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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Eleventh meeting
Hyderabad, India, 8–19 October 2012

COMPILATION OF INFORMATION PROVIDED BY PARTIES ON STEPS TAKEN TOWARDS RATIFICATION AND IMPLEMENTATION OF THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING

Note by the Executive Secretary

INTRODUCTION

1. The Intergovernmental Committee, in paragraph 1 of recommendation 2/8, invited Parties to submit information to the Executive Secretary with respect to the steps taken towards ratification and implementation of the Nagoya Protocol. In paragraph 2 of the same recommendation, the Executive Secretary was requested to compile this information and to make it available to the eleventh meeting of the Conference of the Parties.
2. In accordance with recommendation 2/8, the Executive Secretary invited Parties, through notifications 2012-106 and 2012-118 (Reminder) of 11 July 2012 and 23 August 2012, respectively, to submit information on this topic no later than 1 September 2012 to the Secretariat.
3. As of 21 September 2012, the Executive Secretary had received submissions on this issue from Bangladesh, Brazil, Colombia, Comoros, Costa Rica, Ethiopia, European Union and its Member States, Guinea Bissau, Honduras, Japan, Lebanon, Mexico, Morocco, Mozambique, Nigeria, Switzerland, Tanzania and Thailand. All submissions are available on the following webpage: <http://www.cbd.int/cop11/abs/submission/>.
4. The present note provides a compilation of the information received on this topic. The information is being provided in the languages in which it was made available to the Secretariat.

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In order to minimize the environmental impacts of the Secretariat's processes, and to contribute to the Secretary-General's initiative for a C-Neutral UN, this document is printed in limited numbers. Delegates are kindly requested to bring their copies to meetings and not to request additional copies.

SUBMISSIONS

Bangladesh

5. “I am pleased to inform you regarding above mentioned subject that Bangladesh is actively considering the issue of Ratification of the Nagoya Protocol. Yet, without proper ABS-legislation and institutional framework in place, Bangladesh is not in favour of ratifying the protocol. Bangladesh is of the opinion that as a provider country, it would be difficult to process the notifications of handling genetic resources in the absence of institutional, legislative, technical and technological capabilities to address ABS. Bangladesh is underscoring the need to introduce more specific national legislation, regulations or policies to effectively implement the Protocol. To this end, Government of Bangladesh has never been standstill in undertaking initiatives. We have already formulated Bangladesh Biological Diversity Act 2012 that is in the process to be finalized for coming into force. This Act covers the issues of ABS. Yet, establishing broader ABS framework could never be ended with formulating the Act. Enacting the Act and developing detailed Rules, Manuals and Guidelines to operationalize the Act would require huge involvement of and consultations with the stakeholders. Bangladesh is intended to consult the stakeholders at every stage before going for ratification of the ABS protocol. One such consultation has already been planned to be held before COP 11 to inform the stakeholders on Nagoya Protocol. Bangladesh has already contacted UNEP on channelling Nagoya Protocol Implementation Fund for furthering the capacity building activities. Therefore, Bangladesh is wished for ratifying the protocol in the process of completion of the preparatory capacity building activities.”

Brazil

6. “...wishes to submit the requested information with respect to steps taken towards ratification and implementation of the Nagoya Protocol.
- 1) The Nagoya Protocol on Access and Benefit-sharing was sent to the Brazilian Parliament (National Congress) on June 5th, 2012;
 - 2) the text has already been distributed to the specific commissions within the Chamber of Deputies and, after its analysis, will be submitted to the Senate’s consideration;
 - 3) at the same time, a proposal for the revision of the national legislation on access to genetic resources and benefit-sharing (MP 2.186-16/2011) is being deliberated within the Federal Government...”

Colombia

7. “...Colombia se permite informar a la Secretaría acerca de los avances en el proceso nacional de ratificación del Protocolo de Nagoya.

A la fecha, el Ministerio de Relaciones Exteriores convocó a las instituciones competentes en la materia del nivel nacional, con el fin de abrir un escenario de amplia discusión sobre la pertenencia de ratificación del Protocolo, los principales elementos a tener en cuenta y la hoja de ruta en este proceso.

Durante esta discusión fue evidente que la ratificación implica una serie de retos para el país. En particular se determinó que debido principalmente a que el instrumento involucra de manera directa a las comunidades indígenas y locales, esto implica que se deberá adelantar un proceso de consulta previa con dichas comunidades, de manera que se hagan partícipes del proceso de decisión a la vez que se socializan las implicaciones que tendría la implementación del Protocolo de Nagoya para las comunidades indígenas y locales en el país.

Considerando que Colombia cuenta con numerosas comunidades indígenas, localizadas a lo largo de todo el territorio nacional, el proceso de consulta implica una inversión significativa en términos de recursos financieros y humanos para que sea llevado a cabo de manera efectiva, transparente y participativa.

En ese sentido, es importante reiterar que el proceso interno de ratificación, que incluye la aprobación de un proyecto de Ley en el Congreso así como un concepto de la Corte Constitucional sobre la conformidad del tratado con la Constitución Nacional, no podrá iniciarse hasta tanto no se haya realizado la consulta previa a la que se hizo referencia anteriormente.

Finalmente reiteramos que para Colombia los escenarios de discusión en el ámbito del Convenio de Diversidad Biológica son de gran importancia, en la medida en que nos permiten compartir con otras partes las experiencias y lecciones aprendidas en los temas objeto del Convenio y sus Protocolos...”

Comoros

8. “...en ce qui a trait aux mesures prises pour la ratification et la mise en oeuvre du Protocole de Nagoya, je voudrais par la présente vous informer que lors du conseil du Gouvernement en date du mercredi 8 août 2012, suite à une note du Vice-Président Dr. Fouad MOHADJI, en charge du Ministère de L’Environnement, le Conseil a décidé de présenter lors de la prochaine législature de l’Assemblée nationales du mois d’octobre 2012, la demande de ratification du Protocole de Nagoya par l’Union des Comores...”

Costa Rica

9. “.....me permito informarle que el gobierno de Costa Rica ya envió al Congreso de nuestro país (Asamblea Legislativa) bajo el expediente N° 18372 el proyecto de Ley denominado “Aprobación del Protocolo de Nagoya sobre acceso a los recursos genéticos y participación justa y equitativa en los beneficios que se deriven de su utilización al Convenio sobre la Diversidad Biológica”.

Asimismo, le comunico que la Comisión Permanente Especial de Ambiente de nuestra Asamblea Legislativa inició el proceso de consulta ante varias instituciones nacionales involucradas en los diferentes temas que contempla este Protocolo, a fin de que emitan su criterio, respecto a la ratificación por parte de nuestro país a dicho instrumento internacional...”

Ethiopia

10. “... The Parliament of the Federal Democratic Republic of Ethiopia has ratified the Nagoya Protocol on 28 June 2012 and delivered the document to the Ministry of Foreign Affairs which is responsible for depositing the Instrument of Accession at New York. We hope the document will be deposited within the coming couple of weeks.

With regard to implementation of the Nagoya Protocol, Ethiopia has already put in place legislative and organizational frameworks necessary for the implementation of the Protocol. The Proclamation, on Access to Genetic Resources and Community Knowledge and Community Right (Proclamation No 482/2006) and Regulation on Access to Genetic Resources and Community Knowledge and Community Rights Council of Ministers (regulation No 169/2009) are the major legal provisions for the implementation of the Protocol. Following these legal provisions the country has exercised three ABS agreements with foreign Companies. However, there are small gaps in the Ethiopian Access law above that need to be filled in line with the Nagoya Protocol...”

European Union and its Member States

11. “The EU and its Member States are pleased to have the opportunity that will be provided during the eleventh meeting of the Conference of the Parties to take stock of progress made by Parties towards ratification and implementation of the Nagoya Protocol, to exchange experiences and to discuss challenges with a view to overcoming obstacles and to find constructive approaches to implementation.

The EU and 25 of its Member States have signed the Nagoya Protocol while it was open for signature.

As the Nagoya Protocol touches both on matters of EU and Member States competence, it will have to be ratified and implemented both by the EU and its 27 Member States.

The EU and its Member States are committed to the timely ratification and effective implementation of the Nagoya Protocol, at the earliest possible time before CBD COP 12.

Below, we provide information from the EU and its Member States on what steps have been taken towards ratification and implementation of the Nagoya Protocol and what are the challenges encountered in doing so.

Information with respect to steps taken towards ratification and implementation of the Nagoya Protocol at European Union level

The European Commission held a web-based public consultation from 24 October to 30 December 2011 to seek feedback on a list of questions that addressed key aspects of Nagoya Protocol implementation. 43 replies were received that represented a much broader number of respondents, since the majority of replies came from European or international associations with hundreds or thousands of members each. The respondents covered most sectors potentially affected by implementing measures under the Nagoya Protocol.

All respondents (except one neutral reply) pleaded for a EU-harmonised approach to user-compliance measures, with a clear majority considering an EU-Regulation as the most appropriate instrument for achieving harmonised implementation. The majority of respondents considered that implementing measures could have positive effects on competitiveness and on administrative burden, but stressed that such effects depend on the specific implementing measures chosen.

Industrial users (e.g. pharmaceutical, biotechnology, seeds, health&beauty) stressed their lengthy supply chains and that information about prior informed consent and benefit-sharing arrangements is currently not available at points in the chain where it may be needed.

Research institutions stressed the importance of clear, simple and transparent rules and the need for clarifying ABS-related issues at the time of access to avoid difficulties later on.

The list of questions together with the results of the web-based public consultation have been published under the following link:

http://ec.europa.eu/environment/consultations/abs_en.htm

The results of the public consultation, research undertaken by an external consultant team as well as information gathered through many formal and informal meetings with stakeholders helped the Commission's Environment Directorate-General to undertake, in close collaboration with other Commission services, a comprehensive assessment of the economic, social and environmental effects of different options for implementing the Nagoya Protocol in the EU. On the basis of this assessment, DG Environment developed a draft legislative proposal for Union-level measures that is currently (August 2012) in formal consultation between the services of the Commission.

Depending on the outcome of this formal consultation, the Commission will present a formal legislative proposal for implementing the Nagoya Protocol in the Union still before the eleventh conference of the parties to the CBD in October 2012. Such proposal would be forwarded to the Parliament and the Council of the EU, the Economic and Social Committee and the Council of the Regions for their consideration

All relevant documents drawn up in the course of developing the Commission proposal would be made public after its presentation (ie. proposal, impact assessment, documents from the public consultation, eventual expert study).

Steps taken at Member State level

Belgium

I. Steps taken

Belgium has decided that a timely ratification of the Nagoya Protocol is a high political priority. To this effect, a joint external impact assessment study on possible options for the implementation of the Nagoya Protocol, involving stakeholders, was commissioned. The study is on-going and its final recommendations are expected by the end of 2012. The political discussions on the implementation and ratification process could start then.

Apart from some exceptions, Belgium does not have specific ABS legislation and measures in place. Therefore, existing legal instruments would need to evolve and additional instruments would need to be adopted in order to fulfil the obligations of the Nagoya Protocol.

Relevant options for implementation in view of their potential application in Belgium, have been identified for further analysis, *inter alia* through a stakeholder workshop which was held on 29 May 2012. The identified options focus on the following core implementation obligations:

1. Access and Benefit Sharing

It was recommended to establish the following general legal principle(s): only Benefit Sharing (BS) (option 1) or BS and Prior Informed Consent (PIC) (option 2). Operationalization of these principles would take place in a phased, subsidiary and flexible fashion.

Under the second option, three different sub-options were identified on the further operationalization of PIC. All three sub-options take existing legislation (notably legislation on protected areas and protected species) and expertise (*inter alia* the *ex situ* collections) as a starting point, and aim *inter alia* at increasing data collection and improving legal certainty, while keeping administrative burden as low as possible for all parties involved.

2. Competent National Authority

Flowing from the division of competence on environment and nature protection in Belgium, it was recommended to establish four Competent National Authorities (CNA), to represent the three regions and the federal government, either with separate entry points per CNA (option 1) or with a single point of contact (option 2).

3. Compliance

Although there are relevant provisions in existing Belgian legislation, these are considered not to be sufficient to fulfil the obligations of articles 15 and 16 NP. Therefore the possibility for a general criminal provision in Belgian legislation that refers back to certain (depending on the option) aspects of the legislation of the provider country regarding compliance with PIC and/or MAT is being examined.

4. Monitoring/checkpoints

In order to respect the political commitment for timely ratification only two options are being explored at this point in time: 1) upgrading the existing patent disclosure obligation and 2) PIC as a checkpoint. In a subsequent phase, once more experience has been gained, it might be required to consider more effective checkpoints to monitor the utilization of genetic

resources. Moreover, it is expected that other possible checkpoints will be presented in the proposal for draft EU legislation.

5. National ABS Clearing House (CH) component

Taking into consideration the two distinct tasks of a Belgian CH-component (i.e. general information sharing on the NP, supporting awareness, capacity building, technological transfer etc. on the one hand and specific, technical needs for the ABS CH on the other hand), different options for the execution of the different tasks are being examined, including with the following authorities/institutes: 1) the current Belgian CBD CHM, 2) a research office hosting several collections and their databases (BELSPO), and 3) the current Belgian BCH.

6. National Focal Point

Options for the National Focal Point to the Nagoya Protocol will depend on the choices for the other implementation measures.

Further information (in English) on the Belgian Impact Assessment Study is available on the Belgian CHM (<http://www.biodiv.be/implementation/cross-cutting-issues/abs>).

II. Challenges encountered

Belgium is a member state of the EU and implementation and ratification will therefore need to take place in loyal cooperation with the steps taken at European level. Moreover, as a federal state Belgium encounters further challenges in multilevel coordination and cooperation in the implementation and ratification of the Nagoya Protocol.

Further difficulties encountered in the current stage of preparation of implementation of the Nagoya Protocol are:

- Difficulties in getting everyone understand certain concepts of the Nagoya Protocol (e.g. Benefit Sharing, Prior Informed Consent) and how they relate to existing national concepts (e.g. the distinction between national property right versus access rights in the sense of the Nagoya Protocol);
- The lack of information on the current access to and use of genetic resources in Belgium;
- The lack of awareness on ABS and the NP with stakeholders and administrations;
- The need to build on existing procedures and mechanisms in order to avoid adding unnecessary burden.

Bulgaria

I. What steps have been taken in ratification and implementation of the Nagoya Protocol?

Is prepared a draft Act, amending the Act on Biodiversity, which regulates the terms and conditions for access to genetic resources and the responsibilities of the provider and user:

- Has been designated a National Focal Point;
- Have been nominated six competent national institutions;
- Has been regulated genetic resources's monitoring, the competent authorities may require additional information from the user;

II. What are the challenges encountered in doing so?

- Has still not an National ABS Clearing House (CH) mechanism and certain checkpoints.

The Czech Republic

There is no specific ABS legislation in place at this point in time, however, several legal acts cover the access and utilisation of genetic resources in the agriculture sector, mainly in the area of research. Therefore, the Ministry of the Environment as the current administration authority accountable for the ABS issues commissioned a more complex study in August 2012. It should be finished by 2012 or early in 2013 and is focused on 1) the assessment of the utilisation of genetic resources across sectors and stakeholders at the national level, 2) the impact of the Nagoya Protocol on existing Czech legislation, 3) options regarding PIC, monitoring of utilisation of genetic resources and related checkpoints, 4) cost analysis of different options, and 5) analysis of the EU impact assessment. The Ministry of the Environment has already designated the National ABS Focal Point and cooperates closely with the national Patent Office. As the EU Member State, we will seek to ratify and implement the Nagoya Protocol in close coordination and cooperation with other EU countries and EU institutions.

Denmark

A draft bill of law has been published in September 2012 with the aim of passing legislation before the summer of 2013. The content of the draft legislation concentrates on user country measures introducing prohibition of utilisation of genetic resources that have been obtained in violation of access-legislation in the countries in which the resources were accessed or utilisation of genetic resources, where such utilisation is dependent on traditional knowledge that was obtained in violation of regulatory requirements in the countries where the knowledge were accessed.

The draft legislation will not require Prior Informed Consent but provides for requirement of notification of sampling of genetic resources in Denmark to the competent authority in order to obtain information that can serve as an internationally recognized certificate.

Denmark has a checkpoint in relation to patent application and contemplates the establishment of other relevant checkpoints such as application for public funds for research.

Link to Danish legislation proposal in public consultation September 2012 is available at:
<https://bdkv2.borger.dk/Lovgivning/Hoeringsportalen/dl.aspx?hpid=33921>
(Danish version only)

Cover letter to the legislation proposal is available at:
<https://bdkv2.borger.dk/Lovgivning/Hoeringsportalen/dl.aspx?hpid=33922>
(Danish version only)

When the legislation has been passed Denmark will be ready to ratify the Protocol. Ratification may however be postponed to follow a joint European ratification.

Estonia

Although Estonia was not able to not sign Nagoya Protocol before 1st February 2012, it is committed to ratify it. In July 2012 new Nature Conservation Development Plan until 2020 was adopted by Estonian Government. This plan is equivalent to the NBSAP of Estonia. According to the plan, conservation of genetic resources is a priority and Nagoya Protocol will be ratified latest by 2015. Currently Estonia has some elements of regulation of genetic resources in place. These are mostly connected to Nature Conservation Law and protected species. Estonia is also party to the International Treaty on Plant

Genetic Resources for Food And Agriculture and following it, has adopted the Plan of Collection and Conservation of Genetic Resources of Agriculture Crops until 2007 to 2013 (will have follow up plan 2014 to 2020). National Focal Point of Nagoya Protocol is named from University of Tartu, however contact institution for the Protocol is Ministry of Environment's Nature Conservation Department. The CHM of ABS will most probably be connected to the CHM of CBD. The ratification calendar of the Protocol will depend of the joint EU ratification process.

Finland

What steps have been taken in ratification and implementation of the Nagoya Protocol?

Finland has concluded and published a national study on the implications of the Nagoya Protocol on access and utilization of genetic resources in June 2012. The study contains administrative and legislative proposals for the implementation and ratification of the Nagoya Protocol including proposals for amendments to existing legal acts as well as a proposal for a new ABS Act. The legislation and administrative measures needed for the ABS will be prepared by a separate working group starting its work in 2012 after the EU impact study has been launched. Finland has already designated a National ABS Focal Point and has an existing authority in relation to patent applications. Finland still needs to establish a National ABS Clearing House mechanism and checkpoints in line with the Protocol (e.g. research funding agencies). Finland aims for the joint European ratification and implementation of the Nagoya Protocol.

France

France plans to ratify the Nagoya Protocol by 2014, in line with the EU ratification calendar, after having adopted an ABS national legislation.

In France, there is currently no general ABS legislation. However, some overseas territories have adopted rules for regulating access and benefit-sharing on genetic resources: the South Province of New-Caledonia (Deliberation no. 06-2009 of 18 February 2009 on access and exploitation of biochemical and genetic resources ; articles 311-1 et s. of the environmental code of the South Province of New Caledonia) ; French Polynesia ("Loi du pays" no. 2012-5 of 23 January 2012 on access to biological resources and benefit sharing resulting from their use) ; and the National Park of French Guiana (Law no. 2006-436 of 14 April 2006 ; art. L. 331-15-6 of the environmental code).

Outside these territories and until an ABS legislation is adopted, the French Ministry of sustainable development is answering voluntary requests for access to genetic resources, through an application form. Based on information provided, the Ministry issues a letter on access conditions, informing about existing procedures often linked with ABS (e.g. protected species, sanitary procedures, etc.), as well as on voluntary benefit-sharing provisions benefiting to relevant stakeholders (e.g. *ex-situ* collection, national park, research centres, etc.).

An inter-service working group with all concerned ministries has been active since end of 2010 with the aim of developing options for implementing ABS in France. These options will then be proposed and discussed by stakeholders (researchers, industries, NGOs, etc.).

An online consultation was conducted between May and July 2012 to identify ABS current practices (use of GR and TK) and expectations of French actors concerning ABS, and to start analysing the impact of the future national ABS legislation on research and industry. The results will complete a study conducted in 2010 that explored options for implementing ABS in French territories overseas,

contribute to the impact assessment of ABS in France and ensure that the future ABS legislation is operational.

Germany

By signing the protocol Germany has documented its commitment to the Nagoya Protocol. Germany is committed to implementing and ratifying the Nagoya Protocol at the earliest time before CBD COP 12. The implementation of the Protocol shall take place in a coordinated fashion with the EU and other member states.

Germany is currently investigating possible ways for the implementation of the Protocol and related effects on various user sectors. This includes a process of regular stakeholder consultations to raise awareness for and inform about the Protocol and to ensure appropriate stakeholder involvement.

Also the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Agency for Nature Conservation have established an ABS-Homepage (www.abs.bfn.de) which collects ABS-related information including a collection of SMTA, information on the international and national processes and a documentation of existing sectoral approaches to ABS in Germany and elsewhere.

Biodiversity and ABS are also key areas of the German Development Cooperation as we see ABS as an important tool to valorise genetic resources, enhance legal certainty for users and providers of genetic resources and to reduce poverty in our partner countries. We believe that tailor made solutions are necessary as we see a growing demand by our partner countries for support in implementing the Protocol.

Furthermore Germany is hosting the ABS Capacity Development Initiative since 2005 that is also supported by Denmark, Norway, the Institut de l'énergie et de l'environnement de la Francophonie, and the EU.

Hungary

Since the signing of the protocol consultations have started in Hungary about the implementation of the Nagoya Protocol with regard to the below elements,:

- Hungary plans to require prior informed consent in case someone accesses genetic resources in Hungary.
- The unit/institution currently providing the CBD and ICNP National Focal Points is planned to be designated as the National Focal Point for the Nagoya Protocol.
- The current system of the Hungarian nature conservation authorities is examined as potential competent authority/authorities for the Nagoya Protocol.
- The national CBD CHM (<http://www.biodiv.hu/>) is planned to be expanded to serve as the CHM for the Nagoya Protocol.
- Possible interrelations with the PGRFA are considered when developing the implementation measures for the Nagoya Protocol.
- Discussions have started about some potential checkpoints.
- No specific information is available yet about user country measures.

Italy

The preparatory work for the ratification of the Protocol, and for its inclusion into the national legal system, requires different administrative and legislative acts.

The official translation of the Protocol has already been carried out and it is published on the Ministry of the Environment website.

Consultations with other government bodies are ongoing.

Preliminary to the final ratification of the Nagoya Protocol the assessment, through comparison of the national legislation as a whole, is in process, in order to avoid possible regulatory conflicts due to the wide range of the topic.

The analysis of the regulatory framework and, consequently, the assessment of an internal regulatory intervention hypothesis are ongoing.

In particular, this analysis concerns the art.13-20 where the protocol establishes a set of specific requirements for compliance with the legislation or national regulations of the Contracting Party providing genetic resources as well as the contractual obligations, which are reflected in the terms mutually agreed upon.

Finally, Parliamentary procedures have to be undertaken in order to adopt the Law of ratification.

The Protocol implementation will be carried out in coordination with the European Union and the other Member States.

Romania

Has already designated a National ABS Focal Point but still needs to establish a National ABS Clearing House mechanism and checkpoints in line with the Protocol. Romania is in favour of the joint European ratification and implementation of the Nagoya Protocol.

Spain

After the signing the protocol Spain has initiated the legal procedures for its ratification. It has also produced a review of the obligations and implications of the Nagoya Protocol, and has looked into different administrative and legislative options for its implementation.

The legislative and administrative measures needed, at the national level, will be developed in the context of the revision of the current Spanish Biodiversity Act, which already foresees the possibility to regulate access to Spanish genetic resources. This revision will be launched in the coming months and will take into account the EU legislative proposal when presented

UK

The UK commissioned a study from September 2011 to April 2012 with the aim providing policy makers with an idea of the costs, timescales and delivery options required for the UK to be able to implement the obligations set out in Articles 15–18 of the Protocol covering compliance, monitoring and enforcement of the utilisation of genetic resources and associated traditional knowledge in the UK.

The study also undertook to consult with UK stakeholders regarding the UK's Protocol commitments and to consider how much the UK could be considered a provider of genetic resources. The UK intends to make the results of the study available ahead of CBD COP11.

In implementing the Protocol the UK does not intend to require PIC for genetic resources at this time and will focus on implementing the user requirements in order to be in a position to ratify the Protocol as soon as possible by COP12.”

Guinea-Bissau

12. “...a le plaisir de vous informer qu'il est en cours le processus de ratification du Protocole de Nagoya...”

“... J'ai le plaisir vous informer que le Cabinet Juridique du Ministère des Affaires Étrangères de mon pays est en train de faire la traduction dudit document en langue portugaise pour sa soumission officiel pour la ratification...”

Honduras

13. **“SECRETARIA DE RECURSOS NATURALES Y AMBIENTE DIRECCION GENERAL DE BIODIVERSIDAD**

Antecedentes

Honduras firma el Convenio de Diversidad Biológica el 13 de junio de 1992 y lo ratifica el 21 de Febrero de 1995, mediante Decreto Legislativo N° 30-95. A través del cual el país adquiere compromisos para realizar una serie de acciones en el orden político, técnico y económico orientado a la conservación y manejo sostenible de los recursos naturales.

La Secretaría de Recursos Naturales y Ambiente (SERNA) a través de la Dirección de Biodiversidad (DiBio) es responsable por ley de dar seguimiento y promover el cumplimiento de las Directrices de la Secretaría de la Convención de Diversidad Biológica (SCDB) y es el punto focal técnico que representa al país y actúa como instancia coordinadora de todas las comunicaciones nacionales para la implementación del CDB.

Como tal Honduras asume compromisos de elaborar estrategias, planes y programas para la conservación y utilización sostenible de la diversidad biológica que reflejen las medidas establecidas en el CDB que sean pertinentes para el país con el fin de ser incorporadas en las políticas sectoriales e intersectoriales, como lo indican cada artículo del Convenio.

Uno de los compromisos adquiridos por el país, es en relación a la aplicación del artículo 8 inciso j, para lo cual en el año 2007 se presenta ante la Cooperación Alemana (GIZ), la propuesta del Proyecto **Fortalecimiento en Aplicación Nacional del Artículo 8j CDB-Honduras**, luego se firma el memorando de entendimiento, y se da inicio a las actividades en el año 2008.

El Proyecto se desarrolló utilizando una metodología participativa iniciando proceso de concertación y planificación incluyente con la Confederación de Pueblos Autóctonos de Honduras (CONPAH) que aglutina a los 9 pueblos indígenas y las comunidades Afroindígenas de Honduras: Chortis, Lencas, Miskitos, Pech, Tawahka, Tolupanes o Xicaques, Nahoas, Negros de Habla Inglesa y Garífunas), tomando en consideración sus conocimientos, en el marco del Convenio sobre Diversidad Biológica, CDB (programa de Trabajo 8j; las Directrices voluntarias de Akwe Kon, Directrices de Bonn) el Convenio 169 de OIT, Declaración de los Derechos de los Pueblos Indígenas.

El artículo 8 inciso j, obliga a los Estados a tomar medidas para respetar, preservar y mantener los conocimientos, innovaciones y prácticas de los Pueblos Indígenas y Comunidades Locales; a promover un amplio uso del conocimiento tradicional para la conservación de la diversidad biológica.

Logros y Alcances del Proyecto

- Participación directa de 250 Líderes y lideresas Indígenas y Afroindígenas de base nacionales y regionales e internacionales.
- Grupo de Trabajo 8j CDB, desde los Pueblos Indígenas e integración de las instituciones públicas y privadas involucradas (SAG, ICF, INA, SGJ, FHIS), en los ejes transversales del (Art 8) CDB y Pueblos Indígenas y Afro indígenas, como vehículo a dar respuesta a las decisiones de las COP y acciones del Plan estratégico Nacional de Biodiversidad y Plan de Acción.
- Integración de la Mujer indígena y Afro indígena en las estructuras directiva de CONPAH como conservadora y generadora del conocimiento Ancestral.
- Acceso al Fondo Voluntario SCDB a participación de los Pueblos Indígenas en el marco de eventos CDB - Pueblos Indígenas.

Actividades realizadas con miras a la ratificación e implementación del “Protocolo de Nagoya sobre el acceso a los recursos genéticos y la participación justa y equitativa en los beneficios derivados de su utilización en el Convenio sobre la Diversidad Biológica”

1.-Elaboración de Propuesta para la creación de la Unidad de Seguimiento al Protocolo de Nagoya

La DiBio elaboró la propuesta de creación de una Unidad o departamento que tendrá como finalidad la promoción, investigación, y protección de los Recursos Biológicos, Genéticos y conocimientos tradicionales de pueblos Indígenas y comunidades locales de Honduras, pretende construir mecanismos de consulta que garanticen la aplicación de los sistemas consuetudinarios, conocimientos tradicionales, asociados a los recursos genéticos de acceso, control y reparto equitativo de los beneficios.

2.- Firma del Protocolo de Nagoya

El Protocolo de Nagoya sobre acceso a los recursos genéticos (ABS) se abrió a la firma de febrero 2011 a febrero 2012, por lo cual la DiBio en comunicación con la Secretaria de Relaciones Exteriores, comienza el proceso de firma, primeramente solicitando opinión jurídica a la Dirección Legal de la SERNA, después del análisis se concluye que dicho Protocolo no contraviene a las legislación nacional, posteriormente se elabora la nota oficial donde se contemplan las ventajas de proceder a la firma del ABS firmada por el Secretario de Estado, Dr. Rigoberto Cuellar Cruz y Punto Focal Político de la Convención de Diversidad Biológica de Honduras.

Es así como el 25 de enero del presente año que Honduras firma el Protocolo ABS con lo cual reafirma su compromiso de velar por la conservación y utilización en forma sostenible de sus recursos naturales.

3.-Puntos Focales

Nombramiento de Puntos Focales solicitados por la Convención, a través de un análisis de capacidades y proyección nacional en relación a cada temática, para el seguimiento de las acciones del Plan Estratégico sobre Biodiversidad y para la participación en las reuniones hemisféricas y grupos de trabajo en temas específicos.

4.- Participación en eventos internacionales

Honduras ha participado en eventos de creación de capacidad desde que ratificamos la CDB, pero desde el año 2011 en relación al ABS ha tenido la siguiente participación:

- Montreal, Canadá, Octubre 2011: I reunión del Comité Intergubernamental del ABS.
- Montreal, Canadá, Octubre – Noviembre 2011: Séptima reunión del Grupo de trabajo especial de composición abierta sobre el Artículo 8 (j) y disposiciones conexas (WG8J-7).
- Nueva Delhi, India, Junio 2012: II reunión del Comité Intergubernamental del ABS.
- Asunción, Paraguay, Agosto, 2012: Delegación de las Etnias de Latinoamérica.

5.-Coordinación Interinstitucional

Reunión con personal de DiBio y la Dirección de Propiedad Intelectual (DGPI) del Instituto de la Propiedad de Honduras, para identificar las principales acciones en materia de Recursos genéticos y conocimientos tradicionales de los Pueblos Indígenas, igualmente las competencias y gobernanza en el tema.

Se organizó un taller con el apoyo de la Organización Mundial de la Propiedad Intelectual (OMPI) y la DGPI para dar a conocer los conceptos y experiencias en materia de recursos genéticos, conocimientos tradicionales y Folclore.

6.-Seminario Nacional sobre Recursos Genéticos conocimientos Tradicionales y/o Folclore (23 de agosto 2012)

Este seminario se realizó en la sala de Conferencias de la Secretaria Técnica de Planificación Externa (SEPLAN), Organizado por la Organización Mundial de la Propiedad Intelectual OMPI), en Colaboración con la Dirección de Propiedad Intelectual del Instituto de Propiedad y La Dirección General de Biodiversidad de la Secretaria de Recursos Naturales y Ambiente (SERNA), como proceso a la ratificación del Protocolo de Nagoya.

Durante el Seminario se brindaron 6 exposiciones:

1. ¿Qué son los Conocimientos Tradicionales y las Expresiones Culturales tradicionales (o expresiones del Folclore)? Principales aspectos con relación a su protección desde la perspectiva de la propiedad intelectual. **Dra. Begoña Venero.**
2. ¿Qué son los Recursos Genéticos yCuál es su vinculación con la Propiedad Intelectual? **Dra. Begoña Venero.**
3. Protección de los Conocimientos Tradicionales y Folclore en Honduras. **Antropóloga Gloria Pinto.**
4. Presentación sobre El Protocolo de Nagoya sobre el acceso a los recursos genéticos y la participación justa y equitativa en los beneficios derivados de su utilización en el Convenio de Diversidad Biológica. **Abg. Amaro García/** Director General de Biodiversidad y Punto Focal CDB.
5. Presentación de Experiencias sobre conocimientos tradicionales de los Pueblos Indígenas de Honduras. **Sr. Eddy McNab/** Vice Ministro de la Secretaria de los Pueblos Indígenas y Afrohondureños y **Sr. Edgardo Benítez/** Representante Pueblo Tawahka de la Moskitia, Honduras.
6. Presentación de Experiencias de recursos genéticos en Honduras, conservación tradicional *in situ* o conservación tecnológica *ex situ*. **Ph.D. Paul House.**

7.-Reunión de Trabajo con Instituciones Gubernamentales para la Discusión de la Ratificación de Protocolo de Nagoya (24 de agosto 2012).

- Begoña Venero, Jefa de la Sección de Recursos Genéticos y Conocimientos Tradicionales de la Organización Mundial de Propiedad Intelectual OMPI.
- Camilo Bendeck, Director de la Dirección General de Propiedad Intelectual del Instituto de la Propiedad.
- Rafael Escobar, Sub Director de la Dirección General de Propiedad Intelectual del Instituto de la Propiedad.
- Antonio Sierra, Vice Ministro de la Secretaría de Cultura, Artes y Deportes (SCAD).
- Martha Patricia Cardona, Subgerente de Promoción del Instituto Hondureño de Antropología e Historia.
- Amaro García, Director General de la Dirección de Biodiversidad (DiBio) de la Secretaría de Recursos Naturales y Ambiente (SERNA) y demás personal de DiBio – SERNA.

Recomendaciones y Compromisos:

- Realizar un seminario más amplio sobre “Recursos Genéticos conocimientos Tradicionales y/o Folklore”, que involucre un número mayor de participantes, de todas las Instituciones y Organizaciones involucradas en el tema.
- Conformación de un Comité consultivo de apoyo al proceso de la Ratificación del Protocolo de Nagoya y de seguimiento al Protocolo de Bioseguridad.
- Tener una nueva reunión en la segunda semana de Octubre con el fin de realizar un análisis de la legislación nacional relacionada con el proceso de ratificación del Protocolo de Nagoya.
- Coordinar todas las acciones con los Pueblos Indígenas y comunidades Locales de Honduras.”

Japan

14. “Steps Taken by Japan toward Ratification and Implementation of the Nagoya Protocol

Japan signed the Protocol on 11th May 2011. Since then, a working group comprised of the relevant ministries has been studying domestic measures necessary for ratification and implementation of the Protocol and also suitable for social, economical and ecological background of Japan. The study has been led by the Ministry of the Environment (MoE).

In parallel with the study of the working group, MoE organised last year some informal meetings of ABS experts and key persons from industry and academia in order to exchange views on expectations to and concerns arose from the Protocol and future domestic measures, and to collect information on examples of ABS related measures taken by the industry and academia. MoE also conducted some individual interviews with relevant companies, researchers, ABS experts and NGOs. Same kinds of interviews or informal consultations have also been conducted by some other ministries such as the Ministry of Economy, Trade and Industry (METI). Information collected so far has been used as a basis of the study of the working group.

In addition, MoE has a plan to organise this year a consultative committee in order to be advised on major issues relevant to the domestic measures such as the coverage of the concept of genetic resources and traditional knowledge associated with genetic resources, measures to comply with legislation or

regulatory requirements of provider countries, measures for awareness raising, and measures to address the impacts on industrial activities and academic researches. The committee would be comprised of the invited experts and key persons of the informal meetings and other experts, stakeholders and NGO, and scheduled to be open to the public.”

Lebanon

15. “...please note that the Lebanese Ministry of Environment is in process of taking the administrative and legal measures for the ratification of the Nagoya Protocol by the Government of Lebanon...”

Mexico

16. “...México ratificó el Protocolo de Nagoya el 16 de mayo de 2012, convirtiéndose en el quinto país en hacerlo y así, mostrando su voluntad política y compromiso para la implementación del mismo. Desde que nuestro país firmó dicho Protocolo, se han llevado a cabo diferentes reuniones y talleres con todas las dependencias involucradas en su cumplimiento y aplicación (Secretaría de Medio Ambiente y Recursos Naturales, Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación, Secretaría de Relaciones Exteriores, Comisión Nacional para el Desarrollo de los Pueblos Indígenas, Comisión Nacional de Áreas Naturales Protegidas, Comisión Nacional para el Conocimiento y Uso de la Biodiversidad, Instituto Mexicano de la Propiedad Industrial) para identificar las necesidades y los cambios que debe hacer como país para su efectiva implementación. Dentro de estas destacan: modificaciones y creación de leyes, difusión para concientizar a los funcionarios y actores involucrados e iniciar su capacitación. Para ello, se ha contemplado solicitar apoyo del GEF y a la Agencia Internacional Alemana (GIZ).

Actualmente nos encontramos en un periodo de transición ya que dentro de poco habrá cambio de gobierno. Sin embargo la CDI comenzará una primera etapa de trabajo que consiste en la realización de talleres para la creación de capacidad y sensibilización de las comunidades indígenas. Además de con el proyecto con GIZ, se comenzará una primer etapa de la difusión del Protocolo a nivel nacional; esto después con la aprobación previa del grupo intersecretarial...”

Morocco

17. “...J’ai l’honneur de vous informer que le Maroc a entamé la procédure de ratification de ce protocole dès sa signature en décembre 2012.

En effet, ledit protocole a été adopté par le Conseil de Gouvernement et le Conseil des Ministres respectivement en mars et juin 2012. La dernière étape de la procédure de ratification est en cours en vue de sa publication au Bulletin Officiel.

Par ailleurs, depuis l’adoption du Protocole de Nagoya par la 10ème Conférence des Parties à la Convention sur la Diversité Biologique, le Maroc a entrepris plusieurs actions, notamment :

- L’organisation de plusieurs ateliers à l’échelle nationale et régionale pour sensibiliser les acteurs publics et élaborer une feuille de route pour la mise en œuvre du Protocole de Nagoya au niveau des pays africains
- Élaboration, dans le cadre du Projet GEF/PNUE ID : GEL/2328-2716-4B54, d’une étude relative au diagnostic de l’état de connaissance des ressources génétiques au Maroc et l’évaluation des besoins en matière de renforcement des capacités pour la mise en œuvre du Protocole de Nagoya.
- Préparation du document du projet relatif à la mise en place d’un cadre national de mise en œuvre de ce protocole, et ce avec l’appui technique du PNUD et financement du FEM-STAR.
- Préparation d’un deuxième projet dans le cadre de la coopération bilatérale avec l’Allemagne complétant le projet financé par le FEM...”

Mozambique

18. “...regarding the status of ratification of Nagoya Protocol, the Government of Mozambique, through the Ministry of Co-ordination of Environmental Affairs has pleasure to inform that is still conducting the consultation process. The ratification of Nagoya Protocol by the Parliament can take place in 2013. Therefore, Mozambique needs financial support to conduct training and dissemination of the Nagoya Protocol to more stakeholders...”

Nigeria

19. “...please be informed that the underlisted steps were taken towards the ratification and implementation of Nagoya protocol on Access and Benefit-sharing (ABS):
- i) Nigeria signed the Nagoya Protocol on ABS and the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety on the 1st of February 2012.
 - ii) Two copies of instrument of ratification (the Nagoya Protocol on ABS and the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety) signed by the Hon. Minister of Foreign Affairs and were forwarded to the Permanent Mission of Nigeria to the United Nations in New York for further necessary action.
 - iii) The implementation of Nagoya Protocol on ABS is cross-cutting and participatory as the Inter-Ministerial Committee on ABS (IMCABS) was inaugurated in November 2000 by Mr. President. The mandate of the Committee is to formulate the legislative, administrative and policy guideline to drive Bio-prospecting, Access and Benefit Sharing arrangement.
 - iv) Consequently, a draft policy has been put in place and would be subjected to further review by the IMCABS.
 - v) Two applications for the MTA/ABS permits were received viz:
 - (a) A Japanese scientist is working on African chironomid in collaboration with the University of Ibadan.
 - (b) University of Llorin is seeking ABS permit to sample lizards and some reptiles (Hosts to plasmodium) to elucidate the evolutionary history of the genus, plasmodium and analyse the different mechanisms responsible for the survival in its hosts. The research is in the collaboration with Prof. Iris Bruchhaus, Bernard Nocht Institute for Tropical Medicine, Hamburg, Germany.
 - (c) The IMCABS will hold its meeting before the end of the year to consider applications...”

Switzerland

20. “Switzerland is pleased to submit information about the steps taken towards ratification and implementation of the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization (NP) in Switzerland, including information on draft legal ABS-user-measures, and to share its views on additional issues that may need to be addressed in preparation for the first meeting of the Conference of the Parties to the NP (COP-MOP-1).

As the **ratification procedure in Switzerland is still ongoing**, the draft legal ABS-user-measures presented in this submission shall be understood as a contribution by Switzerland to the discussion on possible approaches on how to implement the NP. In no way shall they be understood as the final measures taken by Switzerland to implement the NP. Indeed, **any measure presented in this submission might be further refined, amended, or omitted once further progress towards**

ratification is made. Moreover, the focus of this document is on legally-binding ABS-user-measures; other measures that are also important to implement the NP, such as those to regulate access to genetic resources in Switzerland or legally non-binding measures, such as awareness-raising and capacity-development activities, are not discussed in detail in this document.

1. Steps towards the ratification of the NP in Switzerland

In order to ratify the NP, Swiss authorities have to follow an official ratification procedure, which first starts by signing of the NP followed by the elaboration of a ratification message to the Parliament, including a proposal with draft ABS-measures. The procedure is accompanied by a series of informal and formal consultations. The mandate to ratify the NP will be given to the Swiss Government (i.e. the Federal Council) by the Parliament after its presumed approval.

1.1. Steps that have already been taken

- **Formal consultations** within the Federal Administration and **decision by the Federal Council to sign the NP** on 30 March 2011. A mandate to prepare the necessary ratification procedure was given to the Federal Office for the Environment FOEN.
- **National ABS conference** on the utilization of genetic resources in Switzerland organized by FOEN together with the Federal Office for Agriculture on 6 April 2011. The aim of the conference was to introduce the NP and other relevant international agreements, in particular the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA), as well as existing national ABS-measures (e.g. the disclosure requirement in the Swiss Patent Act) and to evaluate the need for additional ABS-measures in Switzerland. The conference was attended by more than 170 representatives from government agencies, NGOs, industries, academia and politicians ([Conference Webpage](#)).
- **Switzerland signed the NP on 11 May 2011.**
- Elaboration of a **draft ratification message** and additional **draft legal ABS-measures**, including informal consultations within the Federal Administration and with key stakeholders and NGOs.
- Continuation of **awareness-raising and capacity-development activities**, including the update of voluntary guidelines and best practice tools (e.g. <https://abs.scnat.ch>, [ABS Management-Tool](#)).
- First round of **formal consultations within the Federal Administration** on the draft ratification message and the draft legal ABS-measures followed by a revision of these ratification documents.
- Second round of formal consultations and **decision by the Federal Council to open a public hearing** on the ratification documents on 16 May 2012. Every natural and legal person in Switzerland had the possibility to submit its views on these documents until 6 September 2012. **The ratification documents, including the draft legal ABS-measures, can be downloaded from the [national ABS-Clearing-House](#).**

1.2. Next steps to be taken

- Evaluation of the submissions received during the public hearing and revision of the ratification documents, including the draft legal ABS-measures.
- Formal consultations within the Federal Administration and decision of the Federal Council to submit the documents to the competent Committee and the two Chambers of the Parliament.
- A decision by Parliament whether to approve the NP and to adopt the new legal measures can be

expected at the earliest in autumn 2013. The case given, the Federal Council will be able to ratify the NP after its approval by the Parliament.

- Amendment of existing and/or elaboration of new regulatory requirements (Ordinances).

2. Approach taken to implement the NP in Switzerland

In general, Switzerland believes that a good implementation of the NP requires **a mixture of legally-binding and non-binding measures that should build on already existing ABS-measures and practices**. Therefore, in a first step, Switzerland carefully evaluated whether there was a need to develop additional measures by comparing existing measures with the obligations according to the NP and by organising a national ABS conference to exchange views with all relevant stakeholders (see above). The conclusion from this analysis and workshop was that there is a need to continue with the implementation of legally-non binding measures (such as awareness-raising and capacity-development activities) but also to develop further legally-binding ABS-measures to fully implement the NP in Switzerland.

Secondly, Switzerland considers that any **ABS-measure should be simple, effective, and take into account the needs and practices of those providing and utilizing genetic resources (GR) and associated traditional knowledge (ATK)**. While sector specific measures might be developed in this regard, **some general measures applicable across all sectors should be adopted in a first place, in order to further implement the NP in every sector**. The draft legal ABS-measures in Switzerland developed so far focus on measures that are applicable across all sectors. They have been elaborated in consultation with relevant ABS-stakeholders and representatives of different Federal government agencies.

Finally, Switzerland is convinced that any ABS-measure to implement the NP should create an **“ABS-enabling environment”**, that is **a system that facilitates research and development on GR in order to add value to GR and to enhance the potential benefits that can be shared, while at the same time ensures compliance** with domestic ABS-regulatory requirements of the Parties to the NP that provided the GR. The draft legal ABS-measures in Switzerland have been developed accordingly (see 2.3. and 2.3).

2.1. Existing ABS-measures in Switzerland

An analysis of existing access provisions to GR in Switzerland can be downloaded under the following link: [L'accès aux ressources génétiques en droit Suisse](#). Moreover, Switzerland already introduced a number of ABS-user-measures prior to the adoption of the NP, including a [disclosure of source requirement](#) in the Swiss Patent Act that is also proposed on the international level, voluntary approaches based on the [implementation of the Bonn Guidelines](#) and the [IT-PGRFA](#). More information with regard to existing ABS-measures in Switzerland can be found on the [national ABS Clearing-House](#) or in chapter 1 of the draft ratification message.

2.2. Additional draft legal ABS-measures in Switzerland

As described above, Switzerland drafted additional legal ABS-measures with the aim to close the gap between the existing ABS-measures and the obligations according to the NP. These measures as well as the draft ratification message that contains explanatory notes to the measures (chapter 5) can be downloaded in German, French, and Italian on the webpage of the [national ABS Clearing-House](#). A **non-official English translation** of the draft legal ABS-measures as well as of the explanatory notes is also available on this webpage. As explained above, these measures have to be further revised (see 1.2.). A schematic representation of the draft legal ABS-user-measures is provided below (Figure 1).

In short, Switzerland intends to introduce **three additional measures** in its legal system by **amending the Federal Act on the Protection of Nature and Cultural Heritage** (please download the draft legal ABS-measures for the precise wording and for further details):

- I. **A due diligence requirement** (Implementation of Art. 5 and 15 of the NP)
- Whoever is utilizing a GR or benefiting from the utilization of a GR shall apply due diligence to ensure that:
 - access to the GR took place in accordance with the domestic ABS regulatory requirements of the Party to the NP that provided the GR;
 - benefits will be shared in a fair and equitable way.
 - The minimal information that has to be recorded and passed on to subsequent users will be further regulated on the “Ordinance” level.
- II. **A notification requirement** (Implementation of Art. 15.3 and 17 of the NP)
- Compliance with the due diligence requirement has to be notified at the time of market authorization or commercialization of a utilized GR to a centralized checkpoint at the Federal Office for the Environment (FOEN).
 - The centralized checkpoint might transfer information related to compliance with the due diligence requirement to the Party that provided the GR or to the ABS-CH. The utilized GR, its source and further non-confidential information contained in the notification may be published.
 - There will be a designation of further “checkpoints” in existing procedures to check whether a notification was made at FOEN (e.g. in the authorization procedure for pharmaceuticals)
- III. **A possibility to regulate access to GR in Switzerland** and to support their conservation and sustainable use (Implementation of Art. 6, 8 and 9)

Measures I. and II. will also apply to the utilization of **ATK**. Moreover, Switzerland will have the possibility to take following **measures in cases of non compliance with the new ABS-measures**:

- A fine of up to 100'000 Swiss Francs (approx. 100'000 USD) to whoever intentionally provides no or wrong information according to the notification requirement; for whoever acts through negligence, the fine will be up to 40'000 Swiss francs.
- No authorization for utilized GR or ATK if the notification to the centralized checkpoint has not been made by the time of market authorization.
- A possibility to take administrative measures in cases of violation of the due diligence requirement (administrative order). The focus of the implementation of these measures will be on cases of alleged violation of ABS-regulatory requirements of Parties to the NP that provided the GR.

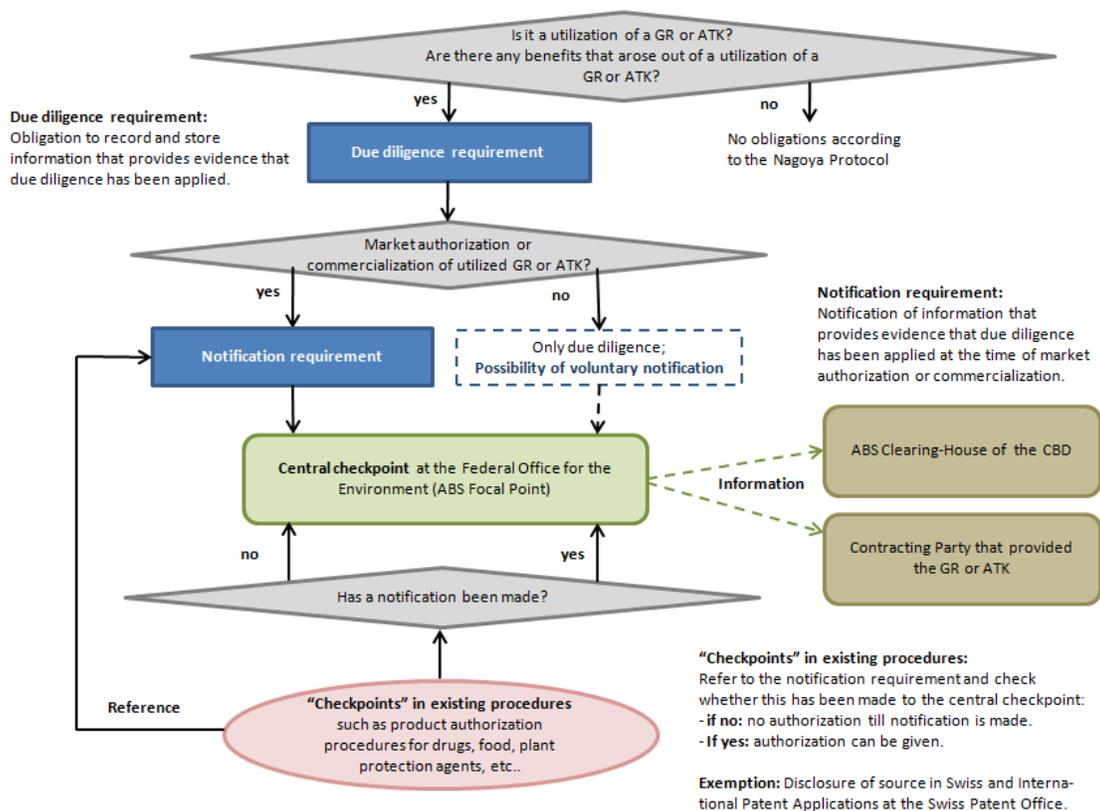


Figure 1: Simplified schematic representation of the draft legal ABS-users-measures in Switzerland

2.3. Rationale for the draft legal ABS-user-measures in Switzerland

A system that facilitates research and innovation on GR while at the same time ensures compliance with ABS

In order to create a system that facilitates research and innovation on GR while at the same time ensures compliance with ABS, Switzerland developed draft legal ABS-user-measures that are applicable across all sectors and that take into account differences of the utilization of GR along the innovation chain of these resources. Moreover, the system should guarantee that the administrative burden will be minimal and acceptable for all partners involved, including for the research communities, industries, and last but not least for the competent national authorities that will need to implement these new measures. Therefore, not every measure will apply to all users along the innovation chain. In fact, the higher the value of the utilized GR or ATK gets, the stronger the measure to ensure compliance with ABS becomes (see Figure 2 below). For instance, while there will only be a due diligence requirement for users at the beginning of the innovation chain (e.g. for non-commercial research activities), the notification requirement at the end of the innovation chain should provide a strong incentive to all users along the chain to comply with the ABS-regulatory requirements.

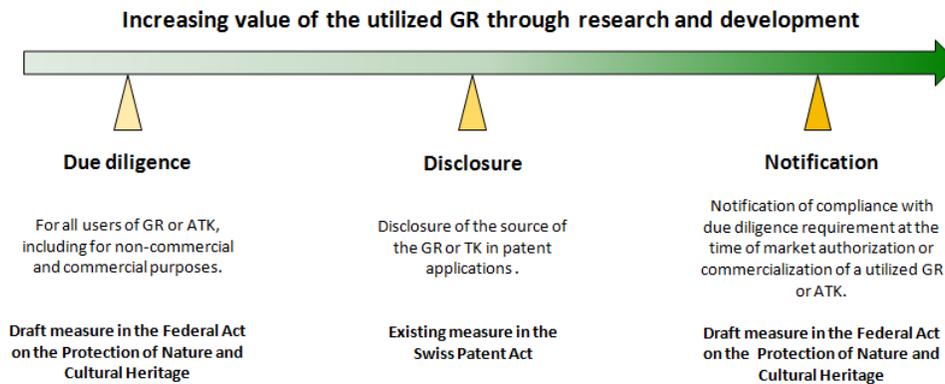


Figure 2: Illustration of the different legal ABS-user-measures along the innovation chain. The higher the value of a utilized GR or ATK gets, the stronger the measure to ensure compliance becomes.

A centralized checkpoint linked to the national focal point for the NP and additional decentralized “checkpoints” in existing market authorization procedures

In principle, Switzerland already has a checkpoint for ABS at the Federal Institute of Intellectual Property. The disclosure of source requirement in the Swiss Patent Act fulfils the minimal requirements according to article 17 of the NP. However, as stated in the message to the revision of the Swiss Patent Act as well as during the negotiations of the NP, Switzerland considers that the disclosure of source in patent applications is not sufficient to fully implement ABS. Indeed, most uses of GR and ATK take place without leading to any patent application.

Therefore, initially the question arose, whether there should be a designation of further checkpoints in existing procedures or whether there is a need for a centralized checkpoint in order to effectively implement Article 17 of the NP. While checkpoints in existing procedures might have the advantage of being more sector-specific, consultations with different Federal Authorities showed, that defining several checkpoints managed by different Federal Authorities would constitute a huge challenge for a coherent and effective implementation of the NP.

The draft-legal measures in Switzerland therefore foresee a centralized checkpoint linked to the national focal point for the NP at the Federal Office for the Environment (FOEN) as well as additional “checkpoints” in existing market authorization procedures (see Figure 1). While only the centralized checkpoint at FOEN fulfils the requirements according to Article 17 of the NP and deals with substantial issues related to the implementation of the NP, the additional “checkpoints” in existing procedures will check whether a notification to the centralized checkpoints was made (see also Figure 1). Therefore, they enhance the effectiveness of the centralized checkpoint, while at the same time, the administrative burden for the competent authorities involved in these procedures remains minimal. Moreover, the designation of a centralized checkpoint has the advantage that it is applicable to all users of GR or ATK across all sectors and that the users know which competent authority in Switzerland is dealing with substantive issues related to the implementation of the NP.

An incentive for other Parties to ratify the NP

The draft legal ABS-user-measures in Switzerland will only apply to the utilization of GR and ATK provided by other Parties to the NP. Moreover, in order to be applicable and consistent with the principle of non-retroactivity the measures will only apply to accesses to GR and ATK that took place after the entry into force of the NP. The legal status of those GR and ATK acquired before the entering into force of the NP for Switzerland or from countries that did not ratify the NP will not be changed by introducing the new legal ABS-measures in Switzerland. Switzerland believes that this is important to ensure

practicability. Indeed, only Parties to the NP might have the minimal regulatory system in place, including Competent National Authorities and an ABS Focal Point, that is essential in order that users can comply with the due diligence requirement. Moreover the approach respects acquired rights and will provide a strong incentive for other Parties to ratify the NP as soon as possible.

Tanzania

21. “...Tanzania has attempted to prepare a draft Cabinet paper to initiate the ratification process.

However, drafting Cabinet paper procedure in Tanzania requires broader consultation with key stakeholders and at the moment the consultation process is challenged with financial constraints.

Nevertheless, we can assure you that once the process is over in near future; ratification instrument will be submitted for your records.

Furthermore, we trust that the Secretariat will continue to solicit funds for early ratification of Nagoya Protocol...”

Thailand

22. “The focuses of Thailand’s work toward ratification and implementation of the Nagoya Protocol are on public awareness, institutional capacity building, as well as policy, institutional and regulatory arrangement.

The development and implementation of ABS regulation

Following the adoption of the Nagoya Protocol by COP 10 in October 2010, the new regulation on access and benefit sharing was approved by the Cabinet on 11 January 2011 to be implemented among government agencies and organizations. The ABS regulation have all necessary elements on access and benefit sharing according to CBD and the Nagoya Protocol and will be used as a framework for those agencies that do not have specific criteria and procedures on access permission to biological resources to set up their own criteria and regulations on ABS accordingly. The Regulation provides set of criteria and procedure for access permission to biological resources and associated knowledge, including those in areas under authorizations of local administrative organizations. The access permission when grant will lead to the development of two types of access and benefit sharing agreements – commercial and non-commercial purpose.

In order to facilitate implementation of the ABS Regulation in accordance with the obligation of the CBD and Nagoya Protocol, the ad hoc working groups were established to push forward implementation of the ABS regulation and Nagoya Protocol’s provisions at agency and university level. MOUs were signed with major universities in Thailand to develop academic ABS regulation and to promote and build awareness of the researcher, lecturers and students on the importance of biodiversity and ABS issues.

Public awareness and institutional capacity building

Since early 2011, series of public awareness activities have been organized for different sectors throughout the country to educate relevant partners about the Nagoya Protocol. Sectors involved include government agencies, local administrative authorities, researchers, educators, private sectors, NGOs, and local community representatives. Networks among agencies and universities have been initiated to develop institutional-level regulations on ABS and educate researchers on ABS issues. Further cooperative works with major stakeholders, especially regulating agencies and universities would be continuously done in cooperating with capacity building activities to increase researchers and regulators

awareness on ABS issues, status and regulations, as well as to strengthen their capacity in developing their own ABS regulations and mechanisms.

Policy, institutional and regulatory review and arrangement

Thailand signed the Nagoya Protocol on the 31 January 2012 to show our commitment to work toward ratification of the Protocol. Right after that mechanism was set for revision of policy, institutional and regulatory framework. Working Groups are established as an integral platform between relevant agencies in preparation toward ratification and implementation of the Protocol. Institutional Structure and domestic legislations have currently been reviewed. The work at this stage has been focused on regulating agencies and research communities, which would be soon expanded to cover all stakeholders, including local communities, NGOs, private sectors, media and general public. Public consultation will be held for all relevant sectors before submitting to the National Committee on Conservation and Sustainable Use of Biodiversity, the Cabinet and the Parliament for approval on the Protocol's ratification consecutively."
