The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing

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Presentation Overview

• Indigenous Knowledge Systems
• The Convention on Biological Diversity (CBD)
• Nagoya Protocol
• The global Biodiversity Framework
• Goal C
• Target 13
• Conclusions
Different world views – value perspective

Living of nature – anthropocentric – prosperity – lack
Living with nature – bio-ecocentric – stewardship – abundance
Living in nature – anthropocentric – belonging
Living as nature – plurocentric – cosmocentric – living in harmony
The CBD tree


Convention on Biological Diversity May 1992

Cartagena Protocol on Biosafety January 2000

Nagoya Protocol on ABS October 2010

Nagoya – Kuala Lumpur Supplementary Protocol October 2010
Access to genetic resources & benefit-sharing in the Convention

The three objectives of the Convention create an equity relationship:

- Conservation of biodiversity
- Sustainable use of its components

Contributing to...

Access to genetic resources

In exchange for...

Fair and equitable sharing of benefits derived from their utilization
WHY rules on access and benefit-sharing?

Providers

Genetic resources
Open access
Needs

Users

Biotechnology
IPR
Benefits

Equity

Loss of biological diversity
CBD on access (Article 15)

MAIN PRINCIPLES

- Sovereign rights over genetic resources
- Facilitate access to genetic resources
- Fair and equitable sharing of benefits
- Mutually agreed terms
- Prior informed consent
CBD on benefit-sharing (Arts. 15, 8, 16, 19)

Main Requirements

- Research and development results (Article 15(7))
- Access to and transfer of technology using genetic resources (Article 16(3))
- Commercial or other benefits derived from use (Article 15(7))
- Participation in biotechnological research on the genetic resources (Article 19(1))
- Priority access to results and benefits arising from biotechnological use (Article 19(2))
- Traditional knowledge associated with genetic resources (Article 8(j))
Why a Protocol on ABS?

CBD provisions not fully implemented

| Cases of misappropriation of genetic resources and associated traditional knowledge |

Need for legal certainty and transparency
- For providers: Concern to ensure benefit-sharing once genetic resources have left the provider countries
- For users: Need for clear procedures when accessing genetic resources
Contributing to the conservation of biological diversity and the sustainable use of its components

The Nagoya Protocol - Objective

Fair and equitable sharing of the benefits arising from the utilization of genetic resources

- Access
- Transfer of technology
- Funding
- Rights over resources and technologies
The Nagoya Protocol - Scope

Benefits

Genetic Resources

Traditional Knowledge
Three pillars of the Nagoya Protocol

**Access** – Users seeking access to genetic resources must:
Get **permission** from the provider country (known as prior informed consent, PIC), unless otherwise determined by that Party

**Benefit-sharing** – provider and user must:
Negotiate an agreement to share benefits resulting from the use of a genetic resource (known as mutually agreed terms, MAT)

**Compliance** – Protocol creates obligations to:
- Comply with national ABS legislation and mutually agreed terms
- Monitor the utilization of genetic resources
- Checkpoints
Access to genetic resources

Sovereign rights over natural resources

Domestic ABS legislation or regulatory requirements

Prior informed consent (PIC) of the providing Party

The country of origin

A Party that has acquired the resources in accordance with the CBD

Ensure PIC or approval and involvement of IPLCs is obtained
Requiring Prior Informed Consent (PIC)?

**Measures**
- Legislative
- Administrative
- Policy

- Legal certainty
- Clarity
- Transparency

**Rules and procedures**
- How to apply for PIC
- Criteria and/or processes for obtaining PIC or approval and involvement of IPLCs

- Fair and non-arbitrary
- Mutually agreed terms

**Information**
- Evidence of:
  - Decision to grant PIC
  - Establishment mutually agreed terms

**Decision**
- Clear and transparent written decision by competent national authority

**Issuance of permit or equivalent (at access)**

**Notify ABS Clearing-House**

Mutually agreed terms may include:
- Dispute settlement
- Benefit-sharing (IPR)
- Subsequent third-party use
- Changes of intent
Benefit-sharing

Sources of benefit
- utilization of genetic resources
- subsequent applications
- commercialization

Types of benefit
- Non-monetary

To be shared with the Party providing the resources
- The country of origin
- A Party that has acquired the resources in accordance with the CBD

Legislative, administrative or policy measures
- Mutually agreed terms
With domestic legislation or regulatory requirements on ABS

With mutually agreed terms (MAT)
- Encourage inclusion of provisions to cover dispute resolution
- Ensure opportunity to seek recourse
- Take effective measures regarding:
  - access to justice
  - utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards

With the provisions of the Protocol
140 Ratifications/Accessions to the Nagoya Protocol

August 2019

[World map with countries marked in various colors indicating different status of ratification/accession to the Nagoya Protocol]

Afghanistan, Albania, Angola, Antigua and Barbuda, Argentina, Austria, Belarus, Belgium, Benin, Bhutan, Bolivia, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, China, Comoros, Congo, Côte D’Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Eritrea, Estonia, Eswatini (Kingdom of), Ethiopia, European Union, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Guatemala, Guinea, Guinea Bissau, Guyana, Honduras, Hungary, India, Indonesia, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao PDR, Lebanon, Lesotho, Liberia, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, the Federated States of Micronesia, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Netherlands, Niger, Norway, Pakistan, Palau, Panama, Peru, Philippines, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, the Syrian Arab Republic, Tajikistan, Togo, Tuvalu, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Zambia and Zimbabwe

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NAGOYA PROTOCOL: PROCESS AND STATUS

COP 10

Adoption
29 October 2010

50th Instrument of ratification, ...

COP 12
MOP 1
13-17 October 2014
51 Parties

COP 13
MOP 2
4-17 December 2016
140 Parties

COP 14
MOP 3
11 June 2018
105 Parties

COP 15
MOP 5
7-19 December 2022
139 Parties

17-29 November 2018

Entry into force
12 October 2014

139 Parties

17-29 November 2018

Parties

Parties

Parties

Parties

Parties
COP15 Major Outcomes

- **Kunming-Montreal GBF** (decision 15/4)
- **GBF Monitoring framework** (decision 15/5)
- **Mechanisms for planning, monitoring, reporting and review** (decision 15/6)
- **Resource mobilization** (decision 15/7)
- **Capacity-building and development & technical and scientific cooperation** (decision 15/8)
- **Digital sequence information on genetic resources** (decision 15/9)
The Kunming-Montreal Global Biodiversity Framework
Goal A
Ecosystems maintained, enhanced, or restored, extinctions are halted, extinction rate reduced tenfold and genetic diversity is maintained

Goal B
Biodiversity is sustainably used and its contributions to people are maintained, enhanced or restored

Goal C
Benefits from the use of genetic resources are shared and sustainably increased

Goal D
The biodiversity funding gap of 700 billion USD is closed by ensuring adequate means of implementation are available.

The Kunming-Montreal Global Biodiversity Framework
Goal 13 Unpacked

1. Monetary and Non-Monetary benefits arising from
   - Utilization of GR
   - Utilization of DSI
   - Utilization of TK associated with GR

2. Are shared
   - Fairly and equitable between providers and users with a special focus on IPLC

3. To ensure that
   - Benefits are substantially increased by 2050
   - Ensuring that TK is appropriately protected
   - Benefits contributes to conservation and use of biodiversity

4. Above to be achieved by means of regulation through internationally agreed benefit-sharing instruments
Target

• Take effective:
  – legal, policy, administrative and capacity-building measures at all levels, as appropriate,
  – to ensure the fair and equitable sharing of benefits that:
    • arise from the utilization of genetic resources and
    • from digital sequence information on genetic resources,
    • as well as traditional knowledge associated with genetic resources,
  – and
  – facilitating appropriate access to genetic resources, and
  – by 2030 facilitating a significant increase of the benefits shared,
Thank You

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Assessment and review of the Protocol

Priorities for further work (NP-3/1)

- Develop ABS legislation and regulatory requirements
- Enhance implementation by Parties
  - Of the provisions on compliance with domestic ABS legislation
  - Monitoring the utilization of genetic resources, including the designation of checkpoints
  - Of provisions related to IPLCs (Article 5, 6, 7 and 12)
- Support the full and effective participation of IPLCs by raising their awareness and capacity on ABS and supporting the development of community protocols, MAT and model contractual clauses
- Raise awareness among relevant stakeholders and encourage their participation in the implementation of the Protocol
Assessment and review of the Protocol

Support from relevant organizations (NP-3/1)

• Expand efforts to build the capacity of developing country Parties to implement the Nagoya Protocol taking into account
  - Priority areas and key findings of the assessment and review
  - Need to strengthen institutional capacities
  - Needs and priorities of IPLCs
• Publish information on CB initiatives and resources on the ABS-CH
• Consider regional approaches to support harmonized implementation
• Facilitate sharing of information and experiences related to transboundary cooperation
• Support strategic communication to enhance awareness about the Protocol
• Build capacity of Parties and IPLCs for the negotiation of MAT and to promote partnerships and technology transfer between users and providers