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SUBSIDIARY BODY ON IMPLEMENTATION

Second meeting

Montreal, Canada, 9-13 July 2018

Item 14 of the provisional agenda[[1]](#footnote-1)\*

# Enhancing integration under the Convention and its Protocols with respect to provisions related to access and benefit-sharing

## *Note by the Executive Secretary*

**Introduction**

1. In decision [XII/13](https://www.cbd.int/doc/decisions/cop-12/cop-12-dec-13-en.pdf), the Conference of the Parties welcomed the entry into force of the [Nagoya Protocol](https://www.cbd.int/abs/text/default.shtml) and urged all Parties to the [Convention on Biological Diversity](https://www.cbd.int/convention/text/) that had not yet ratified the Nagoya Protocol to do so (paras. 1-2). In addition, it recalled Article 26 of the Convention, which requires Parties to report on measures taken for the implementation of the provisions of the Convention, and also recalled that these reports should include information on measures taken in relation to the access and benefit-sharing (ABS) related provisions of the Convention, in particular its Article 15 (para. 3).
2. In addition, the Conference of the Parties requested the Executive Secretary to prepare a note on possible ways and means to promote integrated approaches to issues at the interface between the access and benefit-sharing provisions of the Convention and the provisions of the Nagoya Protocol, taking into account the latest national reports under the Convention, available information in the [Access and Benefit-sharing Clearing-House](https://absch.cbd.int/), and the interim national reports under the Nagoya Protocol, as well as other information submitted to the Executive Secretary, for consideration by the Conference of the Parties at its fourteenth meeting and by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its third meeting (para. 4).
3. Integration between the ABS-related provisions of the Convention and the Nagoya Protocol can be considered at different levels:
   1. Relationship between the ABS-related provisions of the Convention and the Nagoya Protocol;
   2. Integration of access and benefit-sharing across the Convention;
   3. Cross-cutting issues of relevance to the Convention and the Nagoya Protocol, such as capacity-building, the clearing-house mechanisms, the financial mechanism and resource mobilization, and national reporting;
   4. Structures and processes under the Convention and its Protocols.
4. Section I of the present document addresses the relationship between the ABS-related provisions of the Convention and the Nagoya Protocol. Section II examines the integration of access and benefit-sharing across the Convention. Conclusions and recommendations are contained in sections III and IV of the document respectively. In accordance with decision [XIII/26](https://www.cbd.int/doc/decisions/cop-13/cop-13-dec-26-en.pdf), paragraph 2, cross-cutting issues under the Convention and its Protocols, such as capacity-building, the financial mechanism and resource mobilization, and national reporting will be addressed by the Subsidiary Body on Implementation at its second meeting under agenda items 10, 9, 8 and 13, respectively. In accordance with decision [XII/31](https://www.cbd.int/doc/decisions/cop-12/cop-12-dec-31-en.pdf), issues related to the effectiveness of the processes under the Convention and its Protocols will be addressed by the Subsidiary Body under agenda item 15.

# I. Relationship between the provisions of the Convention related to access and benefit-sharing and the Nagoya Protocol

1. The Nagoya Protocol was adopted by the Conference of the Parties in 2010.[[2]](#footnote-2) It supports the implementation of the third objective of the Convention on Biological Diversity, the fair and equitable sharing of benefits arising out of the utilization of genetic resources, and contributes to the other two objectives: conservation of biological diversity and the sustainable use of its components.
2. The Protocol builds on the access and benefit-sharing provisions of the Convention, in particular Articles 15, 16, 19(1) and (2) and 8(j), in order to provide greater legal certainty to both providers and users of genetic resources and associated traditional knowledge. The provisions of the Nagoya Protocol are fully in line with the ABS provisions of the Convention and go a step further in establishing an international framework for access and benefit-sharing through innovative provisions, including those related to access, benefit-sharing, compliance, indigenous peoples and local communities, and the establishment of the ABS Clearing-House.
3. In 2010, Parties to the Convention also adopted the [Strategic Plan for Biodiversity 2011-2020](https://www.cbd.int/sp/), including the Aichi Biodiversity Targets, for the period 2011-2020.[[3]](#footnote-3) Target 16 of the Strategic Plan provides that “by 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation.” The adoption of this target demonstrated the commitment of Parties to the Convention to work towards ratification and implementation of the Nagoya Protocol. The first part of the target was achieved with the entry into force of the Protocol on 10 October 2014. With respect to the second part of the target, although the Protocol is operational, efforts are still needed to further advance its implementation.

## A. Status of reporting on access and benefit-sharing under the Convention and the Nagoya Protocol

1. Further to the adoption of the Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets, Parties to the Convention agreed to translate this overarching international framework into revised and updated national biodiversity strategies and action plans (NBSAPs). Additionally, the Conference of the Parties decided that the fifth national reports, due by 31 March 2014, should focus on the implementation of the 2011-2020 Strategic Plan and progress achieved towards the Aichi Biodiversity Targets.[[4]](#footnote-4)
2. In accordance with Article 29 of the Nagoya Protocol, each Party is required to monitor the implementation of its obligations and to report to the Conference of the Parties serving as the meeting of the Parties to the Protocol on measures it has taken to implement the Protocol. At its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Protocol requested Parties to submit a national report on the implementation of the Protocol 12 months prior to the third meeting of the Parties. Accordingly, Parties and non-Parties were invited to submit a national report by 1 November 2017. Parties to the Nagoya Protocol are also required to make national information available to the ABS Clearing-House as provided by Article 14 of the Protocol and non-Parties are encouraged to do so.
3. Against this background, the table below provides an overview of ABS reporting through the different reporting mechanisms established under the Convention and the Nagoya Protocol.

**Table. Overview of ABS reporting under the Convention and the Nagoya Protocol as of 22 February 2018**

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|  | *Parties to the Convention (196)* | *Parties to the Nagoya Protocol (105)* | *Non-Parties to the Nagoya Protocol (91)* |
| Fifth national reports submitted | 189 | 102 | 87 |
| Information reported on ABS in fifth national report | 165 | 94 | 71 |
| Information on ABS measures in fifth national report | 102 | 67 | 35 |
| NBSAPs submitted | 186 | 104 | 82 |
| Information reported on ABS in NBSAP | 151 | 90 | 61 |
| Interim national reports submitted | 75 | 69 | 6 |
| National records[[5]](#footnote-5) on the ABS Clearing-House | 63 | 55 | 8 |

1. As indicated in the table, out of 189 Parties to the Convention who submitted a fifth national report, 165 Parties (87 per cent) reported on access and benefit-sharing in response to the question on progress made towards the implementation of the Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets. Of these 165 Parties, 94 are also Parties to the Nagoya Protocol. With respect to NBSAPs, out of the 186 NBSAPs, 151 (81 per cent) provided information on access and benefit-sharing in relation to national targets, a planned strategy or activities. In addition, some Parties to the Convention that are not yet Parties to the Nagoya Protocol have submitted an interim national report on the implementation of the provisions of the Nagoya Protocol and/or have provided information on the ABS Clearing-House.

## B. Status of ratifications and implementation of the Nagoya Protocol

1. As of 8 May 2018, 105 Parties to the Convention had ratified the Protocol. Progress with implementation will be considered at the third meeting of the Parties to the Protocol on the basis of the first assessment and review of the Protocol.
2. In accordance with Article 31 of the Nagoya Protocol, the Parties to the Protocol, at their third meeting, will undertake the first assessment and review of the effectiveness of the Nagoya Protocol taking into account information made available through the interim national reports and the ABS Clearing-House as well as other sources of information. An assessment of progress in the implementation of the Protocol will be considered under agenda item 4 of the second meeting of the Subsidiary Body on Implementation on the basis of a note by the Executive Secretary (UNEP/CBD/SBI/2/3). The assessment takes into account information provided by Parties through the interim national report and the ABS Clearing-House. For those that did not submit an interim national report, information provided in the fifth national report and NBSAPs was also considered. Its findings and recommendations will be submitted to the Conference of the Parties serving as the meeting of the Parties for consideration at its third meeting.
3. As the Nagoya Protocol supports implementation of the ABS provisions of the Convention, the assessment of progress in the implementation of the Nagoya Protocol can also assist in assessing progress in the implementation of the ABS provisions of the Convention.

## C. Progress towards ratification and implementation by Parties to the Convention that are non‑Parties to the Nagoya Protocol

1. In addition to Parties to the Convention that have ratified the Protocol, a number of Parties to the Convention are working towards ratification or are planning to ratify.
2. As illustrated in graph A below and on the basis of information made available through national reports under the Convention, NBSAPs, interim national reports on the implementation of the Nagoya Protocol, the ABS Clearing-House and capacity-building projects related to ABS, a process towards ratification is under way in 34 Parties to the Convention, and there are indications that 34 additional Parties to the Convention are planning to ratify the Protocol. Only 23 Parties to the Convention have not given any indication of their intention to ratify the Protocol.
3. In conclusion, available information indicates that a majority of Parties to the Convention that have not yet ratified the Protocol are either working towards ratification or planning to ratify.

**Graph A. Status of ratifications**

**Graph B. Status of ratifications by region**

1. In addition, as illustrated by graph B above on ratifications by region, there is general support for the Nagoya Protocol across all regions. Progress towards ratification, however, is slower in some regions than in others. Limited progress by countries in some regions may be explained by a variety of factors. In particular, the consultation process required by many countries prior to ratification can be politically sensitive and time-consuming considering the cross-cutting nature of ABS issues, which are relevant to different ministries (for example environment, agriculture, research, trade), to indigenous peoples and local communities and to various stakeholders (such as the business and scientific communities). In addition, a number of countries require the development of national measures for implementation prior to ratification.
2. Given that many countries need to adopt measures to implement the Protocol before it can be ratified, a number of Parties to the Convention working towards ratification are also taking steps to implement the Protocol and have made information available on national developments related to ABS implementation, such as the establishment of institutional structures or the development or revision of national ABS measures, through the national reports under the Convention, NBSAPs, the interim national reports on the implementation of the Nagoya Protocol, and/or the ABS Clearing-House.
3. In addition, a number of Parties to the Convention already had ABS measures in place prior to the Nagoya Protocol in accordance with the access and benefit-sharing provisions of the Convention. Many of these countries are in the process of revising their national ABS measures in order to comply with the additional obligations established by the Nagoya Protocol, such as those related to compliance and to monitoring the utilization of genetic resources.
4. The following graph provides an overview of progress made by Parties to the Convention that are not yet Parties to the Nagoya Protocol in establishing legislative, administrative and policy measures on access and benefit-sharing.

**Graph C: Progress in establishing legislative, administrative and policy measures on ABS by Parties to the Convention that are non-Parties to the Nagoya Protocol as of 22 February 2018**

1. According to information available, 30 Parties to the Convention (33 per cent of the Parties that have not ratified the Protocol) reported having ABS measures in place. Out of these 30 Parties, 7 indicated that they were currently revising existing or developing new ABS measures to implement the Nagoya Protocol and 14 Parties were planning to develop additional ABS measures.
2. In addition, out of the 61 Parties to the Convention that do not have ABS measures in place, 13 Parties indicated that they were currently developing measures, 25 Parties reported that were planning to develop measures and another 23 Parties did not provide information on the development of measures.
3. As highlighted in decisions [XIII/1](https://www.cbd.int/doc/decisions/cop-13/cop-13-dec-01-en.pdf) and [NP-2/1](https://www.cbd.int/doc/decisions/np-mop-02/np-mop-02-dec-01-en.pdf) and more recently by Parties in their national reports, further technical assistance, capacity-building and financial resources are needed to support ratification and implementation.
4. Furthermore, Parties to the Convention that have not yet ratified the Nagoya Protocol continue to have ABS obligations as the relevant provisions of the Convention, including obligations contained in Articles 15, 16, 19 (1) and (2) and Article 8(j), continue to apply.

# Integration of access and benefit-sharing across the Convention

1. Access and benefit-sharing is still, to a large extent, considered as a stand-alone issue under the Convention and the Nagoya Protocol. However, the Nagoya Protocol emphasizes that benefit-sharing is to contribute to the conservation of biological diversity and the sustainable use of its components.[[6]](#footnote-6)
2. Given the cross-cutting nature of the Protocol, in order to support its full implementation at the national level, issues related to access to genetic resources and associated traditional knowledge and the fair and equitable sharing of benefits arising out of their utilization should be considered and taken into account by relevant government representatives and stakeholders involved in the management and/or use of natural resources in different areas (for example forests, marine areas, and protected areas) as part of an integrated management approach that can contribute to conservation and sustainable use.
3. Against this background, the integration of ABS related issues across the Convention could further support the implementation of the Nagoya Protocol. Some efforts in this direction have already been undertaken at the international level that could help support and inform activities at the national level.
4. Due to its direct linkages with access and benefit-sharing as it relates to traditional knowledge, the [programme of work on Article 8(j) and related provisions](https://www.cbd.int/traditional/default.shtml) has been supporting ABS implementation and more recently the Nagoya Protocol. Relevant work carried out has included the development of the Mo’otz kuxtalvoluntary guidelines[[7]](#footnote-7) as well as a number of capacity-building activities targeting primarily indigenous and local communities to support the implementation of the Convention and the Nagoya Protocol, including through the development of community protocols.
5. The following materials were developed, with the support of the Secretariat, to build the capacity of the scientific community as users of genetic resources with respect to access and benefit-sharing issues:
   1. A recent 2017 publication developed under the Global Taxonomy Initiative entitled “*Introduction to Access and Benefit-Sharing and the Nagoya Protocol: What DNA Barcoding Researchers Need to Know*” available at: <https://www.cbd.int/gti/>;
   2. A suite of e-learning modules on access and benefit-sharing for those working in botanic gardens was developed by Botanic Gardens Conservation International thanks to support from the Convention on Biological Diversity and the Japan Biodiversity Fund and is available at <https://www.bgci.org/policy/abs_learning/>.
6. In addition, some activities carried out by the Secretariat to address the “business and biodiversity” interface have taken into account access and benefit-sharing and the implications of the Nagoya Protocol. They include the development of newsletters for the business community[[8]](#footnote-8) and a session on ABS at the [Business and Biodiversity Forum](https://www.cbd.int/business/meetings-events/2016.shtml) during the thirteenth meeting of the Conference of the Parties. These activities have highlighted the relevance of ABS to various sectors that utilize genetic resources, including cosmetics, pharmaceuticals, agriculture, botanicals and horticulture.
7. Other initiatives taken to integrate ABS have included initiatives by partners to include an ABS component as part of capacity-building projects addressing environmental or biodiversity-related issues more broadly.
8. With a view to further advancing the implementation of the Nagoya Protocol, additional steps could be taken to integrate ABS across the work of the Convention. For instance, ABS-related issues could be further considered when addressing protected areas or the management of forest and marine areas. The inclusion of an ABS component as part of capacity-building projects could also be considered in a more systematic manner.

# III. Conclusion

1. By adopting Aichi Biodiversity Target 16, Parties to the Convention demonstrated their commitment to work towards ratification and implementation of the Nagoya Protocol, and most Parties to the Convention have provided information on ABS in their fifth national reports (87 per cent) and/or NBSAPs (81 per cent).
2. Based on available information, a large majority of Parties to the Convention (88 per cent) have either ratified the Protocol, are working towards its ratification or are planning to ratify it. This demonstrates broad support for the Nagoya Protocol. In addition, 75 per cent of Parties to the Convention that have not ratified the Nagoya Protocol either have ABS measures in place, are working on the development of measures or are planning to do so.
3. However, as highlighted in decisions XIII/1 decision NP-2/1 and in the interim national reports, further efforts are needed to support ratification and implementation, including through capacity-building and financial support.
4. Considering that the Nagoya Protocol is meant to facilitate the implementation of the ABS-related provisions of the Convention and given that Parties to the Convention have the obligation to implement the ABS-related provisions of the Convention, it is in the interest of all Parties to the Convention to ratify the Protocol in order to support a coherent international ABS regime.
5. Finally, considering the cross-cutting nature of issues related to ABS and the potential for benefit-sharing to contribute to conservation and sustainable use, further efforts may be needed to integrate ABS across the various work programmes of the Convention in order to support the implementation of the Nagoya Protocol. Further integration of ABS into other areas of work under the Convention could be considered as part of the discussions on the [post-2020 global biodiversity framework](https://www.cbd.int/post2020/).

# IV. Suggested draft recommendations

1. The Subsidiary Body on Implementation may wish to recommend that the Conference of the Parties adopt a decision along the following lines:

*The Conference of the Parties*

1. *Notes* with appreciation the efforts made by Parties and non-Parties to the Nagoya Protocol in ratifying and implementing the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;
2. *Urges P*arties to the Convention on Biological Diversity that have not yet done so to deposit their instrument of ratification, acceptance or approval or their instrument of accession to the Nagoya Protocol as soon as possible, and to take steps towards its implementation, including by establishing institutional structures and legislative, administrative and policy measures on access and benefit-sharing, and to make relevant information available to the Access and Benefit-sharing Clearing-House;
3. *Urges* Parties to the Convention that are not yet Parties to the Nagoya Protocol to report on access and benefit-sharing implementation in their sixth national reports;
4. *Reiterates* the need for capacity-building and development activities as well as financial resources to support ratification and implementation of the Nagoya Protocol, and *invites* Governments and relevant organizations to provide technical and financial support;
5. *Encourages* Parties to consider further the integration of access and benefit-sharing into other areas of work under the Convention as part of discussions on the post-2020 global biodiversity framework;
6. *Requests* the Executive Secretary to continue efforts to integrate access and benefit-sharing across the work of the Secretariat.

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1. \* [CBD/SBI/2/1](https://www.cbd.int/doc/c/6ce5/878e/5ffa49887c20c19961fe040a/sbi-02-01-en.pdf). [↑](#footnote-ref-1)
2. See decision [X/1](https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-01-en.pdf). [↑](#footnote-ref-2)
3. See decision [X/2](https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.pdf). [↑](#footnote-ref-3)
4. See decision [X/10](https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-10-en.pdf). [↑](#footnote-ref-4)
5. This takes into account ABS measures, competent national authorities, checkpoints or internationally recognized certificates of compliance. [↑](#footnote-ref-5)
6. See Articles 1 and 9 of the Nagoya Protocol. [↑](#footnote-ref-6)
7. The Mo’otz kuxtalvoluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the “prior and informed consent”, “free, prior and informed consent” or “approval and involvement”, depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge. The guidelines were adopted by the Conference of the Parties in decision [XIII/18](https://www.cbd.int/doc/decisions/cop-13/cop-13-dec-18-en.pdf). [↑](#footnote-ref-7)
8. Available at: <https://www.cbd.int/business/ressources/newsletters.shtml> [↑](#footnote-ref-8)