

UN-CBD, Nagoya Protocol

1. United Nations Convention on Biodiversity (CBD)

1.1. Introduction

- The Convention on Biological Diversity or the CBD is one of the key agreements **adopted at the 1992 Earth Summit** in Rio de Janeiro.
- It **entered into force on 29 December 1993**.

1.2. What is CBD?

- The Convention on Biological Diversity is the most **comprehensive binding international agreement** in the field of nature conservation and the sustainable use of natural resources.
- It **covers biodiversity at all levels:** ecosystems, species and genetic resources.
- The Convention recognizes that biological diversity is about more than plants, animals and micro organisms and their ecosystems.

- It is about people and their need for food security, medicines, fresh air and water, shelter, and a clean and healthy environment in which they live.

1.3. What are the objectives of CBD?

It was conceived as a practical tool for translating the principles of **Agenda 21** into reality, with 3 main objectives:

- The **conservation** of biological diversity.
- The **sustainable use** of the components of biological diversity.
- The **fair and equitable sharing of the benefits** arising out of the utilisation of genetic resources.

Its overall objective is to encourage actions, which will lead to a sustainable future.

1.4. Origin of the CBD

- The United Nations Environment Programme (UNEP) convened the **Ad Hoc Working Group of Experts on Biological Diversity** in November 1988 to explore the need for an international convention on biological diversity.
- In May 1989, it established the **Ad Hoc Working Group of Technical and Legal Experts** to prepare an international legal instrument for the

conservation and sustainable use of biological diversity.

- By February 1991, the Ad Hoc Working Group had become known as the **Intergovernmental Negotiating Committee**.
- The Convention was opened for signature on 5 June 1992 at the United Nations Conference on Environment and Development (the Rio "Earth Summit").
- It remained open for signature until 4 June 1993, by which time it had received 168 signatures.
- The Convention entered into force on 29 December 1993, which was 90 days after the 30th ratification.

1.5. Membership

- The Convention has **196 Parties**, which includes 195 states and the European Union.
- **India became a party to the convention on February 18, 1994.**

1.6. Governing Body

- The convention's governing body is the **Conference of the Parties (COP)**, consisting of all

governments (and regional economic integration organisations) that have ratified the treaty.

- The COP can make amendments to the convention.
- This body also reviews progress under the convention, identifies new priorities, and sets work plans for members.

1.7. Secretariat of the CBD

- The Secretariat of the Convention on Biological Diversity (SCBD) is based in **Montreal, Canada**.
- Its main function is to assist governments in the implementation of the CBD and its programmes of work, to organise meetings, draft documents, and coordinate with other international organisations and collect and spread information.

1.8. Protocols of the CBD

- To support implementation of the CBD objectives, two internationally binding agreements were adopted within the framework of the CBD.
- These two protocols are the **Cartagena Protocol** and the **Nagoya Protocol**.

1.9. Issues covered under the CBD

- Measures the incentives for the conservation and sustainable use of biological diversity.
- Regulated access to genetic resources and traditional knowledge.
- Sharing, in a fair and equitable way, the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources with the Contracting Party.
- Access to and transfer of technology, including biotechnology.
- Technical and scientific cooperation.
- Impact assessment.
- Education and public awareness.
- Provision of financial resources.
- National reporting on efforts to implement treaty commitments.

1.10. National Biodiversity Strategies and Action Plans

- National Biodiversity Strategies and Action Plans (NBSAP) are the principal instruments **for implementing the Convention at the national level.**

- The Convention requires that countries prepare a national biodiversity strategy and to ensure that this strategy is included in planning for activities in all sectors where diversity may be impacted.

2. Nagoya Protocol

2.1. What is the Nagoya Protocol?

- The Nagoya Protocol on Access and Benefit Sharing (ABS) is a **2010 supplementary agreement** to the 1992 Convention on Biological Diversity.
- It sets out obligations for its contracting parties to take measures in relation to access to genetic resources, benefit-sharing and compliance.

2.2. Aim of the Nagoya Protocol

- It provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the **fair and equitable sharing of benefits arising out of the utilisation of genetic resources**.
- The protocol also covers **traditional knowledge associated with genetic resources** that are covered by the CBD and the benefits arising from its utilisation.

2.3. Scope of the Nagoya Protocol

- Nagoya Protocol requires the signatories to **enact a national legislation to ensure fair and equitable benefit sharing** arising out of biodiversity resources and their commercial derivatives.
- Protocol recognizes pre-existing norms for access and benefit sharing established by the **International Treaty on Plant Genetic Resources for Food and Agriculture**.
- Firms will also **have to pay to use genetic material** such as those of pathogens, which are used to develop vaccines.
- Additionally, it has **Access and Benefit Sharing (ABS) rules** to ensure that the benefits of natural resources and their commercial derivatives are shared with local communities.
- Now, multinational companies will have to share their profits with local communities not only for using the original resource, but also for derivative products developed from it.
- Firms will take into consideration indigenous and local communities' traditional knowledge associated with genetic resources.

2.4. Adoption and Ratification

- The protocol was **adopted on 29 October 2010** in Nagoya, Japan.
- It entered into force on **12 October 2014**.
- **India signed the Nagoya Protocol on 11 May 2011**, and **ratified it in October 2012** at the 11th Conference of Parties (COP) to the CBD, conducted in Hyderabad.
- As of April 2022, it has been ratified by **137 parties**, which includes 136 UN member states and the European Union.

2.5. Why is the Nagoya Protocol important?

- The Nagoya Protocol will create greater legal certainty and transparency for both providers and users of genetic resources by:
 - Establishing more predictable conditions for access to genetic resources.
 - Helping to **ensure benefit-sharing when genetic resources leave the country** providing the genetic resources.
- By helping to ensure benefit-sharing, the Nagoya Protocol creates incentives to conserve and

sustainably use genetic resources, and therefore enhances the contribution of biodiversity to development and human well-being.

2.6. Core obligations of the Nagoya Protocol with respect to genetic resources

Access obligations

Domestic-level access measures are to:

- Create legal certainty, clarity and transparency.
- Provide fair and non-arbitrary rules and procedures.
- Establish clear rules and procedures for prior informed consent and mutually agreed terms.
- Provide for issuance of a permit or equivalent when access is granted.
- Create conditions to promote and encourage research contributing to biodiversity conservation and sustainable use.
- Pay due regard to cases of present or imminent emergencies that threaten human, animal or plant health.
- Consider the importance of genetic resources for food and agriculture for food security.

Benefit-sharing obligations

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

Compliance obligations

Contracting Parties are to:

- Take measures providing that genetic resources utilised 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 utilisation of genetic resources after they leave a country including by designating effective checkpoints at any stage of the value-chain: research, development, innovation, pre-commercialization or commercialization.

2.7. Tools and mechanisms to assist implementation

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

- Establishing **National Focal Points (NFPs)** and **Competent National Authorities (CNAs)** to serve as contact points for information, grant access or cooperate on issues of compliance.
- An **Access and Benefit-sharing Clearing-House** to share information, such as domestic regulatory ABS requirements or information on NFPs and CNAs.

- Capacity-building to support key aspects of implementation. Based on a country's self-assessment of national needs and priorities, this can include capacity to

- **Develop domestic ABS legislation** to implement the Nagoya Protocol.

- Negotiate MAT (mutually agreed terms).

- Develop in-country research capability and institutions.

- Awareness-raising.

- Technology Transfer.

- Targeted financial support for capacity-building and development initiatives through the Nagoya Protocol's financial mechanism, the **Global Environment Facility (GEF)**.



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