

Introduction to the Nagoya protocol

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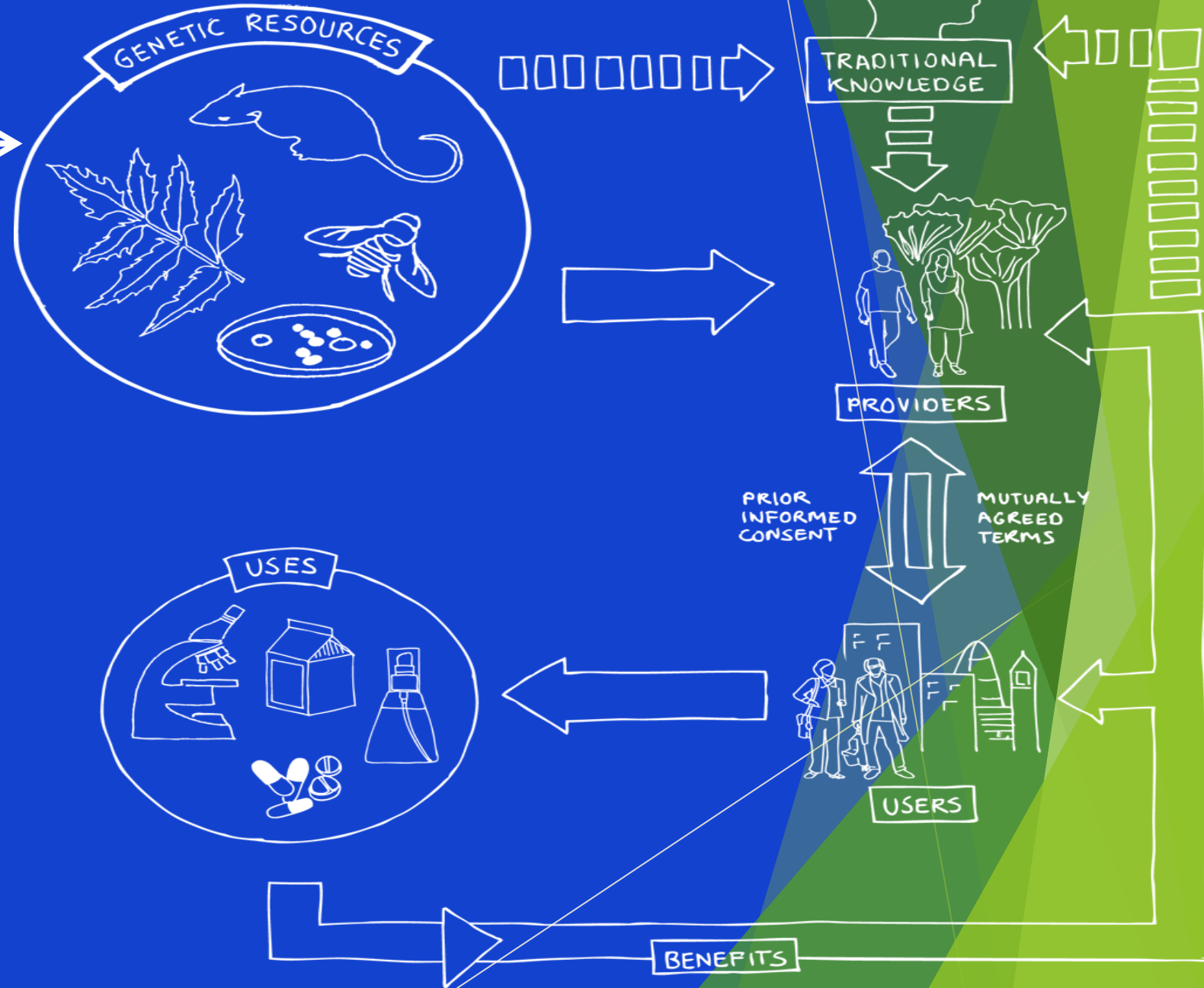
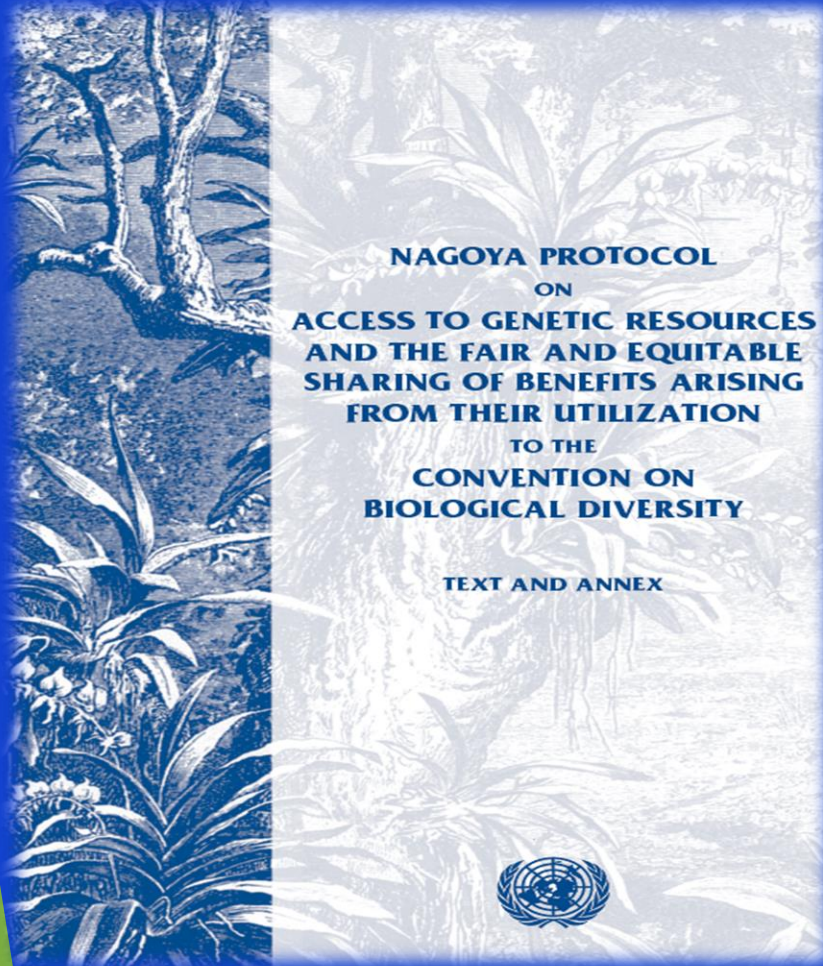
What is the Nagoya Protocol?

- ▶ A new international treaty on access and benefit Sharing to support the implementation of the third objective of the Convention on Biological Diversity: **the fair and equitable sharing of benefits arising from the utilization of genetic resources**
- ▶ A landmark agreement in the international governance of biodiversity relevant for commercial and non-commercial sectors dealing with genetic resources
- ▶ Based on the fundamental principles of **prior informed consent (PIC)** and **mutually agreed terms (MAT)** enshrined in the Convention on Biological Diversity



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Nagoya Protocol on ABS



What problems or issues is it trying to address?

- ▶ Aiming to create greater **legal certainty** for users and providers of genetic resources
- ▶ Aiming to ensure **benefit-sharing**, in particular when genetic resources leave the country providing the resource **for R&D**
- ▶ Aiming to establish more predictable conditions for **access/permission**



What does it cover?

- ▶ **Genetic resources (plant, animal, marine)** and **their biochemical derivatives**, and
- ▶ **Traditional knowledge** associated with genetic resources, as well as benefits arising out of their utilization



What are the core elements of the Nagoya Protocol?

- ▶ 1. Access
- ▶ 2. Benefit-sharing
- ▶ 3. Compliance

1. Access:

National measures should:

- ▶ 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 **for Research and Development (R&D)** for academic or commercial purposes
- ▶ Create conditions to **promote** and **encourage research** contributing to biodiversity conservation and sustainable use
- ▶ Consider the **importance** of genetic resources for **food** and **agriculture** and their special role for food security

2. Benefit sharing: National 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
- ▶ Ensure that 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)

3. Compliance:

Parties to the protocol must:

- ▶ 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
 - ▶ Take measures to address situations of non-compliance
 - ▶ Ensure an opportunity is available to seek **recourse** under their legal systems
- ▶ Note: The Protocol establishes an **internationally recognized certificate of compliance** as evidence that prior informed consent was obtained and mutually agreed terms established

Why is the Nagoya protocol important for Vanuatu?

- ▶ Should support Vanuatu's National Biodiversity Conservation Strategy (1999) by:
 - ▶ Improving knowledge of biodiversity
 - ▶ Increase local awareness of importance and value of biodiversity
 - ▶ Develop appropriate policy, planning and legal mechanisms for managing biodiversity
 - ▶ Protect the intellectual property rights of ni-Vanuatu to their knowledge and uses of biodiversity
- ▶ Should assist in stopping cases of biopiracy (and fear of this)
- ▶ Should give the Vanuatu people more control over **who** uses their genetic resources and traditional knowledge and **how** and **on what terms**

How does the Nagoya Protocol relate to existing legislation?

- ▶ Convention on Biodiversity (supports)
- ▶ Environment Management and Conservation Act 2006 (overlaps/supports)
- ▶ Intellectual Property legislation and obligations under TRIPS (Agreement on Trade Related Aspects of Intellectual Property) (some tensions/ supports)
- ▶ Traditional Knowledge Bill (draft)
- ▶ Vanuatu cultural centre research permit scheme (overlaps/ supports)
- ▶ National Scientific Research Council Bill?
- ▶ International Treaty on Plant Genetic Resources for Food and Agriculture (not ratified) (supports/ limited PIC and MAT)
- ▶ MSG Treaty to protect Traditional Knowledge (not ratified)(pretty useless)

What are the different types of uses of genetic resources and traditional knowledge?

- ▶ **Research for academic and humanitarian purposes**; eg increased knowledge of biodiversity (Santo expedition 2006); develop crops for better food security especially in the context of climate change; discover more information about our environment and biodiversity management
- ▶ **Commercial purposes**, eg crop protection, drug development, production of specialized chemicals, or in industrial processing or to make cosmetics, eg aloe vera company
- ▶ The line between the two is not clear: Some genetic resources initially accessed for research purposes can end up being used for commercial purposes