

Guide to the Ratification and Accession to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization



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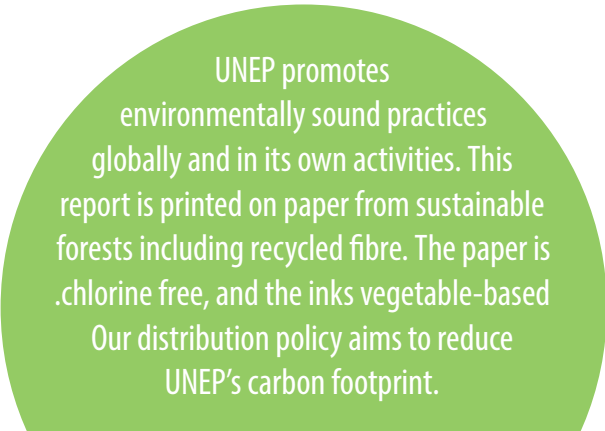
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Foreword

The establishment of a comprehensive national legal, policy and regulatory framework to promote sustainable use of genetic resources is the long-term solution to mitigate the increasing loss of genetic resources, further exacerbated by the impact of climate change and overexploitation of natural resources.

The Guidebook is a “how to” guide on the steps towards ratification of, acceptance of, approval of or accession to, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. It provides references and describes strategies and techniques for good practice on ratification of the Protocol. The Guidebook is designed as a tool for all stakeholders, including indigenous peoples, women and youth, interested in the ratification of the Nagoya Protocol and the conservation and sustainable use of genetic resources. The objective is to present all relevant information to help stakeholders to enhance activities for scaling up the ratification of the Nagoya Protocol, improving implementation of access and benefit-sharing projects and mitigating challenges in future ratification and implementation processes.


By becoming a party to the Nagoya Protocol, a country is creating the conditions to enable key stakeholders such as local and indigenous communities, women and women’s groups, the private sector and research agencies to contribute to the conservation and sustainable use of genetic resources and the associated traditional knowledge held by both men and women. Parties are also expected to demonstrate the benefits of gender mainstreaming in their ratification activities and other measures towards the fair and equitable sharing

of benefits arising from the utilization of genetic resources in a way that promotes the participation of girls and women in a meaningful, timely and effective manner in line with the 2015–2020 Gender Plan of Action under the Convention on Biological Diversity.



This Guidebook is informed by the experiences and lessons learned during the implementation of the Global Environmental Facility-funded project on access and benefit-sharing. The project was implemented by the Law Division of the United Nations Environment Programme in twenty countries with the aim of achieving ratification of the Nagoya Protocol and its early entry into force so that implementation could be effected. The Guidebook highlights the opportunities, experiences and challenges faced by the participating countries, including recommendations, best practice and lessons learned in the journey towards ratification of the Nagoya Protocol.

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Introduction

1. Introduction

1.1 Background

1. Biological diversity (biodiversity) underpins ecosystem functioning and the provision of ecosystem services vital for human well-being.¹ It provides food security, human health, clean air and water as essentials for livelihoods, economic, social and environmental development, and is therefore central to the achievement of the Sustainable Development Goals. Furthermore, it is a fundamental component of many indigenous beliefs, practices and identities. However, despite its significance and importance to the world, biodiversity is being lost and degraded at an alarming rate.
2. Following the culmination of the work of the Intergovernmental Negotiating Committee, which was mandated to explore the need for an international legal instrument on biological diversity, the Convention on Biological Diversity (“the Convention”) was adopted at the Conference for the Adoption of the Convention on Biological Diversity, held in Nairobi on 21 and 22 May 1992. The Convention was opened for signature at the United Nations Conference on Environment and Development, held in Rio de Janeiro, Brazil, from 3 to 14 June 1992, and entered into force on 29 December 1993. The Convention has three main objectives:
 - (a) The conservation of biological diversity;
 - (b) The sustainable use of its components;
 - (c) The fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.
3. Parties to the Convention have devoted considerable efforts to the operationalization of the third objective on access to genetic resources and fair and equitable sharing of benefits arising out of their utilization. Those efforts were promulgated at the first meeting of the Conference of the Parties to the Convention, held in Nassau from 28 November to 9 December 1994.² Subsequent principal steps in the operationalization of the objective include the establishment of the Ad Hoc Open-ended Working Group on access and benefit-sharing;³ the negotiation and adoption of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization;^{4,5} and the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.⁶

2 Decision I/9 on Medium-term Programme of Work of the Conference of the Parties.

3 Decision V/26 on Access to Genetic Resources, adopted at the fifth meeting of the Conference of the Parties, held in Nairobi from 15 to 26 May 2000.

4 Decision VI/24 on Access and Benefit-sharing as Related to Genetic Resources, adopted at the sixth meeting of the Conference of the Parties, held in The Hague, Netherlands, from 7 to 19 April 2002.

5 Bonn Guidelines available at <https://www.cbd.int/doc/publications/cbd-bonn-gdls-en.pdf>.

6 Adopted at the tenth meeting of the Conference of the Parties, held in Nagoya, Japan, from 18 to 29 October 2010. See also chapter IV, para. 44 (o), Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002. Available at: http://www.un.org/esa/sustdev/documents/WSSD_POL_PD/English/WSSD_PlanImpl.pdf.

1 CBD, 2006. Global Biodiversity Outlook 2. Secretariat of the Convention on Biological Diversity, Montreal, Canada.

Box 1: Article 33 – Entry into force of the Nagoya Protocol

Article 33 (1) of the Nagoya Protocol on Access and Benefit-sharing states that:

'This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention [on Biological Diversity]'

Pursuant, therefore, to Article 33(1) as quoted above, the Nagoya Protocol to the Convention on Biological Diversity entered into force on 12 October 2014. The first meeting of the Conference of the Parties to the Convention on Biological Diversity, serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable of Sharing of Benefits Arising from their Utilization, was held in Pyeongchang, Republic of Korea from 13–17 October 2014.

4. The Nagoya Protocol was adopted as part of a “package” at the tenth meeting of the Conference of the Parties, which also included the Strategic Plan for Biodiversity 2011–2020, including the Aichi Biodiversity Targets. Aichi Target 16 provides that “by 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation”. To achieve Target 16, States and regional economic integration organizations that are Parties to the Convention are expected, pursuant to Articles 32 and 33 of the Nagoya Protocol, to take steps aimed at facilitating ratification, acceptance, approval or accession to the Protocol. While the Protocol was open for signature from 2 February 2011 to 1 February 2012, 92 Parties to the Convention became signatories thereto and the Protocol entered into force on 12 October 2014. As at 31 January 2018, 105 Parties to the Convention had ratified, acceded to or approved the Protocol.
5. In that regard, the United Nations Environment Programme has been supporting the ratification or accession process through a project entitled “Global Support for the Ratification and Entry into Force of the Nagoya Protocol on Access and Benefit-sharing”, in line with the recommendations of the second meeting of the Open-ended Ad Hoc Intergovernmental Negotiating Committee for the Nagoya Protocol on Access and Benefit-sharing, held in New Delhi from 2 to 6 July 2012. Recommendation 2/1 on elaboration of guidance for the financial mechanism reiterates the invitation to the Global Environment Facility to provide financial support to Parties to assist with the early ratification of the Nagoya Protocol and its implementation. The aim of the project was to support twenty countries in the ratification or accession process and subsequent commencement of national implementation of the Nagoya Protocol. Under the project, participating countries have carried


1.2 Rationale

5. Since the adoption of the Nagoya Protocol, there has been growing awareness of the use and better assessment of genetic resources and associated traditional knowledge. Despite the growing number of Parties

out a number of activities leading to the ratification of or accession to the Nagoya Protocol. The countries have also identified challenges and shared lessons and best practice that can be taken into consideration in the design and implementation of similar projects in the future. Building on the lessons learned, challenges encountered and best practice gathered from the endeavours pertaining to the ratification of or accession to the Nagoya Protocol, the United Nations Environment Programme has developed the present Guidebook as a way of documenting current efforts, best practice and lessons learned, as well as assessing the various challenges faced and devising ways in which they can be overcome in the future.

7. The Guidebook is a compilation of the real experience of participating countries, collated through the following:
 - (a) A questionnaire completed by national focal points from participating countries. The questionnaire reviewed national experiences, including the opportunities, challenges and lessons learned in the course of the ratification or accession process to the Nagoya Protocol;
 - (b) Two information- and experience-sharing workshops, the first held during the inception workshop for the project, held in Kigali in March 2015 and the second held in Djibouti in August 2016.

8. The Guidebook will be accessible online to all countries and all stakeholder groups, including indigenous peoples, women and youth, involved in the domestic ratification of not only the Nagoya Protocol, but also other multilateral environmental agreements. The Guidebook sets out all the steps necessary under international law for the ratification of, acceptance of, approval of or accession to international conventions and protocols, as established under articles 2 (1) (b), 14 (1), 15, 16 and 17 of the Vienna Convention on the Law of Treaties.

A photograph of a herd of cows in a lush green field. In the foreground, a large brown cow is shown in profile, facing left. Behind it, several other cows are visible, including a black and white spotted cow on the left and a black cow on the right. The background is filled with tall green grass and a dense line of trees. A semi-transparent white text box is overlaid in the center of the image.

Steps to ratifying or acceding to a
multilateral environmental agreement

2. Steps to ratifying or acceding to a multilateral environmental agreement⁷

9. Once a multilateral environmental agreement (including a protocol) has been negotiated and adopted, it is opened for signature under the terms set out in the protocol or the mother convention. The signing of a convention subject to ratification does not in itself necessarily mean that the convention is legally binding on the signing State. It is largely an indication of an intention to comply with the treaty and to commence steps at the national level to enable the State to give its consent by ratification, acceptance or approval to be bound by a convention in accordance with the provisions of the Vienna Convention on the Law of Treaties.⁸
10. As a first step, before a State gives its consent to be bound by a treaty, the State is required to complete all the necessary procedures in accordance with its own national laws and domestic procedures governing treaty ratification processes. National laws and practice determine whether a given treaty is to be ratified by the executive or by parliament, and the procedure the ratifying organ must follow. It also determines whether a treaty automatically becomes domestically binding once it enters into force, or whether implementing legislation is required to translate the treaty into national law.⁹ In each country, the lead ministry or authority with responsibility for the particular agreement will need to identify the applicable procedures. As the procedures to prepare to give consent to be bound by a multilateral environmental agreement vary from country to country, this Guidebook only provides a broad outline of the main steps and options applicable to all countries.
11. As a general rule, the following steps will need to be taken by a State before it is bound by any treaty:
 - 2.1 Preparatory analysis and collection of documentation**
 12. The lead ministry or authority for the multilateral environmental agreement may wish to undertake the following:
 - (a) Translation of the multilateral environmental agreement and ancillary documents into the national language where necessary;
 - (b) Collection of all relevant documentation;
 - (c) Survey of the existing legal and institutional framework to determine which legislative and administrative measures need to be taken to implement the multilateral environmental agreement;

⁷ Text adapted from: <http://www.who.int/fctc/protocol/about/stepsrequiredforratification.pdf>.

⁸ See articles 2 (1) (b), 11, 12, 14, 15 and 16 of the Vienna Convention on the Law of Treaties, 1969.

⁹ Application of the monist and dualist theories. Even if the constitution, national law or practice of a country allows direct application of treaties without requirement for national implementing legislation, certain treaties are not self-executing and countries still need to take the necessary action of adopting national legislation, and taking policy and administrative action to give effect to the treaty at the national level.

- (d) Cost-benefit analysis of becoming a Party to the multilateral environmental agreement, including implementation of the measures identified;

13. Assessment of whether the legal regime established by the Protocol would be beneficial to the State.

2.2 Identify the constitutional requirements and process for domestic approval of ratification

14. The lead ministry/authority will contact the office or administration of the national authority which is mandated to decide on ratification (parliament or executive). The responsible national authority will identify the necessary steps and procedures that will lead to the ratification of the multilateral environmental agreement. When there is agreement to proceed, the responsible national authority will further indicate the necessary decision-making organs that must be consulted before the instrument of ratification can be signed and deposited. In addition to obtaining the necessary approvals from the Head of State or Head of Government, or the need to organize parliamentary debate or seek parliamentary approval, the processes may include the passing of national legislation, judicial review, or evaluation at various State levels.
15. The procedure will seek to resolve the following principal constitutional matters:

(a) Approval of ratification by parliament or executive body

16. Approval of ratification largely depends on the provisions of the constitution, national legislation or practice of the country. As that is unique to the constitutional provisions of each country, there is naturally a wide variety of options. The authority to approve ratification

may, for instance, rest with any of the following:

- (a) The executive (national Government), Head of State or Head of Government, for all treaties
- (b) The executive, Head of State or Head of Government, for all treaties, while parliament is informed or consulted, but does not need to give formal approval;
- (c) The legislature (parliament), for all treaties;
- (d) The legislature, for treaties with major political importance for the country (such as peace treaties, trade treaties and treaties on an international organization), and the executive, Head of State or Head of Government for all other treaties;
- (e) The legislature, if implementing legislation must be passed, and the executive, Head of State or Head of Government for all other treaties.

(b) Procedure by which ratification takes place

17. Ratification procedures vary from country to country, based on the unique provisions of national legislation. Nevertheless, the following procedures apply to many countries:
 - (a) Approval first by one and then by the other chamber of parliament, with prevalence of one chamber in case of disagreement;
 - (b) Approval by only one chamber of parliament.

2.3 Consult with the government office responsible for issuing ratification instruments

18. The lead ministry or authority for the multilateral environmental agreement will consult with the government office responsible for drafting instruments of ratification for international agreements. Responsibility for drafting such instruments is often a legal unit within the Ministry of Foreign Affairs. The lead

ministry or authority will then contact the Ministry of Foreign Affairs with the approval from either parliament or the executive. That approval provides the basis for the issuance of an instrument of ratification by the competent government office.

2.4 Examine the need for or desirability of a declaration

19. When considering whether a State should be bound by a multilateral environmental agreement, the competent designated national authority (executive or parliament) may examine the need for or desirability of making a declaration when it submits its instrument of ratification, acceptance, approval or accession. Declarations are usually used to clarify the country's understanding of specific clauses of the treaty, or to specify the extent to which the treaty applies to the country's dependent territories.

2.5 Prepare and sign the instrument of ratification

20. Once the applicable national procedures are completed, the responsible government office will prepare the instrument of ratification, acceptance, approval or accession, and an instrument of declaration if necessary. The instrument(s) must be signed by the Head of State, Head of Government or Minister of Foreign Affairs, or any person who possesses full powers that have been granted by any of those three persons

2.6 Lodge instrument with the depositary

21. Finally, ratification of, accession to, acceptance of or approval of, a multilateral environmental agreement, including a Protocol, becomes effective only upon receipt of the relevant instruments by the appointed depositary. The multilateral environmental agreement becomes officially binding on the ratifying State when

it takes effect for the country, usually after a clearly defined period following ratification.

22. The Secretary-General of the United Nations is the depositary of the Nagoya Protocol. States are advised to deliver instruments for deposit directly to the Treaty Section of the United Nations Secretariat in New York to ensure that they are promptly processed. The date of deposit is normally recorded as that on which the instrument is received at Headquarters, unless the instrument is subsequently deemed unacceptable. Persons who are delivering instruments of ratification, acceptance, approval or accession do not require full powers. States are encouraged to provide courtesy translations, where feasible, in English or French of any instruments in other languages that are submitted to the Treaty Section, as that facilitates the prompt processing of the relevant actions.
23. The diagram below provides a schematic illustration of the ratification, acceptance, approval or accession process which should be adjusted to the specific circumstances of individual countries.

Steps in the ratification process

24. Additional factors that may need to be considered by certain countries before or after a decision on ratification is made include the following:

(a) Need to pass implementing legislation

25. In certain countries, an international treaty automatically forms part of the body of national law once the country notifies other Parties of its entry into force in the country. As such, the treaty becomes immediately enforceable within the country and creates rights and obligations for national actors, even without the adoption of implementing legislation. Where the provisions of a



treaty are self-executing, those provisions may not be sufficiently specific to allow direct application at the national level and in such a case, specific legislation, regulations or interpretation to clarify the rights and obligations of national actors will generally be developed by national bodies through applicable parliamentary procedures.

26. In certain other countries, international treaties do not become immediately binding at the national level following signature and must be transposed into domestic legislation to establish corresponding national rights and obligations. The legislation must be adopted through applicable domestic legislation procedures.

To avoid duplication and conflict with the existing national legislation framework, an assessment of existing legal, regulatory and policy frameworks should be undertaken to determine the parameters of the implementing legislation. Depending on the particular national circumstances, the process to ratify a treaty is completed once the implementing legislation has been enacted.

(b) Need for judicial review

27. There are situations in which a treaty must be submitted for judicial review by a competent national court, normally the constitutional court, before it can become binding. The purpose of the judicial review process is to determine the consistency of the treaty with the constitution of the country. Once the judicial review process has been completed, the ratification process will proceed, based on the findings of the court.

(c) Need to consult subnational governmental entities


28. In federal States where subnational governmental entities such as states or provinces have substantive competence in the matters covered by the treaty, there is a need for steps to consult those entities as part of the ratification process.

Box 2: Implementation of the Nagoya Protocol

Ratification, accession, acceptance or approval of the Nagoya Protocol on access and benefit-sharing (ABS) in order to become a Party to the Protocol is just one step in the long and complex journey of broader implementation of the Protocol. Alongside that important process there are other means and mechanisms of implementation provided for by the Protocol, including each Party taking action to develop or strengthen national legislation and administrative or policy action to implement the various provisions of the Protocol. Key areas requiring such measures include ensuring access to genetic resources and traditional knowledge associated with genetic resources under articles 6 and 7 of the Protocol; fair and equitable benefit-sharing (article 5); compliance with national legislation or regulatory requirements on access and benefit-sharing and for access and benefit-sharing for traditional knowledge associated with genetic resources (articles 15 and 16); and compliance with mutually agreed terms (article 18). In parallel, countries are required to establish effective institutional frameworks to control the administration of all regulatory measures. In that regard, the Nagoya Protocol provides for the designation of one ABS focal point (of the participating countries, six currently have a woman as their national ABS focal point) and one or more national competent authorities (article 13). Other important aspects of the implementation of the Nagoya Protocol relate to the elaboration, updating and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms (article 19) and the development of codes of conduct, guidelines and best practices and standards (article 20).

Implementation of the Nagoya Protocol cannot occur in any country in isolation, because the level of technical and scientific collaboration between Parties and other important actors and stakeholder groups, including women and women's groups, involved in the conservation and sustainability of biodiversity is critical in addressing the three objectives of the Convention and the core objective of the Protocol. Central to ensuring a greater level of technical and scientific cooperation between partners in the implementation of the Protocol, the ABS clearing house mechanism (ABS CHM) was established under article 14 of the Protocol as part of the clearing house mechanism of the Convention on Biological Diversity. The ABS CHM was established as a means of sharing useful information related to ABS, including information pertaining to national measures on ABS, the ABS focal point, the competent national authorities and the permits or their equivalent issued for the purpose of access as evidence of the decision to grant prior informed consent and the establishment of mutually agreed terms. In addition, the ABS CHM is the platform for exchange of additional tools developed at the national level, such as model agreements and contractual clauses, guidelines and codes of conduct. The publication of that information in the ABS is an avenue to enhance the credibility and transparency of the ABS regime and strengthens the non-arbitrary and legal clarity of the ABS regime, as provided by articles 6 (3) (a) and (b).

It is thus clear that implementation of the Nagoya Protocol requires much more of countries than simply becoming a Party thereto. Further details concerning the achievements of parties to the Convention in relation to the implementation of the Nagoya Protocol by both parties and non-parties to the Protocol can be accessed through the ABS CHM (<https://absch.cbd.int/>).



Steps taken to support
ratification of or accession to
the Nagoya Protocol

3. Steps taken to support ratification of or accession to the Nagoya Protocol

29. To implement the project Global Support for the Ratification and Entry into Force of the Nagoya Protocol on Access and Benefit-sharing, the United Nations Environment Programme, in May 2013, organized an inception and information-sharing workshop to provide a forum for national focal points on access and benefit-sharing and the Convention on Biological Diversity to produce work plans tailored to accommodate the specific circumstances of each country. The work plans developed by the participating countries identified the activities that each country intended to undertake to ensure the ratification of or accession to the Nagoya Protocol.
30. The activities were modelled on the following specific components:
 - (a) Rapid capacity needs assessments;
 - (b) Stakeholder engagement;
 - (c) Monitoring and evaluation.
31. A synopsis of the experience of participating countries in their implementation and realization activities is set out below. In the course of implementation, project partners and participating countries also faced a variety of challenges which were addressed using strategies tailored to fit the national circumstances of each country. Those challenges are set out later in this Guidebook, along with potential solutions that may be adopted or adapted by countries seeking to ratify the Nagoya Protocol.

3.1 Rapid capacity needs assessments

32. The rapid capacity needs assessments:
 - (a) Determined the technical needs and requirements of participating countries and
 - (b) Identified gaps within existing legislation so that legal and policy frameworks could be amended accordingly.
33. All participating countries conducted a comprehensive review of gaps in their existing national policy and regulatory frameworks with a view to identifying opportunities to accommodate access and benefit-sharing principles. Each country identified areas that would require additional technical support to incorporate access and benefit-sharing principles into existing legislation. In that regard, and giving consideration to existing national legislation, country-specific access and benefit-sharing frameworks were developed to ensure equitable benefit-sharing and a sustainable livelihood for stakeholders, including indigenous peoples and traditional knowledge holders, women and youth in local communities and civil society.
34. In countries where access and benefit-sharing was an entirely new concept, the United Nations Environment Programme provided support in drafting new legal, policy or regulatory frameworks on access and benefit-sharing. The frameworks were embedded into national legislation and political contexts to establish functional access and benefit-sharing measures and promote gender mainstreaming. In addition, the United Nations

Box 3: Opportunities for project implementation and Nagoya Protocol ratification or accession identified by participating countries

The following elements represent the opportunities identified during the implementation of the project to facilitate the realization of the greater objectives of the project, including achieving the ratification of the Nagoya Protocol in the participating countries:

- Status of Parties to the Convention on Biological Diversity and other multilateral environmental agreements. Commitment to biodiversity conservation and sustainable use means it makes sense to ratify, accept, approve or accede to the Nagoya Protocol;
- Creation/establishment or prior existence in certain countries of government departments of the environment and other institutions (such as environmental protection agencies) mandated to lead the domestication of multilateral environmental treaties;
- Emergence of ABS "champions" and attention placed by government departments on ABS;
- Enhanced collaboration among national bodies in the context of the implementation of the Convention and its protocols (Biosafety and ABS);
- Existence of solid legal grounds, such as clear constitutional provisions (as in, for example, Djibouti) which entrust the President of the Republic with the prerogative to negotiate and ratify international environmental treaties;
- Existence in certain countries of a legal framework that is applicable to ABS (in Zimbabwe, for example, where Statutory Instrument 61 of 2009 (Access to Indigenous Genetic Resources and Genetic Resource-based Knowledge) Regulations under the Environmental Management Act 2002 (as amended in 2006) includes the key ABS principles); and a number of legal instruments which provide for the meaningful, timely and effective participation of local communities and other stakeholder groups, including indigenous peoples, women and youth, in environmental policy and law-making at the national level (as in Swaziland, for example);
- The National Biodiversity Strategies and Action Plans (NBSAPs) review process and the opportunity it offers for a partnership with the Nagoya Protocol ABS implementation;
- Partnership with national or regional intellectual property offices that are engaged in the World Intellectual Property Organization Intergovernmental Committee (WIPO IGC) negotiations on the intellectual property protection of genetic resources, traditional knowledge, folkloric expressions and customary practice in the protection of biodiversity.

Environment Programme supported the preparation of briefing papers and cabinet papers for enhancing political synergies, and a strategic plan to inform amendments to policies and legal frameworks, and draft legislation for debate and adoption by parliament. The legal documents and instruments prepared to facilitate the ratification of or accession to the Nagoya Protocol were adopted by the respective parliaments of the participating countries.

3.2 Stakeholder engagement and awareness-raising

35. Participating countries conducted broad consultations with various stakeholder groups, including indigenous peoples and local communities; male and female traditional knowledge holders and traditional healers; women's groups and youth; universities and research institutions; business organizations; non-governmental organizations and civil society; and relevant parliamentary committees. Public institutions

such as ministries of the environment, departments of justice and constitutional affairs, foreign affairs, finance, trade and industry, agriculture and regional and local development, and relevant private sector groups were also engaged in awareness-raising and information-sharing. Stakeholder engagement activities resulted in increased understanding of the ways in which access and benefit-sharing could create opportunities and ensure sustainable genetic resource management, while harnessing the economic, social and political well-being of both men and women.

36. Within local communities, targeted sensitization workshops were held on the benefits of access and benefit-sharing frameworks and the positive impact of ratifying the Nagoya Protocol. To ensure a better understanding of access and benefit-sharing, educational materials (flyers, pamphlets and radio broadcasts) were produced in local languages and disseminated to relevant stakeholder groups, including indigenous peoples, women and youth. Workshops for training the trainers were also held to create in-country access and benefit-sharing specialists, who would contribute to the development of synergies, identify the importance of traditional knowledge and customary practice held by both men and women, and compile a repository of existing unique traditional knowledge.

3.3 Monitoring and evaluation

37. The project management unit continues to monitor the progress of participating countries in achieving the objectives of the project and to ensure that all activities are in compliance with the monitoring and evaluation procedures by providing regular progress updates and reports. Although reporting from most countries has been intermittent, the project management unit continues to follow up on and encourage timely reporting, including through regular communication with national focal points. The monitoring and evaluation process has been created in such a way as to enhance the compliance levels of participating countries with their obligations under the Protocol in the long run.



Challenges

4. Challenges

38. Throughout the ratification process, participating countries faced a number of challenges and constraints. Those included unanticipated political influence and a lack of capacity to manage the project effectively, in particular limited technical expertise and the staffing levels required to effectively support implementation.
39. The table below highlights the challenges encountered and the ways in which they were or could have been addressed.

Challenges identified by countries	Approaches which were employed or could have been employed by countries to overcome those challenges
Project management	
<ul style="list-style-type: none"> - Identifying and engaging with relevant stakeholders, including indigenous peoples, women and youth, - Securing maximum attendance at sensitization workshops. - Assembling the same stakeholders (including indigenous peoples, women and youth) involved in training throughout the course of the project for improved continuity. - Establishing a skilled national authority, including women, youth and indigenous peoples. 	<ul style="list-style-type: none"> - Identify and document main stakeholders, including indigenous peoples, women and youth, with an interest in the ABS project. - Monitor and report on the participation of men and women in implementation processes. - Encourage sex-disaggregated data collection, based on gender-specific indicators, to ensure gender equality and mainstreaming in the implementation of the Nagoya Protocol, which would help Governments and countries to better understand whether their policies and activities were benefitting both men and women in a meaningful, timely and effective manner or whether one gender was being left behind. - Organize brainstorming sessions and alliance meetings with all stakeholder groups, including indigenous peoples, women and youth, to discuss what is needed for better implementation of the Protocol. National focal points nominated at the beginning of the process should be maintained as long as possible in their positions and be encouraged to promote the participation of girls and women in ABS processes at the national level. - Establish an inter-agency mechanism for coordination between diverse sectors to address any queries regarding the Nagoya Protocol on ABS. A secretariat with expertise in a wide range of matters, such as biodiversity, law, economics, intellectual property, traditional knowledge and cultural considerations is required. Key players at both grassroots and high levels need to be involved. A multi-stakeholder committee is required to support the administrative and policy delivery process to ensure that the ABS system responds to national interests and regional or international obligations, including gender mainstreaming. Inter-agency coordination should address the development, implementation and review of ABS legislation and implementation regulations. - The establishment of an ABS committee has also been considered helpful in facilitating national ratification processes.
Financial	
<ul style="list-style-type: none"> - Funding for research into the value of medicinal plants and traditional knowledge. - Funding for the revision of existing regulations to accommodate the principles of ABS and for the development of ABS legislation compliant with the Nagoya Protocol. - Insufficient finance at the domestic level as a result of government prioritizing of economic issues over environmental issues. - Limited financial resources for awareness-raising and capacity-building on ABS at the national level. 	<ul style="list-style-type: none"> - Organize discussions with key institutions (government departments and parliament) to increase funds for environmental issues through national budgetary allocations. - Develop valorization strategies at the country level as tools to attract the attention of governments to the economic value of genetic resources from ABS. - Identify relevant activities or areas needing special attention and prioritization; assess goals and objectives for those activities and areas. - Ensure institutional and stakeholder collaboration between national focal points, policymakers (male and female) and members of civil society groups, including women and girls, to explain the benefits of the Nagoya Protocol. - Create action plans with detailed time lines to guide the process. - Undertake rapid capacity needs assessments (of both human and institutional capacities) for the implementation of the Nagoya Protocol.

Challenges identified by countries	Approaches which were employed or could have been employed by countries to overcome those challenges
Policy and legislation	
<ul style="list-style-type: none"> - Fragmentation and the need for synergies between existing international frameworks. - Policymakers not sufficiently informed about ABS and its relevance to the biodiversity and development interests of their countries. - Identifying ABS pilot sites to create enthusiasm within the local community and share their traditional knowledge of genetic resource management. - Creating a national clearing-house on ABS and national advisory bodies. - Lack of knowledge and understanding by government officials on ABS matters and coordination on the ways in which ABS legislation could be implemented. 	<ul style="list-style-type: none"> - An international treaty on phyto-genetic resources is already in place which has a multilateral system on ABS; there is thus a need to synergize and integrate the implementation of the two agreements. - Analyse existing environmental and forestry regulations to uncover gaps in relation to ABS. - Organize sensitization and awareness-raising workshops, policy dialogues and consultations with and between policymakers and members of all stakeholder groups on ABS. - Identify advocates, leaders and ABS focal points in all key decision-making institutions to be "ABS champions" in their respective institutions. - Undertake focus group consultations during the drafting process of national legislation, with the full and effective participation of both men and women. - Identify gaps in existing genetic resource and traditional knowledge legislation and policies at the outset and make adaptations accordingly. - Draft policies to incorporate collaboration with other countries and members of all key stakeholder groups, including indigenous peoples, women, youth and the private sector. - Map and review national regulatory frameworks and other instruments to identify gaps in relation to bioprospecting and ethnobotanical studies. A report to be produced which reviews existing national policies likely to affect or be affected by ABS and the ABS regulatory framework. - Assess existing political, legal and institutional frameworks on genetic resources and traditional knowledge which could be modified to work in harmony with new legislation. Existing and new legislation must address issues of biopiracy and the protection of traditional knowledge.
Training and awareness	
<ul style="list-style-type: none"> - Lack of information on national ABS processes and the Nagoya Protocol tailored to promote the effective participation of members of relevant stakeholder groups, including indigenous peoples, women and youth, in the ratification and implementation of the Nagoya Protocol. - Low levels of access to training and training modules for national focal points on ABS, including on ways in which to lobby ministerial and parliamentary authorities. - Lack of national ABS technical expertise and a limited number of highly qualified ABS experts, both male and female. 	<ul style="list-style-type: none"> - Establish a pool of experts and facilitators, including indigenous women experts, to support awareness-raising and capacity-building. - Increase training and capacity-building activities and modules for members of relevant stakeholder groups, including indigenous peoples, men, women and youth, and other ABS-related organizations at various levels, on ABS technical issues by the United Nations Environment Programme. - Translation of the Nagoya Protocol into national or local languages, such as Portuguese in Angola, taking into consideration the gender-related needs of the target population. - Identify effective strategies for awareness-raising and other activities. Compare costs and results of different activities, such as training workshops, knowledge-sharing workshops and round-table discussions and dialogues and concentrate on balancing the cost-benefit gap. - Establish a systematic and multi-layered awareness-raising process. Seminars, round tables and training sessions should be tailored to fit the specific groups and needs of members of all stakeholder groups, including indigenous peoples, women and youth. - Consider organizing awareness-raising seminars, training and capacity-building workshops which bring together focal points of the Nagoya Protocol and focal points of the International Treaty on Plant Genetic Resources for Food and Agriculture for mutually supportive implementation. - Effectively communicate ABS-related information, practices and needs through mass media, printing and distribution of flyers in local languages. - Develop and implement a communication, education and public awareness strategy at the national and regional levels. - Use a variety of means to disseminate information (including brochures, leaflets, a website, workshops and radio programmes in common and local languages). - Use social media for communication and awareness-raising. - Promote ABS training and technical skill acquisition activities and modules for men and women at the local and national levels.
Political and economic	
<ul style="list-style-type: none"> - Election periods and changes of government hinder or disrupt the ratification process and may also lead to large-scale reorganization of stakeholder groups, including indigenous peoples, women and youth, as well as the redistribution of roles of ministries and local authorities. - Traditional leadership would like to be involved, but conflicts may arise with local people over decision-making power. 	<ul style="list-style-type: none"> - Adjust project-related activities to make them adaptive to political changes and election processes. - Sensitize new members of stakeholder groups, including indigenous peoples, women and youth. - Undertake dedicated sensitization of traditional leaders, including indigenous women leaders.



A photograph of a vast field of golden wheat or grain, stretching to the horizon under a dark, overcast sky. The foreground shows the texture of the stalks and heads of the grain.

Challenges and opportunities for
efficient national implementation
of the Nagoya Protocol in the
context of the Strategic Plan for
Biodiversity 2011–2020 and the
Aichi Biodiversity Targets, and
the 2030 Agenda for Sustainable
Development and the Sustainable
Development Goals

5. *Challenges and opportunities for efficient national implementation of the Nagoya Protocol in the context of the Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets, and the 2030 Agenda for Sustainable Development and the Sustainable Development Goals*

40. National implementation of multilateral environmental agreements, including the Nagoya Protocol, is central to the implementation of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals for a variety of reasons. Implementation of the Nagoya Protocol, as accepted by most countries participating in this access and benefit-sharing project, is critical to furthering the interests of the countries in conserving biodiversity because of its importance to the livelihoods of local and indigenous communities, as well as for research and commercial purposes.
41. In that regard, as countries pursue their domestic implementation of the Nagoya Protocol through legislative, administrative and judicial routes, they are consequently fulfilling their obligations to key international undertakings such as the 2011–2020 Strategic Plan for Biodiversity and the Aichi Biodiversity Targets,¹⁰ and the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.¹¹ The international obligations to implement the Sustainable Development Goals also present an opportunity for the domestication of the Nagoya Protocol. It is, however, worth noting

that the inter-linkages between the implementation of the Nagoya Protocol and the Sustainable Development Goals also present challenges to implementing countries. Notable challenges, in addition to those highlighted in the table above, include limited financial resources, limited national capacity and competing priorities, low participation levels from women and girls and inadequate knowledge and skills to spearhead a process as complex as the domestication of the Nagoya Protocol.

42. During the knowledge- and experience-sharing workshop held in Djibouti from 23 to 25 August 2016, delegates referred to the invaluable support provided by international organizations, including United Nations agencies, and the guidance and assistance that they had received on the mobilization of financial resources from the Global Environmental Facility, which is the main financial mechanism of the Convention. Discussions led to the conclusion that, with greater assistance and increased capacity-building on resource mobilization from international sources, countries would be likely to generate more Protocol implementation projects at the national or regional levels and, in the long run, achieve concrete results within the 2030 Agenda and the implementation process of the Sustainable Development Goals.

¹⁰ Decision X/2: Strategic Plan for Biodiversity 2011–2020, adopted at the tenth meeting of the Conference of the Parties, held in Nagoya, Japan, from 18 to 29 October 2010.

¹¹ United Nations, 2015. Transforming the World: the 2030 Agenda for Sustainable Development. United Nations, A/RES/70/1. Available at: www.sustainabledevelopment.un.org.

Box 4: The Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets

The tenth meeting of the Conference of the Parties to the Convention on Biological Diversity, held in Nagoya, Japan, from 18 to 29 October 2010, adopted decision X/2 on the Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets.

The purpose of the Strategic Plan is “to promote effective implementation of the Convention on Biological Diversity through a strategic approach comprising a shared vision, a mission and strategic goals and targets (“the Aichi Biodiversity Targets”), that will inspire broad-based action by all Parties and stakeholders”.

The Strategic Plan will also “provide a flexible framework for the establishment of national and regional targets and for enhancing coherence in the implementation of the provisions of the Convention and the decisions of the Conference of the Parties, including the programmes of work and the Global Strategy for Plant Conservation as well as the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization”.

The mission of the Strategic Plan is “to take effective and urgent action to halt the loss of biodiversity in order to ensure that by 2020 ecosystems are resilient and continue to provide essential services, thereby securing the planet’s variety of life, and contributing to human well-being and poverty eradication. To ensure this, pressures on biodiversity are reduced, ecosystems are restored, biological resources are sustainably used and benefits arising out of utilization of genetic resources are shared in a fair and equitable manner; adequate financial resources are provided, capacities are enhanced, biodiversity issues and values mainstreamed, appropriate policies are effectively implemented, and decision-making is based on sound science and the precautionary approach”.

43. Furthermore, a number of support mechanisms have been created in a bid to ease ratification and broader implementation of the Protocol and they must be seized by countries intending to become parties so that they are able to establish effective and enforceable Nagoya Protocol-compliant access and benefit-sharing regimes. As noted earlier, the Nagoya Protocol Implementation Fund (NPIF) is one of those mechanisms and is the source of funds for the global access and benefit-sharing project that is at the heart of this Guidebook.
44. Prior to setting up the NPIF, parties to the Convention had already, through decision IX/11 on Review of implementation of articles 20¹² and 21¹³ of the Convention, adopted a strategy for resource mobilization in support of the realization of the three objectives of the Convention.
45. This Guidebook seeks to achieve the following:
 - (a) Improve the information base on funding needs, gaps and priorities;
 - (b) Strengthen national capacity for resource utilization and mobilize domestic financial resources for the three objectives of the Convention;
 - (c) Strengthen existing financial institutions and promote replication and scaling-up of successful financial mechanisms and instruments;
 - (d) Explore new and innovative financial mechanisms at all levels with a view to increasing funding to support the three objectives of the Convention;
 - (e) Mainstream biological diversity and its associated ecosystem services in development cooperation plans and priorities, including the linkage between the work programmes of the Convention and the Millennium Development Goals, taking into

12 Article 20: Financial resources.

13 Article 21: Financial mechanism.

Box 5: Relationship between the Nagoya Protocol, Agenda 2030 and the Sustainable Development Goals

Sustainable development is the principal and desirable result that would derive from making operational the third objective of the Convention on fair and equitable sharing of the benefits arising from the utilization of genetic resources and associated traditional knowledge.

It is widely recognized that promoting the utilization of genetic resources and associated traditional knowledge can increase opportunities for fair and equitable sharing of benefits arising from such utilization. In turn, those benefits create incentives to conserve and allow access to biological and genetic resources and traditional diversity for sustainable use, thus enhancing the contribution of biodiversity to sustainable development and human well-being. That paradigm is significant progress from the Convention and the Bonn Guidelines, brought about by article 9 of the Nagoya Protocol, which establishes an obligation for parties to take measures to ensure that benefits deriving from the utilization of biodiversity are directed to support efforts that contribute to its conservation and sustainable use.

Domestication of the Nagoya Protocol at the national level through ratification and the establishment of effective ABS regulatory and institutional frameworks are therefore key to the realization of Agenda 2030 and the Sustainable Development Goals and their accompanying targets.

Effective ABS regimes would contribute to the realization of Sustainable Development Goal 1, provided that benefit-sharing mechanisms are practical, just and equitable; to Goal 2, provided that Protocol-compliant regulatory frameworks do not affect access to or the flow and exchange of varieties between researchers or farmers; to Goal 5, given the enabling environment created for mainstreaming gender into ABS, providing an effective strategy to ensure that women, men, youth and the elderly benefit from ABS measures and promoting social inclusion; to Goal 8, given the linkages to economic opportunities that can flow from access to and utilization of genetic resources and associated traditional knowledge; to Goal 10 with regard to the rebalancing of power relations between on the one hand biodiversity-rich but technology- and research-poor countries that are largely suppliers of genetic resources and, on the other hand, biodiversity-poor but technology- and research-rich countries that are largely users of genetic resources and traditional knowledge; to Goals 14 and 15, which relate to the interconnectedness of the three objectives of the Convention; and to Goal 17, which relates to the support that needs to be provided to poor countries through global partnerships for sustainable development and the implementation of the Nagoya Protocol. The financial mechanism of the Convention, the Global Environmental Facility, from where funds were mobilized to support the Global ABS project, is a concrete example of the way in which global partnerships can contribute to the various dimensions of the 2030 Agenda and to sustainable development in general.

consideration the different needs of men and women;

- (f) Build capacity for resource mobilization and utilization and promote South-South cooperation as a complement to North-South cooperation;
 - (g) Enhance the implementation of access and benefit-sharing initiatives and mechanisms in support of resource mobilization;
 - (h) Enhance global engagement for resource mobilization in support of the achievement of the three objectives of the Convention;
 - (i) Promote the participation of girls and women in activities related to access and benefit-sharing and the Nagoya Protocol in a meaningful, timely and effective manner.¹⁴
46. In 2011, the Convention secretariat published a detailed guide for the implementation of the strategy for resource mobilization, which includes a detailed review of the 15 indicators that must be used to assess progress and achievements in the mobilization of the financial resources necessary for the implementation of the Nagoya Protocol.¹⁵ Those mechanisms are available and at the disposal of countries to exploit and to guide their resource mobilization efforts.
47. Alongside the challenges and opportunities offered for resource mobilization, broader capacity, including individual (human resources) and institutional capacity, is required for the implementation of the Nagoya Protocol and other multilateral environmental

agreements. The capacity dimension for the implementation of the Nagoya Protocol has also been addressed by the international community following the adoption of decision NP-1/8 on Measures to assist in capacity-building and capacity development (Article 22 [of the Nagoya Protocol]). Annex 1 to that decision is an internationally agreed strategic framework for capacity-building and development to support the effective implementation of the Nagoya Protocol on access and benefit-sharing. That comprehensive framework provides guidance on the sort of strategic measures that need to be taken to enhance capacity-building and development; an indication of the sort of practical activities that should be carried out in the context of the implementation of the strategic framework; the role and responsibilities of the various actors; and the resources needed for the implementation of the strategic framework. The sources and categories of resources identified in the strategic framework are aligned to the resource mobilization strategy discussed above.¹⁶


48. From the foregoing, it appears that national implementation of the Nagoya Protocol and other multilateral environmental agreements is largely dependent on the availability of adequate capacity and resources at all levels. The extent to which countries address those critical pillars in their domestic processes of ratification and broader implementation and enforcement of the Protocol and other multilateral environmental agreements clearly has spillover implications on the ability of those countries to achieve the various internationally agreed environmental goals and targets.

¹⁴ See CBD COP IX/11, 9–30 May 2008, Bonn, Germany. Decision IX/11 Review of Implementation of Articles 20 and 21. Annex: Strategy for Resources Mobilization in Support of the Achievement of the Convention's three Objectives for the period 2008–2015. See also CBD COP XI, 8–19 October 2012, Hyderabad, India. Decision XI/4. Review of implementation of the strategy for resource mobilization, including the establishment of targets.

¹⁵ CBD, 2011. Indicators for Monitoring the Implementation of the Strategy for Resource Mobilization: Methodological Guidance. Secretariat of the Convention on Biological Diversity, Montreal, Canada.

¹⁶ The resources identified in the strategic framework include resource mobilization through the financial mechanism, which is the Global Environment Facility; bilateral and multilateral development assistance; technical cooperation with regional and international partners; new and additional funding; and funding from national budgets.



A photograph of an elephant in a zoo enclosure. The elephant is dark brown with large, wrinkled ears and a long trunk. It is standing on a dirt path with green grass in the foreground. In the background, there are large, leafy trees and a fence. A white text box is overlaid on the right side of the image.

Lessons learned and
recommendations

6. *Lessons learned and recommendations*

49. As part of enhancing the continuous learning process, documenting lessons learned helps national focal points to forecast obstacles and identify ways to avoid those challenges in later stages of projects or in future projects. Drawing on the experiences of the participating countries, a number of challenges identified in the

course of the realization of project activities and the manner in which they were addressed informed the lessons learned and the recommendations made. A summary of those lessons and recommendations include the following:

Project management

- Teamwork, cohesion and collaboration are vital in achieving project objectives. Maintaining the same team of members of all key stakeholder groups, including indigenous peoples, women and youth, is desirable in order to create consistency throughout the ratification process.
- It is important to involve members of all key stakeholder groups, including indigenous peoples, women and youth, who are committed and can facilitate the process. In most participating countries there are three institutions involved in the ratification process, namely the Ministry of the Environment (as the initiator of the ratification and implementation process and the technical party), the Ministry of Foreign Affairs (as the focal point for an international treaty, it prepares instruments of ratification) and the parliament or executive (which considers and reviews proposals for ratification and decides whether or not to approve).
- Ample technical support is needed to ensure effective fulfilment by the country of its obligations under the international treaties to which it is party.
- Participation in ratification or accession to the international treaty is possible only if the relevant authorities and members of all stakeholder groups are fully and mutually committed to achieving a positive outcome.
- It is important to identify and involve a variety of key stakeholder groups (including policymakers, civil society, women leaders, parliamentarians and traditional knowledge holders).

Financial

- To ensure the adoption of policies and programmes for the implementation of the Nagoya Protocol, allocating significant budgetary funds for the purpose is necessary.
- It is important to evaluate the potential of genetic resources as a basis of economic advancement for the country, as well as for decision-makers to understand the importance of those resources in agriculture and food security.

There is a need for donors to fund activities for bringing all national focal points on ABS implementation processes together at the same level for the sharing of experience.

Policy and legislation

- The development of the legal framework should be participatory, simple and easy to operate. Policy and legislation development needs of countries should be tailored to include capacity-building and synergies between key stakeholder groups, including indigenous peoples, men, women and youth. Addressing those needs will enhance knowledge of ABS governance and reduce conflict between members of key stakeholder groups.

Communication

- Creating awareness through the media is very important, as the concept of ABS is still relatively new. In addition, greater awareness creates increased knowledge of the importance of bioresources and the need for sustainable use of genetic resources.
- Communication between the national institutions involved in the process of ratification must work effectively with members of all key stakeholder groups, including indigenous peoples, women and youth. Sensitization, involving traditional practitioners and civil society through workshops organized at different levels in different regions, is necessary. Given that the project is country-driven, enhancement and promotion of the involvement of all key stakeholder groups is essential to its success.
- The development of necessary regulations requires preparation of information products for various target groups in the form of flyers, posters and publications in the media so that there is clarity on the benefits of the Nagoya Protocol and the ABS process. These information products can be of particular use in aiding understanding when translated into local languages.
- There is a need to collaborate with community support organizations, including women's groups, to empower local communities.
- Clarity on gender considerations in and ownership, rights and privileges over genetic resources is necessary.



Conclusion

7. Conclusion

50. The Nagoya Protocol builds significantly on the third objective of the Convention on the fair and equitable sharing of benefits arising from the utilization of genetic resources. It provides basic legal certainty and transparency for both providers and users of genetic resources. By promoting the use of genetic resources and related traditional knowledge, and by strengthening the opportunities for fair and equitable sharing of benefits arising from their use, the Protocol creates incentives to conserve biodiversity, enhance the sustainable use of its components and improve human well-being.
51. As at July 2018, 18 of the 20 participating countries had ratified or acceded to the Nagoya Protocol. Two participating countries that had not yet ratified or

acceded to the Protocol had expressed strong intent to do so and were currently in the final stages of national adoption or approval of their instruments of ratification or accession. Ultimately, the experiences accumulated by all 20 participating countries to the global access and benefit-sharing project summarized in this Guidebook, as well as the various approaches they applied with a view to overcoming the challenges encountered along the way, are relevant to any other country engaged in or considering embarking on the journey towards ratifying, acceding to, approving or consenting to be bound by the Nagoya Protocol or any other international environmental treaty.



Glossary

Glossary

Acceptance, approval, accession and ratification: The international act whereby a State establishes on the international plane its consent to be bound by a multilateral environmental agreement.¹⁷

Access and benefit-sharing (ABS): Refers to the way in which genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers). The Bonn Guidelines list possible benefits, including the results of research and development carried out on the plant material, the transfer of technologies for conducting research or production and the monetary benefits arising from the commercialization of biodiversity-based products. The Bonn Guidelines also state that any such benefits should be shared with all those who have contributed to the resource management, scientific and/or commercial process.¹⁸

Biological diversity/Biodiversity: The variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

Convention: A convention is a formal agreement between States. The generic term 'convention' is thus synonymous with the generic term 'treaty'. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually the instruments negotiated under the auspices of an international organization are entitled conventions (for example, the Convention on Biological Diversity, adopted in Rio de Janeiro, Brazil, on 5 June 1992, which entered into force on 29 December 1993).¹⁹

Country of origin of genetic resources: The country which possesses those genetic resources in in-situ conditions.²⁰

Biopiracy: Bioprospecting that exploits plant and animal species by claiming patents to restrict their general use.²¹

Biotechnology: Any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.²²

Civil society: A community distinct from government and private sector actors, comprised of citizens linked by shared interest, purpose and values.²³

Conference of the Parties: Conference of the Parties to the Convention, the supreme decision-making body of a convention.²⁴

Deposit: After a treaty has been concluded, the written instruments which provide formal evidence of a State's consent to be bound by it are placed in the custody of a depository. The texts of the Convention on Biological Diversity and its protocols designated the Secretary-General of the United Nations as their depository. The depository must accept all notifications and documents related to the treaty, examine whether all formal requirements are met, deposit them, register the treaty and notify all relevant acts to the parties concerned.²⁵

Entry into force: A treaty does not enter into force when it is adopted. Typically, the provisions of the treaty determine the date on which the treaty enters into force, often at a specified time following its ratification or accession by a fixed number of States. For example, the

¹⁷ Vienna Convention on the Law of Treaties 1969, article 2.

¹⁸ <https://www.cbd.int/abs/infokit/brochure-en.pdf>; see also Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, available at: <https://www.cbd.int/doc/publications/cbd-bonn-gdls-en.pdf>.

¹⁹ Vienna Convention on the Law of Treaties 1969, article 2.

²⁰ Convention on Biological Diversity 1992, article 2

²¹ Mapping Environmental Justice, available at: <http://www.ejolt.org/2015/09/biopiracy/>.

²² Convention on Biological Diversity 1992, article 2.

²³ http://www.who.int/social_determinants/themes/civilsociety/en/.

²⁴ <https://www.cbd.int/cop/>

²⁵ Vienna Convention on the Law of Treaties, 1969, article 16.1 (b).

Nagoya Protocol entered into force on 12 October 2014, the thirtieth day after the deposit of the twentieth State's instrument of ratification or accession. A treaty enters into force for those States which gave the required consent.²⁶

Ecosystem: A dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.²⁷

Ex-situ conservation: The conservation of components of biological diversity outside their natural habitats.²⁸

Gender: The social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men in relation to responsibilities assigned, activities undertaken, access to and control over resources, and decision-making opportunities.²⁹

Genetic resources: Genetic material of actual or potential value. Genetic material is any material of plant, animal, microbial or other origin containing functional units of heredity. Examples include medicinal plants, agricultural crops and animal breeds.³⁰

In-situ conservation: The conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.³¹

Mutually agreed terms: The "ABS agreement", that is, the arrangement reached on the terms and conditions of access to and use of genetic resources between the companies seeking plant material for research and development, and the collectors, growers or associations that would be able to supply such material. These contractual agreements are subject to particular procedural and substantive principles. The Bonn Guidelines also list certain basic requirements for such agreements; they must address how the resources are to be used, by whom, and for what purpose, as well as what benefits are to be shared and how such sharing will take place. In addition, national legislation on ABS may require Government approval of the terms of the contract.³²

National focal point: Each Party to the Protocol is to designate a national focal point on access and benefit-sharing to make information available, for example, for applicants seeking access to genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing; traditional knowledge associated with genetic resources, where possible, or information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.³³

National Biodiversity Strategy and Action Plan (NBSAP): Instrument indicating current status of biodiversity, the threats leading to its degradation and the strategies and priority actions to ensure its conservation and sustainable use within the framework of the socioeconomic development of the country.³⁴

Prior informed consent: means an international operation procedure for exchanging, receiving and handling notification and information by a competent authority of the country in which the genetic resource is located before accessing the resource, and negotiating and agreeing on the terms and conditions of access and use of this resource.³⁵

Party: A party to a treaty is a country or international organization which has consented to be bound by the treaty and for which the treaty is in force.³⁶

Provider/Country providing genetic resources: The country supplying genetic resources collected from in-situ sources, including

26 Vienna Convention on the Law of Treaties, 1969, article 24.

27 Convention on Biological Diversity 1992, article 2.

28 Convention on Biological Diversity 1992, article 2.

29 <http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>.

30 Convention on Biological Diversity 1992, article 2.

31 Convention on Biological Diversity 1992, article 2.

32 <https://www.cbd.int/abs/infokit/revise/web/factsheet-nagoya-en.pdf>; see also Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, op. cit.

33 Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, op. cit.

34 Convention on Biological Diversity 1992, article 6.

35 <https://www.cbd.int/abs/infokit/revise/web/factsheet-nagoya-en.pdf>; see also <https://www.nema.go.ke/images/Docs/Regulations/Conservationofbiologicaldiversityandresourcesaccesstogenetics.pdf>.

36 Vienna Convention on the Law of Treaties 1969, article 1.

populations of both wild and domesticated species, or taken from ex-situ sources, which may or may not have originated in that country.³⁷

Signature (of an agreement): The negotiations that precede a treaty are conducted by delegations representing each of the States involved, meeting at a conference or another setting. Together they agree on the terms that will bind the signatory States. After they reach agreement, States are free to sign the treaty in accordance with the terms set out in the treaty. By signing a treaty, a State expresses its intention to comply with the treaty. However, this expression of intent in itself is not binding. Signature qualifies the signatory State to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.³⁸

Sustainable use: The use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.³⁹

Traditional knowledge: Knowledge resulting from intellectual activity in a traditional context, including know-how, practices, skills and innovations. Traditional knowledge generally refers to knowledge systems embedded in the cultural traditions of regional, indigenous or local communities and can be found in a wide variety of contexts, including agricultural, scientific, technical, ecological medicinal and biodiversity-related knowledge.⁴⁰

Treaty: A formally concluded and ratified agreement between States. The term is used generically to refer to instruments binding at international law, concluded between international entities (States or organizations). Under the Vienna Conventions on the Law of Treaties, a treaty must be (a) a binding instrument, which means that the contracting parties intended to create legal rights and duties; (b) concluded by States or international organizations with treaty-making power; (c) governed by international law; and (d) in writing.⁴¹

User/Country consuming genetic resources: Users of genetic resources include research and academic institutions and private companies operating in various sectors such as pharmaceuticals, agriculture, horticulture, cosmetics and biotechnology.⁴²

Utilization of genetic resources: To conduct research and development on the genetic or biochemical composition of genetic resources, including through the application of biotechnology. The Nagoya Protocol does not define "utilization of traditional knowledge". In both the Convention and the Protocol, however, requirements on the fair and equitable sharing of benefits aim to recognize and reward the contribution of the knowledge, innovations and practices of indigenous and local communities towards research and development on genetic resources.⁴³

37 <https://www.cbd.int/abs/infokit/factsheet-uses-en.pdf>.

38 Vienna Convention on the Law of Treaties, 1969, articles 11 and 12.

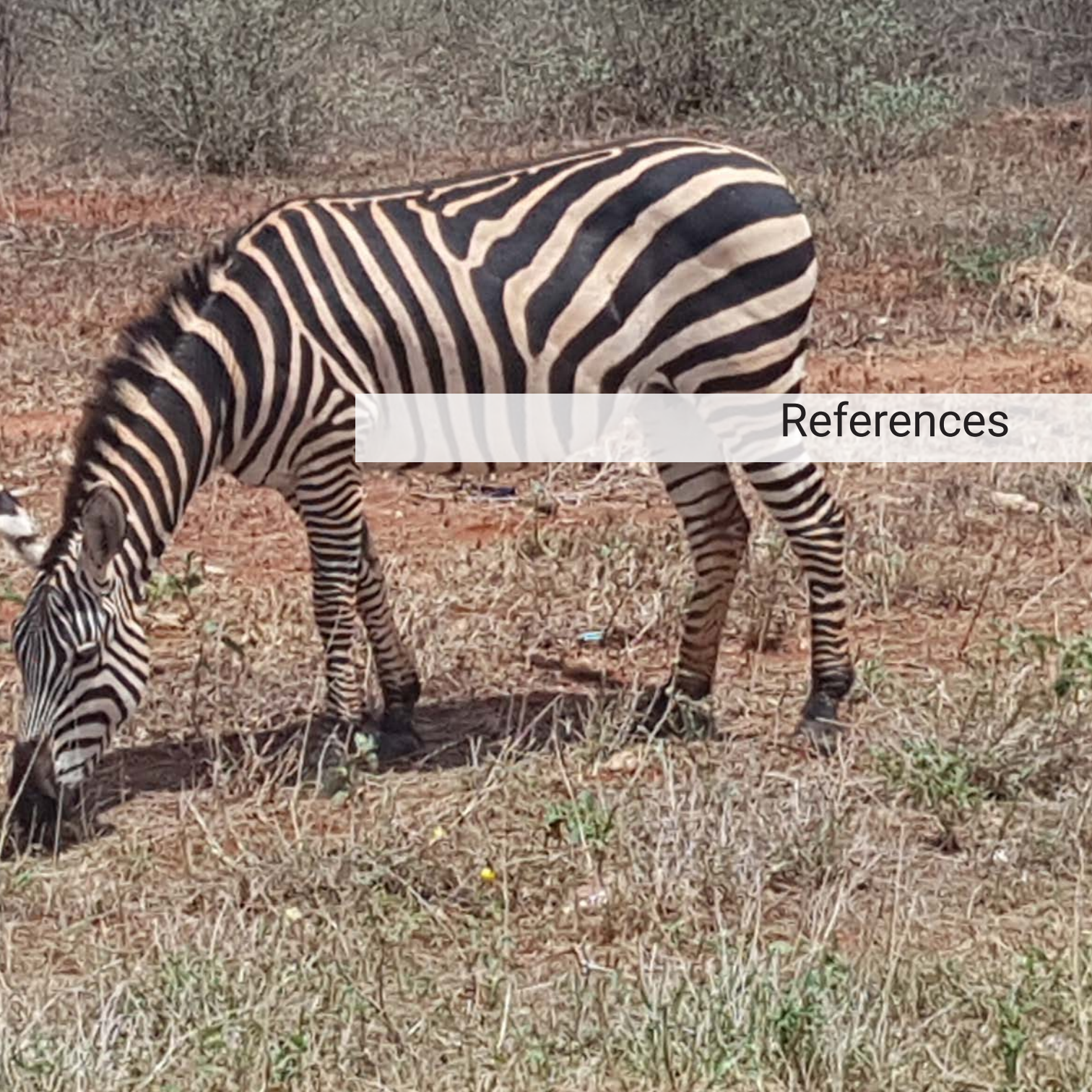
39 Convention on Biological Diversity 1992, article 2.

40 <http://www.wipo.int/tk/en/tk/>

41 http://training.itcilo.it/actrav_cdrom1/english/global/law/keyterm.htm#treaties; see also <http://www.taiwandocuments.org/glossary1.htm#treaties> and article 2 of the Vienna Convention on the Law of Treaties 1969.

42 <https://www.cbd.int/abs/infokit/factsheet-uses-en.pdf>.

43 Nagoya Protocol, article 2, available at: <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>.



References

References

- Bodansky, D, 2010. *The Art and Craft of International Environmental Law*. Harvard University Press, Cambridge, Massachusetts/London, United Kingdom.
- French, H.F., 1994. Strengthening International Environmental Governance. *The Journal of Environment Development*, vol. 3, No. 1, pp. 59–69. Available at: <https://www.jstor.org/stable/pdf/44319425.pdf>.
- Global Environment Facility, 2011. *Global Environment Facility Policies on Environmental and Social Safeguard Standard and Gender Mainstreaming*. Meeting of the Global Environment Facility Council, Washington D.C., May 14–26 2011. Document GEF/C.40/10/Rev.1, available at: https://www.thegef.org/sites/default/files/council-meeting-documents/C.40.10.Rev_1.GEF_Policies_on_Safeguards_and_Gender.May_25_2011_1.pdf.
- Global Environment Facility, 2011. *Outstanding Issues Related to the Nagoya Protocol Implementation Fund*. Meeting of the Global Environment Facility Council, Washington D.C., May 24–26 2011. Document GEF/C.40/11/Rev.1, available at: https://www.thegef.org/sites/default/files/council-meeting-documents/C.40.11.Rev_1_Outstanding_Issues_Nagoya_Protocol_4.pdf.
- United Nations, 2015. *Transforming the World: The 2030 Agenda for Sustainable Development*. United Nations, A/RES/70/1. Available at: www.sustainabledevelopment.un.org.
- United Nations Convention on Biological Diversity, 2011. *Indicators for Monitoring the Implementation of the Strategy for Resource Mobilization: Methodological Guidance*. Secretariat of the Convention on Biological Diversity, Montreal, Canada.
- United Nations Convention on Biological Diversity, 2006. *Global Biodiversity Outlook 2*. Secretariat of the Convention on Biological Diversity, Montreal, Canada.
- United Nations Environment Programme, 2006. *Training Manual on International Environmental Law*. Nairobi, Kenya. Available at: http://wedocs.unep.org/bitstream/handle/20.500.11822/20599/UNEP_Training_Manual_Int_Env_Law.pdf?sequence=1&isAllowed=y.
- United Nations Environment Programme, 2005. *Selected Texts of Legal Instruments in International Environmental Law*. Available at: <http://wedocs.unep.org/bitstream/handle/20.500.11822/8253/-Selected%20texts%20of%20legal%20instruments%20in%20international%20environmental%20law-2005490.pdf?sequence=2&isAllowed=y>.

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