

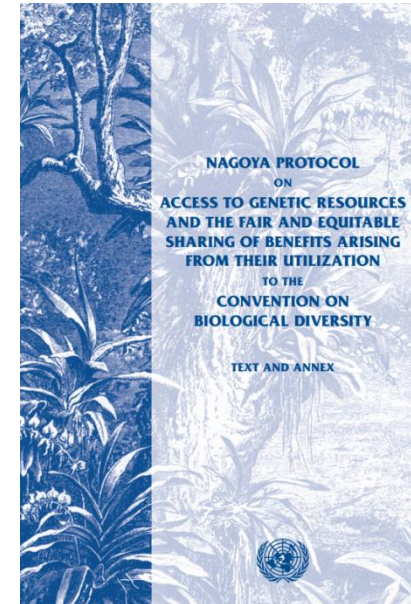
# General Overview of Obligations of Parties under the Nagoya Protocol on Access and Benefit Sharing

Secretariat of the Convention on Biological Diversity

## 1. Background

## 2. Obligations of Parties: Core elements : ABC's of ABS

- Access
- Benefit Sharing
- Compliance
- Traditional knowledge associated with genetic resources



## 3. Mechanisms to support implementation of the Nagoya Protocol

# Background

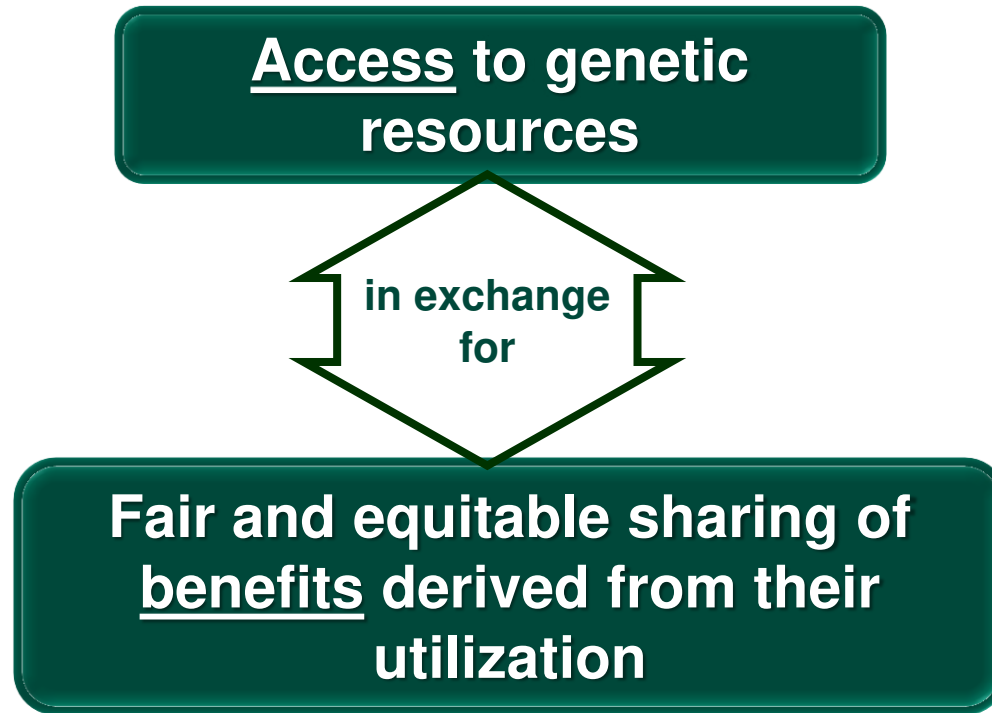
## Convention on Biological Diversity (CBD) has three objectives:

- Conservation of biological diversity
- Sustainable use of its components
- **Fair and equitable sharing of benefits arising from the use of genetic resources**



# Background

CBD thus provides for an equity relationship:



The Nagoya Protocol aims at providing a legal framework to articulate the “quid pro quo” that underpins the CBD



# October 2010: Nagoya Biodiversity Summit

CBD

## Epoch making for Biodiversity policy



Life in harmony, into the future  
いのちの共生を、未来へ  
COP10 / MOP 5

Living in harmony with nature





# The ABC's of ABS

- **A**ccess - users seeking access to genetic resources must:
  - Get **permission** from the provider country (known as prior informed consent or PIC)
- **B**enefit-sharing - provider and user must:
  - Negotiate an agreement to share benefits resulting from the use of a genetic resource (known as mutually agreed terms or MAT)
- **C**ompliance – Nagoya Protocol creates obligations to:
  - Comply with national ABS legislation and mutually agreed terms
  - Monitor the utilization of genetic resources
    - Checkpoints
    - Internationally recognized certificate of compliance

# Access ( Article 6)

**Obligation to establish ABS measures** at the national level, that provide for:

- Legal certainty, clarity and transparency
- Fair and non-arbitrary rules and procedures
- Information on how to apply for Prior informed consent (PIC)
- Written decision by Competent National Authority
- Clear rules and procedures for Mutually Agreed Terms (MAT)
- The issuance of a permit or equivalent to be notified to the ABS Clearing-House



# Fair and Equitable Benefit-Sharing (Article 5)

## Obligation to take measures:

- For benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization to be shared with the Party providing such resources. Benefits to be shared on Mutually agreed terms (MAT)

## Benefits may be monetary and non-monetary benefits:

- Access fees, milestone payments, licence fees, royalties, transfer of technology, sharing results of research, effective participation in research (see Annex)



# Compliance (Article 15)

## Compliance with domestic ABS legislation

### Obligation to take measures:

- To provide that genetic resources utilized within a Party's jurisdiction have been accessed in accordance with PIC and MAT
- To address situations of non-compliance

Obligation to cooperate in cases of alleged violation of domestic ABS legislation or regulatory requirements

# Compliance (Article 18)

## Compliance with mutually agreed terms

### Obligation to:

- Encourage users and providers to include provisions in MAT to cover dispute resolution (including the jurisdiction; the applicable law; and/or options for alternative dispute resolution)
- Ensure that opportunity to seek recourse is available under each Party's legal systems
- Take effective measures regarding access to justice; and the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards

# Compliance (Article 17)

Obligation to take measures to monitor the utilization of genetic resources:

- Designation of effective **checkpoint(s)** for collection of information at any stage of research, development, innovation, pre-commercialization or commercialization
  - Checkpoints to **collect relevant information** on PIC, the source of genetic resources, establishment of MAT, and/or to the utilization of genetic resources

# Compliance (Article 17)

Obligation to take measures to monitor the utilization of genetic resources:

- Checkpoint(s) (continued)
  - Obligation to require users of genetic resources to provide required information at checkpoint(s)
  - Information to be provided to national authorities, provider Party and ABS Clearing-House
  - Take measures to address non-compliance





# Compliance (Article 17)

Obligation to take measures to monitor the utilization of genetic resources:

- Encouraging reporting requirements in MAT
- Encouraging cost-effective communication tools

Internationally recognized certificate of compliance as evidence that PIC was obtained and MAT established

# Compliance (Article 19)

## Tools to encourage compliance:

Obligation to encourage the development, update and use of:

- Model Contractual Clauses for MATs
- Codes of Conduct, Guidelines and Best Practices and/or Standards



## PROVIDER COUNTRY

**PIC**

*Competent National  
Authority*



**MAT**

*- Terms of Use (e.g.  
Commercial or non-  
commercial)*

*- Benefit-sharing (monetary  
or non-monetary)*



**Permit**



**Notified to ABS  
Clearing-House**



**International Certificate of  
Compliance**

**GRs  
+  
Certificate**

**Benefit-sharing**

## USER COUNTRY

**Utilization of GRs**

**Checkpoint(s):**

- *one or more*
- *must be effective*
- *should be relevant to the  
utilization of genetic resources or  
to the collection of relevant  
information at, inter alia, any  
stage of research, development,  
innovation, pre-commercialization  
or commercialization*

**To collect/receive  
information on PIC,  
MAT, source of GRs,  
use of GRs**

**Monitoring the utilization  
of genetic resources**



# ILCs and Traditional Knowledge (Article 7)

## Access to Genetic Resources:

Obligation to take measures in accordance with domestic law:

- For obtaining PIC or prior approval and involvement of indigenous and local communities (ILCs) for access to genetic resources where they have the established rights to grant access to those resources
- Setting out criteria and/or processes for obtaining PIC of ILCs



# ILCs and Traditional Knowledge (Article 7)

## Access to TK associated with Genetic Resources:

Obligation to take measures in  
accordance with domestic law:

- With the aim of ensuring that TK held by indigenous and local communities is accessed with PIC and prior approval and involvement of ILCs and MAT established



# ILCs and Traditional Knowledge (Article 5)

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## Fair and Equitable Benefit-sharing:

Obligation to take measures for the sharing of benefits with indigenous and local communities:

- With respect to genetic resources held by ILCs in accordance with domestic legislation regarding established rights of these ILCs over these genetic resources
- With respect to TK associated with genetic resources held by ILCs



# ILCs and Traditional Knowledge (Article 12)

Obligation to take into consideration customary laws, community protocols and procedures

Obligation of Parties to:

- Establish mechanisms to inform potential users of TK associated with genetic resources about their obligations
- Support the development by ILCs of community protocols; minimum requirements for MATs; model contractual clauses for benefit-sharing arising from the utilization of TK associated with genetic resources

Obligation to not restrict the customary use and exchange of genetic resources and associated TK within and amongst ILCs

# ILCs and Traditional Knowledge (Article 16)

## Compliance with national legislation on TK

### Obligation to take measures:

- To provide that TK associated with genetic resources is accessed with PIC or approval and involvement of indigenous and local communities and MAT, as required by domestic ABS legislation
- To address situations of non-compliance

### Obligation to cooperate in cases of alleged violation of national law on TK





# Measures to support implementation

- National Focal Points and Competent National Authorities
- Awareness-raising
- Capacity
- ABS Clearing-House



# National Focal Points (Article 13)

**Obligation** to establish **National focal points** responsible for:

- Providing information on applicable procedures for obtaining prior informed consent and establishing mutually agreed terms
- Providing information on procedures for obtaining prior informed consent or approval and involvement of ILCs
- Ensuring the liaison with the Secretariat
- Providing information on competent national authorities



# National Competent Authority(ies) (Article 13)

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Obligation to designate one or more national competent authorities responsible for:

- Granting access or issuing evidence that access requirements have been met
- Advising on applicable procedures for obtaining PIC and entering into MAT

Obligation to notify the contact information to SCBD

- When more than one CNA, info on respective responsibilities

# Awareness-Raising (Article 21)

Obligation to take measures to raise awareness about the importance of genetic resources and associated traditional knowledge and related ABS issues. Such measures may include, *inter alia*:

- Promotion of the Protocol
- Organization of meetings of ILCs and relevant stakeholders
- Establishment and maintenance of a help desk for ILCs and other relevant stakeholders
- Information dissemination through a national clearing-house
- Others



# Capacity (Article 22)

- **Obligation to cooperate** in the **capacity-building, capacity development and strengthening of human resources and institutional capacities** to effectively implement the Protocol in developing country Parties and Parties with economies in transitions
  - Including through existing global, regional and national institutions and organizations





# ABS Clearing-House and information-sharing (Article 14)

Obligation to make available to the ABS CH any information required by the Protocol and information required pursuant to the decisions taken by the COP/MOP. The information shall include:

- Legislative, administrative and policy measures on ABS
- Information on the national focal point and competent national authority(ies)
- Permits or their equivalent issued at the time of access as evidence of the decision to grant PIC and of the establishment of MAT



# ABS Clearing-House and information-sharing (Article 14)

Additional information, if available and as appropriate, may also include:

- Relevant competent authorities of ILCs, and information as so decided
- Model contractual clauses
- Methods and tools developed to monitor genetic resources
- Codes of conduct and best practices

# Thank you for your attention!

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## FOR MORE INFORMATION ON ABS:

[www.cbd.int/abs](http://www.cbd.int/abs)