

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization

Secretariat of the Convention on Biological Diversity

Outline



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- Background
- Purpose and main features of the Nagoya Protocol on ABS
- Next Steps



Background



CBD's three objectives:

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

Background

CBD provides for an equity relationship:

Access to genetic resources in exchange for sharing of benefits derived from their use



Why a Protocol on Access and Benefit-sharing?



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

Access to genetic resources

IN
EXCHANGE
FOR:

Fair and equitable share of the benefits derived from their utilization

Why are genetic resources important?



Genetic resources provide a **wide range of products and services** essential to human well-being, notably in the following sectors:

- Pharmaceuticals
- Personal care and cosmetics
- Seed and crop protection
- Botanicals and horticulture

Therefore, **countries have a shared interest** in the advancement of research on genetic resources as it leads to **new discoveries**.



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Uses of Genetic Resources

Genetic resources can be put to **commercial use**:

- They can be used in crop protection, drug development, chemicals, detergents, and textiles among others
- **Examples:**
 - The development of drugs from the use of plant components, such as compounds found in resin and latex, to treat diseases
 - The commercialization of a gene sequence from wild plants to increase the resistance of food crops to agricultural pests



Uses of Genetic Resources

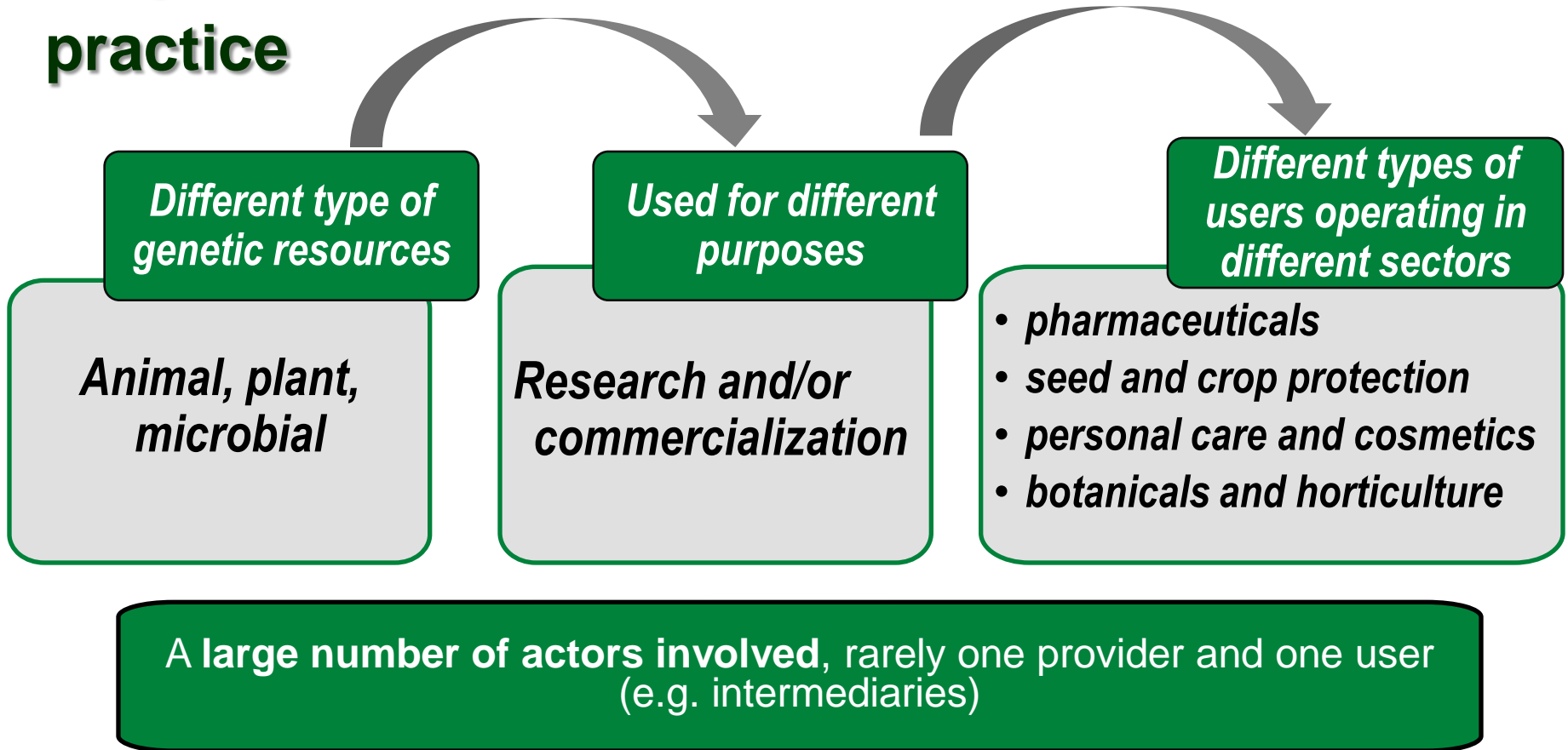
Genetic resources can be put to **non-commercial use**:

- Academic and public research institutions use genetic resources to increase our understanding of nature
- Genetic resources are a key source of information for taxonomy and ecosystem analysis



Uses of Genetic Resources

ABS in practice



Background



Fundamental principles (Article 15 CBD):

- Sovereign rights over natural resources
- Prior informed consent
- Mutually agreed terms, including the sharing of benefits arising from the commercial and other utilization of genetic resources

Background

Why a Protocol on Access and Benefit-sharing?

- CBD provisions not fully implemented
- Cases of misappropriation of genetic resources and associated traditional knowledge
- **Need for legal certainty and transparency**
 - Concern to ensure benefit-sharing once genetic resources have left the provider country
 - Need for clear procedures when accessing genetic resources

Nagoya Protocol on ABS



Mandate for negotiations

- **WSSD, 2002:** Political mandate for international regime on ABS
- **COP VII, 2004:** WG-ABS mandated to negotiate an international regime on ABS
- **COP X, 2010:** Finalization of the negotiations and adoption of the Nagoya Protocol on ABS

Nagoya Protocol on ABS



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Overview

- Objective
- Scope
- Core Elements
- Tools and Mechanisms to assist with implementation
- Institutional provisions



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Objective

“.... the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components”



Nagoya Protocol on ABS

Scope of the Protocol

- Genetic resources **within the scope of Article 15 CBD** and the benefits arising from the utilization of such resources
- **Traditional knowledge associated with genetic resources** within the **scope of the CBD** and the benefits arising from the utilization of such knowledge



Core Elements



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- Access
- Fair and equitable sharing of benefits
- Compliance
- Traditional knowledge associated with genetic resources



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Core Elements: Access

- Sovereign rights over natural resources
- Access is subject to the prior informed consent (PIC) of the provider country



Core Elements: Access

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

- legal certainty, clarity and transparency
- fair and non-arbitrary rules and procedures
- clear rules and procedures for PIC and MAT
- the issuance of a permit or equivalent



Core Elements: Fair and Equitable-sharing



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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 provider country. 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)

Core Elements: Compliance

Compliance with national 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

Core Elements: Compliance

Compliance with mutually agreed terms

Obligation to:

- Encourage users and providers to include **provisions in MATs** 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
- To take effective measures regarding **access to justice**; and the utilization of mechanisms regarding **mutual recognition and enforcement of foreign judgments and arbitral awards**

Core Elements: Compliance



Monitoring of genetic resources

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

- Designation of effective check points for collection of information at any stage of research, development, innovation, pre-commercialization or commercialization
- Encouraging reporting requirements in MAT
- Encouraging cost-effective communication tools

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

Core Elements: Compliance

Tools to encourage compliance:

Obligation to encourage the development, update and use:

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



Core Elements: Traditional Knowledge



Provisions related to TK and to indigenous and local communities:

- Similar provisions related to access, benefit-sharing and compliance apply to TK associated with genetic resources as well as to access to genetic resources where indigenous and local communities have established rights to genetic resources in accordance with national law.

Relationship with other international instruments



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- **No hierarchy** between Protocol and other international instruments
- Possibility to develop **specialized ABS agreements**
- Protocol to be implemented **in mutually supportive manner** with other relevant international instruments
- Where **specialized international ABS instrument** applies, **Protocol does not apply** for Party or Parties to specialised instrument in respect of specific genetic resources covered by and for purpose of specialized instrument.

Tools and Mechanisms to assist with implementation



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- Capacity-building/Awareness-raising
- Technology Transfer
- National Focal Points and Competent National Authorities
- ABS Clearing House
- Financial Mechanism
- Monitoring and Compliance with the Protocol



Institutional Provisions

- Conference of the Parties to serve as the meeting of the Parties to the Protocol (Article 20)
- Secretariat of CBD shall serve as Secretariat of the Protocol (Article 22)



Next Steps



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- Opening for **signature** by Parties to the CBD at UN Headquarters in New York from 2 February 2011 until 1 February 2012
- **Entry into force** on the ninetieth day after the date of deposit of the 50th instrument of ratification by Parties to the CBD
- Establishment of an Open-ended **Intergovernmental Committee** to prepare for the first meeting of COP/MOP
 - First meeting: **6 to 10 June 2011**

Next Steps



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- Awareness raising and capacity-building activities during next biennium in order to:
 - provide technical assistance to Parties with a view to support the early ratification and implementation of the Protocol
 - raise awareness to the Protocol among relevant stakeholders, including business and the scientific community





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Thank you for your attention!

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