



Key Outcomes of the 12th Pan-African ABS Workshop

9th to 13th September 2019, Cape Town, South Africa

Monday, 9th September 2019: International Processes and Activities

- Interlinkages between international ABS-related processes (CBD, FAO / ITPGRFA, WIPO): On-going communication and substantial exchange between the respective government institutions in charge of these processes at the national level is essential to ensure consistent African ABS positions internationally.
- The African Group is therefore encouraged to make use of the online communication system for African negotiators, available at www.coordination.africa, to coordinate biodiversity negotiations, especially during intersessional periods, and support the coordination and the development of African common positions on key issues for Africa such as, among others, digital sequence information on genetic resources (DSI); the role of benefit-sharing in the Post-2020 Global Biodiversity Framework and the Global Multilateral Benefit-Sharing Mechanism under the CBD/Nagoya Protocol.
- For more information on DSI, see the primer compiled by the Initiative (follow the link below).
- The Secretariat of the CBD highlighted that there will be an opportunity for the African Group to comment on future peer reviewed studies on DSI. Any opportunities for engagement and for providing comments will be shared through the normal channel of notifications.
- Lessons learnt from the ABS monitoring simulation example presented:
 - 1) Uploading all information on ABS national systems (legal and administrative measures, permit information, designation of publishing authorities, etc.) on to the ABS Clearing-House is key to the functioning of the overall compliance system;
 - 2) A national database storing permits, PICs and MATs, and most importantly linking these documents to the Unique Identifier (UID) of an IRCC which corresponds to the respective documents is essential for an effective monitoring system. With this information, the CNA in provider country will be able to verify whether the information provided in the checkpoint communiqué with the same UID, which may be submitted years later to the ABS Clearing-House, is correct and that the contractual obligations set forth in the MAT have been fulfilled by the user;
 - 3) The CNA in user countries does not play a role in MAT enforcement; however, a good communication between users and the CNA in provider countries is important;
 - 4) ABS agreements must be legally binding contracts to be enforceable in both provider and user countries;
 - 5) Compliance measures are to be established by all Parties to the Nagoya Protocol, including African countries.

Tuesday, 10th September 2019: National ABS Frameworks and Strategies

Main lessons arising from presentations of African and South African regulatory and institutional frameworks:

- 1) There is no one-size-fits-all option for the national implementation of the Nagoya Protocol. Countries need to develop ABS systems according to their national circumstances and priorities and can opt for different policy options and approaches in relation to key issues, such as, among others, the functional scope of ABS regulation (follow or adapt the scope of the Nagoya Protocol), entity negotiating MAT or granting PIC, and the form of benefit-sharing. However, African countries should consider the African Union Strategic and Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa. For further details, see the discussion paper on ABS Implementation Options (follow the link provided below);
- 2) Elements for an effective ABS regulatory framework comprise, among others: an enabling legal and policy environment, an effective coordination and communication between all the actors involved, financial and technical support mechanism for national actors (SMEs, research, IPLCs) and a strategy linked to the national development strategy and/or the Sustainable Development Goals (SDGs);
- 3) Clear guidance on national procedures to apply for permits, obtain PIC and establish MAT is essential for users (academia, research organisations and industries);
- 4) In the context of utilisation of biological and genetic resources, intellectual property (IP) pervades the whole ABS value chain. With respect to traditional knowledge, IP tools could, for example, be used as a 'shield' to protect traditional knowledge from misuse and misappropriation or as 'sword' to economically valorise traditional knowledge;
- 5) Constellations of actors and their functions in R&D/the valorisation of genetic resources can vary to a large extent depending on their respective business model which often entail a collaboration between universities and the private sector. Consequently, utilisation rights and IP may be held by individual actors, shared, licenced out, etc.;
- 6) A contract is a key tool to fill the gaps in international law on ABS – appropriately worded clauses in ABS contracts are essential to, for example, prevent erroneous patents and secure the rights of providers of genetic resources.

Wednesday, 11th September 2019: Field Trip to ABS Actors Along the Value Chain

The field visit provided an opportunity to explore the different stages of operational value chains, from the permit process and research phase to the commercial phase, illustrating some examples of business concepts or academic research projects on which the South African bioeconomy is based:

- The area of expertise of Parceval (Pty) Ltd includes cultivation and sourcing of botanical raw materials, establishing supply chains, and product formulation and manufacturing of intermediary and finished products predominantly in the pharmaceutical sector. Parceval complies with South African ABS legislation and regulations. It has been granted several bioprospecting permits and established ABS agreements accordingly. Key challenges encountered are, among others, the identification of traditional knowledge holders; a low level of understanding of communities on bioprospecting, the establishment of ABS contracts and legal agreements and the high transaction costs of compliance.
- Afriplex is a South African company focusing on the development and manufacturing of botanical extracts, complementary medicines and food & beverage product solutions. Combining state-of-the-art facilities and processes with a source to shelf approach, Afriplex aims at unlocking the

potential of traditionally used African medicines and botanicals while adding value to all the components of the supply chain. Working closely with multiple educational institutions and research organisations, Afriplex has established a productive ABS compliant bioprospecting pipeline from the permit application process and the biodiscovery phase to the commercial phase, including, where relevant, benefit-sharing agreements with traditional knowledge holders. It is thus a good example of collaboration where research is undertaken by universities while product development and manufacturing are carried out by the company. Different constellations of IP ownership are being applied.

- The case of the Honey Flower (*Melianthus major*) provided an example of an international research partnership between University of Dortmund in Germany and Parceval (Pty) Ltd, raising various issues related to PIC, MAT, benefit-sharing and the involvement of IPLCs in such commercially-oriented research collaboration projects. The research is still in the biodiscovery phase. Even if new bioactive compounds found in the plant prove to be potentially applicable for anti-inflammatory applications, commercial success is not yet in the cards as further regulatory requirements and consumer safety schemes need to be met.
- The case of Kraalbos (*Galenia Africana*), a herbal shrub used for various traditional medicinal remedies, provided a useful example on how a successful national academic research has turned into a promising ABS case. Kraalbos has been traditionally used to treat skin diseases, wounds and coughs and is currently used in cosmetic formulations such as soaps, lotions, and shampoos. Further biochemical investigations revealed the potential of this shrub to be used as a natural pesticide and fertiliser and led to a patent. The product developed is now ready for commercialisation. This example also illustrated the case where although traditional holders on the plant have not been involved at the initial stage of the research and development process due to a lack of legislation at the start of the research process, they have later been approached by the researcher to establish an ABS agreement in relation to the future commercialisation of the products developed from his research on Kraalbos. The business model aims at integrating IPLCs as shareholders (exposure to all potential benefits and risks).

Thursday, 12th September 2019: Approaches and Instruments to Facilitate ABS Partnerships and Agreements

- Establishing fair and equitable ABS systems is a long process of learning by doing.
- Raising awareness on ABS and building the capacity of all stakeholders involved, IPLCs, academia, the research industry and the private sector in particular, is key to the development of national ABS systems.
- National budgets should plan for capacity building activities to enable the full participation of IPLCs in ABS processes and the development of sustainable ABS value chains from the onset.
- Organising and networking across communities is also key. Experienced IPLCs should share lessons learnt and knowledge gained on ABS with other IPLCs.
- Complex supply chains in some sectors where a final product is based on multiple ingredients sourced in very small quantities in different countries implies significant difficulties not only in ensuring compliance with multiple national laws but also in the distribution of fair benefit-sharing along the value chain.
- Despite their divergences, different perspectives and system of values, it is critical that all actors involved in the value chain understand the difficulties and impediments the others encounter.
- ABS issues cannot be dealt with in isolation – all actors must work together towards the common goal of creating a fair and equitable balance of benefits between providers and users of genetic resources by establishing better ABS regulatory frameworks and better ABS contracts.

- Non-commercial research has specific features which need to be addressed in national ABS frameworks: short research project cycles (of 2-3 years) that require ABS permits as prerequisite for funding (in EU), subject of research sometimes not clear from outset, pathogens require fast track access (Article 8 of the Nagoya Protocol).

Friday 13th September 2019: Framing the Use of Genetic Resources / ABS

- Sectors users of genetic resources vary considerably with respect to R&D entities, research periods, budgets, IP instruments, access quantities, business models (business to business or business to clients), the relevance of specific genetic resources in final products, etc. Such issues are to be considered carefully and taken into account when establishing MAT. Companies users of natural ingredients are leading the number of applications to access genetic resources.
- Access permits like national laws are not enforceable in another country. If you want to make an obligation on the user, it must take the format of a binding contract which adheres to contract law and makes the obligation binding. The two golden rules of contract drafting are: (1) avoid ambiguity and (2) be clear, specific and dynamic, but not narrow.
- Avoiding the use of terms impossible to define such as the terms 'genetic resources' or 'non-commercial' in a contract is critical.
- Trust is an important issue to build any partnerships and/or relationships with the communities. Regulators have a key role to play in bringing communities and the private sector together.
- Benefit-sharing has a crucial role to play in the Post-2020 Global Biodiversity Framework, with benefit-sharing as an incentive for sustainable use and conservation. IP rights and ABS are important tools to link up the three objectives of the CBD and manage expectations in terms of benefit-sharing.
- More coordination among different sectors at the international level is required in order for ABS to play a key role in contributing to the Agenda 2030 on Sustainable Development and achieving the SDGs.

Links to guides:

ABS Implementation Options - Policy and Administrative Options for Implementing the Nagoya Protocol on Access and Benefit Sharing (ABS), available at: http://www.abs-initiative.info/fileadmin/media/Knowledge_Center/Publications/Implementation_Options/Collection_-_Implementation_Options_-_ABS-I_-_201909.pdf

Digital Sequence Information on Genetic Resources (DSI) - An Introductory Guide for African Policymakers and Stakeholders, available in English and French at: http://www.abs-initiative.info/fileadmin/media/Knowledge_Center/Publications/DSI/Introductory_Guide_-_DSI_-_ABS_Initiative_-_201908.pdf

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