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State Secretariat for Economic Affairs
seco

A Guide to Using the Working Draft ABS Management Tool

State Secretarait for Economic Affairs (seco)
Effingerstrasse 1
CH-3003 Berne / Switzerland
Tel. +41 (0)31 324 07 82
Fax +41 (0)31 324 09 58
www.seco.admin.ch

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International Institute for Sustainable Development
161 Portage Avenue East, 6th Floor
Winnipeg, Manitoba
Canada R3B OY4
Tel. +1 (204) 958-7700
Fax +1 (204) 958-7710
www.iisd.org
info@iisd.ca

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How to use the ABS Management Tool

Introduction

A Working Draft ABS Management Tool ('ABS-MT') has been drafted by the International Institute for Sustainable Development (Switzerland), Stratos Inc. (Canada) and Jorge Cabrera (Costa Rica). The ABS-MT is designed to help users and providers of genetic resources and associated traditional knowledge to reach fair and equitable agreements on the terms and conditions under which access and use can take place. An Advisory Committee of experts from diverse backgrounds has provided guidance for the draft ABS-MT and encouraged the project team to test its application in real situations involving potential or existing users and providers of genetic resources.

The ABS-MT is designed to follow and elaborate the requirements of the:

a) Convention on Biological Diversity (CBD)[1]; and,
b) Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization (Bonn Guidelines)[2].

It further draws on a number of existing ABS codes of practice and natural resource management standards[3].

If used consistently throughout all stages of access and use of genetic resources, the ABS-MT will help private companies, government agencies, research centres, and communities to identify and follow good practices for the following seven key elements of access and benefit-sharing arrangements for genetic resources:

1. Prior informed consent (PIC);
2. Mutually agreed terms (MAT);
3. Benefit sharing;
4. Conservation and sustainable use;
5. Traditional knowledge (TK) associated with genetic resources;
6. Community and indigenous peoples participation; and
7. Information and transparency.

[1] Available at: http://www.biodiv.org/convention/articles.asp
[2] Available at: http://www.biodiv.org/decisions/default.aspx?m=cop-06&d=24
[3] All reference documents are listed in the Phase 1 Project Report: www.iisd.org/standards/abs.asp

The project through which this ABS-MT is being developed is funded by the Swiss State Secretariat for Economic Affairs (seco). Full background information on the project's objectives, activities and outputs is available at: www.iisd.org/standards/abs.asp.

The Working Draft ABS Management Tool is an evolving document. This working draft is intended to be tested and revised based on experience gained in formal pilot tests, through application by interested organizations during 2005 and 2006, and from broad stakeholder input.

This Users Guide has been written to help organizations apply the ABS-MT to their own situations, including for making decisions on whether to seek access to genetic resources, for deciding whether and under what conditions to grant access, for negotiating the terms for fair and equitable use of genetic resources, and for implementing the terms of ABS agreements. The project team's motivation in preparing this Users Guide is to encourage use of and feedback on the Working Draft ABS-MT.

Background: Why was the ABS-MT developed?

The Convention on Biological Diversity (CBD) has three main objectives:

1. The conservation of biological diversity,
2. The sustainable use of its components, and
3. The fair and equitable sharing of benefits arising out of the utilization of genetic resources.

To provide further guidance on how to achieve the third objective of the CBD, the Conference of the Parties of the Convention adopted in 2002, the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization. The Bonn Guidelines are intended to assist Parties when developing and drafting legislative and administrative measures, as well as contracts and other arrangements, under mutually agreed terms for access and benefit sharing.
The Bonn Guidelines (BG) include two substantively different types of guidance: first to governments seeking to establish national legislation and regulatory or policy frameworks to address ABS; and, second to private users seeking access to genetic resources, and other stakeholders involved as providers of or users of genetic

resources. Although the guidance provided by the BG is relevant to different types of users and providers of genetic resources, it does not in all cases provide sufficient guidance to allow its consistent implementation by the full range of different types of organizations, including companies, indigenous and local communities, or research institutions. As a result, these organizations have a need for additional guidance and tools to help them to implement the BG in their access and benefit sharing activities. The ABS-MT seeks to fill this gap.

The ABS-MT is a voluntary and evolving instrument, specifically designed to provide further guidance on how to implement – for both the provider and user of genetic resources and associated traditional knowledge – the provisions and spirit of the CBD and BG in real-world situations. The ABS-MT elaborates the Bonn Guidelines provisions based on the contractual nature of ABS relationships and tries to address some of the possible situations that both the provider and user will encounter in the process of the ABS negotiations.

The ABS-MT is to be used with the following understandings:

1. All relevant laws, regulations and customary practices must be followed. The ABS-MT is not intended to substitute or change any formal requirements set by the appropriate legal entities. Compliance with all the applicable laws and regulations in force in the country and local community is the first guidance provided by the ABS-MT in its practices standards.

2. Once laws are followed, the main interaction between a prospective user of genetic resources and the provider of genetic resources is a negotiation of some form of agreement, generally a contract, permit or other legally binding arrangement. The ABS-MT is intended to help both users and providers in the process of negotiation of such agreements or arrangements, with the aim of facilitating a decision on access based on clear understandings, and to assist a fair and equitable sharing of benefits arising out of the utilization of the genetic resources and associated traditional knowledge. It is further designed to take into account the rights and interests of the participants (stakeholders) in the ABS process, especially those with less financial or other capacity; and to support the conservation of biological diversity.

3. An ABS agreement formalizes the terms of a relationship between a user and a provider of genetic resources. As with all relationships, experience suggests that ABS agreements must be built on trust. The ABS-MT is a voluntary tool that tries to facilitate the establishment of trusting relationships to facilitate the negotiation of fair agreements

4. Experience has shown that – in most ABS relationships – there is an imbalance in terms of knowledge and capacity among users and providers of genetic resources and associated TK. The ABS-MT tries to provide guidance about how to level the playing field among the different participants in the ABS process – based on the expectation that fair ABS agreements must be the product of equitable negotiation processes.

The following sections of this User's Guide will walk you through how to use the ABS-MT, and how to report back on its strengths and weaknesses.

What does the ABS-MT do?

There is no one 'right way' for relationships to develop between users and providers of genetic resources. There is also no one 'right set' of terms and conditions that should be used to formally define the relationship. The nature and terms of the relationship will be determined by a wide range of variables, including: the national and local situation, including applicable laws and regulatory frameworks; expectations and interests of the user and of the provider; the nature of the relationship being sought; the nature of the intended genetic resource use; and, the field of research or development involved. The nature and terms of the relationship will also depend on the economic, environmental, social and cultural contexts.

The objective of the ABS-MT is to give practical guidance to providers of genetic resources in making decisions about access; to users in seeking access; and, to both providers and users in the negotiation of agreements and their implementation and monitoring. It is intended to be applicable for all relevant stages of use of genetic resources. The ABS-MT has been designed in order to be practical, efficient and effective. It includes all pertinent factors to comply with the CBD specifications and specifically the Bonn Guidelines. It is designed to bring a degree of consistency and predictability to the planning and implementation of ABS activities. The ABS-MT covers all the relevant stages of use including:

- pre-access;
- access (discovery and collection);
- research;
- development; and
- commercialisation.

The ABS-MT is intended to guide the ABS decision-making process with the aim of building fair and equitable relationships. Because the focus is on the relationship, it includes some guidance that is relevant to users, some that is relevant to providers, and some that may be relevant to both. But for that reason, it should be noted that not all of the guidance in the ABS-MT will necessarily be directly relevant to your organization. The guidance in the ABS-MT is more heavily directed at users.

Before you use the ABS-MT: Getting Started

Until you understand how your organization[4] operates with respect to the provision and/or use of genetic resources and associated traditional knowledge, you are unlikely to be able to comprehensively and consistently use all the relevant guidance contained in the ABS-MT. There are three types of information that you will need.

First, list the steps that your organization needs to go through when seeking access to and using, or when providing access to, GR and associated TK. Pay attention to all possible stages of use, including pre-access, access (discovery and collection), research, development and commercialisation.

Second, list all of the people responsible for specific ABS-related decisions in your organization or related organizations. In most organizations, there will be a variety of people in different parts of the organization that are responsible for different types of decisions.

Finally, identify the information and capacities that these different people need to have to be able to participate in sound decisions on ABS. This could include legal and scientific information, information on past experiences, or policy statements and commitments, and procedures that your organization has in place.

[4] The term 'organization' is used in a general way here, and refers also to community or indigenous groups, government agencies, researchers and companies.

The management tool provides guidance on identifying and implementing good ABS practices – so comparing how you usually undertake ABS-related activities with the guidance in the ABS-MT will help you to identify gaps that may need to be addressed. These three types of information will give you a reasonably comprehensive roadmap of the different parts of your organization or other organizations that might need to be involved in the implementation of the ABS-MT.

There is a high probability that the use of the ABS-MT will result in activities or approaches that are new to your organization. Some of these new activities or approaches may be very helpful; others may not. The objective of the ABS-MT is to help you to adapt and improve your ABS activities over time, learning from good practice and past experiences to define a clear set of guidelines that work in your specific context. You will only be able to learn what works and what does not if you monitor and assess your ABS-related activities.

In order to monitor and assess your ABS-related activities, you will have to be clear about the desired outcomes at each stage of the ABS process. Keep in mind that some types of outcomes may be the result of a single activity while others may be associated with a range of related activities. The overall aim is to have a clear and honest picture of what you want to achieve with your various activities, and how you can assess if the outcome has been successful – however you choose to define 'success'.

Once you have a basic overview both of how your organization manages or needs to manage its ABS-related activities and of what the desired outcomes of these activities are, you should obtain and read the Convention on Biological Diversity (CBD) and the Bonn Guidelines. These documents outline the internationally agreed policy framework for ABS. They are available at www.biodiv.org.

Now you are ready to begin to use the ABS-MT.

How to use the ABS-MT

As mentioned, the ABS-MT focuses on the relationship between users and providers of genetic resources and associated traditional knowledge – including the ABS decision-making process and, more specifically, the negotiation of the ABS agreement. An indicative outline of the ABS decision-making process has been elaborated and is presented on page 33 of this guide. This outline illustrates the key decision-making points or milestones that should be considered in all the relevant stages of ABS: pre-access, access, research, development and commercialisation. The decision-making guide does not address all potential situations, but tries simply to orient the user of the ABS-MT on some key aspects to be considered in the different ABS stages and activities. Depending on the nature of your organization and the intended type of use, not all of these stages will necessarily be directly relevant.

More detailed and structured guidance is then provided in the main text of the ABS-MT. This guidance addresses the activities and decision-making points and some of the key questions and issues that must be taken into account in each case. The guidance in the ABS-MT is divided into two parts (see page 28 of the ABS-MT)

– **Section 1: ABS Practice Standards:** comprising core commitments, practical guidance to be considered, practices for documentation reporting, and challenges on 7 key elements for good ABS practice.

– **Section 2: A Management Process Framework:** – the internal processes needed to implement ABS Practice Standards.

SECTION I: ABS Practice Standards

Each of the 7 ABS Practice Standards contains four types of substantive information addressing: (a) core commitments; (b) guidance; (c) reporting & documentation; and (d) key challenges. The following points will help you understand and use the 7 Practice Standards to guide you in the ABS decision-making process:

1. The ABS-MT is a voluntary and flexible instrument that should be adapted to different situations. Every ABS-related situation is unique. However, the user of the ABS-MT should commit at a minimum to the Core Commitment established in each of the 7 Practice Standards (see page 34). The Core Commitments represent the foundations for the building of a fair and equitable ABS relationship. To apply the ABS-MT in an ABS negotiation, the user of the ABS-MT can begin by making a clear statement about his intention to meet the Core Commitments.

2. The Guidance which follows each Core Commitment is provided to reflect good practices. While this guidance may not be applicable or useful in all situations, it can assist both user and provider to understand the types of activities which should be considered. The guidance is presented in chronological order to follow the general evolution of a 'typical' ABS process.

3. Following the Guidance section for each Practice Standard, there is a section titled Documentation and Reporting. This section of each Standard provides guidance on documentation practices, and on types of information to be provided and shared between users and providers of genetic resources. It also encourages appropriate information to be reported publicly to enhance accountability and transparency.

4. The full Practice Standards including the Core Commitments, Guidance and additional guidance on Documentation and Reporting, are provided starting on page 38.

5. ABS-MT Practice Standard #1 provides guidance on how to obtain Prior Informed Consent (PIC) from all relevant stakeholders. This constitutes the first and probably the most difficult step in the ABS process. Practice Standard #1 should be considered jointly with Practice Standard #6 (Community and indigenous Peoples Participation). The user should use the Guidance contained here to understand: a) the kind and type of information to be delivered to the provider; b) the process to obtain PIC; c) specific requirements for dealing with ex situ collections or intermediaries; and, d) how to level the playing field between stakeholders. If there is Traditional Knowledge involved, Practice Standard #5 will also apply and should be considered at the same time.

6. ABS-MT Practice Standard #2 provides guidance on how to reach the mutually agreed terms (MAT) under which ABS will take place. This standard can assist user and provider in the drafting of the contract, permit or other legally binding agreement which formalizes the ABS relationship. These terms and conditions are broader than just benefit sharing provisions. The guidance provided in this standard can help determine the appropriate legal advice to be sought by both users and providers during negotiation of the mutually agreed terms. As mentioned, each ABS agreement is unique, but the ABS-MT can provide guidance on reaching the agreement, including suggested content for potential clauses.

7. ABS-MT Practice Standard #3 should be considered together with Practice Standard #2. It addresses one of the specific subsets of the mutually agreed terms: the benefits to be shared. It gives general guidance with respect to the benefit sharing negotiation process, the scope of potential benefits, including both financial and non-financial benefits, and how to incorporate these benefits into the contact or agreement.

8. For purposes of clarity, the ABS-MT has separate standards for PIC, MAT and Benefit Sharing. However, in practice PIC, MAT and Benefit Sharing are linked. When an intended user of a genetic resource seeks PIC, it is usual for negotiation of both the mutually agreed terms and the benefit sharing provisions to also begin. For example, before obtaining PIC the potential terms of the contract should be discussed, including some of the benefits to be shared. The ABS-MT provides guidance on the drafting of the contractual terms to address benefit sharing and other relevant legal aspects, and on how to initiate and develop the relationship between the user and provider. Once the main terms of the agreement are reached and the PIC has been obtained, the Mutually Agreed Terms are usually then drafted in a comprehensive way.

9. ABS-MT Practice Standard #4 addresses the conservation and sustainable use of biodiversity. This standard seeks to: 1) encourage that some of the benefits associated with the use of genetic resources and associated traditional knowledge support the conservation of biodiversity; and, 2) assure that the collection and harvest of the associated biological resources do not have a negative impact on biodiversity. The guidance offered in this standard should be considered by the user in the pre-access and access stages, and should be reflected in the formal ABS agreement.

10. In some cases, users seek access not just to a genetic resource but also to associated traditional knowledge, innovations and practices (TK). If the intended user wants to access and use TK, then ABS-MT Practice Standard #5 will apply, in addition to Practice Standards #1, 2 and 3. To be effective, Practice Standard #5 must be considered in the process of obtaining the PIC, negotiating the MAT and agreeing on the benefits to be shared.

11. ABS-MT Practice Standards #6 and 7 are cross cutting aspects of the ABS process and should be taken into account during all the ABS steps. Practice Standard #6 should be used to guide interactions with stakeholders at all stages of the ABS process. Practice Standard #7 can support the monitoring, tracking and implementation of the terms of the agreement, as well as public reporting.

12. At the end of each Practice Standard are listed some Key Challenges. These challenges are based on practical experience in ABS negotiations and the implementation of ABS agreements. These challenges draw providers' and users' attention to some problems and obstacles that can be expected to arise. The ABS-MT does not intend to provide definitive answers or solutions to these challenges. However, it tries to: (a) identify some of these obstacles and challenges; and (b) suggest some options in dealing with them, as far as possible. When the ABS-MT is revised in 2006, the project team will focus in particular on these key challenges. Your feedback would be appreciated on how the ABS-MT has been helpful – or could be more helpful – in addressing these challenges.

SECTION II: The Management Process Framework

The Management Process Framework (see page 62 of the ABS-MT) provides guidance on the types of supporting activities and internal management functions that may be needed to implement the substantive guidance contained in the 7 Practice Standards. They are steps that users of the ABS-MT can undertake on their own to help bring more structure and cohesiveness to their organization's activities. In most cases, organizations will already have processes in place for many of these elements, but it is useful nonetheless to consider how they are relevant to ABS-related activities, and how they may be amended to more consistently support ABS good practice.

The management process framework contains guidance on six different process elements:

1. ABS Policy Statement
2. Identification of Relevant ABS Practice Standards
3. Implementation of the ABS Policy Statement
4. Identification and Tracking Use of Genetic Resources
5. Responsibilities and Accountabilities
6. Financial and Human Resources.

SECTION III: Providing Feedback on the ABS-MT

To date, the ABS-MT has been developed as a desk-exercise, altough based on real-world experience. The next steps in the process are to implement and test the tool in the negotiation and implementation of actual ABS negotiations, and then to revise it based on these experiences. The project team is seeking information from two sources to learn where improvements can be made. First, the project team will undertake a number of specific pilot projects to field test the ABS-MT throughout 2005 and 2006. Second, the project team is encouraging organizations to apply the draft ABS-MT using their own processes and then to report back on what they have learned about its strengths and weaknesses, and how it can be improved.

While the project team welcomes any information or lessons learned from testing of the ABS-MT, we anticipate that the following information would be of particular use:

Results Arising from Use of the ABS-MT

1. Did the ABS-MT help you in making decisions on ABS – whether to grant access or whether to seek access?
2. Did the ABS-MT help you to approach and interact with third parties (e.g. communities, indigenous peoples' organizations, companies, universities, government agencies)?

3. Did the use of the ABS-MT result in a positive outcome in negotiations? What were the results achieved?
4. Did the ABS-MT help achieve a higher level of confidence and trust between the user and provider of the genetic resource?
5. Where did use of the ABS-MT bring about changes in the way you manage your ABS-related activities?

Usefulness of the ABS-MT

6. Did the ABS-MT provide sufficient guidance for the ABS negotiation process?
7. Were the Practice Standards realistic? Please explain which were and which were not, and why that was the case.
8. Did you find the Management Process Framework helpful? In what ways?
9. Did you find the order of the information helpful, including:
    a. The Decision-making guide/chart;
    b. The Guidance points for each Practice Standard; and
    c. The Management Process Framework.
10. What elements of the ABS process were not sufficiently covered by the ABS-MT? Were any elements inappropriately addressed?

Lessons Learned

11. What were the strengths of the ABS-MT?
12. What were the weaknesses of the ABS-MT?
13. How can the ABS-MT be improved in terms of?
    a. Effectiveness;
    b. Practicality;
    c. Application to different situations; and
    d. Predictability

Challenges

14. What were the main challenges that you faced in the ABS process?
15. What did you do to address these challenges? Which of the solutions were successful?
16. Will you continue to use the ABS-MT in the future? Why or why not?

If you would like additional information prior to or during your use of the ABS-MT, the project team would be pleased to receive communication from you. Please send any comments or questions to:

Jorge Cabrera
mailto: jacmed@racsa.co.cr

George Greene
Stratos Inc.
ggreene@stratos-sts.com

Tom Rotherham
International Institute for Sustainable Development
mailto: trotherham@iisd.ca

Working Draft ABS Management Tool

A Management Tool for Implementing Genetic Resource Access and Benefit Sharing Activities

Developed by the International Institute for Sustainable Development (IISD), Stratos Inc. and Jorge Cabrera on behalf of the Swiss State Secretariat for Economic Affairs (seco).

For more information contact:
Tom Rotherham, IISD
Associate: CSR, Standards & Market Access
International Institute for Sustainable Development (IISD)
Email: trotherham@iisd.ca

Introduction and Structure of the Management Tool

Context for Use of the Management Tool

The Bonn Guidelines were adopted in 2002 to help guide the implementation of the Convention on Biological Diversity's (CBD) provisions on access and benefit sharing (ABS). The Guidelines are directed to Parties, governments, users, providers and other stakeholders. Individual organizations – whether research organizations, companies or communities – have a need for clear guidance and tools to help them implement the Bonn Guidelines in their access and benefit sharing activities.

The primary purpose of the ABS Management Tool is to provide guidance to individual organizations and communities on how to participate in ABS relationships. It is designed to give guidance to users of genetic resources in seeking access in a manner that fully respects the CBD[5]. It can help providers of genetic resources in making decisions about access by increasing the understanding of what they can expect and what conditions they may request in granting access. It is useful to both providers and users in the negotiation of agreements and their implementation and monitoring.

[5] The management tool is intended to be applied to genetic resources as defined in the Convention on Biological Diversity. However, given the lack of clarity on the relationship between genetic and broader biological resources, the management tool may prove useful in other related areas involving biological resources more broadly.

It can lend confidence to those involved in access and benefit sharing activities. In so doing, a management tool can help lay down a process where communities and indigenous peoples obtain a fair and equitable benefit from the use of biodiversity and genetic resources.

Provider: any organization or group of people that is the source of the genetic resource and is the owner, manager or custodian of these genetic resources. User: any organization or group of people that acquires and/or uses genetic resources.

More specifically, the management tool is designed to:

- help organizations implement the provisions of the Convention on Biological Diversity and the Bonn Guidelines on Access and Benefit Sharing and existing ABS policies, laws and regulations, where they are available;
- help genetic resource users adopt responsible practices in ABS relationships;
- facilitate not burden the development of open and constructive relationships between providers and users of genetic resources;
- clarify and foster balance in the rights and obligations in these relationships;
- provide clear guidance and permit sufficient flexibility to meet the needs of specific types of organizations and conditions; and
- raise awareness and inform users of genetic resources on best practices for ABS relationships.

However, the management tool cannot solve all issues related to access and benefit sharing. Some of these will be subject to further international negotiation; others will require national law and regulation to address them.

The management tool is for the use of ABS practitioners and ABS policy-makers. It is targeted, for internal management purposes, to individual organizations wanting to voluntarily adopt good practices in accessing genetic resources and in providing fair and equitable benefits from their use, and that are prepared to demonstrate such good practices. It will also guide compliance with existing ABS laws, policies and regulations, and will help inform ABS regulators with important steps and practices.

The management tool is for use by:

- Companies/private enterprises (large and small), e.g.:

  - pharmaceuticals
  - botanicals
  - crop protection
  - nutraceuticals
  - biotechnology, including microbial sources
  - horticulture, including ornamentals
- local communities;
- indigenous peoples;
- public and private research institutions;
- holders of ex situ collections; and
- intermediaries – commercial and public
- universities

This ABS Management Tool is intended to apply to all stages of use of genetic resources:

- pre-access;
- access (discovery and collection);
- research;
- development; and
- commercialisation.

The management tool is not for direct use by Parties nor government agencies in their capacity as ABS Authorities or ABS Focal Points. The management tool is based on the Bonn Guidelines. It also incorporates good practices drawn from existing voluntary codes, standards and guidelines that address issues related to ABS activities. Its use by organizations may, over time, inform public administrative, policy or legal requirements. A list of all sources of information for this tool is included in Annex A.

The management tool provides guidance that is relevant to access and use of both in situ and ex situ genetic resources. It can be applied to ex situ genetic resources acquired prior to entry into force of the Convention on Biological Diversity. Users of the tool are encouraged to do so. While it has not been developed to address those crops covered by the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (IT), the management tool may nonetheless be useful for addressing access and use of genetic resources that fall under its domain.

Nothing in this document changes the legal or statutory obligations of either users or providers of genetic resources. Users of this document are reminded of the need to identify and adhere to regulatory requirements as part of the use of this management tool.

The ABS Management Tool is an evolving document. This working draft is intended to be tested and revised, based on experience gained in pilot tests, through broader use and through further consultations. It is expected that use of the management tool will add to the knowledge base on access and benefit sharing, and will raise the level of good practice. Feedback is welcomed and encouraged on how the management tool can be improved, and experience and guidance on addressing the implementation challenges that accompany each of the practice standards in the tool. Please direct your comments to: trotherham@iisd.ca

Structure of the Management Tool

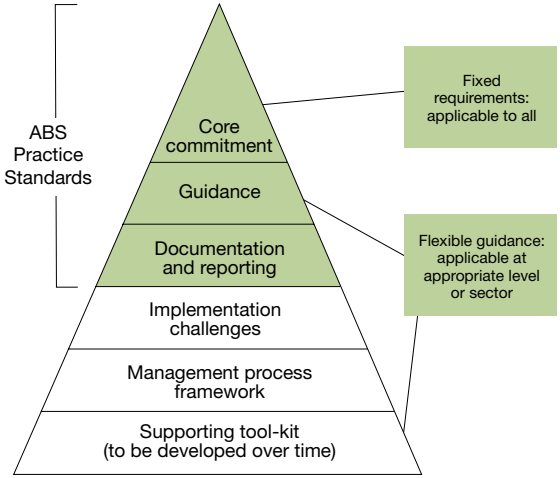
This management tool is structured into three parts:

1. ABS Practice Standards – commitments, guidance, reporting and challenges

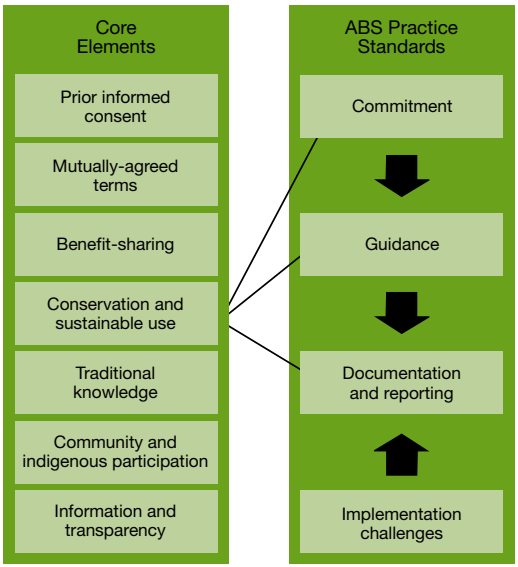
2. Management process framework

3. ** Supporting toolkit (to be developed at a later date based on experience):
   – model access or benefit sharing contracts, material transfer agreements;
   – sector or industry-specific guidelines;
   – community or region-specific guidelines; and
   – customary frameworks.

Structure of the Management Tool



ABS Practice Standards



Section 1
ABS Practice Standards

Section 1 ABS Practice Standards

Application of Practice Standards

The management tool is designed to balance the need for common requirements that apply in all cases of ABS activity, with flexibility in their application to account for differing needs and conditions. Both providers and users of genetic resources have a desire for common principles that are respected in all cases, and that bring a degree of rigour to practices and certainty in results to be expected and achieved. At the same time, the issues that characterize fair ABS relationships and define equitable ABS outcomes are dependent on regional, national and local circumstances, on the economic, environmental, social and cultural context in which decisions are made, and the specific sectors and nature of activities undertaken.

To achieve this balance, the ABS Practice Standards combine a core commitment as the outcome or condition to be achieved in all applicable circumstances, with guidance points that are to be respected in intent and are available to be adopted according to the specific circumstances. These are supported by guidance on documentation and reporting to bring transparency to the application of the Core Commitments and Guidance.

All of the core elements of the ABS Practice Standards are to be considered by both the potential provider(s) and the potential user(s) of a genetic resource. Whether some or all of the core elements of the standards are relevant is determined at the outset by the parties involved in the relationship. For example, if no traditional knowledge is associated with a particular genetic resource, ABS Practice Standard 6 will not apply. Section 2, the Management Process Framework, provides further guidance.

ABS Practice Standards – Commitments, Guidance, Documentation and Reporting
Organizations using the ABS Management Tool voluntarily apply all relevant ABS Practice Standards contained in this section.

Scope: The ABS Management Tool contains seven practice standards. ABS Practice Standards 1– 4 elaborate the key elements of the Bonn Guidelines. Practice Standards

5 – 7 address cross-cutting aspects of ABS. It is recognized that experience for these last three elements may not be as far advanced, and that they are the subject of ongoing international negotiations.

Definitions

Practice Standards

Prior informed consent: Consent obtained by the user from the State and other providers, as the case may be, after fully disclosing all the required information, that allows access to their genetic resources and associated traditional knowledge under mutually-agreed terms.

Mutually-agreed terms: Conditions and provisions of access and benefit sharing, among others, negotiated between the user and the provider and involving other relevant stakeholders.

Benefit Sharing: Participation in the economic, environmental, scientific, social or cultural benefits resulting or arising from access to genetic resources and associated traditional knowledge under mutually-agreed terms.

Conservation and sustainable use: Conditions and practices that ensure/contribute to the diversity of genetic resources accessed, through sustainable use and other conservation measures.

Traditional knowledge, innovations and practices: Knowledge and practices of an individual or collective nature, of indigenous peoples and local communities associated with genetic resources and related to the conservation and sustainable use of biological resources.

Community and indigenous peoples participation: Cross-cutting practices that ensure the involvement of interested/affected local communities and indigenous peoples in decisions that affect genetic resources for which they are owners, managers or custodians, or where genetic resources form part of their culture.

Information and transparency: Cross-cutting practices that foster open exchange of information between providers and users; that demonstrate to each of the organizations in an access and benefit sharing relationship that agreed measures are being carried out; and that demonstrate good ABS practices to the public. These practices take into account the confidentiality needs of commercial interests and holders of traditional knowledge.

Requirements and Guidance

- Core commitment: A policy statement of the acquirer/user organization's commitment to achieve an outcome that reflects/follows good practice and the provider organization's expectation of outcome.

- Guidance: Steps or activities to help user/acquirer and provider/source organizations achieve the core commitment.

- Documentation and reporting: Guidance on documentation practices, on types of information to be provided/shared between users and providers of genetic resources, and on encouraging appropriate information to be reported publicly to enhance accountability and transparency, recognizing confidentiality needs of commercial interests and holders of traditional knowledge

- Implementation challenges: A set of issues to be addressed, and resolved by organizations in the process of negotiation, to make implementation of the ABS practice standard more effective. It is intended to develop further guidance on addressing these challenges at a later stage of development of the management tool. It needs to be recognized that many of the implementation challenges are at the government level and cannot be resolved by organizations in the process of negotiation.

Indicative Guide to ABS Decision-making

Pre-access			
1	GR identified		
2	Provider identified		
3	Applicable laws identified		
4	Does provider have right to grant access?		
	yes	no	Identify owners and/or custodians of GR
5	Is there an existing PIC/MAT contract?		
	yes	no	Identify and engage with competent authority, indigenous peoples, communities, stakeholders
6	Is the intended use covered?		
	yes	no	Identify and engage with competent authority, indigenous peoples, communities, stakeholders
7	Are all practice standards addressed?		
	yes	no	Assess applicability of ABS Practice Standards; engage with stakeholders; set targets
8	Engage in PIC/MAT negotiations with owners or custodians of GR and associated TK		
9	Address all applicable ABS practice standards in legally-binding contract		
10	Proceed to access		

Access			
11	Establish and maintain appropriate communication with all stakeholders (different levels)		
12	Involve communities and indigenous peoples in collection/research		
13	Provide information as appropriate to PIC/MAT signatories and stakeholders		
14	Establish procedures to document implementation of PIC/MAT conditions		
15	Ensure compliance with PIC/MAT and other expectations, including benefit sharing		
16	Verify with stakeholders that obligations and expectations are met		
17	Proceed to use		

Indicative Guide to ABS Decision-making

Utilization			
18	Establish and maintain appropriate communication with all stakeholders (different levels)		
19	Is use according to terms of PIC/MAT?		
	yes	no	Return to step 4: does the provider have the right to grant access?
20	Report all use to PIC/MAT signatories, and others as appropriate		
21	Ensure timely provision of benefits according to schedule in PIC/MAT contract		
22	Ensure GR not transferred to 3rd parties unless allowed in and under terms of PIC/MAT		

ABS Practice Standards – Core Commitments

ABS Practice Standard 1: Prior informed consent (PIC)

Core commitment

- PIC is prior, informed and consented in intent and practice.

- Prior informed consent is obtained in writing from the competent government authority, and from the relevant stakeholders, including local communities and indigenous peoples.

- Prior informed consent is linked to a commitment to negotiate fair and equitable benefits for each stage of access and use. Genetic resources are used only for the purposes expressly outlined at the time of PIC negotiation, and a new prior informed consent is given for any use that differs in type or scope from that originally outlined.

- Prior informed consent is linked to mutually-agreed terms and benefit sharing.

- Where access is obtained from an ex situ collection including from one or more intermediary, documentation should be provided that appropriate PIC exists, and that the transaction and intended use are consistent with that PIC, unless there is clear and reasonable explanation that this is not feasible.

ABS Practice Standard 2: Mutually-agreed terms (MAT)

Core commitment

- Mutually-agreed terms are negotiated in a manner that builds confidence and a relationship of trust between owners, managers or custodians of genetic resources who are the providers and the users of genetic resources, and which establishes the basis for a long-term, transparent and respectful relationship and communication between them.

- MAT is negotiated in good faith by both users and providers, respecting the terms and understandings of prior informed consent, allowing benefits to flow to the owners, managers or custodians of the genetic resource, and facilitating access.

- Mutually-agreed terms take into account the differences in capacities and needs of the providers, including governments, indigenous and local communities, holders of ex situ collections, and the intended user organizations to allow fair processes of negotiation and equitable outcomes in the benefits to be shared.

ABS Practice Standard 3: Benefit Sharing

Core commitment

- A fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge is provided to support the compliance with the three objectives of the Convention on Biological Diversity.

- Benefits are provided according to the specific stages of use set out in the PIC agreement (discovery, research, development and commercialisation) and are renegotiated when the type of use is expected to change beyond the agreed PIC.

- Benefits are shared fairly and equitably with all those who have been identified as having contributed to the resource management, scientific or commercial process, including governments at different levels, and/or indigenous and local communities and relevant stakeholders that are the owners, managers or custodians of the genetic resource.

- Benefit Sharing arrangements are implemented in good faith, respecting the terms and understandings of prior informed consent agreed for use of the genetic resources collected, and the terms and conditions negotiated in the mutually-agreed terms.

ABS Practice Standard 4: Conservation and sustainable use

Core commitment

- The collection and/or harvest of wild genetic resources is conducted, using a precautionary approach, at a scale and rate and in a manner that does not exceed the sustainable yield and that does not impair ecosystem structure, functions and services.

- Domestication and cultivation/captive breeding of genetic resources is conducted in a manner that maintains the genetic variation of the population or diversity of the gene pool.

- Species listed in CITES Appendix 1 and species considered to be globally or locally threatened according to the IUCN Red List or equivalent categories are not collected, except for the purpose of species conservation research. No collection is undertaken in legally-established protected areas that prohibit collection.

- Knowledge about biodiversity that arises from access to a genetic resource is shared in a manner that supports and enhances conservation management.

ABS Practice Standard 5: Traditional knowledge, innovations and practices associated with genetic resources

Core commitment

- The integrity of the traditional knowledge associated with genetic resources that are accessed is respected by the collector of genetic resources and other users. The collection and use of TK is made in such a way as to not affect the integrity, sense and value of the TK, so as to not denigrate it.

- Fair and reasonable effort is made to preserve, respect and maintain traditional knowledge associated with the genetic resources that are accessed.

- Adequate compensation and sharing of benefits are provided when traditional knowledge associated with genetic resources is accessed and used.

ABS Practice Standard 6: Community and indigenous peoples participation

Core commitment

- Effective communication, transparency and consultation is maintained between intended and actual users and the providers of genetic resources – governments, indigenous and local communities, and relevant stakeholders, including their involvement in the granting of PIC and negotiation of MAT.

- The specific concerns and interests of stakeholders, including local communities and indigenous peoples, are responded to through information on intended action – either in the form of commitment to resolve or rationale for why action is not taken.

- Indigenous and local communities that are owners, managers or custodians of genetic resources, and relevant stakeholders, are involved in decision-making on access and participate directly in benefits derived from collection and use of genetic resources.

ABS Practice Standard 7: Information and transparency

Core commitment

- Information related to the genetic resources under consideration, including intended use, is shared in a transparent and open manner between potential providers and potential users of genetic resources – in line with the appropriate stage of negotiation and agreement.

- The quantity and quality of information available and provided is sufficient to enable the genetic resource provider and the intended user of the genetic resource to make informed judgments and decisions, and to undertake actions to implement all agreements reached between the provider and the user.

- The confidentiality needs of commercial interests and holders of traditional knowledge are maintained, while working to the spirit of transparency in ABS relationships.

- Where applicable, traditional and local knowledge is protected in the process of access and not made widely available without the consent of local or indigenous communities.

The Full Practice Standards

ABS Practice Standard 1
Prior Informed Consent (PIC)

Basis

Bonn Guidelines paragraphs 2, 26 (basic principles of prior informed consent), 27 (elements of prior informed consent), 28 (competent authority granting prior informed consent), 33 (timing and deadlines), 34 (specification of use), 36 (procedures for obtaining prior informed consent), 38 (process).

Several relevant codes of conduct, guidelines, protocols regarding prior informed consent.

Core commitment

PIC is prior, informed and consented in intent and practice.

Prior informed consent is obtained in writing from the competent government authority, and from the relevant stakeholders, including local communities and indigenous peoples.

Prior informed consent is linked to a commitment to negotiate fair and equitable benefits for each stage of access and use. Genetic resources are used only for the purposes expressly outlined at the time of PIC negotiation, and a new prior informed consent is given for any use that differs in type or scope from that originally outlined. Prior informed consent is linked to mutually-agreed terms and benefit sharing.

Where access is obtained from an ex situ collection, including from one or more intermediary, documentation should be provided that appropriate PIC exists and that the transaction and intended use are consistent with that PIC, unless there is clear and reasonable explanation that this is not feasible.

Guidance

- Obtain and comply with all the applicable laws and regulations in force in the country regarding prior informed consent.

- Identify the national competent authority and indigenous and local communities and relevant stakeholders and, wherever possible, determine ownership of the genetic resources and/or associated traditional knowledge. In accordance with national legislation PIC may be required from different levels of government.

- Identify and establish procedures to ensure compliance with any customary law, traditions or local processes related to the application for and approval of access, to the extent possible.

- Establish procedures to ensure that all relevant information can be communicated clearly in a language and manner understandable to all relevant stakeholders and in a timely fashion.

- Establish a consultation process and information exchange with affected interests that clarifies to their satisfaction any concerns and/or doubts and responds to their requests for information or documentation.

- Establish procedures to ensure that genetic resources are used only for the purposes expressly outlined at the time of PIC negotiation, and to ensure that new prior informed consent is given for any use that differs in type or scope from those originally outlined, including transfer to third parties.

- Ensure that new prior informed consent is given in cases of transfer of genetic resources to third parties.

- Be aware that PIC and approval for the use of genetic resources does not necessarily imply approval or PIC to use the associated traditional knowledge.

- Respect restrictions on the use of genetic resources and associated traditional knowledge covered by the PIC agreement.

- For ex situ collections, obtain prior informed consent from the competent national authority and/or the organization governing the ex situ collection concerned.

- In the case of access to ex situ resources, examine the PIC documentation from the provider to determine if it is adequate to cover the transaction and intended use. If PIC does not exist, or does not cover the transaction and intended use, obtain further PIC from the competent national authority and/or the organization governing the ex situ collection concerned.

- Identify and make known, where feasible, the country of origin and original providers for ex situ collections that are the immediate source of genetic resource.

- In the case of genetic resources provided by an intermediary, require proof that the organization supplying genetic resources has title to the materials and that it is authorized to supply them for product discovery and development.

- Base discussions on PIC on appropriate information, including the information listed in Annex B.

Documentation and reporting

- Identify and record, for each genetic resource being used, the authorities, customary users or traditional knowledge custodians, where applicable, who have granted access.

- Maintain and make available to indigenous and local communities and relevant stakeholders this documented evidence of PIC.

- Stipulate all obligatory conditions and terms in a legally-binding document (e.g., a PIC agreement, contract, material transfer agreement, etc.).

- Report publicly the processes used to identify and consult with the managers, custodians and owners of the resources in the negotiation of an access permit, documented evidence of PIC, and the country of origin for all access agreements.

- For situations where consent to access is given by a local or indigenous community in a non-written form and in accordance with local custom, record the content, and document the manner in which it was given.

Implementation challenges

- In some cases there will be a need to have independent legal, financial and scientific advice available to the provider of genetic resources, in order to level the playing field with users during negotiation. Monetary contributions from users to providers may be used for the providers to obtain independent legal or other advice.

- PIC may need to be linked at the outset to an understanding for future intellectual property rights and other benefit sharing provisions to be covered in a MAT.

- Identifying from whom prior informed consent shall be sought can be difficult. To obtain and negotiate PIC is one of the major hurdles of the access and benefit sharing process.

- In many cases, it may not be clear who has the authority in the indigenous and local communities or the government (and at what different levels) to approve the use of the genetic resources and associated traditional knowledge. There may also be more than one authority at the local level or among governments from whom PIC must be obtained. It is recommended to follow the traditional and customary rules of indigenous and local communities regarding the authority to grant access.

- Identifying industry partners who are truly interested in co-investment and collaboration – not only in raw material provision – may be difficult.

- Educating some genetic resource users about the CBD and the Bonn Guidelines may be needed at the outset.

- Maintaining requirements for confidentiality over commercial or culturally sensitive information may be difficult, while working toward transparency in relationships.

- Some genetic resources are transboundary in nature, making it difficult to identify from whom PIC should be sought. The same applies for traditional knowledge, which can be shared by more than one community/tribal group.

ABS Practice Standard 2
Mutually-agreed Terms (MAT)

Basis
Bonn Guidelines, Paragraphs 16.III, 41, 42, and 43.

Core commitment
Mutually-agreed terms are negotiated in a manner that builds confidence and a relationship of trust between owners, managers or custodians of genetic resources who are the providers, and the users of genetic resources, and that establishes the basis for a long-term, transparent and respectful relationship and communication between them.

MAT is negotiated in good faith by both users and providers, respecting the terms and understandings of prior informed consent, allowing benefits to flow to the owners, managers or custodians of the genetic resource, and facilitating access.

Mutually-agreed terms take into account the differences in capacities and needs of the providers, including governments, and indigenous and local communities, holders of ex situ collections, and the intended user organizations, to allow fair processes of negotiation and equitable outcomes in the benefits to be shared.

Guidance
- Comply with all the applicable laws and regulations regarding benefit sharing in force in the country, and recognizing that legal and policy arrangements differ by country/jurisdiction.

- Recognize the sovereign rights of States over their natural resources.

- Negotiate agreements (MAT) in good faith, to be correctly understood by the provider and user organization, with each organization making its best efforts to take into account and consider the other's interests, ideas and suggestions.

- Recognize that MAT is to be the result of a negotiation process, involving give and take with the intent that the user and provider are satisfied with the outcomes.

- Negotiate and agree MAT with the different interests and groups from whom PIC is sought – the owners, managers or custodians of the genetic resources, including

governments and their institutions, and indigenous and local communities and relevant stakeholders.

- Negotiate MAT to facilitate access to genetic resources at a minimum transaction cost and avoid imposition of arbitrary restrictions on access.

- Set out the mutually-agreed terms in a written agreement.

- Clarify underlying principles and objectives of the agreement in order to avoid misunderstandings and to help ensure that the original intent of the research relationship is upheld over time.

- Provide sufficient information regarding scientific data and legal considerations in order to enable both the provider and user organization to participate effectively and make informed decisions.

- Specify in a negotiated MAT: definitions, description of the genetic resources covered, scope and purpose of use, permitted uses, obligations of the Parties to the agreement, property rights provisions (including intellectual property), terms of benefit sharing, reporting and auditing obligations, conditions for the transfer to third parties, monitoring and enforcement, dispute settlement mechanisms, duration of the agreement and survival clauses.

- Include in MAT conditions, obligations, procedures, types, timing and mechanisms of benefit to be shared. These will vary depending on what is regarded as fair and equitable in the light of the particular circumstances.

- Include user and provider obligations in MAT.

- Include in MAT the voluntary obligation to disclose the country of origin and the provider of genetic resources and associated traditional knowledge in any application for intellectual property rights.

- Ensure that MAT provides that use of genetic resources takes into account ethical concerns of providers.

- Seek to ensure, as appropriate, that the commercialisation and any other use of genetic resources should not prevent the traditional uses of genetic resources.

- Provide independent legal advice to be available to both the provider and user organizations to ensure adequate legal guidance in the negotiation of MAT.

- Make provision for the support of a mediator or facilitator, where the provider and user organization agree this will improve the negotiation process.

- When supplying genetic resources to third parties, ensure that the transactions and intended use are covered by existing MAT and PIC, and honour all terms and conditions regarding the acquired material. Provide to this third party relevant data on their acquisition.

- Provide a commitment to make a financial provision to ensure that agreed-to levels of benefits flow to the provider of the genetic resource.

- Include in the agreement provision for internal and/or external audits to report progress on its implementation to both the user and provider of the genetic resource. The involvement of relevant stakeholders, and indigenous and local communities in the various stages of development and implementation of access and benefit sharing arrangements can play a role in facilitating monitoring and compliance.

- Resolve disputes arising in the access agreement in accordance with the relevant contractual arrangements and the applicable laws and practices, taking into account the needs and constraints of, and the resources needed by, the provider and user organizations to secure access to justice.

Documentation and reporting

- Document and maintain a record of the process and agreements reached in negotiation of MAT.

- Make available to the other party (user or provider) information needed to make informed decisions on the elements of the MAT agreement, recognizing the confidentiality needs of commercial interests and holders of traditional knowledge.

- Provide in the contract, and put in place, monitoring and reporting mechanisms to

determine that the obligations assumed by both the provider and user organization are fulfilled.

- Report publicly the non-confidential terms and process used to negotiate the MAT, and on a periodic basis progress by both user and provider organization in fulfilment of the obligations under the MAT.

- Make public any dispute between the user and provider arising from the MAT contract provisions, the process used to resolve these, and the non-confidential results of dispute settlement procedures.

Implementation challenges

- Experience has proved the difficulties to negotiate efficiently and within a reasonable period of time the MAT; constraints include:
  - ensuring that each organization (particularly the provider) has a competent legal advice to provide guidance on the contract terms;
  - an unequal access to information; and
  - complexity of the terms and clauses of the contracts, the forms of operation of the scientific research/collection and the potential market for genetic resources may create obstacles to negotiate MAT.

- Bargaining power and access to legal advice and mechanisms may be different, particularly for local communities or research organizations

- Settlement of disputes may be costly, and access to legal remedies differs from country to country. Legal mechanisms for dispute resolution are expensive; agreements can make clear who will cover the cost. A specific contribution to the payment of the cost of the dispute mechanism may be considered. Additional mechanisms such as insurance provisions in case of disputes may be explored.

- Other non-litigious ways of settling disputes (alternative dispute resolution mechanisms) should also be explored and incorporated in the MAT, to cut down on legal costs.

- Unforeseen situations such as bankruptcy, mergers and takeovers may arise; survival clauses are not easy to identify. Proper attention must be paid to these legal issues for which legal advice is recommended.

ABS Practice Standard 3
Benefit Sharing

Basis
Bonn Guidelines para. 45 and other applicable codes of conduct and guidelines (see Annex A).

Core commitment
A fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge is provided in order to support compliance with the three objectives of the Convention on Biological Diversity.

Benefits are provided according to the specific stages of use set out in the PIC agreement (discovery, research, development, commercialisation), and are renegotiated when the type of use is expected to change beyond the agreed PIC.

Benefits are shared fairly and equitably with all those who have been identified as having contributed to the resource management, scientific or commercial process, including governments at different levels, and/or indigenous and local communities and relevant stakeholders who are the owners, managers or custodians of the genetic resource.

Benefit Sharing arrangements are implemented in good faith, respecting the terms and understandings of prior informed consent agreed for use of the genetic resources collected, and the terms and conditions negotiated in the mutually-agreed terms.

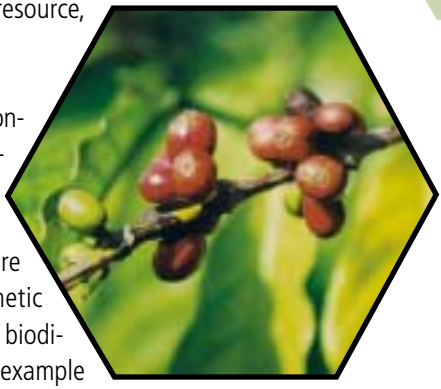
Guidance
- Comply with all the applicable laws and regulations regarding benefit sharing in force in the country.

- Consider near-term, medium-term and long-term benefits. The time frame of benefit sharing should be definitely stipulated. Furthermore, the balance among near-, medium- and long-term benefit should be considered on a case-by-case basis.

- The benefit sharing mechanism should be determined jointly by the user and provider organizations, depending upon the type of benefits and the specific conditions.

- Take into account the expressed desires and needs of the other organization/community and its capacities when negotiating benefit sharing provisions, in a fair and constructive manner to not put them at a disadvantage.

- Put in place mechanisms to ensure that the benefits directly reach the providers (owners/manager/custodians) of the genetic resource, including local and indigenous communities.



- Develop appropriate legal mechanisms in the contract for the provision, management and distribution of benefits.

- Direct a portion of the benefits to those who are the owners/managers/custodians of the genetic resources/biological diversity, in order to support biodiversity conservation and sustainable use, for example through improved knowledge about the biodiversity in the area of collection.

- Consider the creation of trust funds to direct monetary benefits to compensation of the providers according to their contribution to research and development.

- Use genetic resources in and with the participation of the provider country and other providers (owners, users, custodians), including local and indigenous communities, (unless it is not feasible).

- Identify opportunities in the source country and location of collection for participation in commercialisation and value-adding activities.

- As far as possible, provide appropriate monetary benefits including financial contributions for research and conservation, royalties and joint IPRs.

- Seek the original provider of the genetic resource for re-supplying further material, if during the research and development or commercialisation of a product based additional material is needed.

- Give preference to sourcing bulk raw materials collection from the original provider, under reasonable market conditions and taking capacities into account.

- Use a comprehensive and open list of monetary and non-monetary benefits in the process of negotiating benefits, to apply flexibly for the different cases and situations; the List of Potential Benefits in Annex C provides guidance.

Documentation and reporting

- Assess and document the range of monetary and non-monetary benefits provided.

- Provide this information to governments at different levels, and/or indigenous and local communities and relevant stakeholders from which the genetic resource is accessed/sourced.

- Publicly report the processes used to identify and involve in negotiation for benefit sharing the owners, managers or custodians of the genetic resources provided, the degree of acceptance by providers, and the non-confidential terms of benefits provided, including:

  – non-monetary benefits (e.g., technology transferred, access to research results, training); and
  – monetary benefits provided in the contracts (e.g., royalties, milestone payments, up front payment).

Implementation challenges

- Unexpected and unrealistic expectations about the magnitude and kind of benefits to be shared may create difficulties during the negotiation of benefits. Sharing information honestly about the potential and real benefits to be received is advisable.

- Linking benefit sharing with conservation is not always easy or possible it requires careful collection design and monitoring and a clear understanding of the actual status of the resource at the start of the collection process.

- Providing legal mechanisms to beneficiaries in order the claim their rights (legal provision in the contract to entitle the beneficiaries to initiate a legal action) may be difficult depending on the legal system. Obtaining appropriate legal advice on this issue is recommended.

- Considering the nature of the research and development of genetic resources, establishing appropriate monitoring/tracking and reporting mechanisms in the

legal arrangements is advisable but sometimes difficult to enforce. Legal provisions allowing independent auditing, identifier codes for each sample, etc., should be explored.

ABS Practice Standard 4
Conservation and Sustainable Use

Basis

Bonn Guidelines:

- 11 (a): To contribute to the conservation and sustainable use of biological diversity; and

- 48: Benefits should be directed in such a way as to promote conservation and sustainable use of biological diversity.

Good practice principles and guidance in natural resources management standards and criteria, certification and other schemes that have a strong emphasis on ecological sustainability.

Core commitment

The collection and/or harvest of wild genetic resources is conducted, using a precautionary approach, at a scale and rate and in a manner that does not exceed the sustainable yield and that does not impair ecosystem structure, functions and services. Domestication and cultivation/captive breeding of genetic resources is conducted in a manner that maintains the genetic variation of the population or diversity of the gene pool.

Species listed in CITES Appendix 1 and species considered to be globally or locally threatened according to the IUCN Red List or equivalent categories are not collected, except for the purpose of species conservation research. No collection is undertaken in legally-established protected areas that prohibit collection.

Knowledge about biodiversity that arises from access to a genetic resource is shared in a manner that supports and enhances conservation management.

Guidance

- Assess the existing knowledge of resources being accessed and the likelihood that new information about biodiversity will arise or be needed.

- Assess knowledge of conservation status of the species and population to be sampled/collected, prior to granting of PIC, as well as information on its habitat, ecology and any critical environmental concerns, including other uses/pressures on the resource.

- Assess conservation status of the species or population if collection is to exceed simple sampling.

- Use a combination of scientific methods and local/traditional knowledge for assessment of conservation status and decision-making on sustainable use.

- Work with local and indigenous communities to respect and incorporate customary practices as regards conservation and sustainable use.

- Assess genetic diversity of species of interest for domestication and cultivation.

- Develop and implement a collection/harvest management plan and collection protocols that specifically address conservation and sustainable use criteria for the resource being accessed.

- Deposit taxonomic vouchers of every species or sub-species collected in a museum or other appropriate repository in the source country.

- Maximize the involvement of local research institutions, and indigenous and local communities, in collection for conservation research and other conservation activities related to ABS.

- For on-going collection/wild harvesting, monitor the status of the resource to ensure harvest does not exceed the agreed sustainable yield.

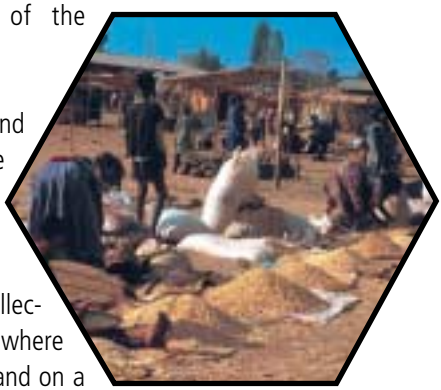
- Include funding and other resources for conservation purposes in benefit sharing arrangements, including under MATs.

Documentation and reporting

- Document and record the species name, variety collected and location, along with other biological and ecological annotations about the resource (note: these can be based on detailed collection reporting protocols that are developed).

- Document existing community practices as they may play a role in the overall conservation scheme.

- Document results on conservation status of the species/variety to be collected.



- Provide full information on conservation status and broader biodiversity assessment to appropriate authorities and local owners, managers or custodians of the genetic resources.

- Document and record the amount of material collected (in gm or kg/tonnes) and the exact location where it was collected – for each approved collection and on a cumulative basis.

- Make this information available to the appropriate authorities, the local owners/managers/custodians of the genetic resource, and the intended user organization(s).

- Report publicly on the conservation plans and implementation activities and results related to each collection of genetic resources.

Implementation challenges

- The ecological basis for determining sustainable yields and sustainable harvest methods often require additional field research and ethno-botanical research.

- Knowledge of the conservation status of individual species or populations may not be known and may be costly to assess prior to decisions on access.

- Experience shows that ABS arrangements often do not end up protecting the resources accessed, regardless of broad commitments to do so; this requires.

- risks for conservation and sustainable use to be addressed up front in decision-making on PIC;
  - measures to conserve the species to be designed into the collection process, including that carried out by local communities;
  - ensuring specific and direct support for conservation and sustainable use as part of benefit sharing activities, made explicit in MATs with particular emphasis on building local capacity and providing resources to conserve the species being accessed;
  - recognizing local conservation efforts;
  - providing resources to state conservation authorities and to the community to conserve the species being accessed; and
  - structured applied field and ethno-botanical research.

ABS Practice Standard 5
Traditional Knowledge, Innovations and Practices Associated with Genetic Resources

Basis

Bonn Guidelines, par. 16 a vi, vii, 16 b ii, iii, 16 ci, 16 d ii, 19, 26 d, 30, 31, 43 a, 43, b, 44 g and 56 and several indigenous declarations, code of conducts, protocols, guidelines.

Core commitment

The integrity of the traditional knowledge associated with genetic resources that are accessed is respected by the collector of genetic resources and other users. The collection and use of TK is made in such a way as to not affect the integrity, sense and value of the TK, so as to not denigrate it.

Fair and reasonable effort is made to preserve, respect and maintain traditional knowledge associated with the genetic resources that are accessed.

Adequate compensation and sharing of benefits are provided including a recognition of the community when traditional knowledge associated with genetic resources is accessed and used.

Guidance

Process to obtain PIC to use TK associated with genetic resources:

- Identify all holders of the TK and the relevant groups or competent authorities able to give consent.
- Apply all applicable requirements of PIC to the obtaining of associated TK, especially the respect for the customary forms of decision-making of indigenous peoples and local communities.
- Consider proper benefit sharing mechanisms for the TK holders not participating in the access negotiations. A process to identify all the relevant TK owners should be in place.
- Suspend collection if, during the process, the TK holders decide the research is not acceptable. If required, and in accordance with the contract, the use of the TK should be stopped until open discussions are in place to understand the concerns of TK holders.

Integrity

- Ensure that the research activities and collection do not violate customary law and practices.
- Respect the sacred values and places of TK holders.
- Ensure any collection or use of genetic resources does not impede traditional uses of TK.
- Ensure that no IPR is sought or any form of commercialisation undertaken in such a way that affects the TK use, integrity or traditional or customary transfer of the TK.
- Ensure that the information not otherwise publicly available on traditional knowledge associated with the genetic resources accessed or used is not disclosed without the prior informed consent of the TK holders, and respect all such requests from TK holders.

Protection and preservation

- Report to the TK holders all relevant non-confidential information to support maintenance and improvement of TK.

- Support the documentation and registration of TK, if this is requested by TK holders.

- Properly acknowledge in all the publications, public dissemination and IPR applications the TK holders' contributions.

Compensation/benefit sharing

- Establish appropriate contractual mechanisms that take into account the freely-expressed desires of TK holders, their needs and particular situations.

- Undertake collection and research, and provide compensation to avoid social and cultural disruption.

- Consider a broad spectrum of monetary and non-monetary benefits.

- Consider appropriate mechanisms for administering monetary benefits, including trust funds.

Documentation and reporting

- Document the processes used to obtain PIC and for the development and follow-up of the contractual relationship with TK holders.

- Keep TK holders informed of activities and results that implement contractual agreements and understandings, using communications means appropriate to the indigenous and local communities involved.

- Keep other TK holders that are non-participating in the contractual relationship informed of implementation of agreements with those party to the agreement.

- Apply the reporting guidance established for the PIC, MAT and Benefit Sharing Practice Standard above, with the agreement of the TK holders.

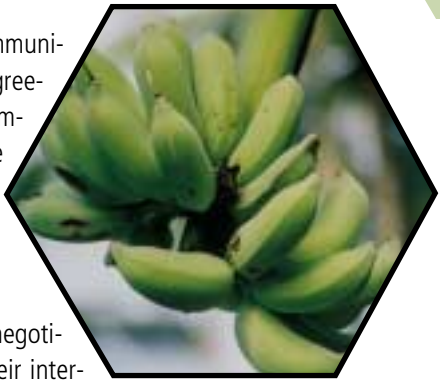
- Report publicly on the efforts and steps taken to provide benefits.

Implementation challenges

- The existence of different cultures and languages including the varying geographic

locations of the same communities makes understanding and relationships difficult or complex. Use of local people as advisors during the negotiations may be useful.

- Obtaining PIC from traditional communities may be difficult, and refusal to grant PIC must be respected.



- TK may be shared among several traditional communities some of which are non-participants in the agreement(s) for PIC and benefit sharing. Both the community concerned or local authorities must be consulted on what should be done in these circumstances, particularly in benefit-sharing implementation.

- If not all the TK holders are part of the contract/negotiation, it may be difficult to take into account their interests, needs and ideas. Suggestions for addressing this are provided in the Guidance section.

- Potential impacts of benefits in traditional life-styles are difficult to assess but must be considered prior to collection.

- Different bargaining powers, legal skills, access to justice and monitoring and reporting capabilities often exist between traditional communities and intended users of genetic resources. Suggestions for addressing this are provided in the Guidance sections on MAT and benefit sharing.

ABS Practice Standard 6
Community and Indigenous Peoples Participation

Basis

Bonn Guidelines:

- II (B) Article 14(h) Mechanisms for the effective participation of indigenous and local communities, while promoting the objective of having decisions and processes available in a language understandable to relevant indigenous and local communities;

- II (C) Article 16(a) (vii) Support measures, as appropriate, to enhance indigenous and local communities' capacity to represent their interests fully at negotiations; and

- V (C) Article 56 The involvement of relevant stakeholders, in particular indigenous and local communities, in the various stages of development and implementation of access and benefit sharing arrangements can play an important role in facilitating the monitoring of compliance.

Good practice principles and guidance in natural resources management certification schemes and voluntary social responsibility standards that have a strong emphasis on community and indigenous peoples' involvement.

Core commitment

Effective communication, consultation and transparency is maintained between intended and actual users and the providers of genetic resources – governments and indigenous and local communities and relevant stakeholders, including their involvement in the granting of PIC and negotiation of MAT.

The specific concerns and interests of stakeholders, including local communities and indigenous peoples, are responded to through information on intended action – either in the form of commitment to resolve or rationale for why action is not taken. Indigenous and local communities that are owners, managers or custodians of genetic resources, and relevant stakeholders, are involved in decision-making on access and participate directly in benefits derived from collection and use of genetic resources.

Guidance

- At the outset, clarify in writing the roles, rights and responsibilities of the intended user(s) (collecting institutions, individual researchers, sponsoring organizations, commercial entities and government agencies) and the provider(s) of the genetic resource (governments, and interested stakeholders including local and indigenous communities).

- Provide directly, and/or with the involvement of governments, the means for indigenous and local communities that are prospective providers of genetic resources

to ensure they have the necessary capacity to negotiate with an equal and informed voice – including independent scientific and legal advice, where necessary.

- Include local stakeholders – individuals (e.g., farmers), communities or indigenous peoples – in decision-making on access and as signatories of agreements for access and for use (MAT) – where they are owners/managers/custodians of the resource to be collected.

- Involve local and indigenous communities in research activities and collection of genetic resources.

- Consult with other stakeholders that may be (directly or indirectly) affected by genetic resource collection.

- Develop and put in place mechanisms for responding to government and stakeholder/local and indigenous community concerns related to proposed or on-going collection of genetic resources.

- Negotiate and provide fair compensation for genuine grievances related to collection of genetic resources that have damaged resources used for livelihoods of local and indigenous communities or people.

- Identify opportunities for culturally and logistically appropriate participation in value-adding R&D and commercialisation activities.

- Involve local and indigenous communities in the development of management plans for genetic resources, including determination of sustainable off-take levels.

Documentation and reporting

- Document the processes used for consultation with and involvement of local communities and indigenous peoples in seeking access with prior informed consent in negotiating mutually-agreed terms and in implementing benefit sharing arrangements.

- Publicly report on the measures taken to inform and involve in decision-making on access and use governments and stakeholders that are owners/managers/custodi-

ans of genetic resources, including local and indigenous communities, including appropriate information on PIC agreements and the terms of MAT contracts.

- Respect the confidentiality requirements of both indigenous and local communities and commercial organizations whenever there is mutual agreement to impose these requirements.

Implementation challenges

- Genuine processes for engagement of local communities and indigenous peoples in decision-making on ABS are not widely practiced.

- Language and cultural differences can seriously limit the effectiveness of consultation and participation of local and indigenous communities, but these are not necessarily insurmountable.

- Lack of understanding and experience with consultation by researchers, commercial bio-prospectors and other potential users of genetic resources can lead to misunderstandings and conflicts.

- Lack of capacity (and effective mechanisms of participation) of stakeholders (e.g., farmers organizations) or local and indigenous communities can create barriers to participation and provides an uneven level of power between those seeking to acquire genetic resources and those providing them or potentially affected by their provision.

- Governments may be reluctant to approve or be unfamiliar with appropriate procedures for, the involvement of indigenous and local communities by prospective users of genetic resources. To address this, potential users of genetic resources, as a matter of good faith and good practices, should at all times request the government or state authorities to include them in the discussion, even if they refuse to do so.

- Participation of local and indigenous communities needs to be ensured, particularly when state authorities do not always recognize local and indigenous communities as entities that should participate in the discussions and decision-making on ABS.

ABS Practice Standard 7
Information and Transparency

Basis

CBD Decision V/26:

- Trust-building and transparency are important in order to facilitate the exchange of genetic resources.

- Information is a critical aspect of providing parity of bargaining power for stakeholders in access and benefit sharing arrangements.

Bonn Guidelines:

- V (B) Article 53 Accountability in implementing ABS arrangements – To promote accountability, Parties may consider establishing requirements regarding a) reporting; and b) disclosure of information.

Good practice principles and guidance in natural resources management certification schemes and voluntary social responsibility standards that have a strong emphasis on information sharing and transparency.

Transparency provides one means for operationalizing different applications of the other six practice standards for different types of use. As such, it is cross-cutting areas of ABS practice.

Core commitment

Information related to the genetic resources under consideration, including intended uses, is shared in a transparent and open manner between potential providers and potential users of genetic resources – in line with the appropriate stage of negotiation and agreement.

The quantity and quality of information available and provided is sufficient to enable the genetic resource provider and the intended user of the genetic resource to make informed judgments and decisions, and to undertake actions to implement all agreements reached between the provider and the user.

The confidentiality needs of commercial interests and holders of traditional knowledge are maintained, while working to the spirit of transparency in ABS relationships. Where applicable, traditional and local knowledge is protected in the process of access and not made widely available without the consent of local or indigenous communities.

Guidance

- Transparency is an essential aspect of building confidence between providers and users; therefore, establish procedures to ensure that all relevant information can be communicated clearly in a language and manner understandable to all relevant stakeholders and in a timely fashion.

- Communicate clearly and honestly the objectives and likely outcomes of collection activities, including intended uses of the genetic resources and expectation for commercial potential.

- Prepare a transparent policy on the commercialisation of genetic resources and products and indicate fully and honestly the intentions of use of genetic resources (GR). There should be a reporting scheme where updates are regularly given on these matters, including third-party transfers and uses of the genetic resources.

- Provide the government authority and stakeholders, including local and indigenous communities that granted access, with written reports of the research, as well as with samples of genetic resources collected during the research process.

- Provide progress reports as part of benefit sharing agreement to describe the status of any intellectual property being/having been sought and any effort to commercialise any material or derivatives or material.

- Provide voluntary disclosure of country of origin of genetic resources where the subject matter of the application concerns or makes use of genetic resources in its development.

- Conclude agreements with prospective sample suppliers (intermediaries) only when they can provide documentary evidence that they have permission from appropriate government authorities, and local and indigenous communities with ownership or use rights, to collect such samples.

- Ensure that sample suppliers are aware of and comply with the terms of collection, including for the sharing of benefits.

- Respect confidentiality of information considered to be sensitive or of cultural significance by local and indigenous communities.

Documentation and reporting

- Maintain records and make them available to both the provider(s) (and to the regulator whenever the provider may be a private party) and user(s) of the genetic resource, including:
  - terms and conditions under which genetic resources were acquired or supplied (i.e., written PIC);
  - country of origin (where known) or third party source;
  - taxonomic and conservation status information;
  - tracking use of genetic resources by the acquirer and subsequent users of the genetic resources;
  - terms and conditions of use and status of their implementation (i.e., MAT); and
  - benefits accruing to organizations that signed the agreement or contract.

- Use public reporting, through such means as annual or sustainability reports, web sites and targeted communications, to inform the broader public of ABS practices and results.

Implementation challenges

- It is difficult to balance the desirability of transparency with legitimate need for confidentiality, e.g., to conserve the resource being accessed, or to maintain commercial confidentiality, or to protect traditional knowledge. If at all, confidentiality should only be invoked in exceptional circumstances and only upon mutual agreement of the parties, in order to maintain transparency.

- Governments may be reluctant to encourage transparency of information in ABS relationships, or may be unfamiliar with appropriate procedures.

- Tracing the source of genetic resources through multiple providers and uses is a substantial challenge.

- Establishing some form of certificate of origin in the absence of a negotiated international agreement on the system may constrain organizations from exercising full transparency.

Section 2
Management Process Framework

Section 2 Management Process Framework

The following process framework is intended to provide guidance to organizations on the types of supporting activities and management functions that will be needed for it to most effectively implement the substantive guidance contained in the seven practice standards. Companies and large organizations already having formal management systems can integrate these steps and the practice standards into their existing systems or establish an ABS-specific parallel system. Communities, research and smaller not-for-profit organizations can use the management system process framework and practice standards to guide their own activities and their relationships with organizations seeking to acquire genetic resources.

1. ABS Policy Statement

The organization should develop a comprehensive ABS Policy Statement that is consistent with each of the seven elements of the practice standards. The policy statement should be developed with and endorsed by senior management, and involve consultations with input, as appropriate, from outside interests with whom the organization expects to interact. The ABS Policy Statement should address, among other things:

- a commitment to comply with all relevant laws and regulations in the jurisdictions in which it undertakes activities;

- a commitment to respect and comply with the spirit and intent of the Convention on Biological Diversity (CBD), and with the Bonn Guidelines;

- the application of the seven ABS Practice Standards contained in this document; and

- the organization's objectives in applying the ABS Practice Standards.

The ABS Policy Statement should be reviewed regularly and revised where circumstances or experience warrant. The policy statement should be made publicly available.

2. Identification of relevant ABS Practice Standards

Where the organization believes that certain ABS Practice Standards do not apply to its access and use of GR, it should make publicly available a full justification for this assertion.

For example, the following ABS Practice Standards may not be applicable when, among other things:

- Prior informed consent: The GR being used, and the intended use, are covered under the terms of an existing written PIC agreement that is available to the intended genetic resource provider.

- Mutually-agreed terms: The GR being used, and the intended use, are covered under the terms of an existing MAT agreement.

- Benefit Sharing: The GR being used, and the intended use, are covered under the terms of an existing PIC or MAT agreement.

- Conservation and sustainable use: The GR is sourced from a gene bank or other ex situ collection that is implementing an effective conservation and sustainable use policy.

- Traditional knowledge: The GR is not customarily used by communities or indigenous groups, or is sourced from genetic resources not based on associated traditional knowledge; or, a provider that has an agreement in place addressing all TK issues that arise from the intended use of GR.

- Community and indigenous peoples participation: The GR is sourced from a gene bank or other ex situ collection that has the right to provide access to the GR.

- Information and transparency: Information and transparency is always a relevant practice standard, although the degree and nature of information provision and transparency will vary with each case.

3. Implementation of the ABS Policy Statement

In order to help implement its ABS Policy Statement, the organization should put in place the following management system elements:

- Define specific objectives for each case of access and use of genetic resources; this should include consideration of issues and implementation challenges specific to the intended access and use.

- Define the process steps to be used, drawing on the process guidance provided in the ABS Practice Standards (see Section 2 above).

- Set process and operational indicators to track adherence to the defined objectives and process steps.

- Monitor implementation of the ABS Policy Statement using the indicators.

- Consider options for, and over time implement, an internal assurance or verification system to confirm adherence to defined objectives and process steps, and to contribute to internal management effectiveness.

- Engage affected stakeholders in establishing the objectives, identifying implementation challenges, and defining process steps and monitoring arrangements.

- Communicate monitoring and/or verification results to stakeholders and interested parties through public reporting.

- Take corrective action, as necessary, to maintain adherence to the policy statement, objectives and process steps.

- Review the policy statement regularly.

- Review and revise the objectives and process steps for each new case of genetic resource access and use.

4. Identification and Tracking Use of Genetic Resources

- The organization should identify and maintain a register of the genetic resources it is accessing and using.

- For all genetic resources accessed and/or used, the organization should identify and document their sources; sources can be defined in terms of some or all of the following:
  - country of origin;
  - sub-national jurisdiction;
  - communities and/or indigenous owning, using or having tenure for the use of the genetic resource;
  - intermediaries from which the genetic resource was sourced; and
  - species from which the genetic resource was extracted.

- Organizations need to identify and record their use of all genetic resources, for all stages of use:
  - pre-access;
  - access (discovery and collection);
  - research for non-commercial purposes;
  - research for commercial development purposes;
  - ex situ conservation;
  - product development;
  - commercialisation from sale or license of the genetic resource and associated intellectual property; and
  - commercialisation from sale of final products or services developed with the genetic resource.

5. Responsibilities and Accountabilities

- The organization should identify internal accountabilities and responsibilities for implementation of the policy statement and for each case of access and/or use of genetic resources at executive, managerial and operational levels.

6. Financial and Human Resources

- The organization should allocate sufficient financial and human resources to carry

out the specific access and use of genetic resources consistent with the agreed policy, objectives and process steps.

- In cases of requests for access of genetic resources from local communities, indigenous peoples or organizations with limited capacities to negotiate fair agreements.

- Identify ways to enable them to build capacity or have access to independent information and advice.

- Assess their information needs and technical (e.g., scientific, legal) capacities in order to ensure they have the capacities needed to take informed decisions.

Possible Future Management Process Elements

Compliance with practice standards: Procedures for assisting organizations with implementation of genetic resource user and provider obligations under PIC and MAT agreements.

Assurance: Procedures that provide information on adherence to agreements, to inform the user and provider organizations on the degree to which obligations are being met, and to inform improvements in practices.

Dispute resolution: Procedures to mediate and settle any dispute arising from the interpretation or compliance with the access or benefit sharing agreement, taking into account the needs and resources of the organizations involved.

Stakeholder relations: Procedures for identification of ABS stakeholders and mechanisms for their engagement.

Annex

Annex A

List of Resources Used in Development of Working Draft ABS Management Tool

International Guidelines

- Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization/CBD Decision V/26
- FAO: International Code of Conduct for Plant Germplasm Collecting and Transfer

Biological Resources Management Standards and Certification Systems

- Forest Stewardship Council
- IFOAM (International Federation of Organic Agriculture Movements)
- Marine Aquarium Council

Sector Codes

- Principles and Common Policy Guidelines on Access to Genetic Resources and Benefit Sharing Arrangements for Participating Institutions (Botanic Gardens)
- Society for Economic Botany: Guidelines of Professional Ethics
- Code of Ethical Practice for Biotechnology in Queensland
- MOSAICC (Micro-Organisms Sustainable Use and Access Regulation International Code of Conduct)

Corporate Policies and Codes

- Novozymes
- GlaxoSmithKline

Customary Programs

- Kuna: Program of Research Monitoring and Scientific Cooperation

Contractual Arrangements

- Diversa: Cooperative Research and Development Agreement (CRADA)

- National Cancer Institute: Letter of Collection

- Know How Agreement between the Tropical Botanical Garden and Research Institute, Kerala, India (TBGRI) and the Ayra Vaidya Pharmacy Ltd., Combatore, India

- Contract between the National Authority of the Environment of Panama (ANAM) and the Smithsonian Tropical Research Institute

Literature

- Laird, Sarah (ed), 2002; Biodiversity and Traditional Knowledge: Equitable Partnerships in Practice, Earthscan, London, UK. Information on this publication can be found at: http://www.rbgkew.org.uk/peopleplants/manuals/biological/index.html

- Pierce, Laird and Malleson – Annotated Collection of Guidelines, Standards, and Regulations for Trade in Non-Timber Forest Products (NTFPs) and Botanical V1.0 February 2002, Rainforest Alliance's Sustainable Botanicals Project, available at: http://marketstandards.chemonics.net/resources/Critical%20Reports/botanicals-standards.pdf

- Pierce and Laird – Promoting Sustainable and Ethical Botanicals Strategies to Improve Commercial Raw Material Sourcing, Final Report prepared for the Rainforest Alliance, May 2002. The report is available at: http://www.rainforest-alliance.org/news/archives/news/botanicals-strategies.pdf

- User Measures: Options for Developing Measures in User Countries to Implement the Access and Benefit-Sharing Provisions of the Convention on Biological Diversity, 2nd Edition, United Nations University Institute for Advanced Studies (UNU-IAS) Report, December 2003. Available at: http://www.ias.unu.edu/binaries/UNUIAS_UserMeasures_2ndEd.pdf

- Second Report of the European Community to the Convention on Biological Diversity: Thematic Report on Access and Benefit-Sharing; October 2002, available at: http://www.biodiv.org/doc/world/eur/eur-nr-abs-en.pdf

- Glowka, Lyle, 2002; Towards a Certification System for Bioprospecting Activities, Study Commissioned by the Swiss State Secretariat for Economic Affairs (seco); available at: http://www.biodiv.org/doc/meetings/cop/cop-06/other/cop-06-ch-rpt-en.pdf

More detailed information on these sources can be found in: Background Research Report: Review of Existing Norms, Standards and Practices Relevant To Access and Benefit Sharing; IISD-Stratos ABS Management Tool Project, available at http://www.iisd.org/standards/abs.asp

Annex B

Information Requirements for Prior Informed Consent

- Legal entity and affiliation of the applicant and/or collector and contact person when the applicant is an institution.
- Type and quantity of genetic resources to which access is sought.
- Starting date and duration of the activity.
- Geographical prospecting area.
- Evaluation of how the access activity may impact on conservation and sustainable use of biodiversity, to determine the relative costs and benefits of granting access.
- Accurate information regarding intended use (e.g., taxonomy, collection, research and commercialisation).
- Identification of where the research and development will take place.
- Information on how the research and development is to be carried out.
- Identification of local bodies for collaboration in research and development.

- Possible third party involvement.
- Purpose of the collection, research and expected results.
- Kinds/types of benefits that could come from obtaining access to the resource, including benefits from derivatives and products arising from the commercial and other utilization of the genetic resource.
- Indication of benefit sharing arrangements.
- Budget.
- Treatment of confidential information.

1 These are indicative suggestions that should be adapted to national circumstances; they are not to be viewed as requirements.

Annex C

List of Potential Benefits

Source: Bonn Guidelines Appendix II
Monetary and Non-monetary Benefits

1. Monetary benefits may include, but not be limited to:
   a. access fees/fee per sample collected or otherwise acquired;
   b. up-front payments;
   c. milestone payments;
   d. payment of royalties;
   e. licence fees in case of commercialisation;
   f. special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
   g. salaries and preferential terms where mutually agreed;
   h. research funding;
   i. joint ventures; and
   j. joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:
   a. sharing of research and development results;
   b. collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the provider country;
   c. participation in product development;
   d. collaboration, cooperation and contribution in education and training;
   e. admittance to ex situ facilities of genetic resources and to databases;
   f. transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
   g. strengthening capacities for technology transfer to user developing country parties and to parties that are countries with economies in transition and technology development in the country of origin that provides genetic resources. Also to facilitate abilities of indigenous and local communities to conserve and sustainably use their genetic resources;
   h. institutional capacity-building;
   i. human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
   j. training related to genetic resources with the full participation of providing parties, and where possible, in such parties;
   k. access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
   l. contributions to the local economy;
   m. research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in provider countries;
   n. institutional and professional relationships that can arise from an access and benefit sharing agreement and subsequent collaborative activities;
   o. food and livelihood security benefits;
   l. social recognition; and
   q. joint ownership of relevant intellectual property rights.