



Establishing Measures to Implement the Nagoya Protocol

An IDLO-SCBD Capacity Building Course

Course Report
May to September 2016



Convention on
Biological Diversity



Creating a Culture of Justice
International Development Law Organization

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Acronyms

ABS	Access and Benefit Sharing
ABSM	Access and Benefit-Sharing Mechanism
AU	Africa Union
BSM	Benefit-Sharing Mechanism
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CSR	Corporate Social Responsibility
EU	European Union
GEF	Global Environment Facility
GR	Genetic resource
IDLO	International Development Law Organization
ILCs	Indigenous & Local Communities
IP	Intellectual Property
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
JBA	Japan BioIndustry Associated
JBF	Japan Biodiversity Fund
MAT	Mutually Agreed Terms
NIE	National Implementing Entity
NP	Nagoya Protocol
PIC	Prior and Informed Consent
R&D	Research & Development
SCBD	Secretariat of the Convention on Biological Diversity
SDGs	Sustainable Development Goals
TK	Traditional Knowledge

COURSE CONTEXT AND METHODOLOGY

CONTEXT

A milestone was reached in 2010, after nearly 10 years of negotiations, with the adoption of the Nagoya Protocol, a new international treaty that commits countries to set clear rules for access to their genetic resources and associated traditional knowledge, and to foster the sharing of the benefits from their utilization with those that have nurtured these resources over the years.

The importance of genetic resources lies in their value as raw ingredients for innovation in medicine, biotechnology, cosmetics, food and beverages, and more. The Protocol establishes a global system that promotes research and innovation on genetic resources while building incentives for their conservation and sustainable use for the long-term benefit of human development and well-being.

Following the entry in force of the Nagoya Protocol in October 2014, many countries are now actively engaged in making the Protocol operational. An early challenge in the Protocol's implementation is building the necessary capacity within each country to establish new or amend existing domestic ABS legislative, administrative and policy measures. **No one-size-fits-all approach to designing ABS measures exist, rather each country will need to define its own approach tailored to its own needs and priorities.**

THE CAPACITY BUILDING APPROACH

The International Development Law Organization (IDLO) and the Secretariat of the Convention on Biological Diversity (SCBD), with funding from the Japan Biodiversity Fund (JBF), launched a joint capacity building program to support national lawyers and policy officers responsible for advancing Protocol implementation processes in their countries. The program **responds to the request from Parties in Decision NP-1/8 for capacity building support** to establish legislative, policy and administrative measures to implement the Protocol.

A global call for applications was issued in January 2016 through a CBD notification and other channels, inviting expressions of interest to participate in the course from lawyers and policy-officers in countries with active processes to implement the Nagoya Protocol. For **each country, up to two candidates could be selected to attend the course**, recognizing that countries will need officers involved in both legal and policy processes to effectively implement the Protocol. The course was designed to engage national officers actively involved in legal drafting, policy development and stakeholder consultations.

The design of the capacity building course was focused on supporting the participants on **five key objectives**:

- > **Learn the core requirements** of the Nagoya Protocol and options for their implementation;
- > **Gain knowledge on implementation challenges** and resources/ideas for advancing processes;
- > **Peer-to-peer share national experiences** on the design of ABS measures;
- > **Strengthen leadership and communications skills** relevant to engaging ABS stakeholders; and
- > **Apply the knowledge acquired** to plan next steps in their own country processes.

To achieve these objectives, the capacity building course took a blended learning approach, consisting of:

- > **E-learning modules** for participants to learn the core knowledge concepts related to the Nagoya Protocol, its requirements and options for implementation;
- > **Face-to-face workshops** to address challenging issues, share national experiences and plan next steps in national processes; and
- > **Online networking** through a Facebook group page enabling participants to share latest news and host discussions on issues of interest.

To further enable the tailoring of the course to participants' needs and current knowledge, all participants were requested to complete **Needs Assessment and Knowledge Surveys**. The results of these surveys enabled IDLO to design interactive sessions for the face-to-face workshops to maximize the relevancy and impact of the learning opportunities to the specific participants in attendance.

Course participants were invited to review the e-learning modules and interact through the Facebook group one month prior to the commencement of the face-to-face workshops. Three regional workshops were held in 2016 (See Annex 1 for the list of course participants):

- > **11 – 15 July 2016 for 20 participants from the Africa and Caribbean regions** (English language);
- > **18 – 22 July 2016 for 22 participants from the Asia-Pacific region** (English language); and
- > **5 – 9 September for 18 participants from the Latin America region** (Spanish language).

Throughout the learning activities and following the workshop, participants continue to ask questions to their colleagues and share experiences and resources through the online network supported by IDLO.

PRE-WORKSHOP PREPARATION: E-LEARNING MODULES

E-LEARNING OVERVIEW

Course participants began e-learning training starting four weeks prior to the face-to-face workshops, specifically on:

- › 10 June 2016 for Africa, Caribbean, and Asia-Pacific participants; and
- › 8 August 2016 for Latin America participants.

The e-learning modules cover **eight themes that familiarize participants with the core substantive elements of the Protocol and provide tips on the policy and legal processes to build effective, country-tailored ABS measures.**

Themes of E-learning Modules

Designing ABS Measures – An Introduction

- Module 1: Legal Reform

What are early steps to support the design of ABS measures?

- Module 2: Policy-Setting
- Module 3: Institutional Arrangements

What are the core elements of ABS measures?

- Module 4: Access to Genetic Resources
- Module 5: Benefit-sharing
- Module 6: Compliance
- Module 7: Indigenous and Local Communities

How to build ABS measures that work?

- Module 8: Supportive Measures

LEARNING OBJECTIVES

The e-learning modules were designed for participants to build a strong foundation of knowledge on the core concepts related to the Protocol and its implementation. This preparation was intended to enable participants to focus on discussing the more complex issues and practically applying the knowledge learned to national contexts in the subsequent face-to-face workshops.

KEY ACTIVITIES AND DISCUSSIONS

The course participants were engaged in a pilot release of these modules in development, enabling them to take part in the ongoing process to strengthen the content and suggest further country experiences. This input was considered highly valuable to ensure the modules contain the most up-to-date and relevant experiences.

Participants gained access to each e-learning module one at a time, invited to post questions on the Facebook group, and welcomed to provide review comments to strengthen the modules. Due to production delays, the modules on Compliance and Indigenous & Local Communities were

released to participants after the face-to-face workshops. Focused introductory sessions on these two themes were thus organized during the face-to-face workshops.



During this pre-workshop period, participants posed several questions through the Facebook group and in the needs assessment that provided a glimpse of the pressing issues faced by countries in designing ABS measures:

- › What are the **compliance obligations** of the Nagoya Protocol, the specific responsibilities of checkpoints, and appropriate institutions to designate, including Competent National Authorities?
- › What are the linkages between legal frameworks on **ABS and Intellectual Property**, in particular in relation to traditional knowledge (TK)?
- › What is the **innovative definition of “utilization”** (vs. use) provided by the Nagoya Protocol?
- › How are **human pathogens** addressed (or not) under the Nagoya Protocol?
- › What guidance is available for the **negotiation of non-monetary benefits**?
- › How and when to **differentiate between types of uses** (e.g. commercial vs. non-commercial)?
- › How to address **genetic resources shared** across State jurisdictions?
- › How to determine **fair and equitable sharing of benefits**?
- › How to develop a **clear and effective ABS policy** or related policies?
- › How to **align existing ABS legislation and regulation** to the provisions of the Protocol?
- › What are **effective strategies for raising awareness and capacity** amongst key ABS stakeholders (e.g. researchers, private sector)?
- › How to raise awareness on how **ABS can contribute to national development**?

OUTCOMES

Participants provided feedback on their country experiences related to the module themes. **The modules are being updated in preparation for their official launch at the end of 2016. All e-learning modules will be made freely-accessible for use by Parties and stakeholders.**

FACE-TO-FACE WORKSHOPS

OVERVIEW

WORKSHOP OVERVIEW

Following the e-learning sessions, participants gathered in three face-to-face workshops held in The Hague, Netherlands; Bali, Indonesia; and Antigua, Guatemala.

- **Hague workshop:** 11 – 15 July 2016 for 20 participants from the **Africa and Caribbean** regions (English);
- **Bali workshop:** 18 – 22 July 2016 for 21 participants from the **Asia-Pacific** region (English); and
- **Antigua workshop:** 5 – 9 September for 18 participants from the **Latin America** region (Spanish).

In total, 59 participants from 40 countries attended the three workshops. An additional 12 participants took part in the e-learning component but were unable to attend the face-to-face workshops. (See Annex I for the workshop group photos and Annex II for the list of course participants)

WORKSHOP OBJECTIVES

The **workshop objectives** were to enable participants to:

- **Learn the core requirements** of the Nagoya Protocol and options for their implementation;
- **Gain knowledge on implementation challenges** and resources/ideas for advancing processes;
- **Peer-to-peer share national experiences** on the design of ABS measures;
- **Strengthen leadership and communications skills** relevant to engaging ABS stakeholders; and
- **Apply the knowledge acquired** to plan next steps in their own country processes.

WORKSHOP AGENDA

All three workshops followed a common training methodology with each workshop's agenda tailored to respond to the identified needs and profiles of the particular participants in attendance. (See Annex III to view the agenda of each regional workshop)

WORKSHOP FACILITATION TEAM

The composition of the facilitation team for each workshop was focused on ensuring participants gained access to a range of expert perspectives on ABS, with sufficient experts to foster small group and one-on-one discussions as needed. To achieve this, each workshop team comprised at least three ABS experts, a SCBD representative and IDLO facilitators.

Facilitation Team

- **ABS Experts:**
 - Prof. Jorge Cabrera (The Hague, Bali, Antigua)
 - Mr. Olivier Rukundo (The Hague)
 - Mr. Uda Nakamhela (The Hague)
 - Dr. Alejandro Lago (Bali, Antigua)
 - Dr. Gurdial Nijar Singh (Bali)
 - Mr. Anthony Foronda (Bali)
 - Ms. Maria Julia Oliva (Antigua)
- **SCBD representatives:**
 - Ms. Valerie Normand (The Hague)
 - Mr. Erie Tamale (Bali)
 - Ms. Beatriz Gomez* (Antigua)

*Intervened through skype
- **IDLO facilitators:**
 - Ms. Helene Molinier (The Hague, Bali)
 - Ms. Yolanda Saito (The Hague, Bali, Antigua)
 - Ms. Olga Perez (Antigua)
 - Ms. Carla Bengoa (Bali, Antigua)

PRESENTATION OF WORKSHOP REPORT

This course report will share the activities and discussions held during all three components (e-learning, face-to-face workshop and online network) of the IDLO-SCBD capacity building course. For the workshop, the report will present the sessions held under the five workshop objectives noted above, rather than in strict chronological order (although these objectives were generally addressed in the listed order). One single report has been prepared to summarize all three courses, intended to enable readers to compare and link common themes, challenges and experiences that emerged across the regions.

FACE-TO-FACE WORKSHOPS

WELCOME AND INTRODUCTIONS

1. OPENING

Each workshop opened with welcoming statements from the SCBD and IDLO, along with local partners.



Fig 1. Welcome session at The Hague workshop

The SCBD (Ms. Valerie Normand/The Hague; Mr. Eric Tamale/Bali; Ms. Beatriz Gomez/Antigua) highlighted the growing number of ratifications of the Nagoya Protocol, and how focus is now on advancing national processes to implement the Protocol. The SCBD encouraged all to share experiences and work together to build effective national ABS systems. A special thanks was expressed to the Japan Biodiversity Fund for their financial support to the training program.

The IDLO (Dr. Faustina Pereira/The Hague; Ms. Helene Molinier/Bali; Ms. Olga Perez/Antigua) noted that the Nagoya Protocol training program draws from IDLO's over 30 years of experience in building the capacity of judiciaries and lawyers around the world on challenging issues of development. IDLO welcomed participants to join the global network of IDLO Alumni, and offered participants IDLO's continued support in advancing their national processes to build ABS rules and legislation.

Special welcomes were presented by:

- **Mr. Tomohiro Shimada, Japan Biodiversity Fund** (Bali training);
- **Ms. Wiwiek Awiati, Universitas Indonesia** (local partner for Bali training); and
- **Dra. María Luisa Aumesquet, Spanish Agency for International Development Cooperation** (local partner for Antigua training).

A special mention was made by **Dr. Alejandro Lago**, of Mr. Santiago Pardo Escobar from Colombia, a course participant who passed away just prior to the Antigua workshop. The Antigua workshop was dedicated to the legacy of Mr. Pardo Escobar, a passionate advocate of ABS

as a means to advance sustainable development goals in Colombia.

2. INTRODUCTIONS

All in attendance (participants, experts and facilitators) next participated in ice-breaker exercises to get to know each other and kick-start the process of peer-to-peer sharing.

“Talking Ball” Circle of Introductions (The Hague, Bali)

Participants in the Hague and Bali trainings formed a circle and tossed the “talking ball” to each other, with each person taking turns to introduce themselves, their goals for the workshop and one interesting fact about themselves.



Fig 2. Passing the “talking ball” at the Bali workshop

“Meet Me” Portraits (Antigua)

In the Antigua training, attendees worked in pairs to draw portraits of each other, and highlight ABS-related knowledge that they would like to share with fellow participants. Each pair presented their partner to the group. The portraits were posted on the wall and participants were invited to stick post-it notes on the portraits of their fellow participants. Each post-it note represented an invitation to meet and get to know each other better over the course of the workshop.



Fig 3. Wall of portraits at Antigua workshop

Through these introductions, it became clear early on in the workshops that the participants themselves offered a wealth of experience on ABS and legal issues, and perspectives to share. Some participants had been involved in ABS for over 10 years, others had already drafted ABS regulations or policies, many were involved in ABS awareness-raising campaigns, and others were just getting ABS processes started in their country.

3. EXPECTATION SETTING

Participants were invited to write down on post-it notes their hopes and aspirations, and fears and uncertainties for the workshop. Responses were presented by facilitators.

This exercise facilitated a discussion between participants and facilitators on what could and could not be achieved at the workshop, while highlighting early on the particular needs and interests of participants present.

- › Participants expressed **fears and uncertainties** about being able to cover the range of course topics in one week, and have meaningful discussions. They noted fears that national ABS processes could fail to build the political will needed to implement the Protocol.
- › Meanwhile, participants brought great **hopes and aspirations** to the workshop. They hoped to learn about the key legal requirements of the Protocol, share experiences and make plans to take action.



Fig 4. Setting out hopes and fears for the Bali workshop

4. WORKSHOP OVERVIEW

IDLO then introduced the course facilitation team, with each team member outlining their specific role, experience and facilitation approach.

The workshop agenda was presented with IDLO providing an introduction to each session and its contribution to the workshop objectives and participant expectations.

FACE-TO-FACE WORKSHOPS

OBJECTIVE 1: LEARN THE CORE REQUIREMENTS OF THE NAGOYA PROTOCOL

1. OVERVIEW

The workshops commenced with focused sessions designed to enable participants to achieve Objective 1: “Learn the core requirements of the Nagoya Protocol and options for their implementation” including:

- Presentation on “Quick Facts About Access and Benefit-sharing under the Nagoya Protocol”;
- Pub Quiz sessions on the themes covered in the e-learning modules;
- Expert presentations on two themes: Compliance and Indigenous & Local Communities (ILCs) – two issues with innovative requirements under the Protocol; and
- SCBD presentation on the ABS Clearing-House.

The sessions were designed to refresh the participants’ memories and open discussion on the issues covered in the e-learning modules taken prior to attending the workshop.

1.1 QUICK FACTS ON ABS

Participants were provided a 10-minute introduction to key ABS issues through a brief presentation “Quick Facts about Access and Benefit-sharing under the Nagoya Protocol.” In this session, participants learned about the value of genetic resources, the negotiation of the Protocol, and key considerations in the design of ABS measures.

The “virtuous cycle of ABS” (see Fig. 5) was discussed, raising the point that all Parties can be both users and providers and need to regulate access and monitor utilization. Finally, the point was raised that no one-size-fits-all solution exists. **Parties need to get started by meeting core requirements of the Protocol and refining measures with experience.**

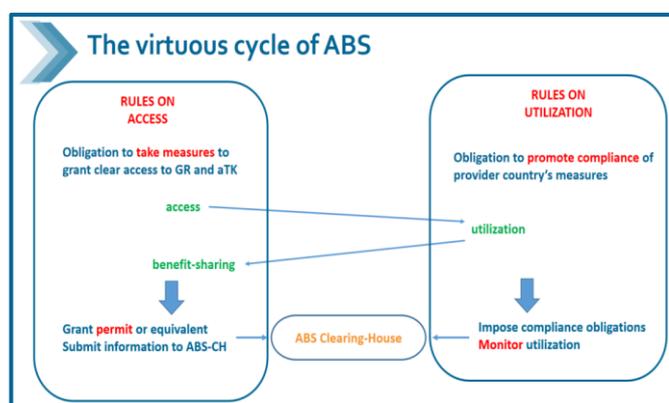


Fig 5. Slide from “Quick Facts” presentation

1.2 PUB QUIZZES: E-LEARNING REFRESHER

Participants formed four teams (per workshop) to compete in Pub Quiz sessions, one for each theme of the eight e-learning modules. Each quiz consisted of eight questions with points awarded for correct answers. Bonus points could be earned by sharing relevant country experiences, and answering challenging “pop quiz” questions. Each group chose a team name, and were given 1-2 minutes to come up with agreed answers amongst the group.

Following each thematic quiz, IDLO facilitators and experts led review sessions to foster discussion and award points (and ultimately chocolates to winning teams).



Fig 6. Pub Quiz session at Antigua workshop

Through the Pub Quiz sessions, participants were able to review the key concepts learned during the e-learning modules in a fun, interactive way. In the discussions, participants highlighted issues of particular interest, and shared their own experiences relevant to each theme.

Issues that generated debate in these sessions included:

- Recognizing **ABS policy-setting** as not only a technical, but important political process needed to build political will and stakeholder buy-in;
- Choosing between **centralized vs. decentralized ABS institutional arrangements**, and how to include technical expertise and stakeholders;
- Deciding whether to maintain the **requirement for prior informed consent (PIC) to access genetic resources** and reasons for doing so;
- Defining the **scope of activities** that trigger access requirements, particularly **commercial activities**; and
- Recognizing the importance of **non-monetary benefits**, and ways to promote and distribute them.

1.3 PRESENTATION & QUIZ ON COMPLIANCE

The Protocol’s provisions on “Compliance” are one of its innovations, and a focused discussion on this issue was held at each workshop through presentations by Ms. Valerie Normand, SCBD (Hague workshop) and Dr. Alejandro Lago (Bali and Antigua workshops).

The presentation highlighted that the need for compliance measures to address situations when genetic resources leave the provider country was one of the key reasons behind the negotiation of the Nagoya Protocol. **Three types of compliance obligations** were discussed - compliance with ABS measures (Articles. 15, 16) and monitoring of the utilization of genetic resources (Art. 17), as well as Parties commitments to promote compliance with MAT (Art 18).

The **Internationally Recognized Certificate of Compliance (IRCC)** was introduced as a tool for monitoring utilization that is issued once countries submit information to the ABS Clearing-house on access permits that have been granted.

1.4 ABS CLEARING-HOUSE MECHANISM

The discussion on Compliance led into the **presentation by the CBD Secretariat on the ABS Clearing-house**, established under Art. 14 of the Protocol. The ABS Clearing-house plays a key role in supporting the monitoring of utilization of genetic resources along the full ABS value chain, enhancing legal certainty and transparency (See Figure 7).

The CBD Secretariat, who hosts the ABS Clearing-house, also offers resources to support Parties and non-Parties to access and upload information to this central database.

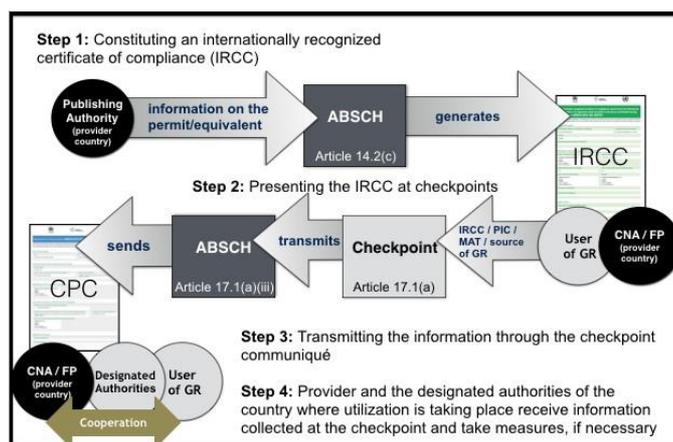


Fig 7. Flowchart showing the role of the IRCC in supporting compliance from ABS Clearing-House presentation

1.5 PRESENTATION & QUIZ ON ILCs

Another innovation of the Protocol is its obligations related to indigenous and local communities (ILCs). In each workshop, Prof. Jorge Cabrera led a discussion on this issue. Discussion focused on the Protocol’s obligations on ILCs, which are triggered in two cases - when access is sought to genetic resources over which ILCs have established rights or to associated traditional knowledge held by ILCs (Art. 5.2, 5.5). Prof. Cabrera highlighted that Parties must consider the obligations outlined in Article 12 when designing measures on ILCs. Experience with implementing these provisions is minimal but advancing especially in the countries like South Africa, Malaysia, Peru, and Ecuador.

SUMMARY: HIGHLIGHTS OF DISCUSSIONS

Throughout these sessions, participants provided insight into relevant experiences and practices in their country.



Fig 8. Ms. Daniela Reyes shares Ecuador’s experience

Some highlights of this peer-to-peer sharing include:

- > South Africa established a **national policy vision** on ABS early on in its 2004 Biodiversity Act. This ABS vision is increasingly linked across sectors, supporting the promotion of a “bio-economy” in South Africa;
- > Namibia gained buy-in to take action on ABS by clearing **linking ABS with the Sustainable Development Goals (SDGs)**;
- > India has created eight (8) **expert committees** to advise on ABS issues. Bhutan also has a technical expert group with scientific and legal expertise;
- > Spain and Bhutan have created **national funds** to direct ABS benefits to conservation activities. India has created three types of funds at the national, subnational and local levels. Peru has a fund to finance projects to benefit ILCs. Malaysia and Namibia have included national funds in their draft ABS legislation.

FACE-TO-FACE WORKSHOPS

OBJECTIVE 2: GAIN KNOWLEDGE ON IMPLEMENTATION CHALLENGES

2. OVERVIEW

The workshops held interactive “World Café” sessions designed to achieve Objective 2: **Gain knowledge on implementation challenges** and discuss resources/ideas for advancing processes. In the Bali and Antigua workshops, case studies relevant to these regions were developed to allow participants to apply the knowledge gained to real-life situations.

For each World Café session, participants were invited to join small group discussions guided by an expert facilitator. Each discussion round lasted 20 minutes, with participants rotating to all other tables over the course of the session.



Fig 9. Olivier Rukundo facilitates a World Café session in the Hague workshop

All discussants were invited to take note of key points of discussion and write them down on a poster-sized paper on each table. To close each session, each facilitator presented a summary of the thematic area guided by the notes on the poster paper, highlighting the notable comments and contributions made by participants.



Fig 10. Maria Julia Oliva summarizes the World Café discussion on “What is fair and equitable?” in the Antigua workshop

World Café Themes

World Café 1 - A closer look at Protocol implementation

- > A closer look at access regimes
- > A closer look at mutually agreed terms
- > Relationship between the Protocol and ITPGRFA
- > Interface between Intellectual Property and ABS
- > Practical perspectives on designing measures

World Café 2 - User perspectives

- > Biodiversity-based R&D: Difference amongst economic sectors and ABS implications
- > EU Regulation: Implications for provider countries
- > Dealing with non-Parties to the Protocol
- > Designing access regimes for different uses – options and considerations
- > 20 years of the Hoodia case: What lessons learnt?

World Café 3 - Challenges of implementation

- > Options for establishment of checkpoints
- > What is just and equitable? A comparative evaluation
- > Addressing past cases of unauthorized access to genetic resources
- > Addressing transboundary genetic resources and shared traditional knowledge
- > African Union Strategic and Practical Guidelines
- > Capacity building programs and funding to support Protocol implementation
- > Case study: What issues arise related to the design of measures

In these sessions, participants were able to focus in and ask questions on issues of particular interest. Further, many took the opportunity to share their relevant experiences, compare with those of their colleagues, and develop new ideas and approaches for addressing these challenges.

Similar World Café themes were covered in the three workshops, with a few variations tailored to the specific needs and interests of participants in each region. The following sections provide descriptions of each thematic World Café session.

2.1 WORLD CAFÉ 1 – A CLOSER LOOK AT PROTOCOL IMPLEMENTATION

In the first World Café, participants were invited to discuss common issues that arise related to the core concepts covered in the e-learning modules.

- **A closer look at access regimes**
(Olivier Rukundo @The Hague, Gurdial Singh @Bali, Paula Rojas @Antigua)

This session focused on the challenges of regulating access to genetic resources. A starting point is to define the scope of application of access rules. The Protocol's innovative definition of "utilization" in Article 2 provides guidance. Countries have specified exemptions in their ABS measures, including human genetic resources, customary use, etc. It is important to consider existing constitutional and property rights regimes relevant to rights over resources. Different access regimes can be set up for different uses and types of genetic resources, and practice amongst countries varies. Participants highlighted the African Union Guidelines as a source of sample application forms and access permits.

- **A closer look at mutually agreed terms**
(Valerie Normand @The Hague, Erie Tamale @Bali, Maria Julia Oliva @Antigua)

Participants discussed "What are mutually agreed terms (MAT)?", concluding that there is no single answer. MAT can include monetary and/or non-monetary benefits, and a clear understanding of the type and timing of these benefits needs to be established at the time of access. This can include agreement to negotiate benefits at a later stage when more information is known. The key is to have a good contract with dispute resolution clauses, supported by good compliance measures established by the country. The Protocol suggests MAT may include terms on third-party use and changes of intent, but challenges remain on how to identify these situations and what obligations to impose. Some notable experiences include Ethiopia and Mauritius who require third parties to renegotiate with the provider upon change of intent from research to commercial use. South Africa provides a list of activities considered to comprise "commercialization." Parties must decide what MAT issues should be regulated by the State, and what can be left to negotiations between users and providers.

- **Relationship between the Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)**
(Jorge Cabrera in all workshops)

This session focused on the Protocol requirement, under Art. 4.3 for mutually supportive implementation of the Protocol with other related international instruments. The ITPGRFA is one such instrument that sets up a multilateral

ABS system, which differs but does not conflict with the bilateral ABS system of the Protocol. The ITPGRFA sets up a centralized system with a central benefit-sharing trust fund managed by the Treaty Secretariat, an entity with a mandate to take action in situations of non-compliance. At the domestic level, the responsible national ministries often differ which can raise coordination challenges. To implement them in a mutually supportive manner, legal clarity is needed on each scope of application and mandate.

- **The interface between Intellectual Property and ABS**
(Olivier Rukundo @The Hague, Alejandro Lago @Bali & Antigua)

In this session, the focus was on the range of intellectual property (IP) rights issues that may arise when genetic resources and associated traditional knowledge are utilized to develop innovations. Participants discussed how IP clauses can be negotiated in ABS agreements to promote sharing of IP entitlements between users and providers. Questions were raised on the best timing to negotiate – early or later in development? If later, there may be better knowledge on its IP value, however clarity is needed to indicate when renegotiation of terms is triggered.

Protecting traditional knowledge (TK) with conventional IP rights can be a challenge, as TK is often commonly held and in the public domain. Some countries, like South Africa and Peru, have created registries to document TK. These efforts can help prevent misappropriation but also risks protection of TK if the information is made publicly available. Patent offices could act as checkpoints, for example by mandating them to collect and share information on origin, PIC and MAT (Spain's approach) or by making disclosure an express requirement for the granting of a patent (Peru's approach) – practice and impact varies with these approaches.

- **Practical perspectives on designing measures**
(Uda Nakamhela @The Hague only)

In this session, participants focused on practical issues that require creative legal responses. Mr. Nakamhela led discussions on various challenges, including:

- How to establish clear property rights over genetic resources?
- How to ensure ILCs are informed of their rights, in order to support proper prior informed consent?
- What approaches can be taken to address past cases of illegal access?
- How to address transboundary genetic resources, and cases of shared TK amongst multiple ILCs?
- What legal approaches can ensure compliance, including criminalizing activity to ensure your country does not become a conduit for illegally obtained genetic material.

2.2 WORLD CAFÉ 2: USER PERSPECTIVES

In the second World Café, participants explored how users from different sectors interact with ABS activities, and how ABS measures can account for these differences.

- **Biodiversity-based R&D: Difference amongst economic sectors and ABS implications¹**
Maria Julia Oliva @The Hague, Jorge Cabrera @Bali)

An understanding of the different ways that different sectors undertake ABS activities can be key to inform the design of ABS measures. Participants discussed the diverse ABS practices of sectors such as cosmetics, pharmaceuticals, biotechnology, agriculture, botanicals etc., and how these differences can impact the design of access measures, types of benefits that can be negotiated, and effective checkpoints for compliance. One approach can be to set up general rules with flexibility to deal with the different sectors, supplemented by sector-specific guidelines. Countries like South Africa and Japan have worked closely with companies to understand how they work. This understanding can also help find opportunities to link ABS to other national priorities – supporting both economic development and environmental protection.

- **EU Regulation: Implications for provider countries**
(Leontine Crisson @The Hague, Alejandro Lago @Bali & Antigua)

This session focused on the European Union (EU) Regulation on ABS, which implements the Protocol's obligations related to ensuring compliance with domestic ABS measures. The EU Regulation obliges all EU users to be able to show due diligence in seeking to obtain legal access to genetic resources from other Parties. Notably, for this obligation to apply, provider countries must be a Party to the Protocol and have domestic ABS requirements in place. The EU Regulation defines two checkpoints where the due diligence declaration is to be submitted – at the stage of research funding and at the stage of final development of a product. It is of note that there are no standardized sanctions for non-compliance established by the EU Regulation, so each Member State can set up different ones. In August 2016, a guidance document on the scope of the EU Regulation was released, which can be accessed on the European Commission website.²

- **Dealing with non-Parties to the Protocol**
(Alejandro Lago @Bali & Antigua)

This session highlighted that notable user jurisdictions, such as the United States, are non-Parties to the Protocol. Participants discussed possible approaches to support the negotiation and enforcement of ABS agreements with non-Parties. Options include not allowing access to genetic resources by non-Parties altogether, establishing State-to-State bilateral agreements, or setting up measures (such as checkpoints and sanctions) to support domestic monitoring and enforcement of MAT. A key issue is that non-Parties will not establish checkpoints, so other tools for monitoring utilization must be created to compensate. One approach can be to raise public awareness of practices by companies within non-Parties to influence them to comply with best ABS practices and standards.

- **Designing access regimes for different uses – options and considerations**
(Gurdial Singh Nijar @Bali, Jorge Cabrera @Antigua)

In this session, participants explored the flexibility provided by the Protocol to design different access regimes to achieve national goals. The Protocol requires Parties to provide for fair and non-arbitrary rules under Article 6(3)(b) but also outlines various situations that may call for different rules in Article 8 (emergency situations, conservation research and in cases related to food, agriculture and food security). Participants explored approaches being taken to address these cases, as well as the pros and cons of other approaches to distinguish between commercial and non-commercial access and set up simplified regimes to build capacity of national actors.

- **20 years of the Hoodia case: What lessons learnt?**
(facilitated by Maria Julia Oliva @The Hague)

This session offered participants an opportunity to take a holistic view of an ABS case – the Hoodia case in Africa.³ Discussions focused on three issues: traditional knowledge, benefit-sharing and sustainability. On traditional knowledge, participants acknowledged the need for ILCs to retain control to ensure the nature of TK as biocultural heritage. However Parties can play a role in establishing clear ILC rights, and supporting negotiations where requested. On benefit-sharing, the importance of non-monetary benefits such as capacity building and incentives (that can be more direct) was raised. Finally, participants highlighted that environmental sustainability should be a consideration from the very outset of ABS agreements, particularly in the food sector where scale can be an issue. ABS measures can support this by linking natural resource management with ABS activities.

¹ Background reading: Series of Sectoral Briefs by Rachel Wynbert (published ABS Capacity Development Initiative), December 2015. <http://bio-economy.org.za/2016/06/27/explore-a-series-of-sectoral-policy-briefs-and-infographics-on-abs/>

²European Commission website "Access and Benefit Sharing" http://ec.europa.eu/environment/nature/biodiversity/international/abs/legislation_en.htm

³ Rachel Wynberg, "Hot Air Over Hoodia", October 2010. <https://www.grain.org/article/entries/4047-hot-air-over-hoodia>

2.3 WORLD CAFÉ 3: CHALLENGES IN IMPLEMENTATION

In the third World Café, sessions were designed to respond to particular requests or interests expressed by participants

› **Options for establishment of checkpoints**
(Alejandro Lago @Bali & Antigua)

The Protocol sets up new compliance obligations, including a requirement to establish one or more checkpoints. In this session, participants created a list of possible institutions that could act as checkpoints and discussed pros and cons:

- Patent offices
- Repositories or gene banks
- Research funding agencies
- Customs or quarantine offices
- Regional research institutions
- Publishers
- Commercialization and market access agencies
- National Competent Authorities...and others...

An important practical consideration is to understand the primary users in each country. Participants noted that custom offices, while effective for monitoring wildlife trade and invasive species, may have limited suitability for ABS activities as checkpoints need to monitor utilization.

› **What is fair and equitable? A comparative evaluation**
(Maria Julia Oliva @Antigua)

Recognizing that a key goal of ABS is to achieve benefits, participants in Antigua held a focused discussion to build an understanding of what is meant by “fair and equitable” benefit-sharing. The discussion focused on three questions:

- How to establish an equilibrium between monetary and non-monetary benefits?
- What non-monetary benefits can have the most relevance and impact?
- Is there a “magic number” for the distribution of monetary benefits?

Participants shared their experiences, noting that no definitive percentage exists to ensure monetary benefits are “fair.” The right percentage will need to be determined on a case-by-case basis. In addition, non-monetary benefits were recognized as holding potential to be more certain and less controversial, offering an effective means to build national capacity on ABS issues.

› **Addressing past cases of unauthorized access to genetic resources**
(Carla Bengoa @Bali & Antigua)

Parties may need to consider how to address the cases of users who have accessed genetic resources and associated traditional knowledge without PIC or MAT prior to the

adoption of ABS measures or in some cases, even in countries with ABS measures. Countries working to promote research and innovation within their borders can make a policy choice between penalizing the prior illegal access or providing a means to regularize these situations. Carla Bengoa shared the experience of Peru where the latter approach was taken in compliance with the Andean Decision 391. This choice was influenced by the consideration that the ultimate purpose of having access rules and procedures is to lead to actual cases of fair and equitable benefit sharing. Care however must be taken to ensure that an opportunity to regularize does not act as a disincentive for potential users to meet access requirements in the first instance. Other countries have taken different measures including Malaysia, Colombia and Brazil.

› **Addressing transboundary genetic resources and shared traditional knowledge**
(facilitated by Jorge Cabrera @Bali & Antigua)

A challenging issue for implementation is how to address cases of transboundary genetic resources or traditional knowledge shared by multiple ILCs, at times across State borders. Article 11 of the Protocol requires Parties to collaborate in these cases, but experience on how to do so remains limited. Jorge Cabrera facilitated discussions on the latest thinking and approaches to address this challenge, including regional cooperation and promotion of community protocols.

› **African Union Strategic and Practical Guidelines**
(facilitated by Oliver Rukundo @The Hague)

In this session, held only at the Hague workshop, participants were introduced to the African Union (AU) **Strategic Guidelines** and accompanying **Practical Guidelines**. The key issue discussed was “How can the Guidelines be used within your national systems to support processes to seek information from applicants?”, focusing on two tools provided by the Guidelines:

- Annex 2: Sample application form for a permit to utilize GR and/or aTK; and
- Annex 3: Basic ABS agreement between PROVIDER and RECIPIENT.

It was noted that the basic ABS agreements provided in the AU Guidelines should not be used as templates, but rather provide useful models for outlining PIC and structuring MAT. These forms can be applied domestically by incorporating them into regulations or supplementary regulations. However care should be taken to ensure they have an adequate level of legal status to be effective and enforced.

- › **Capacity building programs and funding to support Protocol implementation**
(facilitated by Melesha Banham @The Hague & Anthony Foronda @Bali)

In this World Café session, participants reflected on the actions that will need to be taken to build national capacity to effectively implement the Protocol in their countries.

In the Hague, **Melesha Banham** shared her expertise in designing regional capacity building programs with the International Union for the Conservation of Nature (IUCN). Participants discussed how the learning tools developed by IDLO and the SCBD could be adapted to be used in regional programs. Participants also discussed potential funding sources for capacity building, including the Global Environment Facility (GEF), World Bank, other bilateral sources, EU NGOs and the private sector. Ms. Banham highlighted Antigua and Barbuda's experience of becoming a national implementing entity (NIE) who accesses GEF funds directly without a managing agency.

In the Bali workshop, **Anthony Foronda** asked participants to reflect on the goals set out in their ABS Life Maps and develop capacity building plans, guided by the Strategic Framework on Capacity Building, Decision NP-1/8⁴ of the COP MOP 1 of the Nagoya Protocol.

2.4 CASE STUDIES

Case studies were developed to enable participants to apply the knowledge gained to a real-life situation. These exercises took a comparative approach with participants examining the different options available and impacts, considering both jurisdictions where ABS measures were in place or not in place.

- › **Case study: What issues arise related to the design of measures**
(facilitated by Gurdial Singh Nijar @Bali)

In the Bali workshop, Gurdial Singh led participants in a World Café discussion to explore a case study and work together to discuss the issues that arise that can inform the design of ABS measures. The case study enabled participants to look at challenges of addressing past illegal cases of access, dealing with non-Parties, the scope of application of ABS measures, and transboundary genetic resources – issues of importance in the Asia-Pacific region. Together, the participants identified the legal issues that

arose in the case study, and compared expected outcomes in countries with or without access regulations.



Fig 11. Gurdial Singh Nijar facilitating a Case Study session

- › **Case study: Responding to user interest to access genetic resources**
(facilitated by Alejandro Lago @Antigua)

In the Antigua workshop, Alejandro Lago facilitated a case study exercise in which participants were presented with a request from an EU pharmaceutical company for information on the access rules and procedures to follow to obtain legal access to genetic resources in their countries. Participants were split into three groups, one with no ABS measures, a second with a basic ABS measure and a third with detailed ABS measures. In each group, participants defined the response that could be given to the user request. After the group reflection, all participants gathered in a plenary session to report on their findings and discuss how each type of ABS measures influenced the options available.



Fig 12. Participants in Antigua workshop discussing the Case Study exercise

⁴ NP MOP 1 Decision NP-1/8 -Measures to assist in capacity-building and capacity development (Article 22), <https://www.cbd.int/decision/np-mop/default.shtml?id=13408>

FACE-TO-FACE WORKSHOPS

OBJECTIVE 3: PEER-TO-PEER SHARE EXPERIENCES ON THE DESIGN OF ABS MEASURES

3. OVERVIEW

A major objective of the workshop was to provide various opportunities for peer-to-sharing of national experiences. Participants openly share their ideas and experiences throughout the five day workshop, starting with the discussion following each Pub Quiz on Day 1. In addition, specific peer-to-peer sharing sessions were held, including:

- › Life Maps on national ABS processes
- › Panel Discussions with select participants; and
- › World Café sessions led by participants.

In these sessions, participants learned more about each other's challenges and progress, shared particularly interesting aspects of their ABS experiences, and gained an understanding on how and what they could learn from each other.

3.1 LIFE MAPS

Participants were assigned “homework” in the week before attending the workshop to prepare a “Life Map” of ABS milestones in their country. On the 2nd day of each workshop following the completion of the Pub Quiz reviews, participants were invited to present their LifeMap.

Through these Life Maps, participants were able to obtain a comprehensive understanding of the “storyline of ABS” in their country, including both the technical and political issues that have impacted on implementation.

At each workshop, the sessions commenced with the example presentation of the Life Map on Costa Rica (Jorge Cabrera), Brazil (Henry Novion) and Spain (Alejandro Lago). Participants then worked to create one Life Map per country present, working in country pairs where possible.



Fig 13. Henri Novion presents the ABS Life Map of Brazil



Fig 14. Benedicta Falana presenting the ABS Life Map of Nigeria

The Life Map for each country present at the workshop was shared, and some common challenges, advances and opportunities emerged from these presentations.

Challenges

- › Need for clarity in land tenure systems
- › Addressing ABS in decentralized governance systems
- › Updating existing measures to meet the Protocol requirements
- › Lack of capacity and budget to implement
- › Need for close collaboration with Ministry of Justice / Attorney General due to cross-cutting nature of ABS

Advances and opportunities

- › ABS prioritized in revised NBSAPs
- › Legal gap analysis underway
- › Guidelines developed on access procedures
- › Core ABS institutions established
- › Cross-cutting committees created to address ABS policy and decision-making
- › ABS issues being linked to broader political issues, e.g. Aichi Targets, SDGs, climate change;
- › Protocol translated into local languages
- › 2nd revision of ABS legislation complete/underway drawing from lessons learned of ABS experiences

The exercise offered the opportunity for peer-to-peer exchange of ABS experiences, and early identification of common challenges and interesting breakthroughs.

3.2 PANEL DISCUSSIONS

In the Hague workshop, participants from countries with advanced ABS processes joined a panel discussion to share their experiences, and answer questions from their peers.

Participant-led Panel Discussions

The Hague workshop

- › Updating measures to fulfill the Protocol's obligations, *Ashenafi Hailu and Fikremariam Melaku, Ethiopia*
- › Practical tips on designing ABS measures, *Uda Nakamhela, Namibia*
- › Identifying co-benefits across national priorities, *Lacticia Tshiwamulomoni and Rudzani Netsianda, South Africa*

› Ethiopia – Updating measures to fulfill the Protocol's obligations

In Ethiopia, a stand-alone ABS legislation has been developed, the *Access to Genetic Resources and Community Knowledge and Community Rights, Proclamation No. 482/2006*. It is currently being reviewed to update its provisions to the Nagoya Protocol. Current priorities include addressing change of intent, emergency situations, and designating a checkpoint and publishing authority, while building flexibility to accommodate future checkpoints. Clauses are being considered to support capacity building and awareness raising.

› Namibia – Practical tips on designing ABS measures

Mr. Uda Nakamhela shared his perspective as a consultant engaged to assist the Government of Namibia to draft their ABS legislation in 2010. Mr. Nakamhela offered several practical tips on designing domestic measures compatible with the requirements of the Nagoya Protocol. He noted Namibia's approach to leverage existing institutions rather than create all new ABS institutions. Further, Mr. Nakamhela provided tips on addressing issues of IP rights, customary community protocols, and exemptions from the scope of application of ABS measures.

› South Africa - Identifying co-benefits across national priorities

South Africa has recently undertaken a review of ABS legislation. Key priorities are to ensure alignment with the Nagoya Protocol, as well as the new African Union Guidelines for the coordinated implementation of the Protocol. The process will involve stakeholder consultation, mainly through the multi-stakeholder Biodiversity Forum and its working groups. The Bioprospecting Committee, who is the body responsible for granting permits have highlighted problematic areas for attention, based on their experience of granting 40 permits and close to 100 agreements to date. **An innovation in South Africa is the**

Socio-Economic Impact Assessment System, launched in 2015 to develop a more effective legislative program. The System enables drafters to consistently assess unintended costs and risks that may arise out of new policy initiatives, regulations and legislation. Importantly it **provides a tool to identify opportunities to achieve co-national priorities under the National Development Plan**, such that actions and strategies are integrated across government.



Fig 15. Ashenafi Hailu, Fikremariam Melaku and Uda Nakamhela in the panel discussion on leading ABS experiences



Fig 16. Lactitia Tshiwamulomoni and Rudzani Netsianda in the panel discussion on leading ABS experiences

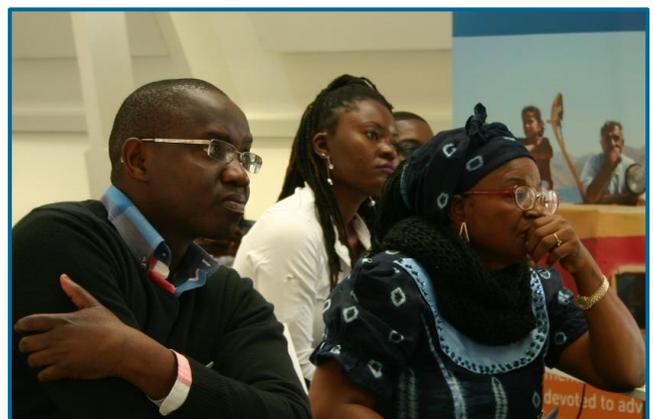


Fig 17. Participants in the panel discussion session on leading ABS experiences in the Hague workshop

3.3 WORLD CAFÉ SESSIONS

In the Bali and Antigua workshops, several participants proposed and designed their own World Café sessions. Working with IDLO facilitators, participants defined themes that featured an interesting approach taken by their country, and/or focused on a particular challenge raised by participants for further discussion.

Participant-led World Café Themes

Bali workshop

- › Defining a policy vision on ABS, *Kauna Schroder, Namibia*
- › Benefit-sharing terms and mechanisms, *Vidya Vijayaraghavan, India*
- › Sharing stories of ABS partnerships, *Chencho Dorij, Bhutan*
- › Engaging the private sector and research communities, *Tomohiro Shimada, Japan*

Antigua workshop

- › Supporting the development of community protocols, *Veronica Lemache and Daniela Reyes, Ecuador*
- › Delimiting the scope of application of access regimes, *Paola Rojas, Colombia*
- › The new approach of Brazil's ABS law, *Henri Novion, Brazil*
- › Elements of effective access regimes, *Natalia Batista, Costa Rica*

BALI WORKSHOP

World Café sessions were led by participants from **Namibia, Bhutan, Japan and India** in the Bali workshop,

› Namibia – Defining a policy vision on ABS

Ms. Kauna Schroder led a World Café session on Namibia's experience on building political buy-in for ABS. Namibia has been a leader in driving ABS global negotiations since the days of the 2002 Bonn Guidelines. At the domestic level, Ms. Schroder noted that Namibia has made great efforts to build buy-in and collaboration on ABS issues. In 2007, an Interim Bioprospecting Committee was created that fostered collaboration on ABS issues in departments across government, universities, the private sector, NGOs and local communities. A draft ABS bill was developed in 2012 after a highly consultative process. Since 2012, officials from the Ministry of Environment and Tourism have engaged with parliamentarians to explain the significance of the ABS bill. A change of government occurred in 2015 with a new vision focused on "leaving no one behind" aligned with the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development. Ms. Schroder shared that officials in her

Ministry worked to **show how ABS contributes to broader sustainable development goals, building on the momentum of the SDGs**. This effort played an important role in building political buy-in and support for ABS from Namibian Parliamentarians.

› India – Benefit-sharing terms and mechanisms

Ms. Vidya Vijayaraghavan facilitated a World Café session for participants to share experiences with establishing benefit-sharing terms in ABS agreements, and in distributing benefits accrued. Ms. Vijayaraghavan started the discussion by sharing India's experience with two mechanisms - the Benefit-Sharing Mechanism (BSM) and Access and Benefit Sharing Mechanism (ABSM). She noted that often in ABS issues, the focus remains on negotiating legal access while benefits still rarely flow to indigenous and local communities. **The BSM moves the focus away from access, and instead aims to ensure some kind of benefit accrues and flows to ILCs**. Challenges remain in acceptance of BSMs, however efforts continue.

› Bhutan – Sharing stories of ABS partnerships

Mr. Chencho Dorij facilitated a World Café discussion to gather stories of benefit sharing in the countries gathered. **The stories shared showed both successes and failures in building ABS partnerships**. In Samoa, U.S. scientists obtained access to mamala tree bark to explore its potential to treat HIV-AIDs. The U.S. researchers invested in the construction of a tree walkway park that now generates tourism revenue for the local Samoan communities. In Thailand, Vietnam, and Cambodia, partnerships and some benefits have taken place but not directly related to formal ABS measures. In other countries, research interest has been expressed but progress has been stalled due to lack of ABS systems and capacity.

› Japan – Engaging the private sector and research communities

Mr. Tomohiro Shimada fostered discussion on approaches to take to engage the private sector and research communities on ABS issues. Mr. Shimada led the discussion by sharing the experience of the Ministry of Environment in Japan, who has collaborated with the Japan BioIndustry Associated (JBA), a private sector body, since 2002. **This collaboration has resulted in the development of Guidelines on Access to Genetic Resources for Users in Japan, with a 2nd edition released in 2012**. Further collaborations have included the creation of specialized ABS websites, hosting help desks, bilateral workshops and international symposiums. Participants shared their own experiences as well, with some lesson learned emerging. In general, the private sector continues to demand clear legal access from countries. Some successes have emerged by opening discussions on ABS within the framework of corporate social responsibility (CSR) principles.

World Café discussions in Bali Workshop



Kauna Schroder, Namibia facilitates a World Café session



Vidya Vijayaraghavan, India facilitates a World Café session



Chencho Dorji, Bhutan facilitates a World Café session



Tomohiro Shimada, Japan facilitates a World Café session



Ofa Kaisamy, Tonga and Kathleen Taituave, Samoa speak in World Café session



Bono Priambodo, Indonesia speaks in World Café session



Somawan Sukprasert and Tatiya Nanthiraphakom, Thailand speak in World Café session



Kunzang, Bhutan speaks in World Café session

ANTIGUA WORKSHOP

World Café sessions were led by participants from **Ecuador, Colombia, Costa Rica and Brazil** in the Antigua workshop.

> Peru – Options to combat biopiracy

Mr. Andres Valladolid facilitated a World Café to share ideas on possible mechanisms or institutions to combat biopiracy. Mr. Valladolid shared Peru's approach of creating the Commission Against Biopiracy, a cross-sectoral coordination body that works to prevent the unauthorized access and use of Peruvian genetic resources, and associated traditional knowledge. Its main approach is to identify unauthorized use in foreign patent applications, and issue formal opposition – a process that has identified nearly 20 cases over last 12 years. The Commission is a *sui generis* monitoring mechanism and has been designated as one of Peru's ABS checkpoints. Other participants considered the feasibility of replicating this mechanism in their countries, and shared experiences with other similar approaches. Most noted that mechanisms are lacking in their country to effectively monitor the flow of national genetic resources and associated traditional knowledge once these leave their jurisdiction.

> Ecuador – Supporting the development of community protocols

Ms. Veronica Lemache and Ms. Daniela Reyes led a discussion on community protocols, based on the growing recognition of their usefulness in supporting meaningful participation of ILCs in ABS activities. Ms. Lemache and Ms. Reyes opened by sharing the Government of Ecuador's first experience in supporting the development of a community protocol by six Zapotec communities in the south of Ecuador. A local company is interested in distilling oil from the Palo Santo tree. Through the community protocol, the Zapotec communities are identifying their priorities to guide negotiations on benefits. The communities seek to become sustainable providers of Palo Santo oil for the cosmetic and nutraceutical sectors. Other participants shared their experience, and agreed in general that community protocols can offer multiple benefits – they enable bottom-up participatory processes that allow communities to engage with potential users of traditional knowledge and genetic resources, channel benefits to the local level, and provide users with legal certainty. One innovative idea discussed was the creation of regional community protocols as a potential approach to address cases of transboundary genetic resources.

> Colombia – Delimiting the scope of application of access regimes

Ms. Paula Rojas facilitated a World Café discussion to share perspectives on defining the scope of application of ABS measures. The focus questions were:

- What measure was taken in your country to define activities that trigger access requirements? Why?

- What legislation and regulations were developed?
- What was the most difficult challenge and how was it resolved?
- What are the most important benefits of defining a clear scope of application?

Ms. Rojas discussed the difficulties experienced by Member States of the Andean Community (Bolivia, Ecuador, Colombia and Peru) in implementing the regional ABS regime established by the Andean Decision 391 in 1996, due to the lack of clear definitions of the terms “biological resources” and “genetic resources”. To date, some of the Andean countries still struggle to determine what activities implicate access to genetic resources, and therefore trigger the Decision's ABS requirements. She then presented the scope of application adopted by Colombia. Overall participants agreed that having precise definitions for key terms such as “genetic resources” “access” or “commercial purpose” can bring legal certainty on the applicable scope of activities, and their related access requirements.

> Brazil – The new approach of Brazil's ABS law

Mr. Henri Novion opened a discussion to enable fellow participants to ask questions on the new Brazilian ABS legislation, Law 13,123/2015. Mr. Novion shared that Brazil's first ABS measure adopted in 2001 took a protective approach focused on preventing bio-piracy, but it was criticized for hindering research and innovation. Brazil's updated ABS approach was developed through a highly consultative process. It aims to promote access to Brazilian genetic resources with the aim of ensuring actual benefits are shared fairly and equitably with States, ILCs and others. Law 13,123 features various novel aspects, including: the creation of a simple electronic registration system for access to genetic resources, an obligation to share benefits only at the stage of the finalized product, mechanisms to regularize past unauthorized cases of access to genetic resources, establishment of minimum royalties for the benefit of local communities, and the creation of a National Fund for Benefit Sharing.

> Costa Rica – Elements of effective access regimes

Ms. Natalia Batista facilitated a discussion on elements of effective access regimes. She described Costa Rica's approach to regulating access to genetic resources through the Biodiversity Law and four regulatory measures (No. 34433-MINAE, 31514-MINAE, 33697-MINAE, and 39341-MINAE). Under this regime, 425 access permits have been granted for basic research and bioprospecting purposes over the last twelve years. Participants discussed some of the key aspects that were taken into consideration for the design of this successful access procedure, such as potential purposes of access, innovative uses of genetic resources, ILC rights over natural resources, compliance and monitoring mechanisms, and supportive implementation with international treaties related to the Nagoya Protocol (i.e CITES).

World Café discussions in Antigua Workshop



Andrés Valladolid, Peru facilitates a World Café session



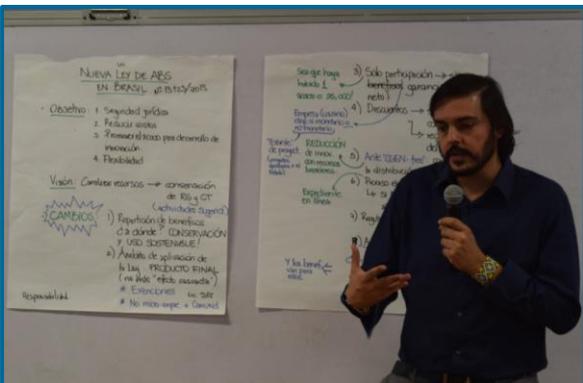
Veronica Lemache and Daniela Reyes, Ecuador facilitate a World Café session



Paula Rojas, Colombia facilitates a World Café session



Natalia Batista, Costa Rica facilitates a World Café session



Henri Novion, Brazil facilitates a World Café session



Rosemarie Ávila, Peru speaks in World Café discussions



Small group discussion in World Café session



Virginia Sibillo, Dominican Republic speaks in World Café session

FACE-TO-FACE WORKSHOPS

OBJECTIVE 4: STRENGTHEN LEADERSHIP AND COMMUNICATIONS SKILLS

4. OVERVIEW

A common challenge cited by participants in the Needs Assessment was the difficulties to communicate the importance of designing measures on ABS to stakeholders and key decision-makers. Inclusive legal reform processes can lead to better implementation of selected approaches, but legal and policy officers require communication and facilitation skills to guide consultations.

Several sessions were designed to support participants in Objective 4: “Strengthen leadership and communication skills relevant to engaging ABS stakeholders, including:

- > Communication Tips
- > Stakeholder Engagement
- > Ignite! presentations
- > Leadership

In these sessions, IDLO capacity building experts (IDLO (Rocio de la Calle @The Hague, Helene Molinier @Bali, Olga Perez @Antigua) led participants in sessions to share the challenges they faced in engaging stakeholders, learn new communication approaches and reflect on their own potential as national leaders in advancing ABS processes.

4.1 STAKEHOLDER ENGAGEMENT

A first step in engaging stakeholders is identifying and understanding them. In the workshop, participants took part in a group brainstorm on:

- > Who are the key ABS stakeholders?
- > What common questions do we face on ABS?

Participants agreed that the key stakeholders in the design of measures include **Parliamentarians, research communities, ILCs, and other key ministries**. Breaking into groups focused on these four stakeholder groups, participants presented their thoughts and experiences on:

- > What are the critical times to reach out to them?
- > How to identify entry points and common interests?
- > What are the best activities to engage them in?

IDLO led a focused discussion on how to “Build Alliances” with the identified stakeholders. Participants were invited to recall that communication requires human connection and trust-building. Participants shared innovative ideas and approaches on building trust with stakeholders in ABS consultations.



Fig 17. Chifundo Chinyama presents on engagement of ILCs



Fig 18. Anthony Foronda presents on engagement of politicians

4.2 COMMUNICATION TIPS

Participants were introduced to the concept of coaching as a means to helping individuals find solutions to their own challenges. IDLO led discussions on the two fundamental skills required of good coaches: the ability to ask “powerful questions” and the capacity to “actively listen.”

Participants took part in exercises in pairs to test their skills by listening in silence to their partner speak for several minutes. In feedback, participants noted that listening without speaking is a challenge, as many wanted to intervene. However, by actively listening some participants found that the person speaking was better able to express ideas uninterrupted and from their own viewpoint.

Participants next practiced asking powerful questions on any topic to their partners for a few minutes. Everyone was then asked to turn back-to-back and the person who had asked questions was tested to see what they had learned and noticed about their partners.

Through the exercise, participants remarked that communication requires listening skills – not only to the words spoken but also body language. Participants debated the importance of paying attention to the tone of voice and body language, as key elements of communication.

Building skills to listen to oneself and others more comprehensively can lead to better problem-solving and identification of solutions together. Participants noted that these skills could be key in connecting with stakeholders, understanding their perspectives, and defining common solutions to advance ABS in their countries.



Fig 19. Communications session in The Hague workshop



Fig 20. Communications session in Bali workshop

4.2 IGNITE! PRESENTATIONS

Trying to explain ABS in a clear, simple way can be a challenge. In this session, participants were introduced to a new way of presenting information - through Ignite! Presentations. Speakers had to present twenty (20) slides that move automatically after fifteen (15) seconds, resulting in a brief but high-impact five (5) minute presentation.

The session began with an introduction to the Ignite! presentation format and rules. Ignite! presentations use

images with minimal text, aimed at providing viewers with powerful images to make the messages memorable.

Next, IDLO and experts presented a sample Ignite! presentation, this one tailored to the course participants – designed to inform and inspire lawyers and policy-makers working to design measures to implement the Protocol.

Participants then prepared their own Ignite! presentations in groups. Each group chose one key stakeholder group to target: Parliamentarians, other ministries, indigenous and local communities, and research communities. In each Ignite! presentation, participants practiced their communications skills and demonstrated their creativity and capacity to inspire. (See photos on next page)

4.3 LEADERSHIP

Participants reflected on the need for leadership to advance national processes to implement the Nagoya Protocol, especially those that had been stalled or faced specific obstacles in obtaining the needed support from key stakeholders. In this session, participants reflected on their own leadership potential, and defined their own approach to leadership.

IDLO led a brief presentation on the different types of leaders, and the importance of emotional intelligence in leaders. Participants then shared their thoughts on specific persons that they admired and the different types of leadership approaches that these leaders took.

Leadership characteristics identified by participants include:

- > Inspirational and visionary;
- > Self-awareness;
- > Fair, non-biased and consistent; and
- > Confidence in decision-making.

Overall, participants noted that the most respected leaders tend to be those that not only can make decisions and inspire, but also show fairness and respect to others.



Fig 21. Olga Perez, IDLO facilitates a leadership session

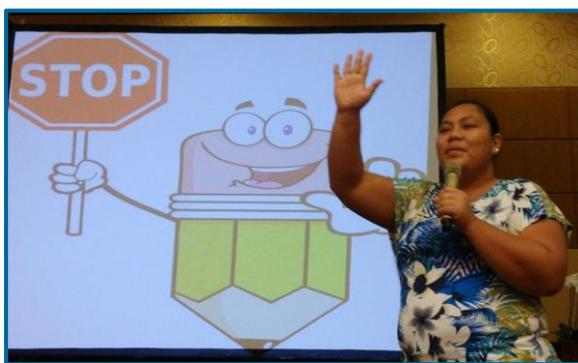
Ignite! Presentations by Participants



Faith Phillime, Botswana



Lactitia Tshitwamulomoni, South Africa



Kathleen Taituave, Samoa



Val Roque, The Philippines



Yourk Sothearith, Cambodia



Raisa Alvarado, Panama



Ileana Cardona, Honduras



Ignite! for the "Minister of Finance" in the Antigua workshop

FACE-TO-FACE WORKSHOPS

OBJECTIVE 5: APPLY THE KNOWLEDGE ACQUIRED TO PLAN NEXT STEPS

5. OVERVIEW

Reflection and planning sessions were interspersed throughout the workshop to enable participants to apply the knowledge gained to their own national contexts.

- > Check your Implementation
- > Problem Tree on ABS Policy-Setting
- > Designing Measures
- > Building Plans and Partnerships
- > Commitment and Accountability

Based on their reflections, participants were able to identify priority next steps and make concrete plans on the collaborations and personal actions needed to advance national processes to implement the Nagoya Protocol.

5.1 CHECK YOUR IMPLEMENTATION

Participants worked on the “Check Your Implementation” exercise, a session aimed at supporting participants to understand what has been achieved so far and what gaps remain in their countries towards the design of domestic measures that fully implement the Nagoya Protocol.

The session was held at each workshop after participants had reviewed the e-learning material in the pub quiz sessions. Participants filled out worksheets (in pairs with their national colleague, if applicable) focusing on the five substantive elements of the Protocol covered in the e-learning modules:

ACCESS		Implemented (circle one)	If NO, should ABS be a next priority for implementation? How can it be achieved?
CORE REQUIREMENTS (Article 6)			
Maximum PIC requirements? What? If so, decide on:	Yes / No		PIC is a default option but Parties can opt out
Scope defined? Exemptions?	Yes / No		Consider Protocol definition of "material" Define exemptions
Why grants PIC?	Yes / No		States have primary right ILCs and others may be included Depends on primary rights regime
What process?	Yes / No		Consider core elements: <ul style="list-style-type: none"> • Information on applying for PIC • Clear written decision • Access to genetic resources • Clear role and procedures on BMT Ensure clear regulatory requirements and fair, non-arbitrary rules
REFINE AND TAILOR APPROACH			
Regulate access for different uses and types of cell	Yes / No		Simplified system for non-commercial access? Especially national research? How to handle different regimes for different OR?
Mutuality requirements (Article 9)	Yes / No		Consider the IPGRFA and PP framework. Consider to make accession a contract? Ensure mutual obligations? Develop competence measures?
Specialised units of access: <ul style="list-style-type: none"> • national research • emergency • food & agriculture (Art. 9) 	Yes / No		

For each element, participants identified whether or not the core obligations had been met. They next considered a list of options for further refining and tailoring their measures to suit national contexts. From this exercise, participants identified gaps and new ideas for implementation, and started prioritizing the next actions to take in the design of domestic measures.

5.2 PROBLEM TREE ON ABS POLICY-SETTING

Participants from many countries highlighted the importance of taking early steps to establish a national policy vision on ABS. Such a vision can help to bring together actors from different ministries and sectors, and provide a unifying focus for all to ensure ABS contributes to national development goals. In this “Problem Tree” session, participants worked in groups to brainstorm and envision the possible elements of an ABS policy vision.

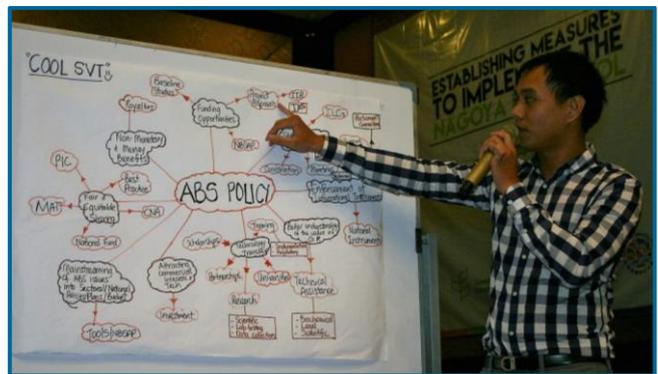


Fig 22. ABS Problem Tree presented by Le Anh Dung, Vietnam at the Bali workshop

In the reflection on the exercise, some participants noted that they had not previously recognized the potential for ABS to contribute to broader development goals beyond conservation and benefit-sharing. Kauna Schroder highlighted **Namibia's** experience in gaining buy-in from other ministries once efforts had been made to link ABS issues to the Sustainable Development Goals (SDGs). Lactitia Tshitwamulomoni shared **South Africa's** experience in setting a clear policy vision on ABS early on, with the result now that ABS is recognized across several sectoral policies on land, ILCs, and the bio-economy.

5.3 DESIGNING MEASURES

In the “Designing Measures” session, participants reflected on the indicative steps to build effective ABS regulatory approaches – an issue that had been covered in the e-learning module on Legal Reform. These steps include:

- > **Stock-take opportunities and challenges** in existing legal and institutional frameworks;
- > **Define regulatory approaches** to achieve short- to medium-term ABS policy goals; and
- > **Monitor, report and evaluate** for adaptive reform.

Three questions were posed to participants for reflection:

- › What regulatory approach(es) is your country taking, or if not chosen, you think is most suitable?
- › What are the advantages and challenges of this choice? Should other approaches be considered?
- › What is the next step to take in your country to advance the development or implementation of the regulatory approach?

STEP 2 – Select Approach

Approach	Would this be a suitable option in your country? Why?	List some advantages / benefits to taking this approach	What immediate steps can be taken to advance this approach
Define ABS vision in strategies, policies or constitutions			
Establish ABS as a priority in NBS-APs			
Draft a stand-alone ABS legislation			
Amend general environmental legislation to introduce ABS			
Adopt ABS regulations under broader legislation			
Gain experience through adoption of administrative measures			

Fig 23. “Designing Measures” worksheet on ABS regulatory approaches

By working through the “Designing Measures” worksheet, participants identified which step their own national processes were focused on, and reflected on the considerations listed on the worksheet to help inform their decision on next steps to take.

5.5 BUILDING PLANS AND PARTNERSHIPS

On the final day of each workshop, sessions were held to enable participants to finalize their plans for next steps, and identify the partnerships they would need to advance Protocol implementation in their countries and regions.

In the Hague, participants gathered in World Café discussions focused on how to build partnerships with each other, with IDLO and the SCBD, and with other partners. In Bali, participants gathered in groups of similarly situated countries to share their plans for next steps, and identify areas for potential collaboration and co-learning. In Antigua, participants split into two groups – Central America and South America – to share plans, highlight key challenges and achievements, and find ways to collaborate together.

5.6 COMMITMENT AND ACCOUNTABILITY

In the final session of each workshop, participants gathered in a circle with the “talking ball” to share their personal commitments to advance Protocol implementation processes in their own country. A set of “minimum commitments” was proposed to the group to consider:

- ✓ Meet with at least two colleagues in your country to discuss workshop
- ✓ Get in touch with your GEF Focal Point
- ✓ Skype / call one other participant to discuss ABS measures
- ✓ Post or respond to one thing on the Facebook group
- ✓ Send one resource to upload on the course website
- ✓ Write IDLO with an update on implementation progress in 3 months (to be included in a newsletter for all participants)

Participants considered and expanded on these minimum commitments, dedicating themselves to action, for example to translate the Nagoya Protocol in local languages, work on new ABS measures or policies, review existing drafts to update them with lessons learned from the workshop and upload information to the ABS Clearing-house.



Fig 24. Diana Monroy, Guatemala making commitments at the Antigua workshop

Many committed to use the new communication and leadership skills and capacity building tools gained in the workshop, including presenting an Ignite! Presentation in their countries. Finally, many acknowledged the importance of actively supporting each other, and the global network that had been formed to ensure that the peer-to-peer sharing continues after the workshop for the benefit of all.

POST-WORKSHOP DISCUSSIONS – ONLINE NETWORK

6. OVERVIEW

A key aim of the IDLO-SCBD capacity building course was to ensure that the relationships built and discussions begun at each workshop did not end in the closing sessions.

The IDLO-SCBD program offers opportunities for continued peer-to-peer sharing between course participants from around the world. Upon completion of the course, participants are invited to join the IDLO Alumni network with focused support provided to keep up to date on the latest thinking, research and news on ABS.

IDLO provides active support to facilitate exchanges amongst the global network through various tools accessible by course Alumni only, consisting of:

- › **A Facebook group** for peer-to-peer sharing and discussion on the latest news, resources and events;
- › **Newsletters** sent by mailing list with an update on the key updates and activities by members; and
- › **Website** providing access to the e-learning materials, member biographies and materials shared, and updates on the latest workshops and ABS-related news.

6.1 FACEBOOK GROUP

Launched in June 2016 with the commencement of the e-learning course, the private Facebook Group provides a central forum for participants to learn about the latest activities and share materials from the IDLO-SCBD course.

Throughout the course period, participants were invited to post questions for discussion and share news related to their national ABS processes. Participants raised question on the issues raised in the e-learning modules. Others have been sharing material for comment by their global peers in the period following the course. Throughout, IDLO shares general news and articles on ABS issues and opportunities of potential interest to the network.

6.2 NEWSLETTER

The newsletter aims to provide a curated forum for peer-to-peer sharing of updates from participants around the world – connecting global colleagues. In November 2016, the first newsletter was sent with updates sharing news and resources sent in by participants from Antigua & Barbuda, Namibia, Peru, Panama and South Africa. The newsletter also offered news items of relevance and an update on key Nagoya Protocol events planned at the 13th Conference of Parties to the Convention on Biological Diversity.

6.3 WEBSITE

Throughout the course, a member-only website has provided a central forum for participants to access the course materials and learn about each other. Participants have shared key resources that could be useful to their global ABS colleagues, and these are centrally stored for access through the course website.



Fig 25. Course website

6.4 SUMMARY AND NEXT STEPS

In November 2016, IDLO contacted all participants for an update on the “Commitments” made during the workshop. Promising developments in national ABS processes were reported by participants, as well as opportunities taken to further network with their peers, including :

- › Draft ABS legislative texts have been shared amongst network members for peer review;
- › Workshops have been held to further disseminate the information gained during the IDLO-SCBD course;
- › Capacity building tools, such as Life Maps and Ignite! presentations have been incorporated into national workshops;
- › New capacity building programs at the regional and national levels are being planned based on the IDLO-SCBD capacity building approach; and
- › Awareness-raising materials are being developed to better communicate ABS to key stakeholders.

Interactive video updates are being recorded by participants to share these updates across the network.

ANNEXES

ANNEX I. WORKSHOP GROUP PHOTOS



Group photo at The Hague workshop, 11- 15 July 2016



Group photo at the Bali workshop, 18 - 22 July 2016



Group photo at the Antigua workshop, 5 - 9 September 2016

ANNEX II. LIST OF COURSE PARTICIPANTS

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ANNEX III. WORKSHOP AGENDAS

THE HAGUE WORKSHOP, 11-15 JULY 2016

	Monday Day 1	Tuesday Day 2	Wednesday Day 3	Thursday Day 4	Friday Day 5	
MORNING	9:00	Opening	Re-cap + daily objectives	Re-cap + daily objectives	Re-cap + daily objectives	
	9:30-10:30	Introductions	Life Maps Workshop session	Country perspectives	Designing Measures Workshop session	Making commitments and connections
		Expectation Setting				
	10:45-12:30	Setting the scene	World Café A closer look at Protocol implementation	World Café Challenges of implementation	Stakeholder Engagement	Remaining questions
		E-learning Pub Quiz				Communication tips
	Lunch Break 12:30-13:30					
AFTERNOON	13:30-15:15	E-learning Pub Quiz	World Café A closer look at Protocol implementation	World Café User perspectives	Building leadership	GROW
					Ignite!	
	15:30-	E-learning Pub Quiz	Check your implementation Workshop session	Problem Tree on ABS policy-setting	Ignite!	Closing: Evaluation forms + diplomas
	17:30	Wrap-up	Wrap-up + Social Event	Wrap-up	Wrap-up	END

BALI WORKSHOP. 18-22 JULY 2016

	Monday Day 1	Tuesday Day 2	Wednesday Day 3	Thursday Day 4	Friday Day 5	
MORNING	9:00	Opening	Re-cap + daily objectives	Re-cap + daily objectives	Re-cap + daily objectives	
	9:30-10:30	Introductions	E-learning Review Legal Reform & Supportive Measures	World Café User perspectives	World Café Participant perspectives	Ignite! Leadership
		Expectation Setting				
	10:45-12:30	Building Alliances	Life Maps Workshop session & report back	Stakeholder Engagement	Designing Measures Workshop session	Dialogue & Sharing ABS measures – progress & challenges
E-learning Pub Quiz Institutional Arrangements & Access						
Lunch Break 12:30-13:30						
AFTERNOON	13:30-15:15	E-learning Pub Quiz Benefit-sharing & Compliance	World Café A closer look at Protocol implementation	World Café Challenges of implementation	Communication tips Designing Measures GROW session	World Café Building Plans & Partnerships
	15:30-17:00	E-learning Pub Quiz ILCs & Policy-Setting	Check your implementation Workshop session & report back	Problem Tree on ABS policy-setting	Building leadership Intro to Ignite!	Commitment & Accountability Evaluation + Certificates
	17:30	Wrap-up	Wrap-up	Wrap-up + Social Event	Wrap-up	END

ANTIGUA WORKSHOP. 5-9 SEPTEMBER 2016

	Lunes Día 1	Martes Día 2	Miércoles Día 3	Jueves Día 4	Viernes Día 5	
M A Ñ A N A	9:00	Inauguración	Repaso + objetivos del día	Repaso + objetivos del día	Repaso + objetivos del día	
	9:30-10:30	Introducciones	Pub Quiz - Comunidades Indígenas y Locales - Reforma Legal	Mapas de Vida Ejercicio - Entendiendo los eventos claves del APB en su país	World Café Compartiendo experiencias de los participantes	Diseño de Medidas Ejercicio
		Expectativas				
	10:45-12:30	Agenda del taller	Pub Quiz - Medidas de Apoyo - Discusión general	Mapas de Vida	Construyendo Alianzas Consejos de Comunicación	Diálogo e Intercambio Medidas de APB – avances y desafíos
Pub Quiz - Establecimiento de Políticas - Acuerdos Institucionales		Verifique el estado de su implementación Ejercicio – Entendiendo el progreso y haciendo planes				
Receso para el almuerzo 12:30-13:30						
T A R D E	13:30-15:15	Pub Quiz - Acceso a los Recursos Genéticos - Participación en los Beneficios	World Café Un análisis más detallado de la implementación del Protocolo	World Café Desafíos para la implementación	Ignite! Introducción y Preparación	Ignite! Liderazgo
	15:30-17:00	Pub Quiz - Cumplimiento - Centro de Intercambio de Información sobre APB	World Café Perspectivas de los usuarios	Mapa Conceptual Definiendo políticas sobre el APB	De la Teoría a la Practica Aplicando conocimientos	Compromiso y responsabilidad Evaluación + Certificados
	17:30	Conclusiones	Conclusiones + Evento Social	Conclusiones	Conclusiones	CIERRE

ABOUT SCBD

The Secretariat of the Convention on Biological Diversity (SCBD), based in Montreal, Canada, was established to support the goals of the Convention and its Protocols. Its primary function is to assist member governments in the implementation of the Convention, including its Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets.

ABOUT JBF

The JBF was established by COP10 Presidency, Government of Japan, to support developing countries to build their capacity to implement the “Nagoya Compact” primarily by promoting Secretariat projects that assist parties to: implement the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets; revise their NBSAPs to include national targets, in accordance with the Strategic Plan, and; strengthen their overall capacity to implement the convention at national level.

ABOUT IDLO

IDLO enables governments and empowers people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

Download the PDF at www.idlo.int



Convention on
Biological Diversity



Creating a Culture of Justice
International Development Law Organization