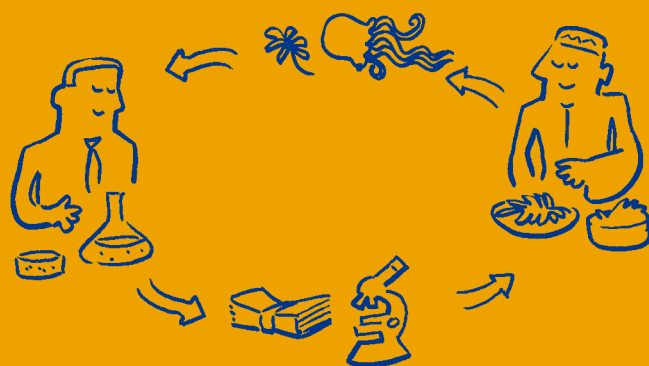


THE ABS CAPACITY DEVELOPMENT INITIATIVE



The ABS Capacity Development Initiative

Supporting the implementation of the Nagoya Protocol

www.abs-initiative.info



funded by



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Access to genetic resources and the sharing of benefits arising from their utilization (ABS), including that of associated traditional knowledge, delivers economic and development opportunities, thereby contributing to biodiversity conservation. Established in 2006, the ABS Capacity Development Initiative supports the creation of enabling environments in which these resources are utilized in a sustainable way.

The pivotal international instrument to achieve this goal is the Nagoya Protocol, which entered into force in October 2014.

The Nagoya Protocol – the ABC of ABS

The Nagoya Protocol provides the global framework for implementing the third objective of the Convention on Biological Diversity (CBD), that is the fair and equitable sharing of benefits arising from the utilization of genetic resources. The Protocol enhances legal certainty and transparency for both users and providers of genetic resources and the associated traditional knowledge.

By reiterating that States have sovereign rights over their *natural* resources, the Protocol confirms their authority to regulate access to *genetic* resources. It stipulates that prior informed consent (PIC)

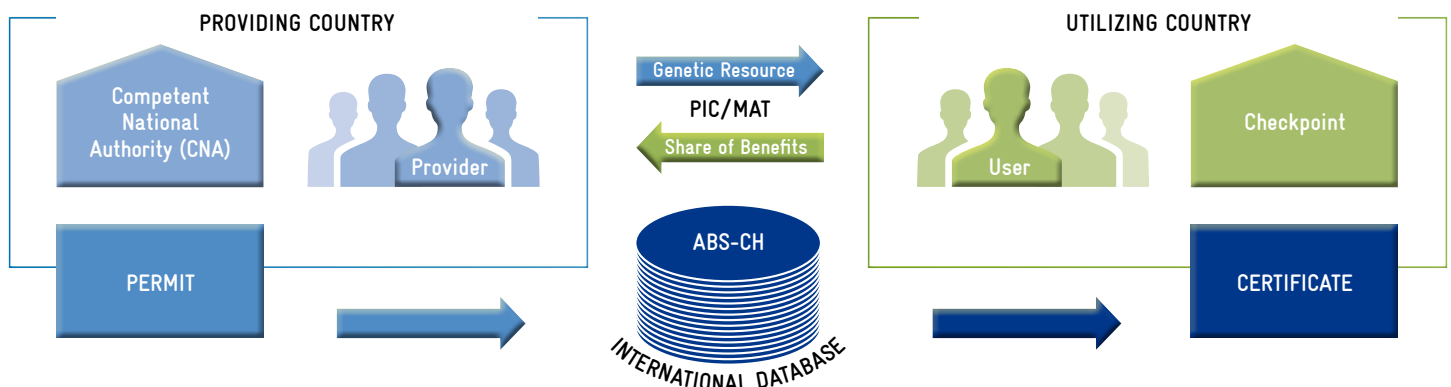
of the providing country is a necessary condition for access to genetic resources. PIC goes hand-in-hand with mutually agreed terms (MAT) between a provider and a user. MAT are contracts establishing the conditions of access to and utilization of the resources and the benefits to be shared by both parties.

The Protocol encourages countries to involve indigenous peoples and local communities (IPLCs) as owners and/or custodians of genetic resources and holders of traditional knowledge in the PIC/MAT process in accordance with domestic law.

Compliance provisions in combination with the ABS Clearing-House (ABS-CH) are key novel elements established by the Nagoya Protocol with the aim of preventing misappropriation of genetic resources and associated traditional knowledge and ensuring benefit sharing agreements are actually enforced.

- **ACCESS:** create fair and non-arbitrary conditions for **accessing** genetic resources and associated traditional knowledge.
- **BENEFIT:** ensure fair and equitable **benefit sharing** when genetic resources and associated traditional knowledge are being utilized.
- **COMPLIANCE:** monitor and ensure **compliance** with MAT and national ABS regulatory and legislative frameworks.

THE COMPLIANCE PROVISIONS OF THE NAGOYA PROTOCOL ON ABS



Why the Nagoya Protocol

The ABS concept combines conservation and sustainable use of biodiversity with academic and commercial pursuits by balancing the interests of users and providers of genetic resources.

For many **developing countries and emerging economies**, ABS is a realistic opportunity to boost biodiversity conservation, generate value from biodiversity, support the domestic research landscape, and create new value chains that contribute to the well-being of the population. More than 100 countries across the world have recognized this opportunity for sustainable development and have ratified the Nagoya Protocol. At present, many national ABS strategies and regulations are being developed or are undergoing revision.

Companies from the pharmaceutical, cosmetic, food, and biotechnology sectors must contend with ever-changing market conditions, such as shifting consumer demands, which may be due to ageing

populations or increased considerations of ethical and sustainability criteria in buying decisions. **Companies, as users** of genetic resources, eventually find answers to these challenges in ABS-compliant value chains, where marketing benefits are linked to the responsible sourcing of genetic resources. Legal certainty through binding ABS contracts secures access to these resources and investment in production.

For **non-commercial users**, e.g. universities and research institutions, whose academic research contributes to the conservation and sustainable use of biodiversity, the Protocol provides for simplified measures for access to genetic resources.

Establishing regulatory and institutional ABS frameworks has several advantages for **providers**, e.g. governments, IPLCs, cooperatives, gene banks and research institutes, roles, rights and responsibilities are clearly defined, actual providers are better integrated into value chains, and benefits, such as transfer of technology and know-how or shares in profit, are properly negotiated and agreed on in ABS contracts.

What the ABS Initiative offers

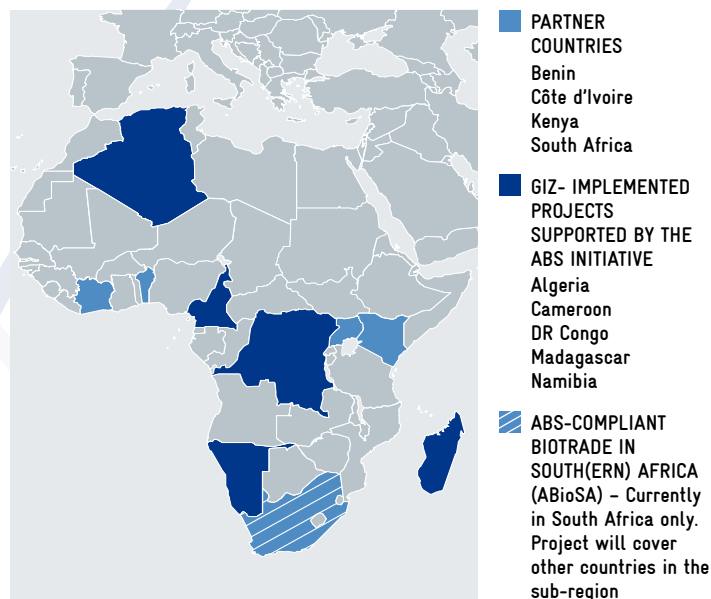
The concept of Access and Benefit Sharing is high on the agenda across the world. The post-2015 Sustainable Development Agenda makes several references to ABS. With the increasing number of countries ratifying the Nagoya Protocol, the number of requests to support national ABS implementation is rising.

The ABS Capacity Development Initiative addresses these requests by supporting three core processes: developing and revising ABS regulatory frameworks, negotiating fair and equitable ABS agreements, and effectively integrating IPLCs in the respective processes. Lessons from the Initiative's activities directly support the Secretariat of the Convention on Biological Diversity (SCBD) in the implementation and further development of the Strategic Framework for Capacity-building and Development to Support the Effective Implementation of the Nagoya Protocol.

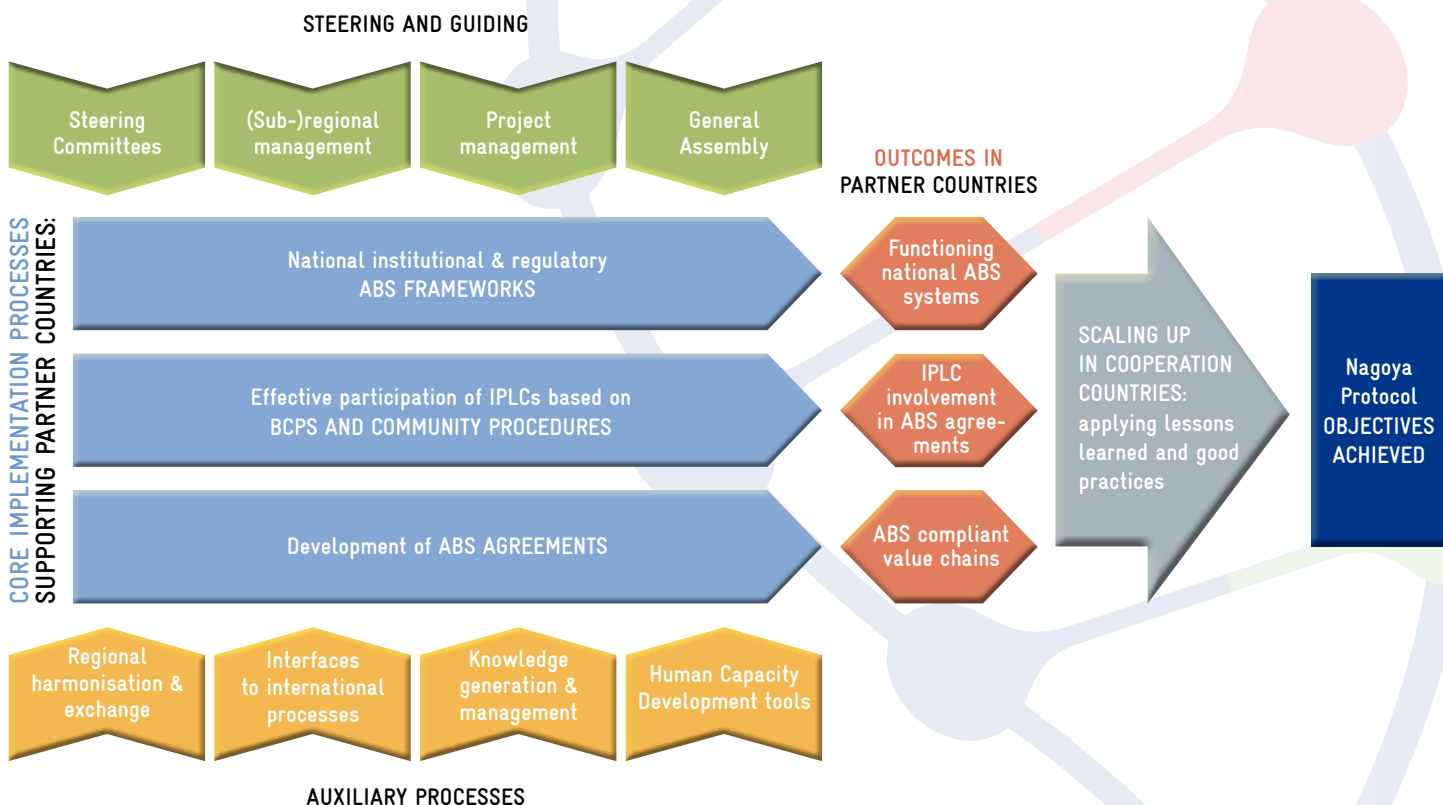
The Initiative draws on expertise and networks rooted in over a decade of experience with ABS. It has developed tools and approaches that are used by ABS stakeholders globally.

When the ABS Initiative started in 2006, it exclusively conducted activities in Africa. In 2012, the Initiative's activities were extended to include all members of the *African, Caribbean and Pacific (ACP) Group of States*. The focus of the current project phase to date is on selected African partner countries. The lessons learned will inform developments in other countries.

PARTNER AND COOPERATION COUNTRIES OF THE ABS INITIATIVE IN AFRICA (AS OF JULY 2015).



INTERVENTION LOGIC OF THE ABS INITIATIVE





Before entering into ABS negotiations, IPLCs must be made aware of their rights. Creating Bio-cultural Community Protocols (BCPs) allows them to reflect on their values and lifestyle and linkages to the legal and political environments. In the process, IPLCs develop a joint understanding of their rights amidst the tension between customary and formal law.

- Participants of a workshop on ABS for IPLCs, organized by the ABS Initiative in Namibia (November 2014)

Videos, studies, guides and communication toolkits – these are just a few outreach instruments of the ABS Initiative. They are used to draw attention to ABS and strategically involve relevant stakeholders in the implementation of the Nagoya Protocol.

- Awareness raising on bioprospecting in the field, in Antsirana (Diego Suarez), Madagascar.



The ABS Initiative provides the following support packages, which are tailored to meet the needs of countries based on their progress with the implementation of the Protocol.

- Guidance on developing and implementing national institutional and legislative ABS frameworks, including permitting systems and administrative processes
- ABS-relevant technical trainings, e.g. on user sectors or intellectual property rights
- Training courses on MAT negotiations, including benefit-sharing, information on monitoring and compliance systems in user countries as well as on relevant market standards
- Setting up dialogue and exchange forums with ABS stakeholders
- Identification of cooperation partners and innovation opportunities leading to ABS agreements
- Specific awareness raising on ABS among relevant stakeholders
- Development of instruments supporting the empowerment of IPLCs and their participation in ABS processes

In addition, the Initiative supports transboundary harmonization and exchange of experiences on ABS by offering (sub-)regional trainings and workshops in Africa, the Caribbean and the Pacific. At a global level, the ABS Initiative serves as an interface between national activities and international processes through participation in meetings and joint activities with international partners.

Supporting ABS-compliant biotrade in South(ern) Africa (ABioSA)

Financed by the Swiss State Secretariat for Economic Affairs (SECO), the ABS Initiative supports the creation of a high-growth, jobs-rich and innovative biotrade sector that complies with international and domestic ABS regulations. This project contributes to the livelihoods of rural people and the productive use of plant biodiversity in South Africa and the Southern African sub-region. It aims to create permanent and seasonal jobs in biotrade value chains while substantially boosting the value generated from regional biotrade products.

Tools used by the Initiative

In cooperation with its partners, the ABS Initiative has developed and applied a substantial amount of tools in three main areas.

Knowledge generation and management

The Initiative documents processes and reviews lessons learned. It also fosters communication and learning among all its stakeholders. Studies and assessments are conducted to stimulate discussion and support decision-making processes. Jointly with Biodiversity, the Initiative further develops conceptual approaches, e.g. on the harmonized national implementation of the Nagoya Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Management and dissemination tools are used to compile and disseminate knowledge on ABS, e.g. ABS Initiative website and fortnightly ABS News Digest.

Human capacity development tools

For the purpose of broadening the pool of experts and disseminators of ABS knowledge, the Initiative creates innovative formats for capacity development. Many of these tools are tailored to meet specific needs at national and local levels. Some examples include a basic ABS training for national focal points, ABS contract training and multi-stakeholder strategy workshops.

Awareness raising tools

Awareness raising triggers reflection and action. Therefore, the ABS Initiative puts emphasis on developing communication tools. Some target lay audiences, e.g. videos to explain ABS and standard presentations, whereas others focus on particular stakeholders' needs at the national level, e.g. the ABS-Communication, Education and Public Awareness (CEPA) Guide and fact sheets on the ABS-relevant industrial sectors.

Milestones achieved by the ABS Initiative

Since 2006, the ABS Initiative has contributed to shaping ABS at a national and international level. Some highlights are:

African interests reflected in the Nagoya Protocol: During the negotiations leading to the adoption of the Nagoya Protocol, the Initiative supported the African Group by organizing preparatory meetings, high-level events and (sub-)regional multi-stakeholder workshops and trainings. As a result, the African Group was able to negotiate with one voice and effectively participate in the negotiations.

African Union ABS guidelines: The ABS Initiative supported the development of the *African Union (AU) policy and technical guidelines*

for the coordinated implementation of the Nagoya Protocol in Africa, which were endorsed by the 27th Ordinary Session of the Executive Council of the AU. These two documents provide strategic and practical step-by-step directions and tools to guide African countries in the implementation of the Nagoya Protocol.

Sub-regional ABS strategy: In the context of the GIZ-implemented Support Program to the Central African Forests Commission (COMIFAC), the ABS Initiative has provided assistance in the development of a sub-regional ABS strategy, which was adopted by the COMIFAC Ministers Council in November 2010. The ABS Initiative is now backstopping ABS implementation in COMIFAC member countries.

Draft ABS policies and regulations: The ABS Initiative has advised on the development of Nagoya Protocol-compliant policies and regulations in countries such as Benin, Cameroon, Madagascar, the Federated States of Micronesia, Morocco, Namibia, Palau, Samoa and Senegal.

ABS agreements: The ABS Initiative has supported the negotiation of benefit-sharing agreements for several natural products, including upfront capacity building of local providers and regulators as well as facilitating the negotiations that led to the signing of ABS agreements, e.g. in Cameroon and Namibia.

Bio-cultural Community Protocols (BCPs): The ABS Initiative, in collaboration with the NGO Natural Justice, supports IPLCs in managing their natural resources and interacting with potential users and governmental institutions. Key instruments in this regard are BCPs, which, among other things, facilitate the establishment of ABS agreements between IPLCs and industry. Facilitated by Natural Justice and the Initiative, a BCP process in South Africa led to a non-disclosure agreement between a local healers association and a domestic cosmetic company.

ABS toolkit and training course for lawyers and legal drafters: The ABS Initiative supported SCBD and the International Development Law Organization (IDLO) in implementing a capacity-building programme to support the implementation of the Nagoya Protocol. The programme is financed by the Japan Biodiversity Fund and the European Union, and offers regional courses on domestic ABS legislative, administrative and policy measures.

Online system for ABS applications, permits and monitoring: The ABS Initiative has developed a single window concept for the integration of all institutions involved in issuing ABS permits and related documents. For users, it offers a transparent and coordinated application and permitting process. Through innovative text mining tools, providers can monitor milestones of utilization, such as publications, patents and other online documents.

What makes the ABS Initiative unique

The Initiative combines a set of features that are essential for the successful ABS implementation.

One-stop support: With its pool of experts and partner organizations, the ABS Initiative is able to cover all relevant aspects to be considered in ABS implementation. Together with collaborators on the ground, the Initiative supports partner countries in assessing the status quo, developing strategies and finding solutions to set up functioning ABS systems.

ABS knowledge broker: Studies, assessments, guides, workshop reports and multimedia tools on the Nagoya Protocol and ABS serve as an extensive knowledge base for ABS-related projects worldwide.

Inter-regional approach: The Initiative has first-hand experience with a variety of ABS challenges and opportunities in Africa, the Caribbean and the Pacific. Exchange events with ABS experts and practitioners from Europe, Asia and Latin America facilitate joint learning from the experiences generated in these different regions.

Inter-disciplinary expertise: Over time, the ABS Initiative has established a considerable network of experts and partner organizations from diverse professional fields, from academics to practice-oriented professionals and lawyers. Their expertise is applied in different ABS-relevant areas such as law, research & development (R&D), business models and governance.

Cross-sectoral proficiency: The ABS Initiative interacts with academic and commercial users of genetic resources to support the development of workable ABS regulations and fair ABS agreements. For instance, the Initiative is providing background information on industry sectors in areas such as sampling, R&D, intellectual property (IP) and marketing.



The national implementation of the Nagoya Protocol needs to be consistent and mutually supportive with other existing instruments. One of them is the International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA). In collaboration with Bioversity International and the Secretariats of the CBD and the ITPGRFA, the Initiative organized a tandem workshop for National ABS Focal Points (NFP) on harmonized national implementation of the two global treaties (Italy, June 2014).

Oil made from the fruit of the Argan tree has great cosmetic value and can help prevent cardiovascular diseases. Although Berber women have been producing Argan oil for centuries, they do not adequately benefit from global commercialization of this product. Properly negotiated and designed ABS agreements could clarify how they could receive benefits arising from the research conducted on the Argan oil they are providing – Berber woman in Morocco grinding the kernels of the Argan tree.

Conceptual and pragmatic: For more than a decade, the ABS Initiative's experts have acquired broad and in-depth knowledge on ABS-related topics, processes and perspectives. This allows for comprehensive and expedient capacity development from the conceptual level to the practical implementation.

Facilitation of multi-stakeholder processes: In order to set the stage for working ABS systems, the ABS Initiative uses strictly participatory approaches in addressing ABS actors and their complex interrelations. ABS players are assisted in gaining an overview of the stakeholder landscape, mutual understanding is facilitated and the negotiation of agreements between stakeholders is supported.

Beneficiaries and benefits

In general, all ABS-relevant stakeholders may benefit from the Initiative's support. Among them are:

Decision makers and legislators are advised on ABS policy options, legal implications and technical requirements when translating the Nagoya Protocol into national context, e.g. for developing or revising national ABS laws and regulations.

National authorities responsible for implementing the Nagoya Protocol receive technical support for improving their capacities, including processing access applications, issuing permits and facilitating ABS partnerships.

IPLCs are custodians and owners of genetic resources and holders of traditional knowledge and therefore play a significant role in ABS. They receive support in responding to requests for access to their genetic resources and associated traditional knowledge. Bio-cultural Community Protocols (BCPs) are important tools in this regard.

ABS cooperation partners in countries providing genetic resources, for instance small and medium-sized enterprises (SMEs), cooperatives, universities and research centers, are indispensable when creating value chains that conform with the Nagoya Protocol. Some may be the actual providers of genetic resources, whereas others have different roles, e.g. in collection of wild specimen, cultivation schemes, the R&D or initial processing steps of the resources. These key actors

benefit from conceptual, technical and legal advice for establishing ABS-compliant research partnerships and value chains.

Users are challenged by the still evolving legal and administrative systems in both user and provider countries. Actors from industry and research are interested in establishing ABS agreements in the Initiative's partner countries which are familiarized with domestic regulatory contexts, relevant governmental and non-governmental actors and national particularities. Options for public-private partnerships may be identified. Cooperation with the ABS Initiative enhances transparency and user-provider understanding, thus reducing transaction costs through better ABS processes.

Partners of the ABS Initiative

- African Union Commission (AUC)
- Bioversity International
- BMZ-funded bilateral projects and programmes, e.g. Algeria, Cameroon, COMIFAC, Madagascar, Morocco, Namibia.
- Fridtjof Nansen Institute (FNI)
- Global Environment Facility (GEF)
- GEF Small Grants Programme (SGP)
- International Development Law Organization (IDLO)
- International Treaty on Plant Genetic Resource for Food and Agriculture (ITPGRFA)
- International Union for the Conservation of Nature (IUCN)
- Natural Justice (NJ)
- PhytoTrade Africa
- Southern African Development Community (SADC)
- Secretariat of the Caribbean Community and Common Market (CARICOM)
- Secretariat of the Convention on Biological Diversity (SCBD)
- Secretariat of the Pacific Regional Environment Programme (SPREP)
- Union for Ethical Biotrade (UEBT)
- United Nations Development Programme (UNDP)
- United Nations Environment Programme (UNEP)
- University of Cape Town (UCT)
- University of New South Wales (UNSW)
- World Intellectual Property Organization (WIPO)



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