



THE ABS
CAPACITY
DEVELOPMENT
INITIATIVE



Concept for National ABS Gap Analysis

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Programme Implementing
the Biodiversity Convention

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1. Introduction

This gap analysis checklist is intended for use in the African partner countries that the ABS Capacity Development Initiative is supporting on the national implementation of the Nagoya Protocol (NP) and the African Union Strategic and Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa (AU Guidelines). This checklist could also be used in other than African countries. In that case, the reference to the AU Guidelines will be obsolete or can be replaced by other applicable regional guidelines.

The checklist seeks to provide a standard manner in which a country's existing or emerging national ABS measures can be evaluated to determine to what extent they address the obligations and other provisions set out in the NP and include the guidance provided in the AU Guidelines. The proposed gap analysis should not limit itself to the regulatory system but should aim at analysing the complete ABS system in a country. Besides the development of an effective ABS regulatory framework this includes the negotiation of fair ABS contracts, the establishment of ABS-compliant value chains, and the involvement of indigenous peoples and local communities based on the respect of their traditional and codified rights.

It thus aims to provide a coherent approach to identifying gaps that have to be addressed through the support of the Initiative to make national ABS measures compliant with the requirements and minimal standards set out in the NP. It is assumed that this will be done drawing on the specific guidance provided in the AU Guidelines. The specific task in the context of the work of the ABS Capacity Development Initiative is, that the gap analysis is not a goal in itself but only a first step towards building comprehensive ABS capacities.

The gap analysis is comprised of four parts:

- Part A seeks to identify general progress and steps taken in the country towards the ratification /accession and implementation of the NP. This is of particular importance to identify how the support of the Initiative could build on these steps in its support and intervention.
- Part B seeks to get further clarity on the legal, policy and administrative landscape for the implementation of the NP in the country. The analysis should outline, what is needed to ensure that legal, policy and administrative measures in place or to be developed are in line with the requirements set out in the NP and what needs to be done towards achieving that goal, bearing in mind the final aims of an effective ABS framework as described above.

- Part C seeks to identify what are the institutional arrangements currently in place and how these are fit for purpose or not to support the implementation of the NP and an effective ABS framework.
- Part D gives recommendations to countries for national implementation of the NP and the AU Guidelines in order to foster the development of an effective ABS framework.

2. Issues to be addressed

The analysis in its four parts needs to address the following overarching issues and answer a set of core questions to be asked in the context of the three fields development of an effective ABS regulatory framework, negotiation of fair ABS contracts for the establishment of ABS-compliant value chains, and the involvement of indigenous peoples and local communities in the relevant processes.

2.1 Part A: General situation in the country: steps towards ratification/ accession and implementation of the Nagoya Protocol

- What steps have been taken to accede/ ratify the NP in the country?
- What steps have been undertaken to implement the NP in the country?
- Which group of stakeholders have been consulted in these processes?
- What are the main obstacles encountered so far through these processes?

2.2 Part B: General situation in the country: legislative, administrative and policy measures on ABS

- Describe briefly the legal system of the country in question. Is the legal system based on civil law, common law or is it a mixed jurisdiction?
- Describe whether a national law is necessary for the NP to be domesticated and also whether, the process to develop new, or amend existing laws / regulations, has commenced.
- Is there a need for a stand-alone law in ABS or can ABS be integrated/ regulated in broader laws: what would be the most efficient way of going about this?
- If there is no need for a stand-alone law, describe the policy, institutional or regulatory mechanisms which are in place that could be adopted for the domestication of the NP?

- Describe whether under the national law it is possible in the domestication of the NP to take into account the standards set under the AU Guidelines, or whether some other national procedure is necessary prior to the standards set under the AU Guidelines being taken on board.
- Describe what can be done through laws and regulations and how best the development of a law and regulation can be sequenced.
- Is there any merit in considering adopting interim measures to cover the period in which specific legislation/ regulations will be adopted/ developed?
- If the country is a party to the ITPGRFA, which national PGRFA have been put under the MLS, which will be regulated through the NP system? Describe the existing system to access PGRFA under the MLS. What is the number of PGRFA accessions that has been granted by and to the country since it became a member?
- Has the country requested or granted access to genetic material under the World Health Organization Influenza Preparedness Framework? Describe the existing system and, if relevant, inform about the benefits received.

2.3 Part C: General situation in the country: institutional arrangements/ measures and permitting systems.

2.3.1 Designation of NFPs and CNAs

- Describe whether a National Focal Point (NFP) is in place and its functions. Do the functions of the NFP include providing information as required under article 13 of the NP?
- Describe whether the country has designated one or more Competent National Authorities (CNA) on ABS. Has the country established a system of "lead agencies" working under the CNA(s), e.g. for implementation of sectoral ABS regulation?
- What coordination mechanisms exist between the NFP and the CNA(s) in receiving ABS applications? From the ABS permitting system in place, is it clear to whom an application for access is submitted?

- Describe the PIC system that is laid out within the ABS system.
- Are the characteristics and procedures of the ABS system transparent for an applicant e.g. through the Internet page of the CNA(s)?
- Does an online application system exist?
- Describe the role of IPLCs in granting PIC and whether the process of obtaining PIC is well set out, understood and clear.
- What are the elements of the ABS permitting system that are currently enabling monitoring of utilisation? Which elements could be used for a future monitoring system?
- Does the ABS permitting system contain provisions based on special considerations with regard to access for
 - non-commercial research purposes, taking into account the need to address a change of intent for such research?
 - purposes in relation to cases of present or imminent emergencies that threaten or damage human, animal or plant health?
 - the importance of PGREA and their special role for food security?
 - reporting requirements by the user?

2.3.2 ABS Clearing House Publishing Authority

- Has an ABS Clearing House publishing authority been designated?
- Which information was already transmitted to the ABS Clearing House?

2.3.3 Permitting systems

- List all the institutions in the country that are involved in the ABS permitting process. Describe the role of each institution listed and whether there are formal or informal interaction channels between them in the ABS permitting process. If the institutions have a mutual agreement explaining the role and responsibilities of each in the ABS permitting process, indicate as much.
- Which other permits (e.g. research permits, sanitary permits) are necessary as precondition for the ABS permit and exportation of GR? Establish a flowchart of the current system.
- What is the scope of the ABS permitting system in place? Please describe the policy, law or regulation how and to which extend they address:
 - All genetic resources within the scope of article 15 of the CBD
 - aTK within the scope of the CBD
 - Access for which type of use taking into account the different approaches of the CBD and the NP
- Does the ABS permitting system provide for differentiation of access to GR based on the nature of sources (e.g. wildlife; animal; PGRFA; marine; together with aTK), where they occur (forest; farmland; marine areas; protected areas; etc.) and are there different systems for access to each? Describe briefly.
- How does the ABS permitting system deal with access to private GR on private land and access by one user to multiple private providers?

If such provisions with respect to access for the aforementioned special purposes are in place, briefly describe the same.

2.4 Part D: gives recommendations to countries for national implementation of the NP and the AU Guidelines

- Provide brief recommendations touching on each of the three components assessed

3. Practical approach

The full gap analysis should ideally comprise three phases:

- 1) Preparatory phase** with desktop studies addressing the questions contained in the questionnaires covering the three topics ABS regulation, ABS contracts and Involvement of IPLCs
Results: preliminary input in questionnaires
- 2) Country visit** with a team of three experts covering the three topics, interviews with main ABS-related institutions and stakeholders
Results: completed questionnaires and summary report
- 3) Concluding phase** preparing the gap analysis report
Results: integrated gap analysis following concept set out in Chapter 2

The forms for the questionnaires and the summary report are attached in the annex.

Overview tools

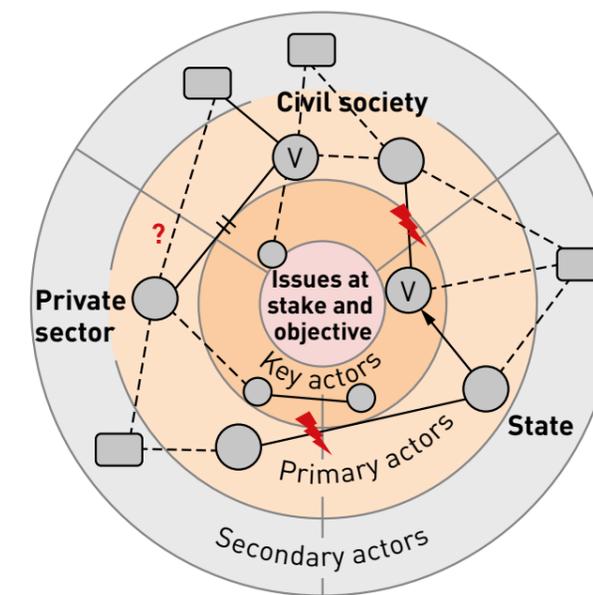
A **table** could give an overview about the ABS landscape in a country:

A **map of actors** could be created to inform about the range of ABS stakeholders and their relationships. The GIZ Capacity WORKS toolbox offers suitable tools for such a stakeholder analysis.

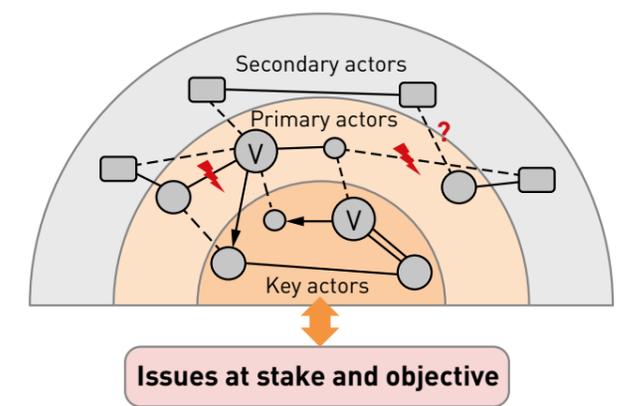
Treaty / Guidelines	Ratification / Adoption	Implementation	Established MATs ¹ / standard MTA ²
CBD	Yes / No	e.g. ABS Regulations, Biodiv Law Art. xx-yy	n (pre-Nagoya ABS system)
NP	Yes / No	e.g. ABS Regulations, Biodiv Law Art. xx-yy	n (post-Nagoya system)
ITPGRFA	Yes / No	# of accessions put under the MLS per notification, link to IT webpage	n SMTAs
WHO (PIP framework ³)	Yes / No	e.g. ABS Regulations, Biodiv Law Art. xx-yy	n SMTAs
UNDRIP	Adopted / Not adopted	e.g. IPLC-related regulations and laws, ABS Regulations, Biodiv Law Art. xx-yy	n (pre-Nagoya MAT for aTK if they are do not fall under the categories listed above)

¹ Mutually agreed terms
² standard material transfer agreement
³ Pandemic Influenza Preparedness Framework

Example of map of actors in the onion format



Example of map of actors in the rainbow format



4. Annex

4.1 Summary report of country analysis

1. General background information

Country:

Team members:

Date of the country assessment:

2. Synthesis of information gathered through the questionnaires (2-3 pages max.)

2.1 Summary of findings: ABS Frameworks

-

2.2 Summary of findings: ABS Agreements - valorization

-

2.3 Summary of findings: Effective participation of IPLCs based on BCPs and community procedures

-

3. Final observations/ conclusions and way forward (1page max.)

Strengths

-

Weaknesses

-

Possible interventions at the political level

-

Possible interventions at technical level

-

4.2 Questionnaire 1: National institutional and regulatory ABS frameworks

National institutional and regulatory ABS frameworks Questions (and Rationale)

Ratification / Accession

A. Process

A1. What are the remaining steps towards ratification / accession?
The aim is identifying, as specifically as possible, the expected process, timeline and issues pending in the ratification / accession process. Government websites, press articles.

A2. How would you describe the challenges and opportunities in the process of ratification / accession?

ABS Policies

B. Existing policies

B1. What ABS-related policies are already in place?
ABS-related policies would include all principles, statements, strategies and guidelines, issued or recognized by the government, that address issues linked to the valorization and use of biodiversity and/or aTK, ownership or usage rights over biological or genetic resources and/or aTK, the collection, research, development and/or commercialization of biodiversity-based knowledge, products or services. ABS may be the main issue in the policy or only one of the elements in a broader policy, such as a sustainable forestry strategy or biotechnology policy. Review of legal and policy framework, academic journals.

B2. To what extent do existing policies address ABS (for example, addressing ownership rights over genetic resources or aTK or establishing principles for benefit sharing)?

- To what extent would you say existing policies are consistent with the NP?
- Are the AU Guidelines reflected in the ABS policy? If yes, to which extent?

C. Evolving policies

C1. Is any development or revision of ABS-related policies ongoing? Please provide details of the content and process for such development and revision.

The aim is identifying, as specifically as possible, the expected objective, process, timeline and issues to be addressed. Government websites, press articles

C2. What are current plans to make new or revised policies consistent with the NP and the AU ABS guidelines?

D. Participation

D1. How would you describe the participation of stakeholders within public, private, academic and other sectors in developing ABS-related policies?

The aim is identifying the main groups involved, the way in which they contribute, and their perceived interests and influence. Government websites, press articles.

D2. In your opinion, how could stakeholder participation be enhanced?

Regulatory frameworks

E. Existing ABS laws and regulations

E1. Are there ABS-related laws or regulations and to what extent are they consistent with the NP?

ABS-related laws and regulations would include legal documents such as constitutions, laws, decrees, acts and regulations issued by the government, that address issues linked to the ownership, usage and/or consultation rights over biological or genetic resources and/or aTK; authorizations to collect, cultivate, use, research, develop and/or commercialize biodiversity-based knowledge, products or services; and/or rules on the sharing of information, monetary and/or non-monetary and other related benefits. ABS may be the main issue in the legal document or only one of the elements in a broader document, such as a protected area regulation or fisheries law. Review of legal and policy framework, academic journals.

E2. To what extent do existing laws or regulations address ABS (for example, addressing ownership rights over genetic resources or aTK or requiring permits for the collection or research of biodiversity)?
Legal associations, NGOs, Commercial Associations

E3. Are there any references or requirements on ex-situ collections in these ABS-related laws and regulations? How does the country deal with ex-situ collections outside of the country?

E4. How would you describe the participation of stakeholders within public, private, academic and other sectors in developing ABS-related laws and regulations?

E5. What would you say is the perception of different groups of stakeholders of ABS-related laws and regulations (e.g. with regards to usefulness and transaction costs)?

F. Permitting process

F1. Are there any permitting processes that relate to ABS (e.g. in sectors such as protected areas, wild collection, procedures for ex situ access, research projects)?

ABS-related permitting processes would refer to activities that require licenses or permits and the procedures put in place to obtain such authorizations. For example, authorizations to collect biological resources from protected or public lands, permits for export of samples of biological material, etcetera. Review of legal and policy framework, government website, trade associations.

F2. How would you describe the steps, sequences, procedures, timelines in these ABS-related permitting processes?

G. Evolving ABS laws and regulations

G1. Is any development or revision of ABS-related laws and regulations ongoing? Please provide details of the content and process for such development and revision.

The aim is identifying, as specifically as possible, the expected objective, process, timeline and issues to be addressed, as well as the groups of stakeholders involved. Government website, press articles.

G2. What are concrete steps taken to develop or revise ABS-laws and regulations to ensure compliance with the NP?

G3. How would you describe the participation of stakeholders within public, private, academic and other sectors in developing ABS-related laws and regulations?

G4. In your opinion, how could stakeholder participation be enhanced?

Institutional set-up including information exchange

H. Existing institutional set-up

H1. How are different institutions involved in ABS-related laws, policies and permits?

The aim is identifying, as specifically as possible, how government entities manage and coordinate ABS-related issues, particularly in relation to other stakeholders. Review of legal and policy framework, government website, case studies.

H2. Is there any formal and/or informal coordination between these institutions?

H3. Which institution(s) play(s) the role of CNA?

H4. Which institution(s) provide information and/or guidance to stakeholders on ABS-related issues?

H5. What would you say is the perception of different groups of stakeholders of ABS-related institutions (e.g. with regards to effective functioning)?

I. Evolving institutional set-up

I1. Are there any plans or ideas to revise the set-up of institutions involved in ABS-related laws, policies and permits?

The aim is identifying, as specifically as possible, the expected objective, structures and timelines for reform. Government website, press articles.

Traditional knowledge

J. Some questions from the IPLC questionnaire

J1. What is the legal status and definitions of (1) indigenous peoples, (2) local communities / certain local communities?

J2. Which legal rights over GR and / or TK do IPLCs have?

J3. Is there legislation for TK protection? If yes, which?

J4. Are there community protocols or comparable procedures on access to GR and/or TK and BS?

J5. What is the role of IPLCs in granting PIC and negotiating MAT? (also to GR)?

Transboundary issues

K. Valorization strategies

K1. Do any of the ABS-related laws or policies address cross-border issues or collaboration?

The aim is to gather specific information on any consideration of transboundary issues in broader ABS-related laws, policies, permitting processes or institutions. Review of legal and policy framework, case studies.

K2. Are there any other mechanisms in place to address share biological and/or genetic resources across jurisdictions?

Valorization strategy and value chain development

L. Overview

L1. To what extent is the valorization of biological and/or genetic resources considered in ABS-related laws, policies and permitting processes?

Valorization of biological and/or genetic resources refers to strategies, policies, programs or rules aiming to add value to biodiversity through activities such as research, product or service development, supply chain development, local value addition, partnerships, certification and verification, and/or marketing.

Stakeholder involvement – Cross cutting

M. Roles and views

M1. How does the interviewee see his/her own role (or the role of the group/institution he/she represents) in the ABS process(es)?

M2. Who else does he/she considers important in these processes?

M3. How does he/she view the role(s) of these other parties?

M4. What does he/she think of the capacities of these other parties to get involved and contribute to the process(es)?

M5. How does he/she perceive his/her own relationship to these other parties?

M6. How does he/she perceive the relationships between the other parties?

M7. Where does he/she see potentially conflicting views, interests or action?

Sources and references

4.3 Questionnaire 2: Effective participation of IPLCs based on BCPs and community procedures

Effective participation of IPLCs based on BCPs and community procedures Questions (and Rationale)

ABS Policies

A. Policy issues

A1. How are IPLC-issues reflected in national ABS-related policies? *ABS-related policies would include all principles, statements, strategies and guidelines, issued or recognized by the government, that address issues linked to the valorization and use of biodiversity and/or aTK, ownership or usage rights over biological or genetic resources and/or aTK, the collection, research, development and/or commercialization of biodiversity-based knowledge, products or services. ABS may be the main issue in the policy or only one of the elements in a broader policy, such as a sustainable forestry strategy or biotechnology policy.*

A2. Are there any national ABS-related strategies developed or recognized by IPLCs? If yes, which?

Review of legal and policy framework, website of IPLC organizations. Results of desk top study and interviews

A3. What rules exist regarding the sharing and use of benefits obtained from ABS cases? (e.g. what purposes can the benefits be used for; any distribution rules, defined groups of beneficiaries)

A4. How were / will IPLCs (be) involved in developing ABS-related policies?

A5. Is there any formal political representation of IPLCs?

A6. What is IPLC involvement in decision-making about the distribution of financial, technical and technological support as elements of benefit sharing at local level?

Regulatory Framework

B. Legal status of IPLCs

B1. What are the relevant rights of IPLCs at the level of the constitution?

Please note highlighted questions are also included in other questionnaires. Review of legal and policy framework.

B2. What is the legal status and definitions of (1) indigenous peoples, (2) local communities / certain local communities?

C. Resource rights of IPLCs

C1. Which legal rights (ownership, use, permission to access, right to share in benefits derived from use) do IPLCs have in existing legislation (e.g. land, forestry, agriculture, fisheries, wildlife laws or regulations)?

C2. Which legal rights over GR and / or TK do IPLCs have under existing relation?

C3. What procedural rights exist? (e.g. (F) PIC, participation, consultation, etc.)

D. Protection of TK

D1. Is there legislation for TK protection? If yes, which?

Please note highlighted questions are also included in other questionnaires.

D2. What is the scope of this legislation (e.g. types of TK covered)?

E. Customary rights

E1. Are there examples of legislation that protect customary rights? If yes, which?

Please note highlighted questions are also included in other questionnaires.

E2. Which institutions exist that deal with customary rights?

E3. Are there community protocols or comparable procedures on access to GR and/or TK and BS?

E4. Are there other types of bottom-up community documents or procedures on resources /TK?

E5. To what extent are community protocols / procedures recognized by the state?

F. ABS legislation

F1. To which extent do ABS-related laws and regulations cover TK? *ABS-related laws and regulations would include legal documents such as constitutions, laws, decrees, acts and regulations issued by the government, that address issues linked to the ownership, usage and/or consultation rights over biological or genetic resources and/or aTK; authorizations to collect, cultivate, use, research, develop and/or commercialize biodiversity-based knowledge, products or services; and/or rules on the sharing of information, monetary and/or non-monetary and other related benefits. ABS may be the main issue in the legal document or only one of the elements in a broader document, such as a protected area regulation or fisheries law. Please note highlighted questions are also included in other questionnaires.*

F2. To which extent do ABS-related laws and regulations refer to IPLCs

F3. What is the role of IPLCs in granting PIC and negotiating MAT? (also to GR)?

G. Representation

G1. How were / will IPLCs (be) involved in developing the ABS-related laws and regulations?

Please note highlighted questions are also included in other questionnaires.

G2. Is there any formal political representation of IPLCs?

Institutional set-up including information exchange

H. IPLC organisations

H1. Which IPLC networks / organisations exist in the country? *The aim is to map IPLCs institutions, their relationship with other actors and their effective involvement on ABS issues. Institutional websites.*

H2. What is the nature and scope of work of these institutions, e.g. community groups, NGOs, local governments; e.g. advocacy, exchange, learning?

H3. Which IPLC organisations are in partnerships with e.g. Ministry, NGOs, etc.?

H4. Are there specific IPLC women's networks? If so, which?

H5. Which of the IPLC organisations in the country are part of regional IPLC networks?

H6. Which IPLC networks / organisations deal with ABS issues?

H7. Which are the most relevant supporting CBOs / NGOs supporting IPLCs on issues linked to ABS?

H8. How are IPLCs represented in ABS-related permitting processes?

H9. What has been going well so far in these processes? What have been challenges?

I. Inventories

I1. Is there any database, inventory or other initiative that collects, documents and systematizes aTK (e.g. in relation to traditional seeds, animal breeds or medicinal knowledge)? If yes, please describe. *The aim is defining the potential for ABS issues to arise in relation to biological and/or genetic resources and aTK held by IPLCs but also gathered in ex-situ collections. University, institutional websites, academic journals.*

I2. What types of TK are included? (e.g. widely shared; shared within certain groups; secret knowledge)

I3. To which extent do these inventories have policies or procedures to ensure compliance with ABS principles (e.g. PIC for access, benefit-sharing for utilisation)?

Transboundary issues

J. Overview on transboundary issues

J1. To which degree are transboundary issues relevant for IPLCs (e.g. because they share cultures, resources or aTK)? *The aim is to identify possible overlap and potential for cooperation and/or conflict in IPLCs sharing biological and/or genetic resources and aTK across borders. Academic journals, government websites.*

J2. How are transboundary issues addressed by IPLCs (e.g. through cooperation, discussion)

J3. Are there any ABS-related laws or policies concerning transboundary TK?

Valorization strategy and value chain development

K. Strategies

K1. How do any strategies, policies or programs for the valorization of biological and/or genetic resources address the rights, needs and interests of IPLCs, including in relation to aTK?

The aim is to specifically determine whether and how biological and/or genetic resources and aTK are considered in these strategies, policies and programs. Government websites, press articles.

K2. In particular, how do these strategies, policies or programs address different types of aTK (for example, widely shared / shared within certain groups / secret knowledge)?

Valorization of biological and/or genetic resources refers to strategies, policies, programs or rules aiming to add value to biodiversity through activities such as research, product or service development, supply chain development, local value addition, partnerships, certification and verification, and/or marketing. Please note that highlighted information is also requested in the regulatory framework questionnaire.

K3. What perceptions exist regarding potential opportunities, challenges, risks and benefits in develop value chains based on aTK?

L. R&D and trade

L1. Are there any existing ABS agreements involving IPLCs? *Please note that highlighted information is also requested in the ABS agreements questionnaire. Government, university, corporate websites.*

L2. Are there biodiversity-based research, development or commercialization projects involving IPLCs?

L3. Which research projects in the country use aTK and/or community-managed/owned GR?

L4. Which commercial products based on aTK and/or community-managed/owned GR are sold in the country?

Stakeholder involvement – Cross cutting

M. Roles and views

M1. How does the interviewee see his/her own role (or the role of the group/institution he/she represents) in the ABS process(es)?

M2. Who else does he/she considers important in these processes?

M3. How does he/she view the role(s) of these other parties?

M4. What does he/she think of the capacities of these other parties to get involved and contribute to the process(es)?

M5. How does he/she perceive his/her own relationship to these other parties?

M6. How does he/she perceive the relationships between the other parties?

M7. Where does he/she see potentially conflicting views, interests or action?

Sources and references

4.4 Questionnaire 3: Development of ABS Agreements

Development of ABS Agreements Questions (and Rationale)

ABS Policies

0 Definition of ABS agreements

01. How does the government define an ABS agreement?
This is (in conjunction with A.) important to know to establish a common and comparable baseline between countries assessed.

Regulatory Framework

A. Existing ABS agreements

A1. How many ABS agreements, as defined by the government, exist? Provide details!
ABS agreements will be defined as per the response given to question "0" above. ABS agreements may thus include permits, contracts and/or projects issued, signed and/or otherwise recognized by the government. Please make sure to describe exactly what is covered and what is not by the term "ABS agreement."

A2. What is the current process and timeline for ABS agreements?
Please note that questionnaire on regulatory framework enquires about steps, sequences, procedures, timelines ABS-related permitting processes. Here, it is necessary to clearly define the process considered for "ABS

agreements," which may or may not be, for the government, the same as permits or projects authorized by other permitting processes.

A3. What is the current process and timeline for securing any other ABS-related permits (e.g. collection, research, export permits)?
The aim is to differentiate, where applicable between permits for basic research / bioprospecting / commercialization, and to identify which other permits are necessary and in which sequencing. Please note that highlighted information is also requested in the regulatory framework questionnaire (point f).

B. Agreements in the pipeline

B1. Do you know of any agreements and/or projects dealing with biodiversity-based research, development or commercialization or ABS that have not been formally approved or recognized by government? Provide details.

These are arrangements and/or collaborations with potential of becoming government-recognized ABS agreement. It won't be possible to obtain comprehensive information, but a general idea of some of the lower hanging fruit for ABS agreements. Academic journals, university websites, corporate websites.

B2. Are there any existing or planned policies and / or rules to formally approve or endorse such agreements?

C. Characteristics of ABS laws and regulations / application tools

C1. How do ABS rules provide (or not) for a) legal certainty, b) clarity over the ownership of GR and aTK c) defined timelines for ABS processes, d) flexibility for ABS negotiations?
The aim is determining how easy or difficult rules and policies make it to negotiate and enforce ABS agreements – and whether tools, instruments and institutions are available to facilitate this. Review of ABS rules, case studies.

C2. How would business identify the counterpart for negotiating ABS agreements?

C3. Are you aware of any guidelines, standards, codes of conduct or training materials providing information and/or guidance on how to deal with ABS rules and practices?
Standard organizations, business associations, civil society networks

D. Stakeholder involvement and capacities

D1. How many ABS agreements with involvement of IPLCs exist? (as defined by government). Provide details key aspects on these agreements.

The aim is determining the potential for ABS-related activities and agreements based on existing capacities and infrastructure. Please note highlighted questions are also included in other questionnaires.

D2. What are other types of stakeholders involved in existing ABS agreements (e.g. types of institutions or companies, nationalities, industrial or scientific sectors)?

D3. How would you describe capacities of local actors to engage in negotiation and implementation of agreements on biodiversity-based R&D and/or commercialization - in terms of business and/or legal questions

Institutional set-up and Information Exchange

E. Stakeholder involvement and capacities

E1. Who are potential local partners and supporters? (NGOs, service providers, companies, financial support)
The aim is to determine the capacities to support developing legally sound and equitable ABS agreements in the country / region.

E2. Do you know of legal experts that provide or could provide guidance on ABS negotiations and would be able to draft ABS agreements?
Legal associations, NGOs, Commercial Associations

E3. How do you rate the legal quality of ABS agreements you know?

E4. Do you know of commercial / value chain experts that provide or could provide guidance in ABS negotiations?

E5. How do you rate the "deal" for your country in the ABS agreements you know?

Traditional knowledge and IPLC issues

F. Resource rights of IPLCs

F1. Are there questions or issues linked to rights over biological and/or genetic resources or aTK that may affect the negotiation or implementation of ABS agreements?

The objective of TK and IPLC -related questions is to define in more detail how their particular issues, needs and interest are or should be considered in the negotiation or implementation of ABS agreements.

G. Stakeholder involvement and capacities

G1. Are there IPLC networks, organizations or CBOs/NGOs that support or could provide support to IPLCs in negotiation or implementation of ABS agreements?

H. Customary rights

H1. Have community protocols or comparable procedures been used or considered in any ABS agreement or other collaboration on biodiversity-based research, development or commercialization?

I. R&D and trade

I1. Are there biodiversity-based research, development or commercialization projects involving IPLCs?

I2. Are there any research projects in the country that use aTK and/or community-managed/owned GR?

Transboundary issues

J. Transboundary value chains

J1. Looking at existing research, development and commercialization of biological and/or genetic resources and aTK, how important would you say are transboundary resources?

Valorization strategy and value chain development

K. Valorization strategies

K1. Is there a national strategy or policies for valorization of biological and/or genetic resources?

K2. How do such strategies or policies address ABS-related issues?
Official documents

Results of desk top study and interviews

K3. Are there references to biological and/or genetic resources or aTK in national strategies or policies on economic development?

K4. What is your sense are the economic opportunities linked to biodiversity? Do you know of any relevant activities or interest in biodiversity-based R&D, commercialization? Do you know of actors such as universities, agencies, companies or communities being contacted for GR or aTK?

Publications, corporate communication

L. R&D with GR and aTK

L1. Is there a national policy on biodiversity-related R&D? What are the actors that conduct taxonomy and biodiversity inventories? Are there national databases or collections?

L2. What kind of species, taxonomic inventories exist?

L3. Do you know of any projects or ongoing collaborations dealing with biodiversity-based R&D? This may involve universities, research institutes and/or companies. Provide details.

L4. What are human and physical resources, regulatory and policy frameworks for R&D partnerships?

M. Stakeholder involvement and capacities

M1. Can you identify experts or institutions related to R&D on biological and/or genetic resources and associated traditional knowledge? (e.g. university researchers, national research institutions, NGOs, IPLC associations)

The aim is determining the potential for ABS-related activities and agreements based on existing capacities and infrastructure. Patent documents are a good source of information to identify R&D actors. Most countries have a limited picture of national actors which may be involved, in one way or another, in the valorisation and, or utilization of their genetic resources.

M2. Are you aware of any national companies, entities or individuals holding patents linked to biological and/or genetic resources?

Business associations, civil society networks.

M3. Can you identify companies and/or institutions engaged in biodiversity-based R&D or commercialization? What are their activities and capacities in this field?

Websites of universities and research institutions, corporate communication.

N. Commercialization and trade

N1. Do you know of any sourcing and/or supply chains of biological resources for use in pharmaceutical, biotech, specialty food, cosmetic products? Provide details.

Information on existing use of biological and/or genetic resources though it won't be comprehensive information, will provide a general idea of some of the potential and lower hanging fruit for ABS agreements.

N2. What information is available on biological resources currently exported and for what uses?

Export of biological resources, certified supply chains of biodiversity-based products, corporate communication.

O. Broader enabling environment

O1. In general, what rules and policies would you say present opportunities or challenges for the business conduciveness of the countries? Do you compare with other countries?

O2. Looking at existing actors and dynamics in the country's economy, which would you say are likely to be the key players involved in or supporting the utilization of GR?

<http://www.doingbusiness.org/-/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB15-Chapters/DB15-Report-Overview.pdf>

<http://www.doingbusiness.org/rankings>

<http://www.doingbusiness.org/rankings>

O3. Do you take key enabling factors for business" – e.g. those reflected in the WB listing *ease of doing business* into account when developing your ABS strategy? If so, how?

By discussing the factors it might be possible to get a prioritisation of elements of business conduciveness – or why business might be reluctant to engage in partnerships. Possibly other key factors for the country can be identified.

Stakeholder involvement – Cross cutting

P. Roles and views

P1. How does the interviewee see his/her own role (or the role of the group/institution he/she represents) in the ABS process(es)?

P2. Who else does he/she considers important in these processes?

P3. How does he/she view the role(s) of these other parties?

P4. What does he/she think of the capacities of these other parties to get involved and contribute to the process(es)?

P5. How does he/she perceive his/her own relationship to these other parties?

P6. How does he/she perceive the relationships between the other parties?

P7. Where does he/she see potentially conflicting views, interests or action?

Sources and references



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