

Sixth Pan African Access and Benefit Sharing Workshop

Limbé, Cameroon, 30th January – 3rd February 2012

REPORT

Day One

1. Welcome and Introduction

1.1. Technical Opening

Mrs Prudence Galega from the Cameroonian Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED), Cameroonian Focal Point for the Convention on Biological Diversity (CBD) and Access and Benefit Sharing (ABS), and Inter-sessional Coordinator of the African Group welcomed the participants to the Sixth Pan African ABS Workshop and thanked the MINEPDED and the African Central Forest Commission (COMIFAC¹) for hosting the event and the ABS Capacity Development Initiative (ABS Initiative) for organising it. Mrs Galega introduced the panel of official representatives who, in turn, welcomed and wished a fruitful and productive workshop to all the participants:

- **Mr Chouaïbou Nchoutpouen**, from the Executive Secretariat of the COMIFAC, Cameroon.
- **Dr Andreas Drews** from the ABS Initiative, Germany.
- **Mr Denis Salord**, Head of Unit of Centralised Operations for the African, Caribbean, Pacific (ACP) Countries at the European Commission (EC), Belgium.
- **Mr Raul Mateus Paula**, Ambassador and Head of the European Union (EU) Delegation in Cameroon.
- **Mr Patrick Akwa Kum Bong**, Secretary General of MINEPDED, Cameroon.

1.2. Getting to Know Each Other and Programme Overview

Both facilitators, Mrs Kathrin Heidbrink and Mr Hugues Quenum warmly welcomed the participants and introduced the ABS Team and the team of interpreters. Mr Quenum proposed a quick exercise to identify the various groups of stakeholders present in the room (Indigenous Peoples and Local Communities (ILCs), owners of Traditional Knowledge (TK), state representatives, researchers, environment, public and private sector, university, cooperation partners and financial partners). He then invited the participants to further introduce themselves and give a brief overview of their professional background and work to their neighbours. Mrs Heidbrink concluded this first short session by presenting the five day programme of this Sixth Pan African ABS Workshop.

2. From Marrakech to Limbé

2.1. Experiences on the Way

presented by Barbara Lassen, ABS Initiative, Germany.

Mrs Barbara Lassen provided a detailed overview of the activities and work achieved since the Fifth Pan African ABS Workshop inviting participants who had been involved in some of these activities to contribute and share their views and experiences along her presentation.

¹ Commission des Forêts d'Afrique Centrale

Mrs Lassen drew participants' attention to the shift of the ABS Initiative's work to practical activities for ABS national implementation such as providing support to national frameworks, undertaking a gap analysis of the African Model Law (AML), identifying ABS value chains that could provide successful models and supporting Bio-Cultural Community Protocols (BCPs).

Mrs Lassen indicated that the importance of Communication, Education and Public Awareness (CEPA) on ABS had been highlighted throughout the year in expert meetings or sub-regional workshops and informed the participants that an ABS CEPA toolkit and an ABS movie will soon be launched.

Mrs Lassen concluded her presentation by giving a glimpse of the future of the ABS Initiative, underlining again the changes in areas and mandate while giving a particular attention to the development of the Biodiversity and Protected Areas Management (BIOPAMA) project funded under the EC for ACP regions and implemented in co-partnership by the EC Joint Research Centre, the IUCN² and the GIZ³ which will be responsible for the ABS component of the project, including tourism activities that could raise benefits for the local communities. *For further details, please refer to the presentation available to download below.*

2.2. ABS Film

A twenty minutes long film, entitled *People, Plants and Profits - The Nagoya Protocol on Access and Benefit-Sharing in the context of three bioprospecting examples from Africa* and produced by the ABS Initiative, was presented to the participants. The movie illustrates the basic principles of ABS in the context of the Nagoya Protocol, with the help of three African cases (Hoodia (South Africa), Argan (Morocco) and Teff (Ethiopia)).

3. ABS Implementation in Africa: State of the Art

3.1. Panel Discussion with three Countries Examples – Policies and Strategy Development: Lessons, Challenges, Success Experiences of Morocco (Professor Ahmed Birouk), South Africa (Lacticia Tshitwamulomoni) and Madagascar (Dr Naritiana Rakotoniaina).

Mr Suhel al-Janabi from the ABS Initiative introduced the panel discussion by highlighting how political circumstances influence different ABS implementation processes at the domestic level. He then asked the three panellists to comment on the different situations in their respective countries. He further asked the panellists to indicate if the country's National Biodiversity Strategy and Action Plan (NBSAP) were being helpful in the development of their respective ABS legislation.

South Africa: Mrs Lacticia Tshitwamulomoni stated that in South Africa ABS issues have been comprehensively addressed starting with the white policy paper of 1997 and the subsequent laws. The current act and legislations provide a legal framework for Prior informed Consent (PIC) and Mutually Agreed Terms (MAT) as well as guidance on procedures to follow for signing and ratifying an international treaty. This framework is currently being revised to address the Nagoya Protocol. Mrs Tshitwamulomoni highlighted the great engagement of the minister and informed the participants that South Africa was aiming to ratify the Nagoya Protocol later this year. Mrs Tshitwamulomoni concluded by indicating that the NBSAP and the development of a relevant national legal framework for ABS were two parallel processes in her country.

Madagascar: Dr Naritiana Rakotoniaina stated, among others, that ABS implementation has been challenging and a rather long process due to a few years of political instability and regular changes of ministers. As a consequence, there was a constant need to raise awareness on ABS issues. On the other hand, progress was made as each minister brought the ABS process one or few steps further

² The International Union for Conservation of Nature

³ Die Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH

each time. She reported that concrete plans for ratification were to be presented to parliament but that the parliament was unfortunately dissolved. Nevertheless, an ABS communication and work plan had been prepared with the support of the ABS Initiative to be submitted to the government. Dr Rakotoniaina concluded by saying that implementing both the NBSAP and ABS was another challenge, and specified that it was a semi integrated process.

Morocco: Professor Ahmed Birouk reported that the ABS implementation process has accelerated since the Marrakech workshop with the establishment of a special committee and a UNEP study which made an inventory of the various institutions and processes in place. Professor Birouk explained that in Morocco, the development of a common approach and the establishment of a legal framework was quite challenging due the number of actors and sectors affected by ABS. To address this situation, a workshop on institutional arrangements recently took place and resulted in the decision that several competent authorities from the various sectors, coordinated by the Ministry of Environment, will collaborate to implement ABS. Professor Birouk ended by informing the participants that the NBSAP and the ABS implementation processes were both integrated in the development of Morocco national strategy.

3.2. Question and Answer Session

Q1: Ratification and Implementation: Can countries ratify the Nagoya Protocol without first of implementing appropriate laws and regulations?

Ratification is a political act. There is no link between the ratification process and the development and implementation of ABS legislation. Although legislation first would be preferable, countries do not have to have an ABS framework in place to ratify the Nagoya Protocol. For example:

- Sudan has started the ratification process without legislation.
- Liberia is working on ABS legislation but it has no interference with the ratification process that the country also started.

Q2: How can countries integrate the biosafety regulations?

The Cartagena Protocol and the Nagoya Protocol are different. The Nagoya Protocol aims to establish an enabling environment for the fair and equitable sharing of benefits arising out of the utilisation of Genetic Resources (GRs) while the Cartagena Protocol aims to ensure the safe handling, transport and use of living modified organisms resulting from modern biotechnology from one country to another. However, biosafety principles and laws can be integrated in existing legislations developed in support of the Nagoya Protocol.

Q3: Legislation prior to the Nagoya Protocol – how does South Africa address the issue of amending existing legislation?

The Nagoya Protocol implies new obligations for the Ministry of Environment, more particularly, the development of checkpoints to monitor the resources and of user measure process.

Q4: To which extent are ILCs involved?

South Africa: A certain number of Community-Based Organisations (CBOs), traditional healer associations, etc. are operating in South Africa. Any piece of legislation goes for consultation to all stakeholders.

Morocco: Most ILCs use GRs. The country has 12 regions and works to balance the representation and participation of all ILCs in each region.

Madagascar: Existing bill that needs to be updated. There was no ILCs representation up to now but this issue is being addressed in the current work on the new legislation.

4. Valorisation Approaches: Experiences with Non-Timber Forest Product Value Chains

4.1. Valorisation of Wild Plant Products and Access and Benefit Sharing, Experiences from Malawi

presented by Chris Dohse, TreeCrops Ltd (TCL), Malawi.

Mr Chris Dohse presented on the valorisation approach used for three Malawian plant products that TCL is currently trading (Baobab, a biotrade case, *Strophanthus Kombé* – illustrating TCL's internal benefit sharing scheme and *Phyllanthus Engleri* – a potential ABS case). Mr Dohse elaborated on the benefit sharing scheme developed by TCL and explained that depending on the plants collected, additional benefits were paid to the communities. These can vary from a Fair Trade premium, an organic premium or a levy for the use of TK or comprise all three types of benefits. *For further details, please refer to the presentation available to download below.*

4.2. Namibian Approaches to Unlocking the Value of Biodiversity Assets: Non-Timber Forest Product Value Chains Lessons

presented by Pierre du Plessis from the Centre for Research Information Action in Africa Southern Africa Development and Consulting (CRIA SA-DC), Namibia.

Mr Pierre du Plessis presented on Namibia's innovative national 'pipeline approach' which aims to proactively create sustainable economic opportunities based on harvesting, processing and trading indigenous plants and natural products. This approach prioritises natural products with large and relatively quick market potential and promotes their commercial development through an integrated, holistic strategy that addresses the entire value chain from harvesting to retail sales in commercial partnership with the private sector⁴. The Marula and *Commiphora Wildii* Resin were used as examples to illustrate this inclusive and participative approach to the valorisation of natural resources. *For further details, please refer to the presentation available to download below.*

4.3. Question and Answer Session

Q1: Could you explain why Baobab is not an ABS case?

Baobab has a massive market in Malawi as well as a growing export market. It has always been traditionally used, but this trade does not fall under the ABS framework as no research on the biological or genetic resource takes place. The benefit sharing scheme developed by TCL is not related to the Nagoya Protocol. TCL works and trades with collectors coming from different communities who organised themselves in groups. If the area is certified organic, TCL pays a levy to the community. TCL also pays a levy when it is a Fair Trade crop or when TK is involved. "ABS" in that context is therefore seen as a wider approach. The communities then decide on how they want to spend the money.

Q2: From a research perspective, all plants contain chemical components and can therefore be used as a medicine. Does ABS apply to all plants or only to indigenous plants with and without associated TK? For example, the frangipani tree possesses biological components that are used for cancer treatment.

To do some research, a PIC from the country of origin of the plant is necessary. For research on plants with no associated TK, a PIC is also required but with respect to TK.

Q3: Aren't the communities benefiting the less from the distribution of benefits along the value chain (prices)?

The communities are generally less benefiting from the profits arising along the value chain. Improving the negotiation between the importers and exporters is therefore crucial. To do so, it is essential to have a good understanding of the market(s).

⁴ Drews A., Probst K., du Plessis P. and Lombard C. (2008). "The Potential of Biotrade and ABS: the Case of Namibia", Rural 21 – 02/2008, pp. 23 – 25.

Q4: On what basis is the percentage in TCL's benefit sharing scheme determined?

The levy or premium is negotiated with the communities. The premium is generally not fixed except in Fair Trade cases.

Q5: What rules should partnerships follow to avoid problems?

To avoid any conflict, always set the questions of concerns first when developing a partnership so there is no reason for the partnership to fall apart. Setting the terms of collaboration very clearly in the MAT is essential.

End of Day One

Official Opening and Welcome Reception

The day ended with the official opening of the workshop and a welcome reception hosted by MINEPDED at the Seme Beach Hotel.

List of Speakers:

- **Mr Pierre Hele**, Cameroonian Minister of the Environment, Protection of Nature and Sustainable Development
- **Mr Raul Mateus Paula**, Ambassador and Head of the EU Delegation in Cameroon.
- **Mr Denis Salord**, Head of Unit of Centralised Operations for the ACP Countries at the EC, Belgium.
- **Mr Christian Glass (Dr)**, German Federal Ministry for Economic Cooperation and Development (BMZ).
- **Mr Søren Mark Jensen**, Danish Ministry of the Environment.
- **Mme Rajae Chafil (Dr)**, Institut de l'Énergie et de l'Environnement de la Francophonie (IEPF), Canada.
- **Mr Chouaïbou Nchoutpouen**, Executive Secretariat of the COMIFAC, Cameroon.

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Day Two

Field Trip to Mount Cameroun: The *Prunus Africana* Case

1. Introduction to the *Prunus Africana*

The University of Buéa hosted the morning session of the field trip which started with a series of presentations introducing the *Prunus Africana* in the Cameroonian context and emphasising the necessity to establish a coherent ABS and forest governance framework in Cameroon.

1.1. Welcome Note

by Dr Yinda Godwin from the University of Buéa

1.2. The Regulatory framework of *Prunus Africana* Management

- **Issues related to *Prunus Africana* Management in Cameroon**
presented by Mr Henri Charles Akagou Zedong, Ministry of Forestry and Wildlife, Cameroon.
- **Sustainable Management of *Prunus Africana* on Mount Cameroon**
presented by Mr Samuel Eben Ebai, Ministry of Forestry and Wildlife, Cameroon.

Mr Henri Charles Akazou Zedong and Mr Samuel Eben Ebai provided detailed information on the Mount Cameroon *Prunus* Management Plan, relevant aspects of the Forest Law and protected areas regulations. They further elaborated on the Convention on International Trade in Endangered species of Wild Fauna and Flora (CITES) regulations and indicated that export permits as well as certificates of origin were mandatory to export *Prunus*. As of 2011, regulations were revised and a resource management plan, among other requirements, also became compulsory for *Prunus* exporters. Taxes for regeneration depend on the quantity exploited and contracts have to be approved by the government. The Ministry of Scientific Research advises the government on quota for exploitation through yearly reports. *For further details, please refer to the presentations available to download below.*

1.3. *Prunus Africana* Value Chain: the Cameroon Case

presented by Mr Okenye Mambo, GIZ Cameroon.

Mr Okenye Mambo presented a comprehensive overview of the *Prunus Africana* value chain. His presentation provided detailed information on the various actors and institutions involved with different agreements, processing of permits required at local, national and international levels for the export of *Prunus Africana*. Mr Mambo also shared insights on the nature of value adding and production schemes, whilst on the other hand, highlighting the lack of information provided by users on the product development process. He concluded with a list of the major international companies involved in the *Prunus* extract production and a summary of products of *Prunus* origin found in selected European countries. *For further information, please refer to the presentation available to download below.*

1.4. The Value Chain of *Prunus Africana* from the “Bark to the Pill”

presented by Mr Suhel al-Janabi, ABS Initiative, Germany.

Mr al-Janabi presented a scheme of the value chain of the *Prunus Africana* from Cameroon to Europe while introducing two end products: the Poldanen and Prostatonin, medicines used in the treatment of benign prostatic hyperplasia. *For further details, please refer to the presentation available to download below.*

1.5. The Necessity of a coherent ABS and Forest Governance Framework

presented by Mrs Prudence Galega and Mr Charles Ossou Zolo, MINEPDED, Cameroon

Mrs Galega and Mr Charles Ossou Zolo emphasised the need for framework coherent ABS and forest governance framework in Cameroon that will address cases such as the *Prunus Africana* case. They provided information on the national implementation of the Nagoya Protocol in Cameroon and the various actors involved in this process. The presenters concluded by exploring the interfaces between ABS and the current non-timber forest product regulations while highlighting ways and means to promote ABS in Cameroon. *For further details, please refer to the presentation available to download below.*

2. Visit to the *Prunus* Area

Participants were warmly welcome by traditional dancers from the local community and took a walk through the *Prunus* agro-forestry farm at Bokwongo Village where they first observed a demonstration of *Prunus* bark harvesting. Participants were then invited to visit the *Prunus* bark processing facility of the Mount Cameroon *Prunus* Management Company (MOCAP) and discussed with villagers and other stakeholders the different steps in the processing of the bark. The field visit ended with a traditional lunch at the *Prunus* processing facility prepared by the local community.

3. Reflecting on the *Prunus Africana* Case

3.1. Panel Discussion

The field trip was concluded by a Panel Discussion which took place at the University of Buéa. The Panel, moderated by Mr al-Janabi, was composed of the presenters of the morning session and Mr. Joseph Ekati (MOCAP) and the representative of the cooperative visited. Further, two intermediaries in the *Prunus Africana* supply chain, Mr. Jacob Beude (AFRIMED) and Mr. Mana Toukour (CEXPRO) were invited to share their views with the other participants.

3.2. Panel Discussion Key Points

The discussions included, among others, the following issues:

- The role of communities: they are the best protectors of the *Prunus*, as they identify themselves with this resource.
- Prices for *Prunus*: are negotiated to the highest bidder of the market. In 2006, it was CFA⁵ 260/kg, in 2011, CFA 350/kg (for the communities).
- *Prunus* is traded mainly with Spain and France. The Ministry of Forest gives authorisations and sets export quotas. When authorisation is granted, intermediaries can choose in which forests they would like to work. Depending on user demands, the *Prunus* is provided in either chopped bark, bark powder or dry bark.
- Communities and intermediaries have no information about who is further involved in the value chain and how the bark is used further down the value chain (e.g. on research, etc.).
- Disclosure of the origin is also of growing importance for final buyers/consumers and governments should aim for this requirement through, e.g. appropriate ABS legislation.
- Is *Prunus Africana* rather a biotrade case with some level of fair trade? Does it fall under the scope of the Nagoya Protocol? Who should provide PIC - the communities, the government or the intermediary?
- A classic market approach is inappropriate in the *Prunus* case as the market/value chain is not very clear. Proper information is difficult to find. Article 11 of the Nagoya Protocol becomes

⁵ Franc of the African Financial Community

The ABS Capacity Development Initiative

very important for a common approach to provide a unified standard. Countries exporting the same GRs should work together to address price and other ABS related issues.

- Because of the possibility of synthesising each active component of any plant, companies/organisations will not need any PIC to put end products on the market.
- The end market price of *Prunus* is difficult to define. The market price of an end product such as Poldanen and Prostatonin is approximately €30 for a box of X tablets, each tablet containing X quantity of *Prunus*.
- Importance of developing sustainable value chains and developing relationships with the private sector: already some providers and users are committed to the sustainable use of *Prunus* and other resources in Cameroon. It is therefore essential to build on this and encourage further dialogue, workshops and elaboration of a strategy with all the stakeholders.

At the end of the panel discussion, participants were invited to share a typical Cameroonian dinner on their way back to Limbé.

End of Day Two

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Day Three

1. Reflecting on the *Prunus Africana* Case (Cont.)

During this first morning session, Mr al-Janabi invited the participants to reflect further on the *Prunus Africana* case. ABS might not provide all the solutions, but is still a key instrument to address cases such as the *Prunus Africana*. He then invited representatives of the private sector to provide a business perspective on the topic at stake.

1.1. Private Sector View on the *Prunus Africana* Case

presented by Julien Chupin, Independent Consultant, France and Pierre du Plessis, CRIAA SC-DC, Namibia.

Mr Pierre du Plessis and Mr Julien Chupin both stressed the importance of developing sustainable value chains from providers to consumers and of involving the private sector in the process. They then provided recommendations with regard to the *Prunus Africana* case and more general recommendations for the utilisation of any GR that could trigger an ABS process. These were as follows:

- Find out if there is a legislation in the concerned supplying country – if yes, importance of compliance.
- Understand that the life cycle of an ingredient can last up to ten years (from research to market). If an active molecule is found, a new PIC needs to be established.
- Implement good practices – ILCs' involvement from the start is essential.
- Revise existing pricing strategies to generate higher benefits for the communities.
- Investigate where patents for each product exist.
- Reach out for consultants as they are specialised in this specific sector.
- Understand how the market works and which other products compete in that market segment.
- Understand the levels of value added in the production chain.
- Know who has the market authorisation to market a specific product and liaise with the holders of Intellectual Property Rights (IPRs).
- Investigate the scale of the opportunity and the viability of the product.
- Find out what other extraction is done in the region with respect to other resources.
- Don't raise too high expectations when introducing ABS.
- Develop a good relationship with the private sector which could help with all the above issues/approaches.
- Develop a regional cooperation would also be useful around all these issues.

1.2. Transfer Paths of Genetic Resources and Associated Traditional Knowledge and Relationship to ABS

presented by Dr Hartmut Meyer, Independent Expert, Germany

Dr Hartmut Meyer presented a generic value chain mapping tool and explained – using examples based on the existing utilisation of *Prunus Africana* and associated TK – current transfer paths of plants and associated TK between the different actors as well as the contract types and IPRs that are used by these actors. *For further details, please refer to the presentation available to download below.*

1.3. Discussion Key Points

The first impressions on the generic value chain mapping tool were, among others, the following:

- One of the traditional uses of *Prunus Africana* might trigger the need for a PIC for further research and development.
- Importance of the role of the private sector in and outside the user country – the elaboration of a guide of good practice on how to collaborate with the private sector could be useful.
- The difficulty to evaluate the financial benefits arising from each step in the value chain: due to confidentiality a value chain analysis is a very difficult process to undertake.
- Key issue is the use which triggers the PIC mechanism.
- With reference to property law or land tenure rights, the identification of the owner(s) of the resource(s) is often very difficult and has impacts on benefit sharing and ILCS rights over their GRs.

Mr al-Janabi concluded the discussion by highlighting the challenges to put all the aspects of the value chain into one model. He stated that this first feedback was encouraging and suggested the need to develop a workshop specific to value chain analysis. He then invited the participants to forward their additional comments on the generic value chain mapping tool to the ABS Initiative.

2. ABS and Non-Commercial Research

2.1. Research Collaboration between the University of Yaoundé (Cameroon) and the University of Dortmund (Germany)

presented by Professor Simeon F. Kouam, University of Yaoundé 1, Cameroon.

Professor Simeon Kouam provided a brief overview of the collaboration between the Universities of Yaoundé and Dortmund which main objective is to research biologically active chemical components of plants for possible use in drug development. He highlighted the institutional and national benefits of the research collaboration, such as the exchange of academic knowledge and skills development via a researcher and student exchange programme, the valorisation of natural resources and the contribution to improved public health. He concluded by underlining that, in the development and implementation of ABS policies and legislation, special considerations should be given to research. *For further details, please refer to the presentation available to download below.*

2.2. Research Collaboration between the University of Abomey-Calavi, Benin with the Catholic University of Louvain, Belgium

presented by Dr Fernand Gbaguidi, University of Abomey-Calavi, Benin.

Dr Fernand Gbaguidi gave a brief overview of the research collaboration between the Universities of Abomey-Calavi and Louvain on the study of the different usage of medicinal plants in the traditional pharmacopoeia with a special attention given to plants traditionally used to treat malaria. He then indicated that this collaboration has been very fruitful and provided for, among others, three PhD programmes and a new laboratory with specialised equipment for the University of Abomey-Calavi. Dr Gbaguidi concluded by highlighting that ABS could be beneficial to the successful establishment of research collaboration. *For further details, please refer to the presentation available to download below.*

2.3. Panel Discussion

The Panel, moderated by Mrs Lassen, was composed of the two presenters, as well as Dr Jean-Dominique Wahiche from the National Museum of Natural History, France, Prudence Galega, Cameroon and Bienvenu Bossou, Benin both ABS Focal Points in their respective country. Focal Points and researchers were invited to provide their perspectives on the research collaborations

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presented and encouraged to contribute to the discussion on the opportunities and challenges encountered by non-commercial research to address ABS as a whole.

The main issue raised by both ABS Focal Points was the obvious communication gap between the relevant actors, such as the national government and the university of the provider country with respect to ABS, which needs to be addressed. Key ABS actors were largely absent in the institutional arrangements established in both collaborations. Further, no details about existing or planned patents were provided, though the research objectives seemed clearly to be commercial. Unfortunately, no benefits seem to come back to the broader communities though they play a major role in the preservation of the resources. Thus, institutional arrangements/contracts have to refer to ABS and clearly indicate when research findings/results are based on TK. All stakeholders, especially the populations/ILCs concerned by the process, have to be involved from the beginning.

Dr Jean-Dominique Wahiche emphasised the three key aspects which relate to ABS. First, any valorisation contract of GRs needs to include provisions with respect to shared ownership of intellectual property, as well as to co-publications, knowledge and equipment transfer, student exchanges, capacity building etc. Further, one has to keep in mind that generally, this kind of basic research brings very little financial benefit in the end. Finally, you will always face challenges in terms of transfer/exchange of GR materials/specimens and traceability of these materials/specimens. There should be no transfer allowed to a third party without a new agreement and if valorisation takes place, the contract needs to be revised with all the stakeholders.

The discussion was then opened to the plenary.

2.4. Panel Discussion Key Points

Participants highlighted the following points:

- The important role of traditional healers in introducing the knowledge has to be recognised, identified and regulated at national level.
- The commercialisation of GRs and associated TK is very complex; monetary benefits may occur, but the real success rate of a high return is very low.
- ABS can assist with the successful establishment of research collaboration and related contracts.
- Importance of defining TK and tradi-practitioner.
- The synthesising of active ingredients is a topic that has to be part of ABS discussions.
- In Benin, tradi-practitioners have to be authorised to sell plants and also pay taxes.
- From a health safety perspective, the exchange of information on plants between researchers and tradi-practitioners is important because warnings can be issued about the toxicity of some plants used or sold on the market.
- Importance of user measures to be put in place to address the issue of when there is a change of intent, i.e. when non-commercial research turns into commercial research.

3. Article 10 and Article 11 of the Nagoya Protocol

3.1. Article 11 of the Nagoya Protocol: Transboundary Cooperation, Experience from Central Africa Countries

presented by Chouaibou Nchoutpouen, COMIFAC, Cameroon.

Mr Chouaibou Nchoutpouen presented on the collaboration of ten Central African countries using the COMIFAC framework and its sub-regional convergence plan to implement Article 11 of the Nagoya Protocol and highlighted further opportunities for cooperation for ABS implementation in the sub-region. *For further details, please refer to the presentation available to download below.*

Key points raised in the question and answer session that follows included:

- The COMIFAC recognises the importance of the ILCs and mentions them in one directive for their commitment to the sustainable management of forest systems in Central Africa. Ratifying the International Labour Organisation Convention 169 is, however, an individual matter for each country of the sub-region to decide upon.
- The COMIFAC approach is a good example to guide the African Commission and to enhance synergies in other sub-regions or regions.
- The drive and positive outcomes of the work of the COMIFAC result from a political will of the various governments.
- Article 11 does not prevent a country to deal individually with these issues and enter into ABS agreements. Countries can develop national frameworks that actually take into account ILCs from other regions, who share the same resources and or TK.
- African countries must work together on ABS implementation and facilitate exchanges between each other.
- The COMIFAC is currently in the strategic and operational phase of the implementation process. It will now proceed with the development of directives and address the issue of access to shared GRs and determine the responsibilities of each party.
- The COMIFAC consulted all existing instruments (Bonn Guidelines, the AML, etc.) to draft a harmonised strategy for the region and sub-region that will address the issue of shared GRs and TK.

3.2. Report from the Reflection Meeting on the Global Multilateral Benefit Sharing Mechanism – Article 10 of the Nagoya Protocol

presented by Morten Walløe Tvedt from the Fridtjof Nansen Institute, Norway.

Mr Morten Walløe Tvedt reported on the outcome of the deliberations and first preliminary discussions of first reflection meeting on the need for and modalities of a the Global Multilateral Benefit-Sharing Mechanism (GMBSM) under the Nagoya Protocol (Article 10) hosted by the Fridtjof Nansen Institute (FNI) in March 2011 in Lysaker, Norway. Mr Walløe Tvedt strongly emphasised that the discussions were in no way meant to lead to any agreement or, pre-determine and pre-empt the official deliberations on this issue which are scheduled to take place during the second meeting of the Open-ended Ad-Hoc Intergovernmental Committee for the Nagoya Protocol (ICNP-2) on ABS later this year⁶. *For further details, please refer to the presentation available to download below.*

The following points were raised during the subsequent question and answer session:

- Transboundary GRs are not the issue in Article 10. Article 10 was introduced to open a door to discuss what can be done with regard to GRs accessed before the Nagoya Protocol. The real issue is that all parties have to agree to comprise and let go this issue of access to GRs prior the Nagoya Protocol.
- The sharing of benefits arising from the use of GRs is a big incentive for sustainable conservation.
- Benefit sharing is not only in exchange for access. It is for conservation of biodiversity within the objectives of the CBD. Article 5.1 needs to comply with it. These are two compelling arguments for having such a Benefit sharing mechanism.
- Article 10 aims to open ways to discuss the utilisation of GRs even if there is no PIC – the preservation of biodiversity is the incentive for such a multilateral system. The nature/format of the fund needs to be discussed. Article 10 is not meant to challenge the right/obligation for

⁶ Walløe Tvedt, M. (2011). A report from the First Reflection Meeting on the Global Multilateral Benefit sharing Mechanism, Fridtjof Nansen Institute 10/2011 (available at <http://www.fni.no/doc&pdf/FNI-R1011.pdf>)

individual PIC/MAT. It aims to create an incentive for users of GRs outside regular PIC and MAT schemes to do what the Nagoya Protocol is encouraging – i.e. the sustainable use of biodiversity.

- Article 10 will be a gradual process – bringing the idea of a multilateral approach and countries together to redistribute the resources equitably.
- The GMBSM could be used as an innovative mechanism to foster a green economy.
- It is not possible to grant PIC for GRs from the high sea, or for genomes that are common to most organisms.
- Some EU countries will probably not require a PIC.
- Article 10 was introduced with regard to the GRs where the origin is unknown. The African Group should discuss this issue to make a concrete proposal on this article.

3.3. Panel Discussion

The Panel, moderated by Dr Andreas Drews, was composed of the two presenters, as well as Pierre du Plessis from CRIAA SA-DC, Namibia and Samuel Diemé, ABS Focal Point, Senegal.

Dr Drews: *With regard to transboundary issues – Can you explain what will be the next step for the COMIFAC to get the strategy into life and deal with such issues as who has the right to give PIC and MAT. Can dispute mechanism resolve potential conflicts?*

Mr Nchoutpouen: Implementing practical measures in the sub-region for countries to cooperate is essential. The strategy was the outcome of a participative process including ILCs, the private sector, government, etc. The first draft was sent for review to all and the final document was sent to ministers for adoption. This strategy defines all actions for an implementation at regional and sub-regional levels, including capacity development workshops in terms of ABS and ABS implementation. Frameworks, communication, awareness tools have been defined and very soon a model and directives for the sub-region and countries will be elaborated. Harmonisation is very important. This is too early to address the conflict resolution issue as we are still in the operational phase.

Dr Drews: *Samuel, you are the ABS Focal Point in Senegal which is at the very beginning of the process of implementing ABS. What do you think about a regional/sub-regional approach to do so?*

Mr Diemé: A regional approach is a good strategy. Senegal follows very carefully what is happening at the COMIFAC in order to reiterate this approach in West Africa and foster a harmonised implementation of the Nagoya Protocol starting with the ratification process. However, it is a very delicate process as each country is focused on their specificities and context. Senegal has still a long way to go, but financial support from the Global Environmental Fund (GEF) helped to start the ABS implementation process.

Dr Drews: *Pierre, can you tell us what the situation in the Southern Africa Development Community (SADC) region is and what would be the benefit of a Pan African approach coordinated by the African Union (AU)?*

Mr du Plessis: SADC has not done a lot about these issues with the exception of the development of PhytoTrade Africa. There is a growing awareness in the region to cooperate, but the SADC level is quite weak. With regard to Article 11 of the Nagoya Protocol, we need to deal with the fact that the knowledge has been split by borders. The logic of the AML and guidelines could be applied to the whole African region.

Dr Drews: *Was there any early stage involvement of ILCs in the COMIFAC decision process?*

Mr Nchoutpouen: ILCs were involved in the entire process and the management of GRs. Indeed, all the countries under the COMIFAC have adhered to the recognition of the rights of ILCs. Article 11 of

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the Nagoya Protocol indicates that ILCs should be involved when relevant. There are also situations where ILCs do not need to be involved. Each ethnic group has its own TK. Only few ILCs share the same TK. It is very important to identify this first.

Dr Drews: Going back to Article 10 – transboundary issues and global benefit mechanisms, was there any discussion on the need of global benefit mechanism in Lysaker? What level of convergence was reached?

Mr Walløe Tvedt: No consensus was achieved but developing this mechanism, step by step, first as a voluntary mechanism is strongly recommended. A pure legal approach to benefit sharing is delicate. There are a few loopholes. Therefore, a voluntary benefit sharing mechanism will be better first. Then, implement a step by step process to create incentives and address the loopholes.

Dr Drews: Regarding situations where PIC cannot be granted or obtained, are there other cases where such situations could occur? Are there any concerns from the African Group that Article 10 is a bit conflicting?

Mr du Plessis: The interpretation of the scope is complicated. There is the concrete example of Germany that does not require a PIC in its national framework.

Mr Diemé: PIC cannot be obtained for GRs accessed prior to the Nagoya Protocol but if these GRs still generate benefits, they will be considered.

Dr Drews: For companies in the cosmetic sector, getting PIC, MAT and all these different agreements could be quite difficult and daunting?

Mr Walløe Tvedt: Companies might use materials from other countries and a multilateral mechanism could be a solution for such cases and for these companies to contribute and compensate for not being able to do the PIC and other agreements.

The discussion was then opened to the plenary.

3.4. Panel Discussion Key Points:

The following issues were raised:

- Political will is a fundamental element for the cooperation between countries to develop the relevant means and expertise. Building political capacity is necessary to see such political decisions and will emerging. The example of the COMIFAC illustrates this very well and brought a lot.
- There is not much done in East Africa regarding ABS implementation. The experience of the COMIFAC could be used in other regions.
- ILCs should not only be involved when it is convenient for parties but when relevant.
- There should be always an effort made to get PIC. Entering into an agreement with a particular community with respect to a specific TK should not prevent another community or other communities to enter into agreements as well. However, problems come when IPRs are involved: – *hoodia* is a very good example. The Nama people in Namibia who also shared related TK were forced to pay benefits to the San. The issue was finally resolved, but it was not an ideal way to deal with the situation.

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Day Four

1. The ABS Process: “Where are we at international level?”

1.1. The Nagoya Protocol on Access and Benefit Sharing: Overview of Recent Developments and Upcoming Events

presented by Oliver Rukundo, Secretariat of CBD (SCBD), Canada.

Mr Olivier Rukundo reported on the establishment of the ICNP as an interim governing body for the Nagoya Protocol, as well as gave a brief overview of upcoming meetings. Mr Rukundo also reported on the status of signatures and ratifications of the Nagoya Protocol and informed the participants that the CBD is considering another approach to assist countries in their ratification process. *For further information, please refer to the presentation available to download below.*

1.2. Key Discussion Points

In the subsequent discussion the following issues/comments were raised:

- The SCBD is executing a medium-sized project funded by the GEF to provide support for the ratification and the early entry into force of the Nagoya Protocol through a series of awareness-raising and capacity building activities. However, it is important to note that this fund is not intended to support concrete ratification implementation processes and activities at the national level.
- To speed up the ratification process, the SCBD is also promoting the Nagoya Protocol on ABS and visiting countries. It generally takes a few years for a protocol to come into force. Countries have different approaches to ratification, different legislation and internal procedures. Financial support from GEF for this will be discussed in the next session.
- Rio + 20's main theme is the green economy. However, neither ABS in general, nor the Nagoya Protocol are part of the green economy while the Nagoya Protocol represents the first protocol for payment for ecosystem services. How far will ABS and the Nagoya Protocol be integrated in Rio + 20?
- SCBD is planning a series of events, among others, the global summit of negotiators. ABS will be one of the items to be discussed. The CBD is also setting up an ABS Pavilion for Rio+20.

2. ABS at the Global Environmental Fund

2.1. Funding for Access and Benefit Sharing at the Global Environmental Fund

presented by Jaime Cavalier (PhD), from the Global Environmental Fund (GEF), United States.

Mr Jaime Cavalier gave a brief overview of the GEF and highlighted that GEF grants were provided to developing countries and countries with economies in transition for projects related to, among others, biodiversity, climate change and land degradation. He then explained that the System for Transparent Allocation of Resources (STAR) and the Nagoya Protocol Implementation Fund (NPIF) were the two financial mechanisms to support ABS implementation. The STAR provides funds under the biodiversity allocation to carry out activities to comply with the provisions of the Nagoya Protocol. The NPIF, a separated fund from STAR, focuses on opportunities leading to ABS agreements between users and providers, technology transfer components and the engagement of the private sector. *For further details, please refer to the presentation available to download below.*

2.2. Key Discussion Points

Participants expressed their dissatisfaction with regard to the change of policy by the GEF Secretariat on the use of the NPIF and highlighted that this fund should still support the ratification of the Nagoya Protocol. They complained about the complexity of STAR and also about the contradictory and confusing information provided by the GEF. As a result, many countries had excluded ABS from their STAR allocation application as they had planned to apply for the NPIF. The overall feeling was that the GEF should reconsider reallocating the NPIF to the ratification of the Protocol and related activities.

The following issues were also highlighted in the discussion:

- Applications can be submitted to the GEF throughout the year.
- Importance of contacting the GEF Operational Focal Point for approval.
- A special allocation for ABS under the next STAR is very unlikely going to happen.
- Requirements to apply to the GEF:
 - a) Eligibility: Any member state of the United Nations (UN) or signatory of the United Nations Conventions.
 - b) Funds: Financing non-refundable.
 - c) Requirements: Co-financing of the recipient country, project must address national priorities, incremental funding for 'global environmental protection'.

3. African Model Law

3.1. Introduction to the African Model Law

Mrs Galega introduced this session by reading the African Union Statement which highlighted the need to revise the AML, particularly taking into account the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Nagoya Protocol on ABS. Participants were invited to critically discuss the gap analysis report and its recommendations with the view to developing an instrument that will assist African countries in their national ABS implementation processes and foster an ABS regional approach.

3.2. The African Model Law: Gap Analysis

presented by Peter Munyi, Kenya and Dr Marcelin Tonye Mahop, England, as well as Professor Johnson Ekpere, Nigeria, Pierre du Plessis, Namibia and Kabir Bavikatte, South Africa.

The five speakers presented the Gap Analysis Report on the AML, which extensively examines relevant instruments and developments related to ABS at the global, continental and regional levels since the adoption of the AML in 2001. The report identifies key gaps and variances with respect to:

- Biological resources, GRs, derivatives and products;
- Benefit sharing;
- Transboundary cooperation and transboundary GRs;
- TK associated with GRs; and
- Special considerations for research, emergencies and PGRFA.

To address these gaps and variances, the report recommends a set of institutional and policy. These are:

- An improved collaboration between various regional bodies (ARIPO, OAPI) and the AU to ensure alignment of activities and avoid duplication of efforts carried out by the different institutions.

- Harmonised ABS policies through a common African approach to access to GRs and benefit sharing across the different economic sectors (agriculture, bio-prospecting and health).

Finally, the report concluded by identifying two potential approaches to be considered with respect to the future of the AML. These two approaches will be detailed and discussed at later stage in this report. *For further details, please refer to the presentation available to download below.*

3.3. Discussion Key Points

- It essential to put this gap analysis in context from the time it was adopted in 2001 to now – very important differences. The AML was very focused on agriculture and biodiversity.
- The AML should also take into account the issue of invasion of genetically modified organisms in community lands.
- A model law is a framework or a manual; hence there is no obligation. Compliance is not relevant in this context.
- There are very limited experiences of user legislations and the AML could look to include what is needed and what is currently being implemented in African countries.
- The analysis shows very few gaps which could be revised to then domesticate the Nagoya Protocol.

4. African Model Law (Cont.) – the Way Forward

4.1. Process Outline for Elaboration of Guidelines

Mrs Galega and Mr du Plessis recapped the key messages that came out the gap analysis presentation while highlighting that the AML's primary goal was to respond to the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreements. They also emphasised the importance of keeping the positive characteristics of the AML, such as its very strong stand on community rights, and conserve them in the text while integrating the Nagoya Protocol.

Mrs Galega and Mr du Plessis proposed to decide on the two potential ways forward as presented in the gap analysis report:

- 1) Amend the existing AML taking into account that it will be a long process, as a complex political and bureaucratic process of endorsement and validation is needed; or,
- 2) Keep the AML as it is and rather work on developing a set of guidelines that could work alongside the AML: practical guidelines on the implementation of the Nagoya Protocol in Africa, which keep the standard and spirit of the existing AML.

4.2. Plenary Discussion

The following is a summary of participants' first impressions and recommendations with regard to the two options presented:

- A number of countries have found the AML important and followed it to inform their own legislation. Is the time constraint a reason good enough to go with the guidelines?
- The AML is a living document done since a number of years which needs to be updated and integrate the Nagoya Protocol. However, guidelines are also needed to implement the protocol. They could encapsulate the essence of the AML while at the same time incorporate any relevant developments and international processes that have happened since the adoption of the AML.

- Due to the time constraint, the second option is more realistic. It will need to include lessons learnt from successful and unsuccessful cases so as to assist countries to implement their own national laws.
- The AML or guidelines are both voluntary. Guidelines would therefore be a more sensible and timely option to address ABS implementation at national level.
- Guidelines will be useful for countries in their ABS national implementation and will offer enough flexibility to account for their national circumstances.
- Considering the international context and the number of issues in the Nagoya Protocol that need clarification, adopting guidelines will be more flexible and faster while leaving open the possibility for revision and the development of more specialised guidelines.
- A set of harmonised standards is needed, especially regarding transboundary issues. Standards will be more convenient for user countries and stops them from addressing their request to other countries.
- The AML is the only document of its kind in Africa. Guidelines could allow addressing the current needs while informing a parallel process of amending the AML for a more harmonised and effective implementation of the Nagoya Protocol in the region.

Participants were invited to give any further feedback and comments on the practical way forward to the ABS Initiative in writing.

5. African Coordination on Articles 10 and 11 of the Nagoya Protocol and other Issues (Closed Meeting)

Further, a closed coordination meeting of the African Group for the preparation of the ICNP-2 on ABS took place.

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Day Five

1. ABS and Intellectual Property Rights

1.1. Outcomes of the Expert Meeting on ABS and Intellectual Property Rights, Addis Ababa, September 2011

presented by Dr Susanne von Saint André, ABS Initiative, Germany.

Dr Susanne von Saint André presented on the results of the expert meeting which main aim was to explore, identify and examine the various links between ABS and IPRs and the practicality of Intellectual Property (IP) instruments along the value chain and by doing so, create a basis for further discussion. She drew participants' attention to the outcome of the brainstorming exercise on the content of MAT, PIC, and the International Certificate. She indicated that after deliberations, the participants of the meeting agreed to translate the results of their work into templates for PIC, MAT and the International Certificate, as well as corresponding handouts for practical use. Further, participants from the Addis Expert Meeting shared their views and impressions, which were very positive and highlighted the importance of having identified PIC and MAT, as well as the international certificate as key instruments for the practical implementation of ABS and IPRs. *For further details, please refer to the presentation available to download below.*

1.2. Presentation of Draft Lists of Elements for Prior Informed Consent, Mutually Agreed Terms and the International Certificate

presented by Dr Susanne Heitmüller, ABS Initiative, Germany.

Dr Susanne Heitmüller explained to the participants the different steps of the consolidation of the group work results, i.e. the different draft lists of elements for PIC, MAT and the International Certificate resulting from the brainstorming exercise in Addis Ababa. Basically, repetitions were eliminated; similar points clustered under one heading etc. She further pointed out that the list of elements for PIC, as well as MAT was very exhaustive. A comparison with the Bonn Guidelines, which include, for example, a comprehensive list of elements for PIC, showed that all of them were covered. With respect to MAT, it will be important to identify the essential elements and distinguish them from those who only become relevant in specific situations and contexts. With respect to elements for the International Certificate, Dr Susanne Heitmüller pointed out, that Article 17 paragraph 4 of the Nagoya Protocol was the main point of reference. In this context, however, many issues remain open and need to be further elaborated. *For further details, please refer to the presentation available to download below.*

1.3. Group Exercise: Review of the Contents of the Draft Lists of Elements for Prior Informed Consent, Mutually Agreed Terms and the International Certificate

Participants were then invited, in small groups or individually, to provide their feedback and/or additional inputs and comments on the consolidated draft lists of elements of PIC, MAT and the international certificate. The following guiding questions were given to them as food for thoughts:

- 1) Are there any important elements missing?
- 2) Can we further cluster the lists?
- 3) What are the essential elements for generic templates?

1.4. Review of Group Exercise Results on the Draft Lists and Way Forward

Dr von Saint André and Dr Heitmüller reported on the results of the exercise observing that the focus of the comments had been more on PIC and the International Certificate as opposed to the Expert meeting, where most of the focus had been placed on MAT. They then informed the participants that all their inputs will be integrated in the current work.

Dr von Saint André further explained that the next step will be the development of generic draft templates (application form for PIC, contract for MAT and a form for the international certificate) and corresponding handouts explaining related policy options. All draft documents will be submitted to a peer review process before presenting the first revised drafts at the 11th Conference of the Parties to the CBD later this year.

1.5. Key Discussion Points

In the subsequent discussion the following points were highlighted:

- Importance of understanding the linkages between ABS and IPRs and how PIC, MAT and the International Certificate put forward the interface with IPRs.
- Importance to build African capacity in the field of IPRs.
- Importance to explain the linkages with regard to disclosure (How need disclosure requirements to be integrated in PIC, MAT and other permits?).
- Only some countries include a disclosure requirement in their patent system. There are still many open issues. The World Intellectual Property Organisation needs to help advancing the discussions, while, in the meantime, tools such as PIC, MAT and other permits need to address these issues and advance the discussion on IPRs.
- IP is very complex and there are very few legal IP experts. Templates for MAT, including relevant IP clauses with explanations, would be therefore very useful and help avoiding unbalanced contractual arrangements.
- Importance to also consider TK in the context of IPRs and highlight what the commonalities and links are.
- Importance that templates and corresponding hand-outs address the issue of non-parties. Though it is a policy decision that countries need to take, they will need to set some rules and clauses for dispute settlement and give recommendations on how to address compliance issue in this specific context.
- The generic templates plus corresponding handouts could be an integral part/ or annexed to the guidelines for the implementation of the Nagoya Protocol in Africa (to be developed in light of the results of the AML gap analysis report).

Following the plenary discussion on the way forward with the development of templates for PIC, MAT and the International Certificate, the participants gathered to take a group picture.

2. The International Treaty on Plant Genetic Resources for Food and Agriculture

2.1. Interface between the Nagoya Protocol on Access and Benefit Sharing and the International Treaty on Plant Genetic Resources for Food and Agriculture

presented by Kent Nnadozie, Secretariat of the International Treaty, Italy and Olivier Rukundo, SCBD, Canada

The common presentation of Mr. Kent Nnadozie and Mr Rukundo introduced the ITPGRFA, its scope, its links to the CBD and interfaces with the Nagoya Protocol on ABS while providing a comprehensive overview the Multilateral System of Access and Benefit Sharing and the Funding Strategy under the Treaty. *For further details, please refer to the presentation available to download below.*

2.2. Discussion Key Points

A short discussion included, among others, the following:

- The ITPGRFA specifies that the use of the material should be used for research, breeding, planting. Any material cannot be utilised for any other use – it would be a breach of the contract.
- The ITPGRFA aims to mirror the CBD and to be implemented without threatening the food security of a country. There is a need to continuously share and exchange PGRFA within the system.
- It is the obligation of countries to put in place some measures to protect associated TK and the related sharing of benefits.

3. ABS Initiative: Way Forward

Dr Drews provided a brief overview of the ABS Initiative's programme and work plan for 2012 highlighting the extension of its work to the Caribbean and the Pacific Regions while fostering a south-south exchange within the regions.

4. Meeting Evaluation

5. Thanks and Closure

Mrs Galega warmly thanked the ABS Initiative and its extended team, the MINEPDED and the COMIFAC for organising such a successful workshop as well as the participants for their valuable contributions.

Mr Heiko Warnken from BMZ, Mrs Bente Herstad from the Norwegian Agency for Development Cooperation, Soren Mark Jansen from the Danish Ministry of Environment, Mrs Rajae Chafil (Dr) from the IEPF, Mr Dimitri Harmegnies from the EC, Mr Rukundo from the SCBD and Mr Nnadozie from Secretariat of the International Treaty, thanked in turn the organisers and all the participants for such a fruitful week.

Mr al-Janabi and Dr Drews from the ABS Initiative thanked all the participants for their hard work as well as the COMIFAC and the MINEPDED for hosting this Sixth Edition of the Pan African ABS Workshop.

Mr Nchoutpouen from the COMIFAC and Mr Akwa Kum Bong, General Secretary of the MINEPDED, thanked the ABS Initiative and all the participants before officially closing the Sixth Pan African ABS Workshop.

End of Day Five and End of the Sixth Pan African ABS Workshop

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