Webinar
"Special considerations and relevant permits"
Thursday, 25 June 2020 at 10h CET Microsoft Teams

Points raised after the presentation of Pierre du Plessis: *Nagoya Protocol Article 8*

- **What was the reason to include the article 8 into the Nagoya Protocol? Was there a certain necessity? Was it easy to agree upon?**

  The inclusion and reaching consensus on the formulation of issues under article 8 was not an easy task and it took some work to arrive at an agreement. It has been included in the Protocol because certain stakeholders had a high interest in ensuring that the utilization of genetic resources (particularly in the area of non-commercial research) is not frustrated in the respective areas covered by this specific article.

- **How could a paragraph with sanctions look like in non-commercial MAT?**
  A non-commercial user agreement could stipulate obligations to pay royalties and/or grant an exclusive license on intellectual property, if the GR would be commercialized. Basically, what is needed is to explicitly spell out what penalty or sanction would be triggered in the event that the GR is commercialized.
- **It is always challenging to handle academic research as non-commercial because it always has a high potential to become commercial at a later stage.**

  This is the issue of a change of intent. A prominent case was from Kenya. In this special case research on a genetic resource, that had been intended for purely academic purposes, led to commercialization within the EU. If there had been a legally binding agreement or provision on what could be done with the research results, anyone who took the genetic resources or the results from the academic laboratory and used them commercially would have in violation of the Nagoya compliance regulations in the EU.

- **On DSI: What tools can be used to ensure benefit sharing or respect for an ABS agreement after the digital sequence is published?**

- At the moment there is not much one can do except to forbid publication. Once the information is published or placed on an open database the best one can do is to inform potential users that the legal situation does not constitute prior informed consent for utilization, and that there is no legitimate or moral right to use the information. This is not a satisfactory solution and therefore DSI is such an important topic.
- One possible solution – hopefully to be included in the Post 2020 framework – could be to require that certain terms and conditions must be accepted before accessing/using DSI published in international databases. Those terms and conditions would essentially constitute a binding contractual obligation on the user.
- Another way would be to stick to the open access option but to implement a global way of sharing benefits. A restrictive approach could prohibit the sequencing of the genetic resources or the publication of such information in the MAT. This would seriously hinder research nowadays, as digital sequencing is state of the art.

- **How can one deal with a situation where a country has not signed the ITPGRFA, but is a Party to the Nagoya Protocol? How can the two frameworks be synchronised during implementation? And how to combine the two frameworks when elaborating national ABS legislation?**

  As long as a country is not a Contracting Party to the Plant Treaty it has no obligations under the Treaty and can regulate plant genetic resources for food and agriculture in any way it sees fit, including through its Nagoya Protocol measures. But plant breeders might be discouraged from using such material, if they are required to negotiate separate PIC and MAT. Moreover, the complexity of breeding makes it almost impossible to keep track of any separate terms negotiated on a bilateral level.

- **How will the debate on open access to genetic sequences affect the implementation of the Nagoya Protocol?**

  First, we have to distinguish between open and free access. One can guess that there is going to be a multilateral system that ensures open access but with guaranteed benefit sharing. A way forward at COP 15 may be in between a global and holistic approach, and terms and conditions for using the databases.

  What is advice can be given to a country which is party to the Plant Treaty, but which has not yet ratified the Nagoya Protocol? What can this be worked out?

  When designing national ABS laws. countries that are Parties to the Plant Treaty should take into account their obligations under the Plant Treaty.

- **What can be done when domestic researchers share a GR with counterparts abroad, but the use has been declared as domestic use only?**

  Since this would be a pure national case, a country can declare such actions an offense. Then different sanctions can be applied to prevent it from happening. Another way

would be to make the international counterparts sign a specific contract before starting the collaboration. Having a contract is always the best way to regulate such situations.

Points raised after the presentation of Pierre du Plessis: *Relevant Permit Systems*

- **Mapping the permitting landscape**
  Mapping the permitting landscape of a country is crucial. If there is one authority or special department that issues permits, this needs to be communicated or highlighted in such a map to avoid frustration on all sides. When it comes to coordinating the permit landscape, Kenya is seen as one good benchmark.
- **Are there any examples of benefit sharing standard clauses for research?**

  There are indeed many examples for standard contracts. But a problem with that lies in the bilateral structure of the Nagoya Protocol. Since a lot of stakeholder have developed their own standard clauses and contracts there is often more than one way of going about this. In some cases there are several possibilities of "standard" clauses, leading to confusion. There is no “one size fits all” solution and each contract and corresponding clauses must be tailored to address the specific circumstances of each case.