

MEETING REPORT and OUTCOMES

Day One

9h00 Welcome and Introductions by Barbara Lassen from the ABS Capacity Development Initiative for Africa

Barbara Lassen, speaking on the behalf of the ABS Capacity Development Initiative for Africa, welcomed all the participants to the Second African Indigenous and Local Communities preparatory meeting on Access and Benefit Sharing (ABS) and Traditional Knowledge (TK).

She briefly summarised the background and the objectives of the meeting. She then introduced the ABS team and the meeting facilitators, Esther Mwaura Muiru founder of Grassroots Organisations Operating Together in Sisterhood (GROOTS) Kenya and Kristy Facer from The Council for Scientific and Industrial Research (CSIR), South Africa.

Getting to know Each Other

The participants were then asked to do a small group exercise aiming at:

- Introducing the participants to each other
- Assessing the level of understanding of ABS and TK issues
- Identifying the various expertise in the room
- Identifying the existing organisations and networks and what do they do

9h30 Setting the Scene and Programme Overview

Mrs Mwaura Muiru also welcomed the participants to the meeting and presented the three day programme to the participants.



Esther Mwaura Muiru

- Day One: Introducing the issues and exchanging experiences
- Day Two: Reviewing of and reflecting on the draft decisions on Article 8 (j) and the draft ABS Protocol
- Day Three: Synthesising all the issues and inputs into two sets of recommendations to forward to the African Group of Negotiators at COP 10.

Mrs Mwaura Muiru highlighted that this meeting was critical as it aimed to prepare for the next Conference of the Parties (COP) in Nagoya, Japan. She also reminded the participants that this year was crucial as stakeholders were coming together to evaluate what has happened in the last decade and to set up a strategic plan for the coming years.

Mrs Mwaura Muiru strongly encouraged the exchange of experiences and insights between participants over the next three days and invited the meeting to reflect constructively on both the Article 8(j) of the CBD and the draft ABS Protocol in order to issue two sets of recommendations to be addressed to the African Group of Negotiators to take to COP 10 in Nagoya in October.

10h00 Tea/Coffee Break

11h00 The Negotiations of Access and Benefit Sharing (ABS) and Article 8(j) under the Convention for Biological Diversity (CBD): Where do we the Stand? Presented by John Scott from the Secretariat of the CBD (SCBD), Canada

Mr Scott introduced his presentation by highlighting that ABS had been a burning issue. Indeed it had been a long process that had been negotiated for almost eight years. He mentioned that the negotiations hopefully would be finalised and the ABS Protocol adopted in October 2010.

Mr Scott highlighted the three goals of the CBD:

- Conservation of Biological diversity
- Sustainable use of its components
- Fair and equitable sharing of benefits from the use of genetic resources.

He noted that the third goal was slightly overlooked and neglected.

Mr Scott also informed the participants about the meeting of the Inter-Regional Negotiation Groups (INGs) to take place next September. He explained that ING's were set up to support the negotiations and have the task of preparing for the formal meeting and to complete the negotiations before October. He then stressed the importance of presenting a text that all governments could agree upon at COP 10. He reported that it was hoped that the text will be finalised for COP 10 to ease decision making by the governing body. If so, the decision will be communicated to governments that will follow a related programme of work for the next two years.

During his presentation, Mr Scott stressed:

- That the participation of ILCs is central to the success of the CBD and in turn it is important that:
 - Mechanisms to promote the full and effective participation of ILCs be developed
 - Communication tools and mechanisms to keep in touch with ILCs that do not have access to modern technologies be developed
- The importance of protecting collective rights over knowledge
- The completion of a Code of Ethical Conduct to ensure respect at all levels to be sent to the Government Body for approval
- The importance of increasing capacity building efforts, community education and public awareness



John Scott

- The importance of ILCs' involvement in the work of CBD Voluntary Fund
- The crucial role of technical guidelines for recording and documenting TK, innovations and practices – It was reported that some communities were embracing documenting and recording their knowledge (WIPO toolkit on the documentation of TK)

He also pointed out that the CBD Secretariat was welcoming creative initiatives and partnerships between ILCs and the private sector. He then provided the meeting with details of the multi-year programme of work on the implementation of Article 8(j) of the CBD and its further revision for the years to come.

Mr Scott also informed the participants on the research and development of indicators to measure if TK is being maintained and thriving and also mentioned the intention to develop indicators to measure the sustainable use of both GR and TK.

On one hand, Mr Scott acknowledged the good work of the CBD Voluntary Fund in involving the ILCs. On the other hand, he regretted the poor work completed in bringing the ILC representatives together and engaging them on the complex task of defining what local and indigenous communities really are.

Complementary Remarks from Kabir Bavikatte from Natural Justice, South Africa

Mr Bavikatte stressed the importance of ILCs rights to protect the use of their GR and TK as well as their traditional lifestyles. He stated that protecting biodiversity was also protecting ILCs' traditional lifestyles. He went on to say that it was crucial to highlight how all these issues were interdependent. He noted that ILCs had started to make this link. He then pointed out that the debate was about conservation in context and included in this context is the focus on certain rights and particularly rights to access to land. Mr Bavikatte concluded by stating that ABS, GR's and TK issues had to be regarded in their context.

11h45 Panel Discussion with Nigel Crawhall from, the Indigenous Peoples of Africa Coordinating Committee (IPACC) and Lucy Mullenkei from the Indigenous Information Network (IIN): What is at Stake for Genetic Resources and Traditional Knowledge at COP 10?

Mrs Mullenkei reported to the meeting that indigenous issues had been a great focus of hers that comprised a long journey and hard work. She thanked the ABS Capacity Development Initiative for Africa and stressed how the Initiative truly added value to the African work.



Nigel Crawhall and Lucy Mullenkei

Nigel Crawhall drew participants attention to the fact that what was happening on the ground was very different to what appeared to be occurring within international negotiations. He stressed that the indigenous communities were becoming poorer, losing their lands and breaking down as the youngsters were walking away from their traditional cultures. He sadly noted that in fact there was little or no respect of the rights of rural and indigenous communities and that, decisions were made either by governments or mining and petrol companies without ILCs' consent.

Lucy Mullenkei emphasised how it was important to look at the ground level as well as regional and international levels. She added that the work at national

level and the work of linking local level issues to the international level were both of crucial importance. She encouraged the meeting to consider cross border issues, work as a team and called for additional capacity to build initiatives.

Nigel Crawhall pointed out three major challenges:

- The mainstreaming of the work of the African Group to other conventions
- The development of a UN declaration on Intellectual Property (IP) stating that the rights are held by the entire communities
- The recognition of traditional institutions and customary laws

Discussion

Few questions and comments followed:

Q) Could you update us on the follow-up of the Nairobi meeting? What about the document and the negotiations that should have followed? Where do we take the outcomes of this meeting to?



A1) The Nairobi recommendations were provided to the African Group of negotiators to the international regime on access and benefit sharing. The land issues came up very strongly. It is very important to create awareness about these issues.

A2) All these meetings have an impact on the negotiations. Not all the recommendations will appear in the ABS Protocol but it will lead to other processes/issues such as:

- Other international debates that Indigenous communities could be part of in seeking further rights
- Nature conservation
- Research and documentation
- Revitalisation and recognition of customary laws

Q) What about the level of representation? Who are the custodians of TK we are talking about? Who is contributing to what? Traditional healers and Indigenous elders need to be more represented in forum and meeting such as this one.

A) There is a very high number of indigenous people but not enough funds to send all of them to meetings. However, it would be great to have more traditional healers and elder representatives.

Comment from Patrice Sagbo: I would like to say that at our level the debate is essentially around two issues:

- a) How to raise awareness at grassroots level?
- b) How can indigenous communities influence the negotiations?

In fact, my question is what work can be done at national, regional and international levels? The role of focal points needs to be clarified. It is important to work together in order to make indigenous communities heard, especially at Nagoya. I express my gratitude to both IPACC and Natural Justice for their very efficient work. However, I would like to call attention to three critical issues:

- The importance of land titling and its impact on biodiversity
- The critical issue of student and academic research
- The importance of local communities education in all the matters related to the CBD

I also would like to highlight that in Central Africa there are two major achievements:

- The recognition of the biodiversity in our countries
- The recognition of ABS (APA), though it is important to note that information related to ABS is not disseminated widely enough in Africa.

13h00 Lunch Break

14h00 the Hoodia Case: Lessons Learnt for ABS Presented by Mathambo Ngakaeaja from Working Group of Indigenous Communities in Southern Africa (WIMSA) – Botswana & Namibia

Mr Ngakaeaja introduced his presentation by explaining that the Hoodia is a desert succulent that was used by the San Hunter Gatherers to support thirst and hunger during long hunting expeditions. Its appetite suppressant properties attracted scientific interest which led to the identification and patenting, by the Council for Scientific and Industrial Research (CSRI) South Africa, of a molecule in Hoodia, P57, believed to be the active appetite suppressant. In 1997, the San People learnt about the patent and started negotiating with the CSRI for compensation from the benefits derived from the commercial development process. After a long negotiation process, and subsequent to the introduction of the Biodiversity Act of 2004 in South Africa, an ABS agreement was reached in 2002 between the San and the CSRI. It was reported that benefits were shared not only with the San People of South Africa but also with the San People of Botswana and Namibia. A second ABS Agreement was reached with the South African Hoodia Growers Association (SAHGA) in 2005 and re-signed in 2007. Currently and after the withdrawal of Unilever from the licensing agreement to

develop products based on the CSIR patent and the flooding of the market with products purporting to be derived from Hoodia, there is now very little demand for Hoodia.

Based on the San's experiences, Mr Ngakaeaja provided the meeting with a critical overview of the various outcomes of the ABS agreement process. Some were encouraging:

- ABS provided the San Peoples with an excellent opportunity to generate their "own" income for self development both through benefits and economic opportunities of Hoodia cultivation
- The CBD served as an excellent international framework of reference
- The Hoodia case was a successful best practice case internationally. However the initial excitement regarding the potential of benefits was premature
- A constructive empowering and capacity building process for San leaders and the institutions involved.



Mathambo Ngakaeaja

However, others were more challenging and raised a range of issues:

- The ABS negotiating process is a complex approach
- ILCs often negotiated from grossly marginalised positions due to a lack of information, communication, technical expertise and finances leading to no or inadequate Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).
- Political unwillingness to enact local legislation. Large volumes of non-ABS products in the market.
- Strategic non-compliance – farmers take advantage of loopholes/delays related to protocol before implementing regulations.
- Cross border sharing of resources has its own dynamics and sovereignty. Who owns what, since when...?
- The harmonisation of national policies and laws is very challenging. Some countries do and others do not have ABS laws

- The realisation of benefits from ABS and associated TK depends on a number of external factors e.g. market forces (demand/supply), efficacy and safety of the product, regulation and competition
- ILCs and their NGOs, as well as other community institutions, have proven to be integral elements for competent local authorities, especially in relation to issues such as compliance.
- Commercialisation of TK brings other challenges to bio-diversity e.g. over exploitation
- The issues of certification, traceability and trade regulations on ABS and compliance are very complex.

15h00 Discussion

Questions from the Floor

Q) What if Unilever is actually conducting further research in secret?

A) We do not know about that and all we can do is to be proactive for each case where Hoodia is being used.



Mathambo Ngakaeaja and the Audience

Q) What about the ABS? When the money was provided, how did you ensure that the population received equal share?

A) It was not easy to share this money fairly. It was divided equally between the three countries involved, rather than dividing the amount in proportion to the number of people in each country as it seemed to be the more equitable solution. The money was essentially used for the social and economic development of the San People via the implementation of grassroots projects in the various communities.

Q) What would you advise to the people being part of the negotiations?

A) It is important to understand that it is a meeting/conference of the parties. Pick an elective priority and find which parties are sympathetic to your cause and make your point to be heard very clearly and wisely.

15h30 Tea/Coffee Break

16h00 Exchange of Local Experiences with Bioprospecting and/or Biopiracy Group Discussions

Kristy Facer introduced this last session of the day by emphasising how it is essential to collate as much information as possible so to be able to draft recommendations. What are the lessons learnt and issues identified from the Hoodia case and other cases? She then gave as example the fact that the Hoodia case, among other outcomes, informed on the issue of transboundary traditional knowledge.

Some participants were invited to share their stories and experiences with the rest of the delegates. The meeting was divided into six groups. Each group was asked to listen, discuss, analyse and report on each specific case study about their uniqueness and the main challenges encountered.

17h00 Reporting Back from the Groups and Identification of Common Issues

Some of the major elements that made these case studies unique were identified as follows:

- Transboundary issues
- Unique wildlife and unique relationships between the wildlife and the Maasai
- Sacred forests and unique relationships between the communities and the forests
- Forest hunter gatherers
- Communities embraced their origins
- Communities were organised and some had prepared Bio-Cultural Community Protocols (BCP)
- The level of poverty
- Loss of dignity, self-dignity and self-reliance
- Loss of culture and TK
- Communities often supply their TK in good faith without any agreement

The main challenges were reported as follows:

- Sensitivity of the issues at stake
- Lack of benefit sharing
- Use and commercialization of GR's without any agreement
- These problems have been continuing for decades



Small Group Discussion

- Conflict of Interests between stakeholders and no legal ownership of the land. e.g. part of the forest was gazetted (Sacred forest/story of origin case study)
- Problem of land management, land appropriation, various issues of governance and corruption, e.g. Maasai land grabbing – no compensation to the communities when the land is sold
- Lack of recognition of customary laws by governments
- Theft of TK
- Loss of livelihoods (e.g. hunting and fishing) and no compensation for the loss of livelihoods
- Very poor representation of ILC's
- No community involvement in the decision making process
- Traditional activities and/or practices prohibited e.g. traditional fishing forbidden vs. encouragement of industrial fishing



Results of Group Discussions

17h30 End of Day One

Day Two

9h00 Summary of Day One

The workshop started with a few observations from the floor on the first day of the meeting:

- There had been much emphasis on content i.e. what is TK, what are GR's and other important concepts.
- Practical information about resource conservation was exchanged
- Discussions brought out the very critical issue of land rights
- The Hoodia case study demonstrated on one hand, the capacity of ILCs in negotiating with important companies or/and governments. On the other hand, it also highlighted the lack of information of ILCs on the ABS issues.

Mrs Mwaura Muiru summarised the main topics discussed the previous day and gave an overview of the agenda of the day.

A review of the common issues identified the previous day was then raised by Barbara Lassen:

Key Common Issues

Compliance: lack of agreement (trust and good faith), lack of benefits or compensation, use of TK without consent, no implementation of international and local laws and other legal instruments.

Awareness: Lack of grassroots awareness of the value of TK and GR.

Valuation and recognition of TK: TK challenged by outsiders, GR vs. biological resources.

Land issues and rights: Privatisation of land across Africa, loss of control over natural resources, lack of benefit sharing and/or compensation and loss of livelihoods when land is sold, land grabbing facilitated by governments, commercial interests and land tenure issues.

Customary laws and institutions: lack of recognition of customary laws by governments and common ownership of land.

Involvement in decision making: Generally speaking, no involvement of ILCs in decision making in matters that concern them with a particular emphasis on matters pertaining to land and very poor representation of ILCs in decision making bodies.

Commercialisation: If commercialised, there is a concern that cultural values will be lost.

Preservation of TK: Knowledge transfer is lacking in communities, religion is also having an impact.



Key Common Issues

Beyond COP

- Work at various levels
- Work with national focal points
- Take the regime to the ground level
- Build capacity of national governments in all sectors
- Preservation of TK at the local level
- Documentation of TK
- Certification of knowledge holders (e.g. IPACC)
- Inform communities on rights
- Discuss with donor countries
- Institutional mechanisms

Negotiation Process

- International Indigenous Forum on Biodiversity (IIFB)
- Work with African delegates
- Speak to sympathetic delegations
- Work with the Secretariat of the CBD
- Elders representation internationally

Other International Regimes

- Links to climate adaptation and local responses
- Mainstream Article 8(j) into other conventions
- ILO C169 and traditional livelihoods
- Engagement with REDD

Issue raised from the floor:

Q) What are the structures or networks that can help and inform ILCs? How can we link with them?

A) Some networks are represented in the room, identify who they are, what they focus on and liaise with them depending on the needs and build on their complementary strengths. Networks will be listed at the end of the meeting to facilitate further interactions between the participants of the meeting.

10h00 Draft Decisions on Article 8(j)

Short Introduction by Kabir Bavikatte from Natural Justice

Mr Bavikatte declared that to protect biodiversity, we have to protect the rights of ILCs and their traditional lifestyles. He then gave a brief overview of both Article 8 (j) and Article 15 and highlighted the critical points to be looked at carefully.

Mr Bavikatte reminded the meeting of the work of the Working Group on ABS (WGABS). He explained that the CBD was like a constitution and that therefore laws that reflect the constitution were to be made. The WGABS was set up and asked by the CBD to use Article 8(j) and Article 15 to write an appropriate law and protocol on ABS. The Working Group on Article 8(j) (WG8J) was then set up and provided the WGABS with inputs while also dealing with other issues such as climate change, etc.

Mr Bavikatte concluded by pointing out the important role played by CBOs, NGOs and other grassroots organisations in pushing and influencing these issues at both national and regional levels while fostering linkages with the international.

Observations/comments from the floor:

- Another important group is the Working Group on Protected Areas
- It is essential to take the information provided to us in this meeting and disseminate it back home. However, we have to organise ourselves
- There is a need for mechanisms to feed into governance/governments. The ABS Capacity Development Initiative for Africa is in the process of moving from workshop activities to national implementation into national laws
- Participants from francophone Africa raised that greater participation from their countries in the process of the negotiations is needed – can we get support from the ABS Capacity Development Initiative for Africa?

10h30 Tea/Coffee Break

11h00 Draft Decisions on Article 8(j) Continues

Update from the CBD concerning the Draft Decisions of the 6th Meeting of the WG Article 8(j) (TK) for the Consideration of the Parties at COP 10 – Future Directions Post 2010 Presented by John Scott from the CBD, Canada

Mr Scott's presentation provided technical information for a better understanding of the work around the CBD. He emphasised one more time that the

development of each document was a long term negotiation process. He also mentioned that some of the developed countries had attempted to stop the Working Group on Art. 8j. He then updated the meeting on:

- 1) The mechanisms to promote the effective participation of ILCs in the work of the convention through:
 - Capacity-building efforts – It was noted that every region (South America, Africa, etc.) were different. However, they could learn from each other to develop their own capacity.
 - Development of communications, mechanisms and tools to facilitate the effective participation of indigenous and local communities in the work of the Convention.
 - Participation of indigenous and local communities in the work of the Convention, including through the voluntary fund for facilitating the participation of indigenous and local communities in the Conventions processes.
 - Other initiatives, for example the CBD Voluntary Fund.



John Scott

- 2) The elements of *sui generis* systems for the protection of traditional knowledge
 - Do we need new laws for the protection of the rights of ILCs and their traditional knowledge? In some developing countries, laws were developed for protecting collective rights to knowledge. However there is no agreement on one international *sui generis* system.

- 3) The elements of a Code of Ethical Conduct to ensure respect for the cultural and intellectual heritage of ILCs – Prior informed consent has to be fought for at COP 10 for the strongest possible outcomes.
- 4) The multi-year programme of work on the implementation of Article 8(j) and related provisions of the CBD, the future agenda of work on Article 10 and 10(c).

Last, Mr Scott stated that the CBD must do more work to engage local communities and not just indigenous communities.

Discussion

Participant: What do *sui generis* laws mean?

John Scott: It means a new set of laws. There is a need for a new set of laws, unique laws to reflect indigenous culture and customary laws, which in turn protect TK but it is a very complex process. It would be useful to look at countries that started implementing '*sui generis* laws'.

Participant: How could we get updated information on these issues and the work of the CBD?

John Scott: The CBD communication system is an online system and you can register via email. There is a demand to increase indigenous representation on the CBD Committee. The CBD Voluntary Fund can fund some of your travels to attend relevant meetings.

Nigel Crawhall: The African Charter involved the rights to self determination. There is a need for a broad representation in the CBD from ILC's, especially from fisher and coastal local communities.

Vital Bambaze: With regard to the use of voluntary funds, how do you define indigenous people and local communities? By combining both, it may solely generate greater confusions and conflict. The indigenous communities do not have the same means to access the funds.

John Scott: The work of local communities is important and complementary to the work of indigenous people. I think that it is not sensible to try to separate the two notions i.e. the concept of an indigenous community and the concept of local community. It is a matter of definition what it means to be an indigenous community or a local community. It differs from country to country and from a culture perspective to another.

Conclusion by Kabir Bavikatte from Natural Justice, South Africa

Mr Bavikatte stated that the discussion about TK should be viewed as knowledge that is dynamic and that is embedded in a way of life. He noted that the text of Article 8(j) was done to secure rights while protecting a way of life and a traditional culture. He went on to say that you could not practice a way of life unless you had access to land where you could live that way of life. The working

group made an important link between Article 8 (j) and the protection of protected areas. He emphasised that the discussion was therefore also about rights to land. Was there anything the participants wanted the African negotiators to keep in mind in Nagoya? Mr Bavikatte reminded them of the importance to voice their thoughts and concerns. He then concluded by encouraging the participants to critically review the draft decision on Article 8(j) and to focus on the following issues: Lifestyle, protected areas, land access and the Code of Ethical Conduct.

12h30 Lunch Break

14h00 Draft ABS Protocol Presented by Kabir Bavikatte from Natural Justice, South Africa

Mr Bavikatte started his presentation by inviting the participants to refer to the documents provided to them at the beginning of the meeting:

- The Recommendations Adopted by the Ad Hoc Open Ended Inter-Sessional Working Group on Article 8(j) and the Related Provisions of the CBD at its 6th meeting, Montreal 26 November 2009
- The Draft Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits arising from their Utilisation
- The Elements of a Ethical Code of Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities relevant to the Conservation and the Sustainable use of Biological Diversity
- Decisions V/16, Article 8 (j) and Related Provisions.



Kabir Bavikatte

Mr Bavikatte explained the importance of reflecting on the ABS Protocol by identifying first from whose perspective this document was approached, what were the interests at stake, the wins and the losses and what strategy and trade offs should be considered. He also drew attention to the passages in brackets in the different documents and clarified the meaning of the use of the brackets to

the participants. He then raised some issues and highlighted them in the text of the draft ABS Protocol:

- 1) Preamble:
 - Significance of mentioning the Declaration on the Rights of Indigenous Peoples
 - No mention of the term 'peoples'
 - Relationship with the World Intellectual Property Organisation (WIPO) Intergovernmental Committee
 - Inseparability of TK and GR
 - The 'subject to national legislation' issue
- 2) Benefit Sharing:
 - Article 4(1): ILCs to receive benefits from the use of GR?
 - TK is a cross-cutting issue
- 3) Traditional Knowledge
 - Article 5 bis: What does 'subject to' national law mean? What does 'in accordance with' national law mean?
 - Article 8: Transboundary cooperation on GR and TK
 - Article 9: Significance of community level procedures, publicly available knowledge
- 4) ABS protocol: A Just Balance
 - Access to justice versus autonomy
 - Customary laws and community protocols
 - Clearing house
 - Certificate
 - Article 12

Inputs and comments from Mr Chibememe from the Chibememe Earth Healing Association (CHIEHA), Zimbabwe

Mr Chibememe expressed concerns in relation to:

- The bracketed text that needed participants' particular attention
- TK and ILCs rights as they were cross-cutting issues and were found in 12 different articles
- The issue of fluidity of the negotiations
- The inconsistency in ILCs' position regarding certain issues
- The lack of cooperation between ILCs of different regions

Discussion

The following comments and queries arose from both presentations:

- Community protocols, that communities can use to overcome some of the issues raised, have not been discussed so far in this meeting.
- TK and GR and their interdependence and the need for community education especially in Francophone Africa.
- Concerns regarding the position of France on customary laws.

- Importance of identifying the right time for lobbying – it was then suggested that the lobbying should take place before COP 10.
- A list of the focal points to be provided.

At the request of the participants, Mr Bavikatte gave further explanations on the following:

- Compliance issue: In Article 12, compliance provisions for TK have been completely removed from the text. This is a key issue for communities
- Preamble: It is extremely long. It is essential to identify what are ILCs' interests and secure them
- Ombudsman: State support and establishment of appropriate, respectful and ethical ombudsman mechanisms
- Genetic resources: negotiations are continuing within the Working Group on ABS regarding communities' rights over genetic resources.
- Customary Laws and Community Protocols as opposed to community level procedures (i.e. where the state can step in and take decision on behalf of communities)

15h30 Tea/Coffee Break

16h00 Traditional Knowledge Negotiations at the World Intellectual Property Organisation (WIPO) Presented by Olivier Rukundo from the ABS Capacity Development Initiative for Africa, Germany

Mr Rukundo presented on the work of WIPO Intergovernmental Committee (IGC) on Intellectual Property (IP), GR, TK and Folklore. He informed the participants that the role of WIPO IGC was to find ways and mechanisms to protect TK by examining IP issues that arise in the context of:

- Access to GR's and benefit sharing
- Protection of traditional knowledge
- Protection of expressions of folklore



Olivier Rukundo

Mr Rukundo defined IP as a means to give value to a specific creation that arises from the human intellect. He described TK as culture specific, integrative and synergistic, which must be approached in a holistic manner. But could TK be protected by conventional/modern IP systems? Mr Rukundo emphasised the importance of addressing the above issue as well as other critical questions such as why protect TK and what are we protecting? Defining TK was therefore essential.

Mr Rukundo then informed the participants about the various outcomes of the initiative and its work around the African Group Proposal.

Discussion

Few questions followed Mr Rukundo's presentation:

Participant: A lot of issues have common characteristics. There are not enough representatives of ILCs in the WIPO discussions. What are the mechanisms in place to address this problem?

Participant: To stress again the point that there is very little influence in terms of ILCs from Africa in the negotiations in WIPO.

Participant: Do you see any conflict in the negotiations within WIPO and the ABS negotiations?

Olivier Rukundo: Patentability has several criteria. There is a wide range of patentability. As far as ABS and WIPO, they are complementary. WIPO has also a voluntary fund for the ILCs as well. Both conventions inform each other so there is

no duplication. WIPO is dealing with additional issues filling in the gaps of the CBD.

16h50 Reflections in Small Groups

The participants were divided in small groups and were asked to:

- a) Reflect on the various documents provided, but to also keep in mind the information disseminated through the various presentations and discussions.
- b) Report back with a list of recommendations that will form a document to be forwarded to the African Negotiators.

The following guiding questions were provided to each group:

Article 8j

- Review 6/2 “Elements of ***sui generis systems***” and comment on any suggested changes
- Review the bracketed text in the ***Ethical Code of Conduct*** and comment
 - PIC and lands and waters used/owned by ILCs
- Discuss the proposed **in-depth dialogue** options and identify the most strategic choice and advantages

ABS Protocol

- **Compliance (Articles 11, 12, 13)**
 - Subject to national legislation/international obligations
 - Enforcement by state
 - Mechanisms (certificate, clearinghouse etc.)
- **Preamble**
 - Declaration on the Rights of Indigenous Peoples and inseparability between GR and TK
- **Ombudsman (Article 14 bis)**
 - Are we satisfied with the measures proposed for conflict resolution and use without consent?
 - How this relates to rights as listed in ILO and UNDRIP
- **TK & GR (Article 4, 8/2)**
 - What are ILC rights to GR and benefits thereof?
- **Community protocols and customary laws vs. community level procedures (Article 9)**

Due to time constraints, the reporting was postponed and added as the first agenda item of Day Three.

17h30 End of Day Two

Day Three

9h00 Summary of Day Two

Ms Facer welcomed the participants for the third and last day of this meeting. She thanked the participants for being so disciplined and so focused on the task at hand. She then summarised what had been achieved the previous day. She highlighted how the information and explanations of John Scott and Kabir Bavikatte were very useful in providing the participants with information on Article 8(j) and its background.

Ms Facer reminded the participants that the recommendations to be produced by the end of the meeting were to be forwarded to the Group of African Negotiators. She pointed out that the previous day, the participants were also informed of the role of WIPO IGC and of the push to move the discussion of TK and related issues under WIPO's mandate. Ms Facer highlighted that it was critical to ensure that the discussion regarding TK remains with the CBD. With this in mind, she strongly encouraged the participants to mention these concerns and others in their recommendations. She then presented the agenda of the day and hand over the debate to the first speaker of the day, Lucy Mulenkei

9h30 Roadmap and Way Forward Presented by Lucy Mulenkei from the Indigenous Information Network (IIN), Kenya

Mrs Mulenkei gave a detailed overview of the long journey that the African representatives had begun to protect the rights of ILCs. She reminded the audience that the first major UN conference on international environmental issues was held in Stockholm in 1972.

Mrs Mulenkei went on saying that in 1992 the Rio Summit took place and the CBD was opened for signature. The CBD was agreed upon and accepted and entered into force in 1993. She noted that some countries still needed to ratify it. She then told the audience that convention bodies were created slowly. The first Conference of the Parties (COP) took place in 1994 in the Bahamas. In 1996, during COP 3 in Buenos Aires, it was decided that the COP would be held every two years.

She called attention to the fact that the COP 4 in 1998 in Slovakia was very important not only because IP issues were put forward but also because the ILCs for the first time raised their voices and said that they needed to be consulted on issues that concerned them. Subsequently, Spain agreed to host a fast ad hoc open ended meeting in Madrid in 1997 on the IP issues. COP 5 was held in Nairobi, Kenya in 2000. COP 6 in The Hague, Netherlands in 2002, COP 7 in Kuala Lumpur, Malaysia in 2004, COP 8 in Curitiba, Brazil in 2006 and COP 9 in Bonn, Germany in 2008.

Mrs Mulenkei told the audience that the setting up of the WG8J was discussed in Bratislava during COP 4. Just before COP 5, the fast ad hoc open ended meeting was hosted again by Spain. In 2001, another fast ad hoc open ended meeting took place in Bonn to discuss the Bonn Guidelines. More discussions took place

after COP 6 in The Hague. She then informed the participants that most ad hoc open ended meetings around Article 8(j) are now held in Montreal by the Secretariat of the CBD.

Mrs Mulenkei pointed out that COP 7 had been critical. She described how discussions and lobbying went on and how the ILC representatives kept on pushing to get the Article 8(j) where it is today. She also indicated that, thanks to the support of the ABS Capacity Development Initiative for Africa, the work of African representatives started to be taken seriously. Then the African initiative was broken down regionally to reach more people.

Mrs Mulenkei explained to the participants that they organise preparatory meetings and side events to create awareness every time there is a COP. One of the key meetings was held in Namibia in March this year. She stated that quite a number of ministers from all over Africa attended the meeting. She further advised that the aim was to reach the ministers concerned by explaining issues surrounding Article 8 (j) so that they will support the community protocol in Nagoya.

Mrs Mulenkei went on saying that meetings were opportunities to discuss issues directly between one another. She emphasised the importance of working together and providing as much information and recommendations as possible for Nagoya negotiations. After Nagoya, she said the journey continues.

Discussion

Esther Mwaura Muiru: It is very important to bring the work of the ILCs forward and be recognised internationally. It is also essential to attend other meetings where issues of biodiversity are discussed such as the Millennium Development Goals (MDG) Summit in New York in September 2010.

Patrick Muraguri: We need a mechanism where our representatives are trained to go in these meetings. We need to be strategic.

Participant: We do need people to take over the work of the older activists and have mechanisms in place to train them.

Participant: I would like to express some concerns about TK. We are focussing on existing TK and practices but in reality there is erosion and deterioration of these practices often due to modernisation so it is important to put mechanisms in place to revive them.

Lucy Mulenkei: COP 10 is a very special opportunity and it is also a financial implication/obligation. Of course, we need new people and to build this capacity. However, it is difficult to take on, in these important meeting, some representatives that have no knowledge about the issues discussed. Not every one of us would be able to talk so it is imperative to select the right people to voice our concerns and recommendations. Regarding the TK issues is important to look at the secretariat and John Scott's work.

Olivier Rukundo: The African Group negotiating the ABS protocol is currently chaired by Namibia. However, the African group always speaks with one voice after a lot of consultation, work and agreement.

10h00 Reporting Back from Group Exercise and Discussions on Recommendations

Each group reported on their work in drafting the recommendations to be sent to the African Negotiators. However, the general feeling was that this critical exercise needed a lot of work and that addressing this task was quite a challenge.



Barbara Lassen, Jacob Wanyama and the Audience

Participants pointed out that it was difficult to come up with constructive recommendations and/or informed decisions with such a limited time frame. They also stressed the need for more information.

Most participants commented that the overall priority of the programme of work should be the access to lands and protected areas.

The Participants from francophone Africa noted that most elements/issues are more comprehensive in English than in the French. They advised to have more precise translation.

Some participants were selected to be part of the drafting team that would spear head the drafting of the recommendations for comment by other meeting participants later in the day.

11h30 Tea/Coffee Break

11h30 Drafting Team Work

The feedback produced as a result of the group work was collated and used to draft the recommendations, which would then be submitted to the rest of the meeting for comments, amendments and final approval.

The drafting team consisted of:



Kabir Bavikatte, Lucy Mulenkei, Gladman Chibememe and Mathambo Ngakaeaja

- Lucy Mulenkei from the Indigenous Information Network (IIN), Kenya
- Gladman Chibememe from the Working Group of Indigenous Minorities in Southern Africa (WIMSA), Zimbabwe
- Mathambo Ngakaeaja from the Working Group of Indigenous Minorities in Southern Africa (WIMSA), Botswana/Namibia
- Ndiaga Sall from Enda Tiers Monde, Plantes Médicinales, Senegal



Olivier Rukundo and Kabir Bavikatte

The drafters were supported by:

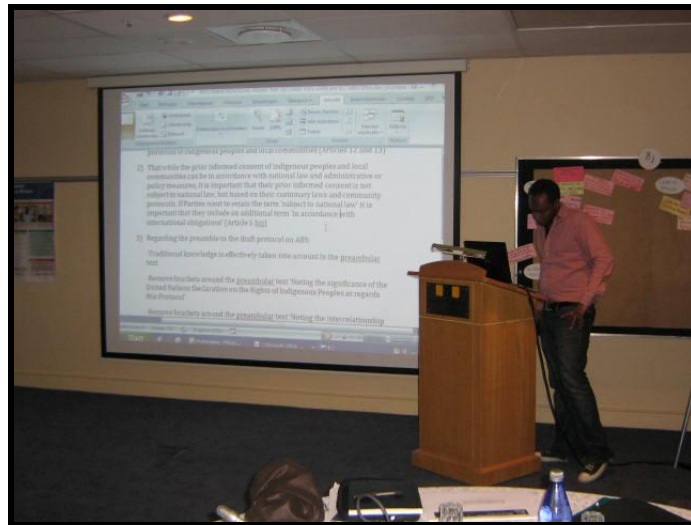
- John Scott from the Secretariat of the CBD, Canada
- Kabir Bavikatte from Natural Justice, South Africa
- Olivier Rukundo from the ABS Capacity Development Initiative for Africa, Germany

13h30 Lunch Break

14h30 Presentation, Amendments and Adoption of the Recommendations

The work of the drafting team was presented by Mr. Rukundo and the discussion was facilitated by Ms Facer.

Mr Rukundo made a first reading of both documents. Both draft recommendations were discussed point by point, amended accordingly and then approved by all the participants.



Oliver Rukundo

Sets of recommendations to be sent to the African Group of Negotiators at Nagoya

RECOMMENDATIONS TO THE AFRICAN GROUP OF NEGOTIATORS BY THE 2ND PAN- AFRICAN MEETING OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES ON THE REPORT OF THE 6TH MEETING OF THE WG 8j

Sui Generis Systems:

This meeting recommends that all Parties should develop effective *sui generis* systems for the protection of traditional knowledge.

In the development of such systems, principles such as the inseparability of customary law and traditional knowledge and the recognition by States of the traditional institutions of indigenous peoples and local communities must be taken into account.

Sui generis systems for the protection of traditional knowledge should be developed, monitored and evaluated with the full and effective participation of indigenous peoples and local communities and be based on their customary laws and community protocols.

Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity:

This meeting recommends to the African Group that the Code of Ethical Conduct must be compulsory.

Prior and informed consent should be maintained and approval and involvement should be removed. Although Article 8j uses the term 'involvement and approval', the various decisions on Article 8j have consistently interpreted this term to mean 'prior and informed consent'.

'Lands and waters traditionally occupied or used by indigenous and local communities' should be retained as the Parties to the CBD in COP 7 accepted this term by consensus in the adoption of the Akwe Kon Guidelines.

Multi-year programme of work on the implementation of Article 8j and related provisions of the CBD:

This meeting welcomes the addition of the new agenda item, in-depth dialogue, and regards it as a useful method of work to ensure Article 8j is effectively addressed as a crosscutting issue by the thematic areas of the CBD.

Noting that there are three proposals on the table: 1) Benefit sharing modalities 2) Protected areas 3) Biodiversity and climate change- the first priority for the African region should be 'Protected Areas' because of the social, cultural, economic and political impact on indigenous peoples and local communities.

Recognising the value added by local governance and management as well as the application of traditional knowledge for healthy ecosystems.

**RECOMMENDATIONS TO THE AFRICAN GROUP OF NEGOTIATORS BY THE 2ND PAN-
AFRICAN MEETING OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES ON THE
DRAFT PROTOCOL ON ABS:**

This meeting recommends:

- 1) Strong compliance measures in the ABS Protocol that ensures users of traditional knowledge comply with the customary laws and community protocols of indigenous peoples and local communities (Articles 12 and 13).
- 2) That while the prior informed consent of indigenous peoples and local communities can be in accordance with national law and administrative or policy measures, it is important that their prior informed consent is not subject to national law, but based on their customary laws and community protocols. If Parties want to retain the term 'subject to national law' it is important that they include an additional term ' and in accordance with international obligations' (Article 5 bis).

- 3) Regarding the preamble to the draft protocol on ABS:
 - Traditional knowledge should be effectively taken into account in the preambular text
 - Remove brackets around the preambular text 'Noting the significance of the United Nations Declaration on the Rights of Indigenous Peoples as regards this Protocol'
 - Remove brackets around the preambular text 'Noting the interrelationship between genetic resources and traditional knowledge and the inseparable nature of these resources to indigenous and local communities'
- 4) The establishment of an office to support developing countries and indigenous and local communities to identify breaches of rights and to provide technical and legal support in ensuring effective redress of such breaches (Article 14 *bis*).
- 5) Considering the inseparable link between the traditional knowledge of indigenous peoples and local communities and the genetic resources associated with this traditional knowledge, special provisions should be made within the ABS protocol to recognize the rights of indigenous peoples and local communities over such genetic resources (Article 4 and 5)
- 6) That traditional knowledge associated with genetic resources should be reflected in a cross-cutting manner throughout the ABS Protocol
- 7) That the words 'indigenous and local community laws, customary law, community protocols and procedures' are retained in Article 9 of the ABS Protocol and is not substituted by 'community level procedures'
- 8) The removal of brackets around Article 11. 3. a(*bis*) 'Relevant competent authorities of indigenous and local communities' and Article 13. 1. v(*bis*) 'Indigenous and local communities, including their relevant competent authorities, that may grant access to traditional knowledge associated with genetic resources'

16h00 Tea/Coffee Break

16h30 Overview of the various African Networks Presented by the Participants

The following networks were represented at the meeting:

- 1) Indigenous Information Network (IIN)
- 2) Indigenous Women Biodiversity Network (IWBNI)
- 3) African Indigenous Women Organisation (AIWO)
- 4) African Biodiversity Network (ABN)
- 5) Indigenous Peoples of Africa Co-ordinating Committee (IPACC)
- 6) Working Group of Indigenous Minorities in Southern Africa (WIMSA)
- 7) Compas Africa

- 8) International Indigenous People Biodiversity Forum (IIBF)
- 9) Ligue Nationale des Associations Autochtones Pygmées du Congo – RDC (LINAPYCO)
- 10) Réseau des Populations Autochtones et Locales pour la Gestion Durable des Ecosystèmes Forestiers d'Afrique Centrale (REPALEAC)
- 11) Coalition pour la Protection du Patrimoine Génétique Africain (COPAGEN)
- 12) Jinukun
- 13) Forum Biodiversité
- 14) Médecine par les Plantes (AMEDD – Mali, Fondation Espace Afrique)
- 15) Gestion Durable de la Biodiversité Agricole au Mali

17h00 Wrap-up and Meeting Evaluation

Ms Lassen gave the last address of the meeting. She declared that the last three days were extremely productive and thanked the participants for their amazing work.

Ms Lassen thanked both facilitators, Esther Mwaura Muiru and Kristy Facer, Nadine Pauly from the ABS Capacity Development Initiative for Africa; Olivier Rukundo for his valuable inputs, the interpreters, the filmmakers, and the Natural Justice Team.

The participants were asked to evaluate the meeting through a short questionnaire.

The participants gathered for a group picture.



17h30 End of Meeting