The Global Multilateral Benefit Sharing Mechanism – NP Art. 10

Report on a reflection meeting held 24-25 March 2011 in Lysaker, Norway

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The ABS Capacity Development Initiative

About the process

- The Fridtjof Nansen Institute and ABS Capacity Development Initiative for Africa were approached by African delegates requesting for a reflection meeting on Art. 10 of the Nagoya Protocol
- Support by: ABS Initiative and Norwegian Ministry of Environment / Foreign Affairs and NORAD
- Host and facilitator: Fridtjof Nansen Institute
- Co-Chairs: Sem Shikongo and Peter Johan Schei
- Chatham house rules: everyone in their personal capacity no reference to names, countries or affiliations
- The discussions were in no way meant to lead to any agreement or, pre-determine and pre-empt the official deliberations on this issue which are scheduled to take place during the second ICNP-2 in 2012.
Art. 10 Nagoya Protocol: Global Multilateral Benefit-Sharing Mechanism

Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilisation of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.
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History, background and context

- The CBD was meant to be a GMBSM, as a ‘grand global bargain’: Conservation obligations in exchange for benefit-sharing obligations
- Making funds available from the utilization of GR to conservation of biological diversity and sustainable use
- The idea for a Global Multilateral Benefit-sharing Mechanism (GMBSM) came into the NP negotiations at a very late stage
- The idea is older than the text, which was never negotiated
- The text provides for the intention and sets the context
- Mechanism – not necessarily merely a fund
Are there any ‘needs for’ a GMBSM?

• Make funding available from those who utilize and draw benefits from GR to contribute to conservation of biological diversity and its sustainable use
• Help companies to do the ‘right thing’ under the CBD-ABS (moral obligation where the origin is not known)
• Create an incentive for users of GR to enter into PIC/MAT
• Close a blind-spot in the ABS-system to diminish the race to the bottom regards BS
• Regulate situations where the general bilateral contractual ABS situation cannot be easily applied
Are there any ‘needs for’ a GMBSM?

• Needs to be re-discussed after the detailed discussion of the modalities for a GMBSM
• Link to resolving the outstanding and difficult questions in the negotiation
  – Needs for in the “transboundary” situation
  – Needs for in the “without PIC” situation
Trigger points for benefit-sharing

Mandatory – Voluntary

- Voluntary Mechanism: to function as an **incentive** for companies to contribute to benefit-sharing
- Mandatory Mechanism: need for creating clear, certain and enforceable **trigger-points** when benefit-sharing is required

Trigger is spelled out in Art. 10: **Utilization of**

a) genetic resources
b) traditional knowledge associated with genetic resources
Trigger points for benefit-sharing

- First issue to clarify more in detail: when is a GR being utilized in a manner triggering obligation to contribute to the Mechanism?
- Point of departure NP Art. 2 c-e
- Second issue to clarify more in detail: when is TK associated with GR being utilized in a manner triggering obligation to contribute to the Mechanism?
- Reflexive: needs => modalities => needs
Trigger points for benefit-sharing

• ‘that occur in transboundary situations’ – (not ‘taken from’ / ‘found’ / ‘collected’ in a transboundary situation) will often be the case for PGR as they have been moved in situ and ex situ

• Transboundary situation: where the GR now exists transboundary (developed and/or moved there) or only achieved its characteristics in a transboundary situation?
  - Species may be transboundary – determination whether a GR ‘occurs in a transboundary situation’ may be difficult to establish

Evidence: Which situations clarify the term transboundary?

Challenge I: not to undermine the sovereign rights of Parties

Challenge II: ...
Trigger points for benefit-sharing

- ‘it is not possible to grant or obtain prior informed consent’ – How can this be made operational?
- ‘not possible’ – absolute or based on good practice?
- Cases where the user
  - cannot document PIC/MAT when utilizing GR/aTK
  - cannot document that GR/aTK have been obtained outside
    - national jurisdiction or
    - in a country not requiring PIC/MAT

Last resolution – after having sought all other possibilities
Challenge I: evidence problem
Challenge II: not to undermine the sovereign rights of Parties
Challenge III: ...
Recipients of benefits from the GMBSM

• System needed for deciding on beneficiaries
• What are the types of projects that could be supported under the mechanism?
  ➢ Link to the ecosystem where the GR was found
  ➢ Independent scientific assessment for the contribution to conservation
  ➢ Earmark a percentage back to certain projects
  ➢ Build capacity both on the provider and user side
  ➢ Address all three pillars of the CBD
• Could a country require that a percentage of benefit-sharing from utilization of its GR shall be shared into the Mechanism?
• Implement (achieve) the great bargain of the CBD
Learning from other mechanisms

ITPGRFA

The trigger-point of private payments and the definition of that:

• ‘recipient who commercializes a product that is a plant genetic resource for food and agriculture and that incorporates material accessed from the Multilateral System, shall pay to the mechanism referred to in Article 19.3f, an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is available without restriction to others for further research and breeding, in which case the recipient who commercializes shall be encouraged to make such payment.’

• Time problem: long time from access to benefit sharing

• Evidence problem: linking back to time of access, monitoring challenge

• Till now – limited payments from the private sector
Learning from other mechanisms

• Need for a close look at the details of other funds for finding similarities and differences
  ➢ state to state
  ➢ private to private
  ➢ private to state
Governance of the Mechanism

- Mechanism is something else than a traditional Fund (innovation)
- There is an important link to the CHM; institutional connection
- Different institutional affiliation was discussed:
  - GEF
  - SCBD
  - UNEP
  - International Finance Cooperation (IFC)
- How can the Mechanism become a driver for the Green Economy?
- Promote biodiversity sound activities which are connected to sound business practices in the long term
The full report was compiled by Morten Walløe Tvedt, Senior Research Fellow at the

and is available as document UNEP/CBD/ICNP/2/INF/2

at http://www.cbd.int/doc/?meeting=ICNP-02
Thank you for your attention

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