



THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING

WHAT IS THE NAGOYA PROTOCOL AND WHAT IS ITS OBJECTIVE?

The Nagoya Protocol on Access and Benefit-Sharing is a new international treaty adopted under the auspices of the Convention on Biological Diversity (CBD) in Nagoya, Japan on 29 October 2010. 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 and implementing the three objectives of the CBD. The Nagoya Protocol will enter into force when 50 countries ratify it.

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
- ▶ Helping to ensure benefit-sharing when genetic resources leave the contracting Party 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 that are covered by the CBD and the benefits arising from its utilization.

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
- ▶ 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, as well as subsequent applications and



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commercialization, with the contracting Party providing genetic resources. Utilization includes research and development on the genetic or biochemical composition of genetic resources. 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 including by designating effective checkpoints at any stage of the value-chain: research, development, innovation, pre-commercialization or commercialization

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. Contracting Parties are to take measures to ensure these communities' prior informed consent, and fair and equitable benefit-sharing, keeping in mind community laws and procedures as well as customary use and exchange.

TOOLS AND MECHANISMS TO ASSIST 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:

- ▶ 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
- ▶ An Access and Benefit-sharing Clearing-House to share information, such as domestic regulatory ABS requirements or information on NFPs and CNAs
- ▶ 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 MAT
 - Develop in-country research capability and institutions
- ▶ Awareness-raising
- ▶ Technology Transfer
- ▶ Targeted financial support for capacity-building and development initiatives through the Nagoya Protocol's financial mechanism, the Global Environment Facility (GEF)