

Participation in policy-making for access and benefit-sharing: case studies and recommendations¹

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- Policy and law on access to genetic resources and benefit-sharing (ABS) will only be effective and equitable if it is developed with the active participation of all key stakeholders, including different government agencies, scientific and commercial users and indigenous and local communities.
- Stakeholder participation builds awareness, capacity and consensus so that, when a country is approached, the relevant actors are ready to establish an ABS agreement without incurring delays which could deter a potential partner.
- Policy makers should provide the necessary information and support to enable weaker groups to participate fully in the policy process, and in particular indigenous and local communities which often depend on biodiversity for their livelihoods and have a wealth of related traditional knowledge.
- Policy to protect traditional knowledge will only be feasible in practice and gain the necessary support for its implementation if it is developed with the active participation of indigenous and local communities, which have ancestral rights over traditional knowledge and are solely responsible for its existence.

What is 'access and benefit-sharing'?

Genetic resources are used to develop commercial products such as new pharmaceuticals, herbal medicines and improved crop varieties. The Convention on Biodiversity requires countries that use genetic resources commercially – largely industrialised countries – to share the benefits they derive 'fairly and equitably' with countries that provide them – often biologically rich countries in the South. Many Southern countries are developing national systems to regulate access to their genetic resources and ensure equitable benefit-sharing. Increasingly, countries are also developing *sui generis*² legislation to protect the rights of indigenous and local communities over their traditional knowledge relating to genetic resources. If they are to be effective, fair and equitable, such systems must respond to the needs of those affected – from companies that use genetic resources commercially, to local communities that use them for daily subsistence.

Case studies of participation in ABS policy

South Africa's Biodiversity Policy, the Philippines' Executive Order no. 247 and India's Biodiversity Law provide examples of fairly comprehensive participatory processes for developing policy on ABS, or biodiversity more broadly. The processes engaged a wide range of stakeholders, including different government departments, NGOs,

scientists and *ex-situ* conservation facilities (eg. museums and botanic gardens) and, to a lesser extent, representatives of indigenous and local communities and the private sector. Multi-stakeholder committees enabled representatives of key sectors and organisations to have a direct input into policy drafting, while workshops, conferences and the dissemination of policy proposals secured inputs from a broader spectrum of stakeholders.

In South Africa, a 28-person multi-stakeholder Reference Group, which included provincial governments, enabled a wide range of sectors and organisations to play an active role in decision-making for the drafting and consultation process. An NGO provided support for managing the process, a Secretariat for communications and logistics, and an independent consultant for editorial drafting. Local communities were brought into the process through provincial briefings, the dissemination of simplified and translated policy documents, and a briefing workshop for CBOs held prior to a national consultative conference, which sought to build their capacity to participate on an equal footing as other stakeholders.

The political context played an important role in enabling these participatory processes, which often went beyond any formal



¹ This briefing paper presents the key findings of an IIED research project conducted in collaboration with: Rachel Wynberg (South Africa), Elenita Dano (SEARICE, the Philippines), Brendan Tobin (Association for the Defence of Natural Rights, Peru), and R.V. Anuradha, Bansuri Taneja and Ashish Kothari (Kalpavriksh, India). For a more detailed report of the project see 'Stakeholder Participation in Policy on Access to Genetic Resources, Traditional Knowledge and Benefit-Sharing', K. Swiderska (2001).
² Meaninging 'unique' or 'of its own kind'.

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→ requirements for participation. In South Africa, the process came at a time when the new democratic government was handing control of policy to the people, and civil society organisations were pressing for a more people-centred approach to conservation. In the Philippines, a very assertive civil society had emerged in the struggle to overthrow the Marcos regime. In India, the strong and assertive NGOs stressed the need for a participatory process.

Strengths of the participatory processes

For each case study, the participatory process was assessed based on the views of a range of stakeholders. The processes were praised for involving a broad range of stakeholders, actively engaging them in policy drafting and securing a high level of informed debate. In the Philippines, the active involvement of scientists ensured that their capacity building priorities were addressed, while that of NGOs helped to ensure the inclusion of provisions requiring the prior informed consent (PIC) of local communities. In India, NGOs and research institutes working closely with grassroots communities were able to present the perspectives of the communities with which they worked. The majority of people interviewed in South Africa felt the process was

extremely successful. It was well planned, managed and resourced, took steps to incorporate provincial actors and local communities, and struck a good balance between securing technical inputs and the broader political process needed to facilitate ownership of the policy.

Weaknesses and constraints of the processes

The assessment identified insufficient involvement of the following stakeholders:

- local authorities: in the Philippines, for example, this has meant that local authorities, which are responsible for local PIC, often lack awareness of the policy or tend to ignore it due to lack of policy 'ownership'.
- local communities: even in South Africa, most people felt that rural communities should have been more actively and extensively involved; and
- the private sector, both domestic and foreign.

The fact that the processes were mainly based in national capitals made it difficult to engage local authorities and communities. Lack of funding was a key constraint to regional/local consultation, and to community

Key steps and stakeholders in the policy processes

The Philippines' Executive Order No. 247

- A drafting group comprising scientists, a legal expert, the departments of science and environment, the wildlife bureau, and the National Academy of Science and Technology.
- A large multi-stakeholder conference.
- Consultations with NGOs of the Philippines Council for Sustainable Development.
- Multi-stakeholder conference convened by the Asian Institute of Management, which helped to engage the business community.
- The Implementing Rules and Regulations (IRRs) of EO 247 drafted by a committee composed of the departments of science, environment/wildlife, health, agriculture and foreign affairs, scientists, the National Museum, NGOs and indigenous organisations.
- Draft IRRs circulated for comment to various stakeholders.

South Africa's White Paper on Biodiversity

- A Reference Group representing parliament, national and provincial government departments, scientific organisations, NGOs and traditional healers.
- A Discussion Document presenting policy options, and its summary, were widely circulated.
- An educational leaflet about the Discussion Document translated into five local languages and distributed throughout the country.
- Stakeholder briefings held in seven provinces.
- Independent sectoral workshops organised by different stakeholder groups.
- National multi-stakeholder conference, with participation of CBOs.
- A Consultative Green Paper circulated for comment.

India's Biodiversity Law and Peoples' Registers

- A drafting group comprising the Ministry of Environment and Forests, NGOs and research institutes, including organisations working closely with local communities.
- Multi-stakeholder consultative seminar convened to discuss

possible elements of a law (including various central government departments, state governments, scientific bodies, NGOs, academics).

- Proposed legislation circulated to relevant experts and organisations.
- A second multi-stakeholder seminar.
- Further discussions with NGOs and research institutes.

Experience in the states of Kerala and Karnataka with formulating peoples' biodiversity registers (PBRs) in close collaboration with local communities has shown that PBRs can be a valuable tool for conserving biodiversity and related knowledge, and enhancing community control over access to these resources. Furthermore, the process to develop PBRs provides a means to stimulate community reflection on access issues so that their concerns can then feed into national policy processes. However, PBRs could facilitate unapproved access in the absence of legislation that vests control over their content in local communities.

Peru's *sui generis* regime to protect traditional knowledge

- Working group established including the national patent office (INDECOP), the National Institute for Natural Resources, the Ministry of Industry, the Peruvian Indigenous Institute and two NGOs.
- Consultative workshops with indigenous people in Lima and Cuzco.
- International seminar in Lima.
- Official publication of the proposed regime in the national press.
- Roundtable on Indigenous Participation to design a more extensive process in collaboration with indigenous organizations.
- Working Group on Indigenous Participation established to coordinate the consultation process, including indigenous organizations.
- Workshop to train indigenous facilitators to undertake regional consultations.
- Information/consultation document for indigenous people.
- Publication of a revised proposal.

participation in particular, largely because these activities were not adequately planned or budgeted for in advance. However, many people stressed the need to actively engage representatives of local and indigenous communities, particularly those living in areas of high biodiversity, since they depend heavily on genetic resources for their livelihoods, often have customary, if not formal rights over biological resources on their land, have helped to conserve and improve them, and have extensive knowledge about their uses. Engaging local and indigenous communities in the policy making process is important to ensure that their rights and contribution are fully recognised through appropriate requirements for PIC and benefit-sharing with local communities. This in turn will help to ensure that ABS agreements support the development and conservation needs of people living close to biodiversity, and hence contribute directly to all three objectives of the CBD.

Although invited to participate, domestic companies often lacked interest in the processes. In the Philippines, for example, some key users of genetic resources only became interested once the policy was approved and its impact became evident. Foreign companies and organisations were often not consulted. Some people felt this would not be appropriate in the development of national policy. But the value of informing key foreign partners and consulting them on particular issues in order to identify their concerns was also recognised. Ultimately, benefit-sharing will depend on continued access and a willingness to share benefits on the part of genetic resource users, most of which are based in the industrialised North.

Indigenous participation in Peru's *sui generis* regime

Peru was the first country to develop a *sui generis* regime to protect the rights of indigenous and local communities over their traditional knowledge relating to genetic resources. In 1996, the national patent office, Indecopi, established a working group involving different government agencies and NGOs. The group developed a good technical proposal, but secured little indigenous participation. After a couple of years it became clear that a number of complex questions relating to consent and benefit-sharing with indigenous communities could only be addressed through a more extensive consultation with such communities.

Although indigenous organisations had been invited to attend the working group, they only attended two meetings, perhaps because they lacked confidence in the process, and in their ability to influence it. This highlights the importance of building trust as a pre-requisite to engaging indigenous people in policy making, by inviting them to participate from the very start of the process, including in decisions regarding the objectives and design of the process.

Two consultative workshops were then organised, which helped to promote awareness and dialogue with indigenous people. Although it was evident that further consultation was required, possibilities were limited due to shortage of funding and time constraints. In October 1999, soon after the proposal was published in the national press, a Roundtable meeting on Indigenous Participation was convened. Indigenous organisations representing Andean and Amazonian communities welcomed the opportunity to evaluate the process to date and identify priorities for enhancing participation. They stressed the need for a country-wide indigenous consultation process, facilitated by indigenous people and for indigenous people to participate directly in the final revision of the proposal. Although training workshops were held for indigenous facilitators of different ethnic groups, and information materials prepared, the country-wide consultation never took place due to shortage of funding and lack of collaboration between different stakeholders. The authorities have now decided to abandon the proposal

Participation in ABS policy – the CBD context

In 1999, the Panel of Experts on ABS concluded that: “access legislation will only be feasible and implementable if it is developed with the full participation of all those who will be affected by and administering it, such as certain industry sectors, universities, scientific research organisations, ex-situ collections and local and indigenous communities”³.

Its report was endorsed by the Fifth Conference of the Parties, which also emphasised “the fundamental importance of ensuring the full and effective participation of indigenous and local communities in the implementation of Article 8(j)” on traditional knowledge (Decisions V/26 and V/16).⁴

The Panel of Experts (2001)⁵ identified the need for a case by case approach to stakeholder involvement, but also highlighted certain common elements, including the direct link between stakeholder involvement and the facilitation of ABS, the need for flexible decision-making and the need to provide support to enable marginalized stakeholders to participate effectively.

The Ad Hoc Open-ended Working Group on ABS was mandated to develop guidelines on inter alia “the roles, responsibilities and participation of stakeholders” (Decision V/26)⁶.

following comments from indigenous organisations indicating a lack of support for it and calls for an alternative regime to be developed.

The benefits and costs of participation

In all the case studies, stakeholder participation brought considerable benefits in terms of making the resulting policy more effective and equitable. Participation enabled the interests and concerns of different stakeholders to be identified, helped to build consensus, and brought technical expertise and practical experience to improve the content and feasibility of the policy. It also served to build the conditions necessary to facilitate implementation – awareness and capacity amongst stakeholders, trust and collaboration between different actors and motivation to put policy into practice. Other benefits include a strengthening of national cohesion in internally diverse countries and possible avoidance of future conflict.

The case studies show that there is a direct relationship between the level of participation and the effectiveness of policy. In South Africa, where participation was most active and extensive, the benefits in terms of enhanced capacity, collaboration and motivation for implementation were particularly notable. Those interviewed were at one as to the benefits they gleaned from involvement in the process and the positive impacts of such involvement for the conservation and sustainable use of biodiversity. Nevertheless, it is clear that participation alone will not guarantee smooth implementation. This will also require firm political commitment to translate policy into action, and sufficient resources for effective administration and monitoring.

Opening up a policy process has obvious cost implications – more resources are required to solicit and incorporate different perspectives. However, the costs of a fairly comprehensive process need not be very high if maximum use is made of existing consultation mechanisms, networks and resources of organisations. Furthermore, the benefits can far outweigh the costs. →

3 UNEP/CBD/COP/5/8
4 UNEP/CBD/COP/5/23
5 UNEP/CBD/WG-ABS/1/2
6 UNEP/CBD/COP/5/23

Recommendations for effective participation

There is no blueprint for participation that will suit every situation, but the case studies have enabled key principles for effective participation to be identified, which may be useful for countries seeking to establish or enhance similar processes.

ABS and traditional knowledge policy:

1. Participatory processes will be most effective when they engage stakeholders actively in decision-making and allow them to influence the outcome, eg. through a drafting committee composed of stakeholder representatives. Drafting committees should be complemented with broader consultative processes (eg. workshops, conferences etc).

2. Processes should not be confined to the capital region but should extend to regional and local levels in order to effectively engage stakeholders such as local authorities and communities.

3. A participatory process should be well planned at the outset, to identify key sectors and organisations, the individuals or groups which can most effectively represent them and the steps and modalities needed to engage them. The necessary financial resources should be identified as early as possible, including for consultation at regional level and community participation (eg. for awareness raising, travel etc).

4. Lack of trust can be a barrier to participation, particularly when certain groups have previously been marginalized. Engaging stakeholders from the start of the process, including in its design, helps to build trust and bring people on board.

5. Awareness raising and capacity building are pre-requisites of effective participation. Particular efforts are required to build the capacity of weaker groups, such as indigenous and local communities, to make informed decisions. Information materials should be tailored for the particular target audience, using appropriate formats and languages.

6. Costs can be minimised by making maximum use of existing consultation mechanisms at national, regional and local levels, and strengthening feedback mechanisms from local to national levels.

ABS/biodiversity policy:

1. Stakeholder participation in ABS policy generates awareness and capacity so that, when a country is approached, the relevant stakeholders are ready to establish an ABS agreement without incurring delays which could deter a potential partner.

2. Stakeholders include different government agencies responsible for administering access at central, regional and local level; scientists and industry involved in the collection and use of genetic resources; and indigenous and local communities whose extensive knowledge

about biodiversity can considerably enrich what a country has to offer.

3. ABS policy-making processes should involve all stakeholder groups equally. Particular efforts are likely to be required to secure participation, not only of local and indigenous communities, but also of companies and scientific institutes, by ensuring they are well informed and pitching the discussion in ways that are meaningful to them.

4. Key foreign partners should be informed and consulted on particular issues to ensure that access is not unreasonably restricted. This involvement might also generate greater motivation to ensure ABS regulations are applied.

5. Building consensus can be difficult as conflicts of interests may emerge (eg. between users and providers of genetic resources), and processes may need to be carefully facilitated in order to minimise and resolve disagreements. However, full consensus is rarely possible.

Traditional knowledge policy:

1. Traditional knowledge owes its existence solely to the indigenous and local communities that have developed it over generations. Therefore, the conditions governing its use should be established by indigenous and local communities, with the State and technical experts (eg. NGOs) acting as facilitators.

2. The interests of commercial or scientific users should be considered to ensure that potential development opportunities and beneficial research are not impeded, but should not take priority over the interests of traditional knowledge holders.

3. Measures to protect traditional knowledge, which is often collectively owned, need to be designed in accordance with customary practices for the management of traditional knowledge. Otherwise, they could undermine collective knowledge systems and hence accelerate the loss of traditional knowledge.

4. As well as participating in a policy drafting group, representatives of traditional knowledge holders should be given the necessary time, resources and technical support to consult more widely amongst their people, including at regional and local level, through processes designed and facilitated by them, in accordance with traditional decision-making practices.

5. Participants should reflect the cultural and social diversity of traditional knowledge holders, which may include different ethnic groups, farmers, women and traditional healers.

6. Since the full and effective participation of indigenous and local communities may take a few years, it may be advisable to introduce interim measures to protect traditional knowledge, which can later be refined to incorporate the results of a more extensive consultation process.