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THE INTERFACE BETWEEN ACCESS AND BENEFIT-SHARING AND BIOTRADE IN NAMIBIA: EXPLORING POTENTIAL AREAS OF SYNERGY

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ABSTRACT

Legal uncertainty and administrative and regularity burdens are serious impediments to sustainable and responsible biodiversity-based economic activities. With the entry into force of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (Nagoya Protocol) an opportunity has arisen for countries to design an access and benefit-sharing (ABS) framework. This can promote the commercialisation of biological resources (biotrade) and provide legal certainty and transparency for the transfer of genetic resources. Although most biotrade businesses follow the core principles of sustainable biodiversity, there is lack of clarity about the application of ABS policy frameworks on biotrade businesses. The Nagoya Protocol aims to clarify key concepts, define the scope of ABS, and stipulate the responsibilities of user and provider countries of genetic resources. As a party to the protocol, Namibia has started developing comprehensive ABS legislation by leveraging its existing administrative and regulatory frameworks. The challenge for Namibia is to find a mutually supportive interrelation between ABS and biotrade, where the implementation of ABS and the promotion of biotrade can go hand in hand. Experiences in other African countries illustrate that the implementation of ABS frameworks is not without its challenges. In South Africa, broader economic losses and further marginalisation of women and poor communities occurred when ABS regulations were applied to existing biotrade businesses. In order to avoid these kinds of unanticipated consequences, Namibia's efforts to develop ABS legislation and set up institutional arrangements to support the implementation of the Nagoya Protocol require careful policy consideration. A significant step in the right direction is to understand the interface between biotrade and ABS, especially the positive interaction that should exist between the two, and to have an informed strategy that addresses this complex relationship. It is the objective of this exploratory study to offer an outline of the national policy context, the ABS development process and salient issues and the connections between biotrade and ABS in the era of the Convention on Biological Diversity and the Nagoya Protocol.

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ABBREVIATIONS AND ACRONYMS

ABS	access and benefit sharing
CBD	Convention on Biological Diversity
CBNRM	Community-Based Natural Resources Management
CSIR	Council for Scientific and Industrial Research
IBPC	Interim Bioprospecting Committee
ILCs	indigenous and local communities
INP	indigenous natural product
IPTT	Indigenous Plants Task Team
NBSAP	National Biodiversity Strategy and Action Plan
MAT	mutually agreed terms
MET	Ministry of Environment and Tourism
MWAF	Ministry of Water, Agriculture and Forestry
PIC	prior informed consent

INTRODUCTION

Recent decades have witnessed increased national, regional and global efforts to promote the fair and sustainable use of commercially traded indigenous natural products (INPs). There is a growing emphasis on the formalisation of the INP sector which consists of both biotrade (through which biological resources are locally and globally traded) and bioprospecting (which involves the systematic exploration of biological resources for commercially valuable products). In many developing countries, efforts to formalise the sector are based on principles of promoting ecological sustainability and social justice, and the goal of generating public revenues.[1] The undermining of natural systems through inter alia deforestation and overexploitation, coupled with increasing population pressure and rising demand for commodities, has led to concerns about the sustainability of INP harvesting practices. Further concerns relate to questions of equity and the fairness of supply chains in relation to the countries and communities in which these INPs are sourced.[2] In response to this, key aspects of INP commercialisation have been given formal recognition through a variety of international agreements and conventions, national legislative frameworks and standardised eco-labelling mechanisms.[3]

In light of the adoption of the UN Convention on Biological Diversity (CBD) in 1993 and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (Nagoya Protocol) in 2010, several countries and regions are developing national legislative and policy measures for the sustainable use and conservation of INPs. Namibia has been lauded for creating a favourable policy framework and institutional environment for the sustainable use of biological resources, including INPs, and leveraging these resources to address social equity concerns in the country. There are also efforts to recognise and promote the traditional knowledge, innovations and practices that have nurtured the country's genetic diversity for thousands of years. The enabling environment created through these policies and institutions has put Namibia at the forefront of INP commercialisation and allowed the country to make progress towards the achievement of its rural development and sustainability goals.

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Despite implementing and passing more than a dozen strategies and acts in the biodiversity and livelihood arena in recent decades, Namibia has yet to promulgate a formal law on access and benefit-sharing (ABS) in relation to the country's genetic resources. The Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation Bill (ABS Bill) was under development since 1998 and a final version of the bill was only submitted to Parliament in 2015.[4] The bill aims to provide a robust tool

1 Laird SA, McLain RJ & RP Wynberg (eds), *Wild Product Governance: Finding Policies that Work for Non-Timber Forest Products*. London: Earthscan, 2010.

2 Carney JA & RN Rosomoff, *In the Shadow of Slavery: Africa's Botanical Legacy in the Atlantic World*. Berkeley: University of California Press, 2010.

3 Raynolds LT & MA Long, 'Fair/alternative trade', in Raynolds LT *et al*. (eds), *Fair Trade: The Challenges of Transforming Globalization*. Abingdon: Routledge, 2007, pp. 15–32.

4 During a personal interview with a representative from the Ministry of Environment and Tourism officials it was mentioned that parliament was expected to endorse the draft ABS Bill in 2017.

to facilitate access, promote equity and develop markets in relation to genetic resources and associated traditional knowledge in Namibia. However, there are concerns about the mechanisms through which the bill and the institutional and regulatory framework it seeks to establish will apply to wider biological resource-based economic activities, including trade in INPs.

The first step in addressing this concern is to obtain greater clarity around key ABS concepts relevant to the existing practices and principles of INP commercialisation. As experiences in developing countries such as India and South Africa suggest, there is a grey area between the commercialisation of genetic resources (using ABS frameworks) and INPs, which leads to confusion among stakeholders. A proper understanding of key concepts such as genetic resources and biological resources and their interrelation is central to promoting the sustainable commercialisation of these resources.[5]

This paper explores the interface between biotrade and ABS, and the potential opportunities and challenges in the negotiation and implementation of ABS and biotrade instruments at a national scale. Further, it explores the experience of Namibia's engagement on ABS and biotrade policy, and considers the implications thereof for other African countries.

ABS AND INTERNATIONAL BIODIVERSITY GOVERNANCE

The CBD is a comprehensive and legally binding multilateral treaty covering the use and conservation of biodiversity. It was created and adopted by governments at the 1992 Earth Summit in Rio de Janeiro where heads of state agreed on a comprehensive strategy for sustainable development. Signed by 168 countries, the key objectives of the convention are the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of the benefits arising from biological resources.[6]

BOX 1 OBJECTIVES OF THE CONVENTION ON BIOLOGICAL DIVERSITY

- The conservation of biological diversity
- The sustainable use of the components of biological diversity
- The fair and equitable sharing of the benefits arising out of the utilisation of genetic resources

Source: CBD, 'Convention on Biological Diversity', 1992, Article 1, p. 3, https://www.cbd.int/doc/legal/cbd-en.pdf

5 Schei PJ & MW Tvedt, *'Genetic Resources' in the CBD: The Wording, the Past, the Present and the Future*. Lysaker: FNI (Fridtjof Nansen Institute), 2010, pp. 533–543.

6 The full text of the Convention on Biological Diversity (Rio de Janeiro, 14 June 1992) can be accessed at CBD (Convention on Biological Diversity), 'Convention on Biological Diversity', https://www.cbd.int/doc/legal/cbd-en.pdf, accessed 7 March 2017.

Prior to the CBD, biological resources were regarded as the heritage of humanity and access was regarded as free to all with no legal or ethical restrictions. Bioprospectors were free to collect genetic materials from animals, plants or microbial resources, undertake scientific research and develop commercial products without a share of the resulting benefits being directed to the states and indigenous and local communities (ILCs) in which the resources originated.[7] This led to the accumulation of substantial wealth by bioprospecting companies at the cost of the socio-economic wellbeing of ILCs. The unequal distribution of benefits derived from the access to and utilisation of genetic resources became a significant concern for the developing countries which hold much of the world's biodiversity. It is for this reason that the CBD grants states the right to regulate access to the genetic resources under their jurisdiction.[8] As noted in Article 15(1) of the CBD,[9]

> [r]ecognising the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

The protection of traditional knowledge, local production and processing techniques and innovations and other agrarian practices of ILCs is a key feature of the CBD. To this end, Article 8(j) of the convention underscores that,[10]

> [e]ach contracting Party shall, as far as possible and as appropriate, subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Although the CBD provides an important overarching framework of rights and responsibilities with regard to access to and use of biological resources (including genetic resources), it soon became apparent that a further agreement was needed to provide detailed procedures and mechanisms for ABS, particularly in relation to genetic materials. The Nagoya Protocol was therefore developed as a supplementary international agreement to the CBD. It was adopted in October 2010 at the Conference of Parties of the CBD, with Namibia becoming a party to the protocol in 2014.[11] The protocol sets out

7 Schroeder D & T Pogge, 'Justice and the Convention on Biological Diversity', *Journal of Ethics & International Affairs*, 23, 3, 2009, pp. 267–280.

8 CBD, *op. cit.*, p. 9. Article 15 of the convention also contains various articles relevant to access to genetic resources.

9 *Ibid.*, p. 9.

10 *Ibid.*, p. 6.

11 The complete list of signatories is available at CBD, 'Parties to the Nagoya Protocol', https://www.cbd.int/abs/nagoya-protocol/signatories/, accessed 12 August 2016.

clear rules on specific measures to be taken by contracting parties in relation to the third core objective of the CBD, namely ABS.[12]

The inclusion of the term 'genetic resources' in the CBD and subsequently the Nagoya Protocol led to its rapid adoption and use in a range of international treaties and protocols, national and regional laws, academic papers and global discourses.[13] As defined by the CBD's Article 2, 'genetic resources' are any material of plant, animal, microbial or other origin containing functional units of heredity that are of actual or potential value. The rules in the Nagoya Protocol apply to genetic resources, whether from plants, animals or micro-organisms, and the benefits arising from their utilisation. The rules also cover traditional knowledge relating to genetic resources and the benefits arising from the utilisation of such knowledge sources. 'Biological resources' include genetic resources, organisms or parts thereof, populations, and any other biotic component of ecosystems with actual or potential use or value for humanity. In other words, genetic resources are a subset of biological resources.[14]

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It is important to recognise that the traditional knowledge of ILCs plays a fundamental role in genetic resource preservation. It is for this reason that the economic benefits that may arise from the exploitation of genetic resources raise important questions of equity, particularly in terms of the distribution of revenues to the communities in which these genetic resources are often sourced. Hence, genetic resources need to be valued appropriately by external role players (research institutes, universities, ex-situ collectors, private companies, etc) in order to determine the nature and amount of benefits that have to be shared among the various stakeholders. In fact, this agenda is closely linked to the global, regional and national debates on the rights of ILCs and the mechanisms through which genetic resources are accessed and the benefits arising from their utilisation are shared. The UN and AU have issued various declarations and passed resolutions recognising the importance of protecting the rights of ILCs in terms of 'indigenous knowledge', such as the 2006 UN Declaration on the Rights of Indigenous Peoples.[15]

12 The full text and annex of the Nagoya Protocol can be accessed at CBD, 'Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity', 2011, https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf, accessed 12 August 2016.

13 Examples are the Conference of the Parties to the Convention on Biological Diversity, the Nagoya Protocol, the Intergovernmental Committee for the Nagoya Protocol on Access and Benefit-sharing, the International Treaty on Plant Genetic Resources for Food and Agriculture and the Council for Trade-related Aspects of Intellectual Property Rights of the World Trade Organization.

14 UNEP (UN Environmental Programme), 'Report of the Meeting of the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches', UNEP/CBD/WG-ABS/7/2, Annex, para 3, https://www.cbd.int/doc/meetings/abs/abswg-07/official/abswg-07-02-en.pdf, accessed 3 September 2016.

15 The UN Declaration on the Rights of Indigenous Peoples was adopted on 29 June 2016. Article 30 of the declaration notes that, 'Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional

The AU has also introduced a range of regional laws to protect traditional knowledge and genetic resources.[16] One of the most important of these is the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources.[17] This model law was adopted by African ministers in 2000 to guide African countries in the development of national laws on local community rights, plant breeders' rights and regulation of access to biological resources.

MAKING SENSE OF ABS: THE NEEM TREE CASE

The neem tree (*Azadirachta indica*) is a fast-growing tree that has proved useful to humans owing to its astonishing versatility and exceptional chemical constituents. Indians have been using various parts of the tree for medicine, toiletries, timber, fuel and agricultural inputs for centuries. Indian scholar and environmental activist Vandana Shiva argues that for centuries the Western world, and in particular British, Portuguese and French colonialists, did not pay attention to the neem tree and its properties, or to the associated traditional practices of Indian peasants. In recent years however, mounting opposition to biochemical products in the West – particularly pesticides – has given rise to a sudden interest in the pharmaceutical properties of neem. Accordingly, Western agrochemical businesses successfully gained control of the relevant intellectual property and patent rights, ignoring traditional knowledge of the tree's properties.[18] In response, a global lobbying movement steered by Vandana Shiva had the patent revoked in 2000

cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.' For the full text of the declaration, see UN, 'UN Declaration on the Rights of Indigenous Peoples', March 2008, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, accessed 3 September 2016.

16 Another important regional declaration on ILC rights is the African Regional Intellectual Property Organization's (ARIPO) Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore. This protocol was adopted in August 2010 and grants exclusive rights to communities to authorise the exploitation of their traditional knowledge and prevent exploitation without their prior informed consent. It emphasises that protection must be tailored to the specific characteristics of traditional knowledge, including its collective and community context. For the full text of the protocol see ARIPO, 'Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore', 2010, http://www.wipo.int/edocs/trtdocs/en/ap010/trt_ap010.pdf, accessed 3 September 2016.

17 The text of the African model legislation can be accessed at OAU (Organization of African Unity), 'African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources', https://www.cbd.int/doc/measures/abs/msr-abs-oau-en.pdf, accessed 3 September 2016.

18 Wynberg R *et al.*, *Indigenous Peoples, Consent and Benefits Sharing: Lessons from the San-Hoodia Case*. London & New York: Springer, 2009.

after a decade-long battle for justice.[19] This is an example of a case where a transnational corporation used a biological resource from a region/country other than the corporation's own home country and made profitable commercial products without any financial reward going to the ILCs for their knowledge contribution.

Such exploitation of biological resources or traditional knowledge by outsiders without the prior consent of ILCs and fair redress (known as biopiracy) is no longer legal for parties to the CBD. The convention declares that such biological resources fall under the sovereignty of national states and any individual or company wishing to access and use them has to meet the demands of justice. In relation to this, articles 8 and 15 of the CBD have laid the ground for ABS and the rights of ILCs.

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In the Nagoya Protocol era, the principle of benefit sharing applies to all cases where a provider country grants access to genetic resources for environmentally sound activities such as bioprospecting, product development and testing, pre-marketing, commercialisation and other activities related to the genetic resources and their biochemical properties. However, the experience in many developing countries shows that there is lack of clarity around designing and executing a functional ABS system and the interpretation of Article 2 of the Nagoya Protocol, notably what is meant by 'utilisation of genetic resources'. Although both the CBD and the Nagoya Protocol have introduced significant legal clarity on this concept, some scholars still argue that it is not completely clear which uses fall within the scope of the ABS obligation.[20] Biodiversity-rich countries such as Namibia should therefore adapt the provisions of the CBD and Nagoya Protocol to their specific legal and political contexts and develop an effective ABS system that can be easily implemented at national level.[21]

NAMIBIA AT A GLANCE: BIODIVERSITY, INP COMMERCIALISATION AND SUITABILITY FOR ABS

With a 2015 gross national income per capita of $5,210, Namibia is classified as an upper middle-income country by the World Bank.[22] Nevertheless, it is still regarded as one of the most unequal societies in the world with high levels of chronic poverty, especially in rural areas. An estimated 28.7% of the country's population of 2.3 million currently lives below the poverty line, with limited access to basic services such as education and

19 Sheridan C, 'EPO neem patent revocation revives biopiracy debate', *Journal of Nature Biotechnology*, 23, 5, 2005, pp. 511–512.

20 Medaglia JC *et al.*, *Overview of National and Regional Measures on Access to Genetic Resources and Benefit Sharing: Challenges and Opportunities in Implementing the Nagoya Protocol*. Montreal: CISDL (Centre for International Sustainable Development Law), 2012.

21 Vijay V *et al.*, *UNCTAD Peer Review on the Implementation of the Nagoya Protocol, and its Impact over Certain Aspects of BioTrade: Challenges on the Implementation of Biotrade and Access and Benefit Sharing*. Geneva: UNCTAD (UN Conference on Trade and Development), 2015.

22 World Bank, 'Namibia', http://data.worldbank.org/country/namibia, accessed 2 September 2016.

healthcare.[23] Despite these socio-economic challenges, Namibia has made significant progress with regard to environmental protection and the conservation of biodiversity. Research shows that Namibia possesses more than 690 unusual and endemic plant species of local and global significance,[24] including hoodia, marula, ximenia, devil's claw, the !nara plant and Kalahari wild silk.

TABLE 1 COMMERCIALLY TRADED NAMIBIAN INPS AND THEIR TRADITIONAL USES AND VALUES

INP	Botanical name	Traditional uses and values
!Nara	*Acanthosicyos horridus*	Nutritional, medicinal, cosmetic
Devil's claw	*Harpagophytum procumbens*	Medicinal health tonic, analgesic, treatment of digestive disorders
Marula	*Sclerocarya birrea*	Firewood, nutritional, medicinal, cosmetic
Ximenia	*Ximenia americana*	Nutritional, cosmetic (emollient and haircare product), medicinal
Omumbiri (Commiphora)	*Commiphora wildii*	Cosmetic (a major ingredient of perfume)
Mapone	*Colophospermum mapone*	Firewood, timber, nutritional, medicinal
Hoodia	*Hoodia gordonii*	Nutritional (dietary supplement and appetite suppressant), medicinal

Source: Adapted from Cole D *et al.*, *Indigenous Plant Products in Namibia*. Windhoek: Venture Publications, 2014

Since time immemorial, the indigenous inhabitants of Namibia have been using local natural materials as a source of livelihood, nutrition and medicine. This has resulted in the accumulation and protection of a considerable amount of traditional knowledge on the use of wild foods and medicinal plants. As far as the commercialisation of local plant species is concerned, anecdotal evidence suggests that such business activities date back to the 1960s, when devil's claw, used for centuries as a local medicinal product, was first commercially traded.[25] Since then, the country has made huge strides in commercialising many other INPs, thereby creating substantial economic opportunities for the poorest of the poor and benefitting women and girls residing in rural areas.

Like many other developing regions, Southern Africa (and Namibia in particular) has been subjected to biopiracy, with none of the benefits from the exploitation of INPs being directed to ILCs. The case of *Hoodia gordonii*, commonly known as hoodia, is a good

23 Republic of Namibia, National Planning Commission, 'Millennium Development Goals Interim Progress Report', 4. Windhoek: Government Printer, 2013

24 Cole D *et al.*, *Indigenous Plant Products in Namibia*. Windhoek: Venture Publication, 2014.

25 *Ibid.*, p. 34.

example of the battle for social justice in the use of and access to biological resources. For centuries, the succulent plant has been used, mainly by the indigenous San communities, to stave off hunger and thirst.[26] Their knowledge of the plant was documented by colonial botanists and used by the South African-based Council for Scientific and Industrial Research (CSIR) to explore the plant's potential use as an appetite suppressant.[27] In 1997, following nearly a decade of research, the CSIR patented the use of the plant's appetite-suppressing chemical compounds.[28] The CSIR subsequently entered into an agreement with a UK-based company in 1998, which in turn entered into a licence and royalty agreement with a US-based pharmaceutical company.

Until the early 2000s the San communities were not aware that their knowledge of hoodia had commercial value and application, and that this traditional knowledge had led to scientific research and the registration of international patents by the CSIR. They had also been excluded from lucrative financial contracts for the development of many other commercial products. In 2001 San communities were alerted to the use of their knowledge without their prior consent. In fact, the CSIR had told the UK-based company that the 100 000 strong San communities 'no longer existed'.[29] Political pressure and extensive media attention forced the CSIR into negotiations with the San communities, leading to the adoption of the 2003 benefit sharing agreement.[30]

Based on its abundant biological resources and associated traditional knowledge, one can conclude that Namibia is suitable for ABS implementation and that a well-designed ABS framework could offer the country a number of opportunities

It was at this critical time that Namibian growers, with the support of the government and international donors, started to organise themselves to regulate access to their resources and ensure equitable sharing of the benefits from the utilisation of these resources and the associated traditional knowledge. An important national initiative was the BioTrade Facilitation Programme launched by the UN Conference on Trade and Development in 2003. The BioTrade[31] programme allows Namibia to explore innovative approaches to developing an industry around the sustainable supply of and trade in INPs, wildlife, indigenous crops and vegetables, fisheries and marine resources, and timber and non-timber forest products. It also made a significant contribution to enhancing livelihood opportunities at local community level, especially in remote areas where opportunities can be limited. A 2012 UN Environmental Programme report on the potential of biotrade for Namibia estimated that the sector already represented around 4.5% of Namibia's gross

26 *Ibid.*, p. 111.

27 Wynberg R, 'Hot air over hoodia', *Seedling GRAIN*, 2010, pp. 22–24.

28 Cole D *et al.*, *op. cit.*

29 Wynberg R, *op. cit.*

30 Wynberg R, 'Rhetoric, realism and benefit sharing: Use of traditional knowledge of hoodia species in the development of an appetite suppressant', *The Journal of World Intellectual Property*, 7, 6, November 2004, pp. 851–876.

31 UNCTAD defines biotrade as the collection, production, transformation and commercialisation of goods and services derived from native biodiversity (species and ecosystems) under the criteria of environmental, social and economic sustainability. See UNCTAD, 'UNCTAD BioTrade Initiative: BioTrade Principles and Criteria'. New York & Geneva: UN, 2007.

domestic product.[32] The report also highlighted that the trade is particularly crucial for the country's poverty reduction efforts in rural areas – provided that local harvesters receive a greater share of the benefits from the INP under commercialisation.

The concept of a standardised ABS regime is a relatively new policy area for Namibia. There have been several activities related to ABS but no legislation that directly addresses the administrative and regulatory issues pertaining to ABS activities. In the light of its abundant biological resources and associated traditional knowledge, one can conclude that Namibia is suited to ABS implementation and that a well-designed ABS framework could offer the country a number of opportunities. These could be in terms of creating new partnerships, building capacity in research and development, boosting bargaining and negotiating power and protecting valuable intellectual property based on the traditional knowledge of its people. The following section examines the key policy and legislative frameworks that have a direct impact on biotrade and ABS-related engagements.

The country has been benefitting from various national laws and institutional arrangements, although it has not yet been feasible to have formally approved ABS legislation

NAMIBIA'S POLICY CONTEXT FOR ABS AND BIOTRADE

Namibia acknowledges the need to grant the users of indigenous biological resources regulated and legally protected access, and to ensure equitable distribution of benefits arising from the use of these resources. In this regard, the country has been benefitting from various national laws and institutional arrangements, although it has not yet been feasible to have formally approved ABS legislation. The country's most recent biodiversity strategy, known as Namibia's National Biodiversity Programme (1994–2005), was designed in 1994. Since then Namibia has developed a range of national policies, legislation and regulations that govern access to biological and genetic resources, the protection of traditional knowledge and the commercialisation of INPs.

The overarching policy and development strategy frameworks that set the platform for biodiversity conservation and use are the Namibian Constitution[33] and Vision 2030.[34]

32 The total biotrade contribution of 4.5% of gross domestic product consists of indigenous natural products (0.15%), wildlife (1.08%), agriculture, indigenous crops and vegetables (0.97%), livestock breeds (1.62%), indigenous fisheries and marine resources (0.21%), and timber, non-timber forest products and others (0.49%). See UNEP, Green Economy Sectoral Study: BioTrade – A Catalyst for Transitioning to a Green Economy in Namibia, 2012, pp. 1–35.

33 While the Namibian constitution lays the foundation for the broader political, economic, cultural and social aspects of the country, the provisions in Article 95(1) are directly relevant to environmental protection and to governance strategies for sustainable resource use for the country.

34 Vision 2030 was launched in 2004 with the aim of promoting sustainable development and natural resource governance in Namibia. Chapter 5 in particular emphasises sustainable and responsible access to and use and management of the natural resource base of the country.

Both documents have provisions that are relevant to the sustainable access to and utilisation of biological resources. Article 95(1) of the constitution, for instance, stipulates that:

> The government shall actively promote and maintain the welfare of the people by adopting policies aimed at the … maintenance of ecosystem, essential ecological functions, process and biological diversity of Namibia and utilization of natural resources on a sustainable basis for the benefit of all Namibians both Present and Future.[35]

For its part, Vision 2030 provides the basis for legal and policy action for 'sustainable development' and 'natural resources'. Chapter 5 of the document states that:

> The integrity of vital ecological processes, natural habitats and wild species through out Namibia is maintained whilst significantly supporting national socio-economic development through sustainable low impact, high quality, consumptive and non consumptive uses, as well as provision diversity for rural and urban livelihoods.[36]

The most important government institutions responsible for the development of ABS regimes and biotrade industries are the Ministry of Water, Agriculture and Forestry (MWAF) and the Ministry of Environment and Tourism (MET). As far as the former is concerned, the legislation that governs ABS/biotrade-related activities is the Forestry Act No. 12 of 2001.[37] The act not only allows for the establishment of community forestry and communal lands in Namibia but also seeks to consolidate the laws relating to the management and use of forests and forest products. The MWAF also actively engages in research on and the development of local plant species and other biological resources. In this regard, the Directorate of Agricultural Research and Training within the MWAF, through the National Botanical Research Institute, is responsible for preserving plant diversity and regulating the material transfer agreements[38] associated with plant genetic materials.

The Directorate of Agricultural Research and Training is also responsible for coordinating Namibia's Indigenous Plants Task Team (IPTT).[39] Launched in April 2000, the IPTT is a

35 Republic of Namibia, 'Constitution of the Republic of Namibia'. Windhoek: Government Printer, 1990.

36 Republic of Namibia, Office of the President, 'Namibia Vision 2030: Policy Framework for Long-term National Development'. Windhoek: NAMPRINT, 2004.

37 This act replaced the Forestry Act No. 72 of 1968 and the Preservation of Trees and Forests Ordinance No. 37 of 1952.

38 As defined in Henderson J, 'Counterpoint: MTAs are a practical necessity', *Nat Biotechnol*, 25, 2007, pp. 722–724. A material transfer agreement (MTA) is a type of legally enforceable contract that governs the transfer of research materials between research institutions and/or companies. By setting out the terms under which materials and associated data may be accessed and used, an MTA is a legal mechanism for the protection of the interests of the owners of discoveries and inventions, while promoting data and material exchanges in the scientific research community.

39 The IPTT is multi-stakeholder group providing technical support for the design and implementation of sustainable approaches and strategies for the harvesting, processing and trading biological resources.

technical team consisting of 14 core members who represent government organisations, non-governmental organisations, community-based organisations, smallholder farmer unions, academia and donor agencies. Using financial grants from external donors such as the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH and Millennium Account Challenge–Namibia, the IPTT plays a crucial role in planning and implementing specific biotrade projects, conducting research and developing products involving INPs and, more broadly, coordinating and promoting the INP industry in Namibia.

With regard to the MET, the main legislation guiding its engagement with the commercialisation of INPs is the Nature Conservation Ordinance No. 4 of 1975. This ordinance not only provides a comprehensive list of protected species but also highlights the need to obtain research permits for any scientific study conducted on plant species within the country. Provisions pertaining to the sustainable and responsible harvesting of INPs such as marula oil, devil's claw, !nara, and hoodia are all set out in this ordinance. Like the MWAF, the MET has set up various institutional arrangements for the coordination of ABS and biotrade-relevant activities, most importantly the Interim Bioprospecting Committee (IBPC). The IBPC was formed in 2007. Administratively situated within the MET Environmental Commissioner's office, it comprises officials and experts from the MWAF, the Ministry of Justice and the Ministry of Trade. The key mandate of the IBPC is to create an enabling environment for the private and public sectors to undertake scientific research in Namibia, especially into the potential application of materials such as micro-organisms, fragrance ingredients, locally available gums and resins, medicinal plants, and indigenous crop and livestock breeds and fisheries. The IBPC also aims to provide support for the development of the biotrade sector in Namibia and is expected to continue its services until national ABS legislation comes into effect. A major area of concern however, is that the committee does not function as efficiently as it should and is overly bureaucratic, making access difficult.

Falling under the MET and MWAF respectively, conservancies and community forests are also locally based entities that play a decisive role in biotrade and ABS initiatives.[40] The legislative framework that regulates the establishment of communal and commercial conservancies is the Nature Amendment Act No. 5 of 1996. While conservancies grant local communities the user rights over activities involving wildlife and related eco-tourism activities. In community forests the relevant community is entrusted with the power to decide on activities pertaining to the management of forests, woodlands and other types of natural vegetation. It is this arrangement that underpins the Community-Based Natural Resources Management (CBNRM) approach in Namibia. The CBNRM approach not only encourages better resource management and promotes the empowerment of local communities but also facilitates the integration of customary

40 A key challenge facing Namibia is the lack of integration between conservancies and community forests because they fall under different acts and ministries. Forestry used to be a department within the MET, which is why the ordinance act's list of protected species includes both wildlife and plants.

institutions and traditional agrarian practices and knowledge into resource management and enforcement processes.[41]

It is worth mentioning here that Namibia's National Biodiversity Strategies and Action Plans (NBSAPs) are also important strategy documents outlining the country's biodiversity targets and priorities. The first action plan (NBSAP1) ran for 10 years (2001–2010), whereas the second plan (NBSAP2), which is a carry-over from NBSAP1, is under implementation from 2013–2022. The NBSAPs are based on a vision for 'Namibia's biodiversity to be healthy and resilient to threats, and for the conservation and sustainable use of biodiversity to be key drivers of poverty alleviation and equitable economic growth, particularly in rural areas'.[42] Cognisant of the potential of ABS to promote sustainable biotrade and bioprospecting benefits for ILCs, the plans delineate various strategies and activities relevant to the ABS development process.

One of the strategic goals of the NBSAP2 was to endorse and gazette national ABS legis-lation by 2015 and ensure the development of equitable and fair benefit sharing mechanisms. It also envisages the establishment of a Competent National Authority by 2018 as a new institutional arrangement to oversee ABS-related initiatives. In so doing, the NBSAP2 provides a framework whereby the country can effectively promote and regulate biotrade and bioprospecting, protect traditional knowledge and negotiate ABS agreements.

ABS DEVELOPMENT PROCESS IN NAMIBIA

In September 2012 the 14th meeting of the African Ministers Conference on the Environment, held in Arusha, Tanzania, resolved that the AU Commission should continue its ongoing work in the development of guidelines to support the coordinated implementation of the Nagoya Protocol in Africa.[43] Accordingly, the AU Commission drafted a practical guide entitled 'African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa'.[44] Endorsed by the 2015 AU Summit, the document provides policy guidance on how to facilitate ABS implementation in the region and promote coordination and collaboration among member states. It seeks to promote the utilisation of Africa's genetic resources and traditional knowledge to support

41 Long SA (ed.), *Livelihoods and CBNRM in Namibia: The Findings of the Namibian Wildlife Integration for Livelihood Diversification (WILD) Project*. Windhoek: Imprint, 2004.

42 Republic of Namibia, Ministry of Environment and Tourism, 'Namibia's Second National Biodiversity Strategy and Action Plan (2013–2022)'. Windhoek: Government Printer, 2014.

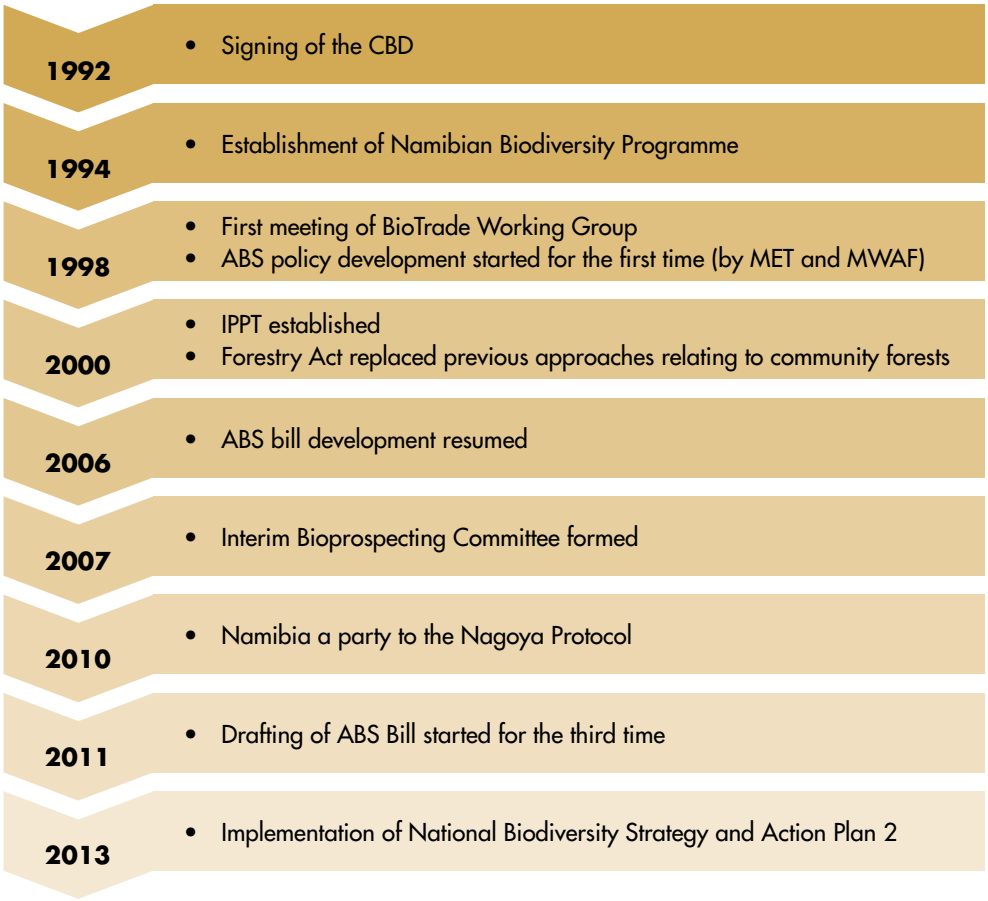
43 See UNEP, 'Report of the Fourteenth Session of AMCEN', 14 September 2012, http://staging.unep.org/roa/Portals/137/Docs/UNEP-AMCEN-14-16%20%2014th%20Session%20Reportfnl.doc.pdf, accessed 8 March 2017.

44 The full text of the guidelines can be accessed at Biodiversity International, 'African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa', https://www.bioversityinternational.org/fileadmin/user_upload/campaigns/Treaty_and_Nagoya_Workshop_2015/AU_Practical_Guidelines_on_ABS-English.pdf, accessed 8 March 2017.

technology transfer, food security and economic growth, while encouraging conservation and the sustainable use of biodiversity.

Building on its national policy and regulatory frameworks and under the leadership of the MET, Namibia has been working on an access and benefit sharing bill since 1998. The process was put on hold in 2006, until an international framework on ABS was finalised, so as to align the draft bill with the provisions of the international legislation. With the Nagoya Protocol coming into force in 2010, Namibia resumed drafting the bill in 2011. Figure 1 summarises key ABS-related milestones that have been reached in Namibia since the country became a signatory of the CBD.

FIGURE 1 SUMMARY OF THE PROCESS AND CONTEXT OF DEVELOPING BIOTRADE AND ABS IN NAMIBIA



As part of Namibia's ABS legislation development process, there were various efforts on the part of the government to organise all-inclusive regional and national consultation forums aimed at raising awareness, discussing the draft bill, gathering feedback and agreeing on the final text. As noted by some key stakeholders during the fieldwork for this study however, the consultation processes were not executed as planned and seem

to have had certain administrative and technical shortcomings. The challenges included their ad hoc nature, the fact that consultations only took place in the capital city, the non-participation of key stakeholders (ie, community groups and conservation role players), and the sidelining of concerns expressed by some organisations.[45] Regardless of the challenges, MET officials have tried to engage the public and gather inputs for incorporation into the draft ABS Bill. The final version was submitted to Parliament and it was expected that the bill would be enacted in the first half of 2017.

A closer examination of the bill suggests that the country has drafted a comprehensive legal framework to ensure the conservation, evaluation and sustainable use of genetic resources and associated traditional knowledge.[46] The bill also aspires to maintain and improve biological diversity, promote the fair and equitable distribution of benefits through a well-designed ABS regime, and build scientific and technological knowledge relevant to the conservation and use of biological resources. The building blocks of the draft ABS Bill are the principles of prior informed consent (PIC) and mutually agreed terms (MAT) – key concepts in both the CBD and the Nagoya Protocol. PIC implies the agreement of national government authorities, and ILCs in some cases, for ABS activities to take place in their region. MAT refers to the bilateral contract or binding agreements between the state and other role players that specifically define ABS conditions in a given country.[47]

Central to the draft ABS Bill is the definition of key concepts. Bioprospecting, for instance, is defined as 'an exploratory activity that aims to identify genetic resource components and information on associated traditional knowledge, with potential for commercial use'.[48] 'Local community' is defined as[49]

> a human population in a distinct geographical area, with ownership or stewardship over its natural resources and genetic resources and associated traditional knowledge and technologies governed partially or completely by its own customs, traditions or laws, provided that ownership of natural resources does not include ownership of genetic resources.

However, no definition has been provided for 'indigenous community/people' or 'commercial use/exploitation', although the bill mentions commercial exploitation and commercial research permits in its provisions.

Although not explicitly, the draft ABS Bill seems to cover biotrade-related activities, ie using INPs in research and product formulation. It also provides a framework whereby traditional systems of access, use or exchange of genetic resources and associated

45 Interviews with key informants in the civil society sector, July 2016.

46 MET (Ministry of Environment and Tourism of Namibia), 'Access to Genetic Resources and Associated Traditional Knowledge Bill (Third Version)'. Windhoek: MET, 2006.

47 Greiber T *et al.*, 'An Explanatory Guide to the Nagoya Protocol on Access and Benefit-Sharing', IUCN (International Union for Conservation of Nature and Natural Resources) Paper 83. Gland: IUCN, 2013.

48 MET, *op. cit*.

49 *Ibid.*, p. 7.

traditional knowledge by and between local communities can be protected and sustained. Hence it is fair to say that the ABS Bill has the potential to promote the recognition of the rights of ILCs and strengthen existing biotrade projects by attaching value to genetic resources and associated traditional knowledge. Given that the interface between biotrade and ABS is legally intricate and that neither the CBD nor the Nagoya Protocol clarifies the distinction between the two,[50] it is necessary to critically examine how the new institutional and regulatory arrangements could affect existing biotrade projects and business in Namibia.

No definition has been provided for 'indigenous community/people' or 'commercial use/exploitation', although the bill mentions commercial exploitation and commercial research permits in its provisions

IS ABS BAD FOR THE COMMERCIALISATION OF INPS?

It is evident that the success of INP commercialisation in Namibia, especially in the initial stages of locating biological resources, rests on the active involvement of ILCs. Although there has been a decline in traditional knowledge owing to increasing urbanisation and the expansion of formal education systems, the traditional knowledge of ILCs is used to facilitate research and development at local, national and international level. Often the processing and trading of INPs is based on the PIC (consent) and MAT (agreement) principles defined above. This approach has helped the country to track the transfer of materials to user countries thereby thus ensuring equitable benefit-sharing with ILCs.

Prior to analysing the possible effects of the proposed ABS Bill on biotrade, it is crucial to understand the key areas of convergence and divergence between the commercialisation of INPs (biotrade) and ABS activities. Table 2 illustrates the interface between the two.

As is clear from the table, the ABS mechanism deals specifically with genetic resources, their derivatives and associated traditional knowledge, whereas a biotrade approach focuses on biological resources that are used for or in trade and ecosystem services. In legal terms there are no specific laws regulating biotrade, although various sectoral laws and regulations affect businesses participating in biotrade. ABS, on the other hand, involves several national, regional and international laws and regulations that have the potential to enhance ABS undertakings. The benefits of both ABS and biotrade are monetary and non-monetary and reward all role players in the value chain. These role players could be the state, farmers, collectors, breeders, hunters or producers.

Global trends suggest that the commercialisation of INPs has benefitted millions of smallholder farmers, gatherers, hunters and producers by creating employment opportunities and generating additional cash income. From an environmental management point of view, more than 19 million hectares of land are sustainably managed by organisations and ILCs working on the commercialisation of INPs.[51] Considered a biotrade success, Namibia has made remarkable progress in the trading and processing of biological resources. The government's INP market bulletin reveals that the country has exported

50 Pisupati B & SK Bavikatte, 'Access and benefit-sharing as an innovative financing mechanism', *Perspectives*, 16, 2, 2014, pp. 53–70.

51 UNCTAD, *Report of the III BioTrade Congress – Biodiversity and Trade: Promoting Sustainable Use Through Business Engagement*, 2016.

various types of INPs over the past five years and secured millions of dollars for the rural communities that supplied the products.[52] This success can be attributed to the institutional arrangements put in place by the government to ensure that private investors are registered with the MET, apply for permits and authorisations and sign benefit sharing agreements in exchange for access to biological resources.

TABLE 2 SIMILARITIES AND DIFFERENCES BETWEEN BIOTRADE AND ABS

Parameter	Commercialisation of INPs (biotrade)	ABS
Primary benefit	Utilisation of biodiversity (at all levels), often through and along a value chain	Access to and utilisation of genetic resources (and derivatives)
Forms of benefit	Non-monetary and monetary benefits	Non-monetary and monetary benefits
Requirements to access biological resources	Prior informed consent (to the sustainable use of biodiversity and traditional knowledge)	MAT (to define access and conditions of use) PIC (to the sustainable use of use genetic resources and derivatives, and traditional knowledge)
Legal frameworks	No specific law	Many ABS measures and regulations
Inter-sectoral linkages	Business is affected by various sectoral laws and regulations	No specific references to biotrade, although some exceptions (South Africa) and exclusions (Peru)
Institutional arrangement	Falls within the environmental or trade sector	Falls within the environmental sector, but is often linked to other sectors

Source: Adapted from Ruiz M & V Rossow, 'Biotrade and ABS in a Nagoya Protocol era', *UNCTAD BFTIII Peer Review*, 2015

With the country set to pass national ABS legislation, it is expected that the mechanisms for access to biological and/or genetic resources and the sharing of benefits with local communities will be affected by the introduction of new institutional arrangements and regulatory requirements in the ABS and biotrade sectors. From a policy angle, it means that the adoption of the draft ABS Bill will pose a small but significant risk in the INP industry, depending on the scope of the national ABS framework is defined.

The first expected challenge is related to determining when and how ABS principles apply in the commercialisation of INPs.[53] At the moment, an increasing number of biotrade

52 MCA-N (Millennium Challenge Account–Namibia), 'Indigenous Natural Products in Namibia', *INP Market Bulletin*, 5, 2013.

53 A biotrade activity may involve the use of non-timber forest products, such as the Brazilian nut in the Amazon, and require a concession and authorisation to proceed from a forestry ministry. Similarly, the harvesting of kernels from the argan tree in Morocco might also require permits under the agriculture or environmental sectors, as it constitutes a classic biotrade activity. In either of these two examples, if a company decided to undertake a new line of research and development to identify specific molecules that were then used and incorporated into a pharmaceutical, cosmetic or other product, ABS frameworks would certainly apply. See UNCTAD, 2016, *op. cit*.

stakeholders do not seem to have a clear understanding of how the proposed ABS rules apply to INP industries. Some groups want all biotrade activities to be labelled as ABS, while others demand a clear distinction between biotrade and ABS activities. This kind of confusion is owing to the lack of clarity on key concepts such as 'genetic resources', 'biological resources', 'commercial' and 'non-commercial' research and development and 'indigenous communities'. It is therefore extremely important that Namibia clearly define the scope of the ABS framework, ie what it does and does not cover, and how it relates to the commercialisation of INPs. This is a crucial step in strengthening the effective implementation of ABS regimes and promoting sound biotrade in value chains. Without this, the ambiguity of the bill will have a significant impact on the harvesting, processing and trading of INPs. As observed in India, the inadequate definition of key ABS concepts and resulting divergent interpretations can lead to conflict and implementation difficulties.[54]

The adoption of the draft ABS Bill will pose a small but significant risk for the INP industry, depending on how the scope of the national ABS framework is defined

The second challenge is associated with the regulatory procedures that should be followed when ABS or biotrade is initiated and implemented. As mentioned earlier, the trade in biological resources in Namibia operates on the basis of formal registration, permits, authorisations and even material transfer agreements. In other words, the country implicitly follows PIC and MAT principles in its biotrade projects, which could make it easier to meet ABS requirements. However, the type of PIC and MAT required for biotrade may be different from that which ABS is expected to require. In the absence of a clear regulatory mechanism in concluding MAT and providing PIC, there is the possibility of a slow decision-making process and heavy regulatory burdens. This may discourage potential biotrade clients, collaborators and partners, and might also stifle opportunities for research and development and local capacity building.

Unnecessary regulatory burdens could be addressed by creating favourable conditions for the processing and validation of PIC and MAT within the biotrade industry using simple and practical administrative and legal procedures. First, there is a need to integrate the duties and responsibilities of key ministries, mainly the MET and MWAF, and relevant institutions within these two sectoral offices, such as the IBPC and IPTT. ABS essentially falls under the MET, but plant resources are managed by the MWAF. Therefore, properly integrating the responsibilities of the two departments is crucial for avoiding unnecessary regulatory burdens. Second, as suggested by environmental lawyers, undertaking new PIC and MAT for those biotrade projects that already have them is not necessary, as the existing PIC and MAT should be considered sufficient for the purposes of complying with ABS regulations. This may imply fewer direct benefits for the national government, but it would definitely facilitate the sustainable commercialisation of biological resources, economic empowerment of ILCs and eventually the realisation of the underlying objectives of the ABS framework.

54 In India, all biotrade activities are subject to ABS because the country's Biological Diversity Act of 2002 and Rules of 2004 do not provide a clear distinction between 'biological resource' and 'genetic resource'.

The third challenge is related to correctly identifying which local community groups should give PIC in terms of genetic resources. In Namibia this seems to be a major source of concern as the draft bill vests the ownership of all genetic resources in the state. In addition to this, some biotrade stakeholders are concerned that the ABS Bill consultation process created false expectations in various local community groups. For instance, most of the ABS consultation meetings organised by the MET mainly involved traditional authorities from various regions and fewer conservancy and community forest representatives. As a result, traditional authorities started to view themselves alone as being eligible for all the benefits emanating from the access to biological resources and associated traditional knowledge. This unrealistic expectation regarding potential economic benefits basically arises from the misconception that the right to use genetic resources follows automatically on the rights to ownership and usage of the plants.

In such a situation, it is important to identify which community groups own the genetic resources and traditional knowledge and are entitled to benefits. Sharing benefits with traditional authorities is important but at the same time the ILCs' role in preserving the genetic resources in the country must be recognised. Benefit has to be properly allocated. This can be achieved by clearly stipulating the right of local communities to give PIC for access to genetic resources and possibly also to negotiate MAT. As far as signing PICs and MAT is concerned, Namibia can adopt Kenya's successful approach, where local communities identify and authorise persons to sign the necessary consent papers and agreements on their behalf. However, the manner in which negotiations take place should be carefully examined and monitored given the various bargaining powers at play.

CONCLUSION

Namibia has a strong track record in terms of engaging with biotrade and ABS. Trade in biological resources and biodiversity products offers a range of opportunities that have encouraged economic development, particularly at local community level. Although the country does not have formal ABS legislation, it has already created favourable conditions for allowing access to biological resources (through, for example, the Interim Bioprospecting Committee and the country's NBSAPs). At the time of writing this report, the country is gearing up to implement the Nagoya Protocol through the enactment of ABS legislation. With the bill expected to come into effect in 2017, there are already expectations that it will provide a tool for regulating access to genetic resources, creating international market opportunities for local communities and, more broadly, promoting the sustainable use and management of biodiversity.

It is clear that ABS and biotrade have a wide range of governance-related features in common. Both sectors involve multiple stakeholders, are inter-sectoral and operate in internationally competitive markets. Yet, as seen in other developing countries, this overlap may create confusion among stakeholders, ultimately leading to implementation difficulties.

Governments need to ensure that they do not introduce overregulation and poorly formulated laws. Moreover, during ABS policy formulation processes, there should be a clear understanding of which INPs and role players or stakeholders will be regulated by

the policy. As seen in other countries, tighter regulations may deter potential investors, become a major obstacle to research and development and in turn negatively affect the livelihoods of the poor who depend on the commercialisation of INPs.

Furthermore, policymakers have to ensure that their country's ABS legislation does not leave a space for differential interpretations of key concepts and provisions. There is a need to clearly define the scope of the ABS and take a fresh perspective on local implementation modalities. For example, attempting to include any commercial use and exploitation of biological resources in national ABS legislation will create serious administrative and regularity problems in the implementation of the Nagoya Protocol and could also undermine the key objectives of ABS as explained in the protocol.

In Namibia there is conflict between traditional authorities (local institutions) and ILCs, suggesting that there are unrealistic expectations among traditional authorities who view themselves as the main beneficiaries of ABS. The government needs to address this misconception by carefully identifying the resource and knowledge owners as well as the legitimate beneficiaries, especially where there may be multiple ethnic groups with the same traditional knowledge. By virtue of their knowledge and proximity to the resource base, ILCs are usually better positioned to be the primary point of contact, with the state and other institutions acting as a second and complementary layer of governance.

Authorities need to very carefully examine the possible consequences for all role players of introducing ABS legislation and formalising the INP sector. In other words, the way in which ABS is to be operationalised and applied to biotrade needs to be discussed in detail. Key to this is having a series of consultations with the private sector, mainly biotrade stakeholders, and exploring alternative approaches to achieving equity and sustainability that are based on local wisdom and social learning processes, and may not necessarily have regulation at their core. The outcome of such meetings should be a mutually supportive regulatory framework and administrative practices and technical assistance programmes aimed at promoting the commercialisation of INPs in value chains and strengthening the implementation of the Nagoya Protocol.

For other African countries, implementing the Nagoya Protocol comes with both opportunities and challenges. The challenge is to develop comprehensive ABS legislation and promote its effective implementation without imposing heavy regulatory and administrative burdens on existing biotrade projects and business. Taking cognisance of lessons learned in the implementation of ABS in other countries and consulting the AU Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa will be useful steps in the introduction of comprehensive ABS legislation that supports economic development and the trade in biological resources.

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