Kew
ROYAL BOTANIC GARDENS

Experiences from the Royal Botanic Gardens, Kew

Use of model contractual clauses, codes of conduct, guidelines and best practices and standards

ICNP3
Item 4.2
Pyeongchang, Republic of Korea

China Williams
RBG, Kew
c.williams@kew.org

Royal Botanic Gardens, Kew

- Non-departmental public body and registered charity

•700 staff - science and horticulture

•Over 1.7 million visitors a year

•UNESCO World Heritage Site

Kew's mission is to inspire and deliver science-based plant conservation worldwide – enhancing the quality of life

Kew receives half its running costs from Government through the Department for Environment, Food and Rural Affairs (Defra).
All other funding needed to support Kew's vital work comes from members, foundations, donors and commercial activities including ticket sales.

Kew Collections

19 major collections:

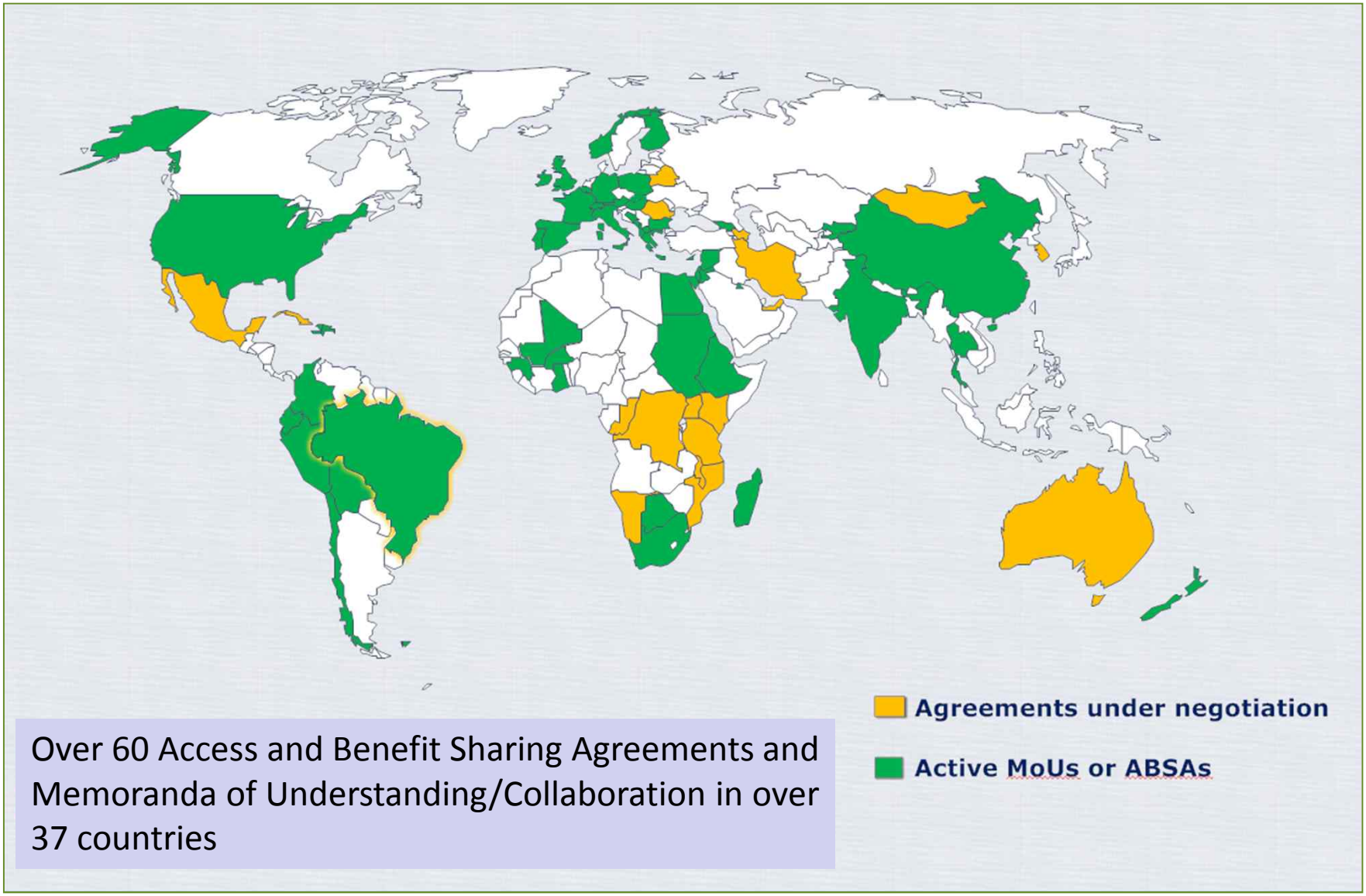
- Preserved plant and fungal collections (Herbarium)
- Living material (The Millennium Seed Bank, living plant collections)
- Documentary and visual reference collections (library, art and archives, on-line resources including databases)




Kew's Collections in Numbers

- Herbarium (7.5 M) & Fungarium (1.25 M)
- Living collections (+30,000 species)
- Millennium Seed Bank (+30,000 species; c. 2 billion seeds)
- DNA and tissue bank (+42,000 accessions)
- DNA C-value (+7,000 species)
- Slide collections (+100,000 slides)
- Library (> 750,000 volumes), archives (250,000), artwork (> 175,000) , paintings, prints and drawings
- Hundreds of scientists visit each year
- 60 + overseas plant collecting trips per year
- Exchange over 60,000 herbarium specimens and 10,000 live plants and seeds each year

Kew Formal Partnerships



Over 60 Access and Benefit Sharing Agreements and Memoranda of Understanding/Collaboration in over 37 countries

Working it out: Practical Implementation of the ABS Regime

Working to Develop a Sectoral Policy

The Pilot Project for Botanic Gardens (1997 -2000)

- Principles on ABS and common guidelines for botanic gardens
- Standard Material Transfer Agreements
- Institutions develop their own Policy on ABS

28 institutions from 21 countries at different stages of introducing ABS legislation: Argentina, Australia, Bolivia, Brazil, Cameroon, Canada, China, Colombia, Ethiopia, Fiji, Germany, Ghana, India, Malaysia, Mexico, Morocco, Russian Federation, South Africa, Switzerland, UK, USA

Lessons Learned from Developing a Sectoral Code of Conduct

- Reassurance that we are following best practice within an ABS framework where national legislation and interpretation can vary
- Global participation in development of Principles valuable in building trust and creating a comprehensive and balanced approach
- Establishes a clearer relationship with government/funders/partners
- Breadth and flexibility: useful for complex institutions
- Show CBD commitment to partners and governments

BUT....

- Need for institutional interpretation - hard for smaller gardens
- 'Static' process and difficult to update
- No assessment and monitoring criteria

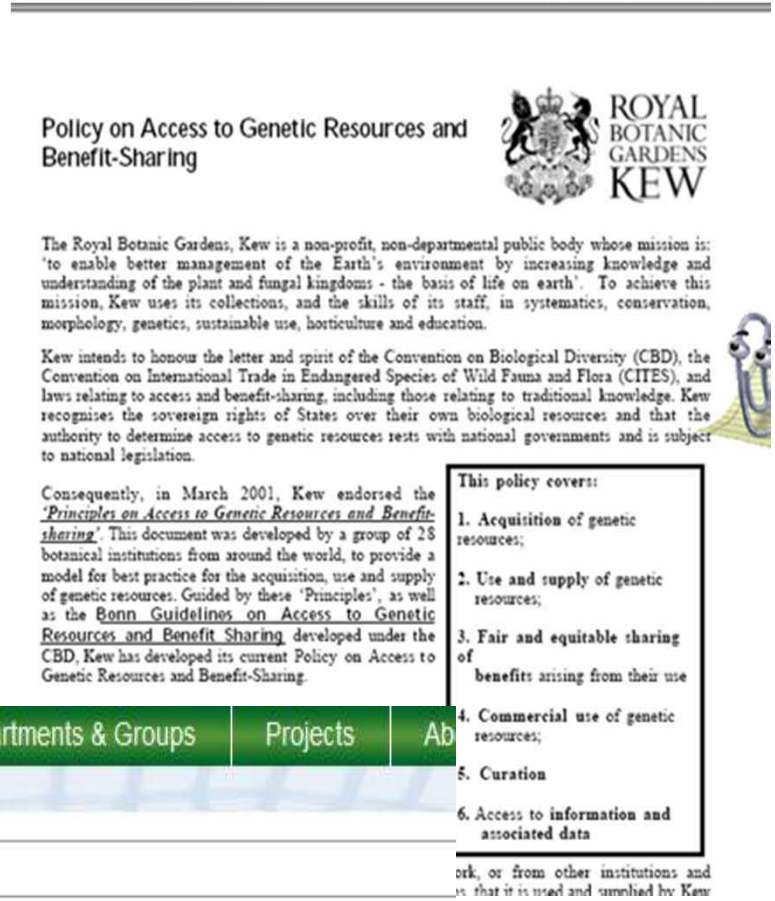
Kew's Experience of Using the Principles

- Signing up to the Principles set off an internal process at Kew to develop an **ABS Policy** that underpins Kew's work
- The process of developing Kew's Policy increased commitment, ownership and understanding of issues by staff – crucial
- Kew's ABS Policy was approved by its Director and Board of Trustees in 2004
- Led to development of **institutional toolkit** at Kew

Kew's ABS Policy 'is designed to ensure that all material brought into Kew (either collected on fieldwork, or from other institutions and individuals) has been legally acquired on mutually agreed terms, that it is used and supplied by Kew on terms and conditions consistent with those under which it was acquired, and that benefits arising from the use of genetic resources by Kew are shared fairly and equitably as agreed with partners in the country of origin of the material'

Kew's ABS Toolkit

- A Policy on ABS
- A CBD Unit
- Regular training for staff and an internet guide to ABS and TK
- Procedure for overseas fieldwork



Policy on Access to Genetic Resources and Benefit-Sharing

ROYAL BOTANIC GARDENS KEW

The Royal Botanic Gardens, Kew is a non-profit, non-departmental public body whose mission is: 'to enable better management of the Earth's environment by increasing knowledge and understanding of the plant and fungal kingdoms - the basis of life on earth'. To achieve this mission, Kew uses its collections, and the skills of its staff, in systematics, conservation, morphology, genetics, sustainable use, horticulture and education.

Kew intends to honour the letter and spirit of the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and laws relating to access and benefit-sharing, including those relating to traditional knowledge. Kew recognises the sovereign rights of States over their own biological resources and that the authority to determine access to genetic resources rests with national governments and is subject to national legislation.

Consequently, in March 2001, Kew endorsed the *'Principles on Access to Genetic Resources and Benefit-sharing'*. This document was developed by a group of 28 botanical institutions from around the world, to provide a model for best practice for the acquisition, use and supply of genetic resources. Guided by these 'Principles', as well as the Bonn Guidelines on Access to Genetic Resources and Benefit Sharing developed under the CBD, Kew has developed its current Policy on Access to Genetic Resources and Benefit-Sharing.

This policy covers:

1. Acquisition of genetic resources;
2. Use and supply of genetic resources;
3. Fair and equitable sharing of benefits arising from their use
4. Commercial use of genetic resources;
5. Curation
6. Access to information and associated data

ork, or from other institutions and s, that it is used and supplied by Kew

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Policies & Procedures

All Topics

Communications

A staff guide to collecting, use and supply of plant material and data

Practical guidance on how to collect and supply plant material and data. Kew is committed to honouring the letter and spirit of the CBD so it's essential staff follow these procedures.

Kew's ABS toolkit

- Policies for visiting researchers in all departments
- Policy for DNA data, images and information harvesting

- Standard /model documents:
  - material supply agreements
  - letters and clauses
  - long term ABS agreements

Kew's model agreements

- Material Supply Agreements (MSA's) for different departments
- Use of material letter
- Memoranda of Collaboration (MoC) for herbarium only
- MoC no transfer to third party
- MoC renewal letter
- Access and Benefit Sharing Agreement (ABSA) with government
- ABSA without government
- ABSA (with clauses for ITPGRFA Annex 1 material)
- ABSA renewal
- Approved translations in French, Spanish and Mandarin Chinese

Model agreements and clauses

- Clarify long term work
- Requirement of national legislation
- Partner request
- Funding requirement
- Builds trust

Model Clauses in Non-Commercial Research Access Agreements

- Parties
- Nature of relationship/purpose of contract
- Definition of genetic material being accessed – seeds, herbarium specimens, DNA, data/TK/information
- PIC/legal access from provider
- Definitions
- MAT - use of material (commercial/non commercial)

  - change of use
- Terms of transfer and supply to third parties (if allowed).
- Steps to take if change of use required

Model Clauses in Non-Commercial Research Access Agreements continued

- Benefit sharing (monetary/non monetary- short term/long term)
- Intellectual property
- Conservation/Sustainable Use
- Dispute Settlement – choice of law
- signatures

Useful sources: Bonn Guidelines, Swiss Good Practice Guide, Australian examples, sectoral models such as in Common Policy Guidelines, MOSAIIC project, SMTA of ITPGRFA, commercial models

Kew's Experiences Using Model Agreements and Clauses

Advantages

- Helps plan the work better –focus mind and realise expectations
- Transparent and legally secure
- Model terms means there is a degree of predictability and sets standard practice– helps with curation and implementation
- Model agreements and clauses speed up the negotiation process – saving time and money
- Clarify best practice where national legislation is not clear

Consistent models in sectors facilitate exchange, support compliance and tracking as terms are well understood and tools in place to implement correctly

Kew's Experiences Using Model Agreements and Clauses

Disadvantages

- Can takes time to set up, don't always know who to involve
- A model is only a model! - terms need to be *mutually* agreed
- When both Parties have a model can cause problems!
- Sometimes models lead to complacency and failure to check/record terms

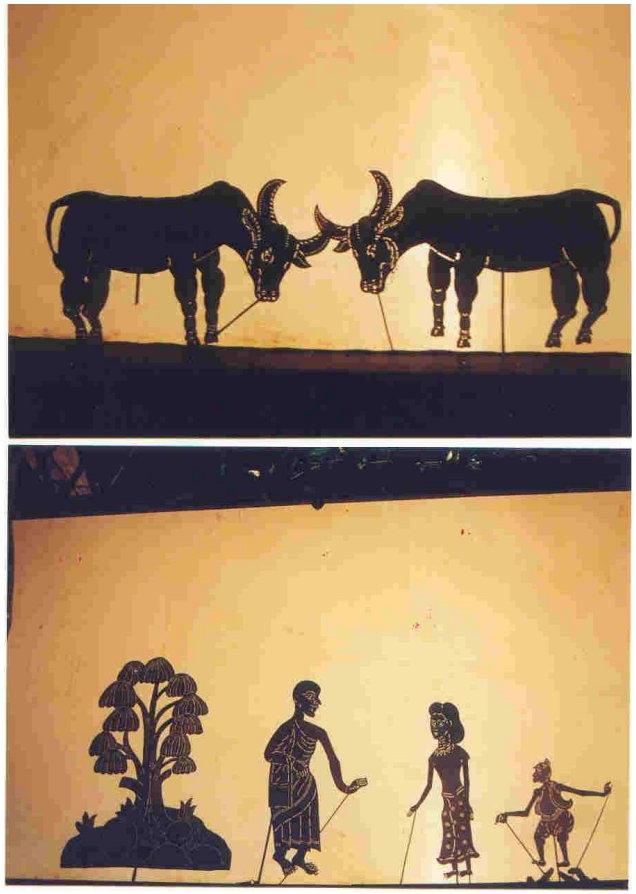
Models need to be flexible to be used with other sectors and governments who may have own models - capacity building required to ensure terms are understood and can be renegotiated

Current and future work…

- Currently working on a sectoral level to develop a code of conduct and guidelines with colleagues in the European Taxonomic community (CETAF)
- Updating internal policies and procedures at Kew in line with NP and to comply with EU Regulations
- Working with Botanic Gardens Conservation International to develop toolkit for Botanic Gardens implementing the NP
- Working with Global Genome Biodiversity Network (GGBN) on developing standard MTAs

Conclusions

- Model codes and agreements are a front end system – need also to focus on monitoring or assessment mechanisms to ensure compliance
- Developing institutional policy and agreements in context of agreed sectoral guidelines gives confidence both internally and externally – but takes time and investment
- Policies and agreements need to be fully understood so changes can be made and new terms agreed or adapted mutually
- Policies need update to keep up with NP and national legislation – takes time



Challenge of needing to remain flexible as we continue to learn and modify based on experience with use and changing legal framework

Thank you!

China Williams

RBG Kew

c.williams@kew.org

Nagoya Protocol – Implications for scientific research collections

- New access procedures
- More formal agreements (access and transfer) will be developed and used
- Need to build trust and tighten up our internal tracking and recording procedures to ensure terms of access are complied with
- Parties may develop simplified access procedures for non commercial use
- Distinction between commercial and non-commercial use needs identified
- Possible increase in interest in use of *ex situ* collections for bioprospecting
- More tracking and reporting compliance requirements
- Need to react to national implementation (e.g.EU Regs)