

REPORT OF THE INTERNATIONAL
EXPERTS MEETING ON ACCESS &
BENEFIT-SHARING AND PROTECTED
AREAS

GLAND, SWITZERLAND

6 – 8 JULY 2011



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UNITED NATIONS ENVIRONMENTAL PROGRAMME

NATURAL JUSTICE

(Lawyers for Communities and the Environment)



INTERNATIONAL UNION FOR CONSERVATION OF NATURE

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LIST OF ABBREVIATIONS

ABS	Access & Benefit-Sharing
ACP	African Caribbean Pacific
BCP	Biocultural Community Protocol
BINGOs	Big International Non-Governmental Organizations
BIOPAMA	Biodiversity & Protected Area Management
CBD	Convention on Biological Diversity
CEESP	Commission on Environmental Economy & Social Policy
CEL	Commission on Environmental Law
CIP	International Potato Centre
COP10	10th Meeting of the Conference of the Parties
CSR	Corporate Social Responsibility
EC	European Commission
FNI	Fridtjof Nansen Institute
GEF	Global Environment Facility
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
GMO	Genetically Modified Organisms
ICCAs	Indigenous & Community Conserved Areas
IGOs	Inter-Governmental Organisations
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
NBSAPs	National Biodiversity Strategies and Action Plans
NP	Nagoya Protocol
PoW	Programme of Work
PoWPA	Programme of Work on Protected Areas
REDD	Reducing Emissions from Deforestation and Forest Degradation

SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
SCBD	Secretariat of the Convention on Biological Diversity
TEKPAD	Traditional Ecological Knowledge Prior Art Database
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNU-IAS	United Nations University Institute of Advanced Studies
WCPA	World Commission on Protected Areas
WG8(j)	Working Group on Article 8(j)
WHS	World Heritage Site
WIPO	World Intellectual Property Organization
WPC	World Parks Congress

STRUCTURE OF THE REPORT

The report commences with an Executive Summary which is a summation of the key objectives and recommendations made at the meeting. A more detailed account of the meeting follows thereafter.

The meeting documents and presentations are separate documents annexed to this report.

EXECUTIVE SUMMARY

Following the adoption of the NP on access and benefit-sharing in October 2010, many countries have developed or are in the process of developing legislation to implement the provisions. However, there have been very few discourses and publications on the potential linkages between the NP and the other processes and Programmes of Work under the CBD that provide guidance to those countries about domestic implementation.

Given the cross-cutting nature of the CBD's objectives to conserve, sustainably use, and equitably share benefits of biodiversity, it is imperative for the implementation of the NP within domestic frameworks to be harmonised with existing frameworks on protected areas, among others.

In order to explore the synergies and potential conflicts between access and benefit-sharing (ABS) and the governance and management of protected areas, the United Nations Environment Programme (UNEP), Natural Justice and the International Union for Conservation of Nature (IUCN), organised a consultation group meeting with key experts in these fields. The goal of the meeting was to explore the potential synergies and conflicts, and how these could be addressed in practice.

MEETING OUTCOME: RECOMMENDATIONS

Recommendations discussed include:

1. Clarifying the differences, overlaps and points of mutual supportiveness of benefit-sharing in the context of both the PoWPA and the NP.
2. Outlining the different governance types and management categories in Protected Areas and analysing how the NP can affirm them in the context of prior informed consent, mutually agreed terms and benefit sharing, while acknowledging the complexities and potential conflicts.
3. Determining how the rights of Indigenous peoples and local communities relating to traditional knowledge associated with genetic resources in the NP can be used to support the Protected Area governance types that involve communities.

4. Examining experiences in Protected Area governance and management that have involved situations of prior informed consent, mutually agreed terms and benefit-sharing, highlighting the lessons and opportunities for ABS lawmakers and implementers at a national level, as well as the opportunities for Protected Area actors to be involved in ABS law/policy development.
5. Listing evidence of how Protected Areas sustain the mega-diversity of genes and traditional knowledge and show the importance of having benefits arising from bioprospecting in Protected Areas flowing back to Protected Areas through local governance systems.
6. Identifying ways in which the rights of Indigenous peoples and local communities in the NP can be relied upon to support community rights in the context of Protected Areas and vice versa.
7. Ensuring that the NBSAPs develop ways in which ABS law and policy is harmonised with existing Protected Area governance types and management categories, and supports the flow back of benefits from bioprospecting in Protected Areas back into Protected Areas.
8. Developing a list/checklist of Protected Area issues to be considered by ABS law and policy makers when drafting laws and policies, with the view to preventing jurisdictional conflicts and promoting mutual supportiveness.
9. Exploring how customary laws and community protocols and procedures in the context of the NP and ICCAs can be used to support local coherence of laws relating to ABS and Protected Areas.
10. Observing lessons learnt from the governance and management of ICCAs.
11. Listing models of legal mapping at different levels prior to developing any new laws, showing how such a process would be critical to ensuring that any new ABS laws do not conflict with, but rather further the goals of existing Protected Area systems and other frameworks related to conservation and sustainable use.
12. Developing a guidance tool for Protected Area practitioners on the NP, identifying the overlaps with PoWPA and specific hooks in the Protocol that can further the goals of PoWPA. Similarly, developing some guidance for

ABS practitioners on PoWPA identifying how Protected Area goals can be centered in the development of any ABS law and policy.

13. Considering different options for capacity building and managing expectations of ABS at the different levels, particularly amongst communities to enable them to engage in the national-level development and implementation of laws and policies.
14. Highlighting best practice cases where there are elements of ABS/biotrade in a Protected Area context to show ABS law and policy makers the way in which different Protected Area governance types and management categories can be supported through ABS law.
15. Identifying ways in which the private sector can be engaged in order to ensure that ABS becomes an innovative financing mechanism for Protected Areas that secures livelihoods of communities dependent on and governing Protected Areas.
16. Developing a timeline with clear objectives and a vision for the rationale behind the interface exercise between ABS and Protected Areas.
17. Making a case for Protected Areas based on their mega-diverse gene pools being crucial for food and health security and resilience in the face of climate change; thereby motivating that the benefits generated through ABS from Protected Areas should flow back to Protected Areas.
18. Establishing an Inter-commission task force, particularly between CEL, CEESP and WCPA to develop guidelines, similar to the UNU-IAS guide on ABS and Protected Areas developed in 2003, for Protected Area practitioners about how ABS can work on the ground in the context of Protected Areas. Also, exploring what the various non-monetary benefits of ABS can contribute to apart from sustainable financing, and what governance frameworks would be suitable for these financing schemes, based on lessons from other/similar sectors.
19. ABS and Protected Areas are still based on fairly static worldviews. We need to work towards introducing a degree of flexibility in them both in the wake of climate change, global environmental change, land use change, etc. There is also a need for the ABS regime to deal with new and emerging

Protected Area governance types and management categories such as adaptive landscapes and with species' habitats changing.

20. Exploring how Protected Area systems, actors and tools can contribute to the development of ABS law and policy and thereby supporting ABS at the level of implementation.
21. Developing a discourse that moves away from a strict interpretation of the NP for the purposes of its implementation and instead focuses on how the NP can be used as a vehicle to realise the goals of the PoWPA.
22. Tracing the flows of genes and traditional knowledge back to the community or the Protected Areas where it originates in order to make sure that the benefits flow back to the source. Since the NP is mainly about state-state rights, there is a danger that benefits from ABS will not flow back to the Protected Areas where the resources were sourced thereby disincentivizing conservation and violating the rights of communities on the ground.
23. Observing the IUCN Protected Area matrix and ensuring that ABS in practice does not disrupt customary and endogenous institutions of Indigenous peoples and traditional societies.
24. Developing a matrix for ABS. There is an assumption that countries require prior informed consent and mutually agreed terms, but this is not always the case. This assumption has led to a “matrix reloaded” for ABS governance types in different scenarios and cases, which makes it even more complicated. Also, seeking examples of ABS governance systems as well as Protected Area matrix examples and examining the issues and the different levels of complexity through the various legal/policy perspectives.
25. Supporting community-led capacity development on ABS and PAs.

BACKGROUND SUMMARY

The NP on ABS was adopted in October 2010 by the 10th Conference of Parties to the CBD. Responding to the third objective of the CBD, the Protocol is considered to be the most responsive international legal framework in its emphasis on ethics and equity in the context of conservation and sustainable use of biodiversity. Key elements of the Protocol include the affirmation of the rights of States and Indigenous peoples and local communities regarding genetic resources and associated traditional knowledge; identification of the conditions for access and utilization of genetic resources and associated traditional knowledge; elaboration of benefit-sharing requirements; compliance with national ABS frameworks including respect for the customary laws and community protocols of Indigenous peoples and local communities and linkages with development through sustainable use of biodiversity.

Considering the significant achievements of countries in the conservation and sustainable use of biodiversity through the designation and management of Protected Areas, a review of recent literature on bioprospecting and use of biodiversity indicate that Protected Areas form the core of actions that link communities, conservation and customary use practices. In fact the literature points to the critical importance of emerging Protected Area management practices especially in dealing with issues of justice, ethics and equity.

However, the review of implementation of the PoWPA in 2010 found that while significant progress was achieved since 2004, implementation lags behind concerning: the assessment of social costs and benefits of Protected Areas; ensuring the effective participation of Indigenous peoples and local communities and the diversification of various types of governance; as well as the improvement of management effectiveness and sustainable finance of Protected Areas.

With this context in mind, the implementation of the NP and the development and implementation of domestic access and benefit-sharing (ABS) frameworks must now be harmonized with existing frameworks on Protected Areas. The main reason for this urgency towards harmonization is the potential for the cross-cutting nature of

ABS law and policy to affect the governance and management of Protected Areas. In many instances, bioprospecting relating to genetic resources and associated traditional knowledge, which triggers ABS agreements, occurs within Protected Areas.

The Opportunity To Make Linkages

The Decisions X/1 and X/ 31 relating to ABS and Protected Areas, adopted by the 10th Meeting of the Conference of Parties to the CBD offers a unique opportunity to consider the potential linkages between Protected Area management systems and ABS implementation at national level. With a number of parties to the CBD hastening to ratify the NP and implement domestic ABS laws, it is critical to ensure that the ABS frameworks not only avoid conflicts with existing Protected Area frameworks, but are also harmonized with the aims of Element 2 of the Program of Work on Protected Areas (PoWPA) that focus on Governance, Participation, Equity and Benefit-Sharing

In order to ensure harmonization between implementation of ABS frameworks and the aims of the PoWPA, it is important to address potential linkages and conflicts that either exist or might arise in the coming months. The primary aim of this meeting is to identify these linkages and conflicts and to work towards developing a guiding framework for Protected Area Managers.

Objectives of the Meeting

This expert consultation/meeting had the following objectives:

- ✿ Understanding the linkages between ABS and Protected Areas and their current state of affairs.
- ✿ Identification of synergies, strategies and actions to make the NP on ABS and PoWPA work on the ground.
- ✿ Development of elements of a potential framework for the implementation of the NP at the domestic level in a manner that is in harmony with and augments the implementation of PoWPA.

DAY ONE:
6 JULY 2011

INTRODUCTIONS

SESSION ONE

1. Opening Address (IUCN)

Pedro Rosabal of the Global Protected Areas Programme Protected Areas at IUCN, opened the meeting, warmly welcoming participants and commenting on the timeliness of the meeting following the emergence of the NP and its wide-reaching effects.

2. Introductions (UNEP)

Dr Balakrishna Pisupati of UNEP (Division on Environmental Laws and Conventions) thanked participants for accepting the invitation to the meeting and presented on the rationale behind arranging the meeting. He elaborated on the events leading



up to the NP, the final hours of challenging negotiations and the eventual adoption of the NP.

He went on to say that it was the most opportune time to assist stakeholder countries and others in aligning legal, regulatory and policy frameworks to the provisions of the NP. To this end, he recommended that the process of aligning these frameworks to the NP be guided by the existing processes of Protected Areas which is perceived to be the most successful and the most progressive in implementing the objectives of the CBD.

The purpose of the meeting, he concluded, was to bring the experts of both areas together to discuss the opportunities that exist to link the work of the PoWPA to the implementation of the NP, and to exchange ideas on the way forward in informing countries about using the common elements of the two areas in developing the Access and Benefit-sharing (ABS) frameworks.

3. Introductions (Natural Justice)

Kabir Bavikatte of Natural Justice (NJ) welcomed and thanked participants for their attendance. He then introduced NJ and its work.

NJ comprises a group of law practitioners who started out in South Africa and who now operate in different parts of the world. The work of NJ, he explained, involves finding ways to centre community rights and community interests in the development and implementation of law and policy both at a national and international level.

He explained further that NJ's interest in the meeting stems precisely from the nature of its work which is from an understanding that the people who are most affected by decisions made at the national and international level, should be at the heart of this kind of decision-making.

Expanding on the purpose of the meeting, he said that the many seismic shifts that took place over the last 20 years in international environmental law through multilateral environmental agreements have not been effectively translated on the ground. Although there are many visionary policies and laws, with excellent work being done at the international level, there are real challenges with the implementation of those policies and laws. In addition, the CBD has at its core the general principles of conservation and sustainable use, but it also has the ABS framework, the PoWPA and the activities of the Working Group on Article 8(j) (WG8(j)). The effect of this is that there are different groups following different processes resulting in a great deal of overlap. It then becomes critical to synergise and cross-leverage processes, and to make the necessary links to ensure that these fora are not pulling in different directions.

The broad aim of the meeting, therefore, is to discuss and identify the challenges and opportunities of implementation and to work towards the development of a guiding framework on the outcomes of the NP for managers of Protected Areas.



4. Introductions: Participants

The participants introduced themselves, giving a brief overview of the work that each of them are involved in, and expanding on their interest in participating in the meeting.

PRESENTATION

“Protected Areas and the Nagoya Protocol on ABS: Opportunities and Challenges”

Prepared by Sarat Gidda and Lisa Janishevski, SCBD

Presented by Dr Balakrishna Pisupati

This presentation, setting out an overview of the CBD’s views on the Protected Areas perspective in the context of the NP, was prepared by Sarat Gidda and Lisa Janishevski, of the Secretariat of the CBD. In their absence, Dr Pisupati presented on their behalf.

The following topics were covered in the presentation:

✿ The Importance of Protected Areas to ABS

Protected Areas are repositories of biodiversity that provide sustainable sources of biodiversity for conservation and use which could facilitate recurrent bioprospecting. The documented successes with bioprospecting within Protected Areas and their well-researched management and governance systems are important areas of learning for ABS practitioners wanting to develop and implement ABS frameworks.

✿ Protected Areas and Bioprospecting

The demand for genetic resources, and the research and development in the pharmaceutical and other sectors persist. New technologies provide unprecedented opportunities for discovering novel compounds from genetic resources occurring *in situ*. For ABS practitioners, these examples are important sources of information on harbouring important biodiversity, as well as on the management of access and benefit-sharing within Protected Areas.



✿ **Policy Framework: PoWPA Element 2 Provisions**

The CBD PoWPA offers a comprehensive framework for action on Protected Areas. The target for Goal 2.1, for example, provides for the equitable sharing of both costs and benefits arising from the establishment and management of Protected Areas. This is an important provision especially since the focus is usually on the sharing of benefits and not the costs of managing the Protected Areas. Equally important, is the activity 2.1.6 under the same goal that not only highlights the links between ABS and Protected Areas, but speaks of strengthening those links through already established institutional structures.

✿ **Policy Framework: NP Provisions**

There are many articles within the NP that are relevant to the linkages within PoWPA. Article 5 deals with fair and equitable benefit-sharing mechanisms; Article 6 provides for access to genetic resources which includes prior and informed consent and mutually agreed terms and related issues; Article 7 addresses access to traditional knowledge associated with genetic resources; Article 8 provides for special considerations for non-commercial research; Article 13 deals with the establishment of national focal points and competent authorities; Article 18 provides for compliance with mutually agreed terms; and finally, the Annexure, which sets out examples of monetary and non-monetary benefits.

✿ **ABS policy for Protected Areas: issues to consider**

The following issues need to be considered when contemplating an ABS policy for Protected Areas:

- When comparing the provisions of the NP to the goals, targets and actions of PoWPA Element 2 and other related provisions, it is important to first assess whether or not linkages between them already exist.
- Effective coordination between PoWPA focal points and ABS focal points and competent authorities in drafting Protected Area-ABS policies at Protected Area system-level, involving all stakeholders, need to be addressed.

- Individual national park managers may develop their own regulating bodies in consultation with Indigenous and Local Communities (Indigenous peoples and local communities), based on Protected Area system-level policy.
- Due consideration should be given to prior informed consent or approval and involvement of Indigenous peoples and local communities under various governance regimes, taking into account customary use and the implications of implementing the ABS framework.

✿ Opportunities and Challenges for Protected Areas

The opportunities and challenges for Protected Areas include identifying the commonalities and differences within the prospecting components of genetic resources in Protected Areas and ABS; the linking of ABS national frameworks with Protected Area management plans; enhancing awareness of issues of ethics, equity and governance within the Protected Area stakeholder community; developing endogenous capacities and know-how for Protected Area managers, Indigenous peoples and local communities and ABS as management principles of Protected Areas; and the identification and assessment of best practices, case studies, and model contractual clauses.

PLENARY DISCUSSION

Following the first session of introductory remarks and presentations, participants were invited to pose questions and/or comment on the issues discussed. The comments and observations that ensued were:

- ✿ The SCBD presentation is sufficient for making the linkages at international and policy level but not at the local level. ABS is about power, and this power vests with the institutions and governments that promote bioprospecting in Protected Areas. Unless those at the local level are able to tap into that power process, the aim to achieve synergy between Protected Areas and ABS will not succeed.
- ✿ The SCBD presentation illustrates what Protected Areas can do for ABS, but omits to show what ABS can do for Protected Areas, which is essential for making the linkages.
- ✿ It should be noted that very few Protected Areas, like few communities, are actually benefiting from bioprospecting. Access is clearly related to governance, and it would therefore, be useful to see examples of Protected Areas that are benefiting from ABS.
- ✿ Most examples of Protected Areas benefiting from ABS relate to park fees and how those fees are ploughed back into Protected Area management. However, there is a publication that contains examples of communities within Protected Areas that benefit from ABS.
- ✿ Benefit-sharing in the context of bioprospecting is very different from park fees. With bioprospecting, the holder of the resources usually receives very little benefit.
- ✿ It is important to emphasise that Protected Areas in the context of PoWPA refer not only to state-governed Protected Areas, but include other Protected Areas such as shared governance, privately-owned Protected Areas, and ICCAs, which comprise a very large group of territories and areas that are usually not considered when PoWPA is discussed.

- ✿ An important aspect of ABS within Protected Areas that is yet to be understood among communities is that the state does not need to be the conduit for benefits related to Protected Areas. Indigenous peoples and local communities who are the actual primary governors of ICCAs according to PoWPA could be the direct beneficiaries. It has taken a long time before this was understood and accepted within PoWPA, and it would probably take even longer for the new ABS laws and policies to be understood.
- ✿ ABS should not be seen exclusively as bioprospecting. Although reference is made to bioprospecting in most readings of the NP, the requirements of ABS are broader than that. There are, for example, biocultural ecosystem services provided by Protected Areas, especially those that allow Indigenous peoples to modify the environment in certain ways to provide services, like ecosystem services and cultural habitats that require benefit-sharing.
- ✿ Property rights and ownership issues need to be addressed, particularly in indigenous Protected Areas and indigenous conserved areas where questions abound regarding the ownership of genetic resources. In addition, Article 10 of the NP provides for a multilateral mechanism for trans-boundary genetic resources which was a contentious issue during the negotiations. The contention was that trans-boundary genetic resources should not be viewed only as a nation to nation issue, but also in terms of sub-nation to sub-nation issue. The reason for this is that sub-national trans-boundary genetic resources are extremely important to Indigenous peoples since most of the resources are not located entirely on their reservations, but could also be found in Protected Areas, and which means that they may have had a hand in creating those genetic resources.
- ✿ While it is crucial to explore techniques for extracting funding from bioprospecting, placing pressure on bioprospecting companies for payments may have an adverse effect. The reason for this is that bioprospecting is essentially a lottery system, and if the actual prospecting is taxed, many businesses that operate on a margin would become insolvent. An alternative may be to tax the winners instead; at the level of the samples, although the value of samples, even with the associated traditional knowledge, are not high.
- ✿ Experience shows that bioprospecting is a long-term process and could be resource-intensive in terms of investments. It may be one of the ways of dealing with the issue of ABS, but it is not the only area that requires focus.

- ✿ It is important to always clarify the category of Protected Areas being discussed because the issues on the ground are quite different from those that are usually referred to in policy discussions. Similarly, it is also important to clarify the type of bioprospecting being undertaken. There are only two known cases of bioprospecting in Protected Areas from the 1960s and 1980s respectively, and no other cases have emerged since then.
- ✿ Market projections for cosmetics and nutraceuticals are quite high. It is critical therefore, that consideration is given to how new developments such as synthetic biology will affect bioprospecting.
- ✿ The NP provides for state-to-state rights, but not for state-to-community obligations. These obligations are provided for in Article 10(c) and 8(j). In the NP, ILPCs' rights are cited in a stand-alone manner, and not as an integral part of the NP. These areas need to be clarified.
- ✿ There is a great deal of variability in what is considered to be Protected Areas and what is considered to be bioprospecting. The classification of each is dependent on the interpretation of Article 2 of the NP. Similarly, there is still a blurry line between biotrade and ABS.
- ✿ Corporate Social Responsibility is one way of getting business involved. If CSR is combined with conservation and research and development, and also linked to Protected Areas, business will benefit whether or not a viable product is found. However, this would mean having to bring the CSR and Research and Development parties together. Although this may pose another challenge if those parties are as detached as the ABS and Protected Area people on the government side.
- ✿ Protected Areas are dynamic by nature. This is evident from the matrix of the different governance types which shows progressively more and more flexibility in its descriptions. It is therefore necessary to look beyond these boundaries to see whether more of nature can be conserved.
- ✿ Developing endogenous capacities is one of the listed challenges and opportunities. This is precisely what COMPAS has been doing with local communities, and often it is in a very close relationship with nature. A few cases of ABS have emerged through this process and some communities already have cultural systems for ABS (e.g. seed exchange). There are

lessons to be learnt from this that go beyond the current understanding of ABS and of Protected Areas.

- ✿ The lack of information regarding the Protected Areas contribution to national income is extensive. In terms of target 11, much still has to be done in terms of valuing genetic resources and associated traditional knowledge, as well as its association with other resources.
- ✿ It cannot be stated with absolute certainty that only two cases related to ABS within Protected Areas exist. The fact that there may be unknown cases cannot be discounted, especially since ICCAs have only recently been recognised and recorded.
- ✿ It is not clear where genetic resources end and natural resources begin. This issue needs to be clarified.
- ✿ Much of the ambiguity in the NP lies in the distinction between genetic resources and natural resources. However, natural resources can be distinguished technically through the idea of “rivalrous resources”. This essentially means that natural resources can be quantified and therefore easily divided. genetic resources on the other hand, refer to genes that flow and mix, which make division and quantification difficult.
- ✿ There are about 15 to 20 cases where products have been developed out of genetic resources sourced from Protected Areas. So the questions that need to be asked are: (1) what is a Protected Area? (2) what are the time scales? (3) Do the colonial type Protected Areas founded in the 40s and 50s still exist, or are they biospheres where many cosmetic products are sourced, with or without traditional knowledge?
- ✿ There is huge potential for bioprospecting within Protected Areas, not necessarily for the conclusion of many benefit-sharing agreements, but for Protected Areas to benefit from ABS.
- ✿ It is somewhat surprising that the SCBD’s presentation which sets out the Articles relevant to ABS in Protected Areas, excluded Article 9. This article is about benefits and provides that the parties shall encourage users and providers to direct benefits arising from ABS towards the conservation of biological diversity and the sustainable use of its components, and thereby reaffirming what ABS can bring to Protected Areas.

- ✿ Article 10, also excluded from the presentation, provides for potential global benefit-sharing mechanisms that can be developed. This provision is attempting to cover some difficult cases, such as trans-boundary resources. It also restates that the benefits derived from the use of the genetic resources shall be used to support conservation and sustainable use of its components, globally. Therefore, the questions to be asked are: (1) how can it be used, and (2) what kind of contribution can be made, globally. Although Protected Areas will not be the only areas that would benefit, they will certainly be the first to benefit from this.
 - ✿ There is also some confusion regarding the discussion about ABS in colonial times. The NP does not apply retroactively and cannot be used to rectify injustices that occurred in the past.
 - ✿ It is better to adopt a positive approach towards the NP and determine how it could be used to create a favourable impact rather than focusing only on its shortcomings.
 - ✿ It should be noted that Protected Areas had the potential for bioprospecting even before the NP.
 - ✿ The benefit-sharing provisions have been in the CBD since 1993. It cannot be argued, therefore, that benefit-sharing began with the NP.
 - ✿ All the examples of ABS in Protected Areas that are often cited, occurred before the establishment of the CBD, and therefore conceptualised before there was any clarity on the ABS framework within the CBD.
 - ✿ Beyond benefit-sharing there are important lessons to be learnt about how the resources were conserved and sustainably used by States and/or communities before the NP.
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PRESENTATION

SESSION TWO

“Equity and Benefit-sharing: Using the NP to support PoWPA”

Prepared and presented by Kabir Bavikatte

This presentation by Natural Justice relates to the provisions in the NP that is relevant to Protected Areas. The following topics were covered:

✿ **PoWPA and the NP: Rethinking Conservation and Property**

○ **The Implication of ABS on Conservation**

The concept of conservation is changing.

Currently, the emphasis is on benefit-sharing or incentives for conservation, and the entire discourse on benefit-sharing is centred on what kind of benefits can flow back to countries or stakeholder groups to incentivise conservation.

ABS is a concept that comes from the larger umbrella approach of payment for ecosystems services, which essentially is rooted in the idea that there are opportunity costs associated with conservation. This has led to a market-based approach to conservation. Natural resources are no longer considered the “common heritage of humankind” that are freely available. Consequently, there is a shift from the ‘common heritage of humankind’ approach to the market-based approach which entails clearly identifying who the rights-holders and beneficiaries are.

The biggest challenge with this approach is that the market by itself cannot identify rights-holders. This means that benefits could inadvertently end up in the wrong hands. The success of this approach



thus comes down to ensuring that those who do the conservation receive the benefits that arise from commercial use.

- **The Implication of ABS on Property**

The incentive-based approach of ABS alters the way conservation is perceived, particularly in relation to commonly-held resources. Gradually, there is shift from the top-down conservation methods, with closer analysis on how common pool resources are managed, thereby generating a new discourse on property rights. The rights and benefits no longer vest in one person or one entity, but in large groups of people, communities or countries who have a bundle of rights in relation to property. The challenge here lies in effectively incentivising large groups of people by ensuring that they derive some benefit from conserving resources.

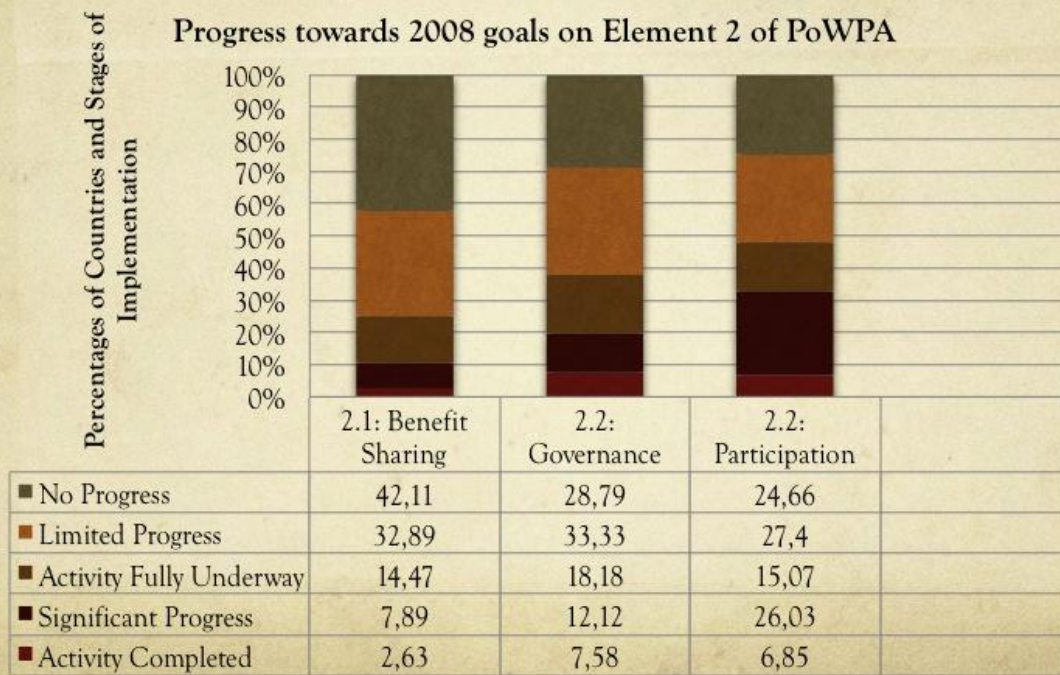
- ✿ **Benefit-sharing and PoWPA**

Benefit-sharing in the context of PoWPA is considered in terms of both costs and benefits in a broader sense. Benefit-sharing in the context of the NP is much more direct and reciprocal in relation to access to genetic resources. However, both are talking about opportunity costs for States. In Bhutan, for example, the constitutional mandate is to conserve 80% of forest cover, and the concern among the citizens is that the state cares more about the forests than the people. These issues raise important questions around costs and benefits arising out of the establishment and management of Protected Areas, for example: how does it link back to livelihoods and how are people on the ground involved in the entire process?

- ✿ **Element 2 of PoWPA**

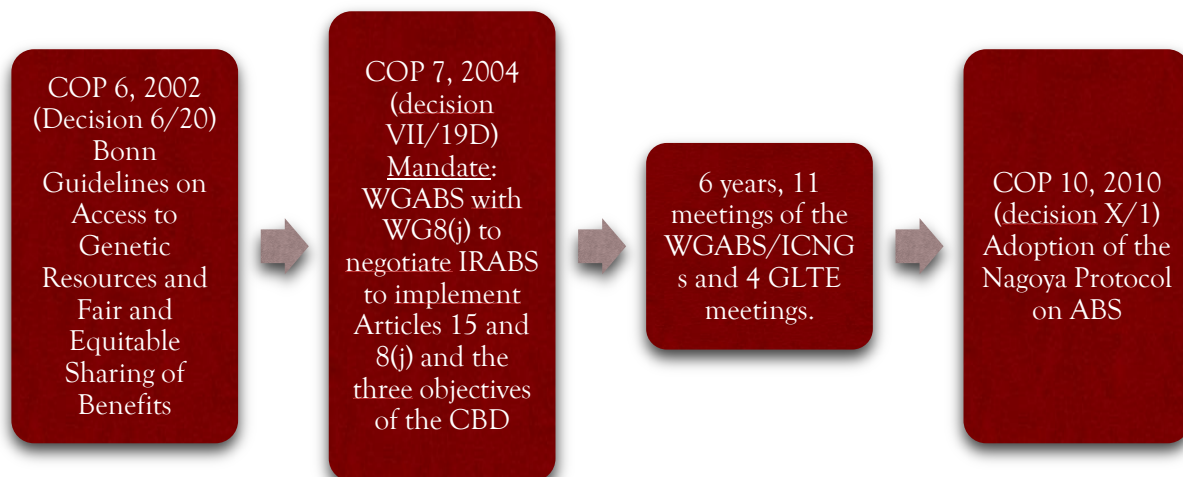
Element 2 of the PoWPA is about governance, participation, equity and benefit-sharing. But very little has been achieved in these areas, particularly with regard to goals 2.1 and 2.2. The SCBD graph below, which sets out the goals for 2008, illustrates the huge chasm between fairly progressive international norms and implementation.

Element 2: Governance, participation, equity and benefit sharing- Goal 2.1: To promote equity and benefit sharing, Goal 2.2: Enhance and secure involvement of IPLCs



Source: www.cbd.int/protected/implentation 1 July, 2011

There are 193 Parties to the CBD and only 41 or 42 have ABS legislation and approximately 20 have regulatory systems in place. Over the last 18 years, some countries have developed strategies and others developed policies, but overall there has been very limited implementation since 1993. This was a significant area of concern at the heart of the NP negotiations. The illustration below shows a chronological depiction of the events over last 9 years leading up to the NP.



This chronology of events is an illustration of the length of time it took to address the concern that there was no benefit-sharing and that the lack of benefit-sharing effectively meant a lack of recognition of rights.

✿ What was at Stake?

○ Article 8(j) and Article 15

The wording of Article 8(j), specifically the words: ‘*shall as far as possible and as appropriate, subject to its national legislation*’ encouraged a laidback approach to Indigenous peoples and local community rights by parties. In contrast, the NP, despite its limitations, is a significant advance in that it promotes free and prior informed consent of Indigenous peoples and local communities.

Article 15, on the other hand, recognises the sovereign rights of States over natural resources and the authority to determine access to genetic resources. But Article 8(j) in its current form introduces additional provisions such as the protection of traditional knowledge, and by implication, protection of land and cultural rights.

Another contentious issue was the ‘subject to national law’ component of Article 8(j). One interpretation of this provision was that the right itself is not subject to national law, but rather in terms of how the right is activated and facilitated. The change here is significant because previously, the ‘subject to national law’ was being read into the CBD as

meaning that the States have a right whether or not to uphold community rights over traditional knowledge or they could exercise these rights on behalf of communities.

✿ Traditional Knowledge Associated with Genetic Resources

In comparing Article 7 of the NP and Article 8(j) of the CBD, it is evident that there is a shift towards greater and greater recognition of rights. In addition, Article 12.1 makes it obligatory on States to recognise local ways in which knowledge is held.

Also, Article 16 compels parties to ensure that any traditional knowledge that is being utilised within their jurisdiction, has been accessed with the free and prior informed consent of the Indigenous peoples and local communities.

✿ Article 6: Access to Genetic Resources

In 6.2 of Article 6, the rights of Indigenous peoples and local communities to genetic resources are recognised. The section stating ‘where they have an established right’, allows for sufficient ambiguity for interpretation. However, this has to be read in the context of the larger international framework based on the emerging rights of Indigenous peoples and local communities. This means that a great deal of interpretation will occur at the level of implementation.

✿ Article 5: Fair and Equitable Benefit-Sharing

This Article underscores the incentive-approach and provides that parties should take measures to ensure that utilisation of genetic resources, and subsequent commercialisation is shared with the relevant parties, including communities.

✿ The Working Group on Article 8(j)

Decision X/43: Para 8 includes a major new component on Article 10 with a focus on Article 10(c) in the revised Programme of Work on Article 8(j) and related provisions, to develop further guidance on sustainable use and related incentive measures for Indigenous peoples and local communities, and also to consider measures to increase the engagement of Indigenous peoples and

local communities and governments at national and local level in the implementation of Article 10 and the ecosystem approach.

✿ **Para 13**

The theme in Para 13 is ecosystem management, ecosystem services and Protected Areas. It is clear that there is an attempt to bring all these issues together within the context of the WG8(j).

✿ **WG8(j)**

Two of the ethical principles are prior and informed consent, and fair and equitable sharing of benefits. These are now being moved beyond traditional knowledge to lands and waters traditionally occupied and used by Indigenous peoples and local communities. The links are now being drawn to ICCAs through WG8(j) which initially spoke about traditional knowledge.

Considering the current linkages between the NP, PoWPA and the WG8(j), it would be useful to attempt to find more linkages for cross-leveraging, and at the same time, determine the links at the international, national and local levels.

PLENARY DISCUSSION

Following the presentation in the second session, participants were again invited to pose questions and/or comment on the issues discussed. The comments and observations that ensued were:

- ✿ National legislation is a key entry point. Businesses operate according to national law even if the standards set under national law are lower than their own standards. The NP does not address this.
- ✿ A great deal can be learnt from communities who actively participated in the law-making processes to ensure that legislation accurately reflects real situations.
- ✿ This is an opportune time to inform those developing ABS frameworks at the national level to adopt a learning-by-doing approach, since there is no perfect system.
- ✿ Many advances have been made on the Protected Areas side with regard to governance and Indigenous peoples and local communities, and for the first time, these principles are captured in binding international law, in the NP. While the NP is not perfect, there are provisions that can be strategically used to achieve some of the aims.
- ✿ There is a possible entry point in understanding the mismatch between States and genetic resources. genetic resources do not exist within administrative borders; therefore ecological regions have to be considered in conjunction with the home of a particular genetic resource. To this end, it is necessary to have agreements among States to regulate access and ensure benefit-sharing. It makes no sense if one could bypass effective ABS law in one country simply because another country has little or no regulation.
- ✿ Good entry points exist in promoting regional agreements that fit ecological boundaries and ecological value. It is easier to obtain something progressive

at the regional level than at the national level since regions tend to emulate one another.

- ✿ Usually common pool resources have a number of rights-holders. It is possible, therefore, that one country or community enters into an agreement with the user of a particular resource, but this does not preclude another country or community to enter into the same kind of agreement. It is important to examine these challenges and to determine the baseline measures that have to be established to prevent the ‘cherry-picking’ by users, communities or countries that have minimal regulation.
- ✿ With the adoption of the NP, the possibility of developing a regional framework on implementation that countries can work on together rather than at cross-purposes, should be explored.
- ✿ A new dynamic is being introduced and questions around common pool resources abound because a private property approach is used in the context of common pool resources.
- ✿ It should be noted that a distinction should be made between traditional knowledge (e.g. India’s Ayurvedic medicinal knowledge) and indigenous knowledge (small tribes, specialized in the use of plants and genetic resources).
- ✿ Other international processes like WIPO or TRIPS that also deal with genetic resources and are left out of the current discussions, should be factored in.
- ✿ There are simultaneous processes going on under WIPO and TRIPS and there have been criticisms of “forum-shopping” during the negotiations, where countries move from one negotiation process to another, depending on what is politically expedient. At the same time, there are people following the different processes concurrently, to cross-leverage the gains made in one, into the others. There is a significant challenge in following all these processes simultaneously.
- ✿ An incentive-based approach to benefit-sharing as set out in the NP is essentially market-related incentives. Whether the benefits refer to technology transfer, monetary or non-monetary, it is still about a market-based mechanism towards profits, with different kinds of benefits flowing back. ABS should not

be seen as a magic bullet, but rather a mechanism that could lead to livelihoods and affirming local priorities.

- ✿ One of the outcomes of the NP is the right to Prior Informed Consent (prior informed consent) and Mutually Agreed Terms (mutually agreed terms). It would be a perverse outcome if governments agreed to issues relating to genetic resources and not to natural resources. Now that the principle is clearly solid and has been agreed to, it will not be difficult to reinforce the principles for natural resources. ABS should be seen as a package of different instruments, to be used for ABS and non-ABS issues for achieving policy goals.
- ✿ Many Indigenous peoples agree with some aspects of the ‘common heritage of humankind’ principle because they find it natural to share. The idea of property rights in the Western sense do not come naturally to Indigenous peoples. They have guardianship and stewardship rights over resources but they do not own them in the Western sense.
- ✿ The global commons can be a means of expropriation from the local commons and don’t necessarily ensure benefit-sharing and mutually agreed terms. MATs are crucial for Indigenous peoples because they are the only secular way for communities to embody their customary laws. Sharing among those who are part of the tradition means taking on certain obligations, but sharing with those not part of the tradition needs something that would compel them to take on those obligations. Contracts, despite their limitations, have been one mechanism to embody customary law in the outcome.
- ✿ There is a deep divide between the ABS community and the CBD community. The only crossover is the people dealing with Indigenous peoples and local communities who try to keep things together because they would lose a great deal if the division expands. Linking ABS to PoWPA is a way of ensuring that what has been gained in the NP is embedded in PoWPA and is further developed. But the opposite is also true. The approach around Protected Areas could really benefit from the political push behind ABS. There is still much to be done in Protected Areas that goes beyond the rights of Indigenous peoples and local communities, but to the conservation and sustainable use of Protected Areas. It is therefore important to ensure that ABS is always geared towards the other two objectives of the CBD to ensure that they support each other.

- ✿ There has been some progress around the concept of 8(j), but it goes much further than that. Getting others to understand just how important this is, is critical. The importance of ABS for Protected Areas and vice versa needs to be underscored to the wider CBD audience.
- ✿ The NP itself is the guidance for countries on how national protocol should be developed. The articles in the NP contain different elements that are the basic requirements that a country should have when dealing with ABS issues.
- ✿ A process has been started to help parties move from negotiation to implementation mode. The first meeting of the Inter-governmental Committee on the NP took place in Montreal recently. The meeting looked at some of the elements that countries will need to bring the NP to national level. .
- ✿ The revision and updating of the National Biodiversity Strategies and Action Plans (NBSAPs), as well as the linkages, are constantly being updated. ABS is one of the targets, and should not be seen as a distinct process that cannot be cross-referenced with the other processes within the CBD. The NBSAPs revision process offers an opportunity to embed some of the elements of the NP and the PoWPA implementation.
- ✿ The SCBD has been silent on the regional NBSAPs process. Some of the linkages discussed at this meeting have to be formed on almost all the elements of CBD, as well as on the cross-cutting issues.
- ✿ Coordination between different actors is necessary. It is important to act within international fora, like WIPO. The NP succeeded under the CBD umbrella because of the benefit-sharing issue. For this reason, the Protected Areas and their genetic resources and traditional knowledge should be calculated and evaluated toward national economies.
- ✿ Once the NP comes into force, a fund will be established to address the financial element of the work. The GEF project in India is one example of this. However, ABS should not be seen only in terms of the dollar value and assume that it will only be driven by economics. On the other hand, evaluation is an important element because countries need to know the value of the resources in order to negotiate benefits.

- ✿ Looking at the global roadmap, the ABS and Protected Area practitioners will be meeting at the World Parks Congress in two years' time. This is an opportunity to table functioning concepts and bring these issues together.
 - ✿ There is an ABS Management Toolkit based on the Bonn Guidelines, developed by the Swiss government and other partners, that is currently being revised in light of the NP. In addition, IUCN is currently developing an explanatory guide like it has done for other frameworks and instruments many years. In all probability, over the next year, there will be other informal civil society guidance documents, as well as more of the official guidelines.
 - ✿ IUCN has, in the past, provided guidance on the type of process that should be in place to produce a particular law. The reason for this is that sometimes the process is more important than producing the guidelines.
 - ✿ In PoWPA, there is already the idea of a multi-stakeholder committee that should take place in each country. Unfortunately, very few countries have started that process. In some countries the process has been very slow due financial constraints.
 - ✿ Sometimes it is just a lack of awareness or a lack of understanding of the relevance of these discussions. It is not so much refusal to engage, but rather about who, how and when to engage. As regards financial constraints, all eligible countries will be getting support from GEF.
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PRESENTATIONS

SESSION THREE

“ABS - Protected Area Linkages: (Some views from IUCN)”

Prepared by Sonia Peña Moreno, Thomas Greiber and Trevor Sandwith

Presented by Sonia Peña Moreno

This presentation is a brief overview of IUCN’s position regarding the linkages between ABS and Protected Areas.

✿ IUCN’s position on ABS

Given the nature of IUCN, and its structure, with members sitting on the governmental and NGO side, and with the different levels of its membership, its position on ABS is pragmatic and balanced, not advocating for one particular side versus the other.

✿ General Starting Point

- IUCN sees the adoption of the NP as an opportunity rather than an obstacle;
- ABS and Protected Areas are two different but complementary layers.

✿ Key issues to consider:

- Linkages with conservation and sustainable use
- Respect for existing Protected Area frameworks
- Empowerment of Protected Area institutions
- ABS Competent National Authority (competent national authority) needs to give the approval but remains a counterpart in the application and negotiation process



- Emphasising the rights of Indigenous peoples and local communities
- Opportunities for using traditional knowledge
- Understanding governance of natural resources

✿ **Past and ongoing work**

- IUCN has a body of policies, publications and studies that is offered for discussion, to advance the objectives of the meeting.
 - IUCN’s general policies include Protected Areas, sustainable use, sustainable finance, general conservation matters, and more recently a great deal about rights, equity and justice, etc.
 - Guidelines and standards
 - IUCN has a large body of tools and experience on regulating biodiversity research within Protected Areas, as well as on commercial use of resources, both of which need to be integrated into new technical guidance
 - Several publications addressing ABS, mainly from the environmental law centre, as well as work done on Protected Areas and ABS, but few making explicit linkages
 - The BIOPAMA Project
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PLENARY DISCUSSION

Following the first presentation in the third session, participants were again invited to pose questions and/or comment on the issues discussed. The comments and observations that ensued were:

- ✿ Target 11 of the PoWPA implies moving into broader landscapes and seascapes, which in turn implies a great deal of underlying tenures, governance types, etc. It also underlies the existence of conservation means and highlights the intersection between Protected Areas and ABS. Since ABS has been developing almost in isolation, it is necessary to address not only the existing systems of Protected Areas, but also the systems of the wider landscape in order to achieve synergies between the two areas.
- ✿ The limits regarding sustainable use need to be identified and compared to what is achievable in a particular landscape or seascape to meet the expectation of equity, while still conserving representative and effectively managed Protected Areas.
- ✿ In Colombia there is an established ABS internal group within the Protected Area agency. This needs to be replicated in other countries to ensure greater participation by Protected Area practitioners in ABS processes.
- ✿ Although many countries are reviewing their legislative frameworks to explore potential conflicts and harmonisation with new ABS legislation, there are challenges in deciding what agency will be responsible for the implementation, since it is not necessarily the mandate of the Environment Ministries. The legislative review should therefore, be a meticulous exercise particularly because of its cross-cutting nature.
- ✿ Although TEMATEA may provide useful information and examples for countries implementing the new ABS legislation, it needs to be revised to reflect the COP10 Decisions.

- ✿ The NP is a new treaty comprising many new elements that are not found in other areas. It would be useful therefore, to develop phraseology that can codify these concepts and principles in a succinct way.
 - ✿ It would be useful to develop an ABS glossary.
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PRESENTATIONS

“The Access and Benefit Sharing Mechanism – with focus on Non-Timber Forest Products (NTFP): *The Potential for Local and National Economies*”

Prepared and presented by Suhel Al-Janabi

To illustrate how the ABS system could potentially boost local and national economies, Suhel Al-Janabi used the Taï National Park in Ivory Coast and the Argan oil products in Morocco as examples in this presentation.

✿ Taï National Park - Ivory Coast ('the Park')

The Taï National Park is a hotspot for scientific research on the Ebola virus (found in habituated chimpanzees) and HIV/AIDS. This area has high numbers of endemic species, several flagship endangered species, and an enormous potential of biological and genetic resources.

Poaching, prospecting and land occupation/degradation are its main threats. However, an integrated park management system is in place and has been supported by Germany since the 1990s. Sustainable funding to continue the management of the site was a significant problem, with a financial gap of approximately 200,000 Euros per year.

○ Current Status

Germany supported steps for ABS and funding possibilities through private sector payments/investments. These steps include:

- The establishment of institutions managing access to the park;



- A multi-stakeholder workshop was held where ABS options were discussed;
 - A review of its legislation was undertaken, establishing reliable legal regulations regarding ABS;
 - A competent ABS authority (“one-stop shop”) was established to liaise with the private sector, encouraging bioprospecting, and linking it to CSR.
 - A ministerial decree was drafted and would have been passed by parliament, but the civil war interrupted this process.
- **Economic Potential**
 - The park is “marketable” due to its endemic species, its status as a World Heritage Site, and its ecosystem services.
 - There are options for eco-sponsoring or eco-labeling as a marketing add-on to bioprospecting enterprises;
 - If bioprospecting fails, the Park can still rely on CSR support.

- **Essential Needs for the Park and Others, Globally**

Global ABS regulations for the private sector is needed in the “country of bioprospection” and in the “country of production”. In addition, inventories of biological resources and genetic resources (both *in situ* and *ex situ*), research partner institutions, and business concepts need to be developed.

- ✿ **ABS in the Future: Argan in Morocco?**

There is a high demand for and high prices associated with Argan oil. A labour force of approximately 2000 people and 30 recognised women’s cooperatives have been established within the Argan oil sector. Many different uses for Argan oil exist in the food and cosmetics industries, with approximately 40 patents out on it.

- **The Current Status**

The intellectual property rights situation in Morocco is unclear leading to uncertainty in the sourcing of biological resources and genetic resources. Existing patents are mostly foreign-owned and there is no disclosure requirement in the patent application process. Although

non-monetary benefit-sharing agreements between companies and some supplier cooperatives have been concluded, suppliers are not informed of what the oil is used for.

Since there is no ABS legislation to comply with, there is no prior informed consent or mutually agreed terms and no benefits are shared with the Moroccan government. After the adoption of the NP, there has been a national legal vacuum, and users of the Argan products are waiting for the establishment of national regulations to cover forest-related aspects, etc. This has led to the breakdown in business relationships because companies are pressurised by NGOs to observe the ABS provisions in the NP.

- **What needs to be done?**
 - A national ABS strategy and relevant laws, in consultation with all stakeholders, needs to be established as soon as possible;
 - A screening/prooing process of potential and existing genetic resources should be implemented for future supply chains;
 - The current GEF funding window should be used to support ABS ratification and implementation.
-

PLENARY DISCUSSION

Following the second presentation in the third session, participants were again invited to pose questions and/or comment on the issues discussed. The comments and observations that ensued were:

- ✿ The Protected Area aspects presented in the presentation is a narrow view of the current situation. In Morocco, for example, capacities, compliance, and governance in general, are very weak. Parachuting a new framework on top of a very weak system makes it conducive to failure. To eliminate the potential for the ABS frameworks to further entrench the weak systems, the process of introducing a new framework should begin from the current position.
- ✿ It is not clear, from the example, why the companies abandoned the value chain. However, the current understanding of ABS is that it is not only for the trading and patenting of commercial goods; it would be interesting to learn whether the many other values of communities would be incorporated into the ABS regime.
- ✿ Governance in relation to the implementation of ABS is usually deficient. In Ivory Coast for example, the Park is managed by a centralised park authority, and the advisory board includes different stakeholders. On the other hand, Morocco has ineffective Protected Area legislation and inadequate capacity, not only within government institutions but also within local communities and cooperatives.
- ✿ One of the challenges experienced by cosmetic companies is complying with prior informed consent when there are many different communities involved. It would be useful to clarify how prior informed consent could be complied with in a legally acceptable way, and the level of community organisation for prior informed consent to be complied with.
- ✿ The patents on Argan oil are primarily process patents.
- ✿ There is a language barrier to the attempts to establish a trans-boundary Protected Area. There are contacts between the governments themselves, but

not necessarily between the park authorities. Companies will withdraw their business if the legal vacuum remains. This situation is exacerbated by the mounting pressure from civil society organisations, and the companies are concerned about being labeled as biopirates. These companies are willing to comply, but no legislation exists for them to comply with.

- ✿ It is clear that Protected Areas are not benefitting in the case of the Tai national park, but it is not clear why, in the Argan oil case, it is not just a simple trade issue. The NP might actually disrupt the existing trade system.
- ✿ Many of the ABS cases can be found in the biotrade sector, where resources are being utilised and where research and development is taking place. Fair Trade agreements in this sector are generally successful and should not be replaced with the ABS system. In biotrade, a supplier is dependent on the goodwill of the buyer to be willing to pay a top-up price; whereas in ABS, the supplier defines the rules of the game.
- ✿ It seems that ABS may complicate something that already works well. In the NP, a normally-traded commodity is exempt from ABS, but the definition of a 'normally-traded commodity' is determined by whoever is responsible for preparing the list. The responsible department is usually the Ministry of Trade and Commerce.
- ✿ The issue of commodity trade and ABS has been a long-drawn-out debate. In the end, it is about how it is being used – e.g. in cosmetics, and in cooking oil. However, if traditional knowledge is part of it, a new set of rights-holders is introduced. There are certain ethics that companies should adhere to, not necessarily legal rules. Trade is an integral part of the ABS framework. A premium price can be set if traditional knowledge is involved. It is important, however, to establish how these systems lead back to conservation and sustainable use. Equally important is establishing the actual needs of the communities, and whether these systems would be effective.
- ✿ According to the NP, States retain sovereignty. The focus of Indigenous peoples and local community rights is on the traditional knowledge, not necessarily on genetic resources. It may be necessary to establish whether the ABS activities within Protected Areas are sufficient to generate adequate benefits. Most States currently do not recognise indigenous rights over genetic resources outside of their territories.

WORKING GROUP DISCUSSION

SESSION FOUR

The participants were divided into two groups and were asked to address the following questions:

- ✿ What are the existing challenges in the governance and management of Protected Areas? What are current trends in the law, policy, and practice of Protected Areas, particularly in relation to Indigenous peoples and local communities that has direct/indirect links with the concept of ABS?
- ✿ What kinds of guidance do countries and stakeholders need to come up with for complementary ABS frameworks and Protected Areas management systems, in order to maximize benefits for communities and users of genetic resources?
- ✿ What research currently exists about the law, policy, implementation, and review of Protected Areas and/or ABS frameworks? What principles, materials, and tools concerning Protected Areas and/or ABS currently exist?
- ✿ How could Protected Areas management systems respond to ABS requirements based on elements of the international ABS Protocol?
- ✿ What are the institutional, financial and human resource capacities and investments needed at country level to achieve synergies between Protected Areas management and ABS implementation?

Report Back: Group One
(Rapporteur: Thomas Greiber)

The group started the session with a discussion about general principles relating to the concepts and the terminology used when developing a report. They agreed that to ensure credibility among the target audience, the language used should be the language used in the NP. It was further agreed that any term that may be controversial should be explained in a footnote.

The following points were made in the group discussion:

✿ Current State of Affairs

- It is important to ensure that there is no confusion about the scope being discussed in the context of ABS;
- The scope of the ABS discussion should be limited to the scope foreseen by the NP. In other words, the discussion is not about access to biological resources and related benefit-sharing but limited to access to genetic resources;
- The distinction between benefit-sharing within Protected Areas and benefit-sharing within the ABS context needs to be clarified. Benefit-sharing is actually the common ground where the two areas intersect.
- Benefit-sharing in Protected Areas is much wider than ABS and ABS becomes a subset within the Protected Areas.

✿ Challenges

- Protected Area as a concept is changing in relation to the role of Indigenous peoples and local communities;
- The implementation of ABS should guard against replicating Paper Parks;
- Protected Areas should be developed to conserve traditional knowledge;
- Benefits from ABS in Protected Areas should lead to conservation and sustainable use and flow back to Protected Areas and shared with the actors managing Protected Areas;
- All stakeholders should be identified and included;
- Conservation plans should include the core areas of PoWPA
 - Landscapes
 - Species
 - genetic resources – NP



- Benefits can also be used to conserve entire areas;
- There is a possibility for establishing partnerships between ABS and Protected Areas for managing Protected Areas and future ABS activities. This could be a partnership between a bioprospecting company and a Protected Area management authority to invest funds and to provide non-monetary benefits to improve and sustain Protected Area management. The value addition for the company would be the opportunity to perform recurrent bioprospecting within the entire Protected Area
- National ABS laws should respect the rights of Indigenous peoples and local communities. The NP provides for many opportunities to implement, reinforce and respect the rights for Indigenous peoples and local communities;
- The ongoing NBSAPs revision process provides an excellent opportunity to bring both ABS and Protected Area groups together. However, it is necessary to emphasise that the ABS practitioners need to show consideration for the Protected Area rules.
- Protected Area institutions should be empowered, but the process of empowerment should occur during the process of drafting legislation and not when the laws are already in place. Protected Area managers should be involved in the mapping, assessment and revision of existing laws and policies that are being amended to incorporate the ABS obligations.
- Jurisdictional conflicts can arise between Protected Areas and ABS institutions;
- The different types of Protected Areas can pose institutional challenges for ABS implementation;
- ABS law and policy makers should learn how to interface with Protected Areas;
- The mapping of relevant international laws should be done before ABS implementation to prevent jurisdictional conflicts;
- It would be useful to establish how ABS can be used to augment the work in Protected Areas in areas with existing conservation arrangements;

- TEMATEA, particularly the mapping of laws in Peru is a good example for the current discussions;
 - An important point that has as yet not been considered, and which may pose a challenge or an opportunity, is determining how ABS will lead to conservation. The experience of Protected Areas and PoWPA will be useful in this exercise.
 - Protected Area practitioners should actively involve themselves in the process. It was recommended that they insist on benefits flowing back to Protected Areas as local custodians;
 - The development of ABS laws and policies at the national level is a rapid process. This presents an opportunity for Protected Area practitioners to participate in the decision-making process; issues of benefit-sharing and ensuring that money flows back to Protected Area management.
 - ABS practitioners should advise Protected Area practitioners about the benefits of ABS within the PoWPA.
 - ABS practitioners do not need to translate everything. A core set of provisions that can be found in the NP need to be communicated in a simple way and simple language should be used.
 - It is not necessary to provide Protected Area practitioners with extensive details regarding ABS because they do not need to become ABS experts. A synopsis of what is required for implementation is sufficient.
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WORKING GROUP DISCUSSION

Report Back: Group Two (Rapporteur: Holly Shrumm)

In addressing the first of the list of questions posed to the groups, group two reported back as follows:

- ✿ Governance issues must be addressed first before a new framework is introduced. National ABS legislation will be brought into an extremely diverse system; there is no quick-fix.
- ✿ PoWPA exists but implementation is greatly lacking, particularly with regard to Element 2 and involvement of Indigenous peoples and local communities.
- ✿ Each country has a different legal system that determines the obligations and implications of the NP. Tenure and rights (both procedural and substantive) are fundamental issues that need to be clarified on a case-by-case basis. It is very complex and differs by land ownership rights, governance rights, resource rights, use and access rights, intellectual property rights, etc. In the case of government Protected Areas, there will surely be huge complexities – who owns what and according to what laws, borders of the Protected Area versus ecological presence of the species, etc.
- ✿ There is an international trend in “back-door” recognition of IPLCs’ rights over knowledge, resources, territories, etc. This can be leveraged in innovative ways in each national and local context.



In combining the second and third questions, the group reported back as follows:

- ✿ The notion that ABS can provide sustainable financing is likely overblown and raising unrealistic expectations. There is a need for creativity, to think small, and not just in terms of the blockbuster drugs. Managing expectations is a significant issue that needs to be constantly addressed at all levels.
- ✿ Benefit-sharing should be considered in the broader sense, not just in how it is narrowly defined in the NP. The gains made in the NP should be brought into other fora.
- ✿ There is a need for examples and “practices” to learn from. A full-spectrum and life-cycle analysis of the costs and benefits of ABS, i.e. working from existing examples and working up through the system is needed.
- ✿ Thorough legal reviews are also needed, looking both for synergies and conflicts. It is necessary to take stock of what is already there, including types and categories of Protected Areas that are already recognized, what supply chains or biotrade are already operating, etc.
- ✿ There is a need to build the capacities and local institutions of Indigenous peoples and local communities to engage in the national-level development and implementation. There needs to be funding and support for stakeholder analysis of the NP and those stakeholders’ proposed mechanisms. This is more about process than outcomes.
- ✿ In addition, there is a need to build capacity amongst government authorities and law-makers to understand the broader frameworks and implications, as well as manage expectations. Also need for in-country institutional development – otherwise, companies will just go elsewhere where the infrastructure is already functioning.

The group responded to the fourth question as follows:

- ✿ There is a need for clarity about whether ABS falls into research or use – the permits will be different depending on the Protected Area management category or governance type
- ✿ Beware of “collateral damages” resulting from ABS – bioprospecting, access, value chain, etc.
- ✿ There are concerns over unsustainable and spurious collection of resources based on imagined or unknown (or newly created) markets

- ✿ There is also a need to be aware of third-party transfers (e.g. academic then commercial)
- ✿ ABS may help promote the notion that Protected Areas are repositories of common heritage; however, need to be aware that some communities don't want their knowledge to be made public for spiritual and/or cultural reasons.
- ✿ There is governance and then there is governability. Resources that are cultivated for subsistence are far different than wild resources (e.g. potatoes vs. Hoodia).

The final question elicited the following response:

- ✿ Building various capacities of communities to secure their governance rights; it is not necessary to go straight for tenure/ownership rights.
 - ✿ There needs to be greater recognition of communities' governance and resource rights stemming from customary/management rights – towards recognition of rights over genetic resources themselves, not just the traditional knowledge
 - ✿ Building capacity of governments also needs to happen – but should happen in the context of community-level capacity building (rather than vice versa)
-

DAY TWO:
7 JULY 2011

RECAP OF DAY ONE

SESSION ONE

Dr Balakrishna Pisupati welcomed participants to the second day of the meeting and emphasised the importance of understanding the similarities and differences between ABS and Protected Areas. The notion of providing and making linkages between PoWPA and NP, raises both expectations and concerns. A major issue is governance and equity; the discussions in the context of the NP are most likely different than those in the context of Protected Area governance and management.

He went on to say that there is no one-size-fits-all approach. A package approach is more likely to succeed than one particular framework or regulatory issue that is meant to fit every context. In addition, the process of linking ABS to the different CBD Programmes of Work involves consideration of both the concepts and the different approaches. If the concepts alone are considered, the practical ways of achieving the linkages may be missed.

In conclusion, Dr Pisupati said that there are many more questions than there are answers when it comes to making the linkages. He encouraged participants to focus on issues that need more clarity and to consider how the ABS concept can be used as a tool to advance implementation of the PoWPA.



PLENARY DISCUSSION

The participants were invited to comment on the issues discussed the previous day. The comments and observations were as follows:

- ✿ A constructive way forward may be to focus on practical ways to advance the aims of the meeting. It would be useful if participants focused on the practical considerations of the other side, to establish the reasons each would be interested in the other.
- ✿ The moment a treaty like the NP comes into being, it transforms the game. There is no longer an exclusive group of ABS negotiators with the associated mystique and secret language. The NP will be interpreted differently over time and in different political contexts, and there will be overlaps and other parallel processes, but they must be approached in a mutually supportive manner. Articles 5, 6, 7, and 12 are four basic articles that capture the essence of Element 2. It may be beneficial to see how these articles can be interpreted and innovatively used to reinforce some of the key issues of Element 2 and PoWPA.
- ✿ It would be useful to create practical mechanisms that work at the local level to make that connection stronger and sustainable because interpretations change, while mechanisms remain.
- ✿ The mention of interpretation and mechanism development usually raises red flags. Firstly, the NP needs to be ratified before implementation. However, if too many barriers are raised in advance, the ratification will not materialise. Ministries responsible for ABS do not want the cross-contamination with other processes because the ABS process is already too complicated and new. prior informed consent is very important for communities and mutually agreed terms is important for most countries, but this should not complicate the ratification process.
- ✿ Despite the politics and realities, it is important to start working towards synergies. This is a very important tool for the work being done, and it has to comply with PoWPA. The NP exists and not all countries have ratified it, but work can continue with what is available.

- ✿ The broader concept of ABS shows that it existed prior to the NP. Bioprospecting took place and agreements have already been developed in Protected Areas. It is not as precarious as it is made out to be. The proposal is something for practitioners at the Protected Area level. If the proposition was to link the NP and PoWPA within a session at Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), then extreme caution is necessary because it would then involve two different levels and two different target groups.
- ✿ The goal is not to produce a political recommendation or policy. Everyone recognises that there are linkages, and everyone realises that the ABS discussions are more sensitive than the discussions within PoWPA. The discussions of this meeting are about options and opportunities for the way forward, and leans more toward the implementation of PoWPA than ensuring that the NP happens. There will be an outcome report that explores ways of using the NP to further PoWPA, and sets out the key issues and the questions regarding the NP that will remain.
- ✿ The proposed outcomes of this meeting among others, are to make the linkages between the ABS and Protected Area processes, without being prescriptive because the target audience is not negotiators of PoWPA or ABS.
- ✿ There will be potential conflicts but jurisprudence will develop over time based on situations that arise and on how conflicts are managed.
- ✿ Some mechanisms that would be drawn from PoWPA and the NP should be tested to make it concrete and show that it is possible and valuable.
- ✿ ABS is about a struggle between stakeholders and rights-holders. As with discussions of co-management, it is necessary to prepare a level playing field, or the usual powerful stakeholders will be the winners.
- ✿ The more aware ABS practitioners are of the potential costs and benefits, the better they can engage with discussions and developments on ABS and integrate both PoWPA and ABS into NBSAPs.
- ✿ The CBD was consciously engineered to include conservation and sustainable use. However, there has always been competition between Protected Areas and ABS. This has to be borne in mind at national level implementation because the same attitude may be encountered.
- ✿ ABS is for facilitating access, not regulating access.

- ✿ It may well be beyond the scope of this meeting, but it may be useful to first address the fears and opportunities of both sides.
 - ✿ It would be useful to consider the potential advantages, challenges and risks to engage with the other framework.
-

WORKING GROUP DISCUSSION

SESSION TWO

In this session the groups were required to discuss the opportunities and challenges of engaging in the frameworks of the Protected Areas and the ABS, particularly with regard to genetic resources, traditional knowledge, mutually agreed terms, prior informed consent and benefit-sharing.

Report Back: Group Two
(Rapporteur: Dr Balakrishna Pisupati)

Group two used the 4 elements of the NP as their guiding posts, namely:

- ✿ Prior informed consent as the process that leads to an access permit (in other words, the common understanding between the provider and user about what is going to be utilized and how);
- ✿ Mutually agreed terms (in essence, the contract that specifies benefit-sharing, limitations of use, third-party involvement, etc.);
- ✿ Traditional knowledge associated with genetic resources; and
- ✿ Governance, mechanism, and frameworks for benefit-sharing.

The discussions started with what these 4 elements of the NP mean in the context of Protected Area systems.



The critical questions that evolved from the discussions were:

- ✿ If there is going to be a Competent National Authority, then how will they be informed about the complexities and issues?

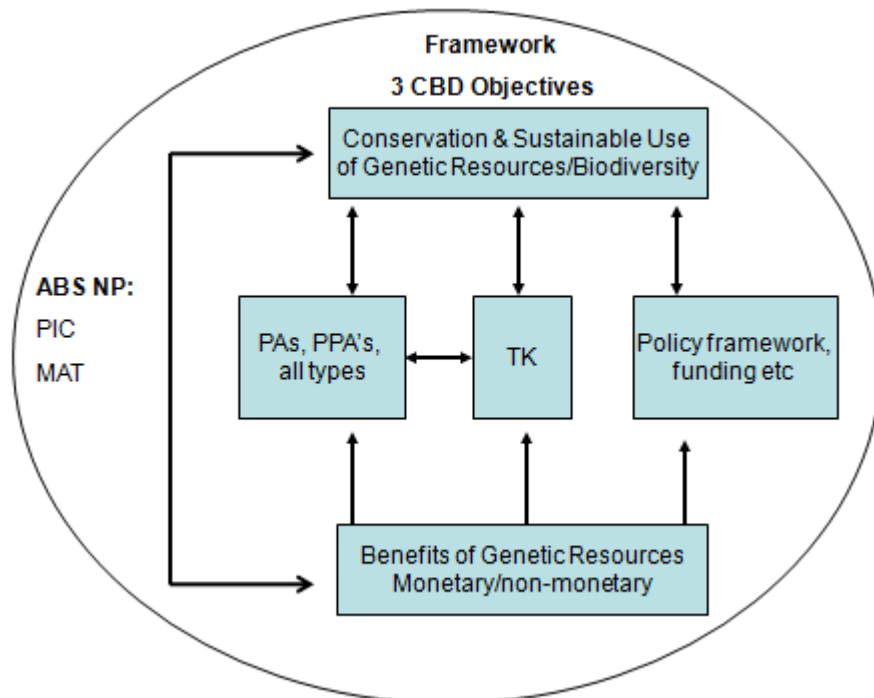
- ✿ Should the provision of information, and the clearing house mechanism, etc. be in accordance with existing permit and other systems?
-

WORKING GROUP DISCUSSION

Report Back: Group One

(Rapporteur: Barbara Lassen)

This group focused their discussions from both the Protected Area perspective and the ABS perspective, and explained the outcome with the diagram below.



The diagram essentially illustrates the following:

- ✿ ABS cannot be considered separately from the objectives of the CBD.
- ✿ The three elements that contribute to conservation and sustainable use are:
 - Well-functioning Protected Areas
 - Traditional Knowledge (that cannot be disconnected from the place or from the people doing the conservation)
 - Government policies, investments and incentives for conservation

- ✿ ABS systems, through the use of genetic resources and traditional knowledge, and through the processes of prior informed consent and mutually agreed terms, could generate monetary or non-monetary benefits.
- ✿ The diagram also illustrates the various systems which provide incentives for having well-functioning protected areas and other landscapes, maintaining the traditional knowledge, and to putting the right policies in place.
- ✿ It is important to note that these systems will not be successful unless the Protected Area practitioners are involved. These practitioners are sources of valuable information to be used when developing ABS frameworks.

Much time was also spent discussing different aspects of opportunities and challenges. The following points were made during the discussion:

- ✿ The Challenges for Protected Areas include:
 - Maintaining effective governance
 - Obtaining sustainable funding
 - Securing political will
 - The need for capacity development of Protected Area managers
 - ✿ The Opportunities for ABS Practitioners to assist Protected Areas include:
 - The ABS framework can help clarify the governance situation at the local level;
 - Monetary benefit-sharing can assist with funding of Protected Areas;
 - Since genetic resources are in Protected Areas, Political Will can be influenced to ensure that the benefits acquired from bioprospecting in Protected Areas flow back to Protected Areas;
 - Non-monetary benefit-sharing can assist with capacity development, e.g. technology transfer.
 - Protected Area minorities can be empowered to participate in Competent National Authority discussions and to set up ABS frameworks.
-

PLENARY DISCUSSION

Participants were invited to pose questions, and/or comment on the group presentations. The comments were as follows:

- ✿ ABS will not contribute to the first two objectives of the CBD unless Protected Area practitioners are brought to the table.
- ✿ The system will not be successful unless the Protected Area practitioners are involved.
- ✿ The Protected Area challenges are broadly governance, funding, political will, and capacity building for management and conservation.
- ✿ The ABS framework can potentially help clarify the rights and governance situation. The different sets of rights occurring in any particular area include: ownership rights, governance or management rights, and beneficiary rights (related to traditional knowledge and resources). These rights and associated governance issues have to be clarified for the success of the ABS system.
- ✿ ABS may contribute to financing, but only if it is built into the national system and into mutually agreed terms.
- ✿ Non-monetary benefits can be generated to support capacity building. The list in the annexure of the NP can be consulted to identify what could apply to Protected Areas.
- ✿ Rights frameworks are arranged according to the perspective from which it is viewed. If conservation and sustainable use are the dominant perspective, then rights will be configured around that. It is therefore critical to keep the right people involved and empowered.
- ✿ A bottom-up approach to ABS is needed.
- ✿ The distinction between a Protected Area system and Protected Area people need to be clarified especially since inferences are being drawn that reference is only made to officially recognised Protected Areas.

- ✿ Before considering Protected Areas, it must be noted from the outset that communities with traditional knowledge are primary rights-holders under the NP.
- ✿ The idea of multi-stakeholder committees is critical. Perhaps the starting point should be to implement ABS in the “easiest” situation to demonstrate that introducing a new system can be successful. This would be a more constructive approach than starting from an oppositional perspective. Sometimes it is better to simply illustrate the possibilities.
- ✿ One hypothesis is that generating benefits from nature will lead to conservation. Another is that governance leads to conservation. However, neither is looking at process, and problems can result from either. The questions that arise from this are: What kind of benefits need to be generated? How is it to be generated? Who is involved in governance? Who needs to be at the table? The NP is almost a theory that is being proposed and which should be used to make this work.
- ✿ When countries develop national ABS systems, it will not be done in a vacuum. It will, to a greater or lesser extent, include legal reviews, stakeholder consultations, etc. Ensuring effectiveness at the country level is the responsibility of everyone.
- ✿ This image is very useful, and also highlights some of the challenges. Benefits from Protected Areas generally go to the national treasury, not even to the Protected Areas themselves. The manner in which the competent national authority and systems are developed will determine its success.
- ✿ This is a nested regime within the context of Indigenous peoples’ rights, human rights and environmental human rights. The ABS regime actually does not connect much with conservation and sustainable use – it is primarily to do with managing access. It should also be nested within human rights conventions and instruments. This issue should be emphasised. The Protected Area system has historically been the purview of governments. In the US, the position of the Native American tribes is that sovereignty and self-determination vests with them. However, the tribes recognise that that progress is inhibited if governments are pushed too hard. They are not asking for a grant of rights, but rather recognition of existing, inherent rights. If such regimes do not recognise them, then the Tribes believe that they (the regimes) are illegitimate.
- ✿ Outside of North America and some of the Pacific, the vast majority of countries do not take this approach. The very indigeneity is not even recognized and

ancestral territories are nationalized. Therefore, multiple approaches is necessary because anything may be a window of opportunity.

- ✿ There are limits to the size of monetary benefits that are not directly related to the outcome.
 - ✿ The notion of innovative financing relates to REDD, Payment for Ecosystem Services, etc. It is about getting the systems right, rather than implying that communities cannot handle money. If the private sector is not involved, then there will be no benefits.
 - ✿ Part of the reason for the interest in the ABS regime is that internal processes for implementing it are not prohibited, therefore as much help as possible is needed to maintain rights.
 - ✿ There are some concrete examples of industry not engaging because they are too scared of being branded as biopirates. In the absence of clear national guidelines, they will not engage.
 - ✿ There are also very small, value-driven companies that want equitable and fair sourcing from communities, with benefits flowing back to communities.
 - ✿ Some companies want to avoid anything to do with traditional knowledge because it is a mine-field of complexities.
 - ✿ Some companies want to do the right thing; otherwise they will lose their shareholders.
 - ✿ The problem with markets and market-based incentives is not clear. Certain aspects of livelihoods and economies are market-based. Markets have to be embedded in society rather than society being treated as an appendage of markets. The conservation movement has started criticizing this. ABS and others are trying to re-embed markets into society and social values.
 - ✿ The misconception that all companies are evil and all developing countries are corrupt and driven by nepotism must be overcome. Positive trends are emerging. Companies seeking to be model corporate citizens driven by the consumer/shareholder demand are beginning to ask how they can share benefits with communities, etc.
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WORKING GROUP DISCUSSION

SESSION THREE

In this session the groups reported on the further discussions on the topics from the previous session. Group two presented first, followed by the presentation from group one.

Report Back: Group Two

(Rapporteur: Balakrishna Pisupati)

This group focused their discussions on the challenges and opportunities from a Protected Area perspective, and drafted a few recommendations. A summary of the discussions are as follows:



- ✿ Challenges:
 - ✿ Compliance issues: with regard to the overall ABS framework, plus national ABS framework
 - ✿ Governance: how will the NP change governance (types and details) without losing autonomy?
 - ✿ The interpretation of Protected Area governance and management in light of the NP
 - ✿ What sort of guidance can be given to “do the right thing” (i.e. checklists?)
 - ✿ Defining the “dos” and “don’ts” of ABS issues from a Protected Area perspective
 - ✿ Clarifying traditional knowledge-related issues

- ✿ Opportunities:
 - Lessons from case studies and experiences
 - Better engagement knowing the “rules of the game”
 - Informed participation of institutions/managers responsible for governance within ABS

 - ✿ Recommendations:
 - Guidance should be given to Protected Area managers/governance systems on mainstreaming key ABS issues (e.g. prior informed consent, mutually agreed terms, benefit-sharing into permits), targeting different types of decision-making; this could be in the form of catalogues of guiding questions

 - ✿ Capacity building broadly and within local institutions
 - ✿ Options for exploring bottom-up decision-making on ABS issues to ensure that conflicts of interest are avoided.
 - ✿ Identify “hooks” to position Protected Area-related interests using the NP to provide guidance for Protected Area/ABS
 - ✿ Creating a task force on Protected Areas and ABS – likely Inter-Commission (WCPA/CEESP/CEL) plus other partners
 - ✿ In concert with the task force, the BIOPAMA project can be used as an opportunity to identify and, where possible, operationalise the linkages
 - ✿ Relevant case studies should be compiled
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WORKING GROUP DISCUSSION

Report Back: Group One

(Rapporteur: Kabir Bavikatte)

The group began the session discussing the actual challenge regarding ABS. The challenge, it seems, is that thus far, the people who work with ABS have been focusing on identifying stakeholders and rights-holders, and to finding ways to generate benefits from genetic resources. Not enough time was spent in the ABS negotiations on how the ABS system would lead to conservation and sustainable use; and at the same time, the people who work in Protected Areas have been working with these issues for a while, and have a different perception of what benefits should be, and also have different Protected Area governance systems.

Mr Bavikatte further reported that it was important therefore, to find ways to harmonise the NP and the ABS laws and policies with existing Protected Area governance systems.

Other points raised in the group discussion included:

- ✿ A multi-stakeholder committee could be established and consulted when the ABS law and policy is drafted. This committee can be the same committee that already exists within Protected Area management systems, and who could expand on the different governance systems at a national level in terms of type and quality.
- ✿ Before law and policy is made, there has to be a mapping of national laws and policies dealing with natural resources – then secure rights, responsibilities, and beneficiaries that will lead to conservation and sustainable use.



- ✿ It is important to show examples of how maintaining Protected Areas and supporting rights of communities will lead to better ABS, and why benefits have to flow back to Protected Areas and existing governance systems. Streamlining legislation will help to maximise benefits.
 - ✿ Legislation should include provisions that compel CNAs to consult with all stakeholders in the various governance systems before making decisions regarding bioprospecting.
 - ✿ Rights on genetic resources at a national level are far more fluid than in the NP. Protected Area practitioners thus have to get involved in ABS law-making and lobby for local governance systems with regard to genetic resources.
 - ✿ Protected Area practitioners need to advise the ABS law and policy makers at the national level.
 - ✿ The Potato Park example was used. In this example, the development of national ABS law was pre-empted by the community by developing their own BCP and asserting local laws and governance systems that compels authorities to consider when drafting national law.
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PLENARY DISCUSSION

A plenary discussion followed the two group presentations. The comments made are as follows:

- ✿ With all of this in mind, it would be useful to explore the NP for the hooks and potential pitfalls in relation to Protected Areas and the IUCN matrix. These hooks and potential pitfalls may provide some of the answers and further directions for next steps.
 - ✿ Grey areas should be explored, and may provide opportunities. The most fruitful grounds may come from these grey areas.
 - ✿ Protected Area practitioners should consider what advice they would provide to the ABS law and policy makers.
 - ✿ It is more constructive to refer to it as ‘points for consideration’ rather than ‘advice’.
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DAY THREE:
8 JULY 2011

MEETING OUTCOME: EXPERT RECOMMENDATIONS

Kabir Bavikatte welcomed participants to the third day of the meeting and outlined the activities lined up for the day. He then presented on the recommendations that were discussed and drafted on the previous day. These recommendations are as follows:

1. Clarification of what is benefit sharing in the context of the PoWPA and benefit sharing in the context of the NP- specifically differences, overlaps and points of mutual supportiveness.
2. Outline the different governance types and management categories in Protected Areas and analyze how the NP can affirm rather than undercut these governance types in the context of prior informed consent, mutually agreed terms and benefit sharing (but also acknowledge the complexities and potential conflicts).
3. Work out how rights of Indigenous peoples and local communities with respect to traditional knowledge associated with GR within the NP can be used to support the Protected Area governance types that involve communities – and explore how the provisions in the NP can be leveraged in other fora/processes. In general, there is a need to clarify different rights and responsibilities and forms of tenure in any given case; each case will be different.
4. Look at experiences in Protected Area governance and management that have involved situations of prior informed consent, mutually agreed terms and BS and highlight what are the lessons and opportunities for ABS lawmakers and implementers at a national level – and opportunities for Protected Area actors to be involved in ABS law/policy development.
5. List evidence of how Protected Areas sustain the mega-diversity of genes and traditional knowledge and show the importance of benefits arising from bioprospecting in Protected Areas to flow back to Protected Areas through local governance systems.

6. Identify ways in which the rights of Indigenous peoples and local communities in the NP can be relied upon to support community rights in the context of Protected Areas – and vice versa.
7. Ensure that the NBSAPs develop ways in which ABS law and policy is harmonized with existing Protected Area governance types and management categories and supports the flow back of benefits from bioprospecting in Protected Areas back into Protected Areas.
8. Develop a list/checklist of issues to consider for ABS law and policy makers regarding Protected Areas when they make ABS law and policy with an aim to prevent jurisdictional conflicts and promote mutual supportiveness.
9. Explore how customary laws and community protocols and procedures in the context of the NP and ICCAs can be used to support local coherence of laws relating to ABS and Protected Areas.
10. Look at lessons from the governance and management of ICCAs- ABS can learn from this.
11. List models of legal mapping (such as TEMATEA- e.g. Peru) at different levels prior to developing any new laws and show how such a process would be critical to ensure any new ABS laws do not conflict with but further the goals of existing Protected Area systems and other frameworks related to conservation and sustainable use.
12. Develop some sort of guidance for Protected Area practitioners on the NP identifying the overlaps with PoWPA and specific hooks in the Protocol that can further the goals of PoWPA. Develop some guidance for ABS practitioners on PoWPA identifying how Protected Area goals can be centered in the development of any ABS law and policy.
13. Consider different options for capacity building at the different levels, particularly amongst communities to enable them to engage in the national-level development and implementation of laws and policies. In general, there is a significant need for managing expectations in all aspects of ABS.
14. Highlight best practice cases where there are elements of ABS/biotrade in a Protected Area context to show ABS law and policy makers the way in which different Protected Area governance types and management categories can be supported through ABS law.

15. Identify ways in which the private sector can be engaged in order to ensure that ABS becomes an innovative financing mechanism for Protected Areas and secures livelihoods of communities dependent or governing Protected Areas.
16. Develop a timeline with clear objectives and a vision as to why we want to undertake this interfacing exercise between ABS and Protected Areas, i.e. what will the case studies and analyses lead to and how can we move towards greater equity in 5 years. For e.g. if the global plan of action states that we need to increase Protected Area coverage to 17% then we have to ask, how ABS can help us do this.
17. The case for Protected Areas on the basis of them being mega-diverse gene pools crucial for food and health security and resilience in the face of climate change still has to be made. Through an argument like this we should motivate for an equitable feedback loop where the benefits generated through ABS from Protected Areas should flow back to Protected Areas rather than assume that ABS will necessarily lead to greater conservation. In fact we should look at how ABS could spur the development of highly valuable Protected Areas around particular areas where there are potentially valuable gene pools or even the restoration of Protected Areas.
18. Specific guidance is required for Protected Area practitioners about how ABS can work on the ground in the context of Protected Areas. It could be developed by a think tank, and/or an Inter-commission task force, particularly between CEL, CEESP and WCPA. The UNU-IAS guide on ABS and Protected Areas developed in 2003 is a good start but it needs to be updated in the context of the NP. We also need to explore what are the various non-monetary benefits ABS can contribute to beyond sustainable financing and what would be good governance frameworks for these financing schemes based on lessons from other/similar sectors?
19. ABS and Protected Areas are still based on fairly static worldviews. We need to work towards introducing a degree of flexibility in them both in the wake of climate change, global environmental change, land use change, etc. There is also a need for the ABS regime to deal with new and emerging Protected Area governance types and management categories such as adaptive landscapes and with species' habitats changing. We can't predict

ecologies in future climate change. Once species move out of Protected Area territories or when we understand that Protected Area systems as whole could be mobile, what are the ABS rights and benefit sharing implications?

20. It would be useful to turn the thing around and look at how Protected Areas can support ABS at the level of implementation by asking how Protected Area systems, actors and tools can contribute to the development of ABS law and policy.
21. We have to develop a discourse that helps us move away from a strict interpretation of the NP for the purposes of its implementation and start asking how the NP can be a vehicle to realize the goals of the PoWPA.
22. It is critical to start tracing the flows of genes and traditional knowledge back to the community or the Protected Areas where it originates in order to make sure that the benefits flow back to the source. Since the NP is mainly about state-state rights, there is a danger that benefits from ABS will not flow back to the Protected Areas where the resources were sourced thereby dis-incentivizing conservation and violating of rights of communities on the ground.
23. We have to bear in mind the IUCN Protected Area matrix and ensure that ABS in practice does not disrupt customary and endogenous institutions of Indigenous peoples and traditional societies. Otherwise, ABS can contribute to the decimation and undoing of the most fundamental aspects of these communities' and peoples' governance. Everything new that comes becomes a new imposed institution.
24. So far, we have only talked about the Protected Area matrix. It is time to start developing a matrix for ABS. Most of the time, we assume that countries require prior informed consent and mutually agreed terms, but that doesn't always happen. This has led to different scenarios and cases where we have a "matrix reloaded" for ABS governance types, which of course makes it even more complicated. We should seek examples of this – ABS governance systems, in addition to the Protected Area Matrix examples – looking at the issues from the various legal/policy lenses and the different levels of complexity therein. For e.g. what does 'access' mean in the context of Protected Area governance systems versus ABS systems?

25. We need to support community led capacity development on ABS and Protected Areas rather than only relying on big NGOs or inter-governmental organizations.
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PRESENTATION

“Inter-community Agreement and Potato Park”

Prepared and presented by Alejandro Argumedo

This presentation outlines a case study on the successful implementation of the provisions of the NP by the Potato Park communities who have successfully established a Potato Park as an *in-situ* gene bank in Cusco, Peru.

✿ Background

There are many different forms of territories in Peru linking conservation, cultural values, and local livelihoods. 7 years ago, the International Potato Centre (CIP) was approached by 6 indigenous communities for repatriation of seed varieties that they had developed. Through the agreement, 450 seed varieties were repatriated thus far. This pool of genetic resources had quite an impact among the 6 communities.



The association with the CIP has provided the opportunity to research and develop new products and work on climate change adaptation through ITPGRFA. From a developing country perspective, the NP was meant to combat biopiracy and realise benefit-sharing. However, instead of preparing for access, the community has taken the opportunity to reverse the power dynamics that allows it to access the resources in gene banks and create local economies and support landscape-level territorial development.

✿ Community Activities and Achievements

If resources can be accessed from gene banks or botanical gardens, communities can create benefits by linking traditional knowledge with science in a creative economy that can provide benefits, rather than waiting

for the government to apply the NP. It is important to be proactive to establish rights that benefit communities and reflect customary laws.

In collaboration with the Cusco government, the communities are developing anti-biopiracy law. In addition, the communities intend to have Cusco declared a Genetically Modified Organisms-free area by working towards the labeling of non-Genetically Modified Organisms foods/products to promote organics.

The Potato Park BCP has been adopted by the regional government and has also helped raise awareness amongst the communities of the issues in the inter-community agreement where the main objective has been food security. There is also a move towards putting the Potato Park collection under the multilateral systems of the ITPGRFA, which introduces *de facto* rights

The community has developed a working relationship with the seed companies and research institutions and universities. Open source seeds are being promoted to encourage sharing amongst communities. In addition, the community in collaboration with CIP is working towards the sending of seeds to Svalbard Global Seed Vault as a back-up for climate change. This has shown how to implement international treaties at the local level in support of traditional territories and institutions. Working with the local government has been fundamental.

PLENARY DISCUSSION

Participants were invited to pose questions or comment on the presentation. These are the comments:

- ✿ Providers have thus far always acted on demand. It was not possible to set the rules of the game. Being proactive is so important, but it requires a great deal of capacity-building, and guidance on issues such as market factors.
 - ✿ The example is an interesting lesson. Much of the work done is around capacity building. If enough time is spent developing a few good local initiatives that take the lead, then capacity development happens in context rather than just in workshops, which generates its own momentum throughout the spheres of influence.
 - ✿ The Potato Park Communities are now engaged in south-south exchanges. This is a cooperative type of learning and discovery where people from similar regions or issues learn together. They are working on conservation without calling it conservation. Ultimately, it is about managing the culture and local processes and life; working on territorial development and identifying sectors that are relevant in that particular situation.
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PRESENTATION

PRESENTATION: ABS Community Protocol in Iran

Prepared and presented by Taghi Farvar

This presentation outlines a case study on the successful implementation of community biodiversity registers by the nomadic pastoralists in Iran.

✿ Background

The very basis of pastoralism is seasonal migration and an adaptation to climate change. From the Zagros to Syrian mountains, nomadic pastoralists developed along with animals' vertical migration, imitating and following nature. Herding became possible with the domestication of these animals and dogs.

In Iran, the focus is primarily on community biodiversity registers and protocols. The community hypothesis is that when it comes to nomadic pastoralism, all of the wild plants are actually domesticated – they are actively managed and used for a variety of things, even if they are not all specifically planted. They should then be covered by ITPGRFA.

A basic matrix was developed jointly by the elders of the community and a botanist for recording every sample, including different properties. One of the issues was about what to do with the collections, uncontrolled access and building safeguards to keep all this information?

✿ Lessons learned:

- To do justice to a BCP, the community should first do a robust and participatory biodiversity register so that they know what they have (not just livestock, as per other protocols). Need to have a sense of the whole variety and ecosystem.



- The communities possess extraordinary knowledge but want to integrate it with modern knowledge to gain credibility.
 - This must be done over a long enough period (a minimum of 2 years)
 - The collection work should cover the different seasons of the year and the specifics of the mobility and migration of the tribal groupings.
 - Wild biodiversity is an indispensable component of the register upon which the protocol should be based.
 - The work must be done in a large enough set of communities, tribes, and Indigenous peoples.
 - The collective work forms the foundation for lobbying.
 - The work should not be left at the level of a study and should inform community efforts and actions plans to conserve and sustainably use biodiversity.
 - Community enterprises should be developed and supported from this work.
- ✿ The future plans are to:
- complete the biodiversity register, including sections on wildlife, livestock, and crops;
 - elaborate the protocol; establish decentralized system of community herbariums (aiming for international status);
 - work with government towards national community-based ABS strategy and protocol;
 - use this experience to strengthen the credibility of the tribes and their organisations;
 - exchange experiences with other Indigenous peoples and traditional communities;
 - turn traditional knowledge and community protocol into useful collective economic activities for the tribes.
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PLENARY DISCUSSION

- ✿ There are many things to bear in mind when developing a register. A register is for a legal purpose, while an inventory is more community-focused. The danger is that once samples and information are collected, it can be re-purposed, regardless of the initial intent. Legal protection and other security measures are needed. There have been examples of some cases such as TEKPAD which provide information for patents. Promotion and support of patents is only one concern of communities - over-harvesting is another major concern. Risks of sharing must be carefully managed. Some countries are creating these registers and putting them into law; so many issues need to be thought through in advance.
 - ✿ Peru has a law on traditional knowledge registers. Whether or not certain kinds of traditional knowledge can be accessed is indicated by “lights” – e.g. green and red lights which indicate what can and can’t be accessed, respectively.
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PRESENTATION

“Biodiversity and Protected Areas Management” (BIOPAMA)

Prepared and presented by Trevor Sandwith

This presentation outlines the objectives of the BIOPAMA project from the perspective of IUCN, and which has direct relevance to the issues discussed at the meeting. IUCN is one of the partners involved in this project with its primary focus being on capacity building and establishing knowledge bases.

✿ General Information:

- The BIOPAMA project is funded under EC for ACP Envelope for Biodiversity. The project is expected to take 4 years for Phase I, and the lessons from this phase will be used to build Phase II

✿ General Considerations:

- The partnership is between IUCN for establishing observatories/knowledge bases and capacity building, EC/Joint Research Centre for information management, and GIZ for the ABS component.
- The structure of the project is fairly flexible

✿ Objective:

- The objective is to improve long-term conservation of biodiversity in ACP regions and reduce the poverty of populations surrounding Protected Areas. A more specific objective is to enhance existing institutions and networks, based on the best available science and knowledge. This can be achieved by building their capacity to



strengthen policy and implement well-informed decisions on biodiversity conservation, Protected Area management, and ABS.

- ✿ Overall result:
 - The overall result is the creation and effective functioning of an “Observatory for Protected Areas and Biodiversity” in each of the 3 regions
 - ✿ Key principles of implementation:
 - The key principle of implementation is that it should be regionally located, and it should create political buy-in by working with regional institutions. In addition, it should ensure that EC Delegations are fully informed (this is seen as a beginning of a long-term process), and that there is effective technical and financial reporting. Close inter-institutional coordination is therefore essential, to also use and enhance existing regional training centres.
 - ✿ Next steps (right at the beginning):
 - In terms of next steps, the work will start with the preparation of a detailed work plan and budget for the contract and arrange a technical induction workshop
 - Implementation has already started at the regional level.
 - The project is specifically designed to bring in specific capacities from the IUCN Commissions.
 - A connection with the WPC has to be made and this is a very opportune time. The different elements include governance and bringing all of them together along the broader policy timeline as well as the activities.
 - ✿ The project is working towards obtaining some discrete and very deep, illustrative examples, and are therefore aiming for depth rather than breadth.
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PRESENTATION

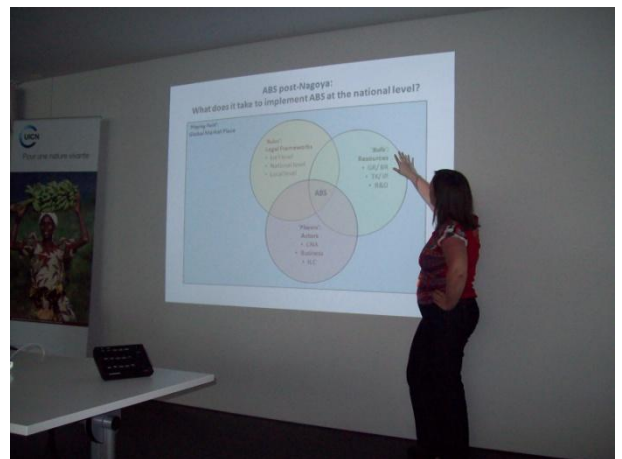
PRESENTATION: ABS post-Nagoya: What does it take to implement ABS at the national level? (BIOPAMA)

Prepared and presented by Barbara Lassen

This presentation outlines the ABS objectives of the BIOPAMA project from the perspective of the ABS Capacity Development Initiative (ABS Initiative) who is also a partner in the project.

The diagram above illustrates the ABS component of BIOPAMA project. GIZ is now expanding into Caribbean and Pacific, aiming for implementation of the NP. Within the ABS playing field, there are rules (frameworks), balls (resources), and players (actors).

The ABS Initiative acts as a catalyst for the core functions of the project which are: pilot projects, policy advisor, broker/networker, think tank. The envisaged impact thereof is sustainable institutionalization of ABS in countries, business organisations, and in communities. The tentative phases of the ABS Initiative include building up examples and best practice cases from within Protected Areas, and to have the feedback between that level and the national policy development process. The working assumption is that the NP will enter into force by the end of 2012. IUCN and the ABS Initiative have decided to create a matrix-mapping exercise to explore common ground.



CONCLUSION

Closing Exercise: Mapping the Linkages and Next Steps

As a concluding exercise, the group was asked to list future events, including international meetings and regional workshops where the objectives of this meeting could be advanced. A preliminary list of suggested events together with timelines and, where possible, the names of the organising institutions are listed in the table below.

Action/Activity (+ Objective)	Possible Institutions	Timeline
COP10		2011
SBSTTA15		2011
8(j)		2011
ICNP2		2012
SBSTTA16		2012
COP11		2012
Meeting of Indigenous peoples on ABS and Protected Areas in USA		Sept 2011
Meeting on ABS and Forest Peoples	ABS Initiative	
General Assembly	ICCA Consortium	October 2011
World Conservation Congress		October 2012
Rio +20		2012
IMPAC		2013
APC		2013
WPC		2014
+NPSAP		
PoWPA Regional Workshops		

PLENARY DISCUSSION

Participants were asked to present their final remarks and/or suggestions on the way forward. These were the concluding comments:

- ✿ Time is needed to digest all that has been discussed before others are consulted. There are a variety of themes through which IUCN and SCBD will work together on capacity building, but this has yet to be fleshed out. The creation of an Inter-Commission group on ABS and Protected Areas is a good idea because this is more about the intellectual expertise. IUCN would be interested in participating if some leadership through the development of an anchoring initiative could be mobilised.
- ✿ It would be useful to take more time to absorb everything before making any decisions. However, there will be more than one institution needed to do everything. E.g. if the FNI does a legal review, they will not necessarily anchor the whole work. There is a possibility also to continue bringing this group together. These options should be kept open. It is important to map the opportunities and build and strengthen the overall agenda of integration.
- ✿ Opportunities and synergies, cross-cutting institutions, etc, can be mapped and in the next few months, develop a loose consortium of organisations to do this. An anchor will however, be needed.
- ✿ The different institutions and actors to reflect on what each could do. Perhaps a start-up clarifying document should be developed that explores theoretical linkages, as a basis for other meetings. This document would go beyond a meeting report and should not be developed just by one person. Perhaps through the FNI or others, we could begin to develop leads for things to work on.
- ✿ A starting point would be to begin to develop this document and circulate it among the experts for input. This would be a bit more informal.

- ✿ Using the current collegial relations, a workshop report as well as a workshop product can be produced, which could include a start-up package of options, potential outcomes, institutions, etc. Agreement can be had up front to collaborate and provide input. Organisations can then be asked to volunteer assistance. SBSTTA may be a good aiming point, but is an occasion rather than the agenda.
 - ✿ A summary of this workshop is needed to pass on to the institutions to which participants are affiliated.
 - ✿ It is envisaged to work towards a synthesis of what was discussed in this meeting and subsequently, to also work towards a working document to move forward the agenda amongst our groups. Additional inputs can be submitted ahead of the report being circulated.
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APPENDICES

- ✿ Appendix A: Full Background Note
- ✿ Appendix B: Presentation (SCBD)
- ✿ Appendix C: Presentation (Natural Justice)
- ✿ Appendix D: Presentation (IUCN)
- ✿ Appendix E: Presentation (ABS Capacity Development Initiative)
- ✿ Appendix F: Presentation (Inter-Community Agreement (Potato Park))
- ✿ Appendix G: Presentation (ABS Community Protocol in Iran)
- ✿ Appendix H: Presentation (BIOPAMA – IUCN)
- ✿ Appendix I: Presentation (BIOPAMA - ABS Capacity Development Initiative)