

# Module 2: The Development of an International Regime on Access to Genetic Resources and Benefit-Sharing



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# Recognising sovereign rights and benefit-sharing

At the heart of the CBD's three objectives is the recognition that biodiversity is **not equally distributed**, that conservation 'costs' place a **burden on developing countries**, and that countries **need money and incentives to develop sustainably and conserve** their biodiversity.

The CBD's third objective, the sharing of benefits from the utilisation of genetic resources, was included to provide the incentive for conservation and sustainable use, and a means to reward provider countries and indigenous and local communities for their roles.

This approach represents a fundamental shift, from a concept of free access to a concept of 'common concern' that recognises the sovereign rights of countries to control their biological resources.



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# CBD Article 15: Access to genetic resources

Article 15 of the CBD sets out the framework for access to genetic resources:

**National governments have the authority** to determine access to genetic resources, and should try to create conditions to **facilitate access** for environmentally sound uses

Access by potential users of genetic resources shall be:

- with the **Prior Informed Consent (PIC)** of the Party providing the resource
- under **Mutually Agreed Terms (MAT)**, agreed between the provider and user

Results of research and development and **benefits** arising from the commercial and other utilization of the genetic resources shall be **shared** fairly and equitably with the provider, upon mutually agreed terms



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# CBD Article 15: Need for clarity and guidance

While many countries introduced specific legislation on Access to Genetic Resources and Benefit-Sharing (ABS), Article 15 provides little guidance on key terms - such as Prior Informed Consent and Mutually Agreed Terms, or what constitutes fair and equitable benefit-sharing.

Countries providing genetic resources asked for more guidance on how to implement the CBD at a national level, and how to prevent misappropriation and misuse of their genetic resources.

Users of genetic resources (academic researchers, conservationists and commercial sectors) called for guidance to ensure that they were working legally.

All sides argued that the lack of clarity in ABS provisions was holding back progress towards the CBD's vital goals of conservation and sustainable use.



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# Other CBD Articles relevant to benefit-sharing

Articles 8(j), 16, 17 and 18 of the CBD set out more general obligations for Parties to:

- encourage the equitable sharing of benefits arising from the utilization of traditional knowledge, innovations and practices (Article 8 (j))
- give access to and transfer technology relevant to conservation and sustainable use (A16)
- exchange information relevant to conservation and sustainable use (A17)
- promote technical and scientific cooperation (A18).



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# Voluntary Bonn Guidelines

The CBD COP established a **working group on ABS** to examine the issues and develop guidance.

The 'Bonn Guidelines' were adopted by COP in 2002.

These set out agreed **voluntary guidance** to assist Parties, governments and other stakeholders in developing ABS strategies.

The **Bonn Guidelines** provide more practical detail on the various steps in the ABS process, such as prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing, and offer an indicative list of monetary and non-monetary benefits.



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# Demand for a legally-binding ABS regime

As the Bonn Guidelines were voluntary in nature, there was increasing demand for a legally-binding international ABS regime to address:

- the lack of certainty about how to comply with ABS provisions
- the over-emphasis on ‘provider’ country regulations to control access
- the need for measures to ensure compliance and enforcement in ‘user’ countries
- the perceived emphasis on access to physical resources, rather than utilisation of resources, as the trigger for benefit-sharing
- the genuine lack of trust of provider countries and fears of misappropriation and misuse of their genetic resources (‘biopiracy’)
- the lack of guidance on, and fears of misappropriation and misuse of, traditional knowledge associated with genetic resources



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# The Nagoya Protocol on Access and Benefit-Sharing

Negotiations towards a legally binding regime began in 2002.

Text was finally agreed and adopted at COP10 Nagoya, October 2010 as **'The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.'**

The Protocol came into force on 12 October 2014 - 90 days after its ratification by 50 countries.

The Protocol is a legally-binding instrument: Parties to the Protocol have to implement it at national level by taking the necessary legislative, administrative or policy measures.

# The CBD, Nagoya Protocol and national ABS legislation: the international ABS regime

Countries that are Parties to the CBD can ratify the Nagoya Protocol.

The governing body of the Nagoya Protocol is the COP-MOP ('the Conference of the Parties serving as the Meeting of the Parties'), which meets concurrently with the CBD COP. COP-MOP/1 was in October 2014.

The Nagoya Protocol introduces additional and complementary ABS obligations to those already established by the CBD.

Parties to the Protocol also need to implement Article 15 of the CBD, and the others articles relating to benefit-sharing (16, 17, 18, and 8(j))

Users of genetic resources need to follow the ABS legislation of a provider country, whether or not that country has ratified the Nagoya Protocol.



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# Timeline for development of the ABS regime

- 1992 CBD opened for signature
- 1993 CBD comes into force on 29 December**
- 2000 COP5 establishes ABS working group to develop guidance
- 2001 ABS working group drafts Bonn Guidelines
- 2002 COP6 adopts Bonn Guidelines
- 2002 World Summit on Sustainable Development calls for new international regime on ABS
- 2004 COP7 sets terms of reference for negotiations
- 2006 COP8 sets 2010 deadline for end of negotiations
- 2007-9 Technical expert groups meet to discuss certificates of origin, legal terms and concepts, compliance and traditional knowledge
- 2009-10 ABS working group meets 3 more times to negotiate text
- 2010 COP10 adopts the Nagoya Protocol
- 2014 Nagoya Protocol comes into force on 12 October**; first meeting of its governing body, the Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol (COP-MOP)



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**End of Module Two  
(History of the Nagoya Protocol)**

Why not try the [quick quiz?](#)

Then, please go to [Module Three](#)  
(Key Articles of the Nagoya Protocol  
explained)



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