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# **The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization**

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# Background



## Fundamental principles (CBD Article 15):

- Sovereign rights over natural /genetic resources
- Prior informed consent (PIC)
- Mutually agreed terms (MATs)

# Background



## Why an International Regime?

- CBD ABS provisions largely unimplemented
- Cases of international misappropriation
  - Genetic resources
  - Associated traditional knowledge
- Need for legal certainty and transparency
  - Ensure benefit-sharing (where genetic resources have left provider country)
  - Need for clear access procedures

# Nagoya Protocol on ABS



## Overview

- Objective
- Core elements
- Scope
- Relationship with other instruments
- Tools / Mechanisms to assist implementation

# Core Elements



- Access
- Fair and equitable sharing of benefits
- Compliance
- Indigenous and local communities (GRs and TK)



# Core Elements



## Fair and Equitable Benefit-sharing

### Obligation to take measures:

- To share benefits on mutually agreed terms with provider country for:
  - Utilization of genetic resources (R&D on genetic or biochemical composition)
  - Subsequent applications
  - Commercialization

### Benefits (monetary and non-monetary)

- Access fees, milestone payments, licence fees, royalties, transfer of technology, sharing results of research, effective participation in research (see Annex)
- Direct benefits to conservation

# Core Elements



## Tools to encourage compliance:

- Model contractual clauses for MATs (Article 15)
- Codes of conduct, guidelines and best practices and/or standards (Article 16)



# Core Elements



## Indigenous and local communities

### Reference to UNDRIP

#### Access to genetic resources:

- Measures required to ensure PIC where ILCs have an established right to grant access to genetic resources (Article 5 para.1bis)
- Criteria or processes to be set out to obtain PIC of ILCs (Article 5 para.2 (e))

#### Access to traditional knowledge associated with genetic resources (ATK):

- Measures required to ensure access with PIC and MAT (Article 5bis)

# Relationship with other instruments and processes



- Existing rights and obligations: Not affected by Protocol
- OK to develop and implement other specialised ABS agreements
- Mutually supportiveness with other relevant international instruments; reference to useful and relevant ongoing work or practices
- Primacy of specialized international ABS instruments

(Article 3*bis*)



# Thank you for your attention!

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