

Experiences and challenges faced by the research sector in complying with ABS rules and procedures

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Exchange of views on the state of implementation of the Nagoya Protocol

OPEN-ENDED AD HOC INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION

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3 key messages

1. Implementation is not a mere legal/administrative activity=> Social experimentation and learning occur during the implementation phase
2. The research community is one of the most crucial stakeholder groups for ABS implementation (probably more than private companies on which the usual narrative of ABS is built)
3. Existing practices in the research community should be used for successful NP implementation, making use of the normative resources and social values of the research sector

1. Implementation as a social experiment and interactive learning

“The whole life of policy is a chaos of purposes and accidents. It is not at all a matter of the rational implementation of the so-called decisions through selected strategies” Clay & Schaffer (1984)

- Implementation is not a mere administrative or legal activity
 - ⇒ Social experimentation and learning occur during the implementation phase
- Practices of GR exchange in the research sector have already undergone considerable evolution
- Need to document these experimentations and practices to better inform the policy process
- In particular, building upon existing informal rules and established practices is crucial for an effective implementation process

2. Importance of the research sector for the success of the NP implementation

- ABS narrative is built around direct access to GR by private companies/monetary benefit-sharing
- The research sector often plays an intermediary role in situations where genetic resources are exchanged several times before reaching commercial use
 - ⇒ The biggest proportion of genetic resource transactions happens within the research sector
 - ⇒ Different type of uses associated with research: conservation, knowledge generation, value-adding, creation/breeding, direct use, etc...
- The research sector is one of the main user of GR:
 - ⇒ Exchange between several actors of different status/capabilities and across different countries
 - ⇒ Broader social values (reputation, reciprocity...) than just monetary ones are mobilized when exchanging GR
 - ⇒ Broader returns to society than monetary ones

3. A roadmap for NP implementation in the research sector

1. Document and analyze existing exchange and use practices and identify their potential to be enhanced towards NP implementation
2. Make use of the opportunities offered by the NP to accommodate the needs of the research communities
 - Ex : The NP could be implemented in such a way it encourages SH to develop guidelines, best practices, model clauses.... (Art 19, 20)
 - Ex: Art 8a specifically dedicated to accommodate the needs of the scientific community
3. Identify possible areas where current norms, values and practices in the research sector could contribute to NP implementation by improving their mutual compatibility
 - Ex: Enhance the documentation/monitoring practices of the research sector to contribute to Art 14 and 17

Some examples

■ Document existing ABS practices in the research sectors:

- Welch EW, EJ Shin and JV Long (2013) Potential Effects of the Nagoya Protocol on the Exchange of Non-plant Genetic Resources for Scientific Research: Actors, Paths, & Consequences, *Ecological Economics*, 86: 136-147.
- Aseffa Seyoum, Eric Welch and Selim Louafi, Explaining Non-Plant Genetic Materials Providers' Expectation of Non-monetary Benefits and Its Incentive Role: The Case of US Public Research (Paper to be submitted to *Journal of Natural Resources Policy Research*),
- Dedeurwaerdere, T., Broggiato, A., Louafi, S., Welch, E., Batur, F. (2012). Governing Global Scientific Research Commons under the Nagoya Protocol, In: Buck, M., Morgera, E, Tsoumani, E. (Eds). 2012. *The 2010 Nagoya Protocol on Access and Benefit-sharing: Implications for International Law and Implementation Challenges*, Brill Academic Publisher.

	No Restrict.	Restrict. on third-party transfer	Restrict. on commercial use		All projects	Projects funded by industry	Projects with international source of GR	Projects with MTAs
Overall Projects	50%	18%	10%	Any non-monetary payments	68 %	66%	74%	80%
- Industry Funded	44%	18%	13%	- Material Storage	16 %	8%	23%	15%
- Int'l Sources	42%	37%	15%	- Technical Services	24 %	24%	34%	30%
- Have MTAs	41%	27%	20%	- Results Information	59%	59%	62%	70%
				- Educ./traing	15 %	13%	18%	13%

Source: E. Welch (2013)

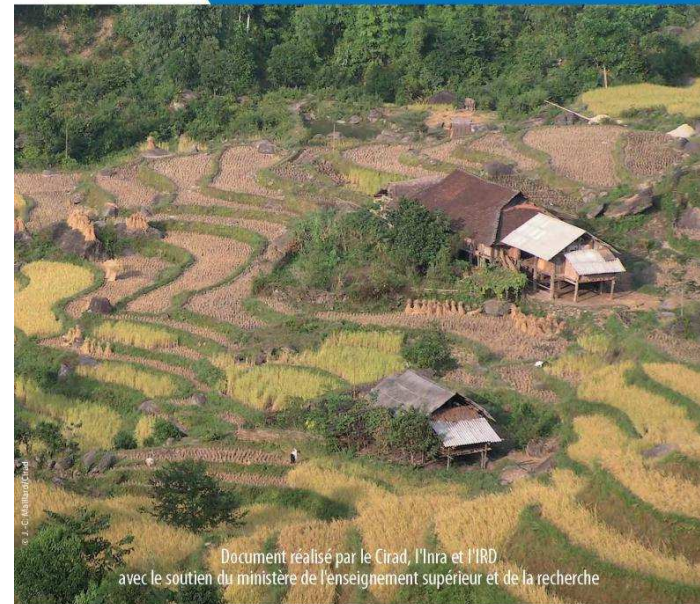
Example of initial insights gained through analysis of existing practices

- The distinction between commercial/non-commercial research may lead to some difficulties of implementation
 - The research sector is better captured by **one-shot/long-term collaboration**: exchange of GR as a transaction or as a *partnership* is what matters most
 - ABS as a means to engage in long term partnership that allows better capture of so-called non-monetary benefit sharing without precluding the possibility of monetary benefits
 - *Ex: Microbial sector: A non exclusive license for both commercial and non-commercial research (see <http://www.cbd.int/icnp3/submissions>)*
- ⇒ Need to know more about what is of value to exchange partners
- ⇒ Need to better account for the whole range of benefits generated by the research sector in order to develop instruments able to capture and share these benefits

Thank you !

Lignes directrices pour l'accès aux ressources génétiques et leur transfert

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