

- Encourage transboundary cooperation in instances where genetic resources and associated traditional knowledge are sourced from two or more countries: the minimum benefit sharing terms to be included in MAT
- Support the creation and effective implementation of the Global Multilateral Benefit-Sharing Mechanism as foreseen in Article 10 of the Nagoya Protocol

4 Monitoring and Compliance, with a view to:

- Negotiate provisions with the MAT obliging any user who applies for intellectual property rights or product marketing authorization to disclose summary of application, the origin, source of genetic resources and associated traditional knowledge and declare necessary ABS requirements are complied with
- Encourage compliance through the use of checkpoints and internationally recognized certificates of compliance as well as regular and systemic information exchange

- Provide genetic resources and associated traditional knowledge for utilisation only to users domiciled within AU member state jurisdiction, or within jurisdiction of a Party to the Nagoya Protocol that has adequate compliance and mutual support measures in place

5 Protection and Promotion of Traditional Knowledge Associated with Genetic Resources, Community and Farmers’ Rights, and Economic Development, with a view to:

- Ensure that genetic resources and associated traditional knowledge for utilisation are only provided to users domiciled within AU member state jurisdiction, or within jurisdiction of a Party to the Nagoya Protocol that has adequate compliance and mutual support measures in place
- Foster transboundary cooperation in instances where genetic resources and associated traditional knowledge are sourced from two or more countries: the minimum benefit sharing terms to be included in MAT
- Safeguard the collective rights of ILCs to their genetic resources and associated traditional knowledge and of farmers to their traditional livestock breeds and crops, including the right to derive economic development benefits from the utilisation of their genetic resources and associated traditional knowledge
- Ensure that the utilisation of genetic resources does not exceed sustainable harvesting limits, deplete biological resources or otherwise threaten the sustainability of biodiversity at the genetic, species or ecosystems levels

6 Capacity building, capacity development and technology transfer, with a view to:

- Ensure that benefits arising from the utilisation of genetic resources and associated traditional knowledge, especially non-monetary benefits, contribute to national and regional capacity building and technology transfer
- Call on AU Member States to cooperate in capacity building, capacity development and strengthening of human resources and institutional capacities to effectively implement the Nagoya Protocol
- Encourage national intellectual property offices as well as continental and regional IP organisations to play a more active role in ABS, through capacity building, assistance in negotiating mutually agreed terms, and compliance with ABS requirements to monitor and track the utilisation of genetic resources and associated traditional knowledge

Objectives of the AU Practical Guidelines

The step-by-step Practical Guidelines are meant to

- Provide practical guidance to AU Members States on how national ABS systems can be implemented in a regionally coordinated manner, consistent with the provisions of the Nagoya Protocol, so as to preserve key African interests and positions while preventing a “race-to-the-bottom” scenario in which users of genetic resources and associated traditional knowledge play off African Union Member States and/or African ILCs against one another
- Establish a coordinated and cooperative regional approach to preventing misappropriation of African genetic resources and/or associated traditional knowledge, and to punishing such misappropriation when it occurs
- Encourage utilisation of Africa’s genetic resources and associated traditional knowledge assets in ways that support regional objectives and strategies on human resource development, technology transfer, scientific and technical capacity building, food security and economic growth, while encouraging conservation and sustainable use of natural and human capital, including the rights of ILCs
- Facilitate the establishment of common African ABS standards, particularly for benefit-sharing



THE ABS
CAPACITY
DEVELOPMENT
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Factsheet

The African Union Strategic and Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol on ABS

Context

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity (Nagoya Protocol) provides a global framework for implementing the 3rd objective of the Convention on Biological Diversity (CBD): the fair and equitable sharing of benefits arising from the utilisation of genetic resources – in short: Access and Benefit Sharing (ABS).

The Nagoya Protocol was adopted in October 2010 and came into force on 14 October 2014. The Protocol creates greater legal certainty and transparency for both providers and users of genetic resources and associated traditional knowledge by (1) establishing clearer and more transparent conditions for access to genetic resources and (2) helping to ensure benefit-sharing when genetic resources leave the country providing them for utilisation in other countries.

Well-implemented ABS mechanisms create incentives to conserve and sustainably use genetic resources, and therefore enhance the contribution of biodiversity to development and human well-being. For the Nagoya Protocol to show the intended effects, it will need to be implemented at the domestic level. The African Union Strategic and Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol on ABS (AU Guidelines) provide strategic and practical step-by-step directions and tools to African countries for a coordinated implementation of the Protocol’s provisions. The AU Strategic Guidelines were adopted in 2015 by the African Ministerial Conference on the Environment (AMCEN) and approved at the African Union Summit.

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Structure of the AU Guidelines

The AU Guidelines are composed of two separate but interrelated parts.

- The first part (**Strategic Guidelines**) sets out policies and strategic guidelines for a coordinated approach of the implementation of the Nagoya Protocol in Africa.
- The second part (Practical Guidelines) is a step-by-step guide providing detailed technical guidance and background considerations, primarily aimed at Focal Points and other stakeholders involved in developing and implementing ABS systems at national and local levels (designed to leave a large degree of national discretion and flexibility).

Annexes of the AU Practical Guidelines include:

- Sample application form for a permit to utilise genetic resources and/or associated traditional knowledge
- Outline of a basic ABS agreement
- Commentary on key elements of a complete ABS agreement
- Basic principles for community involvement in ABS

The AU Guidelines are not legally binding for the AU Member States, but represent a political consensus by AU Member States on how to implement the Nagoya Protocol in a coordinated manner. In particular, they commit Member States to:

- Establish compatible access procedures;
- Exchange information on users who divert African resources in all African countries and deny them access in all African countries;
- Cooperate in the process of elaboration of common African standards for benefit-sharing; and
- Strengthen the rights of indigenous and local communities (ILCs).

To comply with the various obligations under the Nagoya Protocol, many African countries are developing new or revising existing frameworks on ABS. The AU Guidelines thus provide a supplementary tool of reference, which encourages the consistent and coordinated implementation of the Nagoya Protocol in Africa.

Point of Reference for National ABS Frameworks

Each Party to the Nagoya Protocol needs to consider specific national priorities, needs and policies. This necessary flexibility in domestic ABS implementation is mirrored in the obligations set out in the Nagoya Protocol. The AU Guidelines are meant to facilitate both, ABS implementation in Africa, and coordination and cooperation among African countries in the implementation of the Nagoya Protocol. The AU Guidelines should therefore be interpreted in light of primary sources, such as the texts of the CBD, the Nagoya Protocol, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), and the Bonn Guidelines.

Furthermore, the AU Guidelines are not intended, and do not attempt, to make ABS measures in Africa completely uniform. The AU Guidelines draw on the flexibility contained in the provisions of the Nagoya Protocol which provides countries some degree of latitude to implement ABS measures in light of their national needs, interests and priorities. The coordinated approach to the Nagoya Protocol implementation in Africa outlined in the AU Guidelines is intended to make coordinated use of national flexibilities contained in the Nagoya Protocol to avoid a situation where African countries end up being played off against one another in a race to the bottom.

For the Benefit of Africa

Africa is a continent with a rich heritage of biological diversity, genetic resources and associated traditional knowledge. These assets have often been misappropriated in breach of specific ownership rights of the countries of origin or ILCs. Preventing injustices of this nature has become a priority in Africa and resulted in active participation of the African Group in the Nagoya Protocol negotiations.

While Africa views itself primarily a provider of genetic resources and associated traditional knowledge, each African country is also potentially a user of genetic resources and associated traditional knowledge from other, mainly neighboring African countries. Crop varieties and livestock breeds originating from other parts of the world contribute to Africa's agriculture and food security. It is no accident that most African countries are Parties to the ITPGRFA, a specialised ABS instrument for a particular subset of genetic resources. The African Group also participates in on-going negotiations at the FAO Commission on Genetic Resources for Food and Agricultural on ABS measures for other groups of genetic resources, including animals, aquatic organisms, invertebrates, microorganisms and forestry resources.

African institutions also form part of international research networks around topics, such as taxonomy (requiring access to specimens), health (requiring access to pathogens) and climate change adaptation (requiring access to genetic resources adapted to changed environmental conditions). To ensure that Africa benefits from such research in a fair and just manner, substantial ABS issues need to be raised. With growing scientific and technological capacity, Africa is transforming its genetic resources and associated traditional knowledge into novel biotechnology and biotrade products and creating new income opportunities. If properly implemented and with appropriate training, technology transfer and funding, ABS offers opportunities to increase Africa's ability to add value to and benefit from its natural and cultural resources. It can also help to alleviate poverty, stimulate community-level economic development and serve as an incentive for sustainable use and conservation of biodiversity.



African Minister Conference on ABS, Windhoek, Namibia, March 2010



Validation Workshop on the AU Guidelines, Addis Ababa, Ethiopia, October 2013

From Nagoya to Johannesburg: The Process of the AU Guidelines

The AU Guidelines were developed through a participative and consultative process in which all stakeholders (e.g. government officials, indigenous and local communities) were involved. Today, African countries can draw on the valuable strategic and practical orientations and guidance contained in the AU guidelines to support their national efforts towards the implementation of the Nagoya Protocol. The following are the key milestones that informed the process that led to development and adoption of the AU Guidelines after the adoption of the Nagoya Protocol in 2010.

2010

For African ABS stakeholders the 2010 adoption of the Nagoya Protocol was an opportunity to implement ABS in a coordinated manner. This approach needed to be in synergy with agreed African positions and relevant international instruments, such as the *African Common Position for the Negotiations of the International Regime on Access and Benefit Sharing* adopted by the Pan-African Conference of Ministers in charge of ABS held March 2010 in Windhoek, Namibia, and the 2001 *African Model Law for the Protection of the Rights of the Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources* (African Model Law).

For this reason, the African Union Commission Department of Human Resources, Science and Technology (AUC DHRST) commissioned the ABS Capacity Development Initiative to support the work on a gap analysis of the African Model Law. The analysis was undertaken by a team of African experts and took into account the provisions and requirements set out in the Nagoya Protocol, the ITPGRFA and other relevant international instruments and processes. The gap analysis concluded that the African Model Law was still relevant but that an additional complementary guideline document would be needed to be used alongside.

2012

The conclusions and recommendations resulting from the gap analysis were reported to the 6th Pan-African ABS workshop held at Limbe, Cameroon, in January 2012. Upon request of attending African ABS stakeholders, AUC DHRST commissioned a group of African ABS experts to draft ABS guidelines. The ABS Capacity Development Initiative provided the necessary financial support.

In September 2012, the 14th meeting of AMCEN, held in Arusha, Tanzania, adopted a resolution aiming “to encourage the African Union Commission to continue its ongoing work in the development of guidelines to support the coordinated implementation of the Nagoya Protocol on access and benefit-sharing in Africa”. By including this decision as paragraph 26 in the *Arusha Declaration on Africa's post-Rio+20 strategy for sustainable development*, AMCEN made the ABS guidelines process part of the broader African sustainable development agenda.

2013

In October 2013 technical experts discussed the ABS policy section in detail during a meeting in Ethiopia. The results of this discussion fed into the development of the *AU Policy Framework for the Coordinated Implementation of the Nagoya Protocol on ABS*. The experts further requested the AU Commission and the ABS Capacity Development Initiative to facilitate the development of the guidelines section into a step-by-step implementation guide.

2014

Comments from expert peer reviewers on the guidelines' draft version were incorporated into a revised consolidated draft, which was consolidated during a validation workshop in Addis Ababa in August 2014.

2015

The final version of the AU Strategic Guidelines was adopted by AMCEN at its 15th meeting held at Cairo, Egypt in 2015. Additionally, AMCEN took note of the accompanying AU Practical Guidelines as step-by-step guidance for the implementation of the Nagoya Protocol at national and regional levels. This decision was endorsed by the AU Executive Council at its 27th Ordinary Session held in Johannesburg, South Africa in 2015.

Objective of the AU Strategic Guidelines

The objective of the AU Strategic Guidelines is to provide strategic policy guidance to support the implementation of the Nagoya Protocol in Africa and serve as a basis for the development and regular updating of AU Practical Guidelines with a view to facilitate and ensure coordination and cooperation in the implementation of the Nagoya Protocol in Africa.

The AU Strategic Guidelines give policy guidance on six issues

➊ ABS procedures, awareness raising and information sharing, for example:

- To cooperate to develop compatible continental and regional procedures for granting prior informed consent (PIC), concluding mutually agreed terms (MAT) and monitoring compliance by users

➋ Access for utilisation, with a view to:

- Promote sustainable use of genetic resources and associated traditional knowledge by instituting transparent and functional access regulations

- Make clear that having acquired physical access to genetic resources including from ex-situ collections does not legitimize utilisation and that PIC and MAT are essential including from ILCs where they have the established right

- Ensure that provisions are in place for requiring PIC and MAT access to and utilisation of naturally occurring biochemical derivatives (as per Nagoya Protocol Art. 2) and for access to associated traditional knowledge relating to use of such derivatives

- Exempt from domestic regulation acquisitions relating to trade in commodities and where such access does not result in utilisation as genetic resources (as per Nagoya Protocol Art. 2), however eventual change of intent needs to be notified and required procedures met whereby encouraging customary use and exchange of genetic resources and associated traditional knowledge within ILCs

- Encourage mutually supportive implementation of the ITPGRFA and the Nagoya Protocol

- Promote and encourage research that contributes to the conservation and sustainable use of biodiversity through simplified access for non-commercial research, due regard to present and imminent emergencies, support use of genetic resources for food agriculture and food security in Africa

➌ Benefit-Sharing, with a view to:

- Co-operate and coordinate policies towards establishing transparent, fair, equitable benefit sharing standards that uphold intrinsic, cultural and socio-economic values of genetic resources and associated traditional knowledge