditional knowledge will only be accessed with the PIC of the ILPCs concerned. In Addition, steps are currently being taken to include disclosure requirements in patent applications to protect traditional knowledge from being patented as new inventions. OAPI reported that an amendment on the protection of traditional knowledge will be included in the revised Bangui Agreements. The ABS Initiative notified the participants that it will continue its collaboration with WIPO on the interface between the traditional knowledge, traditional protection and intellectual property and on how to reflect traditional knowledge and intellectual property in ABS contracts.
- **Sector implications for ABS regulations and MAT:** Participants were informed that the AU Guidelines had been particularly welcomed by the different industry representatives attending the 4th Business Dialogue as, unlike the EU ABS Regulation, they provide them with a practical set of references. Finally, participants were invited to provide their expertise to review the two draft ABS Sector Briefs that were being developed for the pharmaceutical and cosmetics industries and forward their inputs and/or comments to the ABS Initiative before the end of the workshop.

Field Trip: The *Aloe debrana* Case

Introduction

The objectives of the field trip were threefold. First, provide participants with some background information on the *Aloe debrana* Case, a national ABS example, including details on the ABS agreement, the nature of the utilisation of the resource and the Parties involved: the EBI and G-Seven. Second, provide participants with the opportunity to visit the Company's factories located in Akaki, South of Addis Ababa; interact with the stakeholders involved in the valorisation of the *Aloe debrana*, including local communities directly affected by



this new industry; and gathered the necessary information to critically review the provisions of the ABS agreement and provide constructive advice. Third, elaborate recommendations on how to improve the current ABS agreement soon to be renewed to both Parties.

Introduction to the *Aloe debrana* Case

The presentations introduced G-Seven, the sole producer in Ethiopia of jute sacks, twines and ropes made from natural local and foreign import fibres for holding food grade items such as coffee, cotton, pulses, etc. Participants were told that the Company started encountering challenges when final consumers expressed some concerns with the use of mineral-oil based batching in the process of manufacturing jute bags used for packaging of food grade materials and the possible hydrocarbon contamination of the bags. To solve this problem, the Company embarked on various R&D projects, the results of which allowed replacing the batching oil with a blend of rice bran oil, vegetable oil and gel extracted from the leaves of the *Aloe debrana* collected from the wild stands. In accordance with Ethiopian national law on ABS, the Company approached the EBI to requested permission to harvest the *Aloe debrana* leaves from the wild stands for commercial purposes. In 2009, based on the findings of a thorough assessment of the economic and environmental impacts of the project, the EBI (provider) and the Company (user) entered into a five year agreement authorising access to two different *Aloe* species, including the *Aloe debrana*, in designated areas. The benefits agreed upon were non-monetary and consisted in sharing the results of any research undertaken with the EBI, training local communities on harvesting methods and giving the local communities priority in the supply of the *Aloe* leaves as raw material to the Company. The agreement also prohibited the Company to claim or obtain any IPRs over the genetic resources of both *Aloe* species or any component thereof and any traditional knowledge associated with the application of *Aloe* oil. However, G-Seven, which became the only manufacturer of *Aloe debrana* based products in Ethiopia, holds the patent right over the utility model for *Aloe debrana* gel invention for emulsion from the Ethiopian intellectual property office. Today, as a result of the Company's entrepreneurship and research investigation, a genetic material, that was completely unknown in the country's economy, has become the backbone of the Ethiopian coffee export, providing economic opportunities for the local communities and beyond.

Insights from the Field Trip to the G-Seven Factories

The visit to the G-Seven Factories provided the participants with the opportunity to observe the utilisation process of the *Aloe debrana* as well as the technology used and to investigate further various aspects essential to establish a fair and equitable ABS agreement. Participants were explained that the research revealed that the *Aloe debrana* gel could be used safely as a jute fibre softening. The gel is first extracted manually from the leaves and processed immediately to retain its bioactive properties. It is then mixed with rice bran oil and/or any vegetal oil. The blend is directly used as a lubricant to treat fibres before they can be turn into bags. The whole procedure is harmless to the environment and more research are currently being undertaken to improve the quality of the products. The leaves are picked at a collection site nearby by members of the local communities and then sold to the Company. Participants inquired why the initial agreement did not plan for more benefits to be channelled down to the local communities. It was highlighted that a strategic decision was made to first focus on securing the international coffee export market and wait to see if the new production process was creating value. With the market secured, more considerations can be given to benefit-sharing for the local communities in the renegotiation of the contract. Nevertheless, because it is a federal case, local



communities will not be a party to the agreement. According to Ethiopian national law on ABS, the EBI, which is the Competent National Authority and ABS Focal Point, is mandated to negotiate any ABS agreements. Participants were told that no existing traditional knowledge associated with the *Aloe debrana* was used in this specific case. PIC was therefore not required. Participants were also told that the EBI was still mandated to negotiate MAT on behalf of communities in cases where PIC was required. Benefits arising thereafter are shared between the state and the local community. The kind and amount of benefits are determined on a case by case basis. Finally, participants investigated about the potential risk of depleting the resources. They were indicated that the contract contained clear provisions on the management and the monitoring of the use of the *Aloe debrana* so that the collection of the leaves does not exceed the sustainable use limit of the resource.

Recommendations for Renewing the Mutual Agreed Terms for the *Aloe debrana* Contract

Group Exercise

A group exercise was used as a methodology to provide feedback on the field trip to both the EBI and G-Seven and elaborate some practical recommendations to enhance the current agreement on access to *Aloe* genetic resources. To do so, participants were divided into seven groups and asked to reflect on all the information they gathered on the case. They were then asked to put themselves in the shoes of both Parties as if they were negotiating a new contract and to:

- (i) Indicate key elements to take into consideration;
- (ii) Elaborate on specific issues to be considered; and
- (iii) Report back to the plenary.

Reporting Back

The results of group discussions showed that the general feeling was that the current contract between the EBI and G-Seven did not exactly reflect an ABS contract in the strict meaning of the Nagoya Protocol. Some participants described it as primarily being an agreement on access to biological and endemic resources as opposed to access to genetic resources. According to most participants, very limited benefit-sharing could be observed. They therefore strongly advised that the various obligations under the Nagoya Protocol be taken into more careful consideration in the next agreement. Benefits should be more tangible and go beyond to what had been agreed upon in the initial agreement. Some participants pointed out the need to clarify aspects related to intellectual property rights and the existing patent. One major recommendation was that the local communities preserving the resources had to be involved in the negotiations of the new contract. Overall, the recommendations made by the different groups highlighted missing elements and elements to review in the current contract. General recommendations to the Ethiopian National Competent Authorities regarding, among others, the valorisation of traditional knowledge, community participation and involvement, the review of ABS national legislation for a better alignment with the obligations under the Nagoya Protocol and health & safety measures were also provided. A synthesis of the various recommendations resulting from this group work can be found in Annex 1 of the report.



Designing National Access and Benefit-Sharing Strategies and Regulations

Introduction

The objective of this session was to provide participants with the opportunity to reflect in country groups on the four sets of key messages drawn from the presentations of the earlier session on options for a coordinated approach to ABS in Africa and discussed in groups what these key messages meant in terms of designing comprehensive, effective and coordinated ABS systems in the region. These key messages related to the following topics: EU ABS Regulation; valorisation (Patent and market studies); sector implications for ABS regulations and MAT; and protection and valorisation of (associated) traditional knowledge.

Building Effective and Coordinated ABS Systems in Africa

Group Exercise

Participants were divided into three Anglophone and two Francophone groups and asked to reflect on the two following questions:

- Considering that we are talking about building effective ABS systems: How would you know that your system is effective?
- For your ABS system to be effective: what needs to be coordinated, at what level, by whom (and with whom)?

Participant were explained that an ABS system is a system based on a set of legal rights and prescribed legal processes, including an access, benefit-sharing, and monitoring system on the use of genetic resources and associated traditional knowledge. In other words, an ABS system is an ecosystem that should assess if ABS works. Participants were informed that the overall aim of the exercise was to identify needs, priorities and provide suggestions on how African countries could organised themselves to make ABS more effective in the region. The outcomes of the exercise will complement the AU guidelines and provide an indication to policy makers of the needs and priorities expressed by experts and stakeholders from African countries.

Reporting Back

The reporting back session allowed the working groups to share the results of their discussions and reflect further on the common identified needs and priorities, emerging issues and lessons learnt so far with respect to ABS implementation. It also allowed identifying what the issues were and the possibilities to better organise the implementation of the Nagoya Protocol in the region. The following is a synthesis of the results of the group exercise and the subsequent plenary discussions. The complete results of each working group are available in Annex 2 of this report.

- *How would you know that your system is effective?*

The results showed that all the groups had identified a number of common elements that will indicate whether an ABS system is effective. These were, among others, a sound ABS policy framework combined with a comprehensive and operational legal and regulatory framework and an institutional structure that includes Competent National Authorities, ABS Focal Points and functioning checkpoints. The results also revealed that some of the groups suggested a series of indicators to measure the level of effectiveness of national ABS



systems. These were among others: an increased number of applications for access; an increase level of compliance with access, operational PIC and MAT procedures as evidence by an increased number of ABS agreements signed and a higher level of benefits – monetary and non-monetary – returning back to the country of origin and/or IPLCs; practical measures for the valorisation of genetic resources and the protection of (associated) traditional knowledge in place and complied with as evidence by an increased number of companies and research platforms in provider countries seeking to valorise genetic resources and the traditional knowledge associated with them in the spirit of the Nagoya Protocol; easy access to ABS related information; a decrease in the incidence of cases of biopiracy; and operational measures for transboundary cooperation. One of the groups reported to have started focussing on COP-MOP 1 decisions on national reporting as they provided a series of headings that countries have to report on and hence a good basis for the development of indicators. However, considering that the quality of the effectiveness was essential, the group decided to highlight the importance to also put an emphasis on auditing the efficacy of systems as opposed to reflect on indicators. Thus, their results emphasised, for example, the effectiveness of information flow, up and down the system and to the stakeholders involved; the control of corruption at different levels of the ABS system to make it more efficient and trustworthy; the broad-based evaluation of the biodiversity of a country; the quality of taxonomic information; community-based mapping of resources and knowledge, etc.

First Observations

Some participants agreed that it would be useful to develop indicators at different levels to assess effectiveness and a system of monitoring and evaluation to assess progress made to improve effectiveness. Some highlighted that the conservation and sustainable use of resources, with reference to the first and second objective of the CBD, also needed to be prioritised when developing ABS systems. Finally, some participants pointed out that, although no proper ABS system currently exists, they had, in their opinion, through this group exercise, set the foundation for a more global system/overall framework, which was a very useful point of reference on which they could build upon to assess the effectiveness of their own national ABS systems.

- *What needs to be coordinated; at what level, by whom (and with whom)?*

The results showed that most of the elements identified by the groups in the first part of the exercise needed to be coordinated at the local, national, sub-regional and regional level, highlighting the need for capacity building in various areas. The groups also placed a particular emphasis on the need for more coordination in relation to transboundary resources and transboundary traditional knowledge. Overall, the results revealed the need for a more proactive role of sub-regional organisations and of the AU/AUC in providing more comprehensive guidance for a more coordinated implementation of the Nagoya Protocol in the region.

First Observations

Looking at the results of the exercise as a whole, some participants pointed out that one of the main lessons learnt was that coordination between African countries was essential. Other participants highlighted that the development and adoption of the AU Guidelines were an important step towards the establishment of a regional ABS system and therefore towards a more coordinated approach to the implementation of the Nagoya Protocol in Africa.



Reflections on Workshop Outcomes and Way Forward

Introduction

The objectives of this last session were to reflect on the various inputs and contributions done during the week and discuss further ways and means to proactively mobilise resources to develop regional capacity and advance a coordinated implementation of the Nagoya Protocol in Africa. As in previous years, the agenda of the workshop ended with a brief overview of the next programme of work of the ABS Initiative. This last session also provided an opportunity for the donors of the ABS Initiative to address some closing remarks and thanked all the participants for their very proactive participation in the workshop.

Common Approaches and Recommendations for Implementing the Nagoya Protocol

Panel Discussion

This session was introduced by an open panel discussion on the value of coordination. Participants looked at the various existing examples of coordinated approaches or activities in the region. For example, the various indigenous networks or the work of the COMIFAC which mandate is to harmonised and coordinate national laws of its Member States and facilitate the exchange of experience and technical support. The discussion highlighted that the Member States of the COMIFAC, which share similar concerns with transboundary resources, saw ABS as an opportunity for better cooperation for the conservation and sustainable use of biodiversity in the sub-region and had developed a common vision to implement it. Participants also discussed the benefits of shared activities under the UNEP/GEF ABS projects which also foster the exchange of experience and collaboration across borders while mobilising resources for technical support. Finally, the value of coordination and cooperation in negotiation was best illustrated by the remarkable actions and results of the African Group during the negotiation for the adoption of the Nagoya Protocol. Participants agreed that coordinating activities, such as capacity building, awareness raising and training events, at all levels will contribute to capitalise on the learning process through the exchange of lessons learnt and practical experience between all stakeholders involved in ABS processes in Africa and maximise the utilisation of funds.

Proposal for a Common Approach to Resources Mobilisation

Participants were then invited to review the concept note *“Mobilising resources for coordinating African participation in the international biodiversity negotiation and developing regional capacity for the coordinated implementation of the Nagoya Protocol in Africa”* which echoed the suggestion of contributing a small share of countries’ GEF-6 STAR Allocations as proposed during the Kampala Workshop in June 2014. Participants were then asked whether they would agree, as experts of the 9th Pan-African ABS Workshop, to give the mandate to the ABS Initiative to present this proposal to the next AMCEN which will take place on 2nd-5th March 2015 in Cairo. The general feeling was that additional information and clarification were needed to be able take an informed decision. African participants decided to continue this discussion after the end of the workshop to reaching consensus on the proposal made.

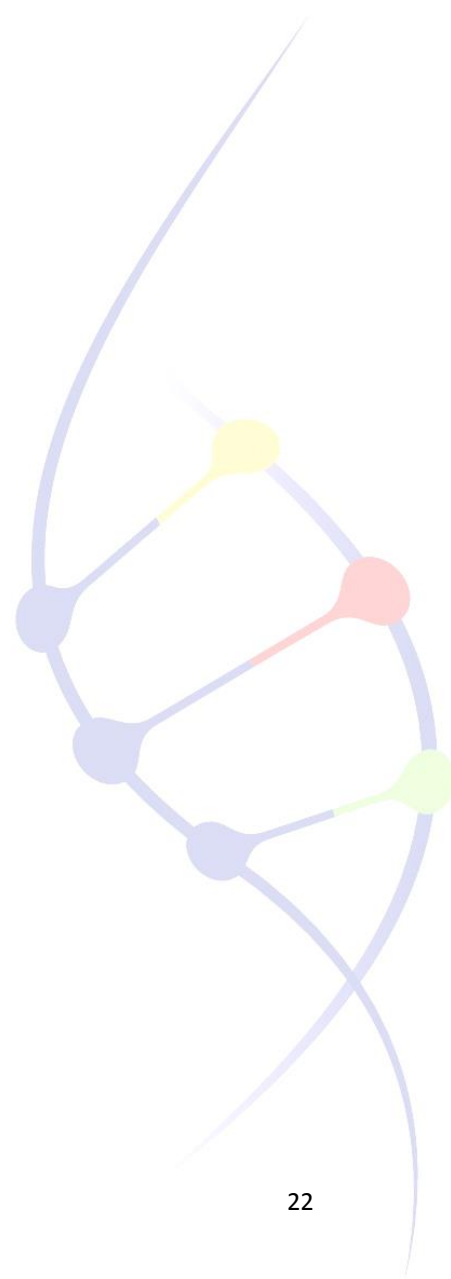
ABS Initiative Work Programme 2015-2018

In this last presentation of the workshop, *Andreas Drews of the ABS Initiative* presented a brief outline of the future plan of work of the ABS Initiative. With the entry into force of the Nagoya Protocol in October 2014, the



ABS Initiative is entering in a new phase. Mr Drews informed the participants that a new Programme Document for 2015-20 had been developed. He further added that the first draft of this document had been presented at the General Assembly of the ABS Initiative which took place last October in Pyeongchang, Republic of Korea, back-to-back with COP-MOP 1. Constructive feedback was provided by Members of the General Assembly and integrated to the draft. The new draft will be presented for validation to the Steering Committee of the ABS Initiative. Finally, participants were presented with the ABS Initiative's draft work plan for 2015-16, also for approval by the Steering Committee.

Closure





Presentations

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

Day 1

From Cotonou to Addis – [Lena Fey, ABS Capacity Development Initiative](#).

Approaches for Identifying Economic Potentials for Genetic Resources under ABS in Africa: Outcomes of a Six Country ABS Capacity Building Project (Cameroon, Kenya, Madagascar, Mozambique, Senegal & South Africa) under GEF-4 – [Hartmut Meyer, ABS Capacity Development Initiative](#).

UNEP Implemented GEF ABS Projects in Africa – [Kamar Yousuf, United Nations Environmental Programme \(UNEP\)](#).

African Bio-Cultural Community Protocols Initiative: Key Lessons, Challenges & Opportunities – [Lesle Jansen, Natural Justice](#).

COP-MOP 1 Nagoya Protocol 13-17 October 2014, Pyeongchang, Republic of Korea: Main Outcomes – [Erie Tamale, Secretariat of the Convention on Biological Diversity \(SCBD\)](#).

Linkages between the International Treaty and the Nagoya Protocol: Mutually Supportive Implementation of both Instruments at the National Level – [Kent Nnadozie, Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture \(ITPGRFA\)](#).

Results and State of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore – [Begoña Venero Aguirre, World Intellectual Property Organisation \(WIPO\)](#).

ABS Country Updates – [Hartmut Meyer, ABS Capacity Development Initiative](#).

Day 2

Snapshot Country Updates: Key Trends and Priorities – [Olivier Rukundo & Hartmut Meyer, ABS Capacity Development Initiative](#).

African Union Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa – [Pierre du Plessis & Olivier Rukundo, ABS Capacity Development Initiative](#).

Key Elements of ABS Frameworks: European Union, France, Germany & Denmark – [Hartmut Meyer, ABS Capacity Development Initiative](#).

Outcomes of Patents and Market Studies – [Paul Oldham, One World Analysis & United Nations University – Institute for the Advanced Study of Sustainability \(UNU-IAS\)](#).



Implementing the Nagoya Protocol in a Time of Scientific and Commercial Change – [Suhel al-Janabi, ABS Capacity development Initiative, on behalf of Rachel Wynberg, University of Cape Town \(UCT\) & Sarah Laird, People and Plants International.](#)

Highlights of 4th Business Dialogue in Copenhagen – Focus on National Regulations on ABS: What It Means for Business – [Christine Akello, Ugandan National Environmental Management Authority & Lucy Mulenkei, Indigenous Information Network.](#)

Day 3

Access and Benefit-Sharing Initiatives in Ethiopia: the Case of *Aloe Debrana* – [Tesfaye Awas, Ethiopian Biodiversity Institute.](#)

Historical Background of G-Seven Trading & Industry P.L.C – [Temesgen Tesfaye, G-Seven Trading & Industry P.L.C.](#)

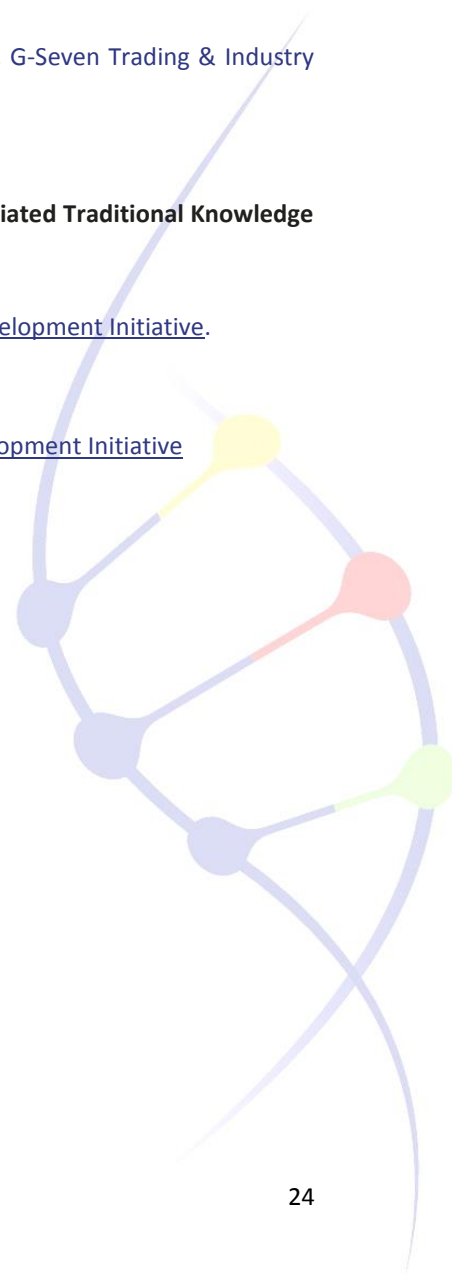
Day 4

Options for Creating National Systems for the Protection and Utilisation of Associated Traditional Knowledge – [Begoña Venero Aguirre, World Intellectual Property Organisation \(WIPO\).](#)

Key Messages from Workshop Presentations – [Hartmut Meyer, ABD Capacity Development Initiative.](#)

Day 5

ABS Initiative: Work Programme 2015-2018 – [Andreas Drews, ABS Capacity Development Initiative](#)





Annotated Agenda

Monday, 23 February 2015: Opening & Reporting	
08.00	Registration
09.00	Opening Session Welcome and Remarks ABS Capacity Development Initiative, <i>Andreas Drews</i> Ethiopian Biodiversity Institute, <i>Gemedo Dalle</i> AUC / Department for Human Resources, Science and Technology, <i>Beatrice Njenga</i> Objectives and Agenda of the Workshop & Getting to Know Each Other
10.30	Coffee / tea
11.00	ABS Update – African Processes From Cotonou to Addis <i>Lena Fey, ABS Capacity Development Initiative</i> Discussion
11.45	UNEP/GEF ABS Project for 6 African Countries <i>Hartmut Meyer, ABS Capacity Development Initiative</i> African Project on Biocultural Community Protocols <i>Lesle Jansen, Natural Justice, South Africa</i> Discussion
12.30	Lunch
14.00	ABS Update – International Processes COP-MOP 1 of the Nagoya Protocol on ABS and Implications for the Region <i>Erie Tamale, CBD Secretariat</i> Linkages between the International Treaty on Plant Genetic Resources for Food and Agriculture and the Nagoya Protocol on ABS <i>Kent Nnadozie, Secretariat of the International Treaty</i> Results and State of the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore <i>Begoña Venero Aguirre, WIPO / Traditional Knowledge Division</i> UNEP-implemented GEF ABS Projects <i>Kamar Yousuf, UNEP</i> Discussion
15.30	Coffee / tea
16:00	ABS Country Updates Introduction to Questionnaire and Group Work
17.30	End of Programme
Tuesday, 24 February 2015: Options for a Coordinated Approach to ABS in Africa	
09.00	ABS Country Updates Report and Discussion



	<i>Olivier Rukundo, ABS Capacity Development Initiative</i>
10.30	Coffee / tea
11.00	<p>Presentation of the African Union ABS Guidelines Overview and Key Elements <i>Pierre du Plessis & Olivier Rukundo, ABS Capacity Development Initiative</i></p> <p>Discussion</p>
12.30	Lunch
14.00	<p>Strategic Considerations for African ABS systems Valorisation: Outcome of Patent and Market Studies <i>Paul Oldham, One World Analytics, UK</i></p> <p>Implications of ABS Regulations in User Countries for Provider Countries <i>Hartmut Meyer, ABS Capacity Development Initiative</i></p>
15.30	Coffee / tea
16.00	<p>Strategic Considerations for African ABS Systems Implications of Business Models in Different Sectors for ABS Regulations <i>Suhel al-Janabi, ABS Capacity Development Initiative</i> <i>Christine Akello Echookit, National Environment Management Authority, Uganda</i> <i>Lucy Mulenkei, African Indigenous Women Organisation, Kenya</i></p>
17.30	End of Programme

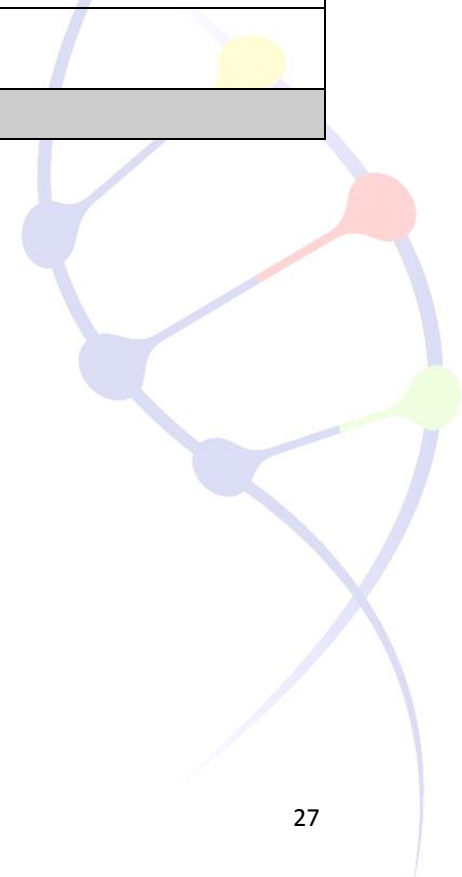
Wednesday, 25 February 2015: Field Trip	
09.00	<p>Introduction to the <i>Aloe debrana</i> Case <i>Ethiopian Biodiversity Institute, Tesfaye Awas</i> <i>G-Seven Trading & Industry PLC, Temesgen Tesfaye</i> <i>Community Representative, Hailu Tesfaye & Seyoun Kiros</i></p> <p>Discussion</p>
10.30	Coffee / tea
11:00	Transfer to Akaki
12.30	Lunch
14:00	Visit of the G-Seven factories
17:00	Transfer to Addis Ababa
18.00	End of Programme

Thursday, 26 February 2015: Designing National ABS Strategies and Regulations	
09.00	<p>Insights from the Field Trip Recommendations for Renewing the MAT for the <i>Aloe debrana</i> Contract</p>
10.30	Coffee / tea
11.00	Options for Creating National Systems for the Protection and Utilisation of (associated)



	Traditional Knowledge <i>Begoña Venero Aguirre, WIPO</i>
12.30	Lunch
14.00	Building Effective and Coordinated ABS Systems in Africa Recap of inputs and group work
Flexible	Coffee / tea
Flexible	Building Effective and Coordinated ABS Systems in Africa <i>to be continued</i>
17.30	End of programme

Friday, 27 February 2015: Designing National ABS Strategies and Regulations & The way forward	
09.00	Building Effective and Coordinated ABS Systems in Africa Report of Group Work
10.30	Coffee / tea
11.00	Reflections on Workshop Outcomes Common Approaches and Recommendations for Implementing the Nagoya Protocol
12.30	Lunch
14.00	ABS Initiative: Work programme 2015 – 2018 <i>Andreas Drews, ABS Capacity Development Initiative</i>
15.00	Way Forward 2015: Workshop Outcomes Closing
15.30	End of workshop





List of Participants

Name	First Name	Institution	Country	Email
Akello	Christine	National Environment Management Authority (NEMA)	Uganda	cakello@nemaug.org
Akindele	Gnimassou Sylvain	Direction Générale des Forêts et des Ressources Naturelles	Benin	akisylva@gmail.com
Ali Mchangama ep. Said Abdallah	Nadjat	Ministère de l'Environnement	Comoros	najalim@gmail.com najat_66@hotmail.fr
Amari Koffi	Alaki Veronique	Ministère de l'Environnement, de la Salubrité Urbaine et du Développement Durable	Ivory Coast	koffialaki@yahoo.fr
Amberber	Mekonnen	Ethiopian Biodiversity Institute	Ethiopia	amekonnen@ibc.gov.et
Awas	Tesfaye	Ethiopian Biodiversity Institute	Ethiopia	absmp@ibc.gov.et
Ayewew	Ashenafi	Ethiopian Biodiversity Institute	Ethiopia	ashenafiayewew@ibc.gov.et
Bayani Ngoyi	Emmanuel	Ministère de la Forêt, de l'Environnement et de la Protection des Ressources Naturelles	Gabon	scoutgabon@yahoo.fr
Ben Belgacem	Hatem	Secrétariat d'Etat Chargé du Développement Durable	Tunisia	hatem_medd@yahoo.fr
Bossou	Bienvenu	ONG CeSaReN	Benin	bmbc1957@gmail.com cesarenong@yahoo.fr
Boukar	Attari	Secrétariat Exécutif du CNEDD	Niger	attariboukar@yahoo.fr
Boumezbeur	Ammar		Algeria	ammarlaieb@yahoo.fr
Bozzi	Pierluigi	AU – PAU	Italy	p.bozzi@yahoo.it
Busokeye	Marie Laetitia	Rwanda Environment Management Authority (REMA)	Rwanda	lbusokeye@rema.gov.rw mlbusokeye@gmail.com
Coulibaly	Nissama Haoua	Direction Nationale des Eaux et Forêts	Mali	haoua14@yahoo.fr
da Costa	Guilherme	Secrétariat d'Etat d'Environnement	Guinea-Bissau	gcosta69@hotmail.com dacostaguilherme020@gmail.com
Dalle	Gemedo	Ethiopian Biodiversity Institute	Ethiopia	gemedod@ibc.gov.et
Dao Sanon	Solange	Organisation Africaine de la Propriété Intellectuelle	OAPI	daosolange@yahoo.fr



Derso	Eshetu	Ethiopian Institute of Agricultural Research (EIAR)	Ethiopia	eshetudrs4@gmail.com ederso@yahoo.com
Diémé	Samuel	Direction des Parcs Nationaux	Senegal	sam_casa@yahoo.fr
Do Nascimento da Conceição Neto	António	Direction des Forêts	Sao Tome and Principe	anaconeto@hotmail.com
Dridi	Mohamed	Banque Nationale de Gènes	Tunisia	dridi_alitn@yahoo.fr
Dumbuya	Babucarr	Department of Parks & Wildlife Management	Gambia	babucarrdumbuya@gmail.com
Echirk	Djamel	Expert en Environnement et Développement Durable	Algeria	djamelechirk@msn.com
Ekpere	Johnson	Independant Consultant	Nigeria	jaekpere@yahoo.com
Ewangaye Didane	Mohamed	IPACC	Niger	med.bayazene@gmail.com
Gahoro-Deali	Blandine Paulette	Ministère de l'Environnement, de l'Ecologie et du Développement Durable	Central African Republic	bpdeali@yahoo.fr
Girma	Demisse	Ethiopian Biodiversity Institute	Ethiopia	dgirma@ibc.gov.et
Giyon	Fikremariam	Ethiopian Biodiversity Institute	Ethiopia	Fikirghion80@gmail.com
Habib Gademi		Ministère de l'Agriculture et de l'Environnement	Chad	hgademi@hotmail.com
Hashi	Mohamud	National Environment Management Office (NEMO)	Somalia	deegankadirector@gmail.com mhashi@opm.gov.so
Herstad	Bente	NORAD	Norway	bente.herstad@norad.no
Imende Oliver	Joyce	National Environment Management Authority (NEMA)	Kenya	jimende@yahoo.co.uk jimende@nema.go.ke
Jensen	Eva Juul	Ministry of the Environment	Denmark	EJJ@nst.dk
Kairabeb	Lazarus	Nama Traditional Leaders Association	Namibia	kairabeb@iway.na
Kalemba	Martha Mphatso	Environmental Affairs Department	Malawi	mphakalemba@yahoo.com
Kante	Daouda	Ministère de l'Environnement, Eaux et Forêts	Guinea	kante54@yahoo.fr



Kirose	Seyoum	Local Community	Ethiopia	meher@ethionet.et
Kpidiba	Koukatonebeha	Ministère de l'Environnement et des Ressources Forestières Direction des Ressources Forestières	Togo	Kpidibaados@yahoo.fr Kpidibaados@gmail.com
Lalami	Khalid	Ministère Délégué Chargé de l'Environnement du Maroc	Morocco	lalami@environnement.gov.ma
Madzou Moukili		Ministère de l'Economie Forestière et du Développement Durable	Republic of the Congo	madzoumoukili@yahoo.fr
Mavimbela	Sibongile	Southern African Development Community	SADC	smavimbela@sadc.int
Menioui	Mohamed	Programme ACCN - GIZ Rabat	Morocco	mohamed.menioui@gopa.de mohamed.menioui@gmail.com
Mohamed Elmi Obsieh		Ministere de l'Environnement	Djibouti	med.environnement_dj@yahoo.fr
Mulenkei	Lucy	Indigenous Information Network	Kenya	iin@indigenous-info-kenya.net
Mvondo	Bruno	ReCTrad / CNCTC	Cameroon	smbmvondo@yahoo.fr
Nana	Somanegré	Secrétariat Permanent du Conseil National pour l'Environnement et le Développement Durable	Burkina Faso	somanegre26nana@gmail.com nasanomanegre@yahoo.fr
Nchoutpouen	Chouaibou	Commission des Forêts d'Afrique Centrale (COMIFAC)	COMIFAC	cnchoutpouen@comifac.org
Nepfumembe	Ntambudzeni	Department of Environmental Affairs	South Africa	nnepfumembe@environment.gov.za
Njebarikanuye	Aline	Office Burundais pour la Protection de l'Environnement	Burundi	alinenjebarikanuye@gmail.com ninjeba@yahoo.fr
Nkey Ngono	Chantal	Ministère de l'Environnement et Développement Durable	Democratic Republic of the Congo	chantalnkey@yahoo.fr
Nnadozie	Kent	FAO ITPGRFA	FAO	kent.nnadozie@fao.org
Ogandaga	Gilles	AUC-DREA		OgandagaG@africa-union.org
Olivier	Marc	Association Nature et Culture Burkina	Burkina Faso	oliviersama@yahoo.fr
Palouma		Ministère de l'Environnement, de la Protection de la Nature et du Développement	Cameroon	joelfouka@yahoo.fr



		Durable		
Pesa	Faith Tabu	Ministry of Environment, Water and Natural Resources	Kenya	pesashida@gmail.com
Rakotoniaina	Naritiana	Service d'Appui à la Gestion de l'Environnement (SAGE)	Madagascar	naritiana.sage@blueline.mg naritiana2003@yahoo.fr
Ruhomaun	Kevin	National Parks and Conservation Service	Mauritius	kruhomaunster@gmail.com
Sackey	Emmanuel	African Regional Intellectual Property Organisation (ARIPO)	ARIPO	esackey@aripo.org
Sall	Ndiaga	ENDA Santé	Senegal	ndiagasall@endatiersmonde.org
Scholte	Paul	GIZ Cameroon	Cameroon	paul.scholte@giz.de
Schroder	Kauna	Ministry of Environment and Tourism, Department of Environmental Affairs	Namibia	kauna@met.na bks7904@gmail.com
Seydou	Frances B.	Environmental Protection Agency	Liberia	brownefrance@yahoo.com
Sindayigaya	Livingstone	AUC- Multilateral Environmental Agreements (MEA) Department of Rural Economy and Agriculture Division of Environment and Natural Resources		sindayigaya@yahoo.com
Shakalela	Elize	Deutsche Gesellschaft für Internationale Zusammenarbeit	Namibia	elize.shakalela@giz.de
Stützel	Sophie	BMZ	Germany	Sophie.Stuetzel@bmz.bund.de
Tamale	Erie	Secretariat of the Convention on Biological Diversity (CBD)	CBD Secretariat	erie.tamale@cbd.int
Tesfaye	Hailu		Ethiopia	
Tesfaye	Temesgen		Ethiopia	
Toka Rubio	Honorato	Ministry of Fishery & Environment	Equatorial Guinea	honoratorubio@hotmail.com
Venero	Begoña	WIPO	WIPO	begona.venero@wipo.int
Worku	Tadesse	Ethiopian Intellectual Property Office	Ethiopia	hementadesse@gmail.com
Yousuf	Kamar	UNEP Regional Office for Africa	UNEP	Kamar.Yousuf@unep.org



ABS Team / Resource Persons

Name	First name	Institution	Country	Email
al-Janabi	Suhel	ABS Capacity Development Initiative	Germany	s.aljanabi@geo-media.de
Bassiouris	Mélanie	ABS Capacity Development Initiative	Germany	melanie.bassiouris@giz.de
Clement	Geneviève	Interpreter	France	g.clement@club-internet.fr
Drews	Andreas	ABS Capacity Development Initiative	Germany	andreas.drews@giz.de
du Plessis	Pierre	ABS Capacity Development Initiative	Namibia	pierre.sadc@gmail.com
Fey	Lena	ABS Capacity Development Initiative	Germany	lena.fey@giz.de
Heidbrink	Kathrin	Facilitator	Germany	kathrin.heidbrink@web.de
Imboua-Niava	Victor	Interpreter	Ghana	vimbouaniava@yahoo.com
Jansen	Lesle	Natural Justice	South Africa	lesle@naturaljustice.org.za
Meyer	Hartmut	ABS Capacity Development Initiative	Germany	hartmut.meyer@giz.de
Oldham	Paul	One World Analytics	UK	poldham@mac.com
Pauly	Nadine	ABS Capacity Development Initiative	Germany	nadine.pauly@giz.de
Petros	Emmanuel	Interpreter	Ethiopia	emmanuelpetros@petrosconferences.co.ke
Quenum	Hugues	Co-Facilitator	Benin	comdou@yahoo.fr
Rukundo	Olivier	ABS Capacity Development Initiative	USA	olivier.rukundo@gmail.com
Tvedt	Morten Walloe	Fridtjof Nansen Institute (FNI)	Norway	mwt@fni.no
Woldegiorgis	Mesfin	Interpreter	Ethiopia	meswolde@gmail.com
Zajderman	Sabine	Rapporteur	South Africa	sabinezajderman@gmail.com



Contact

Hartmut Meyer

Advisor

ABS Capacity Development Initiative
Deutsche Gesellschaft für Internationale
Zusammenarbeit (GIZ) GmbH

Postfach 5180
65726 Eschborn

Germany

E hartmut.meyer@giz.de

I www.abs-initiative.info

Andreas Drews

Manager

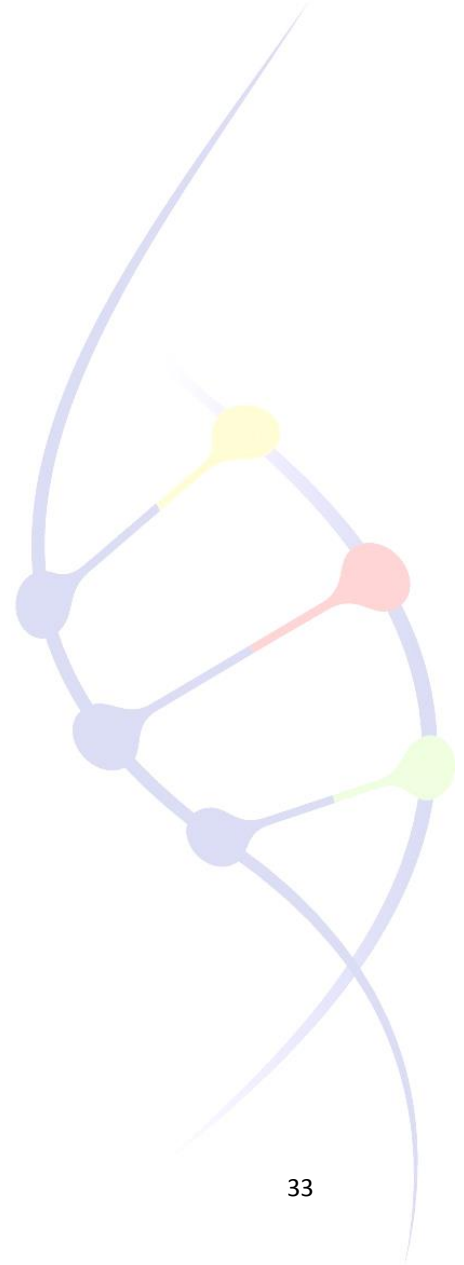
ABS Capacity Development Initiative
Deutsche Gesellschaft für Internationale
Zusammenarbeit (GIZ) GmbH

Postfach 5180
65726 Eschborn

Germany

E andreas.drews@giz.de

I www.abs-initiative.info





Annex 1: Recommendations for Renewing the Mutual Agreed Terms for the *Aloe debrana* Contract

Synthesis of Group Work Results

Contract Related Recommendations

Contract Title

- Consider changing the title from Aloe Genetic Resources to Aloe Oils to align with Article 3.3 of the Agreement.
- Review title page: The agreement is signed between the communities and the G Seven Trading in the presence of the EBI.

Prior Informed Consent

- PIC should be annexed to the contract to be sure that PIC from communities has indeed been obtained.

Benefit-Sharing

- Clause 7: Clearly stipulate the nature of benefits (monetary and non-monetary) that arise from the contract and to be obtained by the communities.
- A premium or minimum payments should be paid into a community conservation trust fund for the benefit of the community.
- Clarify whether the company has patented the *aloe gel/oil*. If so, clarify if the communities share any benefits from this.
- Clarify what is the allocation of the profits to the community from the added value through the use of *aloe* by the company.
- Benefits should go beyond research and laboratory tests and give communities more options to supply the *aloe*.
- Renewing the contract could be an opportunity for the company and the providers to agree on tangible benefits, monetary and non-monetary.
- Expand the provision on benefit-sharing to ensure that the benefits are fairly and equitably shared and that the benefits are directed in such a way that they help promote conservation and sustainable use of the biological diversity.
- Extend the range of benefits to include the two following critical issues as non-monetary benefits:
 - a. Improve the environment and working conditions of workers to be perceived as a non-monetary benefit for members of the local community working in the coffee bag factory.
 - b. Ensure the financing for research on the other virtues of the resource used.

Intellectual Property

- Protection of the invention – as there could be alternatives to the resource in Ethiopia. Private sector could source it from somewhere else.



- More aspects to think about beyond patents. Raw material is specific to Ethiopia and needs to be specified as such in a contract.

Research and Development

- Include a clause in the contract in relation to the identification and the extraction of the active compound of the *aloe*.
- Research on the use of currently discarded plants should be done.
- Research findings should be reported back to the community.

Compliance with the Nagoya Protocol

- Establish a system of penalties for non-compliance with the contract.

Conservation and Sustainable Use of the Biological Resource

- Sustainability and durability of the resources: The current use/exploitation of the *aloe* is not controlled. There is therefore a risk for irrational use of the resource and over exploitation. It is essential to identify elements/indicators allowing measuring these two aspects.
- Clause 3 related to the scope of access should provide standards relating to sustainable harvesting (it is assumed that the company is aware of these standards). It is therefore necessary that the contract be really specific with regard to the indicators for the sustainable use of resources. This will facilitate the evaluation of sustainability goals.
- Lessons learnt on best mode of harvesting should be documented (training communities on harvesting is in the agreement. Training and best practices should be continued).
- Include the institution responsible for environmental protection in the negotiation and the monitoring and evaluation of the execution of the ABS contract.
- There should be a greater recognition of the community's role in sustaining the resource.
- Strengthen the capacities of local communities for more sustainable production.
- Provide for an inventory at the beginning of the contract:
 - a. To know the quantities of *Aloe*
 - b. To help decide on:
 - i. Area where harvesting should be done not just in terms of coverage in kilometres but acreage.
 - ii. Way of sustainable harvesting.

Monitoring

- Introduce an environmental and social audit mechanism at the end of each contract before considering renewal. This will have the advantage of providing guidance to the new contract taking into account the results of the audit.
- Monitoring schedule should not be vague "at any time". It should be quantified, for example, quarterly, half yearly, etc.



Dispute Resolution

- Include a clause on dispute resolution (see Art 18 of Nagoya Protocol) and section V (E) & (F) of the Bonn Guidelines.

Amendment Clause

- For example:
 - a. “The contract may be amended at the written request of both Parties and upon written consent of the other Party”, or
 - b. “The contract/agreement may be amended at the written request of either Party and upon the written consent of the other Party.”

Force Majeure

- Include a provision for force majeure, for example: “Neither Party shall be liable to the other Party for any delay nor in non-performance of its obligations herein in the event or to the extent that such delay or non-performance is due to an event of force majeure.”

Confidentiality

- Include a provision on treatment of confidential information.

Social Responsibility

- Provide a clause to ensure principles, obligations and social responsibility.
- The company's social responsibility should appear in the contract.

Health & Safety

- The international working standards on health and safety should be included in the contract.

Reference to Relevant Laws

- Reference to relevant and applicable laws should be made (ABS law, environmental law, health and safety laws, etc.).

General Recommendations

General Recommendations to the Ethiopian National Competent Authorities

Traditional Knowledge

- Research traditional knowledge known about the benefits of *aloe* and valorise it through new partnerships and ABS agreements.

ILCs





- Include ILCs representatives in the contract negotiations: the examination of the ABS agreement shows that very little space is given to the community as opposed to the spirit of the Nagoya Protocol. The community must be part of the agreement negotiation.
- Allow community members to produce the resource on individual or collective plots so that they have some sovereignty over the resource. The community should not depend on the state agency that is not certain to guarantee its interests.

The Role of the EBI

- The EBI should be granted a full mandate (not just access) which includes regulatory measures.

National Legislation

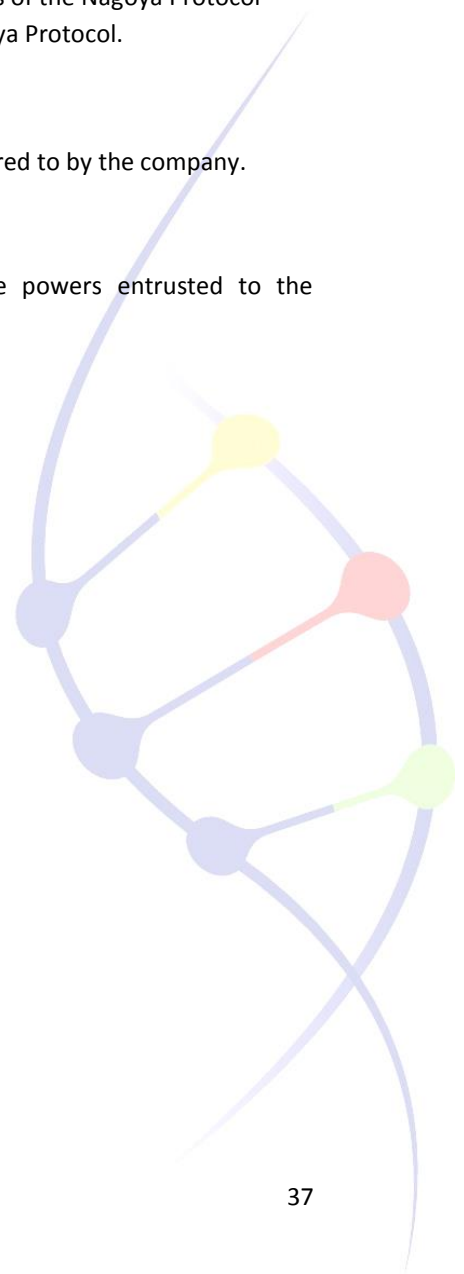
- Consider reviewing the entire national legislation to align it with the provisions of the Nagoya Protocol
- Put measures in place for users in the event of non-compliance with the Nagoya Protocol.

Social Responsibility

- Social responsibility of the government to ensure that all regulations are adhered to by the company.

Health & Safety

- The authorities must take measures to ensure consistency between the powers entrusted to the institutions in charge of environmental control and safety.





Annex 2: Building Effective and Coordinated Access and Benefit-Sharing Systems in Africa

Group Work Results

Considering that we are talking about building effective ABS systems: How would you know what your system is effective?

Francophone Group n°1

1. Les demandes d'accès aux ressources génétiques et connaissances traditionnelles sont adressées aux autorités nationales compétentes et en augmentation.
2. Les modalités d'accès/permis/autorisations sont connues et respectées.
3. Les ressources génétiques et les connaissances traditionnelles associées sont valorisées à travers le mécanisme APA.
4. Un cadre juridique adéquat est mis en place.
5. Les points de contrôle sont connus par les utilisateurs et sont opérationnels.
6. Les inventaires des ressources génétiques et des connaissances traditionnelles associées sont connus.
7. Les CPCC et CCCA sont dûment signés.
8. Les utilisateurs des ressources génétiques et des connaissances traditionnelles associées sont connus.
9. Les conditions de vies des CAL sont améliorées grâce à l'APA.
10. Les utilisateurs respectent l'engagement des contrats et les réglementations nationales.
11. Les connaissances traditionnelles sont documentées et exploitées dans l'esprit APA.
12. Une large communication autour de l'APA est mise en œuvre et basée sur des bonnes pratiques APA nationales.
13. La bio-piraterie est réduite.
14. Accroissement des entreprises de valorisation des ressources génétiques et des connaissances traditionnelles associées et des plateformes de recherche et développement.
15. Les demandes d'accès déposées sont traitées avec diligence.
16. Les procédures et étapes d'accès sont définies, clarifiées, divulguées et respectées (Le Centre d'Echange d'informations APA).

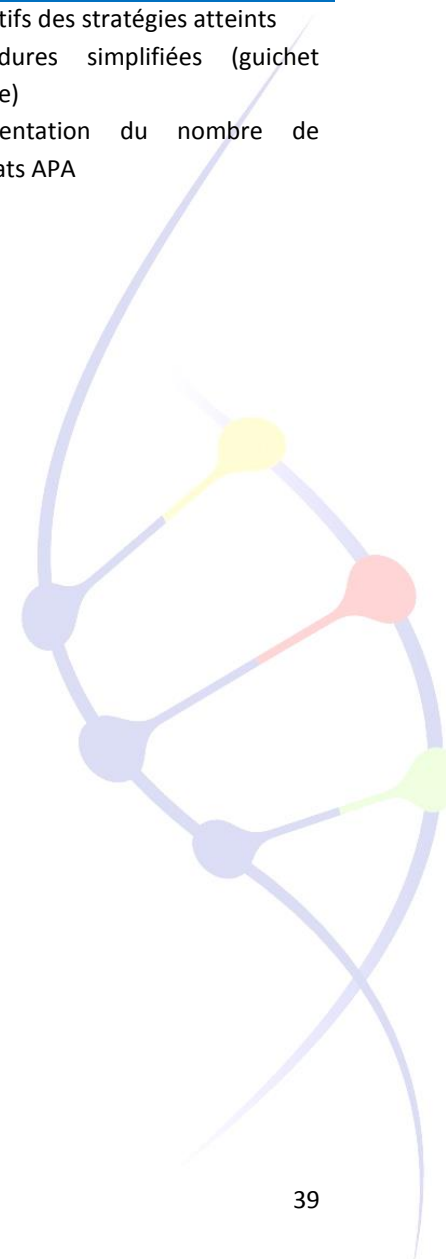


Francophone Group n°2

	Contenu	Efficacité
Cadre Politique & Juridique	Loi APA Textes d'application	Conformité avec le Protocole Nagoya Conformité avec le contexte national Nombre de contrat avantageux
Cadre Institutionnel	Autorité Nationale Compétente Point Focal APA Comité national APA Institution d'exécution	Représentation de toutes les parties prenantes Responsabilité et mandats clairs Accessibilité de l'information
Mesures Opérationnelles	Stratégie de communication Stratégie de valorisation Stratégies national APA Plan d'action APA Procédures administratives APA Points de contrôle	Objectifs des stratégies atteints Procédures simplifiées (guichet unique) Augmentation du nombre de contrats APA

Anglophone Group n°1

1. Institutional structure: National Focal Point & checkpoints
2. Access to genetic resources: PIC & MAT on Access
3. Benefits-sharing: traditional knowledge of IPLCs
4. Compliance & monitoring: user reporting & information-sharing
5. MAT compliance
6. Legal redress: dispute resolution
7. Special considerations: Research emergencies
8. IPLCs: PIC measures, community protocols
9. Conservation
10. Transboundary cooperation
11. Model clauses, contracts.
12. Codes practices, awareness, capacity: traditional knowledge
13. Technology transfer and collaboration
14. Optional information





Anglophone Group n°2

Legal

- National legislation either by Act of Parliament or by Executive order or resolution
- Have a sound provision regarding how it relates with existing legislation
- Take into account customary laws, community protocols and practices of IPLCs

Policy

- Stand-alone policy or integrated into a broader policy.
- Sound ABS principles, objectives and strategies
- Monetary and evaluation

Institutional arrangements

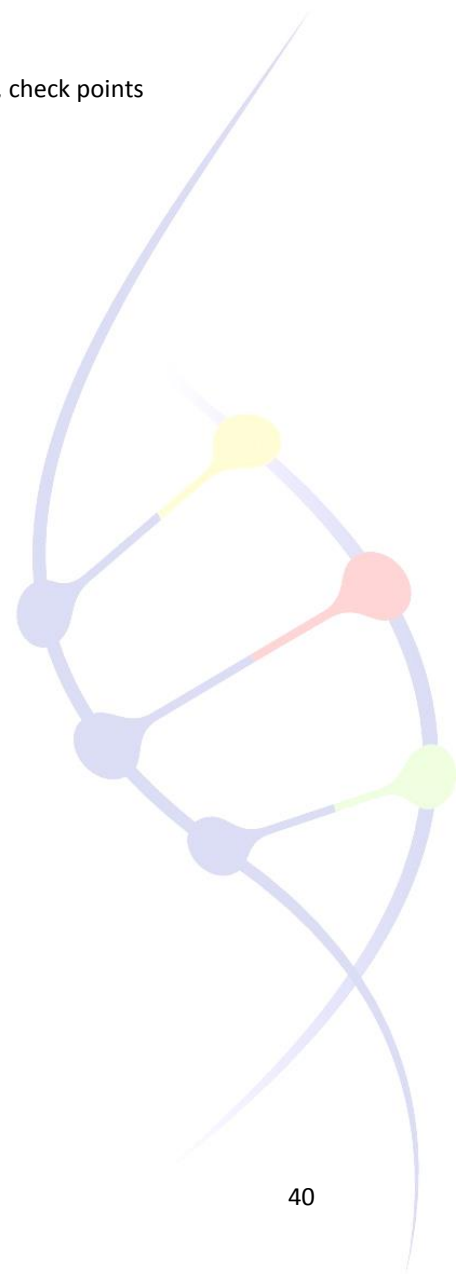
- Differ in all/every country: Competent National Authority, Focal Point, PA, check points

Resources

- Financial
- Human
- Natural

Effectiveness Dependent on:

- Directed clear procedures in place
- Users know where to go
- Compliance with stipulated timelines
- Compliance with checkpoints.





What needs to be coordinated, at what level, by whom (and with whom)?

Francophone Group n°1

Niveau	Quoi	Qui (avec qui)
Local	Procédures d'accès (1,2) Partage des avantages (1,2) Protocoles bio-culturels (4)	Administrations locales Communautés locales
National	Procédures d'accès (1,2) Développer une stratégie de valorisation (1,2&3) Mise en œuvre de la stratégie de valorisation (1,2&3) Elaboration et adoption des cadres réglementaires et institutionnels Points de contrôle Répartition des tâches Organismes nationaux	Différent ministères : par exemple le Ministère de l'Environnement ou le Ministère de la Recherche Administration Point focal Secteur privé/ institutions de recherche privés Déteneurs des connaissances traditionnelles associées Toutes les parties prenantes
Sous Régional	Procédures d'accès aux ressources transfrontalières Harmonisation des cadres juridiques relatifs aux ressources transfrontalières Points de contrôle Répartition des tâches Organismes sous régionaux	Institutions sous régionales compétentes Différents pays transfrontaliers
Union Africaine	Lignes directrices de l'Union Africaine sur l'APA Elaboration de contrat types (PIC et MAT)	Commission de l'Union Africaine Pays Membres de l'Union Africaine

Francophone Group n°2

Niveau	Quoi	Qui (avec qui)
Local	Procédure d'obtention du CPCA Procédure d'obtention du CCCA Activités de renforcement des capacités	Comité local Autorité nationale compétente
National	Recherche et développement Points de contrôle Délivrance des permis d'accès Partage des bénéfices	Universités Institut de recherche Douane nationale Autorité nationale compétente Bénéficiaires
Sous-Régional	Points de contrôle Ressources transfrontalières	Organisations sous régionales A.N.C Pays
Régional/Union	Points de contrôle	C.M.A.E



Africaine	Cadre politique APA de l'Union Africaine Gestion des conflits	
Autre	Points de contrôle	Organes de contrôle compétents

Anglophone Group n°1

Level	What	Who (with whom)
Local	<p>If all stakeholders are involved in the implementation process of the Nagoya Protocol.</p> <p>Addressing corruption on local/national level.</p> <p>Establish taxonomic baseline and link it to community mapping.</p> <p>Establish baseline study.</p> <p>Flow of information between stakeholders at different levels.</p>	
National	<p>Addressing corruption at national level.</p> <p>National capacity in taxonomic biodiversity information.</p> <p>Monitoring of system.</p> <p>Aligning pre-Nagoya agreements with new system.</p> <p>Effective legislation on ABS.</p> <p>Flow of information between information between stakeholders at different levels.</p> <p>Hierarchy of priorities in determining if all elements of system are in place.</p> <p>If all stakeholders are involved in the implementation process of the Nagoya Protocol.</p> <p>Evaluating gaps arising from audit process.</p> <p>National law should have provisions for transboundary resources.</p> <p>Country developed baseline data and standards for species before giving licences.</p> <p>Measurable information on country's biodiversity.</p> <p>Broad-based economic evaluation of genetic resources and associated traditional knowledge.</p>	
Sub-Regional	<p>Addressing corruption at sub-regional level.</p> <p>Broad-based economic evaluation of genetic resources and associated traditional knowledge.</p> <p>Effective legislation on ABS.</p> <p>Flow of information between stakeholders at different levels.</p> <p>Measurable information on the country biodiversity.</p>	
African Union	<p>Transboundary agreements on resources.</p> <p>Addressing corruption on regional and international level.</p> <p>Regional level supporting national capacity on taxonomic biodiversity information.</p> <p>International biodiversity information capacity.</p> <p>Need quantitative and qualitative indicator on use of genetic resources and associated traditional knowledge.</p> <p>Mechanism for regular auditing and compliance with MAT.</p>	

Anglophone Group n°2

Level	What	Who (with whom)
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Local	Access to genetic resources and associated traditional knowledge	Local and traditional authorities IPLCs Resources custodians
National	Legal policy Resources Institutional arrangements	CNA Line ministries Intellectual property offices
Sub-Regional	Coordinate policy and programme Harmonisation Transboundary related ABS issues	Regional Economic Communities Member States Regional intellectual property offices
African Union	Adoption and implementation of the AU ABS Guidelines	No systems The Department of Human Resources, Science and Technology Member States

