

NAGOYA PROTOCOL ON

ACCESS TO GENETIC RESOURCES
AND THE FAIR AND EQUITABLE
SHARING OF BENEFITS ARISING
FROM THEIR UTILIZATION

TO THE

CONVENTION ON BIOLOGICAL DIVERSITY

TEXT AND ANNEX

Arrangement of Presentation

- Background
- Core Provisions
- Entry into force

Background

- 3rd Objective of CBD: fair and equitable sharing of benefits arising from the use of genetic resources
- Art- 15, CBD provides a framework for ABS at national and regional levels by stipulating:
 - Authority to determine access is subject to national legislation
 - Access for environmentally sound uses should be facilitated
 - Access to be provided by country of origin
 - Mutually agreed terms
 - PIC
 - Participation of research
 - Measures aimed at fair and equitable BS must be taken by contracting parties

Background (2)

- WSSD, 2002- Call for negotiation of a legally binding regime on ABS.
- WG-ABS- 6 years of negotiations
- Adoption-Nagoya, October, 2010.

Core Elements

- Definitions
- Access
- Fair and equitable sharing of benefits
- Compliance with domestic ABS legislation or regulatory requirements
- Compliance with mutually agreed terms
- Monitoring
- ILCs and Traditional Knowledge

Definitions (art. 2)

What is access?

Not defined in CBD= legal uncertainty

Utilization of genetic resources?

Defined in Nagoya= legal certainty

(c) "Utilization of genetic resources" means 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;

Clarity on what is regulated is regulated: access to GRs for their utilization -see art. 6

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Access (art. 6)

- Sovereign rights over natural resources
- •Access to genetic resources for their utilization is subject to the prior informed consent (PIC) of the provider country
- •Party requiring PIC has obligation to take legislative, administrative or policy measures, as appropriate, to provide:
 - Legal certainty, clarity and transparency.
 - •Fair and non-arbitrary rules.

Fair & equitable sharing of Benefits (art. 5)

Obligation to take measures to ensure:

- •Benefits arising from the utilization of genetic resources, as well as subsequent applications and commercialization, to be shared with provider country.
- •Benefits to be shared are subject to mutually agreed terms (MAT).
- Benefits may be monetary and non-monetary

Compliance (art. 15)

Compliance with domestic ABS legislation or regulatory requirements

- Obligation to take measures:
- •To provide that genetic resources utilized within a Party's jurisdiction have been accessed in accordance with PIC and that MAT have been established
- To address situations of non-compliance
- Obligation to cooperate in cases of alleged violation of domestic ABS legislation or regulatory requirements

Compliance (art. 18)

Compliance with mutually agreed termsObligation to:

- •Encourage users and providers to include provisions in MATs to cover dispute resolution
- •Ensure that opportunity to seek recourse is available under each Party's legal systems
- •To take effective measures regarding access to justice; and the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards

Monitoring Genetic resources (art. 17)

Obligation to take measures to monitor the utilization of genetic resources:

- Designation of checkpoints for collection of information at any stage of R & D, innovation, precommercialization or commercialization
- Encouraging reporting requirements in MAT
- Encouraging cost-effective communication tools
- Internationally recognized certificate of compliance as evidence that PIC was obtained and MAT established

ILCs and Traditional Knowledge (various)

- Access of GRs and associated TK: Obligation to take measures to ensure that PIC of ILCs is obtained and MAT established
- •Fair & Equitable Benefit Sharing: obligation to take measures for sharing benefits with ILCs with respect to their GRs and associated TK
- Compliance with national law on TK
- •Obligation to take into consideration customary laws, community protocols and procedures

Entry into force

Entry into force 90 days after the date of deposit of the 50th instrument of ratification

- 92 countries have signed the Protocols so far.....
- 14 ratifications so far....
- -Albania, Ethiopia, Fiji, Gabon, India, Jordan, Laos, Mauritius, Mexico, Micronesia, Panama, Rwanda, Seychelles, South Africa