

5th Pan-African ABS Capacity Development Workshop

Marrakech, Morocco, Jan. 31 – Feb. 4, 2011

R E P O R T



Day One

8h30 Setting the Scene – Welcome and Opening Remarks

Dr Andreas Drews, from the Access and Benefit Sharing Capacity Development Initiative for Africa (ABS Initiative), welcomed all the participants to the Fifth Pan-African ABS Workshop and thanked the State Secretariat for Water and Environment of Morocco (SEE) in partnership with the High Commission for Water and Forests and the Fight against Desertification (HCEFLCD) of Morocco for hosting the event.

Dr Drews opened the meeting by emphasising that these coming five days of discussion and experience exchange are happening at a very important moment in the ABS history as the Nagoya Protocol on ABS has just been adopted in November 2010 after intense negotiations. Now, Parties are faced with the challenge of implementing the Protocol. He then provided a brief background of the ABS Initiative, its five years of existence and goals. Dr Drews closed his opening statement by stating that though this workshop will not provide clear answers, it will offer a space to exchange with colleagues, experts, stakeholders and donors reasonable and practical options. And, to define the needs that require support in addressing the challenges ahead.

Mr Suhel al-Janabi, from the ABS Capacity Development Initiative for Africa, greeted the participants and reiterated that the objective of this workshop was to provide an open space to discuss key issues related to the national implementation of ABS.

Mr al-Janabi invited the audience to consider real life challenges such as the case of Argan. Argan is of a high value product that is slowly growing overseas markets and is an excellent example of how functioning Bio Trade supply chains with ABS components in place can possibly be transformed to include ABS agreements without destroying the source of livelihood for poor rural populations. What is important is to understand which steps need to be taken? What needs to be considered? Is it commodity trade; biotrade; ABS agreement; intellectual property rights (IPRs); traditional knowledge (TK); patents, trademarks; geographical indications and research and development?

Mr al-Janabi reminded the audience that 2011 was the last year of the current programming phase of the ABS Initiative. He pointed out the need to develop a vision beyond 2012 as well as a programme which again joins donors' interest and capacity development needs of recipient countries. He conveyed to the audience the hope that this workshop will provide some guidance and ideas for this planning process.

Mr al-Janabi then thanked the donors, the ABS Initiative's partners, stressing the important role they play in the ABS Initiative's work and the European Union (EU) for their interest in the ABS Initiative's work. At last, Mr al-Janabi thanked the Global Environment Facility (GEF) for their interest and trust in the ABS Initiative's expertise.

Mr Ahmed Skim, from the Convention on Biological Diversity (CBD) Focal Point for Morocco, extended a warm welcome to the participants, reminding all that the Nagoya Protocol on Access to Genetic Resources (GR) and the Fair and Equitable Sharing of Benefits Arising from their Utilisation will be opened for signature by parties to the CBD on 2nd February 2011 for one year at the UN Headquarters in New York. He then emphasised that signing the Nagoya Protocol was critical but it was of strategic and political importance to ratify it to further its implementation.

Introduction and Getting to Know Each Other

Dr Drews introduced the participants to the rest of ABS team (Barbara Lassen, Suzanne Reyes-Knoche, Mélanie Bassiouris and Nadine Pauly, Olivier Rukundo and Kabir Bavikatte – advisors to the ABS Initiative, Sabine Zajderman – rapporteur); the team of interpreters (Christian Stenersen, Geneviève Clément, Sarah Rossi and David Neal); and the workshop facilitators, Kathrin Heidbrink and Tarek Nefzi.

Both facilitators, Kathryn Heidbrink and Tarek Nefzi warmly welcomed participants who were asked to stand up when the name of their country was called. By the end of the exercise, Mrs Heidbrink noted that there were forty-six different countries from more than two regions of the world represented in the room and indicated that more were to come in the next few days of the workshop. Participants were then given five minutes to introduce themselves to their neighbours.

Mrs Heidbrink went on to present the five day programme to the participants while recalling the objectives aimed to be achieved by the end of the workshop.

9h50 Key Note Address

- ♦ **Brief history of ABS – ABS, the long road to Nagoya**, presented by Sem T. Shikongo, Directorate of Tourism, Ministry of Environment and Tourism, Namibia.

Discussion Key Points

- The Nagoya Protocol is a negotiated compromise reflecting what could be reached and to be implemented immediately. African countries can go further than the Nagoya Protocol and use the text of the Protocol to their advantage. Africa needs to start now to develop national laws and legislation.
- There is a need for a well-coordinated action to take ABS issues further at national level but also at regional level. African countries need to develop a strategy for implementation, work together and be united across all Africa so as not leave any other country behind.
- States have sovereign rights over their resources. Therefore, it is critical to inform governments appropriately. Proactive awareness raising at local level is crucial as well as the continuous education of ministers. As laws are constantly evolving, work of revising these laws and educating ministers will need to be an on-going process.
- As far as constructive ambiguity is concerned, we cannot all see things the same way. However, we must put things in context as much as possible to find the best way to implement the Nagoya Protocol.

11h00 Tea/Coffee Break

11h20 Nagoya Outcomes: “Where are we now?”

- ♦ **An African Perspective on the Nagoya Protocol: “Where does Africa stand? Where are we? How did we get here? Where to go next? ”** Presented by Olivier Rukundo from the Centre for International Sustainable Development Law (CISDL).
- ♦ **A Private Sector View on the ABS Protocol – Nagoya Protocol: Where are we?** Presented by Maria Julia Oliva from the Union for Ethical BioTrade (UEBT).

Questions from the Floor

Where do we start to implement the Nagoya Protocol?

First, by signing and ratifying. Then, by implementing the Nagoya Protocol and putting in place national policies and legislation in each country with considerations to local circumstances. The African Model Law could be used as a starting point at local level in order to emphasise a certain harmonisation/ homogeneity between regions and sub-regions.

What about the intellectual property rights (IPRs) with reference to disclosure requirements especially when it comes to innovation? Could you clarify the disclosure requirements for innovation?

IPRs was a key issue during the negotiations, notably as regards to disclosure requirements which would create an obligation to disclose certain issues such respect for Prior Informed Consent (PIC), Mutually Agreed Terms (MAT), source in applications for intellectual property rights – there are nuances but the African Group broadly favoured the introduction of a requirement at the formal stage of a patent application. The argument was that non-adherence to this disclosure requirement would automatically lead to a hold in the processing of the application until the situation is remedied.

The presentation highlighted that there was a need to formulate legislation for an ABS International Regime. The presenter argued that his concern pertains to understanding how the Nagoya Protocol can help countries in their development efforts?

There is a moral obligation to share benefits arising out of the continuing uses of GR. A checklist of the various stakeholders should be added.

Was the Nagoya Protocol initiated by the African countries to protect their resources or by the developed countries?

It was initially requested by developing countries during the Rio Summit in 1992 to address the need for an international regime on ABS to protect their resources and to get a fair return out of their utilisation.

Could this protocol become more of an impediment than an advantage for African countries and the management of their GR? Too many laws might hamper on the protection of GR?

The Nagoya Protocol is an international agreement; however it is up to each country to define for themselves their measures, their policy and strategy for the valorisation of GR and benefit sharing. Obligations established in the Nagoya Protocol do not have effect if not put in national legislation and reflected in national regulatory requirements (PIC, MAT, etc...)

Reinforcing national focal points for the implementation of the Nagoya Protocol and related capacity building efforts would be useful but it is difficult to mobilise stakeholders and relevant partners as well as the financial means. How can we do this?

We can coordinate at continental level and agree on terms in every African country. It is important that we implement what we agreed upon in Nagoya through national legislation as it saves and protect our interests. Additionally, the ABS Initiative is putting in place mechanisms to support the implementation of the Nagoya Protocol.

There is a real need for the private sector/companies to address access and benefit sharing. What can we do to attract the private sector?

Providing legal certainty is important. There is also a need for a proactive participation of governments to support collaboration.

13h00 Lunch Break

14h30 Exchange of Local Experience – Introduction to the Argan Case

- ◆ **History and Management of the Arganerie**, presented by Salwa Elantray, High Commission for Water and Forests and the Fight against Desertification of Morocco
- ◆ **History and Options for the Valorisation of Argan, including Research Aspects with Reference to the IPR**, presented by Prof. Zoubida Charrouf from the university of Mohamed V-Agdal, Rabat, Morocco.
- ◆ **Research and Product Development based on Argan Production**, presented by Charlotte d'Erceville from Cognis.

Questions from the Floor

Are men involved in cooperatives?

Cooperatives only involve women. The Argan oil production was traditionally women's work. Recently, they organised themselves in cooperatives. Though cooperative members are only women, they can hire male employees, generally for picking fruits.

Could you tell us where are invested the benefits generated from the partnership you described in the presentation?

If benefits generated by the partnership (cooperatives, NGOs, rural communities, ministers and other institutions), they are reinvested in the sustainable development of the Argan forest. The challenge is to find a balance between human activities and development and the sustainable use/conservation of the Arganerie.

Was the overall situation (i.e. local development and conservation of the Argan tree) improved by all the measures implemented? Was ABS beneficial?

Positive outcomes resulted from the implementation of the ten year Arganerie sustainable development programme. This programme includes a participatory approach that facilitates awareness raising among the local communities. As far as the Nagoya Protocol is concerned, this is too early to say if there is any positive result or improvement.

Considering climate change, could the Argan Tree play a particular role? Could the Argan tree adapt to tougher climate conditions?

The Argan Tree could play a very important role considering climate change. It only grows in semi-arid areas. It is a very tough and water resistant tree which can grow with temperatures of up to 50 degrees. The Argan tree is also a natural wall against diversification.

Are there any financial impacts on the local communities?

The utilisation of the Arganerie is well organised and does generate benefits. The State also contributes through subsidies.

What is the level of knowledge of the ABS amongst women?

There is no knowledge of ABS unless women are in contact with industries or researchers.

How can local communities benefit from research when researchers leave the communities when their onsite research is done?

This is not the case here but I admit that this can happen.

Who is paying land taxes?

The Arganerie has a particular status. The land belongs to the State but residents/local communities have the right to perpetual usufruct.

Who does apply for patents?

There are more than forty different patents on Argan and related by-products – Pierre Fabre, Cognis, etc...).

To qualify for a patent, there are various criteria to follow such as novelty and innovation, etc. What is Cognis patent related to?

Cognis patent is on cosmetic use.

How does Cognis react to the ABS? How does Cognis deal with the sharing of benefits?

The Nagoya Protocol will be implemented through national laws and other related ABS measures. Cognis will have to reflect on these laws throughout their partnership agreements. Cognis operates on the percentage of purchase not on benefits.

The Argan Tree is disappearing but no organisation is planting them, why?

Yves Rocher received a price from Morocco for planting trees. Cognis used to have a nursery but the project was stopped due to a lack of skills and knowledge of the Argan tree and the maintenance of plantations.

Do all research and extractions happen in Morocco?

Argan oil is extracted in the cooperatives in Morocco. Other extractions are done in France. Cognis is exporting Argan leaves. Cosmetic organisations do not import that much. Supply/production chains are used by various importers.

Why entering into a partnership with Prof. Charrouf? Why is the State absent in the value chain? Where does this partnership leave the communities?

Cognis met with a team of researcher and Prof. Charrouf and entered into a partnership.

Additional Comment from the Floor

Globalisation could be added to the constraints listed in the presentation such as climate change, urbanisation, etc... Globalisation has put additional stress on the Argan tree. Some research are being done around 'domesticating' the Argan Tree with a view to saving Argan forests as the Argan tree is slowly disappearing.

16h25 Tea/Coffee Break

16h45 Formal Opening Speech by Host Country

Officials were introduced to the audience. They, in turn, welcomed the participants to the Fifth Pan-African ABS Workshop starting with the representative of the host country, Morocco:

- Mr Jamal Mahfoud, on behalf of the State Secretariat of Water and Environment, Environment, Morocco

- Dr Balakrishna Pisupati, representative of the United Nations Environment Programme (UNEP), Head of Biodiversity, land and Governance, Programme with Division of Environmental Law & Conventions based in Nairobi, Kenya
- Dr Silvia Morgenroth, representative of the German Embassy, Cooperation Advisor to the Federal Republic of Germany, Rabat, Morocco
- Mrs Bente Herstad, representative of the Norwegian Agency for Development Cooperation (NORAD), Head of Department for Private Sector Development and Environment, Norway.
- Mrs Rajae Chafil, representative of the Institut de l'Energie et de L'Environnement de la Francophonie (IEPF/OIF), Project Manager, International Negotiations on Environment and Sustainable Development, Quebec, Canada

Mrs Heidbrink thanked the officials and invited them to join the audience for the last exercise of the day.

17h20 Preparation of the Field Trip to the Arganerie Biosphere Reserve

Pierre du Plessis, from the Centre for Research Information Action in Africa Southern Development and Consulting (CRIA, SA-DC), Namibia and Susanne Reyes-Knoche from the ABS Initiative, Germany introduced the four topics for observation regarding the Argan case study for the field trip planned the next day. Participants were advised to pay attention to everything they will see in relation to the four topics. These topics were as follows:

1. Intellectual Property Rights (IPRs) and the use of Traditional Knowledge (TK)
2. Resource Management and Benefit Sharing for Conservation and Sustainable Use
3. Supply Chain Management and Market Development
4. Innovation, Research and Product Development

The participants were asked to pick a topic and to form eight groups: four Anglophone groups and four Francophone groups and put their names on the board associated to the topic chosen. Then, each group was given a series of questions for each topic to use as a guideline for information collection during the site visit.

End of Day one

Day Two:

Field Trip to the Arganerie Biosphere, Essaouira Province of Morocco

The field trip started by the visit of the Traditional Cooperative of Attadamoune. Participants were divided in two groups (French/English) and encouraged to gather as much information as possible. At the end of the visit, participants were invited to taste various Argan based food products and buy Argan oil and other Argan based cosmetics while observing and questioning women from the cooperative cracking Argan nuts and hand pressing them to obtain oil.

The field visit continued to the second site; the Mechanised Cooperative of Ajddigue in the rural community of Tidzi. The participants formed the eight original groups (four English groups/four French groups) and went on a guided visit of the second cooperative.

It was noted that in the traditional cooperative oil's production was far more limited than in the mechanised cooperative. The latter was also buying fruits from other sources in the region beside its own fruit production. From a production of 50 000 litres of oil in 2000, the Cooperative of Ajddigue increased to 18 tonnes in 2010.

The field trip was concluded by a Panel Discussion session which took place in the Dar Souri Meeting Room in Essaouira. Participants were encouraged to ask questions to the Panel Members, active players in the Argan industry.

The Panel Members were as follows:

Suhel al-Janabi (Moderator)
Charlotte d'Erceville, Cognis
Prof. Zoubida Charrouf, University of Rabat
The Regional Director of High Commission for Water and Forests and the Fight against Desertification of Morocco
Ahmed Skim, CBD Focal Point in Morocco
Representative of the Mechanised Argan Cooperative

Discussion Key Points:

- The Argan(*Argania spinosa*) industry in short:
 - The Argan Tree population – 8 to 10 meter high, endemic to Morocco, some estimated to be between 150 and 250 year old – covers approximately 800,000 hectares in south-west Morocco, 250 trees per hectare in the Atlas region and around 40 trees per hectare in desert by the Guelmim region (Anti-Atlas)
 - Loss of 600 hectares per year since the beginning of the last century
 - 2 500 to 4 000 tons of oil per year is produced
 - A tree produces between 10 to 30 Kilos of fruits per year
 - A litre of oil represents around 38 of fruit or 2,6 kilos of almonds
 - A litre of oil represents 20 hours of labour in a traditional cooperative against 16 hours in semi-mechanical cooperative as the cracking is still done manually and represents 70% of the labour.
 - An estimated 2000 people are working in the Argan sector
 - Around 30 recognised women's cooperatives have been established
- The use of ABS principles is still very new in Morocco. Resource management and conservation is done by various ministries and various sectors which all follow their own strategy. It is, therefore, quite challenging to develop a common approach and strategy for ABS implementation. The approach is along these lines:

- Prior to the adoption of the Nagoya Protocol, setting up of working group (government members, researchers, students) to reflect on an ABS implementation roadmap.
 - Following the adoption of the Nagoya Protocol, the ABS implementation roadmap will be updated especially as regards to all matters pertaining to administration and legislation. Any information will be simultaneously communicated to all stakeholders, including women cooperatives. Most stakeholders should be involved through consultation and inputs.
 - Project proposal just signed with the GEF to provide support for ABS implementation.
 - In the interim period, current national measures still apply.
- There is a non-monetary benefit agreement between Cognis and the community working. The establishment of the first women cooperative was associated with the set-up of a NGO and a series of development/training projects such as literacy, management of cooperatives, new extraction methods, support on product quality management, traceability, etc... The outcomes were received positively.
 - Cognis is waiting for the ABS legislation to be in place for more guidelines on how to amend its monetary and non-monetary policy.
 - Women prefer to work in cooperatives for a smaller salary rather than in nurseries or farms. It is a matter of dignity. They feel respected.
 - Women own the cooperative and share amongst themselves any benefits at the end of the year.
 - Sustainable development, roles and responsibilities of the Arganerie are established in a ten year programme. The HCEFLCD works very closely with the rural communities who have usufructuary rights. Any proposition is discussed and agreed with them. However, all matters relating to conservation are dealt with by the HCEFLCD.
 - The vast majority of Argan oil and by products are exported. Locally, these products are mainly sold to tourists as they are too expensive products for Moroccan. However, there are no comprehensive sales and export statistics to refer too.
 - All exported products are controlled by independent certification bodies. Women cooperatives also can have the quality of the oil controlled at a state-owned laboratory.
 - The Argan tree has a very special place in the life of Moroccan people. It represents human and cultural values which are quite complex to explain. The Argan tree cannot be reduced to tonnes and money. There is a human, social and cultural side to it.

The questions related to monetary benefits or percentage of trade going back to cooperatives and property rights/patents were left quite open due to the lack of information. Participants were told that most patents were filed overseas (e.g. Cognis, Pierre Fabre, etc...).

At the end of the panel discussion, participants were invited to visit Essaouira and its magnificent port and to later gather for dinner in a picturesque Moroccan restaurant before returning to Marrakech.

End of Day Two

Day Three

9h00 Group Reflection on the Argan Case

Both facilitators, Mrs Heidbrink and Mr Nefzi, welcomed back the participants and introduced the agenda of the day. Prof. Charrouf was warmly thanked for her help with the excursion arrangements.

The participants were asked to reform their field trip groups to discuss further the various topics for observation. They were also asked to compare and synthesise the information collected onsite using the guidance questionnaires provided at this effect. The findings will be then presented and discussed during the second part of the exercise.

10h30 Tea/Coffee Break

11h00 Reporting Back – Group Presentations

Each group designated a spokesperson to present the outcomes of their reflection work. For each topic, groups were requested to present findings that were complementary to the other group's observations rather than have them repeat the same point again, i.e. the Anglophone group will add to the Francophone group's observations and comments and vice versa for the next topic.

Mrs Heidbrink reminded the participants that the main objectives of this workshop were to understand the Nagoya Protocol and how to implement it. Hence, such an exercise will provide a good sense of the difficulties and opportunities as well as constructive reflections and inputs on how to approach the ABS implementation process.

1. IPRs and the use of TK

- What are the traditional uses of Argan? Who are the holders of this TK?
 - The holders of this TK are the traditional people.
 - The traditional uses of Argan are as follows: firewood, fodder, cosmetics, food, medicine for stomach pain and constipation, dry scalp and skin, construction industry (hard wood). It was also highlighted that the Argan tree provided a cultural, spiritual and social well-being and contributed to social change in rural communities.
- What conventional IPRs (patents, trademarks, etc...) have been established over Argan uses? Who owns this Intellectual Property (IP)?
 - The situation is not very clear regarding IPRs. Patents are mostly foreign owned (e.g. Cognis, Pierre Fabre...). Not all patents are publicly known. However, innovations are based on TK.
 - Geographical indication exists.
 - Traditional people are not participating in the negotiations.
- How does the conventional IP relate to the TK? What arrangements, if any exist for benefit-sharing on IP with TK holders?
 - The conventional IP is not related to TK.
 - Benefit sharing arrangements exist sometimes but are neither formalised nor clear.
 - Communities are not getting adequate and equitable benefits.
 - Salaries are lower than the usual daily average wage.
 - It is essential to move from Corporate Social Responsibility (CSR) to TK/rights-based benefits.
 - Community involvement in negotiations is essential.

2. Resource Management and Benefit Sharing for Conservation and Sustainable Use

- How is the Argan resource traditionally managed and used to ensure its conservation?
 - Initially, the Argan was a resource traditionally managed with no real conservation systems in place apart from a natural regeneration of the resource.
 - Traditional users have usufructuary rights: firewood, oil for household, animal feed and picking fruits for income generation.
 - The Argan tree is a cultural pillar for local community before being an economic and social force for change.
- Has this management system been changed in response to modern commercial uses? How?
 - Management system has changed to some extent e.g. onset of seedling production and a gradual involvement of the state over the years with the recent implementation of a ten year programme for the sustainable development of the Arganerie combined with local community development to prevent the decline of the Argan resource.
 - Since 1998, creation of women cooperatives and involvement of various NGOs (capacity building activities/non-monetary benefits).
 - Introduction of mechanised form of processing.
- Does benefit-sharing play a role in determining resource management practices? How?
 - Generally speaking, benefit-sharing facilitates capacity building and resource management practices at different levels (e.g. national level – non-monetary, community level – cooperative, monetary) which in turn improve lives of rural/local communities.

3. Supply Chain Management and Market Development

- Who organises the harvesting and supply of Argan raw material? Why these particular value-chain actors?
 - Harvesting or supply of Argan is done by resident families (usufructuary rights) and women cooperatives. However, harvesting and harvesters are not formally organised.
 - Supplies are not regulated at all (approximately 15/20% women cooperatives and 80/86% middleman – no existing data to refer to).
 - Traditional gender role – empowerment of women cooperatives.
- Who extracts the oil, refines it and markets it to downstream users? Why these particular value-chain actors?
 - Women are the main actors in oil extraction (at home or traditional/mechanised cooperatives).
 - Argan oil is mostly refined overseas. There is no technology or resources to do certain technical procedures in Morocco. Much of the value addition is therefore created outside Morocco which is not an ideal situation.
 - Other value-chain actors are women cooperatives, NGOs and private sector and foreign companies).
 - Marketing is done by all value-chain actors and addresses various markets – local, national and international (Cognis and other companies).
- Are these same people or organisations responsible for final product development and marketing, Why/why not?
 - Women are less involved in end products especially when it comes to elaborate cosmetic products. However, beside private companies, various economic interest groups do seem to be involved in the development of end products.

- The amount of benefits returning to the communities was not clear.

4. Innovation, Research and Product Development

- Who developed/develops modern or new uses for Argan? Why?
 - What was observed onsite was not product development but amelioration of traditional techniques.
 - Women cooperatives, local partners (e.g. NGOs), research partners and local universities, private sectors and foreign companies developed/develops modern or new uses for Argan.
 - Although some research is being done by a Moroccan university, research and development is mostly done overseas by foreign companies
 - Argan resource conservation, valorisation of Argan through the diversification of its use, availability of TK, academic curiosity and prospect, commercial interest/new market shares, better social and economic conditions, better incomes and increase profits
- What research was/is required before modern or new uses could/can be brought to market?
 - Basic research on the Argan tree, applied research on Argan oil and related by products – specification/composition, search for active ingredient, safety and toxicity for users, formulation and stability, clinical efficacy, quality and traceability, and commercial viability
- How is this research and development related to the development and marketing of final consumer products?
 - Confirmation of the virtues of Argan/products' specification/composition and transferred somehow to the consumers including TK.
 - End product valorisation.
 - Additional information for marketing/market development.
 - Transfer of technology package.
 - Produce the Argan resource in a sustainable way.

Additional Observations

- ABS was not considered in the sale- strategies of the cooperatives.
- Who makes the cosmetics sold at the mechanised cooperative?
- Regarding resource conservation management, two laws were passed. First in 1912 and then in 1925. Rural communities did have usufructuary rights. However, resource conservation management was the responsibility of High Commission for Water and Forests and the Fight against Desertification. After some social conflicts and climate issues, this legislation was amended and compelled rural communities to resource conservation management.

12h30 Lunch Break

14h00 Analysis and Lessons Learnt (from the Argan case and other cases)

Panel Discussion:

Mr Nefzi welcomed the participants to the second part of Day Three. A short exercise on language diversity demonstrated the impressive result that more than twenty-seven languages were spoken throughout the room.

Dr Andreas Drews, moderator of the Panel Discussion session, introduced the five panellists who were invited to reflect on the Argan case and other cases they experienced with reference to ABS issues and the Nagoya Protocol:

Ahmed Birouk, Professor of Genetic Resources at the Hassan II University of Agronomy and Veterinary Medicine, Morocco, member of the National Biodiversity Committee of Morocco, formerly delegate of Morocco at the CBD COP and SBSSTA as well as at the FAO Commission for Plant Genetic Resources for Food and Agriculture, followed the ABS Process at international level.

Pierre du Plessis, Senior Consultant, Centre for Research Information Action in Africa Southern Development and Consulting (CRIA, SA-DC), Namibia and key negotiator for the African Group.

Dr Rachel Wynberg, Senior Lecturer and Deputy Director, Environmental Evaluation Unit, University of Cape town, South Africa and author of numerous publication on ABS.

Dr Gemedo Dalle, Director of Genetic Resources, Transfer and Regulation Directorate, Institute of Biodiversity Conservation, Ethiopia and ABS National Point for Ethiopia.

Fernand Gbaguidi, Head of Pharmacognosy Laboratory – Director of Scientific Research, Benin, expert for the Minister of Health for the Certification of Medicine based on Plants and APA Committee Member of Benin.

When considering the research and development done by Cognis and the use of Argan oil as a commodity, how can we differentiate trade, biotrade and ABS?

Mr Pierre du Plessis highlighted that there was a continuum in the use of natural resource. It was therefore essential to reflect on what the Nagoya Protocol says, more precisely Article 2 of the Protocol. Mr du Plessis stressed that it took a very long time to produce this work. There was a lot of misconceptions about what ABS was about and a bad understanding of the CBD. ABS will happen on the basis of MAT. He then stated that the Argan case was somehow comparable to the Amarula case. However, according to Mr du Plessis, the Argan oil was not an ABS case. It was more a biotrade case as it increased the value of the resource and production. He stressed that Argan oil was common knowledge. Mr du Plessis concluded by highlighting the importance to implement national regulations and to establish in any case PIC and MAT agreements.

Research as key component of the ABS, a research perspective – a case from Benin.

Mr Fernand Gbaguidi confirmed that the Nagoya Protocol will bring more clarity. Referring to a research case quite similar to the Argan case, Mr Gbaguidi indicated that on one hand researchers were under a lot of pressure to publish. On the other hand, they were encountering numbers of limitations in their research. There is a need for change. In Africa, research means are quite limited which often leads to partnership with overseas research centres, institutes or universities. This is when generally problems arise. Here, ABS implementation is necessary. It is essential in applied studies in Africa and overseas.

ABS Legislation – A case from Ethiopia

Dr Gemedo Dalle informed the audience that ABS legislation had been implemented in Ethiopia prior to the adoption of the Nagoya Protocol but, it seems, in a legal vacuum. With reference to the Teff case, he stressed that legal provisions were of no use if either both parties or one party did not respect the terms of the agreement. Dr Dalle was confident that the Nagoya Protocol will help substantially to avoid these issues.

Lessons Learnt – Hoodia and Umckaloabo (Pelargonium) cases from South Africa

Dr Rachel Wynberg presented the Hoodia case as one of the most famous biopiracy cases. She specified that when the patent was filed the San People did not know about it resulting in a lot of political tension about what the San People could ask for despite the non-existence of the PIC in this case. As for the Umckaloabo case, she informed the audience that the Schwabe's pelargonium patent had just been removed. However, she went on, for years no compensation had been given to the communities. The first lesson learnt from both cases is that one does not have to wait for national ABS laws to start implementing processes. Second, it is important to stress that often various communities use the same natural resources. Similarly, TK is often shared by different communities and this must be reflected in any agreement.

Importance of implementing appropriate legislation. How to move forward? – A case from Morocco

Prof. Ahmed Birouk stated that in Morocco, sectors were managed separately under various but complementary ministries. ABS legislation was therefore quite difficult to implement. He went on to say that generally speaking, ABS implementation does not have to be that challenging. Indeed the implementation process could foster a more practical management of these various sectors. He noted that the Argan case was a very interesting and well-documented case that could provide valuable guidelines. He then advised on the following:

- The need for more information and awareness raising.
- The importance for the various sectors and ministers to work together for a better coordination of the ABS implementation process.
- The significance of listing all existing GR to improve legislation.
- The setting-up of a think tank where all active players/stakeholders could exchange and design a comprehensive and practical framework for implementation.

Points raised by the Plenary

- The importance of a fair and equitable share of benefits i.e. a fair reward for the stewardship of a GR and associated TK.
- The existence of a grey area related to TK associated with GR as not mentioned in the Nagoya Protocol despite the importance TK plays in the use of GR. Therefore, it is a prerequisite to always keep an African perspective on this specific issue and to always link TK to biodiversity, GR and conservation.
- The lack of a structure/proper framework when companies are willing to share with the local communities
- The crucial need to standardise conservation procedures when considering GRs that are helpful to cure diseases such as cancer, especially if this resource is threatened. The implementation should be easier and simple for the benefit of all parties. Access to genetic material will also have to be regulated. If such GRs are blocked, it is crucial to be able to demonstrate their specific and unique qualities.
- The importance to raise awareness among scientists/researchers who have a key informative role in terms of GR specifications, composition and uses but are generally not well aware of ABS. Indeed, researchers and laboratories should address ABS requirements because the provision of the Nagoya Protocol provides access to GR.
- The importance to make known the value of indigenous and local communities (ILCs), their GR and TK when implementing the Nagoya Protocol
- The difficulty of obtaining a PIC when commodities are widespread across communities. Identifying the ownership of GR or TK is easier when countries are organised. Members of government or NGOs could facilitate the process as concerns often come from letting private companies alone doing this process. The use of Bio-Cultural Community Protocol (BCP) could ease this process.

- The challenging and delicate process of reviewing patents obtained before the Nagoya Protocol. Hence the significance to forward every single related input to WIMPO. Regarding the Argan case – not Argan Oil, it might be beneficial to try.

Additional Points raised by the Plenary regarding Argan as an ABS Case

During the plenary question and answer session subsequent to the panel discussion, some participants raised some concerns and requested more clarifications on the reasons why the Argan oil could not be considered as an ABS case. Some compared it to the Hoodia case. Others drew the attention on the Arganerie and the Argan tree. How to apply in these cases a fair and equitable sharing? Additional interests were expressed on the fact that if the Argan was a trade case and not an ABS one, how was it possible to ensure the protection of GR that constitute Moroccan biodiversity?

The following points are addressing these remarks:

- Initiate retrospectively a fair and equitable sharing of benefits to the Arganerie would simply be a very difficult process.
- Compare the Argan to the Hoodia case in this specific instance is not appropriate. TK is not quite clear about Argan. The Hoodia case is very particular and unique in terms of effects as opposed to oil which is quite mainstreamed. It is actually quite a different business case. The Hoodia market has not been successfully developed, it is currently totally dormant. However, there is a market for Argan oil.
- If Argan is a trade case, ensuring the protection of GR appears to be a big loophole in the Nagoya Protocol which needs to be covered by national legislation. Hence the importance of establishing PIC agreements.
- We have to be very careful when saying that Argan is not an ABS case. For any access to GR, it is essential to make sure that benefits are shared equally and conservation done appropriately. Indeed a part of Argan falls under ABS.

16h45 Tea/Coffee Break

17h00 Interim Reflection

Defining Key Insights and Open Questions so far

The participants were asked to meet in groups of three people and take 20 minutes to reflect on the most interesting insight on ABS implementation so far. They were also asked to identify throughout their discussion an important question left unanswered and to put it up on the board prepared for this effect. These questions will be answered later during the workshop.

End of Day Three's Programme

End of Workshop for most Business Representatives

Day Four

9h00 To Dos in ABS Implementation

Introduction of Eight Major Fields of Action in ABS Implementation

Group Work: Development of a Checklist – To Dos for each Field

The fourth day of the workshop started with a group exercise. The participants were divided into sixteen groups of maximum six people. Each group received a worksheet and was asked to list five or six points for action for the development of a checklist. Mr Pierre du Plessis introduced the eight fields of action, summarising brief guidance questions that participants could find on their worksheet:

1. Ratification/Implementation
2. Defining overall ABS policies/strategies
3. Putting in place domestic ABS legislation
4. Stakeholder identification and analysis
5. Establishing institutional arrangements, including Competent National Authorities (CNA)
6. Dealing with TK
7. Dealing with transboundary issues (TK, GR, Research....)
8. Valorisation strategy

Additional Remarks:

- Importance of identifying all stakeholders especially businesses. Each country has to enact its own policies, strategies and partnerships with regard to its own specific biodiversity and TK. Countries should be proactive in looking for partnerships as opposed to wait for people to come to them and passing by interesting partnerships.
- Importance of communication:
 - A press release has been done prior the beginning of the workshop by the German Embassy. It was proposed to the participants, if they wished, to set up a team of drafters to produce a declaration by the end of the workshop.
 - Establishment of a communication strategy to coordinate the circulation of information across all African countries.
 - A communication toolkit is in process (ABS Initiative and the SCBD).
- Importance of developing a long term strategy that includes the strengthening of current legislations or the development of first set of legislations for ABS implementation. The 1969 version of the African Convention on the Nature and Natural Resources is a good starting point as very closed to the Nagoya Protocol. One could also refer to the forty protocols/conventions already in place within the African Union.

The participants were invited to put their findings on the relevant boards scattered throughout the room.

11h20 Tea/Coffee Break

11h00 Reporting Back

Mrs Heidbrink welcomed back the participants and congratulated them for their impressive work on the To Do lists. As opposed to presenting their findings, she proposed that participants break up into their groups and consult each board and add missing items which they felt were relevant for each field of action. She then introduced the team of volunteers who had offered to coordinate the drafting of a synthesis of all findings per field, in both English and French. Mrs Heidbrink stressed that this would not be an official document yet but a working

document to be used as tool for assessing what has been done or should be done in participants' respective country in terms of ABS implementation.

12h30 Lunch Break

14h00 Process of ABS Implementation: National/Regional Experiences

- ♦ **ABS Implementation Process – the COMIFAC's Experience**, presented by Chouaïbou Nchoutpouen, Biodiversity and Desertification Manager, Executive Secretariat COMIFAC (Commission des Forêts d'Afrique Centrale), Cameroon.

Discussion Key Points

- The COMIFAC Model is related to the African Model Law. In terms of ABS implementation, there is no sub-regional legislation but a sub-regional strategy aiming to harmonise national legislation.
 - In terms of funding:
 - Request an allowance from each region or country to support the ABS implementation process i.e. a percentage of GEF allowance for each country/region.
 - Request funding directly to GEF only to support the ABS implementation process.
 - Important and challenging task of involving ILCs in the ABS implementation due to the fact that most of them are nomad people.
 - Importance of maintaining national focal points which is a difficult task as ministers change all the time
 - In order to replicate the COMIFAC Model:
 - Awareness raising, especially for politicians, lobbying and fund raising.
 - Communication is essential.
 - Circumstances and experiences are different for each country. Therefore, it is essential to do a baseline study/inventory in each country before starting developing a strategy.
- ♦ **The Issue of Bio-Trade and Bio-Prospecting in Namibia: An Analytical Overview**, presented by Sem T. Shikongo, Directorate of Namibia, Ministry of Environment and Tourism, Namibia.

Discussion Key Points

- Members of the Bio-Trade Working Group are Ministers of Tourism, Agriculture, Academia, and others – they are looking at each situation at hand.
- Permits are granted by Ministers then they are channelled to the Bioprospecting Committee. The Committee will indicate if it relates to ABS, bioprospecting or just research and accompanying mandate in Namibia.
- Income generated goes into a fund and it is used for different projects on various issues.
- Namibia started to study ABS related issues early on but waited a little while before moving ahead with a legislation. Indeed it was very beneficial to do this work in process as there were very little amendments to do to the legislation already enacted.
- Importance for countries to understand that it is their cause to raise awareness on what is biodiversity – be creative and innovative in the way you convince people. Namibia mandated the writing of a little book. However, popular posters were made. This proved to be more effective.
- In terms of capacity of local communities and their involvement in the negotiations, it would be naive to let communities negotiate on their own. However, we should increase their knowledge on these issues to make them aware of their rights as much as possible.

- Sharing expertise and experiences is the way to go for Africa so Africa will not need support from outside expertise.
- ♦ **Bioprospecting, Access & Benefit Sharing in South Africa**, presented by Carina Malherbe, Department of Environmental Affairs, South Africa.

Discussion Key Points

- In terms of users, legislative measures are in place. In South Africa, there are different levels of authority, the national, the regional and the provincial. The various levels of authority have their own competencies but they are all complementary. The Bioprospecting Expert Group is therefore constituted from representatives of all the regions.
- The signature of the Minister is necessary and addresses SA legislation. The minister is accountable for signing – analysis and recommendations are provided but the Minister has the last decision.

16h30 Tea/Coffee Break

16H45 Plenary – Response to Open Questions from Interim Reflection on Day Three

Participants' questions were clustered in various categories: support & financing, implementation, utilisation, ILC/TK, no ABS, CEPA (Communication, Education and Public Awareness), coordination, taxonomy, ABS/conservation, research, business and cloud questions/statements. Various questions had already been addressed during the two previous days while others will be attended the next day, last day of the workshop.

Key points:

- Support & financing: it should be driven by the African countries themselves. Donors and a Global Environmental Facilities (GEF) representative are in the room.
- Implementation/conservation/coordination: a delicate balance, with consideration to each country's circumstances, has to be found between ABS, conservation, sustainable use and the different stakeholders until ABS International Regime is implemented.
- Utilisation: dialogue with potential users where you can either decide to stay within fair Trade principles or draw an agreement within the Nagoya Protocol.
- CEPA: implementation of awareness raising strategy.
- Taxonomy: inventory of TK and species is essential.
- Research: when considering research, ABS and valorisation, most solutions would be case specific.

Parallel Session: Drafting Committee in charge of summarising, consolidating a Priority Checklist / To Dos (open end)

End of Day Four

Day Five

9h00 National/Regional Assessments: Status of Implementation and Capacity Building Requirements

Drafting Committee's Feedback on Checklist / To Dos

Both facilitators welcomed the participants to the last day of the workshop and invited Mr Olivier Rukundo to present the synthesis of the To Dos/Checklist done by the drafting group.

Mr Rukundo reminded the audience one more time that this synthesis was still a working document as well as a tool to be adapted by each country's circumstances and use in the ABS implementation activities. The idea was to be able to assess how this tool could be used by all countries in the short term. He then commented on each point of the consolidated To Dos/checklist.

It was also noted that it was possible that in some countries, a priority simply does not fit in any of these categories. In such a case, the participants were asked to just add it on the template as at this stage, there was a need for a common action plan and therefore common priorities.

10h00 Participants analysis of implementation status in their own country (based on consolidated Checklist) and list 3 priorities for capacity building

Participants were asked to take a look at this form which identified countries and to tick where appropriate to reflect the situation in their respective countries. The participants were then instructed to give back the form for a first assessment analysis of each country's situation vis-à-vis the ABS implementation process.

10h45 Tea/Coffee Break

11h15 Financing ABS and other ABS related Programmes and Research

- ♦ **ABS Initiative Draft Work Plan for 2011** by Dr Andreas Drews from the ABS Initiative for Africa.
- ♦ **The Collaboration of the ABS Initiative with the Fridtjof Nansen Institute (FNI) 2009 – 2011**, presented by Morten Walløe Tvedt, Senior Research Fellow at FNI, Norway.
- ♦ **ABS at the Global Environment Facility (GEF)**, presented by Jaime Cavelier, Programme Manager, Natural resources Biodiversity of Eastern and Southern Africa Biosafety and ABS Worldwide at the GEF, USA.
- ♦ **European Union (EU) actions for CBD (ABS)**, presented by Simon Legrand, European Commission, Belgium.
- ♦ **The African Union position in brief** by Mahlet Teshome Kebede, African Union Biosafety Unit representing the African Union Commission.

Mrs Mahlet Teshome Kebede informed the meeting that the African Union Commission, in considering its mandate, will support projects on ABS implementation. She reported that the African Union wanted to play a more proactive role in supporting member States in the implementation of the Nagoya Protocol the work that has been done so far as well as all collaborations.

- ◆ **The IUCN in brief** by Sonia Pena Moreno, Policy Officer, Biodiversity, Global Policy Unit, IUCN, Switzerland.

Mrs Sonia Pena Moreno provided the audience with a brief overview of the various current projects of IUCN Biodiversity Global Policy Unit:

- Proposal for an explanatory guide for Nagoya Protocol, article by article – first draft planned in June 2011.
- Collaboration with the CBD Secretariat on the revision of the strategic plan.
- Communication, education and public awareness to find the best tools for communicating ABS.
- Training and needs assessment regarding capacity building needed for ABS.

Discussion Keys Points

- Norway is the first European country to enact an ABS legislation, however no single court case has taken place in twenty years
- GEF funds are allocated per country. The funds are used as each country decides
- GEF is all about co-financing. The access for ILCs is on small grants basis
- In order to make the GEF grant application process less tedious and frustrating, it is advised that applicants reflect the number of activities in a meaningful way. The simpler it is, the less paperwork. There is a ten business day period to reply each application. Each project will have to be finalised in eighteen months.
- The EU is discussing with the New Partnership for Africa's Development (NEPAD). NEPAD is an African Union programme. The EU has more contacts with the African Union.
- Any advice or suggestions regarding calls for proposals are welcomed. Applicants are encouraged to contact and inform the EU about their positions.
- The African Union could be more proactive in matters related to ABS as opposed to be passive.
- The explanatory guide for Nagoya Protocol will be a combination of inputs, interpretations, comments and with various perspectives and angles and not just an environmental lawyer's outlook.
- It is important that any guide to the Nagoya Protocol captures the history of the negotiations as it will give an insight as to why so and so was written and why in that or this way. African negotiators should provide their inputs to such a guide to create more democracy.

13h30 Lunch Break

14h30 Feedback and Outlook

Mrs Heidbrink informed the participants that thirty four countries participated in the assessment exercise. Data were put into spreadsheets and graphics were prepared to show and comment on by the participants.

Feedback on Country Assessments – Analysis of Morning Exercise

Mr Suhel al-Janabi introduced the results by stating that statistics were extremely enlightening.

The results were gathered in eight clusters corresponding to the eight fields of action. Graphics and statistics were reflecting the average of the thirty four countries as follows:

- Cluster n°1 – Ratification/Implementation showed that strengthening of political will was a process that had started in various countries. Average

political momentum created but no involvement of parliament to move forward the ABS implementation as yet.

- Cluster n°2 – Defining overall ABS Policies/Strategies showed that most countries were at the very beginning of defining an ABS policy and strategy.
- Cluster n°3 – Putting in Place Domestic ABS Legislation indicated that African countries are moving towards developing a domestic ABS legislation. Some legal requirements might be in place in some countries but not in others.
- Cluster n°4 – Stakeholder Identification & Analysis told the audience that all countries had started identifying stakeholders, roles and responsibilities. All countries had taken off and set up means on how to engage with stakeholders.
- Cluster n°5 – Establishing Institutional Arrangements confirmed that most focal points were in place and that very few countries needed the setting up of one focal point.
- Cluster n°6 – Dealing with TK showed that countries were more or less dealing with TK issues and that these processes were just starting. It also looked like there was a potential to learn from a couple of countries which had already established processes.
- Cluster n°7 – Dealing with Transboundary Issues pointed out some first activities around transboundary issues but very seldom implementation strategy exchanges stressing that there was still a lot of work to do in this area.
- Cluster n°8 – Valorisation Strategy showed that valorisation strategy had recently started. A handful of countries seemed to have started with identification of market opportunities.

Capacity Development Priorities

- Cluster n°1 – Ratification/Implementation strongly pointed out that taking the necessary measures to ensure the ratification, approval and implementation of the Nagoya Protocol is the main priority.
- Cluster n°2 – Defining overall ABS Policies/Strategies highlighted a strong need for institutional reinforcement (more than 10 countries). Developing a communication was the second main priority.
- Cluster n°3 – Putting in Place Domestic ABS Legislation showed that at this stage priorities are set to ratifying and communicating the Nagoya Protocol despite the fact that in future African countries will need a lot of assistance in the design, adoption and subsequent implementation/enforcement of ABS legislation.
- Cluster n°4 – Stakeholder Identification & Analysis pointed out that creating awareness about ABS among identified stakeholders was a strong priority (CEPA for ABS for stakeholders involved).
- Cluster n°5 – Establishing Institutional Arrangements informed the audience that as in Cluster n°3 priorities at this stage are different.
- Cluster n°6 – Dealing with TK indicated that there was a lack of capacity in identifying and documenting TK. The second priority related to enhancing awareness and build capacity of communities, relevant ministries, stakeholders and agencies. Here again CEPA was a priority.
- Cluster n°7 – Dealing with Transboundary Issues showed that only few countries prioritised dealing with transboundary issues at this stage but this result is related on each country's circumstances.
- Cluster n°8 – Valorisation Strategy pointed out that most countries did assess the development of a strategy as a priority.

This was a very first rough but very useful analysis which can be compared with the first 2006 capacity building analysis. Both analyses gave a broad idea of where African countries stand in terms of ABS implementation and where capacity development

processes should happen. These results provided valuable indications where the ABS Initiative needs to focus and provide support.

Remarks from the Plenary

- It is a first snapshot of the ABS implementation process in Africa. This assessment exercise should be repeated by the end of this year in order to evaluate the improvements made by each African country.
- All items are a priority. There might be other interpretations of the results especially when considering each country's particular context. However it was a valuable exercise to indicate where the priorities are in term of capacity building.

The participants gathered for a group picture.

15h30 Workshop Evaluation and Closure

16h00 End of Workshop