Frequently Asked Questions (FAQ's) on ABS Implementation in the Pacific

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Nagoya Protocol

1. **What is Nagoya Protocol?**
   The Nagoya Protocol on Access and Benefit-Sharing is a supplementary 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.

2. **When did Nagoya Protocol come into force?**
   It came into force on 12th October, 2014.

3. **What are the main obligations under the Nagoya Protocol?**
   Under the Nagoya Protocol there are access obligations, benefit sharing obligations and compliance 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.

   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 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.

   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.

4. **Who are the most relevant Partners in national implementation of the Nagoya Protocol?**

   The ABS Focal Point, the designated competent national authorities, research organisations, scientific organisations, non-governmental organisations undertaking bioprospecting including academic institutions and biosecurity agencies.

5. **What is the process of becoming a Party to the Nagoya Protocol?**
   To become a Party, the country must submit an instrument of accession to the depository, which is the UN Treaty Section in New York. States and regional economic integration organizations that are Parties to the Convention on Biological Diversity are eligible to become a Party to the Nagoya Protocol.

   The United Nations Secretary-General acts as Depositary for the Nagoya Protocol through the United Nations Treaty Section in New York.

   There may be additional requirements such as Cabinet endorsement within each country before instrument of accession is submitted to the depository to become a Party and those national processes and requirements must be met first. The instrument must be signed either by a Head of State, Head of Government or by a Minister for Foreign Affairs.

6. **How many countries are Parties of the Nagoya Protocol from the Pacific?**
   There are currently 7 countries from the Pacific. These are Fiji, Samoa, Vanuatu, Tuvalu, Marshall Islands and Palau.

7. **Is there any assistance available to become a Party from the Pacific Region?**

   The Secretariat of the Pacific Regional Environment provides technical assistance to its member countries on matters related to ABS. The ABS Capacity Development Initiative also provides support towards technical and capacity building in the Pacific.

BENEFIT SHARING

1. **What is benefit sharing under the Nagoya Protocol?**

   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 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.

2. **What are the types of benefits included under the Nagoya Protocol?**
   There are two types of benefits that Nagoya Protocol prescribes. These are monetary benefits and non-monetary benefits.

   (i) Monetary Benefits include:

   (a) Access fees/fee per sample collected or otherwise acquired;
   (b) Up-front payments;
   (c) Milestone payments;
   (d) Payment of royalties;

(e) Licence fees in case of commercialization;
(f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
(g) Salaries and preferential terms where mutually agreed;
(h) Research funding;
(i) Joint ventures;
(j) Joint ownership of relevant intellectual property rights.

(ii) ***Non-monetary benefits may include, but not be limited to:***
(a) Sharing of research and development results;
(b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;
(c) Participation in product development;
(d) Collaboration, cooperation and contribution in education and training;
(e) Admittance to ex situ facilities of genetic resources and to databases;
(f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
(g) Strengthening capacities for technology transfer;
(h) Institutional capacity-building;
(i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
(j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;
(k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
(l) Contributions to the local economy;
(m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources;
(n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
(o) Food and livelihood security benefits;
(p) Social recognition;
(q) Joint ownership of relevant intellectual property rights.

3. Is there a formula to calculate benefit?

No there is no specific formula to calculate the benefits under the Nagoya Protocol. It is required that benefits are derived from negotiations leading to an agreement. Countries are free to adopt their own system on how the benefits will be calculated and shared.

4. Who decides on the benefit sharing arrangement?

The benefit sharing is mutually negotiated between the owner of biological resources who are providers and those who access these resources who are the users. A government agency or any other body which is a legal entity can act on behalf of the users to protect their legal rights and standing.

TRADITIONAL KNOWLEDGE

1. What is Traditional Knowledge under the Protocol?

In the context of access and benefit-sharing, traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities (ILCs) related to genetic resources. This traditional knowledge is developed through the experiences of communities over centuries, adapted to local needs, cultures and environments and passed down from generation to generation.

2. Why is Traditional knowledge important?

Indigenous and local communities rely on biological resources for a variety of everyday purposes, and see themselves as custodians and protectors of biological diversity. In this way traditional knowledge has helped preserve, maintain and even increase essential biological diversity over centuries.

Today genetic resources have a wide range of commercial and non-commercial uses. In many cases the same properties that make them useful to ILCs are now used by industry to develop popular products. They are also used by researchers to better understand biodiversity and the intricate web of life on earth. In both cases, traditional knowledge is a vital source of information for identifying uses of genetic resources that humanity as a whole can benefit from. This knowledge is particularly valuable for bioprospectors, or users of genetic resources, who use it to guide them to plants, animals and microbes that are already known to have useful properties. Without this knowledge many species currently used in research and commercialized products may never have been identified.

3. What is Article 8(j) of the Convention of Biological Diversity?

In Article 8(j) of the CBD, it states the need for governments to respect, preserve, maintain, and promote the wider application of traditional knowledge with the approval and involvement of the relevant ILCs. For instance if users want to use traditional knowledge in their research and Product development, they are required to seek the prior approval of the relevant ILCs and must negotiate mutually agreed terms that encourage the equitable sharing of any benefits that may arise from the use of this knowledge. Some national governments are already implementing Article 8(j) of the CBD through national legislation, law reform and their own national biodiversity action plans, strategies and programmes. Amongst other objectives, this ensures that the prior informed approval of the relevant ILCs is sought before traditional knowledge is accessed and used.

Prior Informed Consent

1. What is Prior Informed Consent (PIC)?

It is the permission given by the competent national authority of a provider country to a user prior to accessing genetic resources, in line with an appropriate national legal and institutional framework.

PIC is to establish bottom up participation and consultation of an Indigenous Population or owners of biological resources or Traditional Knowledge holders **prior** to the beginning of a development or accessing of traditional knowledge on ancestral land or using resources within the provider country's territory.

2. How is the PIC process achieved?

It is achieved through consultation, meetings, discussions followed by a written approval for any permit or access being granted.

3. Who is responsible for the PIC process?

The user is required to consult the owners of the resources and knowledge (provider) through the facilitation of the necessary competent authorities.

4. What is the basic principle of a PIC process?

Basic principles of an effective PIC system should include:

• Legal certainty and clarity
• Access to genetic resources should be facilitated at a minimum cost
• Restrictions on access to genetic resources should be transparent, based on legal grounds, and not run counter to the objectives of the Convention.

5. What are some basic elements that must be constituted in a PIC?

The clear establishment of Competent National Authorities (CNAs) who can grant PIC

• Procedures for obtaining PIC from the CNAs.
• Clearly specified timing and deadlines.
• Specifications of use.
• Mechanism for consultation of relevant stakeholders.

MUTUALLY AGREED TERMS (MAT)

1. **What is mutually agreed terms?**
   MAT is an agreement that is negotiated mutually between the User and Provider on the benefit sharing terms and conditions of access before the commencement of any access or use of biological resources.

2. **How is MAT determined?**
   The Bonn Guidelines outline principles and basic requirements to be considered in the development of MAT, including:

   - Legal certainty and clarity
   - Facilitating the transaction through clear information and formal procedures
   - Reasonable periods of time for negotiations
   - Terms set out in a written agreement.

   The Guidelines provide an indicative list of MAT, which include:
   - Type and quantity of genetic resources, and the geographical/ecological area of activity
   - Any limitations on the possible use of material
   - Whether the genetic resources can be transferred to third parties and under what conditions
   - Recognition of the sovereign rights of the country of origin
   - Capacity-building in various areas to be identified in the agreement.

   Bonn Guidelines: Voluntary guidelines intended to assist governments in the adoption of measures to govern access and benefit-sharing in their countries.

ABS National Focal Point

The focal Point is the permission given by the competent national authority of a provider country to a user prior to accessing genetic resources, in line with an appropriate national legal and institutional framework.

Competent National Authority

CNAs are bodies established by governments and are responsible for granting access to users of their genetic resources, and representing providers on a local or national level. National implementation measures establish how CNAs work in a given country.

ABS Clearing House

1. **How has ABS Clearing House being established?**
   Article 14 of the Protocol establishes the Access and Benefit-sharing Clearing-House (ABS Clearing-House) as part of the clearing-house mechanism under Article 18, paragraph 3 of the Convention, as a means for sharing information on access and benefit-sharing.
2. **What is the function of the ABS-CH?**
   The ABS Clearing-House is a key tool for facilitating the implementation of the Nagoya Protocol, by enhancing legal certainty and transparency on procedures for access and benefit-sharing and for monitoring the utilization of genetic resources along the value chain, including through the internationally recognized certificate of compliance. By making relevant information available regarding ABS, the ABS Clearing-House facilitates and increases opportunities for users and providers of genetic resources and associated traditional knowledge to connect and create fair and equitable ABS agreements.

ABS Regional Project

1. **What is the Regional ABS Project about?**

The objective of the project is to support Pacific Island countries to ratify the Nagoya Protocol and to implement key measures to make the Protocol operational in this region. In this way, the project will support Pacific Island countries to facilitate access to their genetic resources and secure benefit-sharing in a fair and equitable way in line with the Convention on Biological Diversity and the Nagoya Protocol.

2. What are the key outcomes / components of the Project?

Component 1: A baseline analysis to identify common assets (particularly relating to traditional knowledge), issues and needs between countries. **Component 2** will assist countries to ratify the Protocol through supporting national authorities. **Component 3**: Establishment of an enabling environment for the implementation of basic provisions of the Protocol. This will include stocktaking and assessment of capacities and systems currently in place, development or review of strategy and action plans. **Component 4**: Regional coordination and technical support.

3. **How many countries is part of the Pacific Project?**
14 Pacific island countries include: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.