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Access to Genetic Resources and Fair Benefit Sharing under the Nagoya Protocol – Experiences of the BAOFOOD Research Project in Kenya

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Abstract

According to the international Convention on Biological Diversity (CBD), the rights to biological resources belong to the state in whose territory they are found. The handling of these genetic resources is regulated in a binding international agreement known as the Nagoya protocol. The protocol was adopted in 2010 and entered into force in 2014. As of April 2018, it has been ratified by 105 member states. Each member state enacts detailed national legislation for the implementation of the protocol. In Kenya, users of genetic resources are obliged to comply and acquire permits from the implementing and enforcing government bodies of the Nagoya protocol including the Kenya Wildlife Service (KWS), National Environment Management Authority (NEMA), and Kenya Plant Health Inspectorate Service (KEPHIS). The permits require legally binding agreements with the communities in which the genetic resources exist and the specific government agencies, among them 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 Utilisation. Using the case of the BAOFOOD project, the current paper presents the practical implications and challenges resulting from compliance with and acquisition of permits in line with the Nagoya protocol. The BAOFOOD project aims to promote the domestication, market development, processing and consumption of baobab (*Adansonia digitata*) for the improvement of food security, nutrition and rural livelihoods in Kenya and the Sudan, with the ultimate goal to establish a community-based processing unit to produce and supply highly nutritious baobab products. BAOFOOD is amongst the first projects in Kenya applying for permission under the protocol. The paper concludes that, 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 reference cases are therefore urgently required that could serve as guidance to local administrators and researchers alike.

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