

Sub-Regional Workshop on Access and Benefit-Sharing for Anglophone African Countries

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Acronyms and Abbreviations

ABS	Access and Benefit-Sharing
AU	African Union
AUC	African Union Commission
BCP	Biocultural Community Protocols
CBD	Convention on Biological Diversity
CNA	Competent National Authority
COP	Conference of the Parties to the Convention on Biological Diversity
EU	European Union
IPLCs	Indigenous Peoples and Local Communities
IRCC	Internationally Recognised Certificate of Compliance
JKUAT	Jomo Kenyatta University of Agriculture and Technology
KWS	Kenya Wildlife Service
MAT	Mutually Agreed Terms
MOP	Meeting of the Parties to the Nagoya Protocol
NEMA	National Environmental Management Authority
PGRFA	Plant Genetic Resources for Food and Agriculture
PIC	Prior Informed Consent
SCBD	Secretariat of the Convention on Biological Diversity



Background

Since the coming into force of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits arising from their Utilisation (Nagoya Protocol) in 2014, African countries have intensified activities to develop their domestic access and benefit-sharing (ABS) systems. At the regional level, guidance is provided by the African Union Guidelines for a Coordinated Implementation of the Nagoya Protocol (AU Guidelines) since 2015, and the African Group continues to play an important role in the negotiations of the Parties to the Convention on Biological Diversity (CBD) and the Nagoya Protocol.

The ABS Capacity Development Initiative (the ABS Initiative or Initiative) supports the elaboration of regulatory frameworks, the development of ABS compliant value chains and the involvement of indigenous peoples and local communities (IPLCs) in ABS in its African partner countries. Furthermore, it continues to offer capacity building services on ABS and related topic to stakeholders from all African countries as well as from the Caribbean and Pacific regions, and supports their involvement in ABS-related international processes.

Being one of the “early movers” on ABS in Africa, Kenya has had ABS legislation for several years. Kenya’s biodiversity has drawn researchers’ interest for decades, and there are already ABS contracts signed with foreign users. Kenya is currently revisiting its national ABS legislation to increase its effectiveness and compliance with the Nagoya Protocol. Kenya’s civil society, too, has been actively engaged in ABS-related matters for years, and several community protocol processes have been started around local genetic resources and traditional knowledge with Kenyan IPLCs.

Approach and Objectives

In the run-up to the 13th Conference of Parties to the CBD and the second Meeting of the Parties to the Nagoya Protocol (COP-13 /MOP-2), to be held in Cancun, Mexico, in December 2016, the ABS Initiative organised two sub-regional workshops for Anglophone and Francophone African countries.

The Anglophone workshop took place in Nairobi, Kenya, from 26th to 30th September 2016. It provided a forum for stakeholders from Anglophone African countries to learn about recent developments in the ABS arena, exchange experiences and discuss approaches to implement the Nagoya Protocol and other ABS-related issues.

Specifically, the workshop aimed to:

- Introduce the guidance frame provided by the AU Guidelines;
- Discuss approaches to developing national regulatory frameworks;
- Foster exchange on strategic approaches to the valorisation of genetic resources and associated traditional knowledge;
- Discuss elements and the functioning of ABS agreements as well as related monitoring and compliance instruments;
- Provide a forum to exchange on approaches to involving IPLCs in ABS and integrate the protection of traditional knowledge.

Participants

49 participants from 22 Anglophone African countries took part. These included National ABS Focal Points, representatives of IPLCs, stakeholders from civil society as well as from the research and private sectors.



Outcomes

This five-day sub-regional ABS workshop for Anglophone African countries was especially designed to provide participants with an opportunity to exchange experiences on the process and approach adopted in their respective countries to implement ABS and learn from each other. Using the AU Guidelines as a frame, participants reflected on a number of strategic issues and options available to develop efficient and effective ABS regulatory frameworks that will address different contexts and circumstances, discussed the concept of valorisation and the intricacies of ABS contracts. The workshop programme also included a one-day field visit to the Jomo Kenyatta University of Agriculture and Technology (JKUAT) at which time participants were introduced to the Soda Lake Bacteria ABS case study. Examining this case study provided the participants with an opportunity to learn about the current Kenyan ABS system and discuss the elements of a practical ABS agreement example. Methodologically, the workshop organisers applied a number of innovative formats to ensure the active involvement of all participants and create room for fruitful discussions. In particular, the workshop concluded with an 'open space' which provided participants with a new type of platform to discuss and exchange additional experiences on issues of their choice related to the national implementation of the Nagoya Protocol. At the end of five days of intense discussions, participants identified a set of topics to be further investigated at follow-up meetings. These were, among others, the need to explore better ways to communicate with IPLCs and involve them in ABS processes; the need to better understand the research process and the development of intellectual property to protect traditional knowledge from misappropriation; the need to better understand the development of value chains and how to develop effective ABS agreements and benefit-sharing clauses.

Constructive discussions, group exercises and activities contributed to:

- A better understanding of the guidance frame provided by the AU Guidelines;
- A better understanding of the different approaches and options available to develop effective national ABS regulatory frameworks;
- An enhanced understanding of what valorisation is all about and of the reality of research and development in the biotechnology sector;
- A better understanding of the importance to develop a strategic approach to the valorisation of genetic resources and associated traditional knowledge and how a valorisation strategy, if well-implemented, can contribute to implement efficient national ABS systems;
- A better understanding of the key elements to consider when negotiating ABS contracts, especially benefit-sharing clauses;
- A better understanding of the key intellectual property issues to take into consideration, including the positive and/or defensive approach, to protect traditional knowledge;
- Fruitful discussions on the different approaches that could be implemented to better involve IPLCs in ABS processes, build their capacity on ABS related issues and empower them to successfully negotiate fair and equitable ABS agreements;
- Maximising the learning curve of participants on a wide range of ABS issues of their choice thanks to an open space forum.



Process

Opening

Hartmut Meyer from the ABS Initiative welcomed the participants and thanked the Kenyan National Environmental Management Authority (NEMA) and partners for their close collaboration in the organisation of this event. He informed the participants that the programme of work of this sub-regional workshop was designed in a slightly new format in order to better tap into the capacities built in African countries over the past years, putting a strong emphasis on interactive discussions and exchange of knowledge, experiences, good practices and expertise between the participants.

Caroline Lentupuru from the Baringo County Local Government informed the participants that the soda lake bacteria important for scientific research were and are accessed in the Baringo County. She went on to say that, generally speaking, county governments were on the learning curve regarding ABS issues. There is indeed a real need for capacity building and helping local communities to be able to benefit from their genetic resources and the traditional knowledge associated with them.

XXXXX from NEMA welcomed all the participants on behalf of the Kenyan Government. He highlighted the importance of Kenyan biodiversity and thanked the ABS Initiative for using the soda lake resources as a learning example. He then said that Kenya supported various ABS projects and stressed that the AU Guidelines were an important document to assist African countries with the implementation of the Nagoya Protocol.

Dr XXXX from Kenya Wildlife Service (KWS) stressed that Kenya had important success stories and that everyone concerned should play their role in ABS processes for the benefit of all. In this regard, he highlighted that IPLCs must be better involved in ABS issues and processes. Mr XXX reiterated NEMA's full commitment to IPLCs' participation in ABS discussions and to ABS national implementation processes.

Setting the Scene

Introduction

The main objectives of this first session of the workshop were to bring the participants up-to-date with the latest developments in relation to ABS and provide an introductory overview of the AU Guidelines.

Updates on ABS and the Nagoya Protocol

In this opening presentation, *Hartmut Meyer* provided a brief update on the status of national records posted on the ABS Clearing House and gave a brief overview of the European Union (EU) ABS Compliance Regulation. Regarding the former, one of the main concerns was the gap between the high number of Parties to the Nagoya Protocol, and the actual information posted on the ABS Clearing House. Considering the important role played by the ABS Clearing House in keeping records of Internationally Recognised Certificates of Compliance (IRCC), it will be useful to identify the reasons why only few countries have provided information to the ABS Clearing House. In order to do so, the Secretariat of the CBD (SCBD) kindly requested the assistance of the ABS Initiative to discuss this issue with the participants of its workshops. Mr Meyer then explained some of the main features of the EU ABS Compliance Regulation, focussing on users' due diligence obligations and on the obligation for each Member State to establish at least two checkpoints in the valorisation process. He drew participants' attention to the fact that the scope of the EU ABS Compliance Regulations might not be necessarily the same as that of provider country legislations.



AU Guidelines: Overview of Contents

Mahlet Teshome from the Department of Human Resources, Science and Technology (HRST) at the African Union Commission (AUC) gave an overview of the contents of the AU Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa. The Guidelines, which were developed by the AUC and officially adopted by the AU General Assembly in 2015, serve as a reference frame for all African countries in their Nagoya Protocol implementation processes. The policy guidance calls on AU Member States to ensure that adequate legislation is in place and provides guidance on the following key issues: awareness raising and information sharing on ABS procedures; access for utilisation; benefit-sharing; monitoring and compliance; protection and promotion of traditional knowledge associated with genetic resources, community and farmers' rights, and economic development; capacity building and technology transfer.

Plenary Discussion

Following these first presentations, participants requested some clarifications on the following points:

- *Contract, EU ABS Compliance Regulation and Absence of ABS Legislation in Provider Country:* When a contract has been established for the utilisation of genetic resources with a provider country that has no existing ABS legislation, EU users have no obligation to inform their national authorities about the existence of this contract. However, they will have to respect the terms of the contract agreed upon with the provider country, as this is governed by contract law.
- *Role of the AUC in Coordinating the Implementation of the AU Guidelines:* The AUC has established the Continental Coordination Committee (CCC) for coordinating the implementation of the Nagoya Protocol in Africa. The CCC is comprised of relevant actors within the region. However, there is still a need for AU Member States to ratify the Nagoya Protocol and organise themselves within their Regional Economic Communities (RECs) to make sure that their position is aligned within the AU.

Countries' Aspirations with ABS

Before starting the very technical discussions of the workshop programme, participants were invited to take a step back and reflect on their (personal) reasons and motivation to implement ABS: What makes countries engage in this process? What are their aspirations? What improvements or changes do they expect once ABS is fully functional? The following points summarise the results of this reflection.

- Make ABS work at the ground level
- Empower communities and are able to strategise about Biocultural Community Protocols
- Traditional dignitaries are sensitised across Africa
- People on the ground can direct use of genetic resources for own benefits
- Poverty reduction and incentive for conservation and sustainable use
- Base operations of science on prior informed consent (PIC) and mutually agreed terms (MAT)
- Socio-economic development through strong partnerships with the private sector, the research community and IPLCs
- More equal distribution of power and ABS as an economic tool
- ABS should be a political priority and include ABS into programmes and policies
- Putting together groups that increase commitment of government to implement ABS



Strategic Considerations

Introduction

The overall objective of this session was to provide participants with an opportunity to exchange experiences on the process of implementing ABS in their countries and learn from each other. A more specific objective was to reflect on strategic issues, different approaches and options available to develop effective ABS regulatory frameworks that will address different contexts and circumstances. For each strategic issue examined, a reference to the AU Guidelines was made.

Regulatory Frameworks from the Perspective of the AU Guidelines

The presentation of *Peter Munyi from the ABS Initiative* discussed ABS regulatory frameworks in the context of the AU Guidelines. The AU Guidelines encourage countries to put in place institutional arrangements to regulate ABS, establish procedures for PIC and MAT and rules on access to and utilisation of genetic resources and associated traditional knowledge, including special considerations on specific types of access (such as genetic resources for food and agriculture (GRFA), health, research and development contributing to conservation and sustainable use of biodiversity). Furthermore, the AU Guidelines indicate that provisions have to be put in place for the sharing of benefits arising from the utilisation of genetic resources and associated traditional knowledge. Finally, any regulatory framework must include compliance measures with provider countries' ABS rules, address situations of non-compliance and monitor the utilisation of genetic resources and, where relevant, associated traditional knowledge.

Plenary Discussion

The following is a short summary of the main points discussed:

- *Adaptive and Responsive ABS Regulatory Frameworks:* The AU Guidelines recognise that the scenario on some issues can evolve. The AU Guidelines say that a law on ABS should allow for rules or administrative actions to be taken within the law to respond to changes that may arise.
- *Specific Type of Access for PGRFA:* Under certain conditions, plant genetic resources for food and agriculture (PGRFA) do not fall within the scope of the Nagoya Protocol. Facilitated access to them for the purpose of research, breeding and training for food and agriculture is governed by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

Group Exercise

The overall objective of this group exercise was to share experiences between countries on the establishment of ABS regulatory frameworks, divided in two steps: process and contents.

Regulatory Frameworks – Process

For the first part of the exercise, participants were provided with three guiding questions:

1. To what extent was/is existing legislation/ regulation being amended in your countries, or to what extent was/is new ABS legislation/regulations required?
2. What challenges or/and opportunities did you encounter along the process of establishing ABS regulatory frameworks?
3. How did you deal with creating and sustaining the necessary political will?



Insights from Group Discussions

- absence of ABS framework made developing potentially profitable partnerships rather difficult
- guidance such as the AU Guidelines is important, although countries did not necessarily have to wait for such tools to give directives to go ahead with the national implementation of the Nagoya Protocol.
- pay attention not to over regulate ABS to avoid restricting access
- situate ABS legislation appropriately in order to address comprehensively all ABS issues.
- need for more awareness raising and capacity building, especially with regard to ILPCs and scientists
- lack of involvement of ILPCs in ABS processes
- need to sensitise regulators on ABS issues
- governments must ensure that monetary and non-monetary benefits flow back to local communities
- business cases are essential to trigger political will and make sure that ABS is understood by politicians

Countries' Experiences

- **Cameroon:** Cameroon is currently revising a number of existing laws to establish its national ABS regulatory framework. As this process unfolds, it appears that many stakeholders, scientists in particular, were not aware about ABS. Raising awareness on ABS issues and empowering stakeholders to actively take part in national ABS processes, especially local communities, is essential. Considering that political will is key to start establishing ABS regulatory frameworks, the main challenge encountered is to successfully place ABS at the top end of government's priorities.
- **Kenya:** Kenya already has an ABS regulatory framework in place. However, there are still a number of challenges for scientists to obtain a permit. The current system is not user friendly, but the potential exists for clearer procedures in order to facilitate access. The relationship between researchers and IPLCs is difficult. It is therefore important to empower both groups of stakeholders on these issues as a matter of priority. Overall, it is also essential to raise awareness about the value of genetic resources and the importance of ABS for economic development, especially at local level.

Regulatory Framework – Contents

Comparing & Contrasting Different Countries

To support the second part of this exercise, Uganda and Kenya were taken as examples to highlight possible choices of contents and instruments when developing regulatory frameworks. Both countries are Parties to the CBD and the Nagoya Protocol. Both had existing ABS regulatory frameworks before the adoption of the Nagoya Protocol, but with distinctive features and approaches. In Kenya, ABS regulations are scattered across a range of statutes and regulations, which addressed different elements of ABS (environment; forestry; wildlife; seeds and plant varieties; protection of traditional knowledge and cultural expressions and science, technology and innovation). In Uganda, ABS related measures are less dispersed across statutes and regulations. In Kenya, the focal point is in the Ministry of Environment but the Competent National Authority (CNA) functions are not set out clearly in NEMA. In Uganda, both the focal point, i.e. a NEMA staff member, and the CNA, i.e. the Uganda National Council for Science and Technology (UNCST), have been clearly designated with the UNCST having well-defined functions. The two countries also differ on the ownership and management of genetic resources. In Uganda, legislation is very explicit about where the ownership of the genetic resources lies: It is vested in the government for the benefit of the people of Uganda. In contrast, ownership of genetic resources is not defined in Kenya. Some similarities do exist though. Both countries provide some exemptions regarding utilisation. For



example, customary use and exchanges by local communities for food and other consumptive purposes, access to PGRFA, human genetic resources and approved academic research fall outside ABS regulations. However, neither Kenya nor Uganda has designated any checkpoints as yet.

Countries' Experiences

- **Namibia:** In Namibia, the State is responsible for the land while communities are the custodians. They are closely involved in the process of granting permits. This process includes obtaining PIC and establishing MAT in accordance to Article 6 of the Nagoya Protocol. Biocultural Community Protocols (BCPs) are regarded a useful tool to clarify or formalise communities' structures and facilitate government interactions with IPLCs.
- **Gambia:** The CNA and the ABS focal point have been designated. Some check points have also been selected but the regulation is not fully in place as yet. Communities are custodians of the land. Government is providing technical support for them to get organised before advancing the legislation.
- **Cameroon:** In Cameroon, communities are the owners of their lands. MAT is discussed and signed with the communities but PIC is provided by the government and then signed by the communities.
- **Ethiopia:** The ABS framework is already in place and operational. The CNA and the ABS focal point have been designated and access to genetic resources and associated traditional knowledge is taking place according to the legal requirements.

Lessons Learnt

First, all participants agreed that there were gaps to be filled regarding the involvement of IPLCs in ABS processes and capacity building around those issues. The interactions between IPLCs, government, researchers and other third parties must be strengthened. BCPs and other community structures are crucial tools which could play a key role. Second, it appears that no country has chosen a fast approach to national ABS implementation but an elaborated system of rules to be followed. Effective and coordinated national ABS systems and processes still have to be developed.

Case Study: National Use of Soda Lake Microbial Resources with ABS Contract

Introduction

The case of negotiating an ABS agreement between national users, the federal institutions and the Baringo County government including the participation of IPLCs was chosen as practical national example. Because Baringo County is too far from Nairobi for a day trip, the relevant stakeholders gathered in Nairobi and presented their views to the workshop participants. The overall objective of the Kenyan Soda Lake microbial resources ABS case study was to draw general lessons about the role and involvement of IPLCs in ABS processes at local level. To help with the comprehension of the case study, participants were asked to keep mind the two following questions:

1. What aspects do you particularly find interesting regarding local level involvement in the presented case?
2. What are the implications for stakeholders at the various levels?



The presentation of the case study took place at Jomo Kenyatta University for Agriculture and Technology (JKUAT), which provided the participants with the opportunity to also visit a few of its (potentially) ABS-relevant projects and activities. The group visited JKUAT's botanical garden, which collects specimens of endangered plants used in traditional medicine; participants also visited a banana propagation facility and gained an insight in the activities Prof. Abukutsa Mary O. Onyango aiming to preserve and promote the use of African indigenous vegetables. Finally, staff from the Institute for Biotechnology Research briefly presented their laboratory facilities, where they currently establish a collection of genetic materials of bacteria originating from the Kenyan soda lakes, aiming to better control access to and utilisation of these resources.

Background to the Case Study

Participants were first provided with comprehensive background information on the past 30 years of research at the Kenyan Soda Lakes. Kenyan Soda Lakes are famous for their alkalinity, salinity and hot springs which support highly productive ecosystems and unique habitats hosting a rich diversity of microorganisms able to adapt to such extreme conditions. Bioprospecting for novel bioactive compounds represents a large part of these research activities and concentrates on describing isolates, especially from extremophiles which have unique attributes for biotechnological, industrial, environmental and medical applications.

Background information was also provided on the Kenya Wildlife Service (KWS), a key government agency charged with managing wildlife resources under the recently reviewed Wildlife Act of 2013. Over the years, KWS has directly entered into a number of agreements with outside partners playing a significant role in streamlining ABS issues within the protected areas system.

Participants' attention was then drawn to Kenya's changing legislative landscape and the resulting impacts on the governance of protected areas, user rights, land and resource ownership, community rights and benefit-sharing:

- The Environmental management and Co-ordination (Amendment) Act of 2015 and the Environmental Management and Co-ordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation Legal Notice 160 of 2006 put in place an ABS regulatory framework. However, none of these laws addresses cultural resources such as traditional knowledge.
- The Protection of Traditional Knowledge and Cultural Expressions Act of 2016 seeks to fill this gap by enabling communities to control the use of culturally significant and economically valuable traditional knowledge and expressions of folklore and by promoting the protection of the intellectual property rights of the people of Kenya. In doing so, this new Act intends to give effect to Articles 11, 40 and 69(1)(c) of the Kenyan Constitution. This very innovative legislation therefore creates a new form of intellectual property rights, 'putting Kenya at the forefront of states in the global south protecting national resources and the interests of local people'.
- Furthermore, Article 4a and Article 10 of the Constitution on Principles of Governance calling for the sharing and devolution of power and resources from national government down to county governments aims to strengthen transparency, facilitate accountability and build trust between government and IPLCs. In the context of ABS, this means that counties need to find their position in the ABS framework and develop respective legal and administrative approaches.



Past Experiences

Presentations recounted research initiated by a Kenyan PhD student in the 80s to establish what types of enzymes could be found in the Lakes Bogoria, Magadi, Nakuru, Elementaita and Solai of the Great Rift Valley and which led to the discovery of extremophile bacteria which for many years had been used by local communities to wash their clothes and cure diseases. These bacteria contained useful enzymes that could resist extreme conditions such as high temperatures, salinity and pressure. Samples were collected pursuant to a research permit issued by the Kenyan National Council for Science and Technology (NCST) to the student. The genetic material was then taken by the student to the University of Leicester in the United Kingdom as part of the research protocol agreed upon by the NCST. At the time, the University of Leicester was also collaborating with Genencor International Inc., a biotechnology company, producer of industrial enzymes based in the United States. Through this collaboration, but independently from the research carried out by the Kenyan PhD student, two patents based on genetic material originating from Kenyan soda lakes were issued in the United States. Because access to those resources happened before the coming into force of the CBD, no ABS agreement was established and no benefit-sharing negotiated. It is suspected that some products derived from this initial collection had been licensed by Genencor to Procter & Gamble. A court case is still pending. Although this case remains unresolved, it has heightened awareness within the country about the importance of implementing effective ABS measures and establishing comprehensive ABS agreements.

In 2007, KWS entered a five-year partnership with the Danish biotech company Novozymes under which Novozymes was able to collect, identify and characterise microorganisms from Kenya's national parks. It should be noted that rather than being motivated by a particular bioprospecting goal, the partnership was initially aimed at negotiating agreements for the commercialisation of pre-CBD collections which were done outside any agreement. The deal was therefore negotiated to pay any accumulated royalty on past sales and secure royalties from any future sales of any product developed from Kenyan microorganisms. The partnership's provisions also included technology transfer, capacity building, training of Kenyan students and setting up a microbial laboratory for KWS researchers. Any intellectual property resulting from the partnership will be co-owned by both parties. The respective collections did not involve any traditional knowledge; hence, communities were not directly involved in the agreement. The sharing of the benefits was under the discretion of KWS. The agreement raised some concerns and was challenged in court. In 2013, the Endorois community living in the vicinity of Lake Bogoria in Baringo County received Kenya Shillings 2.3 million as royalties paid by Novozymes. The Endorois became the first indigenous people in Kenya to benefit from royalties arising from the utilisation of their genetic resources. The money supported school fees of 247 students and the development of a cultural centre.

The Soda Lakes ABS Agreement Case Study

The Endorois People are agro-pastoralists who have lived around Lake Bogoria in Kenya's Rift Valley for centuries. The land and wetlands around Lake Bogoria are home to some of the Endorois community's most important sacred sites, medicinal plants, pastures and saltlicks for their animals. The Endorois see land, collectively held, as the single most important source of livelihoods and identity through livestock rearing, beekeeping and peasant subsistence farming. In 1973, the Endorois People were evicted from their ancestral lands by the Kenyan government and the land was declared a game reserve, without consultation, consent or any compensation. The Endorois People were dispersed across Baringo, Nakuru and Laikipia districts, causing great disruption to their traditional way of life and means of livelihood. The community resorted to take legal action against the Kenyan government. Having failed to find any justice in Kenyan courts, the community



sought the intervention of the African Commission on Human and People's Rights alleging violations of the African Charter resulting from their displacement from their ancestral lands and Kenya's failure to adequately compensate them. In February 2010, the African Commission ruled in their favour concluding that Kenya was in violation of Articles 1, 8, 14, 17, 21 and 22 of the Charter. This decision created a major precedent as it represented the first time that indigenous peoples' rights over their ancestral lands and natural resources had been legally recognised in Africa. The African Commission made a number of recommendations to the Kenyan government requiring, among others, the recognition and restitution of the ownership rights of the Endorois People and access to their ancestral lands, payment for compensation for the loss suffered and payment of royalties for existing economic activities. The community is now working together with the Baringo County Government and KWS on a joint management plan of the Lake Bogoria Game Reserve. Community involvement and participation in the management plan and decision-making processes has had positive impacts on many levels. From an ABS perspective, it has built the capacity of the community to better understand ABS related issues and helped developed stronger collaboration between researchers, the state and the communities.

Since 2013, KWS is one of the executing partners of the GEF funded project 'Developing the Microbial Biotechnology Industry from Kenya's Soda Lakes in line with the Nagoya Protocol'. The overall objective of this project is the utilisation of microbial genetic resources within the protected Kenyan Soda Lakes for research, development and commercialisation of industrial enzymes and bio-pesticides for improved resource management and livelihoods in compliance with the Nagoya Protocol. Partnerships between providers and users of genetic resources are a central component for the successful implementation of the project. These partnerships comprise the county government and the local communities around the soda lakes, the University of Nairobi, the JKUAT, Kenya Industrial Research Development Institute (KIRDI), Moi University, Rivatex East Africa, the Deutsche Sammlung von Mikroorganismen und Zellkulturen (DSMZ) and the Verenum Corporation.

Effective community structures and community participation are critical to the development of functioning ABS agreements. The involvement of Baringo County Government in ABS is relatively recent. The county government decided to review Lake Baringo and Lake Bogoria biodiversity management plans to include ABS. The drafting of a whole chapter dedicated to community involvement is currently being led by a member of the Endorois community and will include provisions on the development of community protocols, PIC and MAT. The Baringo County Government will sign the PIC agreement for the Soda Lake Microbial Project as soon as the communities will be ready to do so. However, both are facing a number of challenges before reaching this point. For example, low levels of awareness in ABS issues in the county, among the staff of the county government and communities need to be addressed. Negotiation skills of County Government officials and communities as well as community structures need to be strengthened.

Group Discussions and Lessons Learnt

Participants were divided into four groups and asked to reflect on the two guidance questions provided to them in preparation of the case study. They highlighted how the community had been empowered by the whole process and commended the leadership of the community. This experience helped the IPLCs to better organise themselves and expand their knowledge of ABS issues. Most groups were of the opinion that the case study demonstrates that trust is key to a successful partnership. There is still a need for greater clarity on the role of the community in the ABS process, the question of who is providing PIC and a better involvement of communities in ABS processes at all levels. The highly fragmented nature of Kenyan ABS legislation also created much confusion and points to the need of a more user friendly system. Finally, all groups agreed on the need for more awareness raising and capacity building particularly on ABS agreements.



Understanding Valorisation

Valorisation of Genetic Resources and Associated Traditional Knowledge

The presentation of *Julien Chupin from the ABS Initiative* aimed to provide participants with a clear understanding why it is important to be strategic when developing an ABS valorisation strategy and what the options are to develop such a strategy. In the context of ABS, valorisation is best understood as the act of generating value from genetic resources and associated traditional knowledge through research and development (R&D). In the context of this session, the focus was on the economic side of valorisation. However, valorisation is not restricted to economics, but can also be directed to environmental or cultural values. Developing a valorisation strategy is therefore central to optimise and harness a nation's existing natural and human capital. The AU Guidelines do highlight this aspect and encourage the development and implementation of valorisation strategies. In the same way, the AU Guidelines also urge African countries to take measures to develop endogenous human, technical and institutional capacity by promoting collaborative research activities and joint training programmes as well as the establishment of regional or sub-regional research infrastructures. Mr Chupin named two main approaches to valorisation: the proactive approach, i.e. promoting an identified resource to the market, and the reactive approach, i.e. addressing a request from a foreign user. It is recommended to start by developing a national strategic plan for valorisation, which needs to be reviewed often for it to be effective. Valorisation should be based on areas where a country has a competitive advantage (genetic resources of particular value, e.g. unique and abundant resources), and should support the conservation and sustainable use of a resource. Traditional knowledge may be useful in identifying valuable uses of resources. To be successful in the long term, an ABS valorisation strategy needs to be flexible and responsive to new developments, with provisions for regular reviews, re-evaluation and re-planning as necessary.

Plenary Discussion

- **Gambia:** Gambia did a study on specific genetic resources that were of interest for a Senegalese organisation. This not only allowed increasing the knowledge on these resources and their potential value but also helped identifying a new resource that was not of interest before in Gambia.
- **Cameroon:** Cameroon reported on another example of an external request for access to a resource. The R&D phase showed promising results. A PIC and a MAT were signed so the company could access more material, but the commercialization phase takes time to get started.
- **PhytoTrade Africa:** PhytoTrade gave the example of a resource very similar to palm oil. The oil extracted from this resource has a good effect on skin, and it is used e.g. for producing soap. The mid-term objective is to develop the local market and later enter the international market. PhytoTrade is also looking at improving the quality of cooking oil and how products can have a longer shelf-life. This involves a number of partners.
- **Kenya:** Kenya highlighted that looking at the scientific literature is another way to find out where scientific interest is. It also helps identifying R&D actors and major players all around the world and the resources they are interested in. Some recent studies revealed that thousands of Kenyan species are mentioned in scientific literature.



ABS Agreements: Analysis of Contracts

Drafting Successful ABS Contracts with a Particular View to on Benefit-sharing Clauses

The Nagoya Protocol presupposes the use of contracts but it does not give any guidelines on how to establish them. Placing a particular focus on benefit-sharing clauses, the presentation of *Morten Walløe Tvedt from the Fridtjof Nansen Institute* aimed at introducing participants to the basic elements and aspects to consider with regard to ABS contracts. The AU Guidelines provide useful and practical advice on how to deal with benefit-sharing in ABS agreements. When implemented, the Nagoya Protocol has to be tied to a legal tool to ensure that the ABS requirements in the provider countries are binding in user countries. Any ABS contracts must be enforceable in user countries. Some of the main concerns when drafting ABS contracts are, among others, the absence of international contract law for ABS; the dynamic nature of the object of the contract; the long period of time between access, utilisation and benefit-sharing; as indicated above, the different jurisdictions in which ABS contracts must be enforceable and the variety of parties involved. Another challenge is to find the exact manner to stipulate the benefit-sharing obligations. Avoiding ambiguity is the first step to functional benefit-sharing obligations. Clear trigger-points must be defined and concrete obligations about what shall be shared must be clearly specified to avoid any uncertainty. The presentation also critically discussed some examples of benefit-sharing clauses from Kenya, Ethiopia, Cameroon and South Africa.

Plenary Discussion

- *The Choice of Law in ABS Contracts:* Courts in user countries are not specialised in the legislation of the provider country. It is therefore recommended that the law of the provider country regulates the contract being established between provider and users of genetic resources.
- *Engaging with Multi-national Companies:* Mother and daughter companies must not be confused. Hence, identifying the right parties to a contract is essential.
- *Absence of National ABS Law:* An ABS contract can be made even in the absence of a national ABS law. A contract will be binding on all the parties, so there is no need of an ABS national legislation to enter into an ABS agreement.
- *Renegotiating PIC and MAT at a Later Stage:* Keeping an option opened for renegotiating PIC and MAT is possible. However, this creates uncertainty. It is therefore strongly advised to negotiate any benefit-sharing right from the start despite the uncertainty about the outcomes of an R&D process. For example, a percentage of gross sales as benefit-sharing obligation is quite a reasonable condition to include in ABS contracts and a reasonable risk to take for the provider country. Another example is to have an upfront payment done to the communities at the time of access that is reasonable and decide not to pursue any more benefits. Generally speaking, renegotiating PIC and MAT reduces the chance of fair benefit-sharing and should be warned against. The chance of users coming back if they have positive research outcomes is very uncertain.
- *Being Specific and Concrete Regarding all Substantive Obligations and Processes:* Providers must be very specific about the nature of genetic resources and the potential outcomes in the contract so that the user cannot say that the outcomes of the research are not based on the accessed genetic resources. Nothing ambiguous should be left in an ABS contract as it will be difficult for the providers of genetic resources to gain any remedy in a court. Everything that is illegal to do must be included in the contract and sanctions for all potential breaches specified in the contract.



ABS & IPLCs Involvement

ILPCs' Involvement in ABS and the AU Guidelines

The objective of this session designed around a panel discussion was to discuss approaches that could be used to better involve IPLCs in ABS processes. The respective recommendations from the AU Strategic Guidelines were presented as an introduction. Additional guidance is provided by the AU Practical Guidelines.

Panel Discussion

Starting the discussion, the panel members were asked to look back at the soda lakes case study and share some experiences with communities' involvement in ABS processes in their respective countries. These can be summarised as follows:

- *Experience from Kenya from an ILPC Representative's Point of View:* The case study of the Soda Lake Microbial Resources is a good example of how communities have become involved in ABS and demonstrating their willingness to learn and expand their knowledge of ABS-related issues. The ABS process has helped them to become more aware of their rights and the economic potential of their natural resources. There are still gaps and more awareness raising is needed but the use of BCPs could assist these communities to further organise themselves.
- *Experience from Namibia from a Government Representative's Point of View:* Communities standing up for their rights and being proactive is what stands out from the case study. Communities should not wait for governments to get involved. In Namibia, IPLCs are custodians of natural resources. Having this important role makes them part of every step that the country takes to deal with ABS. Involving and empowering local communities is essential to create a sense of ownership.
- *Experience from Cameroon from an IPLCs' Point of View:* The case study presents a lot of similarities with what is experienced in Cameroon but the approaches taken are slightly different. In the case study, NGOs or elders are community representatives. There is a good relationship between researchers and the communities. This is not the case in Cameroon. In Cameroon, a platform for communities has been established to discuss ABS related issues. In Kenya, communities are well-aware of their rights and are asking for them to be respected. This is not the case in Cameroon. Kenyan communities believe these resources will improve their livelihoods but a good leadership seems to be missing. There are many partners dealing with communities (researchers, private sectors, civil society, etc.) This is not the case in Cameroon, except for NGOs. There is also a great need to empower communities at various levels of the value chain and to develop partnership with the research communities.
- *The South African Experience from a Researcher's Point of View:* The case study highlighted that the concept of ABS is relatively new, especially for communities. In South Africa, when it comes to traditional knowledge, the main challenge is to identify the owner of the knowledge. For example, the CSIR found a new bioactive compound from a plant that was used by some communities. Communities were not organised and identifying who to speak to in order to negotiate with them was a real challenge. In recent years, the use of BCPs and their development process have empowered communities and made it easier for researchers to interact with them.



Plenary Discussion

In the plenary, the discussion concentrated essentially on the level of organisation of IPLCs. The different experiences reported by the participants highlighted that the level of organisation of IPLCs was highly heterogeneous from one country to the next. All agreed that raising communities' awareness about ABS and building their capacity was essential to improve their understanding of these issues and what is at stake. This, in turn, will have a positive impact on the level of IPLCs' participation in ABS processes. Reinforcing the relationship between governments, the research community and IPLCs was also seen as critical. To conclude, participants generally agreed that there were different needs to be fulfilled: the need to explore better ways to communicate with IPLCs, the need to better understand the research process and the development of intellectual property and the need to better understand the development of value chains.

Legal Protection of Traditional Knowledge

Protection of Traditional Knowledge: Intellectual Property Considerations

The presentation of *Morten Walløe Tvedt from the FNI* discussed the key intellectual property issues to take into consideration in the protection of traditional knowledge. It looked at the links between intellectual property and traditional knowledge, whether or not intellectual property offers the right incentives to meet the needs of traditional knowledge holders, what conventional intellectual property instruments say about traditional knowledge and which options there are for recognising traditional knowledge as intellectual property and protecting it. Currently, there is no agreed international definition of traditional knowledge. In the absence of definition of the subject matter for protection, protecting this very subject matter, i.e. traditional knowledge, creates a fundamental challenge from a legal point of view. Innovations based on traditional knowledge may benefit from intellectual protection (patent, trademark and geographical indication protection) or be protected as a trade secret or confidential information. However, traditional knowledge as such – knowledge that has ancient roots and is often oral – can often not be protected by conventional intellectual property systems. Intellectual 'protection' is not necessarily equivalent to 'preservation or safeguarding'.

So, how could traditional knowledge be protected by intellectual property laws and systems? Basically, approaches to intellectual property protection can either be positive or defensive. A positive approach to protect traditional knowledge means to enable holders, if they wish so, to proactively acquire and assert intellectual property rights over their traditional knowledge. This can allow traditional knowledge holders to prevent unwanted, unauthorised or inappropriate uses by third parties (including culturally or demeaning uses), but also support them in valorising traditional knowledge themselves. A defensive protection approach uses registries and databases to document traditional knowledge in order to prevent third parties from obtaining intellectual property rights over this knowledge - it is a defensive disclosure.

Legal Traditional Knowledge Protection in Kenya

Stanley Atsali from Kenya Industrial Property Institute gave an overview of the development process of the Traditional Knowledge Act in Kenya. This process started in 2006 with the formation of a task force by the State Law Office mandated to develop a national policy, a draft bill and regulations on the protection of traditional knowledge. It was followed by the establishment of a Traditional Knowledge and Genetic Resources Unit at KIPI in 2009 to address the protection of traditional knowledge with a particular attention given to the



documentation of traditional knowledge. In 2010, provisions for the protection of intellectual property rights associated with traditional knowledge and associated genetic resources were included in the newly promulgated Constitution. Finally, after this long process, the Kenyan Traditional Knowledge Bill was signed into law in 2016. The next step for Kenya is the development and implementation of regulations with the involvement of all relevant stakeholders in the process.

Plenary Discussion

Some participants highlighted the importance to protect traditional knowledge at national level while waiting for an international *sui generis* system to be adopted. A few participants showed some scepticism on the extent to which protecting traditional knowledge with national laws could make a difference or help advancing the international process that is currently taking place at WIPO. Others insisted that if more and more countries were to regulate traditional knowledge and its protection, this will put pressure on and force the international community to fast track international law on the protection of traditional knowledge; in fact, patent law, too, initially started only in a few countries at the national level, until eventually a powerful international system was established.

Information and Communication

Introduction

Overview of the Information Technology-Based Online Application and Monitoring System Project

Hartmut Meyer from the ABS Initiative informed the participants that the Initiative is in the process of developing and testing an IT-based online application and monitoring system to support governments in Kenya, India and The Bahamas in managing ABS applications and permits as well as monitoring compliance with ABS agreements and the utilisation of genetic resources. This system is based on the idea that permit data could be used to screen public data (publications and patents) to follow critical points in the value chain. It creates a one-stop cloud-based portal for access permits that can be easily updated and a central system where all ABS related documents could be kept.

Plenary Discussion

Participants asked for additional clarifications on the functioning of this very innovative online system and how one single system could address the various and distinct national ABS regulatory frameworks currently in place or being developed. They were informed that this system was an internal system for governments designed to be adapted to and support any national ABS regulatory frameworks.

The ABS Clearing-House

Lena Fey from the ABS Initiative gave a brief presentation on the ABS Clearing House (ABS-CH), its purpose and overall functioning. The ABS-CH provides three types of information: national records, reference records and SCBD records. Parties to the Protocol have the obligation to upload information to the ABS-CH on legislative, administrative and policy measures on ABS, information on the national focal point and CNA or authorities and on permits or equivalents issued at the time of access as evidence of the decision to grant PIC and of the establishment of MAT. The content of these national records is defined and verified by a national Publishing Authority (PA), which is to be nominated by each country. Reference records refer to additional information



that can be published on the ABS-CH by all actors in ABS – e.g., a local community can upload a BCP, or a company can publish its Codes of Conduct for the utilisation of genetic resources, enhancing transparency for all stakeholders. Reference records are verified, but not checked with regard to content, by the SCBD before being published online. Serving as the link between ‘provider’ and ‘user’ countries, the ABS-CH generates the internationally recognised certificates of compliance (IRCC) and forwards checkpoint communiqués to all the Parties. However, it can only work if the information is uploaded to the system; unfortunately, information still remains scarce, as Parties only very slowly start populating the ABS-CH.

Plenary Discussion

The following brief discussion aimed to investigate how participants perceive the ABS-CH and its manageability, where they see challenges when using it and what should be changed to make it more user-friendly. This was to generate some initial guidance for the SCBD to better adapt the ABS-CH and its functioning to users’ needs. The table below summarises the issues highlighted by the participants on the reason why very little information has been uploaded by the countries on the ABS-CH.

Challenges	Potential solutions
IRCC: Is the information “censored”/ filtered?	No, the SCBD only verifies adherence to publishing standards
Unclear: How are confidentiality issues being treated?	The publishing country determines - in cooperation with the user and providing IPLCs, if appropriate - which elements are confidential
Process of publishing is too complicated	Governments could consult the SCBD and receive information and training
The wrong people have been trained (not PA)	Governments need to make sure that the right persons are trained
PA not (yet) named	Governments must appoint the PA
In many countries, information is not yet available; countries hesitate to publish work in progress	Governments could indicate that e.g. ABS regulation is under development and give a timeline
Required information unclear to Countries	Governments need to sensitise stakeholders on what the ABS-CH is about (national level) and provide trained and knowledgeable staff
No clarity about the roles of the institutions defined in the Protocol & ABS-CH (e.g. national focal point – PA)	
Conflicting institutional responsibilities	
Lack of personnel continuity /consistency at national level	
Sensitivity /confidentiality of information: PA has to have information verified / approved by a higher level before publishing it on the ABS-CH	



Open Space

Introduction

The main objective of this session was to provide participants with a platform, using the 'open space' methodology, to give them the opportunity to discuss and exchange experiences on issues of their choice relating to the implementation of the Nagoya Protocol. 'Open space' is a technique that allows a large number of people to work together in different groups to create a dynamic and profound reflection on simple or complex issues while leaving freedom to the participants to join one or more conversations. This methodology was born from the observation that during a meeting or a conference, the most interesting discussions among the participants usually take place during the coffee break. This methodology aims to reproduce the exchanges and the very informal and relaxed atmosphere of coffee breaks encouraging initiative-taking and mutual learning.

Summary of the Discussions

- *First Session:* This first round of group discussions enabled the exchange of useful experiences on diverse topics such as the protection of traditional knowledge in Botswana, community engagement with government and research institutions, the ownership of plant medicinal value, gene sequencing and the free availability of genetic information, the identification of suitable community legal entity in the establishment of ABS contracts and the challenges encountered to obtain a PIC.
- *Second Session:* Very fruitful discussions allowed participants to exchange knowledge and good practices on hot topics like the issues related to ABS implementation in protected areas, community involvement in monitoring benefit-sharing, how best negotiating benefit-sharing from the use of genetic resources, building IPLCs capacity on ABS related issues and more particularly on the importance to establish PIC and MAT and how communities can best organise themselves to engage with ABS and get financial support.
- *Third Session:* For this third and last round of group discussions, participants explored further the valorisation of genetic resources and the development of ABS value chains and looked at how to establish a botanical garden as part of a BCP process for training and conservation purposes. Finally, political will and other challenges faced by African countries in the implementation of the Nagoya Protocol as well as strategic approaches to adopt in the absence of a national ABS framework and the *Echinops giganteus* ABS case were the last themes discussed by the participants.

Plenary Discussion and Feed-Back

Participants discussed fifteen different themes scheduled over three sessions. Some participants said that the 'open space' had allowed them to understand a number of issues, discuss themes they did not consider before and exchange experiences and good practices. The group reports can be found in Annex 1 of this report.

Overall Conclusions from the Workshop

The Way Forward for the ABS Initiative

The activities of the ABS Initiative in Africa for the next 1,5 years will essentially focus on national level work in its four partner countries and in countries with bilateral GIZ ASB projects, framed by additional activities at the



subregional and regional levels that involve all African countries. Hartmut Meyer and Lena Fey from the ABS Initiative gave a few examples of the Initiative's activities in its partner countries:

- *Kenya*: The ABS Initiative is supporting ABS national implementation through the online IT system. It also plans to use the Soda Lake Bacteria case study as an example to inform other Kenyan counties, support other economic activities valorising traditional knowledge and link research activities to ABS.
- *Uganda*: The ABS Initiative will support the development of an ABS approach to the existing *Prunus africanus* value chain. This can develop in a very good ABS case, which could also be used to inform other countries.
- *Benin*: The ABS Initiative will continue its support the national implementation of the Nagoya Protocol. Benin has already developed an ABS strategy and is currently preparing an interim ABS regulatory framework. Two BCPs are currently being developed in partnership with Natural Justice and a local NGO and could serve as examples to other countries.
- *South Africa*: The ABS Initiative will support the revision of the existing ABS legislation and the bioeconomy strategy.

Final Remarks

Looking back at countries' aspirations with ABS, participants agreed that the workshop had contributed to addressing them to a large extent. Some participant highlighted that the *Echinops giganteus* case study from Cameroon presented during the open space round of discussion particularly attended to many of the issues and aspirations listed at the beginning of the workshop. Participants underlined that the active participation and exchange of experiences were a very good learning process. They noted that through the various presentations, discussions and exercises, capacity had been created and that they had the responsibility to now share what they had learnt back in their countries, spread the knowledge and build more capacity.

Closure



Presentations

The full list of presentations made during the workshop is available [here to download](#).

Day 1

[Setting the Scene: Updates on ABS and the Nagoya Protocol](#) – Hartmut Meyer, ABS Initiative.

[African Union Guidelines for the Coordinated Implementation of the Nagoya Protocol](#) – Mahlet Teshome Kebede, African Union Commission.

[Regulatory Frameworks: From the Perspective of the African Union Guidelines](#) – Peter Munyi, ABS Initiative.

[Regulatory Frameworks: Comparing & Contrasting Different Countries](#) – Peter Munyi, ABS Initiative.

Day 2

[30 Years of Soda Lakes Research in Kenya](#) – Professor Hamadi Iddi Boga, Microbial Ecologist, Principal Investigator, Taita Taveta University College, Kenya.

[Soda Lakes Research: Chemical and Pharmaceutical Biosciences, Biotechnology & Bioinformatics Platform](#) – Professor Francis Mulaa, University of Nairobi.

[Kenya Nagoya Protocol Implementation Fund Soda Lakes Project: ABS Agreements Process and Status in the Context of the Nagoya Protocol](#) – Kavaka W. Mukonyi, Kenya Wildlife Service, Kenya.

[The ABS System in Kenya](#) – Joyce Imende and Jane Nyandika, National Environmental Management Authority (NEMA). Kenya.

[ABS: Baringo County Government's Experience](#) – Caroline N. Lentupuru, Baringo County Executive Committee Member – Agriculture, Livestock & Fisheries, Kenya.

[Role and Expectation of the Endorois Community in Access and Benefit-Sharing](#) – Wilson Kipsang Kipkazi, Executive Director of the Endorois Welfare Council, Kenya.

Day 3

[Valorisation of Genetic Resources and Associated Traditional Knowledge](#) – Julien Chupin, Initiative APA.

[Drafting Successful ABS Contracts – with a Particular Focus on Benefit-Sharing Clauses](#) – Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway.

[Overview about an IT-Based Online Application and Monitoring System](#) – Hartmut Meyer, ABS Initiative.

[The ABS Clearing House](#) – Lena Fey, ABS Initiative.

Day 4

[IPLC Involvement in the African Union Guidelines on ABS](#) – Gino Cocchiario, Natural Justice, Kenya.

[Protection of Traditional Knowledge: Intellectual Property Considerations](#) – Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway based on Olivier Rukundo's Presentation.

[Legal Traditional Knowledge Protection in Kenya](#) – Stanley Atsali, Patent Examiner at Kenya Industrial Property Institute.



Agenda

Monday 26 th September 2016 : Introduction, Updates and Regulatory Frameworks	
8h30	Registration
9h00	Opening Ceremony Welcome Remarks: <i>Hartmut Meyer, ABS Initiative</i> <i>Caroline N. Lentupuru, Baringo County Executive Committee Member, Kenya</i> <i>XXX, Kenya Government</i> <i>XXXX, Kenya Wildlife Service</i> Getting to Know Each Other
10h30	Coffee/Tea
11h00	Setting the Scene Updates on ABS and the Nagoya Protocol <i>Hartmut Meyer, ABS Initiative</i> African Union Guidelines on ABS <i>Mahlet Teshome Kebede, African Union Commission</i> Countries' Aspirations with ABS <i>Plenary Discussion</i>
12h30	Lunch
14h00	Strategic Considerations Regulatory Frameworks <i>Peter Munyi, ABS Initiative</i>
15h30	Coffee/Tea
16h00	Regulatory Frameworks (cont.) <i>Peter Munyi, ABS Initiative</i>
17h30	End of Day One

Tuesday 27 th September 2016: ABS Case Study – Utilisation of Microbial Genetic Resources from the Soda Lakes Region under ABS Contracts	
7h45	Departure to Jomo Kenyatta University of Agriculture and Technology (JKUAT)
9h00	Welcome and Visit of JKUAT Facilities
10h30	Pause-Café
11h00	Presentation of the Case Study 30 Years of Soda Lakes Research in Kenya <i>Professor Hamadi Iddi Boga, Taita Taveta University College, Kenya</i> Soda Lakes Research: Chemical and Pharmaceutical Biosciences, Biotechnology & Bioinformatics Platform <i>Professor Francis Mulaa, University of Nairobi</i>



	Soda Lakes Project: ABS Agreements Process & Status in the Context of the Nagoya Protocol <i>Kavaka W. Mukonyi, Kenya Wildlife Service, Kenya</i>
13h00	Lunch
14h00	Presentation of the case Study (cont.) The ABS System in Kenya <i>Joyce Imende & Jane Nyandika, National Environmental Management Authority (NEMA), Kenya</i> ABS: Baringo County Government's Experience <i>Caroline N. Lentupuru, Baringo County Executive Committee, Kenya</i> Role and Expectation of the Endorois Community in Access and Benefit-Sharing <i>Wilson Kipsang Kipkazi, Endorois Welfare Council, Kenya</i>
15h30	Coffee/Tea
15h45	Reflection on the Case Study Group and plenary Discussion
17h00	Departure to the Hotel
18h00	End of Day Two

Wednesday 28th September 2016: Valorisation Strategies and ABS Agreements	
9h00	Strategic Considerations Understanding Valorisation <i>Julien Chupin, ABS Initiative</i>
10h30	Coffee/Tea
11h00	Understanding Valorisation (cont.) <i>Julien Chupin, ABS Initiative</i>
11h45	Strategic Considerations Analysis of Benefit-Sharing Clauses in ABS Agreements <i>Morten Walløe Tvedt, FNI</i>
12h30	Lunch
14h00	Analysis of Benefit-Sharing Clauses in ABS Agreements (cont.) <i>Morten Walløe Tvedt, FNI</i>
15h30	Coffee/Tea
16h00	Information and Communication Compliance and Monitoring Systems <i>Hartmut Meyer, ABS Initiative</i>
16h45	The ABS Clearing House <i>Lena Fey, ABS Initiative</i>
17h30	End of Day Three
18h00	African Union Coordination Meeting for CBD CPO-13, Cartagena Protocol MOP-8 and Nagoya Protocol MOP-2



Thursday 29 th September 2016: IPLCs and ABS and Open Space	
9h00	Strategic Considerations Involvement of IPLCs in ABS Processes <i>Moderated by Gino Cocchiario, Natural Justice</i>
10h30	Coffee/Tea
11h00	Strategic Considerations Legal Protection of Traditional Knowledge <i>Morten Walløe Tvedt, FNI</i> Practical Example: Legal Protection of Traditional Knowledge in Kenya <i>Stanley Atsali, Kenya Industrial Property Institute</i>
16h30	Lunch
14h00	Open Space Group Work and Discussion on Topics Selected by the Participants <i>Facilitated by Kathrin Heidbrink and Esther Mwaura-Muiru, ABS Initiative</i>
15h30	Coffee/Tea
16h00	Open Space (cont.)
17h300	End of Day Four

Friday 30 th September 2016: Conclusion and Way Forward	
9h00	Open Space (cont.)
10h30	Coffee/Tea
11h00	Open Space (cont. & ending) Reporting Back on Group Work and Discussion <i>Facilitated by Kathrin Heidbrink and Esther Mwaura-Muiru, ABS Initiative</i>
11h45	Overall Conclusions Plenary Discussion and General Reflections
12h30	Lunch
14h00	Wrap-up, Evaluation and Closure
15h00	Final Remarks and Closure
15h30	End of Workshop



List of Participants

First Name	Surname	Organisation	Country	Email
Kebaabetswe	Keoagile	Department of Environmental Affairs	Botswana	kebkeoagile@gov.bw
Oageng	Disang	Department of Environmental Affairs	Botswana	oodisang@gov.bw oagengdisangpro@gmail.com
Marc Albert Gérard	Olivier	SAMA BIOCONSULT	Burkina Faso	oliviersama@yahoo.fr
Aii Shatu	Ali	MBOSCUDA	Cameroon	aliaishatou@yahoo.com
Simeon	Kouam Fogue	University Yaoundé	Cameroon	kfogue@yahoo.com
Andreas Nembo	Lekunze	BAMUMBU	Cameroon	lekunzenembongwe@yahoo.com
Albun William Banye	Lemnyuy	Ministry of Environment, Protection of Nature and Sustainable Development (ABS NFP)	Cameroon	lemnyuy@yahoo.com
Bruno	Mvondo	RECTRAD / CNCTC	Cameroon	smbmvondo@yahoo.fr
Nahla	Abdelhamid	Egyptain Environmental Affairs Agency	Egypt	nahla.nagib85@gmail.com
Ashenafi Ayenew	Hailu	Ethiopian Biodiversity Institute (EBI) (ABS NFP)	Ethiopia	ashenafiayenew@ibc.gov.et
Mersha Yilma	Zelege	MELCA – Ethiopia	Ethiopia	mersy1@ymail.com
Babucarr	Dumbuya	Department of Parks & Wildlife Management	Gambia	babucarrdumbuya@gmail.com
Joyce	Imende Oliver	National Environment Management Authority (NEMA) (ABS NFP)	Kenya	jimende@nema.go.ke
Kavaka	Mukonyi	Kenya Wildlife Service	Kenya	mukonyi2000@yahoo.com
Lucy	Mulenkei	Indigenous Information Network	Kenya	mulenkei@gmail.com
Linda	Opati	International Livestock Research Institute	Kenya	lopati@cgiar.org
Paul	Chepsoi	Endorois Welfare Council (EWS)	Kenya	palkips@yahoo.com



Wilson Kipsang	Kipkazi	Endorois Welfare Council (EWS)	Kenya	kipkaziwk@gmail.com
Caroline	Lentupuru	Baringo County	Kenya	cnaikena@yahoo.com
Jane	Nyandika	National Environment Management Authority (NEMA)	Kenya	jnyandika@nema.go.ke
Bernard Aggrey	Nyende	Jomo Kenyatta University of Agriculture and Technology	Kenya	director@ibr.jkuat.ac.ke
Sylvia	Museiya	Yiakulaikiak Trust	Kenya	sylviamuseiya@gmail.com
Evans	Taraka	National Museums of Kenya	kenya	evans.taracha@gmail.com
Moses	Ziro	Africa Nature Organization	Kenya	nature@africanature.or.ke
Frances Browne	Seydou	Environmental Protection Agency of Liberia (ABS NFP)	Liberia	brownefrance@yahoo.com
Martha Mphatso	Kalembe	Environmental Affairs Department (ABS NFP)	Malawi	mphakalembe@yahoo.com
Arlete Germana Daniel	Osvaldo	Ministry of Land, Environment and Rural Development (ABS NFP)	Mozambique	d_arlete@yahoo.com.br
Stephanus Pieter	Masiliso	KHWE Custodian	Namibia	pieter.masiliso@gmail.com
Kauna	Schroder	Directorate of Environmental Affairs (ABS NFP)	Namibia	kauna@met.na
Nambili Tukuna Kashululu	Shipena	Office of the Attorney General	Namibia	nambili10@gmail.com
Johnson Avbiniovurue	Ekpere	University of Ibadan	Nigeria	jaekpere@yahoo.com
Benedicta Olayinka	Falana	Federal Ministry of Environment (ABS NFP)	Nigeria	benedisrael123@gmail.com
Béatrice	Cyiza	Rwanda Environment Management Authority (ABS NFP)	Rwanda	bcyiza@rema.gov.rw
Yusuf	Omar	Directorate of Environment	Somalia	oyusuf14@gmail.com



Andries Sechaba	Bareetseng	Council for Scientific and Industrial Research	South Africa	sbareetseng@csir.co.za
Neil	Crouch	South African Biodiversity Institute	South Africa	n.crouch@sanbi.org
Ntambudzeni	Nepfumembe	Department of Environmental Affairs	South Africa	nnepfumembe@environment.gov.za
Helena Maria Wilhelmina	Steenkamp	Khomani San Bushman Council	South Africa	bushmanCouncil@khomanisan.com
Paul Lado Demetry	Jubek	Ministry of Environment & Forestry (CBD NFP)	South Sudan	ladolodemen@yahoo.com
Omer Mohamed Eltom	Elshami	Higher Council for Environment and Natural Resources (HCENR) (ABS NFP)	Sudan	hcenr2005@yahoo.com
Sipho Nana	Matsebula	Swaziland Environment Authority (SEA) (ABS NFP)	Swaziland	smatsebula@sea.org.sz
Martha	Ntoipo	Community Research and Development Services	Tanzania	marthantoipo@gmail.com
Samson	Gwali	National Forestry Resources Research Institute	Uganda	gwalis@yahoo.co.uk
Pauline Nantongo	Kalunda	Environmental Conservation Trust of Uganda (ECOTRUST)	Uganda	pnantongo@ecotrust
Michael Lopeyon	Kuskus	District Local Government of Napak	Uganda	mtukumoi@gmail.com
Sarah	Naigaga	National Environment Management Authority (NEMA)	Uganda	snaigaga@nemaug.org
Mukwaya Samuel	Suuti	Uganda Bio-Trade Alliance	Uganda	ssuutimkwaya@yahoo.com
Penninah	Zaninka	United Organisation for Batwa Development in Uganda	Uganda	zaninkapen@gmail.com
Allan	Dauchi	Ministry of Lands, Natural Resources and Environmental Protection (ABS NFP)	Zambia	duchi45@yahoo.com



ABS Team

First Name	Surname	Organisation	Country	Email
Arthur	Stevens	Phytotrade Africa	UK	arthur@phytotradeafrica.com
Esther	Mwaura-Muiru	ABS Capacity Development Initiative	Kenya	esther.mwaura@grootskenya.org
Gino	Cocchiaro	Natural Justice	Kenya	gino@naturaljustice.org.za
Hartmut	Meyer	ABS Capacity Development Initiative	Germany	hartmut.meyer@giz.de
Julien	Chupin	ABS Capacity Development Initiative	France	chupinj@yahoo.com
Kathrin	Heidbrink	ABS Capacity Development Initiative	Germany	kathrin.heidbrink@web.de
Lena	Fey	ABS Capacity Development Initiative	Germany	lena.fey@giz.de
Mahlet	Teshome Kebede	African Union Commission	Ethiopia	mahletk@africa-union.org
Walløe	Tvedt	Fridtjof Nansen Institute	Norway	mwt@fni.no
Nadine	Pauly	ABS Capacity Development Initiative	Germany	nadine.pauly@giz.de
Peter	Munyi	ABS Capacity Development Initiative	Kenya	gitahimunyi@gmail.com
Petrus	du Plessis	ABS Capacity Development Initiative	UK	pierre.sadc@gmail.com
Rose	Birgen	Natural Justice	Kenya	rose@naturaljustice.org.za
Sabine	Zajderman	ABS Capacity Development Initiative	France	sabinezajderman@gmail.com

Contacts

Lena Fey

Programme Officer
 ABS Capacity Development Initiative
 Deutsche Gesellschaft für Internationale
 Zusammenarbeit (GIZ) GmbH
 Postfach 5180
 65726 Eschborn
 Germany
 E lena.fey@giz.de
 I www.abs-initiative.info

Hartmut Meyer

Programme Officer
 ABS Capacity Development Initiative
 Deutsche Gesellschaft für Internationale
 Zusammenarbeit (GIZ) GmbH
 Postfach 5180
 65726 Eschborn
 Germany
 E hartmut.meyer@giz.de
 I www.abs-initiative.info



Annex 1: Open Space Reports – Insights, Good Practice and Options for Implementing the Nagoya Protocol

First Session

Report from Session (title)	Protection of Traditional Knowledge: Case of Botswana (Laws aiming at protecting traditional knowledge: Copyright and Neighbouring Rights Act (2008), Industrial Property Act (2010), Companies and Intellectual Property Rights Act (2010) and Draft Indigenous Knowledge System Policy which is still being discussed.)	
Proposed by (name)	KEBA	Discussed in spot "ELEPHANT"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • Linkages of the existing law with traditional knowledge associated with genetic resources • Conventional and traditional way of protection i.e. incorporating what the communities have been doing before the laws • Case study of genetic resources which traditional knowledge was not protected: Hoodia, Devil's claw • Who can protect: Government in terms of legislation and communities as traditional holders of knowledge • How can we protect: joint management of resources between communities and the government, • Associations e.g. herbalist, traditional doctors • Promotion of structures at community level • Lessons learnt: laws done before the Nagoya protocol need to be revised to include aspects of genetic resources and associated traditional knowledge protection. The laws are mostly directed to specific component of the traditional knowledge without necessarily protecting. 	
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> • Gaps faced in the field: lack of laws on traditional knowledge protection, finance issue and deteriorating of traditional knowledge due to gap between elders and upcoming generation • Way forward: benefits should be substantial in order for communities to protect traditional knowledge, revision of existing laws to take into cognisance the Nagoya Protocol with regards to genetic resources and associated traditional knowledge, collaboration of associations with the government • Model to follow: defensive or positive protection. • Development of substantive law on traditional knowledge protection. 	

Report from Session (title)	Indigenous and Local Communities Engagement with Government and Research Institution	
Proposed by (name)	Paul Chepsoi	Discussed in spot "Rhino "
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • How would local communities like to engage with researchers? • Issues of coordinated approach – the way in which researchers interact with IPLCs should be improved • The engagement is usually seen from a negative perspective. IPLCs need to change the strategy on how to engage with government and researchers 	



	<ul style="list-style-type: none"> • Develop national policies which will encourage local communities to share their traditional knowledge • Training IPLCs by involving them at both national and regional level by developing database and monitoring mechanism • Develop indigenous policy and science and technology for biodiversity policy • Develop product value addition to improve the lives of IPLCs • Non-disclosure of information on traditional knowledge from IPLCs unless proper protection is ensured • Material transfers agreement and literature review • Develop joint research proposal between the government and IPLCs on genetic resources • IPLCs should work at developing political goodwill from the government, the best example of this was south Africa • Develop continental framework (to refer to both policy and law examples of Namibia which recognise and respect ILPCs) • The need to harmonise both regional and countries • It is important to have joined IPLCs focal point in Africa <p>Leason learnt</p> <ul style="list-style-type: none"> • South Africa is one of the best examples with good approach, guidelines and the procedural framework • We learnt that as much as South Africa has well-structured policies, they do not have clear data about the San peoples
<p>Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)</p>	<ul style="list-style-type: none"> • It is important to have joined IPLC policies spearheaded by AU and focal points • Develop IPLC structural coordinated membership focal point • Monitor the success of Endorois ABS with both government and the Baringo county • Give more resources to CSO / IPLC organisations for capacity building and information awareness

Report from Session (title)	Gene Sequencing and Free Availability of Genetic Information	
Proposed by (name)	Nahla & Mahlet	Discussed in spot "Buffalo"
<p>Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)</p>	<ul style="list-style-type: none"> • Institutions were genetic information is available in public media (e.g. NCBI). • Physical access to genetic resources is not required – how are associated traditional knowledge and resources protected? • Regulating access to information of genetic resources with ABS/Nagoya Protocol. • The definitions under the CBD and the Nagoya Protocol do not cover genetic information, how is access to genetic information and benefit-sharing done in an equitable manner? • Information is not regulated (including genetic information). • What is the practicability of the Nagoya Protocol in the face of science? • CBD defines 'genetic material' which includes functional units of the heredity (i.e. genes) which includes genetic information. 	



Report from Session (title)	ABS Contracts Need Legal Entities: How to Identify Suitable & Representative Community Legal Entities?		
Proposed by (name)	Arthur Stevens	Discussed in spot	"Lion"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • Determine right entry point. Communal land association? • Needs facilitation • Participation? Not all members participate, but should all benefit? • PIC allows subscription to constitution • Consultative meetings needed to determine contribution • Long process, need for capacity building • Work through participatory management • Work in partnership with NGOs (e.g. Ecotrust, Uganda) • Avoid fragmentation. Community resource. • Takes time, money, resources. • Trust fund • Let them work it out? • Genetic resources & traditional knowledge in same agreement • Environment clauses needed for biodiversity conservation 		
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> • Work with NGOs & donors to establish associations etc. • Introduce environmental conservation • Should government be involved? Yes on genetic resources but not traditional knowledge • Work on generation trust at all levels • Work on capacity building • Encourage wider association activity rather than single purpose activity • Carry out due diligence to determine most appropriate entry point 		

Report from Session (title)	Challenges in PIC Acquisition		
Proposed by (name)	Jane Nyandika	Discussed in spot	"Leopard"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • Conceptualising 'PIC' by government officers and communities is slow • Different agencies / levels of government/ NGOs involved – creating confusion • Lack of coordination – competing levels of representatives • Unclear definition of a 'community' • The process is expensive – not clear who covers the cost of negotiation • Interferences • Not clear who owns the natural resources: 'Individuals who own land' or the community – and even more confusing if they are pastoralists • Inadequate numbers of educated community members • Limited community involvement 		
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<p>Solutions:</p> <ul style="list-style-type: none"> • Capacity building of both the formal (NEMA, KWS) and community • Awareness raising/ induction for the community • Entry point: researchers to clearly go through known NGOs – Acceptable in the community 		



Second Session

Report from Session (title)	<ol style="list-style-type: none"> 1. ABS Implementation in Protected Areas with IPLCs and other Stakeholders 2. Genetic Resource Provision: Government Being the Provider vs. Community Being the Provider 		
Proposed by (name)	King Bruno and O.G Disang	Discussed in spot	"ELEPHANT"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • Management of protected areas differs from country to country and from region to region in a country • The laws governing different protected areas also differ • Protected areas must incorporate ABS initiatives • Need to define in the regulation who owns the genetic resources and hence clearly defined who the provider is • The spirit of sharing goes beyond Nagoya Protocol • In some counties, ABS is captured in Supreme law • All protected areas should have management plans and distribute a certain percentage to benefit the community • In some protected areas e.g. in forest areas, the user must demonstrate sustainability of his project • Community and government need each other in negotiation with the user • Genetic resources need to have a track record of where they come from • When genetic resources are not owned by anyone, they belong to state • Sometimes researchers are disadvantaged when they want to pick sample from one area to another as they have to sign additional PICs with different communities 		
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> • Gaps faced in the field: Many countries do not have national laws on ABS hence this makes communities to be exploited of their genetic resource • Way forward: Need for the government to capacitate the communities, make laws that will give a certain percentage of funds to the Community trust funds • Need to train communities in negotiating • Need a law that talks about domestic users and foreign Users 		

Report from Session (title)	Involvement of communities in “monitoring Benefit-Sharing”		
Proposed by(name)	Michael	Discussed in spot	"Rhino"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • Being aware that most communities are organised either in age sets or kingships; they however have no systems in place for monitoring all these benefits • Most structures are rather loose! Exception of kingdomships, which in certain occasions remain with those holding it (power) • The idea of ‘benefit-Sharing’ remains a new concept with communities, for those who have had access to it • In certain occasions, even when an external factor delivers the information, the implementation for follow-ups remains a challenge due to lack of capacities to make follow-ups • Most often no clear agreed tools for monitoring including limitations 		



	<ul style="list-style-type: none"> Added to this is 'no reporting framework' exists for/in communities
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> Institutionalisation of community resource boards Capacity building to create awareness on the need to monitor all resources leaving the community Help to develop community protocol frameworks to act as a bridge between communities, governments and users of resources Introduce to the communities the need for legal frameworks of contracts – importance of their involvements MAT Where possible, introduce and construct resource centres for information access. Also at both regional and country levels, introduce checks 7 balances for the effective continuity of the ABS.

Report from Session (title)	How Best Can You Negotiate Benefits Arising from the Utilisation of Genetic Resources?
Proposed by(name)	Priscillar Mutungi Discussed in spot "Buffalo"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> Before negotiating benefits, it is important for government to build the capacity of local communities and also get them lawyers during negotiations; It is better to negotiate for monetary benefits at the point of commercialisation if users are within the country since you will be aware of the commercial value of the product. However, there is the risk that users will not come back for negotiations on benefit-sharing after access if they are external/foreign researchers. In this case, proper benefit-sharing clauses need to be captured during the MAT i.e. at the point of access Non-monetary benefits to the community before commercialisation should target as much as possible in solving an immediate problem facing the community e.g. establishment of enterprises When traditional knowledge is used, communities should be main authors in all publications resulting from the research. The name to use in the publication should be the community group and therefore the need to have communities organised in legal entities
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> Critical mass of negotiators (possibly legal team) is required to maximise on benefits African governments should invest in building communities capacity on ABS Proper legal advice should be captured in MAT and also legal representation of all parties involved during negotiation for benefits Valuation of intellectual property assets from the accessed material is important as a basis of negotiations; Involvement of government in negotiations is important especially if the user goes directly to the community for access

Report from Session (title)	<ol style="list-style-type: none"> Capacity Building: What is the End Game in Terms of Defined Targets? (Pre-Implementation and during the Implementation) How Do We Ensure that IPLCs Have Full Awareness of ABS with a
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Focus on PIC and MAT?	
Proposed by (name)	1. Evans Taracha Discussed in spot "Lion" 2. Penninah Zaninka
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> The Group resolved that the second question be discussed in the context of the first one. We discussed the issue of capacity building at four levels: <ol style="list-style-type: none"> National government (top policy/law making body) Districts/states/counties Academia/researchers Communities <p><u>Points raised on cross-cutting issues</u></p> <ul style="list-style-type: none"> Map current capacity levels Map the needs as identified by the players at the various levels Map the way-forward Create capacity for making informed choices/decisions Need for awareness creation at all levels Acknowledged that the 53 African nations are at different capacity levels and therefore need for harmonised approach in defining their capacity needs - what would be the role of AU in this?
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> The Group felt that each member state should identify and meet the capacity building targets while drawing on the existing case studies and appropriate partnerships.

Report from Session (title)	
proposed by (name)	Various Ways Communities Can Organise Themselves to engage with ABS Proces Rose and Ziro Discussed in spot LEOPARD
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<p>What needs to be done:</p> <ul style="list-style-type: none"> Identify communities living around the resources Mapping of resources Use intermediaries Conduct training, possibly in local dialect Use of structures and instruments recognised in law, e.g. management plans <p>Structures that can be used:</p> <ul style="list-style-type: none"> Local community structures In Gambia, communities are involved through the Side Management Committee and this has been successful Laikipia Maasai have been involved through the Community Forest Association as provided for in the Forest Act
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<p>The general consensus that communities are not aware/well-informed about ABS. As a result, they lack the capacity to engage in the ABS process. The group members suggested a number of key steps that need to be undertaken to increase the community capacity to engage with the process.</p>



Third Session

Report from Session (title)	Why and How to Valorise Genetic Resources?		
Proposed by (name)	Ashenafi Ayenew	discussed in spot	"Elephant"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • What is valorisation? <ul style="list-style-type: none"> ○ Holistic approach ○ Valorisation should consider ecological, social, cultural and economic values ○ Valorisation is: identifying the types of values attributable to genetic resources and quantifying these values. • Why valorise genetic resources? <ul style="list-style-type: none"> ○ To ensure fair and equitable benefit-sharing (negotiations & MAT) • How to valorise genetic resources? <ul style="list-style-type: none"> ○ Two methods: 1) Contingent valuation – i.e. willingness to pay (WTP); 2) Production loss averted – indicate magnitude of production losses in the absence of genetic resources. • Challenges to valorise genetic resources The scarce literature on valorisation of genetic resources, lack of capacity, the difficulty in measuring values, shift in value of genetic resources – R&D and sustainability status of genetic resources 		
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> • Capacity building and promote research on valorisation of genetic resources and associated traditional knowledge 		

Report from Session (title)	How to establish a botanical garden (as part of a BCP process) for training & conservation purposes?		
Proposed by (name)	Pieter	Discussed in spot	"Rhino"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • Khwe BCP is available in draft form (Bwabwata National Park in Namibia). • Problem: other communities use resources unsustainably (site: multiple use areas of a national park); different communities claim land ownership; also: loss of traditional knowledge on sustainable use • Idea: develop a botanical garden to inform other communities about the value of the resources → mainly through schools • Suggestion: conduct study of the original state and value (social, economic, ecological, cultural) of the ecosystem/resources and the risks related to their depletion → use as a basis for argumentation with government • Suggestion: get public attention by organising cultural events → create visibility; also through tourists • South Africa: community protocols and permits control and manage resource use; support by NGOs, maintained by funds from San Parks • Suggestion: mobilise support from educated/wealthy community members • Suggestion: develop a management plan for the area (it should be possible to get funding for this), get a by-law • Use existing contracts with University of Namibia 		



	<ul style="list-style-type: none"> • Suggestion: raise funds for exchange visits with other communities
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> • Question: is a botanical garden the right tool? Maybe consultations with the other communities would be more effective. Peaceful dialogue does not require money • The biggest challenge: how to create a relationship & communicate with other stakeholders?

Report from Session (title)	Political Goodwill in the Implementation of the Nagoya Protocol / ABS		
Proposed by (name)	King Bruno	Discussed in spot	Buffalo
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • Government/political will is needed for ratification and domestication • Establishment of check points • Use of intellectual property is subject to domestic law → Attach our ABS issues to the high issues already in place, e.g. Sustainable development Goals and climate change → Use of Ministers of Environment Summit → Show concrete examples of benefits from the ABS process → Through the use of media → Establishment of check points → Through the use of National Biodiversity Strategic Action Plans (NBSAPs) <p>How to create a political goodwill?</p> <ul style="list-style-type: none"> • Create post-crisis (?) to attract attention of politicians with emphasis on bringing peace and development • Equip and empower the grass roots level – bottom up movements: when politicians realise that genetic resource have been synthesised, they will then take it serious • Create champions at the higher level – who will be able to translate ABS issues – power and passion • Goodwill is good but needs to be managed otherwise you become activists 		
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> • Need buy-in at all levels from national, local, regional level and AU level • Attract government from the grassroots level • Be able to manage the goodwill in order to avoid to be activists 		

Report from Session (title)	Challenges in implementing the Nagoya Protocol and ABS		
Proposed by (name)	Allan Dauchi, ABS FP, Zambia	Discussed in spot	"Lion"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<p>Challenges identified:</p> <ul style="list-style-type: none"> • Lack or inadequate bilateral funding especially from the GEF as GEF allocation targets biodiversity in general and not ABS specifically • Inadequate capacity by Parties to draft ABS legal frameworks as lawyers are not well vested on matters concerning genetic resources and ABS. MAT development suffers the consequences. • There is no business case for genetic resources and ABS to influence 		



- politicians to facilitate implementation
- Poor coordination and awareness on ABS due to fragmented policies and laws. Focal points are scattered in different sectors and institutions
- Turn-over of focal points. There is no stability regarding focal points as countries change focal points often and this leads to no continuity
- Governments are paying much attention to climate change than biodiversity and ABS

Summary of conclusions or results

(e.g., identified options, ideas for solutions, possible follow-up activities, ...)

Solutions:

- Set-up platforms such as committees or forums to enhance coordination where it is lacking
- Capacity building needed not only in human resource but in equipment
- Africa needs a , 'one-stop shop' for data storage and retrieval and this may be in the AU as long as capacity is built
- African countries need to take stock of the history of the Nagoya Protocol in the pre-Nagoya, adoption and post-Nagoya to have rich information to enable informed policy decision making
- In drafting ABS legislation, countries should take time (precautionary principle) to enable the laws to respond to country situations.
- GEF focal point should work with all focal points to decide on allocation of resources and include ABS needs

Report from Session (title)	Echinops Giganteus ABS Case		
Proposed by (name)	Fon Lekunze	Discussed in spot	"Leopard"
Summary of the discussion (e.g., points raised, insights gained, lessons learnt, ...)	<ul style="list-style-type: none"> • NB: The local government, stakeholders and local community are happy because the MAT fulfils ABS requirements to a certain extent. We give many thanks to Mane S.A. • Uncertainty by the community because the community is not informed. • Greater commitment by all the stakeholders to ensure the ABS process goes through, in terms of capacity building for the community to be able to negotiate, monitor and sustain the resources. • Weakness in the MAT e.g. legal flaws, scientific weaknesses, poor follow-up and checks. <p>Lessons learnt:</p> <ul style="list-style-type: none"> • Much training, capacity building and information sharing is required towards the revision of the MAT in 1.5 year time. It would be essential to identify existing organised structures within the community and deal with them, rather than using intermediary who fail the process in most cases. 		
Summary of conclusions or results (e.g., identified options, ideas for solutions, possible follow-up activities, ...)	<ul style="list-style-type: none"> • If enough training is done for the community, there is high hope that revision in 1.5 year will bear a good MAT • Emphasis has to be laid in the sustainability of the product as well as in building a follow-up chain from planting to manufacture and sale • Research has to be undertaken by stakeholders in this biodiversity locality 		