



## Regional Joint BCH and ABSCH Training of Trainers Workshop for Africa Region

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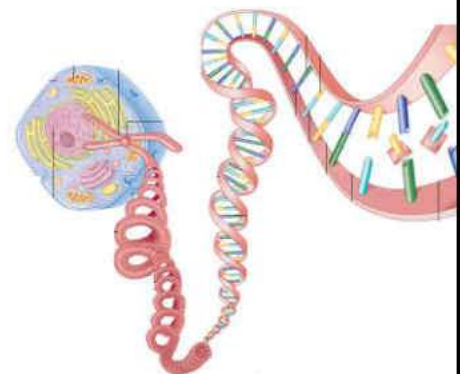
# The Nagoya Protocol

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## INTRODUCTION TO ACCESS AND BENEFIT SHARING

### • Definitions, Key Concepts And Principles

**Genetic material:** any material of plant, animal, microbial or other origin containing functional units of hereditary or genes.



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### • Definitions, Key Concepts And Principles

**Genetic material:** any material of plant, animal, microbial or other origin containing functional units of hereditary or genes.

**Genetic resources (GR) :** any genetic material that has actual or potential value for humanity (Art. 2 CBD)

#### Sourced from:

- Environment where they occur naturally within ecosystems and natural habitats (in-situ)



- Human made collections such as botanical gardens, gene and seed banks and microbial culture collections (ex-situ)



## INTRODUCTION TO ACCESS AND BENEFIT SHARING

### • Definitions, Key Concepts And Principles

#### Traditional knowledge (TK) :

- Indigenous Peoples and Local Communities (IPLC) in addition to acting as GR manager hand down their relevant TK over generations. This TK is an important sources of identifying new uses of GR or GR with potentially valuable properties.
- Bioprospectors and users of GR often use this TK to guide them to plants that are already known to have useful properties. without this knowledge many species currently used in research or commercialized products may never have been identified.



## INTRODUCTION TO ACCESS AND BENEFIT SHARING

### • Definitions, Key Concepts And Principles

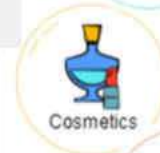
**Using (GR)** : Provide crucial information that increase our scientific knowledge and understanding of the living world

**Value of GR** may result from using the GR and or knowledge to:

- Develop new products and goods;
- Support industrial process;
- Improve conservation methods

Relevant for Pharmaceutical, Botanical, Agricultural, Cosmetics, Food and beverage and Industrial biotechnology sectors

Research that initially has no commercial intentions can lead to discoveries with commercial applications



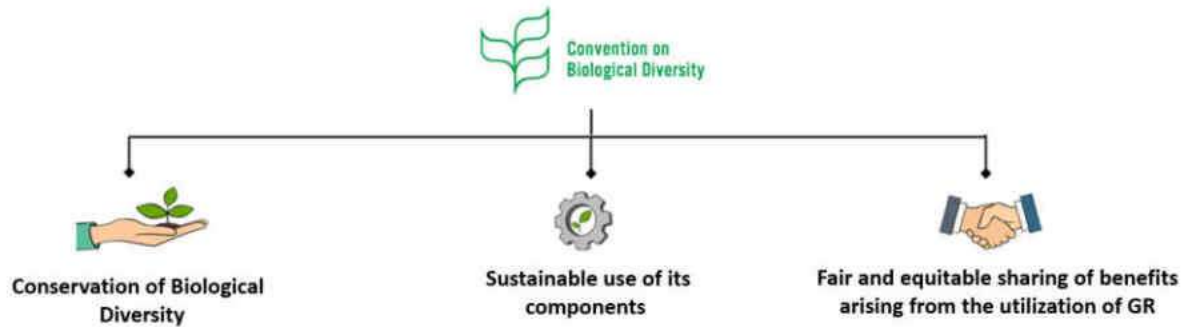
## INTRODUCTION TO ACCESS AND BENEFIT SHARING

### • Historical Overview

- Most of the world's GR are located in developing countries. Before the CBD, access to GR and TK was freely available to any user thus no obligation to share benefits with provider countries.
- Advance in biotechnology enabled new and unforeseen uses for GR which attracted greater attention to their value.
- Industrialized nations developed an Intellectual Property Rights (IPR) regime to protect inventions and products resulting from the use of biotechnology which effectively extended IPR including patent to a wide spectrum of living organisms.
- The IPR regime ignored the value of the raw materials and did not acknowledge the contribution of IPLCs and Farmers to the development and maintenance of GR through years of cultivation and husbandry and using their TK.
- In 1980s, several countries started restricting access to GR under their jurisdiction.

# INTRODUCTION TO ACCESS AND BENEFIT SHARING

## • Historical Overview



# INTRODUCTION TO ACCESS AND BENEFIT SHARING

## • Historical Overview



Art 8j

Art 15

Art 16

Art 19

### Access and benefit sharing:

- Recognize the sovereign rights of States over their natural resources,
- The authority to determine access to genetic resources rests with the national governments and is subject to national legislation.
- Parties should take legislative, administrative or policy measures to ensure sharing of benefits arising from the commercial and other utilization of country providing the resources.

## INTRODUCTION TO ACCESS AND BENEFIT SHARING

### • Historical Overview



Art 8j

Art 15

Art 16

Art 19

#### Access and benefit sharing:



To get access user must first get a permission



Provider



User

Negotiate an agreement detailing type of benefits being shared and how and when sharing will happen

Prior informed consent  
(PIC)

+

Mutually agreed terms  
(MAT)



## INTRODUCTION TO ACCESS AND BENEFIT SHARING

### • Historical Overview

Art 8j

Deals with the TK of IPLC and encourages the equitable sharing of benefit arising from the utilization of such knowledge, innovations and practices

Art 16

Deals with handling of biotechnology and sharing its benefits

Art 19

Deals with Technical and Scientific Cooperation between Parties

However, ABS provisions in the CBD were general in nature so after the entry into force of the convention, parties started to discuss the need to have more clear guidance on how to go about putting ABS provisions of the CBD into practice.

# INTRODUCTION TO ACCESS AND BENEFIT SHARING

## • Historical Overview

### Bonn Guidelines on ABS



- Adopted in 2002 by the Parties to the CBD
- Covered GR and associated TK and innovations and practices addressed by Art 8(j) of the CBD
- Provided direction on how to establish measures on ABS and negotiate ABS agreements
- Defined main roles and responsibilities of users and providers
- Identified steps involved in the process of obtaining Access to GR and ensuring benefit sharing

Parties felt they needed a legally binding international agreement



# INTRODUCTION TO ACCESS AND BENEFIT SHARING

## • Historical Overview

2002

- At the world Summit on Sustainable Development, countries called for action to negotiate an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

2005-2010

- A working group was constituted and active to negotiate an international regime on ABS leading to the adoption of the Nagoya Protocol.

2014

- The protocol entered into force on October 12th 2014. Mirroring the third objective of the CBD

Today

- The protocol has 141 Parties

## The Nagoya Protocol on ABS



- Supplementary legally binding treaty to the CBD which aims to advance the third objective of the CBD
- Countries ratifying the Protocol agree to be bound by it and to implement it at the national level
- Builds on the Provision of the CBD and the Bonn Guidelines in order to create an international legal framework on ABS
- Creates incentives to conserve biological diversity and to use of its components sustainably
- Enhance the contribution of biological diversity for sustainable development and human well being

## The Nagoya Protocol

### • Objective

Art 1

- Reiterates the third objective of the CBD and refers to “the fair and equitable sharing of the benefits arising from the utilization of genetic resources”, including by appropriate [access to genetic resources](#), [transfer of technology](#) and funding contributing to the [conservation](#) of [biological diversity](#) and the [sustainable use](#) of its components.

Art 2

- ‘Utilization of genetic resources’ mean “to conduct [research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology](#) as defined in Article 2 of the Convention”.

## The Nagoya Protocol

### • Scope

Art 3

- The Protocol shall apply to genetic resources within the scope of [Article 15](#) of the Convention and to the benefits arising from the utilization of such resources as well as to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

## The Nagoya Protocol

### • Relationship with International Agreements and Instruments

- This Protocol is the instrument for the implementation of the ABS provisions of the Convention.
- Where a specialized international ABS instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol **does not apply for the Party or Parties to the specialized instrument** in respect of the **specific genetic resource covered by and for the purpose of the specialized instrument**.

e.g. Relationship with the [International Treaty on Plant Genetic Resources for Food and Agriculture](#).



## The Nagoya Protocol

### • Core obligations



## The Nagoya Protocol

### • Fair and Equitable Sharing of Benefits

- Benefits include those arising from the utilization of genetic resources and from subsequent applications and commercialization.
- The identification of benefits and arrangements details shall be agreed through MAT between the user and provider. The Protocol's Annex contains a list of non-exhaustive potential monetary and non-monetary benefits.
- The Protocol sets the foundation for consideration of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of GR and TK associated with GR that occur in transboundary situations or for which it is not possible to grant or obtain PIC (Art 10).

## The Nagoya Protocol

### • Fair and Equitable Sharing of Benefits

Parties should:

- Take legislative, administrative or policy measures to implement the benefit-sharing obligation.
- Encourage users and providers to direct benefits to conservation and sustainable use of biological diversity ([Art 9](#)).
- Encourage the development, update and use of sectoral and cross-sectoral model contractual clauses for MAT and voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing ([Art 19](#) and [20](#)).
- Take measures aiming to ensure that benefits are shared based on MAT with the concerned ILCs if they have established rights over the resources

## The Nagoya Protocol

### • Access to Genetic Resources (GR)

- Countries have [sovereign rights](#) over [GR](#)
- Access is subject to PIC
- Parties should establish institutional arrangements to facilitate the implementation of access provisions this include requirements to designate:
  - A national focal point who is responsible for providing information on access procedures and liaising with the Secretariat;
  - One or more competent national authorities who are responsible for granting PIC and entering into MAT.

## The Nagoya Protocol

### • Access to Genetic Resources (GR)

- To create legal certainty, clarity, fairness and transparency of domestic access and benefit-sharing legislation or regulatory requirements Parties should:
- Set out criteria and/or processes for obtaining PIC or approval and involvement of ILCs;
- Establish clear rules and procedures for establishing [MAT](#). Provide information on how to apply for PIC;
- Provide for written PIC decisions in a cost-effective manner and within a reasonable period of time; and
- Provide for issuance at the time of access of evidence of PIC and MAT and notification to the [ABS Clearing-House](#);

## The Nagoya Protocol

### • TK associated with GR

Parties should:

- Take measures, in accordance with their domestic legislation, aiming to ensure that TK associated with GR that is held by ILC is accessed with the PIC or approval and involvement of these communities and that MAT are established.
- Take measures to provide that the benefits arising from the TK associated with GR are shared in a fair and equitable way with the ILCs holding such knowledge.
- Establish mechanisms to inform potential users of traditional knowledge associated with [genetic resources](#) about their obligations

## The Nagoya Protocol

### • TK associated with GR

Parties should:

- Take into consideration, in accordance with [domestic law](#), ILCs' customary laws, community protocols and procedures with respect to TK associated with GR
- Support the development by ILCs of TK-related community protocols, minimum requirements for MAT, and model contractual clauses
- Not restrict, as far as possible, customary use and exchange of genetic resources and traditional knowledge associated with genetic resources.

## The Nagoya Protocol

### • Compliance to Domestic ABS measures of Provider countries

Parties to the Protocol are mandated to take measures to:

- Provide that GR ([Art 15](#)) and GR associated with TK ([Art 16](#)) utilized within their jurisdiction have been accessed with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the providing Party.
- Address situations of non-compliance with measures adopted in accordance with paragraph 1 of Articles 15 and 16 and to cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements.

## The Nagoya Protocol

### • Compliance to MAT

**Art 18** Parties should encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

- (a) The jurisdiction to which they will subject any dispute resolution processes;
- (b) The applicable law; and/or
- (c) Options for alternative dispute resolution, such as mediation or arbitration.

## The Nagoya Protocol

### • Compliance to MAT

- Parties should:

- ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms; and
- take measures, as appropriate, regarding access to justice and the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards.

## The Nagoya Protocol

### • Monitoring to support compliance

- The Protocol establishes a compulsory system to monitor and enhance transparency of the utilization of genetic resources ([Article 17](#)).
- Parties **designate one or more checkpoints** to collect or receive information related to PIC, the source of the genetic resources, the establishment of MAT and/or the utilization of genetic resources.
- The information collected or received at checkpoints is to be made available to relevant national authorities, and to the Access and Benefit-sharing Clearing-House which share a **checkpoint communiqué** with the national focal point and CNAs from the provider country, and to the designated authority from the user country.
- Parties requiring (PIC) for access will provide for **internationally recognized certificates of compliance** to serve as evidence that PIC was obtained and mutually agreed terms were established

## The Nagoya Protocol

### • ABS Clearing House

- The Protocol also establishes an ABS Clearing-House (ABS CH) to share relevant information for the implementation of the Protocol (Art 14).
- This will be discussed in more details in the next presentation

## Nagoya Protocol and UN 2030 Agenda



Thank you !

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