

Access to genetic resources and fair benefit sharing under the Nagoya protocol – Experiences of the BAOFOOD research project in Kenya



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1. Introduction/Background

- The Convention on Biological Diversity (CBD) states that the rights to biological resources belong to the state in whose territory they are found.
- Access and benefit sharing for these genetic resources and the associated traditional knowledge are regulated in the Nagoya protocol (adopted in 2010, entered into force in 2014). As of July 2018, 105 member states have ratified the protocol. Kenya ratified the protocol in 2014.
- While one major objective of the protocol is to enforce the fair sharing of benefits emerging from the utilization of genetic resources and its subsequent application and commercialization, it also aims to limit the negative impact on non-commercial research contributing to biodiversity conservation and its sustainable use in developing countries, e.g. by allowing simplified measures (Art. 8a). [1] Criteria for effectively separating commercial from non-commercial research have been proposed. [2], [3]
- Member states enact detailed national legislation to implement the protocol.
- The following government bodies implement and enforce the Nagoya protocol in Kenya: Kenya Wildlife Service (KWS), National Environment Management Authority (NEMA), and Kenya Plant Health Inspectorate Service (KEPHIS).
- Users of genetic resources must obtain legally binding agreements with these authorities and the communities in which the genetic resources exist.
- Required agreements comprise the Prior Informed Consent (PIC), the Mutually Agreed Terms (MAT), the Material Transfer Agreement (MTA), as well as the Benefit Sharing Agreement and Report on Utilization [4].

2. The BAOFOOD project

- The BAOFOOD project (2016-2019) is a non-commercial research project that aims to promote the domestication, production, market development, processing and consumption of baobab (*Adansonia digitata* L.) for improved food security, nutrition and rural livelihoods in Kenya and the Sudan.
- The project consortium comprises 10 partners from academia, business and civil society from Kenya, Sudan, Malawi, Germany, and the UK.
- Part of the nutritional analyses of baobab fruit pulp were to be conducted by German project partners, as the required laboratory equipment (HPLC-DAD, high-throughput HPTLC) was not available in Kenya.
- Export of baobab samples and use of samples by Germany project partners required upfront clearance in accordance with the Nagoya protocol.

3. Experiences of the BAOFOOD project

- The case of the BAOFOOD project was one of the first of its kind Kenyan authorities were faced with.
- The process from initiating the negotiations to granting the required agreements took almost 2 years (Figure 1). Project progress was delayed substantially due to late export of baobab samples to German laboratories.
- Repeated reviews of contract drafts and alignment of the various partners' legal departments and Kenyan authorities was time consuming.
- KWS's initial communications expressed expectation with regard to significant financial benefits to be expected from the agreements disregarding the non-commercial nature of the research project.

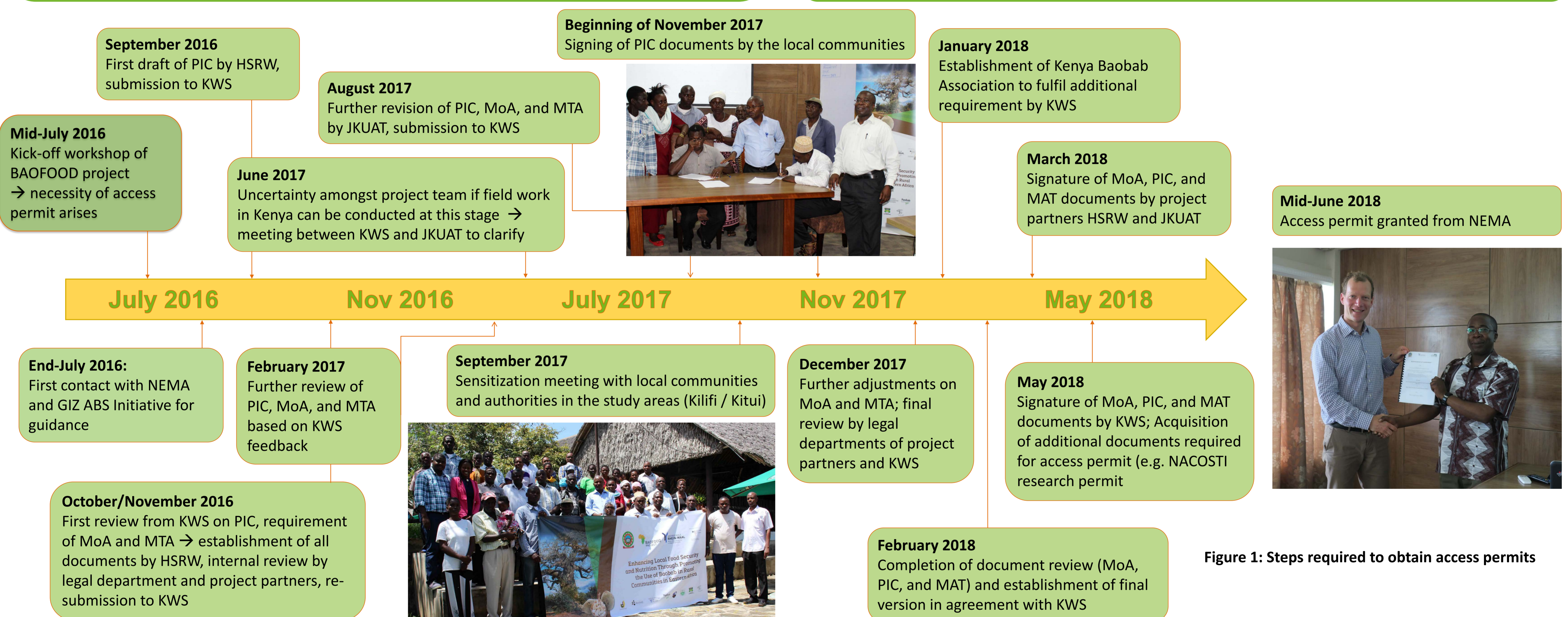


Figure 1: Steps required to obtain access permits

4. Conclusion

While the larger objectives pursued with the enactment of the Nagoya protocol merit unreserved support, cumbersome procedures to implement existing regulations, unclear responsibilities at the national and local levels, lengthy processes involved in acquisition of the sequential permits, and a generally limited understanding of local authorities concerning the nature of non-commercial research projects have the potential to seriously affect the implementation of the research project. Successful references cases are, therefore, urgently required that could serve as guidance to local administrators and researchers alike.

5. Recommendations

- Shorter and more standardized procedures. Since the Nagoya protocol permit process cuts across a number of government agencies, there is need of a one stop shop for the permits.
- Simplified process for non-commercial research in comparison to commercial ventures.
- Higher level of awareness needed amongst researchers working with genetic resources with regards to Nagoya and its implications for research.
- Consideration of permit acquisition process in the project life-cycle (by donor agencies as well as partner institutions; ideally, agreements should be in place at project start).

References

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With support from



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Acknowledgements: The project is financially supported by the German Federal Ministry of Food and Agriculture (BMEL) based on the decision of the Parliament of the Federal Republic of Germany through the Federal Office of Agriculture and Food (BLE), which we gratefully acknowledge.

Poster presented at the Tropentag conference, 17-19 September 2018, Ghent University, Belgium.