

The Nagoya Protocol on Access and Benefit-sharing

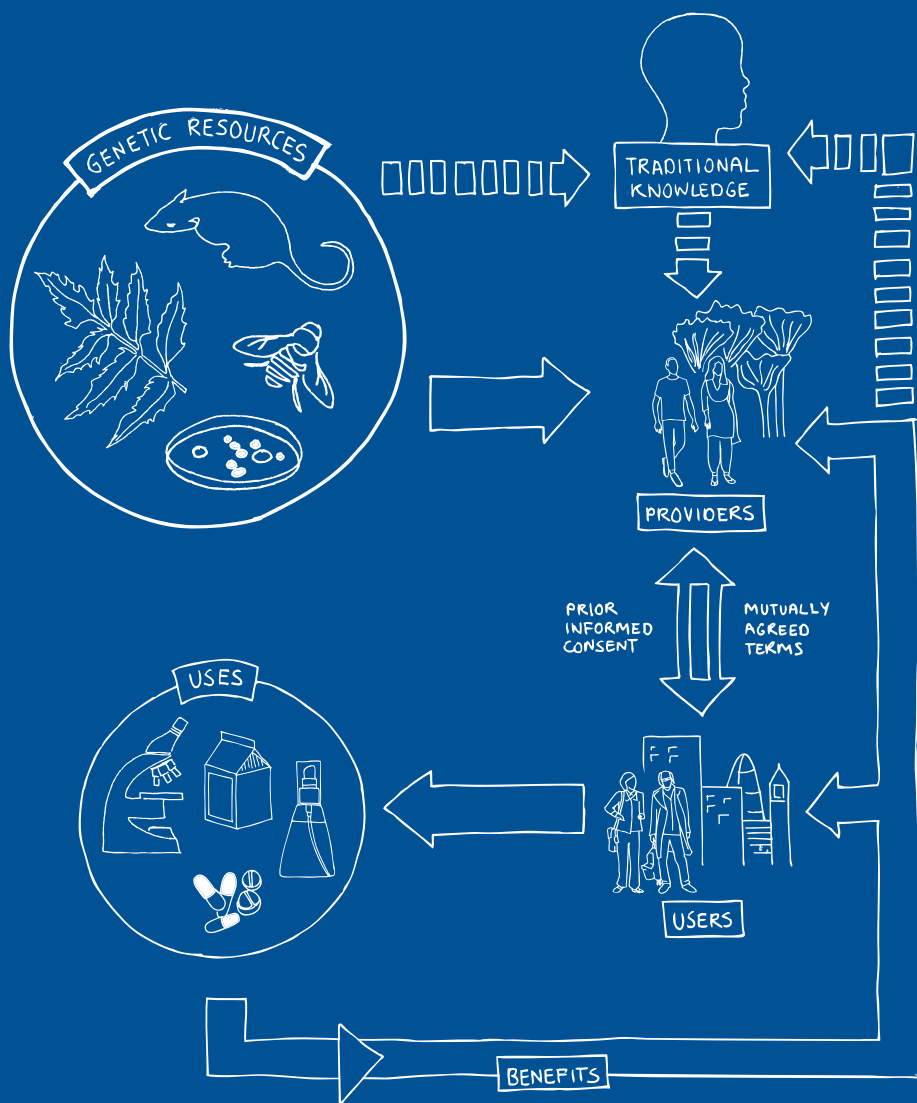
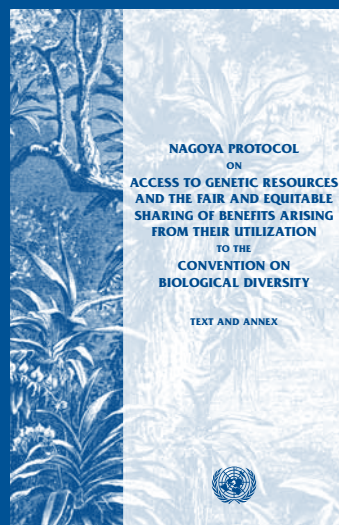




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Background

At the 2002 World Summit on Sustainable Development, governments called for action to negotiate an international regime to promote the fair and equitable sharing of benefits arising from the use of genetic resources. In 2004, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, established under the Convention on Biological Diversity (CBD), was mandated to negotiate an international regime on access and benefit-sharing. After six years of negotiations, the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* was adopted in Nagoya, Japan on 29 October 2010.



The full text of the Nagoya Protocol can be found at: www.cbd.int/abs/text/

What is the Nagoya Protocol?

The Nagoya Protocol on Access and Benefit-sharing is a new international treaty that builds on and supports the implementation of the CBD, in particular one of its three objectives, the fair and equitable sharing of benefits arising from the utilization of genetic resources. The Nagoya Protocol is a landmark agreement in the international governance of biodiversity and is relevant for a variety of commercial and non-commercial sectors involved in the use and exchange of genetic resources.

The Nagoya Protocol is based on the fundamental principles of access and benefit-sharing enshrined in the CBD. These principles are based on potential users of genetic resources obtaining the **prior informed consent** (PIC) of the country in which the genetic resource is located before accessing the resource, and negotiating and agreeing on the terms and conditions of access and use of this resource through the establishment of **mutually agreed terms** (MAT). This agreement includes the sharing of benefits arising from the use of the resource with the provider as a prerequisite for access to the genetic resource and its use. Conversely, countries, when acting as providers of genetic resources, should provide fair and non-arbitrary rules and procedures for access to their genetic resources.

Why is the Nagoya Protocol important?

The Nagoya Protocol will create greater legal certainty and transparency for both providers and users of genetic resources. It helps to ensure benefit-sharing, in particular when genetic resources leave the country providing the genetic resources, and it establishes more predictable conditions for access to genetic resources.

By enhancing legal certainty and promoting benefit-sharing, the Nagoya Protocol encourages the advancement of research on genetic resources which could lead to new discoveries for the benefit of all. The Nagoya Protocol also creates incentives to conserve and sustainably use genetic resources, and thereby enhances the contribution of biodiversity to development and human well-being.

What does the Nagoya Protocol cover?

The Nagoya Protocol covers genetic resources and traditional knowledge (TK) associated with genetic resources, as well as the benefits arising from their utilization.

What are the core elements of the Nagoya Protocol?

The Nagoya Protocol sets out core obligations for its contracting Parties to take measures in relation to access to genetic resources, benefit-sharing and compliance.

Access obligations

Domestic-level access measures should:

- Create legal certainty, clarity and transparency
- Provide fair and non-arbitrary rules and procedures
- Establish clear rules and procedures for prior informed consent and mutually agreed terms
- Provide for issuance of a permit or its equivalent when access is granted
- 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

Benefit-sharing obligations

Domestic-level benefit-sharing measures should 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 genetic resources. Utilization includes research and development on the genetic and/or biochemical composition of genetic resources. Sharing

of benefits is subject to mutually agreed terms. Benefits may be monetary (such as royalties) or non-monetary (such as sharing research results or technology transfer).

The Nagoya Protocol also proposes the creation of a global multilateral benefit-sharing mechanism in order to address benefit-sharing with respect to genetic resources occurring in transboundary areas or situations where prior informed consent cannot be obtained. The nature of this mechanism is to be defined. Benefits from the mechanism are to be used to support the conservation and sustainable use of biodiversity globally.

Compliance obligations

Specific obligations to support compliance with the domestic legislation or regulatory requirements of the contracting party providing genetic resources, and contractual obligations reflected in mutually agreed terms, are a significant innovation of the Nagoya Protocol. Parties to the Nagoya Protocol should:

- Take measures to provide that genetic resources utilized within their jurisdiction have been accessed in accordance with prior informed consent, and that mutually agreed terms have been established
- Cooperate in cases of alleged violation of another Party's requirements
- Encourage contractual provisions on dispute resolution in mutually agreed terms
- Ensure an opportunity is available to seek recourse under their legal systems when disputes arise from mutually agreed terms
- Take measures regarding access to justice
- Take measures to monitor the utilization of genetic resources including by designating effective checkpoints at any stage of the value-chain: research, development, innovation, pre-commercialization or commercialization

The Nagoya Protocol also provides for the development, update and use of model contractual clauses for mutually agreed terms, as well as codes of conduct, guidelines and best practices and/or standards for different sectors.

For an overview of such instruments already in use, please go to www.cbd.int/abs/instruments.

How does the Nagoya Protocol address traditional knowledge associated with genetic resources and genetic resources held by indigenous and local communities?

The Nagoya Protocol addresses traditional knowledge associated with genetic resources with provisions on access, benefit-sharing and compliance. It also addresses genetic resources where indigenous and local communities have the established right to grant access to them. Parties to the Nagoya Protocol are to take measures to ensure these communities' prior informed consent, and fair and equitable benefit-sharing, keeping in mind customary laws and procedures as well as customary use and exchange of genetic resources.

By setting-out clear provisions on access to traditional knowledge associated with genetic resources, the Nagoya Protocol will assist in strengthening the ability of indigenous and local communities to benefit from the use of their knowledge, innovations and practices. The Nagoya Protocol will also provide incentives for the promotion and protection of traditional knowledge by encouraging the development of community protocols, minimum requirements for mutually agreed terms and model contractual clauses related to access and benefit-sharing of traditional knowledge associated with genetic resources.

Supporting mechanisms to assist with implementation

The Nagoya Protocol's success relies on its effective implementation at the domestic level. Supporting mechanisms provided by the Nagoya Protocol will assist its contracting Parties with implementation, these include:

- The establishment of national focal points and competent national authorities to serve as contact points for obtaining information, granting access and cooperation between Parties.
- An Access and Benefit-sharing Clearing-House, which is a web based platform to share information to support the implementation of the Nagoya Protocol. Each Party to the Nagoya Protocol shall provide, for example, information on domestic ABS requirements, on national focal points and competent national authorities, as well as make available permits or their equivalent issued at the time of access.

- Capacity-building to support key aspects of implementation. Based on a country's self assessment of national needs and priorities this can include capacity to:
 - Develop domestic ABS legislation to implement the Nagoya Protocol
 - Negotiate mutually agreed terms
 - Develop in-country research capacity
- Awareness-raising through promotion of the Nagoya Protocol and an exchange of experiences and information, with and among key stakeholders, including indigenous and local communities, the research community, and others.
- Technology transfer, primarily through collaboration and cooperation in technical and scientific research and development programmes, including biotechnological research.
- Targeted financial support for capacity-building and development initiatives through the Nagoya Protocol's financial mechanism, the Global Environment Facility (GEF).

When will the Nagoya Protocol enter into force?

The Nagoya Protocol is open for signature at the United Nations Headquarters in New York from 2 February 2011 until 1 February 2012. It will enter into force 90 days after the date of deposit of the 50th instrument of ratification by a Party to the CBD.



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