



Key features of the Nagoya Protocol on Access Benefit Sharing (ABS)

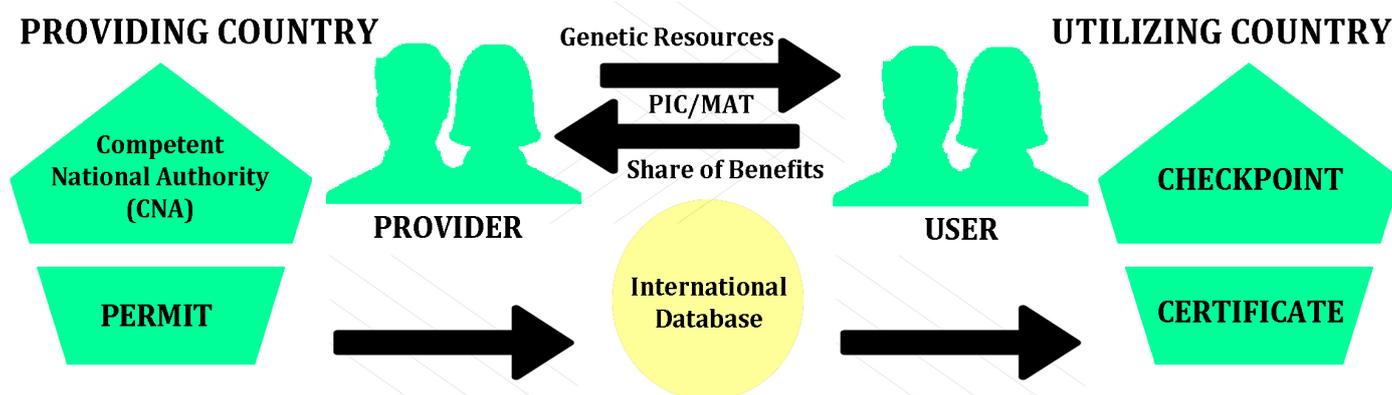


Diagram shows the compliance provisions of the Nagoya Protocol on ABS (based on the same diagram posted in www.cbd.int/abs/about/)

What is the Nagoya Protocol and its objectives?

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (CBD) is a supplementary agreement to the Convention on Biological Diversity. It provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

The Nagoya Protocol was adopted on 29 October 2010 in Nagoya, Japan and entered into force on 12 October 2014, 90 days after the deposit of the fiftieth instrument of ratification. Its objective is the fair and equitable sharing of benefits arising from the utilization of genetic resources, thereby contributing to the conservation and sustainable use of biodiversity.

Why is the Nagoya Protocol important?

The Nagoya Protocol will create greater legal certainty and transparency for both providers and users of genetic resources by: Establishing more predictable conditions for access to genetic resources and helping to ensure benefit-sharing when genetic resources leave the country providing the genetic resources. By helping to ensure benefit-sharing, the Nagoya Protocol creates incentives to conserve and sustainably use genetic resources, and therefore enhances the contribution of biodiversity to development and human well-being.

What does the Nagoya Protocol cover?

The Nagoya Protocol applies to genetic resources that are covered by the CBD, and to the benefits arising from their utilization. The Nagoya Protocol also covers traditional knowledge (TK) associated with genetic resources.

2 main goals of benefit sharing under CBD

- promote greater equity
- create incentives for conservation

2 policy priorities Nagoya Protocol recommend to parties

- promote the conservation and sustainable use of biological diversity
- promote technology transfer, collaboration, & cooperation

2 core obligations related to the design of measures to support benefit-sharing

- make clear scope of activities that trigger benefit-sharing
- require written mutually agreed terms (MAT)

The **Philippines** acceded to the Nagoya Protocol on 29th September 2015 and entered into force on 28th December 2015 is one of the 18 mega-biodiverse countries of the world. It contains two-thirds of the earth's biodiversity, between 70 to 80% of the world's plant and animal species and maintains 5% of the world's flora.

The accession has been pushed by the Department of Environment and Natural Resources (DENR) to address the issue of biopiracy, the commercial exploitation of biological or genetic material without compensating indigenous people or communities from which the material or knowledge was obtained.

What are the core obligations of the Nagoya Protocol with respect to genetic resources?

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 are to 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 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; and consider the importance of genetic resources for food and agriculture for food security.

***Benefit-sharing obligations.** Domestic-level benefit-sharing measures are to provide for the fair and equitable sharing of benefits arising from the utilization of genetic resources with the contracting party providing genetic resources. Utilization includes research and development on the genetic or biochemical composition of genetic resources, as well as subsequent applications and commercialization. Sharing is subject to mutually agreed terms. Benefits may be monetary or non-monetary such as royalties and the sharing of research results.

***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. Contracting Parties are to: take measures providing that genetic resources utilized within their jurisdiction have been accessed in accordance with prior informed consent, and that mutually agreed terms have been established, as required by another contracting party; cooperate in cases of alleged violation of another contracting 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 after they leave a country including by designating effective checkpoints at any stage of the value-chain: research, development, innovation, pre-commercialization or commercialization.

What are the tools and mechanisms to assist the implementation?

The Nagoya Protocol's success will require effective implementation at the domestic level. A range of tools and mechanisms provided by the Nagoya Protocol will assist contracting parties including:

1. Establishing national focal points (NFPs) and competent national authorities (CNAs) to serve as contact points for information, grant access or cooperate on issues of compliance
2. An Access and Benefit-sharing Clearing-House to share information, such as domestic regulatory ABS requirements or information on NFPs and CNAs
3. 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 (MAT) and develop in-country research capability and institutions
4. Awareness-raising
5. Technology Transfer
6. Targeted financial support for capacity-building and development initiatives through the Nagoya Protocol's financial mechanism, the Global Environment Facility (GEF)

The Nagoya Protocol established a platform for exchanging information on ABS, called the ABS Clearing-House.

Countries provide the ABS Clearing-House with information on legislative, administrative and policy measures; the national focal point and competent national authorities; internationally recognized permits; and ABS checkpoints. Additionally, the ABS Clearing-House contains reference material, including model contractual clauses, community protocols, capacity-building resources and other publications.

How do countries implement the Nagoya Protocol?

Countries implement the Nagoya Protocol through laws and regulations, which establish the ABS requirements and procedures that persons, companies and other organizations will need to follow to access and utilize genetic resources in their jurisdiction. National implementation is generally a complex process that may take months or years for countries to adopt and operationalize their national rules on ABS. Many countries, including China, Mexico, Morocco, Namibia and Vietnam, are still in the process of elaborating rules on how biodiversity is accessed for research and development and how resulting benefits must be shared.

For the Philippines, Executive Order (EO) 247 was issued on May 18, 1995 by President Fidel Ramos to implement the CBD's provisions. The EO primarily aims to regulate biological and genetic resources prospecting to ensure that these resources are protected, conserved, developed and put to the sustainable use and benefit of the national interest. The DENR subsequently issued Department Administrative Order No. 96-20 that details how the DENR and other concerned institutions will administer and operationalize regulation, research, collection and use of the country's bio-genetic resources.