THE ABS CAPACITY DEVELOPMENT INITIATIVE

L'INITIATIVE DE RENFORCEMENT DES CAPACITES POUR L'APA

Organized by the ABS Capacity Development Initiative, hosted by the Ministry of Environment of Denmark and the Confederation of Danish Industries and supported by the Ministry of Foreign Affairs of Denmark

4th ABS Business Dialogue

Public-Private Partnerships for Sustainable Development

28th-29th January, 2015, Copenhagen, Denmark

REPORT


4th ABS Business Dialogue
28 to 29 January 2015, Copenhagen
Hosted by:
Danish Ministry of the Environment
Danish Industry Confederation

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Abstract

The Fourth ABS Business Dialogue (28th - 29th January 2015), organized by the *ABS Capacity Development Initiative* and hosted by the *Ministry of Environment of Denmark* and *the Confederation of Danish Industries*, was attended by government representatives from European, African and Asian countries, research institutions, collections, industry associations, Indigenous Peoples and Local Communities (IPLCs) and intergovernmental organizations from North and South. Building on the previous ABS Business Dialogue, the two-day workshop was designed to lay out feasible ways forward of implementing Access and Benefit-Sharing framed by the Nagoya Protocol.

Updates on regulatory and other relevant developments at the international and national level as well as approaches developed by users in order to cope with the Nagoya Protocol were addressed through presentations and discussions. Further, the workshop focused on different types of support made available by various organizations to promote the establishment of ABS compliant value chains in cooperation with the private sector and provided an overview of scientific developments along with different business models and changed markets. Key findings of the meeting, presented in this report, are recommendations resulting from a group work session focusing on the demand for access and benefit-sharing which will be used for the further support of countries when developing their national regulatory frameworks. In the closing session, panelists were invited to share their ideas concerning future cooperation forms for an effective implementation of the Nagoya Protocol.

Overall, the interactive format of this year's event as well as the active involvement of the participants contributed to the success of the meeting and provided a good basis for fruitful and rich discussions to advance the implementation of the Nagoya Protocol.

Background

The *ABS Capacity Development Initiative (ABS Initiative)* is supporting a series of activities to facilitate the exchange of experiences with Access and Benefit-sharing (ABS) implementation and support the implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (hereinafter referred to as the Nagoya Protocol), adopted by the 193 Parties to the *CBD* by consensus in October 2010.

The recent entry into force of the Nagoya Protocol on 12 October 2014 and the successful conclusion of the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol (COP /MOP 1), held from the 13th to the 17th of October 2014 in South Korea, represent pivotal milestones which pave the way for further work to ensure the effective implementation of the Protocol. With the rising number of ratifications of the Nagoya Protocol and alongside greater awareness of ABS, in particular at a high political level and in the private sector, the demand for support to make the Protocol operational at the national level is increasingly demanded.

Enhanced dialogue and opportunities for exchange between policy makers, regulators, and the business community are therefore critical to ensure the effective implementation of the Nagoya Protocol at the national level. In particular, there is a clear need to foster a better understanding among regulators and the business and research community on options to promote ABS business models and value chains that can provide a basis for the establishment of fair and functional ABS agreements in accordance with the obligations set out in the Nagoya Protocol. Against this background, a dialogue on "Public-Private Partnerships for Sustainable Development" was organized by the *ABS Capacity Development Initiative* and hosted by the *Danish Ministry of the Environment* and the *Confederation of Danish Industries* on 28th and 29th January, 2015, in Copenhagen, Denmark.

This Fourth Business Dialogue on ABS aimed to provide an opportunity to discuss in more detail concrete options for fostering the effective engagement of relevant stakeholders in the implementation of the Nagoya Protocol. It was aimed at furthering the understanding of how ABS business models and value chains operate with a view to draw concrete and workable recommendations for policy makers and regulators who are involved in the development of national regulatory frameworks for the implementation of the Protocol.

The report provides a synthesis of the contributions from presenters and the interactive discussions that followed.

Objective

Building on the previous Business Dialogue held in September 2013, this Dialogue was designed to sketch out practical and feasible ways forward of implementing Access and Benefit-Sharing framed by the Nagoya Protocol.

To achieve this objective, the workshop

- Provided an update on regulatory and other relevant developments at the international and national level, particularly on the outcomes of COP – MOP 1, held from 13-17 October 2014 in Pyeongchang, Republic of Korea
- Informed on approaches being developed by users (e.g. business community, basic and applied research) in order to cope with the provisions set out in the Nagoya Protocol
- Identified different types of support made available by various institutions, organizations and programmes to address and overcome challenges faced by stakeholders with respect to the establishment of ABS compliant value chains
- Provided an overview of the characteristics of different sectors (e.g. biotechnology, cosmetics, food and beverages) and a forum to discuss the development of national regulatory frameworks which take into account the needs of different business sectors that use genetic resources
- Contributed to building an improved cooperation and collaboration among relevant stakeholders (users, regulators, government representatives, academia, representatives of Indigenous Peoples and Local Communities, etc.)

Participants

The two-day workshop brought together around 85 representatives from governments from European, African and Asian countries, the private sector, research institutions, collections, industry associations, Indigenous Peoples and Local Communities (IPLCs), intergovernmental organizations and development cooperation agencies from North and South.

For further details, a list of participants is attached in the annex.

Outcomes

The active involvement of the participants contributed to the success of the Fourth Business Dialogue and provided a good basis for fruitful and valuable discussions to advance the implementation of the Nagoya Protocol.

During the two-day workshop, presentations, discussions and group work have contributed to:

- An overview of the progress made with respect to ratifications, key outcomes of COP/ MOP 1 and recent developments regarding the development of national and regional approaches for the development or revision of ABS regulatory frameworks
- A better understanding of how different sectors use genetic resources
- An improved understanding of the types of support available to bring forward the establishment of ABS compliant value chains
- The identification of points for consideration and the elaboration of recommendations to inform the development of national regulatory frameworks taking into account the needs of various sectors
- Building a platform of exchange of experiences and best practices

The workshop was concluded with a closing plenary, facilitated by the Co-Manager of the *ABS Initiative*, *Mr. Suhel al-Janabi.*

Process

Wednesday, 28 January 2015

Opening

After officially opening the meeting, *Mr. Suhel al-Janabi* welcomed the participants of the Business Dialogue on behalf of the ABS Initiative.

Following this, H.E. Minister for the Environment of Denmark *Kirsten Brosbøl* gave an opening statement, highlighting that Denmark is proud to be a partner to the *ABS Capacity Development Initiative* bringing together North and South to exchange views and come up with shared solutions. She thanked the *Secretariat of the Convention on Biological Diversity (CBD)* for its noble facilitation of the ratification process of the Nagoya Protocol and highlighted the need for a showcase of concrete local ABS agreements for the next Meeting of the Parties in Mexico in 2016.

Mrs. Kathryn Garforth, Programme Officer at the *Secretariat of the CBD*, highlighted in her opening statement the many successes that have been achieved in the field of ABS in a short time, pointing among others to the recent entry into force of the Nagoya Protocol, the adoption of the EU regulation on ABS and to the adoption of key decisions at COP / MOP 1.

Mrs. Tine Roed, Deputy Director General at the *Confederation of Danish Industry*, emphasized the importance of ABS to create income generation in developing countries. Her hope for the ABS Business Dialogue was to clear the way for the effective implementation of the Nagoya Protocol.

Mrs. Daphne Yong-d'Hervé, Chief Intellectual Property Officer at the *International Chamber of Commerce*, thanked the *ABS Initiative* and the *Danish Government* for bringing key stakeholders together before pointing to the need for coherence in ABS interpretation at the national and international level to advance the implementation of the Nagoya Protocol as well as for all actors to work together to ensure that evolution of system is practical and workable for everyone concerned.

Finally, the facilitator *Mrs. Kathrin Heidbrink* gave a brief introduction to the Fourth ABS Business Dialogue.

The entry into force of the Nagoya Protocol

The first session of the Business Dialogue started with a comprehensive update on relevant ABS developments at the international and national level.

- **Status of ratifications and outcomes of COP 12 / MOP 1**

Kathryn Garforth, Programme Officer on Access and Benefit-sharing at the *Secretariat of the CBD*, gave a detailed presentation on the status of ratifications and the outcomes of the 1st meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (COP – MOP 1), held from 13-17 October 2014 in Pyeongchang, Republic of Korea. Participants were informed that the Nagoya Protocol entered into force on 12 October 2014 after having reached the necessary number of ratifications. As of 27th January 2015, 58 countries have ratified or acceded to the Protocol. The *CBD Secretariat* is anticipating more ratifications over the coming months as many countries are working on their implementation process. *Mrs. Garforth* also gave a brief summary of the key outcomes of several important decisions that were adopted at COP-MOP 1, concerning among others the establishment of a compliance committee, model contractual clauses, capacity building, awareness-raising, the global multilateral benefit-sharing mechanism and the ABS Clearing-House. She also gave an introduction to the ABS Clearing-House, explaining its goals and guiding principles and the main types of information that Parties are required to share through the ABS Clearing-House.

- **Open plenary discussion**

In the open plenary discussion that followed, participants sought clarifications regarding the ABS Clearing-House and compliance measures of the *Secretariat of the CBD* to ensure the effective implementation of the Nagoya Protocol.

- **Regional and national implementation update: policies, laws and regulations**

Mahlet Teshome Kebede, Legal Expert in the Human Resources, Science and Technology Department of the African Union Commission, reported on the implementation of the Nagoya Protocol from an AU perspective. After briefly referring to the structure of the *African Union* and the OAU Model Laws which were developed in the absence of current legally binding international regimes (NP, ITPGRFA, CPB) and regional initiatives (ARIPO, OAPI, PAIPO), *Mrs. Kebede's* presentation focused on the development of the *African Union Guidelines for a Coordinated Implementation of the Nagoya Protocol on ABS*. Aimed at providing policy and strategy guidance to support the implementation of the Nagoya Protocol in Africa, the Draft AU Guidelines on ABS are expected to be endorsed by the *African Ministerial Conference on the* Environment (*AMCEN*) in March and the *AU Assembly* in June 2015. *Mrs. Kebede* highlighted that the first part of the Draft Guidelines, the policy framework, sets out principles of the envisaged coordination as well as policy guidance on direction to AU Member States on national implementation against a harmonized regional standard proposed by the AU Guidelines, while the Guideline section (part two) constitutes a hands-on tool for implementers of the Nagoya Protocol, namely National Competent Authorities and related organs of AU Member States.

The presentation held by *Ashenafi Hailu,* Director of Genetic Resource Access and Benefit Sharing Directorate at the *Ethiopian Institute of Biodiversity*, gave a detailed overview of the current status of ABS implementation in Ethiopia. Ethiopia's ABS legislation focuses on Prior Informed Consent, Mutually Agreed Terms, a multilateral system of access and how to implement relevant activities (see *Access to*

Genetic Resources and Community Knowledge and Community Rights Proclamation No. 482/2006 and Regulation 169/2009). Moreover, Ethiopia has acceded to the Nagoya Protocol and developed a Code of Conduct to administer ABS issues. After reporting on ABS practice in Ethiopia, *Mr. Hailu* identified the challenges that Ethiopia is facing with respect to the implementation of ABS, emphasizing that local communities are not adequately benefiting from accessing their genetic resources due to limited capacity and lack of effective enforcement and follow-up mechanisms on ABS. In the future, it is planned to build material and human capacity for bio-prospecting and negotiation, increase the number of genetic materials access for research, development and benefit sharing and control unauthorized movement of genetic resources and establish the ABS Clearing-House.

Gaute Voigt-Hanssen, Senior Legal Adviser at the *Norwegian Ministry of Climate and Environment* updated the participants on Norwegian ABS policies laws and regulations. Referring to the Norwegian Nature Diversity Act, in force since July 2009, *Mr. Voigt-Hanssen* indicated that the Act provides the possibility to draft regulations requiring permits for access to Norwegian genetic resources, rules on benefit-sharing, and information on the use of traditional knowledge. He emphasized that importers of genetic material from other countries are required by the Act to provide information on the origin of the material and the circumstances through which the material has been obtained. Moreover, *Mr. Voigt-Hanssen* highlighted that changes in the Norwegian laws were also made in Acts that have implications for ABS, such as the Norwegian Patents Act. For Norway, setting up check points (e.g. Patents Office, Norwegian Research Council, Plant Breeders Office), deciding on access and benefit-sharing requirements, and fulfilling regulations on traditional knowledge associated with genetic resources will be work for the future.

Alicja Kozlowska, Policy Officer for Global Sustainability, Trade and Multilateral Agreements at the *European Commission*, reported on the developments at the level of the *European Union*, focusing on the *EU regulation No. 511/2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union* adopted in April 2014. The core of the regulation is the user's due diligence obligation. Participants were informed that the system of due diligence implies an obligation to meet a reasonable standard of care to ascertain legal acquisition of genetic resources and associated traditional knowledge. Next steps with respect to ABS implementation at the EU level are to work on the Implementing Act to the EU regulation, which is to be adopted in October 2015 and to prepare (sectoral) guideline documents. The main task for the EU Member States under the Regulation is to designate competent authorities (Article 6), lay down rules on penalties (Article 11) and prepare for checks on user compliance.

Finally, *Keize Nagamati Junior,* Environmental Analyst at the *Ministry of Environment of Brazil*, made a brief contribution from the floor concerning the implementation status of ABS in Brazil, reporting that a bill is currently under discussion to update the ABS regulation. It is expected that this update will help stimulate access to genetic resources and provide more benefits. The bill will also provide a basic framework for the implementation of provisions by intra-legal regulations. Regarding the Nagoya Protocol, Brazil's ratification of the Protocol is currently under discussion in the Brazilian National Congress and expected to be concluded after the ABS regulatory bill under discussion.

- **Open plenary discussion**

After the presentations, an open plenary discussion touched on the following key issues:

- With respect to a question concerning the applicability of the EU regulation No. 511/2014 in countries without ABS legislation in force, it was indicated that the sovereign rights of the parties are exercised by putting appropriate requirements in place. A participant indicated that without a Prior Informed Consent (PIC) or Mutually Agreed Terms (MAT) requirement in a country, access is presumed to be free. However, it is important to note that this may in fact not be the case everywhere.

- The importance of inter-ministerial working groups was highlighted. Participants pointed to the usefulness of such groups for sharing views and opinions with respect to the involvement of Indigenous Peoples and Local Communities (IPLCs).

- The issue of registered collections was discussed among the participants. It was stressed that registered collections aim to ensure that the obtained material is in order, i.e. that appropriate permits have been issued, etc. The notion of registered collections does not however imply that there is no PIC or MAT requirement.

- Some participants also called for information on samples, emphasizing that the origin of samples must be known and entry dates need to be clarified.

Coping with the Nagoya Protocol – guidelines, codes of conducts, pilot projects, etc.

The afternoon session on the first day aimed to inform the participants on approaches and measures being developed by the private sector and by basic and applied research in response to the obligations set out in the Nagoya Protocol. The following panelists delivered brief opening statements which set the scene for a facilitated plenary discussion that followed.

- **Approaches being developed by the private sector**

Dr. Ricardo Gent, Executive Director at the *German Association of Biotechnology Industries within the German Chemical Industry Association (DIB)* referred to the association's best practices guidelines on ABS that were developed in 2006. He further reported that the association is presently drafting best practice guidelines for collections which are anticipated to be concluded in the upcoming months. While *Dr. Gent* strongly supported the concept of the EU regulation on ABS – in particular the voluntary tools that help users meet the compliance obligations - he suggested focusing on the facilitation of the use of genetic resources as opposed to control mechanisms with a view to trigger investments in conservation and sustainable use of genetic resources.

Christian Eberhardt, Account Manager Ingredients at *V. Mane Fils S.A.*, shared some practical experiences by presenting the company's sourcing activities with respect to *Echinops giganteus* in Cameroon, where *Mane* was involved with local communities and the government to obtain the necessary PIC and enter into MAT in accordance with the requirements of the Nagoya Protocol on ABS. In this context, *Mr. Eberhardt* described the lengthy process from finding the resource up to the development of the final product, highlighting the high investments borne by industry and the possible

abrupt end of a project for technical, economical or regulatory reasons, even at a very advanced stage. He also pointed to the importance of non-governmental organizations and associations in order to facilitate or even enable communication and exchange with the local communities on the field and with the national level. For this reason, the number of intermediaries needed may be multiplied, depending on the number of levels and regions involved and the extent of the contacts of these intermediaries at these levels and in these regions.

Bo Hammer Jensen, ABS expert and consultant for *Novozymes*, reported on measures put in place by Novozymes to comply with the provisions of the CBD and the Nagoya Protocol. These include, among others, an internal product developing gating system that involves a CBD / Nagoya Protocol compliance check for commercial utilization as well as strain collections. Moreover, the company expects the EU template for declaration at the stage of final product development to be the foundation for *Novozymes'* internal guidelines for ensuring the needed documentation for CBD/Nagoya protocol compliance. While *Novozymes* is experienced in negotiating contracts, *Mr. Hammer Jensen* emphasized the need for contracts to be of a broad nature rather than pinpointing specific uses.

- **Approaches being developed by basic and applied research**

Dr. Philippe Desmeth, President at the *World Federation for Culture Collections*, drew attention to the Microorganisms Sustainable use and Access management Integrated Conveyance System (MOSAICS) Code of Conduct which was developed in 1999, as well as to standard contracts such as material transfer agreements and basic procedures, which are still valid today. Further, he pointed to major developments at MOSAICS such as the Global Unique Identifier, a unique code that can be attached to microbial samples for tracking and MOSAICS's work concerning the ownership of microorganisms which has resulted in the concept of the "Bundle of Rights". At present, MOSAICS is working on the update of the MOSAICS outcomes into the trust with the help of specific tools, for instance the Global Catalogue of Microorganisms. *Dr. Desmeth* highlighted that MOSAICS is facilitating access and legitimate use of genetic resources, but also pointed to potential grey areas such as the issue of monetary and non-monetary benefit-sharing.

Dr. Lily Rodriguez, researcher for the *German Research Foundation (DFG)*, gave a brief overview of the *German Research Foundation*, highlighting its investments in research and biodiversity in over seven countries. With respect to measures being developed by the foundation, she reported on guidelines established in 2008, requiring applicants of fundings to provide information on specific ABS requirements (e.g. name, contact, process). She indicated that *DFG* exclusively funds academic research and once funding is awarded there is no follow-up until the end of the project when a final report must be submitted. Further, she pointed out that due to the entry into force of the Nagoya Protocol, the guidelines of the *German Research Foundation* are expected to be updated shortly.

Dr. Christopher Lyal, researcher at the *Natural History Museum in London*, reported on a wide range of measures that have been developed by the museum to manage ABS issues. These include checking workflows to identify points where there are ABS implications, revising internal policies, processes and data management; a process of staff training will shortly be under way. Further, *Dr. Lyal* highlighted the importance of cooperation among institutions, emphasizing that the museum has compiled best practices and developed tools in collaboration with the *Global Genome Biodiversity Network* and the *Consortium of European Taxonomic Facilities*, which in both cases are planning to adopt the same measures across their networks. Each group had established a working group to develop codes of conduct, best practice and other tools such as standard Material Transfer Agreements.

- **Closed plenary discussion**

In the subsequent discussion, the preceding panelists were invited to address the following question:

What needs to be further clarified in order for stakeholders to be able to develop guidelines, codes of conducts and best practices?

In summary, the panelists identified the following core needs:

- Several participants stressed the need for clarity, pointing to many uncertainties around definitions (e.g. “utilization”).

- Further, awareness-raising on ABS and its promotion were regarded as essential in order to enable compliance with the provisions set out in the Nagoya Protocol.

- It was recommended for business representatives to establish guidelines and codes of conducts and to subsequently propose regulations and submit them to provider countries.

- The need for a structure and organization on the field in countries providing genetic resources with a view to attract foreign industry was seen as necessary. To bring an example, hotspots of biodiversity should be made accessible and interpreters should be identified.

- **Open discussion**

In the open discussion that followed, participants expressed the following ideas and views:

- Some participants called for industry representatives to take a proactive approach, recommending users to provide direct input to governments to make new business models work. Further, it was suggested to ensure that regulations are embedded into the socio-economic development policies of the respective countries.

- The importance of regulations and guidelines taking into consideration users’ needs as well as their potential interaction was central to the open discussion: A few participants shared practical experiences, revealing that some industries have successfully formulated industry guidelines before contacting relevant ministries in provider countries. In this context, the need for support from relevant ministries was also underlined.

- The importance of awareness-building activities and the subsequent sharing of best practices were emphasized by many participants. One participant pointed to the need for awareness-raising at the consumer end and recommended to transform the constraints of guidelines and regulations into added value. The success of organic and fair trade concepts served as examples.

- Participants also differentiated access for commercial research and non-commercial (basic and applied) research. It was argued that little or no transaction costs for basic research might eventually lead to an increase of transaction costs for commercial research. Some participants

emphasized that it is necessary to take into account that benefits will mostly be generated by commercial research.

- The establishment of an effective multilateral mechanism for sharing benefits was called for when those benefits clearly arise from utilization of genetic resources.

- Cost-efficiency for regulations and procedures was seen as essential. A number of tools have already been developed to fast track, mainstream and reduce hurdles of costly procedures (e.g. legal restoration system, single window and multiple application contracts, incentives for compliance, standardized contracts for benefit-sharing, FAO).

- Finally, a representative of IPLCs enquired about businesses' experiences with local communities. What were the challenges regarding the involvement of IPLCs and how did industry tackle them? While some participants referred to the challenges when interacting with local communities in the field and called for support for PIC and MAT negotiations with IPLCs, another participant shared positive, practical experiences regarding negotiations with local communities and instead pointed to difficulties encountered at the level of national administrations.

Supporting ABS compliant value chains in cooperation with the private sector

The afternoon session of the first day of the Business Dialogue informed the participants on relevant support measures made available by institutions, organizations and programmes to promote the establishment of ABS compliant value chains in cooperation with the private sector.

María Julia Oliva, Senior Coordinator for Policy and Technical Support for the *Union for Ethical Biotrade (UEBT)*, a non-profit association working with companies and other organizations in promoting the "Sourcing with Respect" of ingredients that come from biodiversity, and *Véronique Rossow,* head of Research and Development at *Phytotrade Africa*, a non-profit association whose main objective is to support BioTrade throughout multiple value chains from Southern Africa, and therefore alleviate poverty through the sustainable use of the biodiversity, jointly presented the main types of requests received from companies working to set up ABS compliant value chains. A group of panelists was then invited to share effective support measures that could be utilized to address and overcome these challenges.

Mrs. Oliva and *Mrs. Rossow* examined key needs of companies, including:

1. Specific awareness-raising activities and capacity-building
2. Technical support for understanding and meeting ABS requirements
3. Policies, systems, and tools to determine the need for ABS and verify compliance
4. Promotion of change in sectoral transformation
5. Clear and practical legal requirements and procedures
6. Coping with transitional situations in countries

Mrs. Oliva reported that *UEBT* is successful in offering companies support in most of the above-named fields, but emphasized that the promotion of change in sectoral transformation, particularly with respect to promoting the ABS message to the broader public, remains challenging. She also pointed to the urgent need for regulations to support transitional approaches in countries. *Mrs. Rossow* confirmed the power of the Nagoya Protocol as a tool to decrease the asymmetry of strengths between "the North and the South", but also the complexity of promoting BioTrade at users' level, due to various reasons including the lack of clarity around definitions and the need to maintain competitiveness to get the buy-in from the industry.

Further to the types of requests highlighted in the presentation, the following inputs were made:

Mr. Santiago Carrizosa, Global Adviser on ABS at *UNDP*, reported that *UNDP* could, among others, successfully address and promote sectoral transformation. Measures utilized by *UNDP* are a combination of policy and on-the-ground approaches that include: a) linking the ABS policy development process with national efforts to develop and strengthen science and technology policies, programs and projects that use natural product value chains for the development of ABS products; b) developing root cause analyses to identify supply, policy and land management issues and solutions for ABS-compliant value chains; and c) facilitating private-public platforms or partnerships to address production, land management and ABS issues. *Mr. Carrizosa* also pointed to *UNDP's* Green Commodities Program (GCP) which combines public and private efforts to transform a commodity sector. GCP is a neutral broker with strong technical expertise, bringing together the various stakeholders of the targeted commodity sector at country level to address underlying structural problems. GCP's approach could also be used to foster multi-stakeholder collaboration and the establishment of effective national enabling environments for natural products having the potential of becoming ABS products.

Mr. David Vivas Eugui, Legal Officer at the *UNCTAD's BioTrade Programme*, reported that *UNCTAD* provides policy advice, runs expert groups on the interface between BioTrade and ABS, and offers a variety of tools that support the development of ABS compliant value chains (e.g. Handbook on the Interface between Intellectual Property and Implementation of the Nagoya Protocol). Further, *Mr. Vivas Eugui* stated that *UNCTAD* provides capacity-building and in the future aims to discuss the possibility of trade tools and the development of incentives to promote compliance with the Nagoya Protocol. Support to promote ABS compliant value chains in selected LDC/SIDS is foreseen.

Mr. Jaime Cavelier, Senior Biodiversity Specialist at the *Global Environmental Facility (GEF)* informed the participants about new opportunities for funding under the *GEF's* "Non-Grant Instrument (NGI)". Opportunities will be open for the private sector as well as for governments of GEF eligible countries. They could apply to various "products" including short and long term concessional loans, equity/investment fund and credit and performance risk guarantees. In the case of the private sector, the NGI will be open to large as well as to small and medium enterprises working in line with the mandate of the *GEF*.

Mrs. Sophie von Gagern, Project Manager at *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH*, reported that GIZ supports countries on behalf of the Federal German Government at regional and national level in the implementation of the Nagoya Protocol. Thereby, GIZ facilitates dialogues between all relevant stakeholders to manage value chains in a sustainable and ABS compliant way. *GIZ* can identify local partners for research and development, provide value chain assessments and support the enhancement of sustainable management of the respective resource in accordance with environmental and social standards. *Mrs. von Gagern* also gave an overview on the various ways *GIZ*

usually partners with the private sector (e.g. development partnerships (see develoPPP.de); integrated development partnerships), consortium or as a consultant).

Mr. Suhel al-Janabi, Co-Manager of the *ABS Initiative*, briefly provided background information on the multi-donor *ABS Capacity Development Initiative* before referring to the types of support that the Initiative may offer with respect to setting up ABS compliant value chains. Measures include technical support, ensuring stakeholder identification along the value chain, process facilitation and expectation management. The *Initiative* also advises on compliance matters with respect to national and international obligations, provides capacity-building and is responsible for technical and legal backstopping of ABS processes.

- **Open plenary discussion**

A number of issues were raised in the subsequent open plenary discussion, including the following:

- It is key to use pilot cases to initiate the implementation of national ABS frameworks in countries where ABS rules are not yet operational
- A bottom-up approach seeking to first engage local communities was recommended by participants and encouraged by support agencies
- A significant need for awareness-raising among relevant stakeholders exists. Finding a common language is a precondition for IPLCs to be able to participate in the ABS dialogue.
- It is recommendable to use practical examples of ABS implementation (e.g. national and global ABS projects) and concrete ABS case studies. Participants were invited to present actual case studies.
- Capacity-building for stakeholders and stakeholder analysis' are considered valuable instruments
- Triangular relationships might hamper adequate benefit-sharing agreements for local communities. It is important to ensure that benefits reach the providers of genetic resources and holders of traditional knowledge.
- There is an urgent need to provide funding for research activities in countries

Thursday, 29 January 2015

Implementation of the Nagoya Protocol in a time of scientific and commercial change

Following a quick recap of the first day of the Busines Dialogue, the morning of the second day aimed at providing an overview of scientific developments along with different business models and changed markets. In order to do so, *Dr. Rachel Wynberg,* Associate Professor at the *University of Cape Town* and *Mrs. Sarah Laird,* Co-Director of *People and Plants International*, reported on recent changes in scientific, technological and business realities and provided a snapshot of the specificities of different business sectors (e.g. biotechnology, pharmaceuticals, food, cosmetics).

Dr. Wynberg pointed to the fast changes in industry and the sciences, and informed the participants on fundamentally changed approaches to drug discovery, plant breeding, crop improvement, foods and cosmetics. She highlighted key research changes (e.g. rise of microorganisms; greater precision), the blurring boundaries between sectors as well as the increasing number of patents on biodiversity, emphasizing that a large proportion of resource collection nowadays takes place in user countries ("backyard exploring"). The great variety of approaches towards R&D and product development processes was also emphasized. Finally, *Dr. Wynberg* pointed to the need for governments to stay abreast of the changed realities, recommending that industry representatives should share their knowledge concerning these new developments with regulators in providing countries to ensure that governments will not be regulating for activities that no longer exist.

Visual materials accompanying this presentation will be available in April 2015 on the website of the *ABS Initiative* (see http://www.abs-initiative.info/).

Group work on access patterns and benefit-sharing

The overall objective of the group work session was to inform the development of national regulatory frameworks focusing on the demand for access and benefit-sharing while taking into account sectoral specificities. To do so, the participants were divided into six groups composed of representatives of governments, industry, research institutions and associations from North and South. They were asked to reflect on two questions related to access and benefit-sharing.

The first three groups of participants were asked to discuss the following question:

- ***How can the varied nature of demand for access be most effectively accommodated in national regulations?***

The groups were invited to consider the regulations themselves as well as the institutional capacity to implement them. Based on the outcome of their discussions, each group was asked to develop three to five recommendations for policy makers in order to inform the development of national regulatory frameworks that take into account the access patterns of various types of users of genetic resources.

The three remaining groups were invited to answer the following question:

- ***How specific should national regulations be with respect to benefit-sharing?***

The participants were asked to consider the nature of benefits, as well as the timing of negotiation and distribution of benefits. Each group was asked to develop three to five recommendations for policy makers on what should be considered in national regulatory frameworks with respect to benefit-sharing. The outcomes of this group exercise were subsequently presented in plenary.

A synthesis of the group work is provided below. The results of the individual group works are available in the annex.

Synthesis of group work on access patterns and benefit-sharing

A. How can the varied nature of demand for access be most effectively accommodated in national regulations?

1. Provide solutions at different levels

- Through regulations (including guidelines, the establishment of national competent authority), administrative practice and contracts.

2. Make access to genetic resources simple and quick (recommended time to obtain an access permit: 3 months)

- Facilitate access procedures for users and providers (e.g. through use of simple collection declarations), taking into account that a uniform 'one size fits all' access procedure may impede research
- Designate one administration in the provider country (e.g. national competent authority) as point of contact for users
- Require users to provide a clear and understandable purpose/ motivation for accessing genetic resources with view to facilitate access
- Provide guidelines for users outlining all required information and documents necessary to obtain a permit
- Make use of evolutionary clauses/contract addendums that allow capturing repeated use, future changes in use/intention and transfers both by the original collectors and subsequent users in the value chain.
    - Before PIC is given, a regulation may require information on the development process and potential benefit sharing. In the PIC, the letter of intent/access request should define already proposed development process and benefit sharing (milestones) depending on the sector and type of research.
    - Ensure flexibility in traceability of genetic resources (by using electronic tools for applications for ABS (software packages) for regulators to follow tracking;
- Make use of national research centers when acquiring access
- Provide a mechanism to require provider countries to develop flowcharts with correct information for users (through ABS Clearing-House)

3. Build the capacity of regulators with a view to accommodate sectoral specificities

- Train regulators and repositories on R&D models and data management systems, and relevant global standards (e.g. ISO TC 276 BioTech)

4. Ensure legal certainty for all actors (collectors, industry, regulators)

- Establish simple and clear procedures in regulations for providers and users

    - Need to clarify/differentiate the use of the natural extracts and ingredients directly used for processing under current technologies and consumption and not for R&D in the strict sense. The same considerations apply for bio-control agents.
- Allow for flexible regulations in order for negotiations to accommodate sectoral specificities (consider using sector / industry / research-specific rules).
- Regulations should protect confidential information to prevent its disclosure by administrations or the Clearing-House
- Clarify the competences of national authorities under the Nagoya Protocol, FAO ITPGRFA and the WHO Pathogen sharing system
- Use standardized contracts, modular clauses, model certificates and passports/permits (for collections)
- Use existing global standards that may apply to cases of ABS collections

5. Recognize best practices and success stories

- Maximise learning from positive experiences by looking at successful ABS processes in countries (e.g. Costa Rica, Colombia, Australia)

6. Acknowledge the history of exploitation

- Take into account historical inequalities around practices of appropriation of genetic resources and associated traditional knowledge without the consent of the country of origin or the community holding the knowledge

B. How specific should national regulations be with respect to benefit-sharing?

1. Be very specific in prescribing the process for agreeing on benefit-sharing

2. Regulations should be flexible

- Benefit-sharing rules should reflect actual situation and business practices
- The process of benefit-sharing and determining the exact benefit should be negotiated on a case-by-case basis by the parties themselves (watch out for information asymmetry!)
- Rules should support IPLCs to create their own mechanisms for transparent, clear, consistent benefit-sharing.
- With respect to exact benefits:
    - Rules should allow for the sharing of both monetary and non-monetary benefits.
    - If a percentage-based benefit sharing approach is agreed upon, consider the following issues:

- Does the percentage come from a reasoned basis?
- Are sectoral differences recognized? (profit margins, etc.)
- Rules for the negotiations need to define which are the percentages that will be considered and their basis
- Percentage of gross revenue or net revenue?
- No stacking of percentages

- Milestones should be included in agreements to accommodate different phases in benefit-sharing
- Benefit-sharing should contribute to the development of national research capacities and knowledge related to genetic resources in provider countries
- ABS frameworks could propose a range of incentives for companies and research organizations to promote ABS-compliant R&D and benefit-sharing (R&D tax breaks, direct support, clusters and networks, patent boxes)

3. Provide and/or facilitate legal/technical/scientific/commercial advice to providers to rebalance information asymmetry

- Advisors / lawyers could offer pro bono services to indigenous communities with a view to facilitate their negotiations
- Make access to past cases available (e.g. through creation of case databases)
- Make use of an international agency as mediator / international arbitrator to resolve disputes of parties

4. Non-monetary benefit-sharing agreements should be embedded in national strategies of provider countries (e.g. NBSAPs)

- The strategies should be transparent and made accessible to users

5. Ensure legal certainty

- Regulations should make clear the identity of the competent authorities empowered to grant PIC and negotiate MAT, including benefit-sharing. Fewer entities /levels mean less administrative burden and increased legal / ethical certainty (e.g. centralized institute such as *Ethiopian Institute of Biodiversity*).
- Provide guidance to users as to whom they engage with and the types of issues that need to be addressed when engaging with IPLCs

6. Benefits should reach local communities

- Ensure that benefits are not diluted in administrative costs / Support conservation in a transparent way

7. Allow for evolution of ABS relationship and law

- Make use of precedents

8. Establish general guidelines as opposed to strict frameworks

- Give guidance on the interface between intellectual property and benefit-sharing for all actors.

- **Open plenary discussion**

Following the presentations by the groups regarding the outcomes of their discussions on the nature of the demand for access and implications for the development of national regulatory frameworks, a number of issues were raised, including the following:

- It was suggested that clarity of terminology is needed in national regulatory frameworks in order for users to be able to determine more easily what type of activities are covered by ABS requirements. For example, is the use of extracts and ingredients for processing covered by ABS requirements? Currently, the situation is not clear for a number of research activities.

- Differentiating access for commercial research and non-commercial research of genetic resources, participants stated that a uniform "one-size-fits-all" access procedure may impede research and highlighted the difficulty to determine when non-commercial use of a resource turns into commercial use. Some participants recommended using a two-track approach (e.g. Australian approach) where the user / bioprospector upon obtaining the research permit promises to inform the provider in the event that the research turns into commercial research with a view to renegotiate a benefit-sharing agreement. With respect to the issue of a transfer/change of non-commercial to commercial use, it was considered useful for organizations and actors to develop tools that help users remember they have to communicate to the provider a transfer of genetic resources to a third party or a change of intent. The onus should be on the users to report back to the provider.

- Regarding the use of flowcharts in the ABS Clearing-House, it was agreed that flowcharts and clear step-by-step procedures would be very valuable. However, it was indicated that the Clearing-House is not in a position to demand that countries make such information available unless decided by the Parties to the Protocol. Likewise, the Clearing-House is not in a position to mandate that information be made available in a specific language unless agreed to by the Parties to the Protocol. This would be work for the future.

Following the second round of presentations concerning benefit-sharing, participants raised the following issues:

- One participant pointed to the importance of the potential for ABS partnerships with an investment of effort and a share of the risk being assumed by the provider. A good practical example is Namibia where as a result of an equitable share of the risks, there was also a more equitable share of the benefits. In this context, the participant underlined that technology transfer, capacity building and upgrading of local capacities could be of more value than royalty payments to many African countries. The focus should be put on collaboration for development instead of milestone payments.

- Another participant made reference to the information asymmetry that had been the subject of discussion and recommended a framework protecting the weaker negotiating partner (whether provider or user). The participant also stated that the discussions in the respective groups pinpoint the difficulty of setting up fair and practical rules for different situations that occur. In this context, the need for flexible frameworks for the nature of the benefits and the actual demands was underlined.

- The question was raised as to whether a subsequent user also requires a PIC to perform research and development on a genetic resource. Referring to the obligations of users, it was explained that the system of due diligence (see Art. 4 of EU regulation No. 511/2014) had been developed in/by the EU to address situations of subsequent use, highlighting that the obligation to transfer information is imminent regardless of the need for renegotiating PIC. Users shall seek, keep and transfer to subsequent users the internationally-recognized certificate of compliance, as well as information on the content of the MAT relevant for subsequent users; or where no internationally-recognized certificate of compliance is available, information and relevant documents (date and place of access of genetic resources and associated traditional knowledge, etc.).

- The majority of participants emphasized the need for clear and specific definitions with respect to genetic resources versus commodities, research and traditional knowledge. Declarations were seen as highly useful for companies.

- Finally, it was highlighted that developing countries should put in place national development policies with the goal to build capacity and rebalance the existing asymmetries of users and providers.

The following is a summary of the main issues raised by regulators and representatives of indigenous peoples and local communities (IPLCs) in the plenary.

- A great need for clarity with respect to rules and guidelines was highlighted by the participants. For some, it was critical that users provide clear information regarding the purpose of research and development with respect to genetic resources they are seeking access to in order to enable facilitated and quick access to genetic resources.

- In addition, it was pointed out that it will be helpful to use countries' experiences on benefit-sharing as examples, particularly by looking at different benefit-sharing. The AU Guidelines for a Coordinated Implementation of the Nagoya Protocol on ABS were seen as a useful instrument to support the development or revision of national regulatory frameworks and processes.

- With respect to compliance measures, it was emphasized that clear access procedures and benefit-sharing details are necessary for all stakeholders in business and research in order for users to comply with the defined rules and obligations. Several participants stated that standardized conditions such as widely adopted model clauses would be helpful in facilitating compliance. Stakeholders from providing countries and policy makers at the regional and / or national level were invited to bring forth such model clauses.

- Finally, many participants highlighted the usefulness of the meeting and agreed that close collaboration and trust amongst the diverse stakeholders are key to a successful implementation of the Nagoya Protocol.

At the closing of this session, the managers of the *ABS Initiative*, *Dr. Andreas Drews* and *Mr. Suhel al-Janabi*, indicated that the results of the working groups are of great importance and will be used for the further support of countries when developing their national regulatory frameworks. Participants were also invited to share ABS agreements with a view to build from past experience.

Closing panel discussion: What cooperation is needed to make the Nagoya Protocol work?

The Fourth Business Dialogue was concluded with a panel discussion which was aimed at giving key stakeholders the possibility to share their views and thoughts on future cooperation forms for an effective implementation of the Nagoya Protocol.

Mikkel Aarø-Hansen (*Danish Ministry of Environment*) reaffirmed Denmark's strong commitment to ABS and highlighted the need for further capacity development and trust building at all levels to ensure that access and benefit sharing will work in practice.

Flemming Winther-Olsen (*Danish Foreign Ministry*) highlighted the importance of demonstrating ABS successes to the donor community with a view to encourage further funding for the implementation of ABS at the national and international level.

Karin Klitgaard (*Confederation of Danish Industries*) drew attention to the usefulness of the meeting and expressed the need to strike a balance between flexibility and security with respect to ABS regulations and procedures.

Pierre du Plessis (*African Union Commission*) underlined the importance of strong partnerships among the relevant stakeholders and asked for industry representatives to move beyond the letter of the law to ensure the equitable sharing of benefits arising from the utilization of genetic resources.

Daphne Yong d'Hervé (*International Chamber of Commerce*) highlighted the fact that much work was being done in the business community to raise awareness and share best practices and pointed to the importance of dialogue and cooperation between users and governments when creating legislative frameworks.

Alicja Kozlowska (*European Commission*) pointed to the importance of capacity building and awareness-raising activities among stakeholders in all sectors with a view to build a comprehensive understanding of basic ABS principles.

Jaime Cavalier (*Global Environmental Facility*) indicated that the two-day workshop has highlighted the urgency to move forward with the implementation of provisions of the Nagoya Protocol, by establishing pilot projects with private sector companies.

Kathryn Garforth (*Secretariat of the CBD*) welcomed the commitment and willingness of the various stakeholders to bring forward the implementation of the Nagoya Protocol and pointed out that the valuable findings of the workshop will be taken into consideration in the upcoming planning phase of the *Secretariat of the CBD*.

After welcoming the outcomes of the workshop, *Mr. al-Janabi* concluded the Fourth ABS Business Dialogue by thanking all participants for their encouraging, realistic inputs and the host country for enabling the *ABS Initiative* to organize this successful event.

Presentation of group results

Group A1:
How can the varied nature of demand for access be most effectively accommodated in national regulations?

Move from the general and simple (legislation) to the more detailed and specific (regulations and procedures). Definitions should be clear, particularly for industry representatives.

- Make the first step in access simple for industry (e.g. simple collection declaration). Legal certainty is of utmost importance for collectors, industry and regulators. Processes should be fast and simple (win-win situation).
- Detailed benefit-sharing negotiations should take place once resource of potential interest has been found (2nd step).
- Possibility of sector/industry/research-specific rules. Regulations require flexibility so that negotiations can take into account sectoral specificities. There is a need to build the capacity of regulators so that they have a better understanding of differences between sectors (e.g. national consultant informing about respective industry sector). An awareness of the risks and possibilities of specific sectors is crucial for regulators in order to accelerate the process.
- Acknowledgement of history of exploitation is helpful (be aware that some countries think of risks rather than possibilities)
- Great demand for a common understanding of definitions
- Learning from experience and sharing of success stories is helpful (e.g. Costa Rica, Colombia, Australia)

Group A2:
How can the varied nature of demand for access be most effectively accommodated in national regulations?

The law is general in terms of PIC / MAT requirements. Need to differentiate between access for non-commercial and commercial use.

Common points regarding access for non-commercial and commercial use:

- Designate one administration in the provider country (e.g. national competent authority) as point of contact for users
- There is a need for guidelines for users outlining all the information and documents that are required from users to obtain a permit
- Enable a quick process to obtain access permit (approx. 1-3 months) to avoid difficulties with respect to turnover of R&D in the respective business sector
- Regulators ask that users provide a clear and understandable purpose / motivation for accessing genetic resources in order to be able to facilitate access
- It would be useful for the ABS Clearing-House to require the provider country to develop a flow chart providing correct information for users in French and English
- In terms of process, regulations should provide simple and clear procedures which will facilitate a swift process
- To recognize good practices

With regard to non-commercial aspects:

- Flexibility in traceability of genetic resources is needed (resource should be allowed to travel with certificate to another user who is not doing R&D)

With regard to commercial aspects:

- A facilitated process / shortcut for a new PIC should be established for situations where the purpose of utilization of a genetic resource has changed (when there is a change of intent)
- Regulations should protect confidential information to prevent its disclosure by the administration or clearing house

Group A3:
How can the varied nature of demand for access be most effectively accommodated in national regulations?

Recommendations regarding issues for consideration in the development of national regulatory frameworks:

Make access and flows as easy as possible and provide legal certainty. Facilitate procedures for users and providers.

1. Make use of evolutionary clauses/contract addendums that allow capturing repeated use, future changes in use/intention and transfers both by the original collectors and subsequent users in the value chain.
    - Before PIC is given, a regulation may require information on the development process and potential benefit sharing. In the Prior informed consent, the letter of intent/access request should define already proposed development process and benefit sharing (milestones) depending on the sector and type of research.
2. Need to clarify/differentiate use of the natural extracts and ingredients directly used for processing under current technologies and consumption and not R&D. The same applies for bio-control agents. Clarify in regulations of both user and providers.
3. Need to provide solutions at different levels: through regulations (including guidelines, the establishment of national competent authority), administrative practice and contracts.
4. Clarify the competences of national authorities under the Nagoya Protocol, FAO ITPGRFA and the WHO Pathogen sharing system (e.g. regulators need to provide information on relevant authorities and how to connect with them).

Support of institutional capacity through:

- Making use of national research centres when requiring access;
- Training regulators and repositories on R&D models and data management systems, and relevant global standards (e.g. ISO TC 276 BioTech);
- Use electronic tools for applications for ABS (software packages) for regulators to follow tracking;
- Use standardised contracts, modular clauses, model certificates and passports / permits (for collections);
- Use existing global standards that may apply to cases of ABS collection

Group BS 1: How specific should national regulations be with respect to benefit-sharing?

1. Be very specific in prescribing the process for agreeing on benefit-sharing
2. Provide/facilitate legal/technical/scientific/commercial advice to providers to rebalance information asymmetry (at beginning and through mediation as needed)
    - Great amount of asymmetry between negotiating parties exists, i.e. communities, indigenous groups are underrepresented while multinationals/users are typically overrepresented. Users have lawyers and money to invest in educating themselves, but local community members also require legal, technical, commercial advice.
    - Legal, commercial, marketing advice could be offered by advisors and lawyers that offer pro bono services to indigenous communities to help them negotiate. Access to past cases should be made available by creating a database of cases (i.e. providing examples of what works, what doesn't)
3. Be flexible about exact benefits and negotiate on case-by-case basis
    - The process of benefit-sharing and deciding the exact benefit (including questions with respect to trust funds, percentages, etc.) are best left to the parties as long as the parties are more or less equally represented (watch out for information asymmetry!)
    - Advice to users and providers should be kept very broad
    - Include milestones in agreements, so that the terms of the agreement are reviewed every few years to deal with different phases in benefit-sharing agreements: The initial negotiation might no longer be considered fair and equitable a few years later (e.g. product might become high-selling or become a product that has no alternatives in the market).
    - Make use of an international agency as "neutral party/international arbitrator" to which both parties can resort to in case of dispute.
4. Allow for evolution of ABS relationship and law
    - Make use of precedents and induce rules from there (common law approach)
5. Ensure benefits reach local people
    - Make sure benefits are not diluted in administrative costs (e.g. support conservation in a transparent way).
    - Determine who is responsible for negotiations in provider country (e.g. centralized institute like the *Ethiopian Biodiversity Institute*)

<u>Further points that were considered:</u>

- General guidelines recommended (no strict frameworks)
- Unpredictability is a major concern with respect to benefit-sharing
- How do we benefit local people?
- Great possibility for corruption
- How to deal with confidential business information from users?
- What is fair and equitable and who determines this?
- Should we share and have common resources?
- Should contribution be proportional?
- Should there be a trust fund? Who should manage the trust fund?
- Should there be a 50:50 distribution?
- Should the money go to conservation training?
- Should 100% of benefits go to indigenous peoples and local communities (IPLCs)?
- Transparency is a key requirement for benefit-sharing.

Group BS 2: How specific should national regulations be with respect to benefit-sharing?

1. Benefit-sharing rules should reflect actual situation and business practices
    - Rules should be based on negotiations
    - In certain situations negotiation cannot be free (information asymmetries, lack of competences, different situations of power)

⇨ Issues should not only be addressed in regulations but also in guidelines!

2. Rules should allow for the sharing of both monetary and non-monetary benefits.
   If a <u>percentage-based benefit sharing approach</u> is agreed upon, consider the following issues:
    - It needs to be clear where the percentage comes from (reasoned basis)
    - Sectoral differences need to be recognized (e.g. the different types of profit margins in different sectors need to be reflected)
    - Percentage of what? Rules for the negotiations need to define which are the percentages that will be considered and based on what?
    - Percentage of gross revenue or net revenue? Gross revenue is positive from accounting perspective, but raises the question of confidentiality; often difficult to see what the specific R&D costs for one product have been and the different profit margins
    - There should be no stacking of percentages
3. There should be flexibility as to when benefit-sharing is negotiated, executed, and finalized.
    - Specific time frames for benefit-sharing must take into account the rights of IPLCs.
    - There should be flexibility as to the types of benefits whether up-front, milestone or non-monetary benefits, but the terms of benefit-sharing should be agreed upfront. (Concept of good faith does not always work in reality).
    - It is important to define expectations and basic elements of timelines and the types of benefits (ideally done at guideline level rather than in regulations, also due to changing situations on the ground).
4. Rules should support IPLCs to create their own mechanisms for transparent, clear, consistent benefit-sharing
    - There is a significant need for more clarity and certainty.
    - Users need guidance as to whom they engage with and the types of issues that need to be addressed when engaging with IPLCs (critical for legal certainty!).
5. Guidance on the interface between intellectual property and benefit-sharing is needed for the different actors.
    - There is a role for patents as a way to protect and generate benefits but how exactly that is defined may change in different situations. Different actors require different types of support. Guidance is useful (not necessarily through regulations but rather guidelines).
6. ABS frameworks could propose a range of incentives for companies and research organizations to promote ABS-compliant R&D and benefit-sharing such as R&D tax breaks, direct support, clusters and networks, patent boxes as types of incentives that can be adapted to focus on biodiversity based R&D and the sharing of benefits.

Group BS 3: How specific should national regulations be with respect to benefit-sharing?

1. Non-monetary benefit-sharing agreements should be in the context of the provider country's *National Biodiversity Strategy and Action Plan (NBSAP)* or other relevant national strategy (e.g. bioeconomy/development strategy). This strategy should be accessible to users and transparent.
    - The idea here was that a national strategy should exist and be formulated, clear, accessible and transparent, in order for the concrete benefit-sharing within a specific project to be organically included in a vaster frame of an outspoken political intention. An anecdotic character of the concrete benefit-sharing could thus be reduced or avoided, as well as divergences between different projects.
2. The regulation should make clear the identity of the competent authorities empowered to grant PIC and negotiate MAT, including benefit-sharing. Fewer entities /levels mean less administrative burden and increased legal / ethical certainty.
    - Example: In Morocco the national competent authority is composed of relevant stakeholders in the process and gives a voice to all within one single authority, which ultimately provides greater clarity and certainty.
3. Regulations should not be too prescriptive
4. Benefit-sharing should contribute to the development of national research capacities and increase of knowledge related to genetic resources that are to be addressed a country's capital.
    - Benefit sharing should privilege providing support to building further knowledge and research capacity in provider countries. There should be a minimum requirement for benefit-sharing to increase the knowledge within the provider country.

Presentations

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

- **The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization: Current status** – Kathryn Garforth, Secretariat of the Convention on Biological Diversity (SCBD)
- **Implementation of the Nagoya Protocol on ABS and the ITPGRFA: An AU Perspective** – Mahlet Kebede Teshome, African Union Commission
- **Current status of ABS implementation in Ethiopia** – Ashenafi Ayenew, Ethiopian Institute of Biodiversity
- **Update on ABS policies laws and regulations in Norway** – Gaute Voigt-Hanssen, Norwegian Ministry of the Environment
- **EU Regulation implementing the Nagoya Protocol in the Union** – Alicja Kozlowska, European Commission
- **Activities of German Chemical and Biotech Industry** – Dr. Ricardo Gent, German Association of Biotechnology Industries within the German Chemical Industry Association (DIB)
- **Implementing ABS frame by the Nagoya Protocol: Novozymes A/S approaches/measures** – Bo Hammer Jensen, NOVOZYMES
- **Threats and Opportunities in Knowledge-Based Bioeconomy** – Dr. Philippe Desmeth, World Federation for Culture Collections
- **A Hypothetical Research & Development Chain** – Dr. Lily Rodriguez, German Research Foundation (DFG)
- **ABS Decision Points in a Museum Workflow** – Dr. Christopher Lyal, Natural History Museum London
- **The Union for Ethical Biotrade (UEBT) and Phytotrade Africa** – María Julia Oliva, UEBT/ Véronique Rossow, Phytotrade Africa
- **UNDP Support to ABS Compliant Value Chains** – Santiago Carrizosa, United Nations Development Programme (UNDP)
- **Cooperation Fields with the Private Sector** – Suhel al-Janabi, ABS Capacity Development Initiative
- **Support for the Ratification and Implementation of the Nagoya Protocol and Engagement with the Private Sector** – Jaime Cavalier, Global Environmental Facility (GEF)
- **GIZ Support to ABS Compliant Value Chains** – Sophie von Gagern, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Annotated Agenda

4th ABS Business Dialogue

Public-Private Partnerships for Sustainable Development

28 to 29 January 2015, Eigtveds Pakhus, Copenhagen

Wednesday, 28 January 2015	
9.00 –10.30	**Opening** • *H.E. Minister of the Environment of Denmark (Mrs. Kirsten Brosbøl)* • *Secretariat of the Convention on Biological Diversity (Mrs. Kathryn Garforth)* • *Confederation of Danish Industry (Mrs. Tine Roed)* • *International Chamber of Commerce (Mrs. Daphne Yong D'Hervé)* **Introduction to the Business Dialogue:** Getting to know each other/ walk through programme
10.30 – 11.00	Coffee Break
11.00 – 12.30	**The entry into force of the Nagoya Protocol:** **Status of ratifications and outcomes of COP 12 / MOP 1** • *Secretariat of the Convention on Biological Diversity (Mrs. Kathryn Garforth)* **Regional and national implementation update: policies, laws and regulations** • *African Union Commission (Mrs. Mahlet Kebede)* • *European Union Commission (Mrs. Alicja Kowslowska)* • *Ethiopia (Mr. Ashenafi Hailu)* • *Norway (Mr. Gaute Voigt-Hanssen)*
12.30 – 14.00	Lunch
14.00 – 15.30	**Coping with the Nagoya Protocol - guidelines, codes of conducts, pilot projects, etc.** **Approaches being developed by the private sector** • *German Association of Biotechnology Industries (Dr. Ricardo Gent)* • *MANE (Mr. Christian Eberhardt)* • *Novozymes (Mr. Søren Flensted Lassen)* **Approaches being developed by basic and applied research** • *World Federation for Culture Collections (Dr. Philippe Desmeth)* • *German Research Foundation (Dr. Lily Rodriguez)* • *British Natural History Museum (Dr. Chris Lyal)*
15.30 – 16.00	Coffee Break
16.00 – 17.30	**Supporting ABS compliant value chains in cooperation with the private sector:** **Key issues to be addressed** • *Union for Ethical BioTrade (Mrs. Maria J. Oliva) /* *PhytoTrade Africa (Mrs. Katie Beckett / Mrs. Véronique Rossow)*

	Possibilities of support • *Global Environmental Facility (Mr. Jaime Cavelier)* • *United Nations Development Programme (Mr. Santiago Carrizosa)* • *UNCTAD Biotrade Programm (Mr. David Vivas Eugui)* • *ABS Capacity Development Initiative (Mr. Suhel al-Janabi)* • *GIZ (Mrs. Sophie von Gagern)*
19.30	Social Dinner

Thursday, 29 January 2015	
9.00 – 11.00	**Recap of Day 1** **Implementing the Nagoya Protocol: better understanding sectoral differences & trends** (Focus on Biotechnology, Cosmetics, Pharmaceuticals, Food /Beverages) • *Dr. Rachel Wynberg / Mrs. Sarah Laird* **Working group sessions:** Access patterns; Benefit-sharing; and Resource use in different sectors
11.00 – 11.30	Coffee Break
11.30 – 12.30	**Working group sessions** (continued)
12.30 – 14.00	Lunch
14.00 – 15.30	**Presentation of working groups: Accommodating sectoral specificities in national regulatory frameworks**
15.30 – 16.00	Coffee break
16.00 – 17.00	**Closing plenary: What cooperation is needed to make the Nagoya Protocol work?** • *Danish Ministry of the Environment (Mr. Mikkel Aarøe-Hansen)* • *Danish Foreign Ministry (Mr. Morten Elkjaer)* • *Confederation of Danish Industry (Ms. Karin Klitgaard)* • *Secretariat of the Convention on Biological Diversity (Mrs. Kathryn Garforth)* • *International Chamber of Commerce (Mrs. Daphne Yong D'Hervé)* • *African Union Commission (Mr. Pierre du Plessis)* • *European Union Commission (Mrs. Alicja Kowslowska)* • *Global Environmental Facility (Mr. Jaime Cavalier)*

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