

Transfer under Nagoya Protocol of traditional knowledge to scientists in Burundi, mediated by ministries of environment and health



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What is the Nagoya protocol?

<https://www.cbd.int/abs/about/>

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity

is a **supplementary agreement to the Convention on Biological Diversity.**

-transparent legal framework



Why is the Nagoya Protocol important?

- greater **legal certainty** and **transparency** for both **providers** and **users** of genetic resources by:
 - more predictable conditions for access to genetic resources.
 - benefit-sharing when genetic resources leave the country providing the genetic resources
- creates **incentives** to conserve and sustainably use genetic resources,
- enhances the contribution of biodiversity to development and human well-being.

What does the Nagoya Protocol cover?

The Nagoya Protocol applies to

- genetic resources that are covered by the CBD,
- and to the benefits arising from their utilization.
- The Nagoya Protocol also covers traditional knowledge (TK) associated with genetic resources that are covered by the CBD and the benefits arising from its utilization.

What are the core obligations of the Nagoya Protocol with respect to genetic resources?

The Nagoya Protocol sets out core obligations

- **Access obligations**
- **Benefit-sharing obligations**
- **Compliance obligations**



Access obligations

Domestic-level access measures (in country) are to:

- legal certainty, clarity and transparency
- fair and non-arbitrary rules and procedures
 - For prior informed consent and mutually agreed terms
- Provide for issuance of a permit or equivalent when access is granted
- promote and encourage research contributing to biodiversity conservation and sustainable use
- Pay due regard to cases of present or imminent emergencies that threaten human, animal or plant health
- Consider the importance of genetic resources for food and agriculture for food security

Benefit-sharing obligations

Domestic-level benefit-sharing measures

- provide for the fair and equitable sharing of benefits arising from the utilization of genetic resources with the contracting party providing genetic resources.
- Utilization includes **research and development** on the genetic or biochemical composition of genetic resources, as well as subsequent **applications and commercialization**.
- Sharing is subject to **mutually agreed terms**. Benefits may be **monetary or non-monetary** such as royalties and the sharing of research results.

Compliance obligations



Contracting Parties are to:

- genetic resources accessed in accordance with prior informed consent, mutually agreed terms have been established
- Cooperate in cases of alleged violation contractual provisions on dispute resolution in mutually agreed terms
- recourse under their legal systems when disputes arise from mutually agreed terms
- access to justice
- monitor the utilization of genetic resources after they leave a country including by designating effective checkpoints at any stage of the value-chain: research, development, innovation, pre-commercialization or commercialization

Tools and mechanisms to assist implementation

At the domestic level

Establishing **national focal points** (NFPs) and **competent national authorities** (CNAs) to serve as contact points for information, grant access or cooperate on issues of compliance

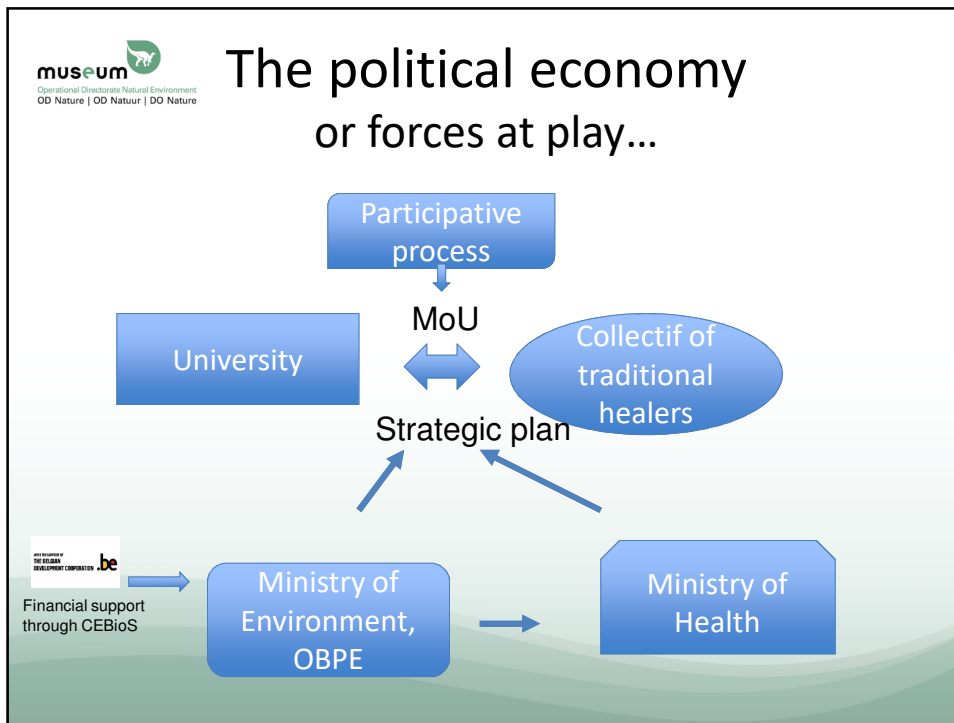
- An Access and Benefit-sharing **Clearing-House** to share information, such as domestic regulatory ABS requirements or information on NFPs and CNAs
- **Capacity-building** to support key aspects of implementation.
- **Awareness-raising**
- **Technology Transfer**
- **Targeted financial** support for capacity-building and development initiatives through the Nagoya Protocol's financial mechanism, the Global Environment Facility (GEF)

The P. of Nagoya and traditional knowledge


See also examples in Peru, India, Brazil, South Africa...

The case of BURUNDI

A perspective from the South for implementation in the South



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The case of Burundi's pioneering work

PLAN STRATEGIQUE DE RECHERCHE SUR LES RESSOURCES GENETIQUES MEDICINALES AU BURUNDI (2016-2020)




It explains the natural resources, the threats, the institutional framework, the jurisdiction, the SWOT etc...



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Aim of the series of participative workshops



REPUBLIQUE DU BURUNDI

MEMORANDUM D'ACCORD MUTUEL

ENTRE

**L'UNIVERSITÉ DU BURUNDI REPRESENTANT
LES CHERCHEURS SCIENTIFIQUES
B.P. 1550
Bujumbura, Burundi**

ET

**LE COLLECTIF DES ASSOCIATIONS DES
TRADIPRATICIENS DU BURUNDI
POUR
LA RECHERCHE SUR LES RESSOURCES
GENETIQUES MEDICINALES DANS L'ESPRIT D'APA**



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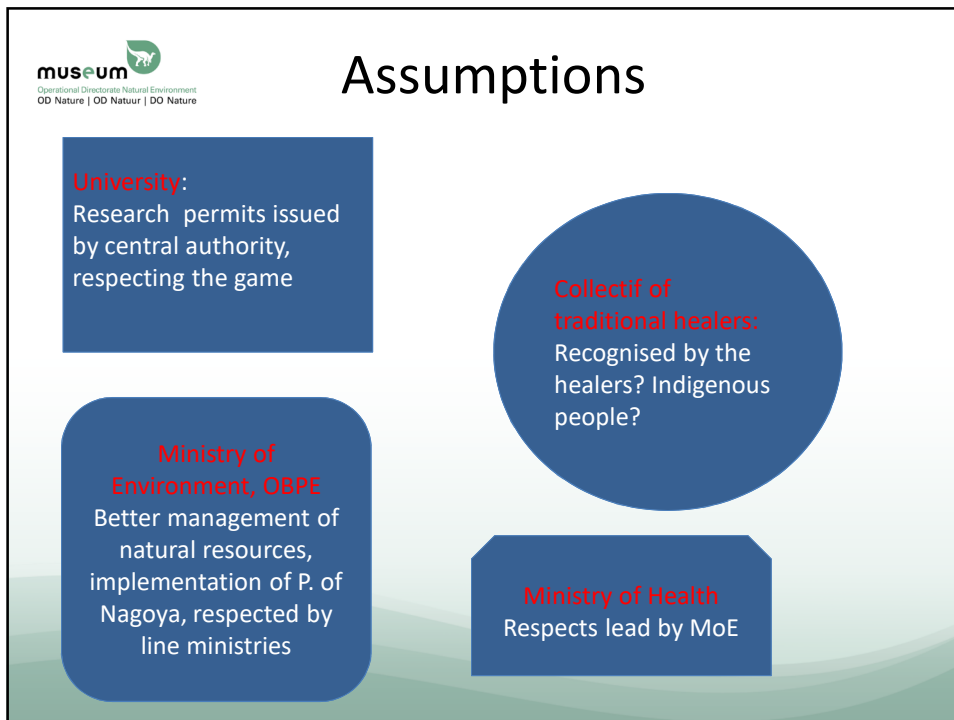
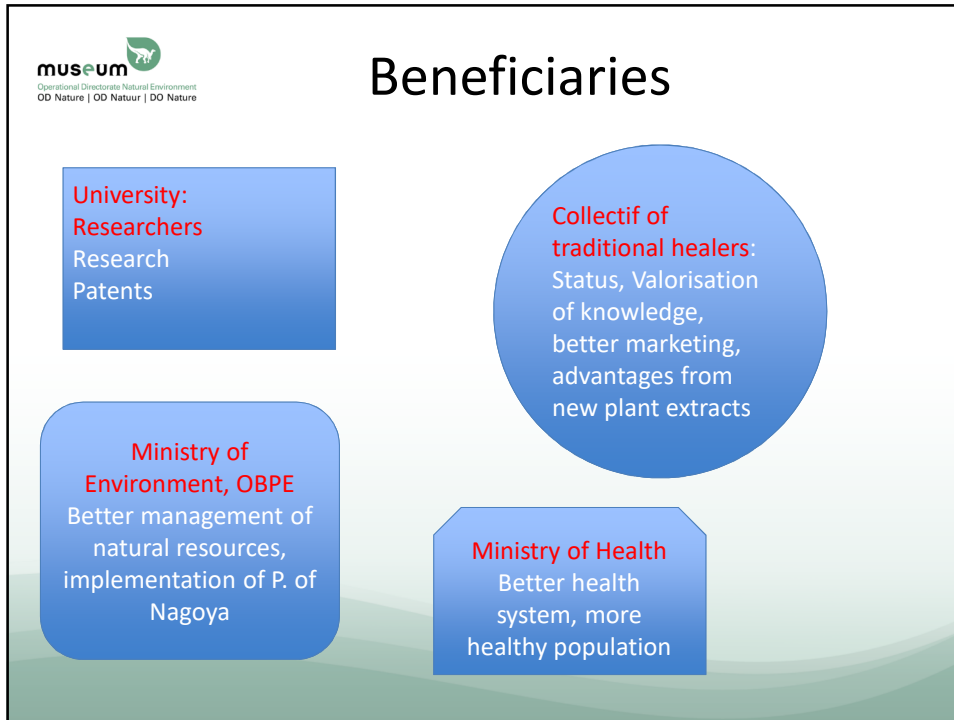
Who signs?

Lu et approuvé par:

<p><u>POUR L'UB/CH</u> Prof. Gaspard BANYANKIMBONA Recteur de l'UB</p> <p>Date _____</p>	<p><u>POUR LE CAT</u> Représentant du Collectif des associations des tradipraticiens</p> <p>Date _____</p>
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POUR APPROBATION

<p style="text-align: center; font-size: small;">LE MINISTRE DE L'EAU, DE L'ENVIRONNEMENT, DE L'AMENAGEMENT DU TERRITOIRE ET DE L'URBANISME</p> <p style="text-align: center;">AUTORITE NATIONALE COMPETENTE</p> <p style="text-align: center; font-size: small;">Pour le Protocole de Nagoya sur l'Accès aux Ressources Génétiques et Partage des Avantages en découlant</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">Fait à Bujumbura, le/...../2016</p>	<p style="text-align: center; font-size: small;">LE MINISTRE DE LA SANTE PUBLIQUE LUTTE CONTRE LE SIDA</p> <p style="text-align: center;">AUTORITE NATIONALE COMPETENTE</p> <p style="text-align: center; font-size: small;">Pour la Médecine traditionnell</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">Fait à Bujumbura, le/...../20</p>
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Asymmetry of players

- The state power as brooker, jurisdiction
- The academic world, scientific approach, higher education
- Traditional healers, lower education, traditional and magical approach

TRUST?

Does everyone understand the same?

- **State:** system in place preserving and valorising natural resources, traditional knowledge, N. P. implemented
- **University:** access to traditional knowledge for personal promotion, research, publications, patents, access to international funding, better career, additional income
- **Traditional healers:** own knowledge confirmed by research, better value chain, quality insurance of medicinal plants, better market, professional guild officially recognised, additional income
- **Population, local and indigenous communities:** alternative medicinal circuits, cheaper medicine, better healing, less disease

Possible loopholes/questions

- What if one traditional healer tries to **sell** his knowledge to one researcher?
- What if traditional healers do not **recognise** national TH collectif?
- What if bioprospecting and biopiracy happen without prior informed consent? → **control**?
- How to **monitor** original knowledge holder and carrier through time?
- Is the **legislation** adapted? What about **private property**?
- **Magical** part of traditional healing system?
- **Plants, mushrooms, animals**?
- How to control **monopolies** on academic and CAT sides?
- **Quality control** of process: peer review, external labs?
- Judicial system independent? **Corruption** in the field
- **Taxes** to OBR and OBPE?

Important paragraphs in the MoU between universities and traditional healers (and some critical issues)

- « Les deux parties mettront sur pieds un **comité scientifique** chargé **d'évaluer** les avantages issus de la recherche sur les ressources génétiques médicinales »; (**Bias to University?**)
- « Ce comité scientifique se réunit **une fois par semestre** et fait un **rapport** chaque année; Pour chaque cas de recherche, les deux parties mèneront ou commanditeront préalablement **une étude** pour déterminer les types d'avantages monétaires ou non monétaires, immédiats et futurs et préciser le **mode de leur partage** par tous les acteurs »; (**who pays the study?**)

Important paragraphs, cont.

- « Les deux parties **informeront** le public scientifique et les tradipraticiens des **avantages** issus de la recherche sur les ressources génétiques médicinales à travers des canaux appropriés ». **(risk of information manipulation by one party? Quid des désavantages?)**
- « Une fois que l'UB/CH et le CAT s'aperçoivent qu'une telle ou telle découverte émanant d'une recherche conjointe nécessite d'être protégée par un **brevet**, les inventeurs des deux parties seront appelés à signer un document juridique de **transfert des droits de propriété industrielle à la fois à l'UB/CH et au CAT**; et un **brevet collectif UB-CAT** sera déposé dans un **dossier** gardé dans le pays préalablement déterminé par les deux parties. » **(where to keep it? Possible in fragile jurisdiction ?)**

The process continues!

- After the development of the strategy and action plan, the MoU:
 - Awareness workshops for researchers and tradipraticiens
 - The development of a POLICY BRIEF (see draft)

Concluding remarks

- Nagoya protocol at **work!**
- The **loopholes** are in the details
- **Asymmetry** of negotiations is a weakness of the process, difficult to remediate that
- **Monitoring and steering** groups!!
- Burundi one of most fragile, politically unstable and poor countries in the world!
However, this process is **remarkable!**

