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CANADA



ACCESS AND BENEFIT SHARING IN CANADA: INDIGENOUS PERSPECTIVES ON THE NAGOYA PROTOCOL & THE ROAD AHEAD

Summary of Saskatoon Symposium and Focus Group

Chidi Oguamanam (University of Ottawa)
Chris Koziol (University of Ottawa)
with Andrea Lesperance (University of Ottawa)



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ABS Canada

ABS Canada,

c/o University of Ottawa Faculty of Law
57 Louis Pasteur Street
Ottawa ON K1N 6N5
abs-canada.org

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ABS Canada's Saskatoon Symposium & Focus Group: May 11-13, 2017

Introduction: The ABS Canada Project

ABS Canada is an independent, SSHRC-funded research project. Its objectives include capacity building through education, training, networking, and outreach, and the development of new and better relationships between Aboriginal peoples and other ABS stakeholders. As part of this strategy, ABS Canada has convened a series of loosely-guided focus groups on ABS in key regions across the country, shaped by the input and participation of Aboriginal partners. The purpose of these regional focus groups is to engage all ABS stakeholders, including governments, civil society organizations, and the private sector, in an open and frank discussion about the challenges and opportunities of an Aboriginal-sensitive ABS policy for Canada. In these sessions, ABS Canada hopes to build relationships, find common ground, and partner with participants to develop a deeper appreciation of the interests and perspectives of each stakeholder group on ABS.

This report provides a brief summary of ABS Canada's third focus group and capacity building workshop, held on Treaty 6 territory (Saskatoon, Saskatchewan) in May of 2017. It outlines a list of issues raised by focus group participants; some are canvased here for the first time, while others reflect and affirm the discussions and outcome documents of the previous focus groups, held in Moncton in October 2015 and Ottawa in May 2016. For a brief historical overview of ABS in Canada, please consult the [relevant sections](#) of our Moncton Focus Group Report (available with all other outcome documents on the ABS Canada project website: abs-canada.org).



Overview

On May 11-13, 2017, ABS Canada convened the third of three scheduled capacity building workshops and focus groups on Access and Benefit Sharing with Aboriginal communities from Western Canada. The forum's objectives included awareness-raising, capacity building, and identification and discussion of issues relating to ABS in Canada from Aboriginal and other stakeholder perspectives. As with our other research and capacity building activities, insights generated from this forum are expected to support future policy developments and/or implementation of national or international ABS frameworks in Canada in ways that reflect and embody Aboriginal sensitivities and interests.

The Saskatoon ABS forum was organized in partnership with the generous assistance of Dean Martin Phillipson of the University of Saskatchewan College of Law, and in collaboration with the Maritime Aboriginal Peoples Council (MAPC), an organization which continues to demonstrate considerable expertise and national leadership on ABS. The organizers also owe a debt of gratitude to Maria Campbell, Elder in Residence and Cultural Advisor to the College of Law at the University of Saskatchewan for her assistance in finding participants, whose many and varied contributions provided critical insight. Additional support was provided by the Centre for International Governance Innovation (CIGI).

The Saskatoon event brought together representatives of Aboriginal communities from Western Canada (especially Treaty 6 territory, which includes modern-day Saskatoon and the surrounding areas) along with researchers and technical experts. Several participants from the 2015 Eastern Canada Focus Group and 2016 Central Canada focus group also attended to share their insights and experiences, and to gain a sense of how the ABS conversation in Canada has evolved over the last two years. The participation of these delegates was a direct outcome of the first focus group in Moncton, where participants strongly advocated for cross-regional interaction and knowledge sharing to help develop Canada-wide synergies and institutional knowledge on the subject of ABS.

In addition, ABS Canada leveraged its ongoing partnership with the Open AIR initiative to facilitate the participation of three African delegates to the



event. These individuals were invited to share their perspectives on genetic resources and associated traditional knowledge, and how their respective countries and regions had managed implementation of an ABS regime under the terms of the Nagoya Protocol.

In a departure from previous focus group arrangements, ABS Canada convened an academic symposium on ABS on May 11 in advance of the focus group proper. The purpose of this symposium was to assemble leading Canadian and international experts on ABS, the CBD, and Nagoya Protocol, to encourage networking and to bring everyone up to date on the latest developments in the field. Presenters at the various panels are also contributing chapters for a forthcoming volume on ABS in Canada being prepared by our research group; the symposium was therefore an opportunity for contributors to meet their fellow authors and discuss some of the ideas and issues that will shape this volume. A summary of the symposium presentations is provided in Part 1 of this report, beginning on page 6.

Owing to these specific objectives, in its original conception the symposium was closed to other focus group participants. This was to encourage frank academic discussions about the potentials and pitfalls of an Aboriginal-sensitive ABS policy for Canada while allowing co-authors to network and learn from one another. In addition, these conversations on the state of ABS in Canada and around the world were to further inform how we would introduce this material to elders and other Aboriginal focus group participants on the second and third day of our event.

Owing to a regrettable communication error, many elders and Indigenous participants arrived early and attended this symposium. This created an incongruity between speakers and audience, which generated some confusion and mistrust. Panelists at the symposium, anticipating an audience of fellow academics and practitioners, often spoke at fairly granular levels of detail about various international instruments, national policies, and research practices. This understandably created frustration and confusion for Aboriginal participants; not only were all presenters and participants not properly welcomed and introduced according to local custom and protocol, but complex and technical issues surrounding intellectual property regimes were discussed with casual use of terms of art, while relying on Western



concepts and terminology without any grounding or context for many participants.

As a result, the question and answer sessions for each panelist became quite extensive, and forced organizers to adapt the event schedule – the symposium shifted into a more open-ended discussion of traditional knowledge, intellectual property, and the interface of Western and Aboriginal conceptions of ownership and knowledge dissemination. While this was not its original design, this evolution was welcome as it helped overcome some of the mistrust and confusion that characterized the event on its first day. The focus group concluded with a roundtable where each participant introduced themselves and shared what motivated them to attend the event, what they had learned, and where they hoped Canada’s conversation on biodiversity conservation and ABS would go in the future.

Throughout these discussions, participants provided perspectives relating to the protection, governance, and administration of biodiversity and traditional knowledge (TK) in Aboriginal communities, both on Treaty 6 territory and across the country. They also reflected on the progress being made (versus rhetoric being issued) by the Government of Canada.

Participants’ interventions were wide-ranging. The tenor of their comments often re-echoed a strong historical mistrust of government actors rooted in colonial dynamics, the legitimacy of Aboriginal-related research projects, concerns over regional and inter-group differences and histories, the relative priority of the ABS file among the many pressing issues facing Aboriginal peoples, and the combined effects of the foregoing on the quest for an Aboriginal-sensitive ABS policy. Overall, participants at the forum were passionate, frank and determined in their collective resolve on the need for Aboriginal peoples to be fully consulted, resourced, and integrated in a transparent manner by all levels of government into any further discussions on ABS and related matters in Canada. Participants also provided insights into areas of opportunity and reflected on potential approaches to regional implementation of ABS in Canada. A thematic summary of the comments made by participants is included in Part 2 of this report, beginning on page 16.



PART 1: Symposium

Below are key points made during each presentation at the Symposium

Speaker: Timothy Hodges, Professor of Practice in Strategic Approaches to Global Affairs, McGill University Institute for the Study of International Development (IISD)

- Mr. Hodges framed the fundamental intent of ABS and the Nagoya Protocol as “a grand bargain” – the developing world would provide access to genetic resources and the traditional knowledge to unlock the potential of those resources, and in exchange, those seeking access would be required to share any benefits derived from the ensuing R & D with the providers under an equitable framework.
- Mr. Hodges noted that this bargain has clearly not been born out in practice
- From Mr. Hodge’s perspective, negotiations concerning the CBD left all parties unsatisfied; he signaled that this is often the mark of a good process because no one state left the table with a “better deal” than the others, but it is clear more work remains
- Although Canada is not a party to the NP, Mr. Hodges stressed that under the CBD Canada already has obligations to work towards formulation and implementation of a domestic ABS policy
- Mr. Hodges emphasized that Aboriginal peoples and local communities must play an important role in ABS; this includes a prominent seat at the negotiating table for the international instruments that regulate ABS, which has simply not been the case to date
- Mr. Hodges characterized the entire Nagoya Protocol process as inherently imperfect, noting that while solutions are sometimes best found by looking to governments, results can also be achieved by working around governments, with solutions coming from the grassroots level (as these are the people most heavily impacted)
- In Mr. Hodge’s opinion, Canada has been “slow” on the ABS file for 3 connected reasons: (1) political leadership has been lacking, so the public service has no direction on the issue, (2) Canada has a strong interest in being seen as a “provider” country friendly to the biotech industry, and (3) ABS is extremely complex and it is difficult to sustain interest or motivate affected stakeholders



- Mr. Hodges concluded by noting that in Canada, TK is undervalued and not understood – which is a bad starting point if we want to protect it

Speaker: Professor Larry Chartrand, University of Ottawa Faculty of Law

- Professor Chartrand spoke of ways to apply Dene law to the idea of genetic resources and associated Aboriginal traditional knowledge
- From the Dene perspective, people would never understand the idea of using non-human entities (e.g. the living sources of genetic resources) in an indiscriminate or destructive way – this is simply antithetical to their belief system
- Professor Chartrand stressed the importance of this perspective, noting that you cannot have true reconciliation in Canada if there is no recognition of Aboriginal legal perspectives, a point made repeatedly in the recent findings of the Canadian Truth and Reconciliation Commission
- Professor Chartrand explained that since many Aboriginal laws are derived from oral histories and legends, they are not easily recognized under Western, text-based frameworks
- But Canadian policymakers should remember two key takeaways that should inform approaches to ABS in Canada: (1) “equality and interdependency,” and (2) “mutual aid and reciprocity.”
- From Professor Chartrand’s perspective, “equality and interdependency” mean that human beings and their natural environment are equally important, and sustain one another – there is no relationship of subservience (i.e. “resources to be exploited”)
- “Mutual aid and reciprocity” mean that human beings and the natural world have a sacred obligation to be each other’s stewards
- These concepts do not reconcile with an ABS framework centered on Western intellectual property rights and the concept of monetizing and extracting resources – the key is to use these perspectives to shape ABS implementation in the Canadian context as part of a broader effort at reconciliation with Aboriginal peoples



Speaker: Dr. Kelly Bannister, Co-director of the POLIS Project on Ecological Governance, Centre for Global Studies at the University of Victoria and Adjunct Professor in the Faculty of Human and Social Development

- Dr. Bannister discussed the application of research ethics to the concept of ABS
- She noted the need to work collaboratively on ethics frameworks that are sensitive to Aboriginal traditions and approaches
- Dr. Bannister noted the need to “move beyond our comfort zones” and to embrace non-traditional forms of research that are truly in keeping with local customs
- In her presentation, Dr. Bannister highlighted that reconciliation requires the asking of an important question: “was there ever *conciliation*?” In other words, has there ever been a better state of relations that we are aiming to return to, or did that never exist? For Dr. Bannister, university researchers need to ask themselves tough questions about whether their ethical policies (animated by Western values/objectives) are adequate to the task of working to understand other peoples and their ways of living and thriving
- Dr. Bannister introduced the idea of “relational ethics” – pushing to create space for dialogue so that different peoples and cultures can approach one another in an atmosphere of respect; Western scientists needing to meet with Aboriginal peoples on their land and on their terms, rather than inviting them into Western spaces and governing interactions with Western rules and customs
- While this may mean unconventional approaches – meetings held in a forest with elders serving as a guide, for example – this approach will constructively upend old colonial processes infused with a settler mentality
- The difficulty in bringing Aboriginal peoples into the ABS conversation reflects the importance of developing ethics guidelines for an ABS regime not solely animated by Western perspectives
- The core question? What is considered ethical *in the community where you are doing your research*? This is relational ethics in action – an approach to research ethics dictated by respect for and an understanding of the people you are meeting and working with



Speaker: Professor Jeremy de Beer, University of Ottawa Faculty of Law/Open AIR

- In his presentation, Professor de Beer discussed the ways technological changes are undermining the Nagoya Protocol, which he considers already out of date
- He noted that a great deal of information, including “digital DNA” can be broadcast globally; the importance of genetic resources is not the physical material itself but rather the *relationship* between the physical material and the people who use that material, and the information in and about that material
- One of the biggest difficulties in implementing the Nagoya Protocol is determining *who* should do the implementing? While Indigenous nations are sovereign, the federal government in Ottawa has the lead on this file
- He also stressed that there are also significant challenges related to Nagoya Protocol compliance; echoing Professor Chartrand, Professor de Beer highlighted that Indigenous legal principles are not recognized beyond the practicing communities, yet compliance with the Nagoya Protocol requires those same communities to adhere to Western legal principles and customs
- Professor de Beer’s presentation centered around what he called a fairly creative proposal: “bold and aggressive legal action” in the form of a Section 35 Constitutional challenge
- In his telling, an Indigenous community could file for a patent; if/when that patent application is rejected for not meeting required (and inherently Western) formalities, the Indigenous community could use Section 35 to argue that its inherent right to self-determination and sovereignty are embedded in S. 35 and include the right to protect intellectual property in a manner consistent with Indigenous legal traditions

Speaker: Mr. Frederic Perron-Welch, BIONOMOS Law

- Mr. Perron-Welch affirmed Professor de Beer’s point about the difficulty inherent in implementing Nagoya in Canada – there is simply insufficient knowledge in affected communities and a complete lack of agreement on how best to proceed



- He also stressed that the biggest unstated roadblock is that there is no roadmap for Nagoya implementation that enhances the process of reconciliation in Canada
- As such, there is a desperate need for further capacity building across all sectors/groups involved in ABS
- Mr. Perron-Welch noted that the most recent government-sponsored capacity-building exercises on ABS took place over ten years ago, in 2004/2005, and were related to the Convention on Biological Diversity only and not the Nagoya Protocol
- Mr. Perron-Welch highlighted the problems with this lackluster approach in light of Article 31 of the Nagoya Protocol, which places the onus on each state party to raise awareness regarding the importance of genetic resources and associated traditional knowledge; this means ongoing efforts to educate and train users/providers of GR on respectful, equitable ABS agreements
- However, there are currently no public efforts to draft legislation; the government still in “consultation mode”
- Yet many prior consultations have lost much of their value as the Protocol and related legal architecture surrounding ABS has evolved significantly since 2004/2005
- Mr. Perron-Welch lamented that Canada is not currently a leader on ABS despite its richness of genetic resources and the incredible diversity of its Indigenous peoples and communities, and at this stage must turn outward and learn best practices and experiences from other jurisdictions that are further along in the ABS process
- Indeed, much of the Nagoya Protocol (especially Articles 5(2), 6(2), and 12) require further reflection and refinement through the lens of Indigenous rights – and given the lack of Indigenous voices at the negotiating table, the legitimacy deficit of the Nagoya process must be proactively addressed

Speaker: Gladman Chibememe, University of Zimbabwe

- Mr. Chibememe discussed Zimbabwe’s experience implementing ABS
- He explained how the Zimbabwean constitution has recently been amended to better reflect/respect customary and traditional laws; for example, judges are required to interpret statutes in light of customary practices



- Zimbabwe recently launched a National Biodiversity Strategy & Action Plan – core goal of ensuring biodiversity preservation and the equitable sharing of benefits derived from all forms of resource extraction
- Applying the lessons of Zimbabwe, Mr. Chibememe explained how the Canadian constitutional order might be reconciled with Indigenous peoples if it is continually informed by Indigenous laws and customs, rather than merely serving as an affirmation of existing rights, however construed by the constitutions Western framers
- He also stressed that smaller communities of Indigenous peoples need to work together and network to amplify their voice; this worked in Zimbabwe and it might work in Canada as well
- Mr. Chibememe expressed sympathy for the lack of funding supporting Indigenous communities in efforts relating to ABS, but stressed that funding will always be an issue and cannot be an excuse for inaction; the Zimbabwean experience shows you can change minds, laws, and even the constitution by working together and leveraging what resources you do have – and in parts of Africa, these are even more minimal than those available to many Indigenous communities in Canada and across North America

Speaker: Dr. Marisella Ouma, Intellectual Property Consultant & Former Chairperson of the Kenya Copyright Board (KECOBO)

- Dr. Ouma spoke of the difficulties that Kenya has experienced defining *who* ABS is supposed to be addressing and exactly who is supposed to benefit from an ABS regime
- Echoing Mr. Chibememe’s remarks, Dr. Ouma noted that Kenya is a good model for Canada: it is also rich in natural resources and biodiversity and has substantial populations of Indigenous and local communities who have close relationships with those resources
- In her view, the Kenyan experience shows the importance of developing truly *local* protocols; the communities who control access to resources are the key stakeholders in developing ABS policies and agreements
- Dr. Ouma acknowledged that the customary laws of Indigenous communities are typically placed (as in Kenya) at the bottom of the “legal hierarchy” – this may need to change if we want to access/use resources that are controlled and understood by these communities



- The 2010 Kenyan Constitution and 2016 *Traditional Knowledge and Cultural Expressions Act* should provide insights to Canadian policymakers and others interested in equitable ABS frameworks; both provide important protections for Indigenous TK, as well as ways to commercialize TK while allowing Indigenous communities to maintain control, and to share in the benefits of commercialization

Speaker: Mr. Freedom-Kai Phillips, Research Associate, Centre for International Governance Innovation (CIGI)

- Mr. Phillips explored case studies from the Democratic Republic of Congo, Ethiopia, and Peru where Indigenous and local communities have been empowered to restrict/allow access to traditional resources and associated knowledge
- He noted that Peru has implemented a moratorium on access to genetic resources until local Indigenous peoples have both the capacity and capability to manage these resources, in addition to implementing registries and intellectual property laws/policies that reflect Indigenous objectives
- Mr. Phillips explained that Canada lacks a comprehensive framework governing genetic resources and associated Indigenous traditional knowledge, but **does** have robust IP laws
- The application of this IP paradigm is inherently limited by its failure to account for different knowledge systems and conceptions of ownership and value
- Mr. Phillips indicated his support for TK registries as an important tool in the ABS toolkit; he acknowledged that there are inherent problems with “documenting that which has never been and was never meant to be documented,” but at least registries place control over TK in the hands of Indigenous peoples, as opposed to corporate actors, researchers, etc.

Speaker: Mr. Roger Hunka, Director of Intergovernmental Affairs, Maritime Aboriginal Peoples Council (MAPC)

- Mr. Hunka spoke of the perspectives on nature and life shared with him over the years by a number of Mi'kmaq elders, and highlighted the importance of trust as a means of effecting change



- He stressed that TK cannot be understood by outsiders; to appreciate the knowledge one must also know the language, to live, sense, and feel alongside Indigenous peoples
- Mr. Hunka noted that Indigenous peoples and their traditions emphasize the importance of interconnectivity and interdependence amongst all living things, yet this valuable perspective has always been undermined, cast aside, or ignored by the government
- In his view, trust between stakeholders in ABS has been shattered, and it is incumbent upon the federal government to restore that trust
- Mr. Hunka emphasized that Canada should no longer speak about reconciliation but instead about *redress* – adopting UNDRIPS and implementing the TRC recommendations without qualification
- Its failure to do so reveals its true motivations, namely assuaging Indigenous concerns with “window dressing” while continuing to permit the exploitation of Indigenous resources and associated traditional knowledge in the name of “progress” and “economic development”
- As a model of trust and effective partnership, Mr. Hunka recounted the 2.5-day session hosted in 2011 by the Maritime Aboriginal Peoples Council and Professor Oguamanam during which 80 participants gathered together to craft the [Iskenisk Declaration](#), which lays out an Indigenous interpretation of the Nagoya Protocol and ABS
- Mr. Hunka stressed that this document is an example of what can happen when Indigenous peoples work together and take the initiative on the ABS file, and of the potential for collaboration and partnership between Indigenous peoples, academics, and the law community as demonstrated by the enduring friendship between Mr. Hunka, Professor Oguamanam, MAPC, and ABS Canada

Speaker: Mr. Preston Hardison, Policy Analyst, Tulalip Tribes (Washington State)

- Mr. Hardison discussed his perspective that Indigenous rights are inherent and not granted by States, and that UN decisions, protocols, agreements, and treaties do not apply to Indigenous peoples until *they* chose to adopt them – that is self-determination in practice
- This applies equally to regimes that ostensibly seek to protect Indigenous rights and interests, like the Nagoya Protocol
- While stressing this, Mr. Hardison noted that UN treaties can be



powerful documents that shape the normative landscape on which states operate

- However, negotiating treaties with the proper inclusion of Indigenous voices can be hard, since participating is expensive/time consuming and Indigenous peoples have many issues to deal with “at home”
- A major problem with ABS? It is fundamentally a western contractual approach – “access in exchange for benefits”
- This is not the Indigenous approach
- Mr. Hardison stressed that Indigenous peoples need to codify their customary laws and secure a seat at the table to fight for their perspective to be included – but must be ready to accept flawed outcomes and compromises with other interests
- Mr. Hardison suggested Indigenous peoples come together to draft their own ABS protocol – a truly Indigenous alternative to Nagoya

Speaker: Professor Daniel Dylan, Lakehead University

- Professor Dylan spoke about the “quasi-ABS” Inuit Impact and Benefit Agreements developed in Canada’s Nunavut territory, and discussed their limitations
- He detailed a number of research projects with commercial applications that are linked to genetic resources in Nunavut, noting that there is no ABS regime in place to govern this research and any derivative commercial benefits
- Professor Dylan explained the role of the Nunavut Research Institute, which is responsible for licensing all research that takes place in Nunavut; work cannot proceed without a license, but there are no benefit sharing provisions
- His presentation stressed that there are some things to be learned from the way Nunavut licenses and controls researcher access, but these are not comprehensive protections and would need to be supplemented by an ABS regime to properly protect and preserve genetic resources and associated Indigenous traditional knowledge

Speaker: Professor Thomas Burelli, University of Ottawa Faculty of Law

- Professor Burelli shared his experiences conducting field research in French Guyana
- He noted that there were no ABS agreements governing this work, and



that local Indigenous communities were not even informed that the research was taking place

- This example should catalyze an important conversation about research ethics and best practices – Professor Burelli stressed that Indigenous communities should not wait for states to act, as Indigenous peoples are best placed to determine research and access guidelines to their own communities and resources
- In Canada, researchers have worked hard to change their relationships with Indigenous peoples
- For example, there is now a developing constellation of policies (including Tri-Council policy on the importance of conducting research *by* and *with* Indigenous peoples) but these in some ways continue to reflect old colonial mindsets, as they were developed by Western lawyers
- Indigenous peoples have a critical role to play in framing the relationships between their communities and researchers, otherwise Western governments and commercial interests will do it in their stead, and to their detriment

Speaker: Mr. Kent Nnadozie, Secretary *ad interim* of the International Treaty on Plant Genetic Resources for Food and Agriculture

- Mr. Nnadozie described the history and objectives of the Plant Treaty, including its emphasis on conservation and the sustainable use of plant genetic resources for food and agriculture
- He noted that today, most crops could not sustain themselves without human intervention – the genetic resources at the heart of these plants are critical to human well-being and sharing them fairly and equitably is in the best interest of all
- Many of the laws and practices we have developed to encourage environmental sustainability and biodiversity conservation reflect the lowest common denominator at negotiations; this is a frustrating but recurring reality of international negotiations, and fails to reflect the urgency of these challenges
- Mr. Nnadozie emphasized that the world is losing the benefits of biodiversity to corporatized monocultures populated by patented crop strains; these forces are backed by powerful economic incentives and permissive legal regimes



- While at some point, “mouths have to be fed,” he indicated that we will lose this ability if we continue on our present course
- For Mr. Nnadozie, this underscores the need for the Nagoya Protocol and complementary international instruments
- That being said, and as other presenters have highlighted, much work remains to be done, including better protection of farmers’ rights, creation of benefit sharing funds, dissemination of sustainable farming best practices, nurturing a multilateral system so states and other interests have a platform for dialogue and change

PART 2: FOCUS GROUP

Below are key ideas and opinions expressed by focus group participants; they are arranged thematically for ease of reference

Access and Benefit Sharing:

- Participants repeatedly stressed that the very idea of plants and animals as “resources” is not compatible with Aboriginal views, and that any legal system or policy that starts with this premise will (1) engender confusion and resistance and (2) likely be rejected by the communities those policies are meant to protect;
- As a threshold issue, participants explained that they would be unlikely to participate in any ABS agreements or conversations with industry and government until they regain full ownership and control over their traditional lands;
- Participants noted the irony of being asked to share their medicines and knowledge with outsiders, given Canada’s long history of demeaning that same knowledge and historical practice of banning traditional medicines and techniques. One participant noted that in her community, healers always had to “hide on our own lands to collect our medicines,” but that there is still a strong ethic of sharing for mutual benefit that they feel could be taken advantage of;
- Participants were skeptical that their traditional knowledge would ever truly be understood, valued, and respected. They noted the long (and ongoing) history of “demonizing” their practices and way of life – one



medicine woman felt she was seen by Western doctors as “some kind of witch.” From their perspective, Western scientists and researchers wish to commoditize and profit off of that which they do not know, understand, or respect;

- Participants were deeply “alarmed” and “frightened” by the idea that slight modifications in the wording of laws and international agreements could have a substantial bearing on their rights and the futures of their communities;
- Participants noted that this fear is exacerbated by the foreignness of Western legal traditions, which fail to account for kin-based Indigenous knowledge or collective notions of consent;
- One participant felt that IP law, the CBD, and the Nagoya Protocol would never be accepted by Aboriginal peoples, stressing that these are “Western” laws.

Canada’s Role in ABS Negotiations:

- Participants agreed that Canada’s current approach to ABS-related negotiations reflect a colonial and settler mindset, as all delegations are led by government officials with limited input from Aboriginal peoples. This non-inclusive approach is troubling for Aboriginal peoples given that the use or sharing of genetic resources and associated traditional knowledge directly engage the economic future of many Aboriginal communities, warranting the duty to include their voices and experiences at international negotiations;
- Participants expressed concern that they are frequently involved in negotiations only at “the ninth hour” which reflects the low value the Government places on their opinion; many participants felt that government viewed them as an obstacle to be overcome rather than as key stakeholders;
- Some participants indicated that they were “frankly uninterested” in what Canada was doing at the international level in terms of negotiating legal instruments. Rather, they were deeply concerned



with how Canada treats their peoples at home – “why worry about that when we are still being colonized and our rights are not being respected here every day?”

Consultation & Stakeholder Relations:

- Participants expressed concerns over Canada’s continued engagements in sporadically organized government sessions on ABS, noting that this does not amount to full and proper consultation as the Government has failed to provide Aboriginal peoples with opportunities to fully engage in the process;
- Participants noted that researcher and academic communities must develop responsive protocols that are accessible and culturally-sensitive, allowing Aboriginal peoples to view, understand, share, and help shape research findings;
- Participants expressed anger and frustration that international negotiations on the Nagoya Protocol and related instruments featured minimal input from Aboriginal communities; many felt that the efforts to include their voices were “tokenism;”
- Participants agreed that the complexity of ABS as a subject matter demands more accessible capacity-building materials and outreach; references was made to the many “acronyms,” “articles,” and “legalese” that precluded clarity and understanding;
- Participants stressed repeatedly the importance of learning, respecting, and adhering to local protocols when meeting. Failure to observe these protocols generated mistrust, confusion, and a fear that the researchers were there to “steal from them” – participants noted that these dynamics are rooted in history and will colour any future consultations and negotiations;
- A preference was expressed for Aboriginal peoples to be treated with respect, not just as one stakeholder group among many, but as the pre-eminent stakeholder group given the concentration of genetic resources on traditional Aboriginal territories in Canada;



Capacity Building:

- Participants maintained that capacity building on ABS need to be a two-way or “multidirectional” exercise. As such, while governments need to support ABS capacity building in different directions, Aboriginal peoples also need to educate the government on how to engage and understand Aboriginal peoples as essential stakeholders in ABS;
- Participants articulated frustration at being considered a “marginalized” community in need of capacity building and capacity development, noting that this very language perpetuates colonial mentalities and structures and reproduces the very reality “capacity building” and “capacity development” ostensibly mitigate;
- Participants expressed appreciation for the international delegates who attended the focus group, and indicated that learning from other Indigenous and local communities about their experiences and best practices was helpful and constructive;
- Participants observed that for too long Canada has prided itself as an active development partner with developing nations in the global South while continuing to “live in denial” over the state of Aboriginal communities within its own borders. These domestic communities are not only in need of developmental support generally, but require targeted assistance for complex issue areas such as ABS. Participants noted that there is much that Canadian Aboriginal Peoples can learn from their counterparts in Indigenous and Local Communities in Africa and elsewhere. As such, participants called on Canada to actively support a South-North, or even North-North capacity development initiative on ABS and related matters that target or affect Indigenous peoples of Canada;
- Participants expressed a desire for additional financial support for capacity building in ABS and related matters, including prioritization of resources to translate documents and the need for plain-language explanations of key concepts and terminology as part of capacity building and consultation – this was raised in Moncton, and



participants expressed frustration that there had been no progress on this matter to date;

- Participants also noted that their communities face resource constraints that undermine efforts to organize meetings to talk amongst themselves – this would affect any effort to come together to present a “common face” toward the government should Canada decide to implement the Nagoya Protocol and seek input from Aboriginal communities through some sort of consultation process;
- Participants were very concerned at the idea of being asked to attend a capacity-building session in a hotel room with university researchers – this made many feel “spoken down to” by people “with fancy pieces of paper on their walls” who had little understanding of their communities or local protocols;
- Participants noted that redress or reparation for confirmed instances of bio-piracy and exploitations of Aboriginal TK may be worth discussing but expressed uncertainty regarding how that process might work;
- Participants discussed the issue of TK databases as a defensive measure and but felt that this approach is inherently “dangerous,” and problematic overall, noting that the mere process of uploading their information in a database was akin to surrendering it to settlers.

Conclusion:

- Participants expressed appreciation for the three-day session. While mistrust and suspicion clouded some of the event owing to miscommunication between the organizers and participants, a roundtable introduction and open discussion helped to bridge these divides. Some elders indicated that holding this roundtable at the end instead of the beginning reminded them of the very nature of the ABS discussion in Canada – “all backwards.” A majority of participants believed that at the end of the day, any logistical “hiccups” turned out to be a “blessing in disguise” as they helped to practically highlight and resolve (at least in the context of the focus group itself) the trust question between researchers and Aboriginal peoples. Distinguishing



between researchers that are genuinely committed to partnering with Aboriginal Peoples and the government, many participants felt that government should have come to them first, before negotiating any international agreements. They insist that governments should continue to consult meaningfully before taking further policy decisions;

- Participants indicated a desire to remain in touch and to guide and support one another in this work; many did not know the specifics of ABS but nevertheless had been deeply conscious of the biopiracy phenomena for some time, and were surprised no one had asked for their input sooner;
- The organizers committed to freely disseminating any and all outcome documents from the focus group (including this report), as well as further project materials as they are developed and published.





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