



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

Secretariat of the Convention on Biological Diversity

1. **Obligations of Parties:** core elements
 - Access
 - Benefit-sharing
 - Compliance
 - Traditional knowledge associated with genetic resources

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

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

- Legal certainty, clarity and transparency
- Fair and non-arbitrary rules and procedures
- Information on how to apply for PIC
- Written decision by CNA
- Clear rules and procedures for MAT
- The issuance of a permit or equivalent to be notified to the ABS Clearing-House

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

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

Obligation to take measures:

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

Benefits may be monetary and non-monetary:

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

Compliance with national ABS legislation

Obligation to take measures:

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

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

Compliance with mutually agreed terms

Obligation to:

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

Monitoring the utilization of genetic resources

Obligation to take measures to:

- Designate effective **check points** for collection of information at any stage of research, development, innovation, pre-commercialization or commercialization
- Encourage **reporting requirements** in MAT
- Encourage **cost-effective communication tools**
- **Internationally recognized certificate of compliance** as evidence that PIC was obtained and MAT established

Tools to encourage compliance:

Obligation to encourage the development, update and use of:

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



References to TK and ILCs in the preamble:

- Relevance of Article 8(j)
- Interrelationship between GRs and TK and their inseparable nature for ILCs
- Importance of TK for the conservation and sustainable use of biodiversity, and for the sustainable livelihoods of ILCs
- Diversity of circumstances in which TK is owned or held

References to TK and ILCs in the preamble:

- Right of ILCs to identify the rightful holders of TK , within their communities
- Unique circumstances where TK is held in countries (oral, documented or in other forms), reflecting a rich cultural heritage
- UN declaration on the Rights of Indigenous Peoples
- Nothing in Protocol should be construed to diminish or extinguish existing rights



Access to Genetic Resources Granted by ILCs



Access to Genetic Resources:

Obligation to take measures in accordance with domestic law:

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

Access to TK associated with Genetic Resources:

Obligation to take measures in accordance with domestic law:

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



Fair and Equitable Benefit-Sharing with ILCs

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

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

Compliance with national legislation on TK

Obligation to take measures:

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

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



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

Obligation of Parties to:

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

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

- Obligation to consider the need for and modalities of a **global multilateral benefit-sharing mechanism**
 - For benefits derived from the use of genetic resources and traditional knowledge that occur in transboundary situations or for which prior informed consent cannot be granted
- Obligation to encourage users and providers to direct the benefits towards the **conservation and sustainable use of biodiversity**

Measures to support implementation

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



Obligation to establish National focal points responsible for:

- Providing information on applicable procedures for obtaining PIC and MAT for access to genetic resources
- Providing information on procedures for obtaining PIC or approval and involvement of ILCs and MAT for access to TK
- Ensuring the liaison with the Secretariat
- Providing information on competent national authorities, relevant ILCs and relevant stakeholders

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

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

Obligation to notify the contact information to SCBD

- When more than one CNA, info on respective responsibilities

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

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

- Obligation to **cooperate in capacity-building and development** to effectively implement the Protocol in developing countries
 - Facilitate the involvement of ILCs and relevant stakeholders
- Obligation to take into account the need of developing countries for financial resources
- Obligation to identify **national capacity needs and priorities** through self assessments
 - Support the capacity-needs and priorities of ILCs, and relevant stakeholders, as identified by them

Measures on capacity-building and development may include:

- Measures to increase the capacity of ILCs in relation to access to genetic resources and/or traditional knowledge associated with genetic resources



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

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



ABS Clearing-House and Information-Sharing



[Additional information](#), if available and as appropriate, may also include:

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

Thank you for your attention!

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FOR MORE INFORMATION ON ABS:

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