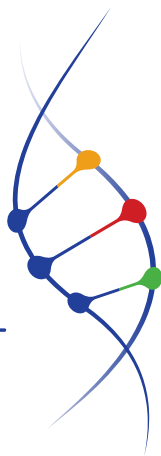


THE **ABS**
CAPACITY
DEVELOPMENT
INITIATIVE



Concept for a National ABS Gap Analysis

www.abs-initiative.info

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1. Introduction

This methodology for an ABS gap analysis was developed by the ABS Capacity Development Initiative to support strategic planning in its African partner countries, which the ABS Initiative supports in the national implementation of the Nagoya Protocol (NP) and the African Union Strategic and Practical Guidelines for a Coordinated Implementation of the Nagoya Protocol in Africa (AU Guidelines).. The suggested methodology can also be applied in other than African contexts; In that case, the reference to the AU Guidelines will be obsolete or can be replaced by other applicable regional guidelines.

The methodology seeks to provide a standardised manner in which a country's existing or emerging national ABS measures can be evaluated to determine to what extent they address the obligations and other provisions set out in the NP and include the guidance provided in the AU Guidelines. The proposed gap analysis should not limit itself to the regulatory system but should aim at analysing the complete ABS system in a country. Besides the development of an effective ABS regulatory framework, this includes the negotiation of effective and enforceable ABS contracts, the establishment of ABS-compliant value chains, and the involvement of indigenous peoples and local communities based on the recognition of their traditional and codified rights.

It thus aims to provide a coherent approach to identifying gaps that could be addressed – by a country itself as well as external partners – to make national ABS measures compliant with the requirements and minimal standards set out in the NP and, in an African context, with the AU Guidelines. Importantly, the gap analysis is not a goal in itself but only a first step towards building comprehensive ABS capacities.

We recommend structuring the gap analysis in five parts:

- Part A seeks to identify general progress and steps taken in the country towards the ratification/accession and implementation of the NP. This is of particular importance for external partners to clarify how they could build on these steps in their support and interventions.
- Part B seeks to get further clarity on the legal, policy and administrative landscape for the implementation of the NP in the country. The analysis should outline what is needed to ensure that legal, policy and administrative measures in place or to be developed are in line with the requirements set out in the NP and what needs to be done towards achieving that goal, bearing in mind the elements of an effective ABS system as described above.

- Part C seeks to identify the institutional arrangements currently in place and to what extent these are fit for purpose to support the implementation of the NP and an effective ABS framework.
- Part D addresses the results of a publication and patent landscape analysis. The IT-based text-mining approaches help assess which genetic resources and associated traditional knowledge appear in publications and patent documents, who are the main users (persons and institutions) and the networks between domestic and foreign persons and institutions involved in R&D.
- Part E gives recommendations to countries for national implementation of the NP and the AU Guidelines in order to foster the development of an effective ABS framework.

A complete ABS country assessment would consist of desktop studies, country visits with a team of specialised experts, interviews with a wide range of stakeholders, establishing contacts with decision makers, conducting stakeholder workshops and developing a first road map outlining possible fields of ABS capacity development based on the information collected and needs discussed.



2. Issues to be addressed

The analysis in its five parts needs to address the overarching issues and answer a set of core questions in the context of three fields: development of effective ABS regulatory frameworks, negotiation of fair ABS contracts for the establishment of ABS-compliant value chains, and the involvement of indigenous peoples and local communities in the relevant processes.

2.1 Part A: General situation in the country: steps towards ratification/accession and implementation of the Nagoya Protocol

- What steps have been taken to accede to/ratify the NP in the country?
- What steps have been undertaken to implement the NP in the country?
- Which groups of stakeholders have been consulted in these processes?
- What are the main obstacles encountered so far in these processes?

2.2 Part B: General situation in the country: legislative, administrative and policy measures on ABS

- Describe briefly the legal system of the country in question. Is the legal system based on civil law, common law, or is the jurisdiction a mix of both?
- Describe whether main stakeholders regard a national law as necessary for the NP to be domesticated and whether the process to develop new or amend existing laws/regulations has commenced.
- Do main stakeholders see a need for a stand-alone ABS law or can ABS be regulated by existing legislation: What would be the most efficient way of going about this?
- If there is no need for a stand-alone law, describe the policy, institutional or regulatory mechanisms in place that could be adapted for the domestication of the NP.

- Describe whether under the national law it is possible to take into account the standards set by the AU Guidelines, or whether some other national procedure is necessary to allow for an integration of the standards set by the AU Guidelines.
- Describe what can be done through laws and regulations and how best the development of a law and regulation can be sequenced.
- Is there any merit in considering adopting interim measures to cover the period before specific legislation/regulations will be adopted?
- If the country is a party to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which national plant genetic resources for food and agriculture (PGRFA) have been put in the Multilateral System (MLS), and which PGRFA will be regulated through the NP system? Describe the existing national system to access PGRFA under the MLS. What is the number of PGRFA accessions that have been granted by and to the country since it became a member?
- Has the country requested or granted access to genetic material under the World Health Organization's Influenza Preparedness Framework (WHO PIP)? Describe the respective national system and, if relevant, inform about the benefits received.

2.3 Part C: General situation in the country: institutional arrangements/measures and permitting systems

2.3.1 Designation and roles of ABS-institutions

- Indicate whether a National Focal Point (NFP) has been nominated and describe its functions. Do the functions of the NFP include providing information as required under article 13 of the NP?
- Indicate whether the country has designated one or more Competent National Authorities (CNA) for ABS. Has the country established a system of "lead agencies" working under the CNA(s), e.g. for implementation of sectoral ABS regulations?
- Indicate whether the country has designated one or more check-points. What is their role in receiving information on the utilisation of GR and aTK in the country?

- Describe the situation with regard to numbers of mandated staff members, available work time, professional experience.
 - What coordination mechanisms exist between the NFP and the CNA(s) in receiving ABS applications? If an ABS permitting system is in place, is it clear to whom an access request must be submitted?
 - Describe the PIC system that is foreseen within the ABS system.
 - Describe the compliance and monitoring system for ensuring compliance by domestic users of GR and aTK with PIC and MAT issued by provider countries.
 - Describe the characteristics and procedures of the ABS system ensuring transparency for an applicant.
 - Does the CNA provide an internet page, which gives a comprehensive overview about the ABS framework?
 - Does an online application system exist? Describe its main features.
 - Describe the role of IPLCs in granting PIC and evaluate whether the process of obtaining PIC is well set out, understood and clear.
 - What is the scope of the ABS permitting system in place? Please describe the policy, law or regulation, including how and to which extent they address:
 - All genetic resources within the scope of article 15 of the CBD
 - aTK within the scope of the CBD
 - Access for which type of use taking into account the different approaches of the CBD and the NP
 - Does the ABS permitting system provide for differentiation of access to GR based on the nature of sources (e.g. wildlife; animal; PGRFA; marine; together with aTK), where they occur (forest; farmland; marine areas; protected areas; etc.) and are there different systems for access to each? Describe briefly.
 - How does the ABS permitting system deal with access to private GR on private land (e.g. domesticated animal GR) and access by one user to multiple private providers (e.g. trading company collecting GR from many growers for use in a value chain)?
 - What are the elements of the ABS permitting system that are currently enabling monitoring of utilisation? Which elements could be used for a future monitoring system?
 - Does the ABS permitting system contain provisions based on special considerations with regard to access for:
 - Non-commercial research purposes, taking into account the need to address a change of intent for such research?
 - Purposes in relation to cases of present or imminent emergencies that threaten or damage human, animal or plant health?
 - The importance of PGRFA and their special role for food security?
- If such provisions with respect to access for the aforementioned special purposes are in place, briefly describe the same, including reporting requirements by the user.

2.3.2 ABS Clearing-House Publishing Authority

- Has a publishing authority for the ABS Clearing-House been designated? Describe any challenges it faces to work effectively.
- Which information from the country is already available on the ABS Clearing-House?
- Did the country already publish information on ABS permits, PIC and MAT in the ABS-Clearing House and thus establish Internationally Recognised Certificates of Compliance?

2.3.3 Permitting systems

- List all the institutions in the country that are involved in the ABS permitting process. Describe the role of each institution listed and indicate whether there are formal or informal interaction channels between them in the ABS permitting process. If the institutions have a mutual agreement explaining the role and responsibilities of each in the ABS permitting process, indicate as much.
- Which other permits (e.g. research permits, sanitary permits) are necessary as precondition for the ABS permit and exportation of GR? Establish a flowchart of the current system.

2.4 Part D: General situation in the country – Assessing the current extent of utilisation of genetic resources and associated traditional knowledge based on references in publications and patents.

- For this section, we recommend applying the established text-mining methodology developed by the ABS Initiative in cooperation with Dr. Paul Oldham (UK).

- Results of this analysis will show all available details about publications and patents dealing with GR and aTK from the assessed country.
- This information will form a basis for the interviews and the workshops during the country visit; they will be of specific importance for informing decision makers about the R&D interest in national GR and aTK and their potential value.
- Results can be used in developing specific capacity development activities, for example:
 - Targeted information for main domestic and foreign users to increase knowledge about and compliance with ABS frameworks,
 - Specific activities concerning ABS contract negotiations and value chain development.

2.5 Part E: Recommendations to countries for national implementation of the NP and the AU Guidelines

* Provide brief recommendations touching on each of the four components assessed.

3. Practical approach

The full gap analysis should ideally comprise three phases:

- 1) **Preparatory phase** with desktop studies addressing the questions contained in the questionnaires covering the three topics ABS regulation, ABS contracts and involvement of IPLCs as well as the analysis of the publication and patent landscape
Results: preliminary input in questionnaires and results/slides of the analyses
- 2) **Country visit** with a team of experts covering the three topics, interviews with the main ABS-related institutions and stakeholders
Results: completed questionnaires and summary report
- 3) **Concluding phase** preparing the gap analysis report
Results: integrated gap analysis following the concept set out in Chapter 2

The forms for the questionnaires and the summary report can be found in the annex.

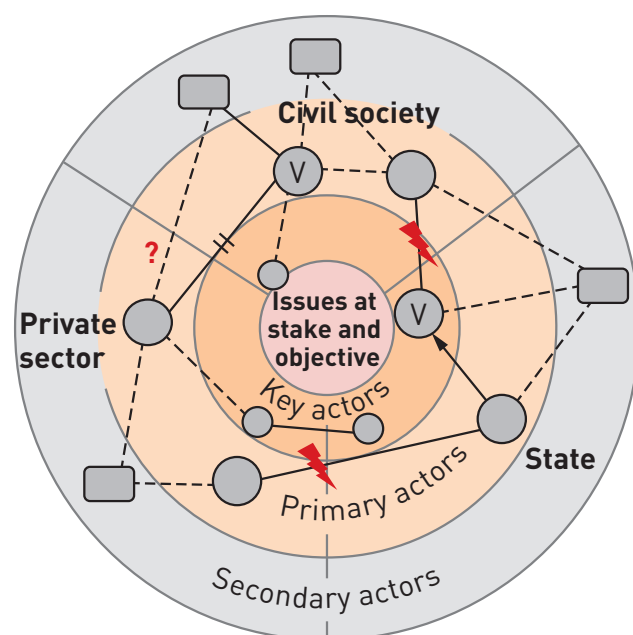
Overview tools

A **table** could give an overview of the ABS landscape in a country:

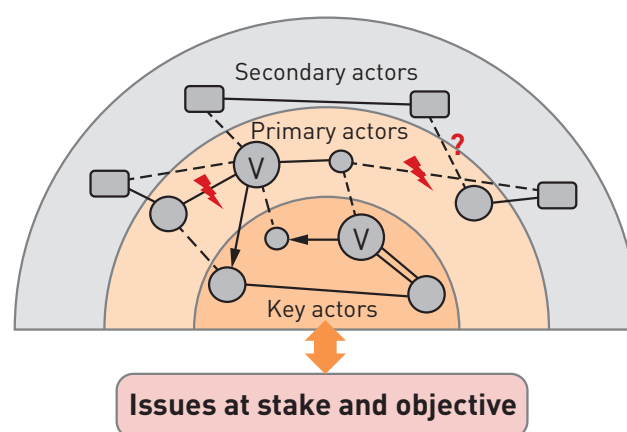
Treaty/Guidelines	Ratification/Adoption/ Member	Implementation	Established MATs/SMTA
CBD	Yes/No	e.g. ABS Regulations, Biodiv Law Art. xx-yy	n (pre-Nagoya ABS system)
NP	Yes/No	e.g. ABS Regulations, Biodiv Law Art.; link to ABS-CH	n (post-Nagoya system)
ITPGRFA	Yes/No	# of accessions put under the MLS per notification, link to ITPGRFA webpage	n SMTAs
WHO (PIP framework ³)	Yes/No	e.g. ABS Regulations, Biodiv Law Art. xx-yy	n SMTAs
UNDRIP	Adopted/Not adopted	e.g. IPLC-related regulations and laws, ABS Regulations, Biodiv Law Art. xx-yy	n (pre-Nagoya MAT for aTK if they are do not fall under the categories listed above)
TRIPS/WIPO	Yes/No	e.g. disclosure of origin and ABS compliance as elements of national patent law	not applicable

A **Map of Stakeholders** could be created to visualise the range of ABS stakeholders and their relationships.

Example of map of actors in the onion format



Example of map of actors in the rainbow format



4. Annex

4.1 Summary report of country analysis

1. General background information

Country:

Team members:

Date of the country assessment:

2. Synthesis of information gathered through the questionnaires (2-3 pages max.)

2.1 Summary of findings: ABS Frameworks

-

2.2 Summary of findings: ABS Agreements - valorisation

-

2.3 Summary of findings: Effective participation of IPLCs based on BCPs and/or community procedures

-

3. Final observations/conclusions and way forward (1page max.)

Strengths

-

Weaknesses

-

Possible interventions at the political level

-

Possible interventions at technical level

-

4.2 Questionnaire 1: National institutional and regulatory ABS frameworks

Questions (and Rationale)

Ratification/Accession

A. Process

A1. What are the remaining steps towards ratification/accession?

The aim is to identify, as specifically as possible, the expected process, timeline and issues pending in the ratification/accession process.

A2. How would you describe the challenges and opportunities in the process of ratification/accession?

B. Existing policies

B1. What ABS-related policies are already in place?

ABS-related policies would include all principles, statements, strategies and guidelines, issued or recognised by the government, that address issues linked to the valorisation and use of biodiversity and/or aTK, ownership or usage rights over biological or genetic resources and/or aTK, and the collection, research, development and/or commercialisation of biodiversity-based knowledge, products or services. ABS may be the main issue in the policy or only one of the elements within a broader policy, such as a sustainable forestry strategy or biotechnology policy.

B2. To what extent do existing policies address ABS (for example, addressing ownership rights over genetic resources or aTK or establishing principles for benefit sharing)?

- To what extent would you say existing policies are consistent with the NP?
- Are the AU Guidelines reflected in the ABS policy? If yes, to what extent?

C. Evolving policies

C1. Is there any ongoing development or revision of ABS-related policies? Please provide details of the content and process for such development and revision.

The aim is to identify, as specifically as possible, the expected objective, process, timeline and issues to be addressed. Government websites, press articles etc. may serve as information sources.

C2. What are current plans to make new or revised policies consistent with the NP and the AU ABS guidelines?

D. Participation

D1. How would you describe the participation of stakeholders within public, private, academic and other sectors in the development of ABS-related policies?

The aim is to identify the main groups involved, the way in which they contribute, and their perceived interests and influence.

D2. In your opinion, how could stakeholder participation be enhanced?

Regulatory frameworks

E. Existing ABS laws and regulations

E1. Are there ABS-related laws or regulations and to what extent are they consistent with the NP?

ABS-related laws and regulations would include legal documents, such as constitutions, laws, decrees, acts and regulations issued by the government, that address issues linked to the ownership, usage and/or consultation rights over biological or genetic resources and/or aTK; authorisation to collect, cultivate, use, research, develop and/or commercialise biodiversity-based knowledge, products or services; and/or rules on the sharing of information, monetary and/or non-monetary and other related benefits. ABS may be the main issue in the legal document or only one of the elements in a broader document, such as a protected area regulation or fisheries law.

E2. To what extent do existing laws or regulations address ABS (for example, addressing ownership rights over genetic resources or aTK or requiring permits for the collection or research of biodiversity)?

E3. Are there any references to or requirements for ex-situ collections in these ABS-related laws and regulations? How does the country deal with ex-situ collections outside the country?

E4. How would you describe the participation of stakeholders within public, private, academic and other sectors in the development of ABS-related laws and regulations?

E5. How do different groups of stakeholders perceive the ABS-related laws and regulations (e.g. with regard to usefulness and transaction costs)?

E6. Do IPR laws contain ABS-related elements as disclosure of origin or ABS compliance?

F. Permitting process

F1. Are there any permitting processes that relate to ABS (e.g. in sectors such as protected areas, wild collection, procedures for ex situ access, research projects)?

ABS-related permitting processes would refer to activities that require licenses or permits and the procedures put in place to obtain such authorisations. For example, authorisations to collect biological resources from protected or public lands, permits for export of samples of biological material, etc.

F2. How would you describe the steps, sequences, procedures, timelines in these ABS-related permitting processes?

G. Compliance and monitoring system

G1. What legal and administrative measures were taken to build up a compliance and monitoring system?

G2. Which information has been submitted to the ABS Clearing-house on ABS permits, MAT and PIC? How many Internationally Recognised Certificates of Compliance have been established?

G3. What kind of challenges do the checkpoints experience? Describe the measures which should be taken to make the compliance system fully functional.

H. Evolving ABS laws and regulations

H1. Is there any ongoing development or revision of ABS-related laws and regulations? Please provide details of the content and process for such development and revision.

The aim is to identify, as specifically as possible, the expected objective, process, timeline and issues to be addressed, as well as the groups of stakeholders involved.

H2. What are concrete steps taken to develop or revise ABS laws and regulations to ensure compliance with the NP?

H3. How would you describe the participation of stakeholders within public, private, academic and other sectors in developing ABS-related laws and regulations?

H4. In your opinion, how could stakeholder participation be enhanced?

Institutional set-up including information exchange

I. Evolving institutional set-up

I1. How are different institutions involved in ABS-related laws, policies and permits?

The aim is to identify, as specifically as possible, how government entities manage and coordinate ABS-related issues, particularly in relation to other stakeholders.

I2. Is there any formal and/or informal coordination between these institutions?

I3. Which institution(s) play(s) the role of CNA, NFP, checkpoint, publishing authority?

I4. Which institution(s) provide(s) information and/or guidance to stakeholders on ABS-related issues?

I5. How many mandated staff members are employed, what is the available work time, how is the professional experience?

I6. How do different groups of stakeholders perceive ABS-related institutions (e.g. with regard to effective functioning)?

J. Evolving institutional set-up

J1. Are there any plans or ideas to revise the set-up of institutions involved in ABS-related laws, policies and permits?

he aim is to identify, as specifically as possible, the expected objective, structures and timelines for reforms.

Traditional knowledge

K. Some questions from the IPLC questionnaire

K1. What are the legal status and definitions of (1) indigenous peoples, (2) local communities/certain local communities?

K2. Which legal rights over GR and/or TK do IPLCs have?

K3. Is there legislation for TK protection? If yes, which?

K4. Are there community protocols or comparable procedures on access to GR and/or TK and BS?

K5. What is the role of IPLCs in granting PIC and negotiating MAT (on TK and also GR)?

Transboundary issues

L. Transboundary issues

L1. Do any of the ABS-related laws or policies address cross-border issues or collaboration?

The aim is to gather specific information on any consideration of trans-boundary issues in broader ABS-related laws, policies, permitting processes or institutions.

L2. Are there any other mechanisms in place to address shared biological and/or genetic resources across jurisdictions?

Valorisation strategy and value chain development

M. Overview of valorisation strategies

M1. To what extent is the valorisation of biological and/or genetic resources considered in ABS-related laws, policies and permitting processes?

Valorisation of biological and/or genetic resources refers to strategies, policies, programs or rules aiming to add value to biodiversity through activities such as research, product or service development, supply chain development, local value addition, partnerships, certification and verification, and/or marketing.

Stakeholder involvement – Cross cutting

N. Roles and views

N1. How does the interviewee see his/her own role (or the role of the group/institution he/she represents) in the ABS process(es)?

N2. Who else does he/she consider important in these processes?

N3. How does he/she view the role(s) of these other parties?

N4. What does he/she think of the capacities of these other parties to get involved and contribute to the process(es)?

N5. How does he/she perceive his/her own relationship to these other parties?

N6. How does he/she perceive the relationships between the other parties?

N7. Where does he/she see potentially conflicting views, interests or actions?

Sources and references

Suggested sources and references are:

- Websites of e.g. government, legal associations, NGOs, commercial associations, universities
- Official documents, National Register
- Reviews of legal and policy framework, case studies, academic journals
- Newspaper articles, NGO publications

4.3 Questionnaire 2: Effective participation of IPLCs based on BCPs and community procedures

Questions (and Rationale)

ABS Policies

A. Policy issues

A1. How are IPLCs and their concerns reflected in national ABS-related policies?

ABS-related policies would include all principles, statements, strategies and guidelines, issued or recognised by the government, that address issues linked to the valorisation and use of biodiversity and/or aTK, ownership or usage rights over biological or genetic resources and/or aTK, the collection, research, development and/or commercialisation of biodiversity-based knowledge, products or services. ABS may be the main issue in the policy or only one of the elements in a broader policy, such as a sustainable forestry strategy or biotechnology policy.

A2. Are there any national ABS-related strategies developed or recognised by IPLCs? If yes, which?

A3. What rules exist regarding the sharing and use of benefits obtained from ABS cases? (e.g. what purposes can the benefits be used for; any distribution rules, defined groups of beneficiaries)

A4. How were/will IPLCs (be) involved in developing ABS-related policies?

A5. Is there any formal political representation of IPLCs?

A6. How are IPLCs involved in decision-making about the distribution of financial, technical and technological support as elements of benefit sharing at the local level?

Regulatory Framework

B. Legal status of IPLCs

B1. What are the relevant rights of IPLCs at the level of the constitution?

B2. What are the legal status and definitions of (1) indigenous peoples, (2) local communities/certain local communities?

C. Resource rights of IPLCs

C1. Which legal rights (ownership, use, permission to access, right to share in benefits derived from use) do IPLCs have in existing legislation (e.g. land, forestry, agriculture, fisheries, wildlife laws or regulations)?

C2. Which legal rights over GR and/or TK do IPLCs have under existing legislation?

C3. What procedural rights exist? (e.g. (F) PIC, participation, consultation, etc.)

D Protection of TK

D1. Is there any legislation for TK protection? If yes, which?

D2. What is the scope of this legislation (e.g. types of TK covered)?

E. Customary rights

E1. Are there examples of legislation that protect customary rights? If yes, which?

E2. Which institutions exist that deal with customary rights?

E3. Are there community protocols or comparable procedures on access to GR and/or TK and BS?

E4. Are there other types of bottom-up community documents or procedures on resources/TK?

E5. To what extent are community protocols/procedures recognised by the state?

F. ABS legislation

F1. To what extent do ABS-related laws and regulations cover TK? *ABS-related laws and regulations would include legal documents such as constitutions, laws, decrees, acts and regulations issued by the government, that address issues linked to the ownership, usage and/or consultation rights over biological or genetic resources and/or aTK; authorisations to collect, cultivate, use, research, develop and/or commercialise biodiversity-based knowledge, products or services; and/or rules on the sharing of information, monetary and/or non-monetary and other related benefits. ABS may be the main issue in the legal document or only one of the elements in a broader document, such as a protected area regulation or fisheries law.*

F2. To what extent do ABS-related laws and regulations make reference to IPLCs?

F3. What is the role of IPLCs in granting PIC and negotiating MAT (on TK and also on GR)?

G. Representation

G1. How were/will IPLCs (be) involved in developing the ABS-related laws and regulations?

Institutional set-up including information exchange

H. IPLC organisations

H1. Which IPLC networks/organisations exist in the country? *The aim is to map IPLCs institutions, their relationship with other actors and their effective involvement on ABS issues.*

H2. What is the nature and scope of work of these institutions, e.g. community groups, NGOs, local governments; e.g. advocacy, exchange, learning?

H3. Which IPLC organisations are in partnerships with e.g. Ministry, NGOs, etc.?

H4. Are there specific IPLC women's networks? If so, which?

H5. Which of the IPLC organisations in the country are part of regional IPLC networks?

H6. Which IPLC networks/organisations deal with ABS issues?

H7. Which are the most relevant CBOs/NGOs supporting IPLCs on issues linked to ABS?

H8. How are IPLCs represented in ABS-related permitting processes?

H9. What has been going well so far in these processes? What have been challenges?

H10. Are there any (viable) customary institutions? Are they recognised by the state? How is their relationship with other relevant structures (e.g. local governments/administration)?

I. Inventories

I1. Is there any database, inventory or other initiative that collects, documents and systematises aTK (e.g. in relation to traditional seeds, animal breeds or medicinal knowledge)? If yes, please describe.
The aim is to define the potential for ABS issues to arise in relation to biological and/or genetic resources and aTK held by IPLCs but also gathered in ex-situ collections.

I2. What types of TK are included? (e.g. widely shared; shared within certain groups; secret knowledge)

I3. To what extent do these inventories have policies or procedures to ensure compliance with ABS principles (e.g. PIC for access, benefit-sharing for utilisation)?

Transboundary issues

J. Overview on transboundary issues

J1. To which degree are transboundary issues relevant for IPLCs (e.g. because they share cultures, resources or aTK)?

The aim is to identify possible overlap and potential for cooperation and/or conflict in IPLCs sharing biological and/or genetic resources and aTK across borders.

J2. How are transboundary issues addressed by IPLCs (e.g. through cooperation, discussion)?

J3. Are there any ABS-related laws or policies concerning trans-boundary TK?

Valorisation strategy and value chain development

K. Strategies

K1. How do any strategies, policies or programs for the valorisation of biological and/or genetic resources address the rights, needs and interests of IPLCs, including in relation to aTK?

The aim is to specifically determine whether and how biological and/or genetic resources and aTK are considered in these strategies, policies and programs.

K2. In particular, how do these strategies, policies or programs address different types of aTK (for example, widely shared/shared within certain groups/secret knowledge)?

Valorisation of biological and/or genetic resources refers to strategies, policies, programs or rules aiming to add value to biodiversity through activities such as research, product or service development, supply chain development, local value addition, partnerships, certification and verification, and/or marketing.

K3. What perceptions exist regarding potential opportunities, challenges, risks and benefits in developing value chains based on aTK?

L. R&D and trade

L1. Are there any existing ABS agreements involving IPLCs?

L2. Are there biodiversity-based research, development or commercialisation projects involving IPLCs?

L3. Which research projects in the country use aTK and/or community-managed/owned GR?

L4. Which commercial products based on aTK and/or community-managed/owned GR are sold in the country?

Stakeholder involvement – Cross cutting

M. Roles and views

M1. How does the interviewee see his/her own role (or the role of the group/institution he/she represents) in the ABS process(es)?

M2. Who else does he/she consider important in these processes?

M3. How does he/she view the role(s) of these other parties?

M4. What does he/she think of the capacities of these other parties to get involved and contribute to the process(es)?

M5. How does he/she perceive his/her own relationship with these other parties?

M6. How does he/she perceive the relationships between the other parties?

M7. Where does he/she see potentially conflicting views, interests or actions?

ABS agreements will be defined as per the response given to question “0” above. ABS agreements may thus include permits, contracts and/or projects issued, signed and/or otherwise recognised by the government. Please make sure to describe exactly what is covered and what is not by the term “ABS agreement.”

A2. What is the current process and timeline for ABS agreements? *Please note that the questionnaire on regulatory framework enquires about steps, sequences, procedures and timelines of ABS-related permitting processes. Here, it is necessary to clearly define the process considered for “ABS agreements,” which may or may not be, for the government, the same as for permits or projects authorised by other permitting processes.*

A3. What is the current process and timeline for securing any other ABS-related permits (e.g. collection, research, export permits)? *The aim is to differentiate, where applicable, between permits for basic research/bioprospecting/commercialisation and to identify which other permits are necessary and in which sequencing.*

Sources and references

Suggested sources and references are:

- Websites of e.g. government, legal associations, NGOs, commercial associations, universities
- Official documents, National Register
- Reviews of legal and policy framework, case studies, academic journals
- Newspaper articles, NGO publications

4.4 Questionnaire 3: Development of ABS Agreements

Development of ABS Agreements Questions (and Rationale)

ABS Policies

0 Definition of ABS agreements

01. How does the government define an ABS agreement?

In conjunction with A. below, this information will allow you to establish a common and comparable baseline between assessed countries.

Regulatory Framework

A. Existing ABS agreements

A1. How many ABS agreements, as defined by the government, exist? Provide details!

B. Agreements in the pipeline

B1. Do you know of any agreements and/or projects dealing with biodiversity-based research, development or commercialisation or ABS that have not been formally approved or recognised by government? Provide details.

These are arrangements and/or collaborations with a potential to lead to government-recognised ABS agreements. It will not be possible to obtain comprehensive information, but a general idea of some of the “lower-hanging fruit” for ABS agreements.

B2. Are there any existing or planned policies and/or rules to formally approve or endorse such agreements?

C. Characteristics of ABS laws and regulations/application tools

C1. How do ABS rules provide (or not) for a) legal certainty, b) clarity over the ownership of GR and aTK c) defined timelines for ABS processes, d) flexibility for ABS negotiations?

The aim is to determine how easy or difficult rules and policies make it to negotiate and enforce ABS agreements – and whether tools, instruments and institutions are available to facilitate this.

C2. How would businesses identify their counterpart for negotiating ABS agreements?

C3. Are you aware of any guidelines, standards, codes of conduct or training materials providing information and/or guidance on how to deal with ABS rules and practices?

D. Stakeholder involvement and capacities

D1. How many ABS agreements with involvement of IPLCs exist? (as defined by government). Provide details on key aspects of these agreements.

The aim is to determine the potential for ABS-related activities and agreements based on existing capacities and infrastructure.

D2. What are other types of stakeholders involved in existing ABS agreements (e.g. types of institutions or companies, nationalities, industrial or scientific sectors)?

D3. How would you describe the capacities of local actors to engage in the negotiation and implementation of agreements on biodiversity-based R&D and/or commercialisation - in terms of business and/or legal questions?

Institutional set-up and Information Exchange

E. Stakeholder involvement and capacities

E1. Who are potential local partners and supporters? (NGOs, service providers, companies, financial support)

The aim is to determine the capacities to support the development of legally sound and equitable ABS agreements in the country/region.

E2. Do you know of legal experts that provide or could provide guidance on ABS negotiations and would be able to draft ABS agreements?

E3. How do you rate the legal quality of ABS agreements you know?

E4. Do you know of commercial/value chain experts that provide or could provide guidance in ABS negotiations?

E5. How do you rate the “deal” for your country in the ABS agreements you know?

Traditional knowledge and IPLC issues

F. Resource rights of IPLCs

F1. Are there questions or issues linked to rights over biological and/or genetic resources or aTK that may affect the negotiation or implementation of ABS agreements?

The objective of TK and IPLC -related questions is to define in more detail how their particular issues, needs and interests are or should be considered in the negotiation or implementation of ABS agreements.

G. Stakeholder involvement and capacities

G1. Are there IPLC networks, organisations or CBOs/NGOs that support or could provide support to IPLCs in the negotiation or implementation of ABS agreements?

H. Customary rights

H1. Have community protocols or comparable procedures been used or considered in any ABS agreement or other collaboration on biodiversity-based research, development or commercialisation?

I. R&D and trade

I1. Are there biodiversity-based research, development or commercialisation projects involving IPLCs?

I2. Are there any research projects in the country that use aTK and/or community-managed/owned GR?

Transboundary issues

J. Transboundary value chains

J1. Looking at existing research, development and commercialisation of biological and/or genetic resources and aTK, how important would you say are transboundary resources?

Valorisation strategy and value chain development

K. Strategies

K1. Is there a national strategy or policies for the valorisation of biological and/or genetic resources and/or aTK?

K2. How do such strategies or policies address ABS-related issues?

K3. Are there references to biological and/or genetic resources or aTK in national strategies or policies on economic development?

K4. What are, in your estimation, the economic opportunities linked to biodiversity? Do you know of any relevant activities or interest in biodiversity-based R&D, commercialisation? Do you know of actors such as universities, agencies, companies or communities being contacted for GR or aTK?

L. R&D with GR and aTK

L1. Is there a national policy on biodiversity-related R&D? What are the actors that conduct taxonomy and biodiversity inventories? Are there national databases or collections?

L2. What kinds of species/taxonomic inventories exist?

L3. Do you know of any projects or ongoing collaborations dealing with biodiversity-based R&D? This may involve universities, research institutes and/or companies. Provide details.

L4. What are human and physical resources, regulatory and policy frameworks for R&D partnerships?

M. Stakeholder involvement and capacities

M1. Can you identify experts or institutions related to R&D on biological and/or genetic resources and associated traditional knowledge? (e.g. university researchers, national research institutions, NGOs, IPLC associations)

The aim is to determine the potential for ABS-related activities and agreements based on existing capacities and infrastructure. Patent documents are a good source of information to identify R&D actors. Most countries have a limited picture of national actors which may be involved, in one way or another, in the valorisation and/or utilisation of their genetic resources.

M2. Are you aware of any national companies, entities or individuals holding patents linked to biological and/or genetic resources?

M3. Can you identify companies and/or institutions engaged in biodiversity-based R&D or commercialisation? What are their activities and capacities in this field?

N. Commercialisation and trade

N1. Do you know of any sourcing and/or supply chains of biological resources for use in pharmaceutical, biotech, specialty food, cosmetic products? Provide details.

Information on existing use of biological and/or genetic resources, though it will not be comprehensive, will provide a general idea of some of the potential and “lower-hanging fruit” for ABS agreements.

N2. What information is available on biological resources currently exported? For what uses are such resources exported?

Export of biological resources, certified supply chains of biodiversity-based products, corporate communication.

O. Broader enabling environment

O1. In general, what rules and policies would you say present opportunities or challenges for the business conduciveness of the countries? Do you compare with other countries?

O2. Looking at existing actors and dynamics in the country's economy, which would you say are likely to be the key players involved in or supporting the utilisation of GR?

O3. Do you take key enabling factors for business – e.g. those reflected in the WB listing ease of doing business into account when developing your ABS strategy? If so, how?

By discussing the factors it might be possible to get a prioritisation of elements of business conduciveness – or why business might be reluctant to engage in partnerships. Possibly other key factors for the country can be identified.

Stakeholder involvement – Cross cutting

P. Roles and views

P1. How does the interviewee see his/her own role (or the role of the group/institution he/she represents) in the ABS process(es)?

P2. Who else does he/she consider important in these processes?

P3. How does he/she view the role(s) of these other parties?

P4. What does he/she think of the capacities of these other parties to get involved and contribute to the process(es)?

P5. How does he/she perceive his/her own relationship with these other parties?

P6. How does he/she perceive the relationships between the other parties?

P7. Where does he/she see potentially conflicting views, interests or actions?

Sources and references

Suggested sources and references are:

- Websites of e.g. government, legal associations, NGOs, commercial associations, universities
- Official documents, National Register, corporate communication
- Reviews of legal and policy framework, case studies, academic journals
- Newspaper articles, NGO publications

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