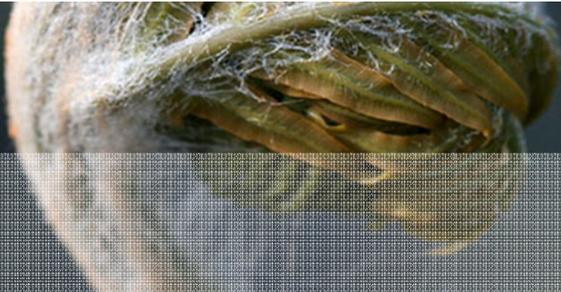




# Nagoya Protocol: a brief introduction

Workshop on the Preparations for the  
Implementation of the Nagoya Protocol in Belgium,  
Brussels, 29 May 2012

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# Overview

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# 1. Convention on Biological Diversity (1)

° Earth Summit **Rio de Janeiro, 1992**

Worldwide treaty (193 parties – all except US and Andorra) within sustainable development framework

**Three** – mutually supportive - **objectives**:

1. conservation of biodiversity
2. sustainable use of its components, and
3. access to, and fair and equitable sharing of the benefits of genetic resources (ABS)

Seen as trade off between North (1<sup>st</sup> and 2<sup>nd</sup>) and South (3<sup>rd</sup>)

Developing, often biodiversity rich, countries committed to use their sovereign rights to support the objectives of the CBD while developed countries committed to provide them with the necessary resources to do so



# 1. Convention on Biological Diversity (2)

## **Art. 15 CBD:**

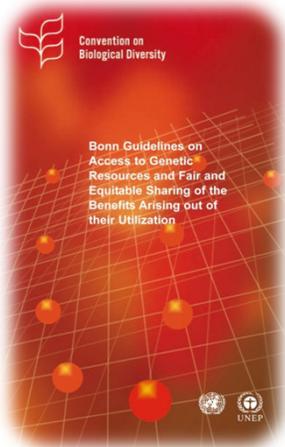
- Sovereign rights of states over their natural resources
- principles of prior informed consent (PIC) and mutually agreed terms (MAT) for access to GR
- principle of fair and equitable benefit sharing upon MAT
- Facilitate access



## **Article 8(j) CBD:**

- need for governments to respect, preserve, maintain and promote the wider application of traditional knowledge with the approval and involvement of relevant indigenous and local communities (ILCs)

## 2. Run up to ... the Nagoya Protocol



### **Bonn Guidelines (CBD COP6 - 2002):**

- Assist governments in the elaboration of ABS measures
- Help users and providers of genetic resources to implement ABS procedures effectively

### **Earth Summit Johannesburg 2002:**

political mandate to start negotiations on an international regime on (A)BS, within the framework of the CBD and bearing in mind the Bonn Guidelines

### **CBD COP10, 2010:**

Adoption of the Nagoya Protocol on ABS





### 3. Nagoya Protocol: aim

Support the **implementation of the third objective** of the CBD, and thereby contribute to its other two objectives, *inter alia* through:

- creating greater legal certainty for users/providers of GR
- helping ensure fair and equitable benefit-sharing
- more predictable conditions for access
- encouraging advancement of research on GR
- creating incentives to conservation and sustainable use of GR (e.g. through recognizing their value and through BS)
- enhancing the contribution of biodiversity to development and human well-being



## 4. Scope

- Access to GR and traditional knowledge associated with GR (TK), as well as benefits arising out of their utilization
- **GR** = all genetic material (= material of plant, animal, microbial or other origin containing functional units of heredity); except human
- **Utilization** of GR = research and development
- **ILC** = Indigenous and Local Communities
- **Why TK?** Our understanding of GR often comes from TK of ILCs which has been handed down over generations
- NP is a **general, framework agreement**:
  - Does not prevent Parties from developing/implementing other international agreements
  - NP does not apply where a more specialized ABS instrument applies

## 5. Core elements: Access and BS (1)



### PIC?

- The permission given by the competent national authority of a provider country to a user prior to accessing GR, in line with an appropriate national legal and institutional framework

### MAT?

- An agreement reached between the *providers of GR* and users on the conditions of access and use and the benefits to be shared between both parties

### Providers of GR?

- States have sovereign rights over their natural resources
- Laws within the provider country determine rights over GR at the national level, who has the authority to grant access to GR and who should be involved in the negotiation of MAT with potential users





## 5. Core elements: Access and BS (2)

### Domestic measures should:

- Provide that **Access** shall be subject to **PIC**, unless otherwise determined

Each Party requiring PIC shall provide for clear, transparent, non-arbitrary rules and procedures

- **Provide** for the fair and equitable **sharing of benefits** arising from the utilization of genetic resources, as well as subsequent applications and commercialization, with the contracting party providing the GR

- **Ensure** that **sharing of benefits** is subject to **MAT**. Benefits may be monetary (such as research funding, joint ventures, royalties) or non-monetary (such as sharing research results, education and training, technology transfer)



## 6. Compliance (1)

### Compliance with ABS legislation

Each Party should:

- Take measures to provide that GR utilized within their jurisdiction have been accessed in accordance with PIC, and that MAT has been established
- Take measures to address situations of non-compliance
- Cooperate in cases of alleged violation of another Party's requirements





## 6. Compliance (2)

### Compliance with MAT

Each Party should:

- Encourage contractual provisions on dispute resolution in MAT
- Ensure an opportunity is available to seek recourse under their legal systems
- Take measures regarding access to justice and the mutual recognition and enforcement of foreign judgments and arbitral awards

## 7. Monitoring

Each Party should:

- Designate one or more effective **checkpoint(s)** for collection and transfer of information relevant to implementation, at any stage of research, development, innovation, pre-commercialization or commercialization
- Encourage reporting requirements in MAT
- Encourage cost-effective communication tools

The Protocol establishes an **internationally recognized certificate of compliance** as *evidence* that PIC was obtained and MAT established (= PIC made available on the ABS-CH)





## 8. Supporting mechanisms

Each Party shall designate:

- a **national focal point** (NFP) to provide information and facilitate cooperation
- one or more **competent national authorities** (CNA), responsible for granting access, and responsible for advising on procedures and requirements

Furthermore an **Access and Benefit-sharing Clearing-House** (ABS-CH) is established: an international web-based information exchange mechanism (*modalities under investigation*)



## 9. Additional obligations

Each Party shall:

- Encourage development, update and use of model contractual clauses for MAT, codes of conduct, guidelines, best practices and standards
- Take measures to raise awareness

Parties shall:

- cooperate in capacity building
- cooperate in research and promote technology transfer



## 10. Special considerations

### Domestic measures should:

- Create conditions to 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** and their special role for food security





## 11. Implementation: state of affairs



### International

- 92 signatures, 5 ratifications (50 needed for entry into force)
- ICNP 2 and CBD COP11 ...

### Europe

- Politically committed to timely ratification and effective implementation (e.g. CC 20 December 2010)
- Draft COM implementation proposals foreseen 9-10/2012
- Most MS advance well on domestic impact assessment, some even further (esp. DK, HU)



### Belgium

- Signed on 20 September 2011
- Timely ratification a high priority (e.g. ICL-CIE 27/10/2011)
- Impact assessment study ongoing

