

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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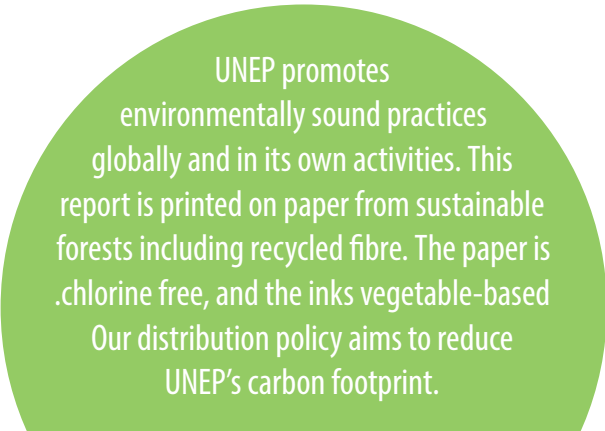
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Foreword

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 to the Nagoya Protocol, many developing countries continue to face considerable challenges relating to the implementation of the Protocol, largely financial and human capacity constraints and lack of comprehensive legal frameworks related to national access and benefit-sharing frameworks.
6. 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.

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