



General Overview of Obligations of Parties under the Nagoya Protocol on Access and Benefit-sharing

Secretariat of the Convention on Biological Diversity

Living in harmony with nature





Outline

1. Obligations of Parties: core elements

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

2. Obligations of Parties: to support the implementation of the Nagoya Protocol



Access

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 PIC
- Written decision by CNA
- Clear rules and procedures for MAT
- The issuance of a permit or equivalent to be notified to the ABS Clearing-House



Special Considerations

When **developing and implementing ABS measures**
Parties are to:

- Create **conditions to promote research** for the conservation and sustainable use of biodiversity
 - Simplified measures on access for non-commercial research
- Pay due regard to **cases of health emergency** as determined nationally or internationally
- Consider the importance of **genetic resources for food and agriculture**



Fair and Equitable Benefit-Sharing

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

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



Compliance

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

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

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



Compliance

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, to the Party providing PIC and to ABS Clearing-House, as appropriate
 - Take measures to address situations of non-compliance



Compliance

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

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

Permit or equivalent issued at the time of access and made available to the ABS CH to constitute an internationally recognized certificate of compliance and serve as evidence that PIC was obtained and MAT established



Compliance

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





ILCs and Traditional Knowledge

Access to Genetic Resources:

Obligation to take measures in accordance with domestic law:

- For PIC or prior approval and involvement of indigenous and local communities (ILCs) to be obtained for access to genetic resources where they have the established rights to grant access to those resources

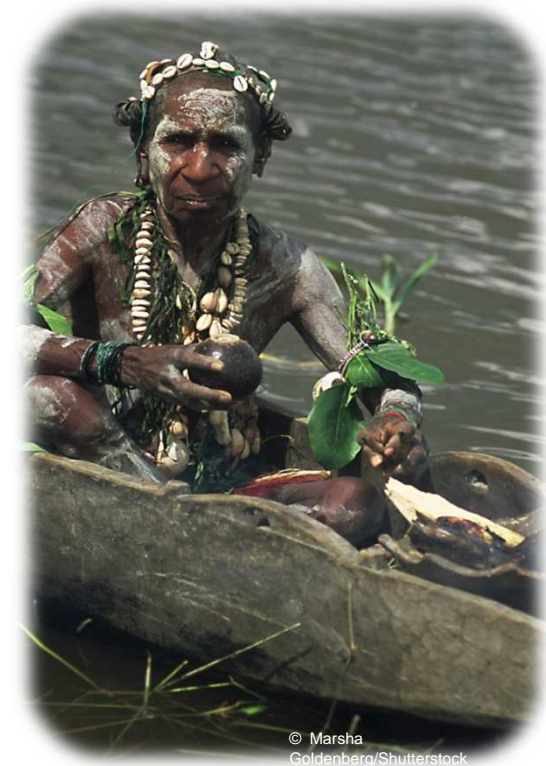


ILCs and Traditional Knowledge

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

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

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 legislation on TK





ILCs and Traditional Knowledge

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



Measures to support implementation

- National Focal Points and Competent National Authorities
- Awareness-raising
- ABS Clearing-House
- Capacity
- Transboundary cooperation
- Financial Mechanism
- Monitoring and Compliance with the Protocol





National Focal Points

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)

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

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



ABS Clearing-House and information-sharing

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

[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:

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