

THE ABS
CAPACITY
DEVELOPMENT
INITIATIVE



L'INITIATIVE DE
RENFORCEMENT
DES CAPACITES
POUR L'APA

The Development of National ABS frameworks

Key Issues for Consideration

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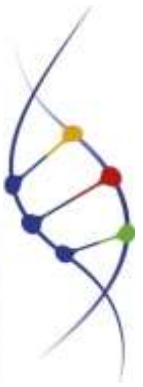


Outline



- **Background:**
 - National assessment/gap analysis
 - Existing measures
 - Stakeholder mapping
 - National strategy and policy – clear objective
 - Regulatory approach
- **ABS legislative/regulatory framework**
 - Institutional arrangements
 - Access
 - Benefit-sharing
 - Compliance

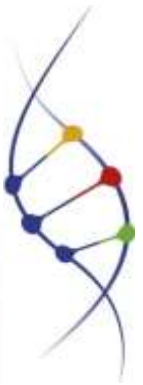
National assessment



National assessment/Gap analysis

- Review of existing measures dealing with ABS or relevant to ABS
 - E.g. Existing permitting systems for access to biological resources for research purposes
- Mapping of ILCs and stakeholders
 - ILCs
 - Botanical gardens, *ex situ* collections
 - Universities, research institutions
 - Private sector (natural products, exporters)

National strategy/policy

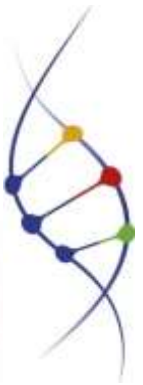


Issues for consideration

- National context
 - Demand for genetic resources
 - What type of genetic resources (forest, marine)
 - For what use (e.g. cosmetics, pharmaceuticals)
 - Potential (e.g. marine bioprospecting)
 - Research and development capacity at national level – desire to build national capacity/enter into partnerships
- Stakeholder consultation
- Market oriented approach vs protective approach
 - Desire to attract foreign investors (e.g. Australia)
 - Desire to protect from biopiracy (e.g. Philippines)

➤ **Desired Outcome: Clear policy objective**

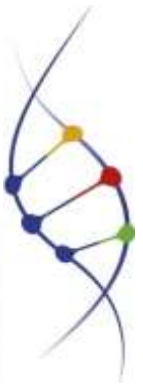
Legal approach



What instrument can best achieve objective?

- **Considerations**
 - Overall policy guidance
 - Governmental system (unitary, federal)
 - Pre-existing laws, policies, administrative measures on ABS and related fields
 - Amendment of existing laws and administrative measures (e.g. ABS, IPR, protected areas, forest, research)
 - Design and implementation of comprehensive ABS regime
- **Examples of existing options:**
 - ABS law (e.g. Ethiopia)
 - ABS measures in environmental law (e.g. Dominica)
 - ABS law and regulations (e.g. Uganda, South-Africa, India)

Institutional Arrangements

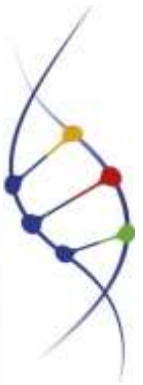


Key provisions of the Nagoya Protocol

Obligation to establish national focal points responsible for:

- **Liaison** with the Secretariat
- **Providing information** on:
 - Applicable procedures for obtaining prior informed consent and establishing mutually agreed terms, including from ILCs.
 - Competent national authorities, relevant ILCs and relevant stakeholders

Institutional Arrangements



Key provisions of the Nagoya Protocol

Obligation to designate one or more national competent authorities responsible for:

- **Granting access** or issuing evidence that access requirements have been met
- **Advising on applicable procedures** for obtaining PIC and entering into MAT

Obligation to provide contact information on NFP and CNAs to the Secretariat:

- No later than the **entry into force of the Protocol**
- When **more than one CNA**, indicate the the type of genetic resource is responsible for and information on responsibilities
- Notify the Secretariat of any **changes**

Institutional Arrangements



Issues for consideration

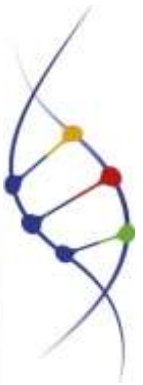
Centralised vs decentralised approach

- What is the level of expertise on ABS/ What authorities are currently dealing with access to genetic resources?
 - One CNA: if limited capacity, more likely to centralize management
 - Several CNA: If technical expertise in different institutions (e.g. research, protected areas, marine) may consider decentralised approach - will require efficient coordination mechanisms

Variety of options in light of national circumstances:

- One or several CNAs
- Technical body
 - For coordination and/or technical guidance
 - Composition may vary (e.g. inter-ministerial, multistakeholder)

Access

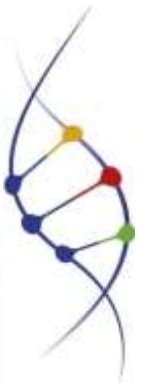


Key provisions of the Nagoya Protocol

Obligation to establish ABS measures that provide for:
(Art. 6 NP)

- Legal certainty, clarity and transparency
- **Fair and non-arbitrary** rules and procedures on access
- **Information on how to apply for PIC**
- A clear **written decision** by a CNA in a cost-effective and timely manner
- The issuance at the time of access of a **permit or equivalent** and notification of ABS Clearing-House accordingly
- Clear rules and procedures for MAT

Access

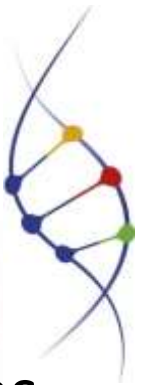


Key provisions of the Nagoya Protocol

Obligation to take measures in accordance with domestic law:

- **Access to traditional knowledge** associated with genetic resources
 - Ensure PIC or approval and involvement of ILCs and establishment of MAT
- Access to genetic resources **where ILCs have the established rights** to grant the access
 - Set out criteria and/or processes for obtaining PIC or approval and involvement
 - Ensure that PIC or approval and involvement of ILCs is obtained

Access – special considerations

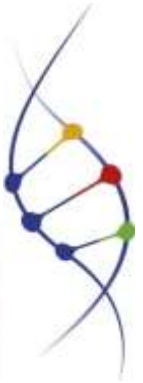


Key provisions of the Nagoya Protocol

When developing and implementing the ABS measures Parties are to:

- Create conditions to **promote research** for the conservation and sustainable use of biodiversity
 - Simplified measures on access for non-commercial research
- **Pay due regard to cases of health emergency** as determined nationally or internationally
- Consider the **importance of genetic resources for food and agriculture**

Access



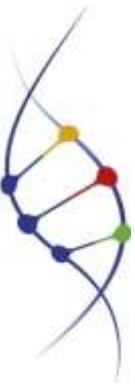
Objective:

- **streamlined process for certainty, clarity and transparency**

Issues for consideration

- **Scope of ABS measure**
 - Utilization of GR: research and development on the genetic and/or biochemical composition of GR (art. 2 NP)
- **Ownership of genetic resources** (e.g. public or private)
- **Procedure for involvement of ILCs** when access to TK or to GR over which they have rights and in negotiation of MAT

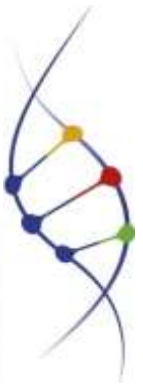
Access



Issues for consideration - options

- Authority to grant access/permit: CNA
- Centralised vs decentralised access/permitting system
 - related to institutional arrangements
 - Access/permit granted by one CNA or through several (e.g. protected areas, forest, marine, research)
 - pros: benefit from existing expertise, institutions
 - cons: confusion, increased costs, inconsistencies in implementation, challenge for monitoring and compliance
- PIC of provider may be required
- Requirement to collaborate with national institution

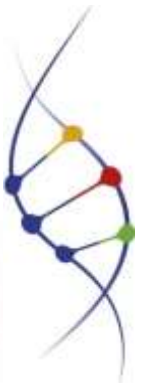
Access



Issues for consideration - options

- **Access for non-commercial vs commercial research**
 - Simplified access procedure for non-commercial research
 - Two step process (MAT for research/discovery phase, MAT for commercialisation)
 - MAT at time of access covering research and commercialisation
- **MAT**
 - Requirements for dispute settlement, benefit-sharing, third party use, change of intent
 - To be negotiated with provider or CNA, with CNA oversight?
- **Relationship with ITPGRFA**
 - If Party to International Treaty on Plant Genetic Resources for Food and Agriculture - SMTA automatically applies

Benefit-sharing



Key provisions of the Nagoya Protocol

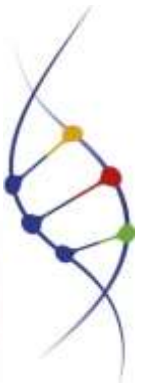
Obligation to take measures:

- For benefits arising from the **utilization of genetic resources as well as subsequent applications and commercialization** to be shared with the provider country. Benefits to be shared on **mutually agreed terms (MAT)**

Monetary and/or non-monetary

- Access fees, milestone payments, licence fees, royalties, transfer of technology, sharing results of research, effective participation in research

Benefit-sharing



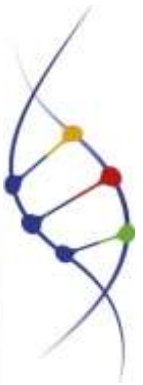
Key provisions of the Nagoya Protocol

Fair and equitable benefit-sharing:

Obligation to take measures for the sharing of benefits with indigenous and local communities:

- With respect to **genetic resources held by ILCs** upon MAT, in accordance with domestic law.
- With respect to **TK associated with genetic resources** held by ILCs upon MAT.

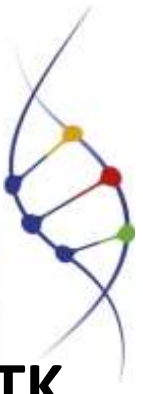
Benefit-sharing



Issues for consideration

- **Negotiation of MAT** to include benefit-sharing
 - Role of CNA in negotiation of MAT (e.g. party/endorsement)
- **Type of benefits**
 - NP annex
 - Importance of non-monetary benefits
- **Timing** (short, medium, long term)
- **Mechanisms for benefit-sharing** (e.g. Trust Funds)
- **Beneficiaries** (provider, State)
- **Who is responsible for benefit-sharing?**
 - Final user, intermediary?

Compliance



Key provisions of the Nagoya Protocol

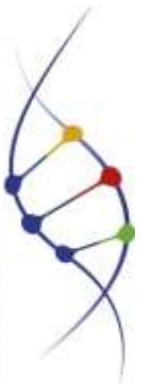
Similar provisions for **access to genetic resources** and for **TK associated with genetic resources**

Obligation to take measures:

- To provide that the GR or TK utilized within a Party's jurisdiction have been accessed in accordance with PIC and MAT has been established as required by the domestic ABS legislation
- To address situations of non-compliance

Obligation to cooperate in cases of alleged violation of domestic ABS legislation

Compliance with MAT

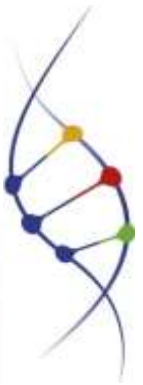


Key provisions of the Nagoya Protocol

Obligation to:

- Encourage users and providers to **include provisions in MAT to cover dispute resolution**
 - Including the jurisdiction; the applicable law; and/or options for alternative dispute resolution
- Ensure that **opportunity to seek recourse** is available under each Party's legal systems
- Take effective measures regarding:
 - **Access to justice**
 - The utilization of mechanisms of **mutual recognition and enforcement of foreign judgments and arbitral awards**

Monitoring

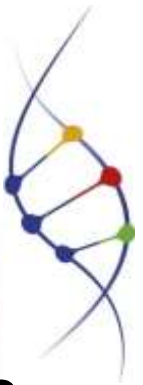


Key provisions of the Nagoya Protocol

Obligation to take measures to monitor utilization:

- **Designate of one or more checkpoints** that are effective and relevant to the utilization of genetic resources or to the collection of relevant information.
 - Require **users to provide the information** required at a designated checkpoint
 - Take measures to **address non-compliance** with this requirement
 - **Provide this information** to national authorities, provider Party and to the ABS Clearing-House
- Encourage **reporting requirements in MAT**
- Encourage the use of cost-effective communication tools

Monitoring

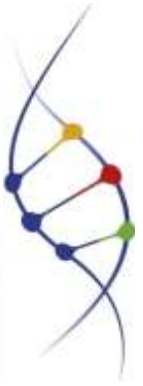


Key provisions of the Nagoya Protocol

Obligation to issue a permit or equivalent at the time of access as evidence that PIC has been obtained and MAT has been established

- Parties are to **make the permits available to the ABS Clearing-House** and thus becoming an **internationally recognized certificate of compliance**
- The internationally recognized certificate of compliance is to contain **certain minimum information**, when is not confidential.

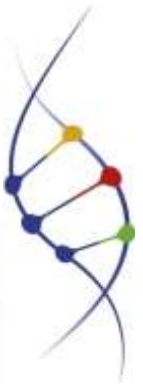
Compliance and Monitoring



Issues for consideration

- **Reporting requirements in MAT**
 - Regular intervals, language of reporting
- **Check points – designate at least one**
 - Publications, funding agencies, IPR offices
- **Permits awarded at time of access – notified to ABS CH for internationally recognised certificate of compliance.**

Training opportunities



- IDLO training course
 - 5 day training
 - Based on national experience in a number of countries
 - Presents different approaches to the implementation of ABS (learning by doing)
 - Tools:
 - IDLO toolkit (being finalised)
 - Training material

Thank you for your attention!

