

Summary Report

**ABS-Management Tool Project
Phase 2
Advisory Committee Meeting #1
15 February 2005
Bangkok, Thailand**

Participants

Merle Alexander
Kate Davis
Libby Evans-Illidge (by phone)
Tom Jacob
Francois Pythoud
Seizo Sumida
Tomme Young
Lourdes Amos (observer)
Gam A. Shimray (observer)

Regrets

Rodrigo Cruz
David Hircock
Almuth Ostermeyer-Schloder
Ping Peria
Stella Simiyu
A.H. Zakri

Objectives of the Meeting

This was the first meeting of the Advisory Committee (AC) in the second phase of the ABS-Management Tool (ABS-MT) project. The objective of this meeting was to:

- a) Review the activities since the end of Phase 1
- b) Review the Phase 2 Implementation Plan
- c) Review and approve the Advisory Committee Terms of Reference (TORs)
- d) Review and approve the Selection Criteria for the "pilot projects"

A PowerPoint presentation was used to update AC members on the activities since the end of Phase 1 and to provide an overview of the Phase 2 Implementation Plan (see file attached). This PPT was also used to structure the discussion in the AC meeting. It was agreed that this PPT presentation would be revised and made available to AC members to use in their own outreach activities related to the project.

Much of the AC discussions in the first part of the meeting touched on issues related to ABS in general rather to the ABS-MT project in particular. While this report does not include a record of the various statements made by members of the Advisory Committee, it does try to extract from the general discussions those lessons of particular importance to the project. Advisory Committee members stated that the Committee provides a useful informal forum in which different perspectives on ABS can be shared openly.

Re-Establishing the Advisory Committee

The project team noted that the AC was being re-established in Phase 2 to undertake a role similar to that of Phase 1, namely: to advise on all aspects of the project, including both the substantive activities and processes for carrying them out; and to help bring a broad range of perspectives to bear on the implementation of the project. All Phase 1 AC members were invited to participate in Phase 2. In addition, the project team had identified the need for additional AC members to ensure an adequate involvement by industry, indigenous peoples groups and local communities.

Tom Jacob, Chair of the ICC Working Group on ABS, accepted an invitation to participate. Rodrigo Cruz, associated with COICA in South America, had also accepted an invitation to participate but was unable to attend the first meeting of the AC.

Lourdes (Des) Amos and Gam A. Shimray who are associated with the Asian Indigenous Peoples' Pact (AIPP), attended the AC meeting as observers and in their personal capacities. They said they are not in a position to become members of the AC. The point was made that it may be difficult for indigenous peoples' representatives to participate formally in the project. There are concerns that the ABS-MT would eventually lead to more access and use of GR and associated TK – something that is not seen as a positive development in many indigenous communities.

It was agreed that efforts to increase indigenous peoples and local community involvement in the project were needed and that these could come through a mixture of informal input to the AC and targeted outreach with relevant networks.

Due to time limitations, the AC terms of reference were not reviewed in enough detail to be formally approved. The AC members did agree however that it is important that all members approve the terms under which they are participating. It was agreed that AC members would be contacted individually after the AC meeting for their input on the TORs, and any proposed revisions circulated to AC members for comment and subsequent approval.

Testing the ABS Management Tool (ABS-MT)

Terminology

It was noted by AC members that the term "pilot projects" had led some of them to understand that the project would try to encourage new applications for access to GR. The project team clarified that the aim of the "pilot projects" was to test the effectiveness of the ABS-MT in real-world situations and so, while the project team would be looking for actual ABS negotiations or other ABS activities to follow, it would not be encouraging or initiating new access requests. It was agreed that the term "pilot project" might be misleading, and that even the term "project" may have negative connotations for certain communities, including some indigenous peoples. Alternatives were discussed, and it was proposed that "field tests" would be a better term to use.

Field Testing and Other Approaches

It was noted that a main objective in Phase 2 of the project is to obtain input on the usefulness of the ABS-MT and that this could be achieved using a number of different approaches. The project team indicated that they had intended to seek feedback in other ways than field testing in ABS negotiations, including by encouraging organizations to unilaterally implement the ABS-MT. The User Guide had been produced in part for this purpose. AC members stated that it would be appropriate to place more emphasis on other test methods, including case studies, and the development of questionnaires and feedback forms for other users of the ABS-MT. Such a questionnaire would be useful because some organizations have envisaged applying the ABS-MT as a normative reference for developing a company-wide or organization-wide policy, rather than as a project-based tool. Increasing the profile of other test methods in Phase 2 could both increase the volume of input on the ABS-MT, and also help to reduce the risk of negative perceptions linked to the concept of "pilot projects."

It was agreed that the project team will produce a short document outlining in clearer terms the objectives, and range of approaches for testing and input on use of the management tool to be undertaken in Phase 2 focusing on the need to get information on the effectiveness of the ABS-MT – of which "field testing" is one of several sources of information. It was noted that this document could also be used when undertaking broader and more proactive outreach activities.

Selection criteria for "field tests"

The project team presented an initial draft set of criteria for selecting field tests for the ABS-MT. Comments by AC members on the proposed mandatory and core selection criteria helped clarify that the criteria are intended to guide the selection of field tests, not to establish conditions under which the ABS-MT is to be used. Several AC members noted that the ABS-MT could conceivably be used in a number of different circumstances, including where only one party (for example a prospective user of genetic resources) is using the tool; where both the prospective provider and user agree to use the ABS-MT; from the start of ABS discussions or negotiations or where these discussions had already begun.

AC members noted that the selection criteria seemed unnecessarily restrictive, and that the project team might have a hard time finding field tests that match all of the criteria. With regard to the mandatory criteria, AC members questioned how it would be possible to determine in advance if the access would threaten conservation and sustainable use, in particular since the ABS-MT was supposed to help ensure this is not the case. A concern was also raised that a focus on conservation and sustainable use as a criterion for selecting field tests might marginalize the role of indigenous peoples through emphasis on modern science. It was suggested that the only mandatory criteria needed are those that refer to legal or policy frameworks that must be in place in order that ABS negotiations can be concluded. An additional mandatory criterion might also address the need for some disclosure of information arising from the field tests.

AC members also suggested that the "replicability" criterion would be difficult to meet, since all ABS negotiations are unique. After some discussion it was agreed that the intent of this criterion is to ensure that the conclusions from the field tests

are valid – i.e. that there was an empirical basis to the testing process – not that every field test was identical. Ensuring testing validity could be achieved by obtaining enough information on the context in which the ABS-MT is being tested to be able to identify the similarities and differences between it and other ABS negotiations.

AC members also said that the proposed criterion requiring both sides of the negotiation or ABS relationship to agree to use the ABS-MT was too restrictive. It was noted that this could complicate the selection of field tests. It would be interesting, for instance, to understand if unilateral use of the ABS-MT was more or less effective than its use by both sides. That said, AC members recalled that the ABS-MT was designed to be used by both users and providers in an ABS relationships, so it would be necessary to review the standards and guidance in the ABS-MT to ensure that a unilateral application did not leave any major gaps in application of the tool.

The project team agreed to revise the selection criteria for field tests of the ABS-MT to clarify and focus on baseline requirements and then a set of desirable conditions to consider in selecting field tests, rather than on a set of restrictive selection criteria.

Applying the ABS-MT Where Existing Guidance is Lacking

During discussions on the types of situations in which the ABS-MT should be tested, AC members stated that it would be most useful and appropriate to focus where there are gaps in existing guidance on ABS practices (e.g. sectors or types of institutions which do not have adequate established guidance).. For instance, it was noted that the botanical gardens community already has clear guidance in place through its ABS common policy principles and guidelines. In this case, while the ABS-MT does provide more detailed guidance, the interjection of an additional “tool” at this time might create confusion.. It was also noted that there are fewer incentives to go into great detail on ABS-issues if the intended use is not commercial.

The advisory committee agreed that this issue could also be addressed through a revision of the selection criteria.

Role of “facilitators” in field tests

The project team informed the AC that potential field tests had been identified through third-party, neutral “facilitators” who had proposed specific ABS activities to use the ABS-MT.

The role of a facilitator in such cases is in providing basic information on the ABS-MT and “making the case” for its use to prospective genetic resources users and providers. . It had also been suggested that parties to the negotiation may be so focused on getting the agreement in place that they might not be able to provide the project team with enough or timely information on the strengths and weaknesses of the ABS-MT. An on-the-ground facilitator could therefore not only help to put a field test in place, but also to ensure that the pilot team has access to adequate information.

AC members indicated that they could see the usefulness of a facilitator

in identifying possible field tests and helping to secure involvement of the parties (prospective user and provider). However they raised some concerns with regard to the role of facilitators in the implementation of the field test. For example, can a facilitator remain neutral in the ABS activity itself, and in terms of his/her role for the ABS-MT tests. It was further noted that the ABS-MT was designed to be a facilitation tool itself, and so it would be hard to isolate the impact of the ABS-MT on the ABS relationships or negotiations from the impact of a third-party facilitator. There was concern of introducing a research bias through the use of a facilitator and this could blur the conclusions from the field tests. Questions were also raised with respect to the validity of conclusions: if it is not common for an ABS negotiation to involve a third-party facilitator, then the conclusions of a field test involving a facilitator would not be as broadly applicable as otherwise. One AC member inquired into whether the driver for the use of a facilitator was the desire to get both parties to agree to use the ABS-MT, and suggested that it might be better to avoid the facilitator and instead choose field tests where the ABS-MT is implemented unilaterally.

The project team noted these concerns and agreed that it would be preferable to limit the use of facilitators in the field tests and to limit their role to the front end of the testing process. However, noting that it may not be possible to initiate field tests without some assistance from a facilitator or other third party, the project team suggested that there were a number of ways to address the concerns expressed by the AC members, including: limiting the role of the facilitator to the identification/endorsement stage; using the facilitator as a source of information on the negotiations, not as a partner in the field test of the ABS-MT; keeping a register of the role and all inputs made by the facilitator; and stating clearly the role of the facilitator in the field test report.

Disclosure of Information

The project team stated that the management tool recognizes the importance of transparency in ABS relationships and that it contains specific guidance on information sharing and disclosure. Therefore, consideration needs to be given to how to address this in the field tests and in particular what type of information from field tests should be made public.

It was noted that, in most cases, ABS negotiations are bound by certain confidentiality clauses. It was generally recognized that the project team would be required to sign non-disclosure agreements with either or both prospective genetic resource users and providers, in order for the parties to agree to a field test the ABS-MT. The project team would therefore need to ensure that there is a balance between the project's need for disclosure (for research and information purposes) and the need for confidentiality of the parties involved.

One way of addressing this is to determine what types of information need to remain confidential between the parties of a negotiation, and what types of information could be used to describe and report on the results of the testing of the MT. For example, information on the process of negotiation and ABS MT use would be more important for the field test reports than information on the terms of the contract, or the type of genetic resource accessed or sought. The former type of information is likely to be less sensitive than the latter. Overall, the AC members stated that there is a need for flexibility in considering the appropriate level and type of confidentiality and disclosure for each field test, to reflect their specific situations.

It was also noted that there are two levels of transparency/disclosure: disclosure between the parties to the ABS agreement, and public disclosure to interested parties. The ABS-MT encourages full and proper sharing of information/disclosure between the prospective user and prospective provider involved in the ABS relationship – but is less prescriptive on public disclosure of information.

It was also suggested that the timing of the disclosure might be important

Interaction between the Advisory Committee and conduct of the field tests.

AC members stated that the parties involved in the field tests should not as a matter of course be made formal members of the AC. However, there was general agreement that the AC would benefit from direct feedback from those involved in the field tests. It was agreed that the organizations involved in the field tests should be invited to attend AC meetings as observers, wherever this is feasible. AC members further felt that it was appropriate that existing AC members could play a role in the use of the MT in specific field tests, but that decisions would have to be made on a case-by-case basis once more information is available.

Other issues related to the testing of the ABS-MT

One AC member noted that this was a very ambitious project because, among other things, there is a big difference between the awareness and capacity of large and small companies. Other AC members noted the fact that capacity constraints were common to a number of ABS stakeholders – including indigenous peoples and local communities – and that “there can be no rights without capacity”. The project team noted that, while the project is not focused on capacity-building, one of the intentions of the ABS-MT is to clarify that fair and equitable ABS relationships must be built on adequate capacity. In those cases where direct capacity building is needed, the project may provide funds for this, although any such investments will be duly noted in the field test reports to ensure that the lessons learned reflect the input of external funding/capacity.

An AC member also noted that one of the challenges in ABS negotiations is in ensuring that the right interests are represented at the table, underlining that this does not always happen, in part, because certain stakeholders are disenfranchised, either because of lack of capacity or because of lack of government-recognition of their rights. From the other side, an AC member from the user community highlighted the fact that even companies with the best intentions face real problems in identifying and engaging with all of the groups that might later claim a “stake” in the negotiations. In some cases, governments discourage – or even dissuade – companies from engaging with marginalized interests.

One AC participant noted that while indigenous communities may be wary of the ABS-MT because it may encourage access when this is not desired, it might also be seen by them as a tool to help provide “damage control”. While they may prefer that no access or use takes place, the ABS-MT might help indigenous communities to increase the likelihood that they are involved in negotiations on access/use and that the results take their concerns into account. In this respect, the ABS-MT would not necessarily be seen as a good thing on its own, but instead as part of a process that creates a “less-bad” outcome.

Outreach

Objectives and Activities

AC members were in broad agreement that outreach is an important component of the Phase 2 activities, but noted that effective outreach must be guided by a clear understanding of:

- a) the objective of outreach for the project; and
- b) the perspective of the stakeholders being contacted.

In particular, AC members underlined the importance of first impressions, and encouraged the project team to clarify better what the purpose and target of the ABS-MT is, what the scope of Phase 2 entails, and what the purpose and target of the outreach is. It was suggested that the Phase 1 project brochure could be updated to provide a more succinct overview of these items, and that this could then be the basis for first contact with new networks on the project.

One AC member noted the importance of communicating with stakeholders in the context of their own concerns and priorities: for example, if a stakeholder group wants to stop all access and exploitation of GR, then a tool that is intended to facilitate access and use will not necessarily be well-received. This “psychological reluctance” will affect not only the type of input that stakeholder groups are willing to give, but also the likelihood that a network will be willing to act as a vehicle for transferring information on behalf of the project. Another AC member indicated that in sectors or regions where there is already a lot of work being done on ABS – such as botanical gardens – the dissemination of the ABS-MT might lead to confusion from “information overload”. Both comments suggest that it might be more difficult that presumed to use existing networks to reach a broader stakeholder group.

Some AC members commented on the objective of the outreach, noting that this could help to identify possible case studies and field tests for getting information on the implementation of the ABS-MT.

The Advisory Committee was also encouraged to inform the project team of meetings within their networks where it might be possible to participate in order to raise awareness of the ABS-MT project, and to get feedback on it. An upcoming meeting in the Yukon, Canada was mentioned (14-17 March 2005). It was agreed that the project team should also develop materials that AC members and others could take to such meetings where they intend to speak about the project.

Project newsletter

The project team described plans for a project newsletter, which would provide a regular source of information on the project, including the field tests and outreach activities. AC members noted that – like the overall project outreach plan – a newsletter could be useful as long as it was developed with a good understanding of the objective and perspective of the target audience. It was suggested that – to reach some audiences – the newsletter would almost certainly have to be translated into local languages. An AC member recommended that the newsletter be defined based on a clear idea of the expected distribution, and a clear idea of which interest

groups do not already have access to other sources of information on the project (e.g. website, side-events, meetings).

Other items

The AC recommended that more proactive steps be taken to coordinate with other ABS-related projects, including those that are related to capacity building. A number of ABS-capacity building projects were mentioned, including IPGRI (2 projects), IUCN, the CBD for Botanical Gardens and UNEP's capacity building work in West Africa. The project team noted that it would be attending an ABS project coordination meeting on the margins of the ABS-3 meeting, organized by WWF International.

The AC members encouraged the project team to translate the User Guide into other languages, including French. One AC member suggested that they may be able to provide funding for a French translation; another asked whether it would be OK for AC members to have the User Guide translated into their local language. It was agreed that AC members should feel free to translate the User Guide into other languages, and to share the translations with the project team.

AC members agreed that the reports of the Advisory Committee need not be mounted on the project website.

Next Meeting

The project team proposed that the next full meeting of the AC be held in March, 2006 at the time of the next ABS Ad Hoc Working Group meeting in Spain. AC members requested that the meeting be held at a better time (than a dinner during the period of the ABS WG meeting) to permit their full involvement. It was suggested that the meeting be held on the weekend prior to the ABS Working Group meeting.

The project team also indicated that it is hoping to raise funds for a conference to present and discuss the results of Phase 2. This may provide a useful opportunity for an additional AC meeting. It will be important for the AC to meet to review and provide commentary and guidance on interpretation of the results of the field testing and other inputs received on the use of the ABS-MT.

Conference calls and e-mail exchange will be used to solicit input and advice from the Advisory Committee until the next full meeting.

Next Steps

The project team outlined the following next steps:

1. A summary of the AC meeting will be circulated to the AC for comment;
2. The project presentation used at the AC meeting will be updated and sent to AC members for their use when speaking about the Management Tool project
3. AC members will be contacted for input on the TORs, with the objective of seeking comment on any proposed revisions and then approval
4. A draft note describing the objectives and range of approaches for testing and obtaining input from users of the Management Tool will be drafted and circulated to AC members for comment

5. The project brochure will be revised in order to clarify the objective of the ABS-MT, the scope of the Phase 2 activities, and incorporating the note on testing and obtaining input on the ABS-MT"
6. Criteria for deciding on field tests will be revised to clarify and focus on limited requirements and on a set of desirable conditions.
7. The project team will continue to seek possible field tests for the ABS-MT; potential field tests will be circulated to AC members for "red flag" comments prior to initiation;
8. A revised list of the potential field tests will be circulated to the AC for information; and
9. A revised outreach plan will be circulated to the AC for comment.
10. Funds will be sought to translate the ABS User Guide into French.