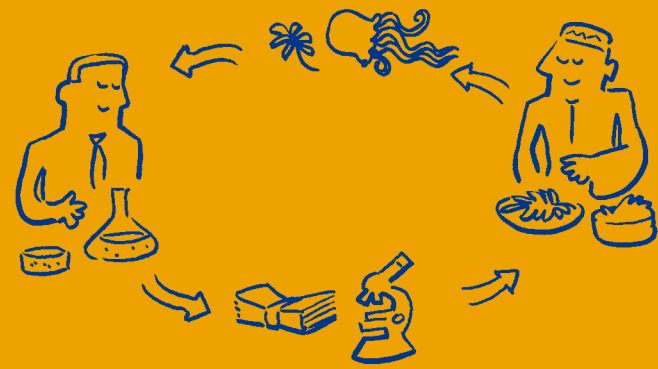
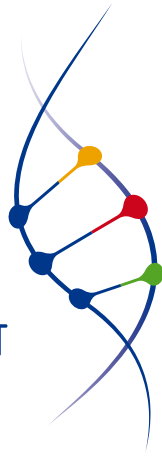


THE **ABS**
CAPACITY
DEVELOPMENT
INITIATIVE



The ABS Capacity Development Initiative

Supporting the implementation of the Nagoya Protocol

www.abs-initiative.info



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. The ABS Capacity Development Initiative, established in 2006, 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 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 utilization of genetic resources. The Protocol enhances legal certainty and transparency for users and providers of genetic resources and associated traditional knowledge.

Furthermore, the Protocol reiterates that States have sovereign rights over their *natural* resources and thereby the authority to determine access to *genetic* resources. The Protocol further stipulates

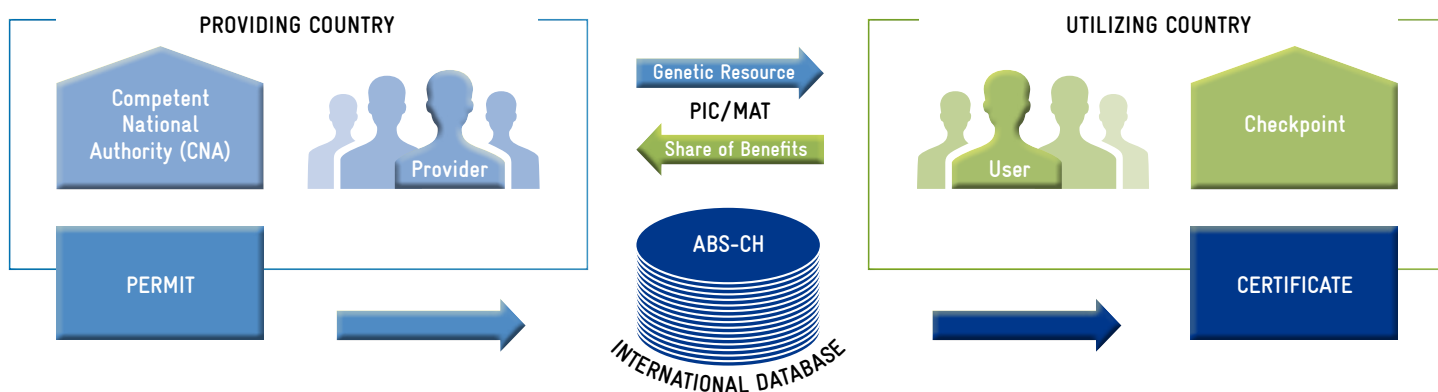
that prior informed consent (PIC) of the providing country is necessary as a condition for granting access to genetic resources. PIC goes hand-in-hand with mutually agreed terms (MAT) between a provider and a user. MATs are contracts establishing the conditions of access and utilization of the resources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

The Protocol encourages countries to involve indigenous peoples and local communities (IPLCs) as owners 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 of the Nagoya Protocol with two aims: to prevent misappropriation of genetic resources including associated traditional knowledge and to ensure that benefit sharing agreements are actually enforced.

- **ACCESS:** create fair and non-arbitrary conditions for **accessing** genetic resources.
- **BENEFIT:** ensure fair and equitable **benefit sharing** when genetic resources and associated traditional knowledge are being utilized and commercialized.
- **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, and thereby is a tool that promotes sustainable development.

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 benefitting the well-being of the population. At present, national ABS strategies and regulations are developed or undergoing revision.

Many companies from the pharmaceutical, cosmetic, food and biotechnology sectors must contend with ever-changing market conditions such as shifting consumer demands – be it, for example, due to ageing populations or increased considerations of ethical and sustain-

ability criteria in buying decisions. **Companies, as users** of genetic resources, eventually find answers to these challenges when operating in ABS compliant value chains: Marketing benefits are linked to responsible sourcing. Legal certainty through binding ABS contracts secures access to these resources and investments in production.

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

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

Commercial and non-commercial users of genetic resources are looking for support and guidance on ABS. The ABS Initiative organizes exchange meetings and, in its partner countries, facilitates ABS agreements between users and providers. – Participants at the ABS Business Dialogue 2013, organized annually by the ABS Initiative, hosted by the Danish Ministry of the Environment, the Ministry of Foreign Affairs of Denmark and the Confederation of Danish Industry.



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 bio-prospection in the field, in Antsirana (Diego Suarez), Madagascar.

What the ABS Initiative offers

The concept of Access and Benefit Sharing is high on the agenda worldwide. The outcome document of the post-2015 Sustainable Development Agenda has several references on ABS. With the growing general awareness on ABS and the increasing number of countries ratifying the Nagoya Protocol, the number of requests to support national ABS implementation is rising.

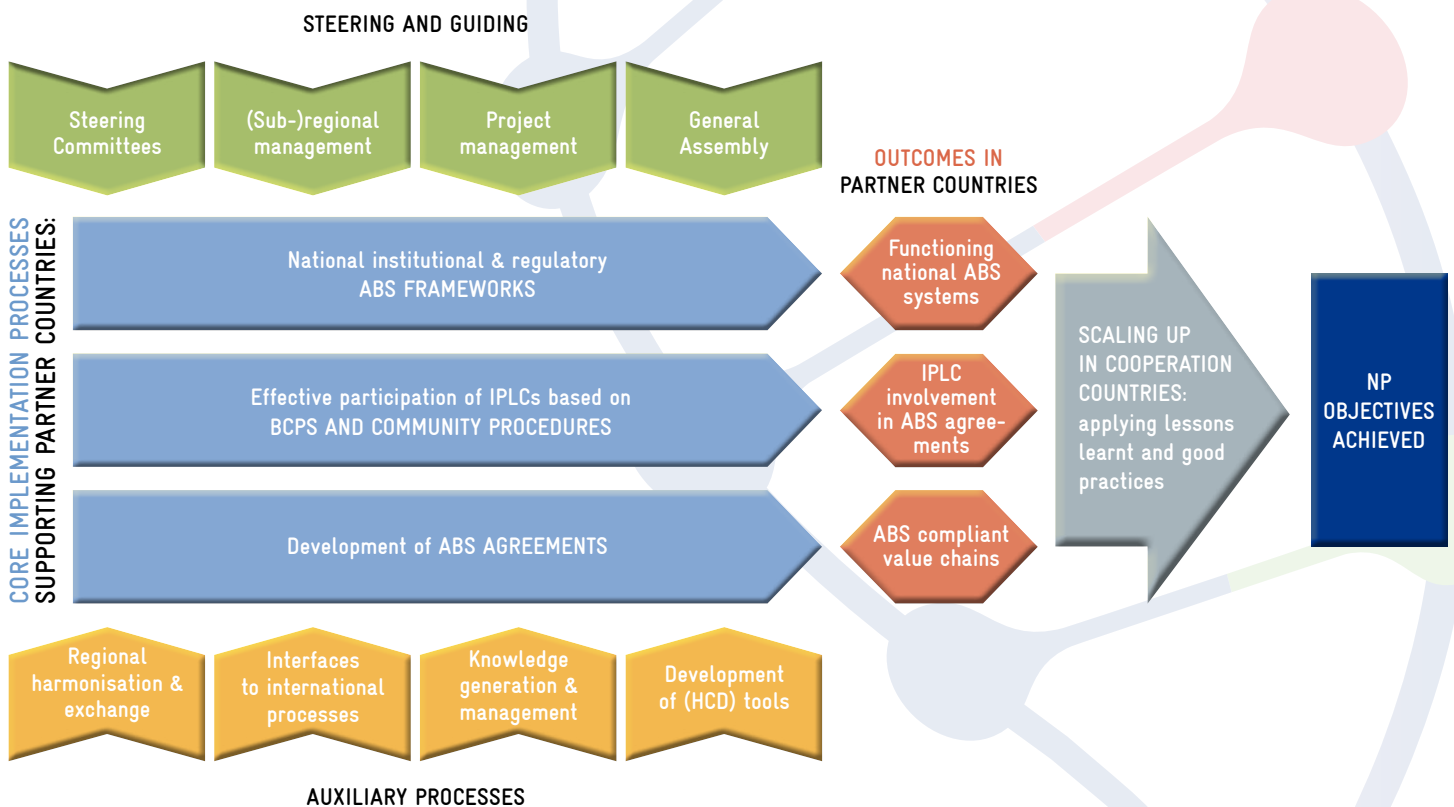
The ABS Initiative addresses these requests by supporting three core processes: developing and revising ABS legislative and regulatory frameworks, negotiating fair and equitable ABS agreements and effectively integrating IPLCs in respective negotiation processes. Lessons from the Initiative's activities will 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 extended to all members of the *African, Caribbean and Pacific (ACP) Group of States*. The focus of the current phase to date is on selected African partner countries. Lessons learned will inform developments in other countries.

INTERVENTION LOGIC OF THE ABS INITIATIVE

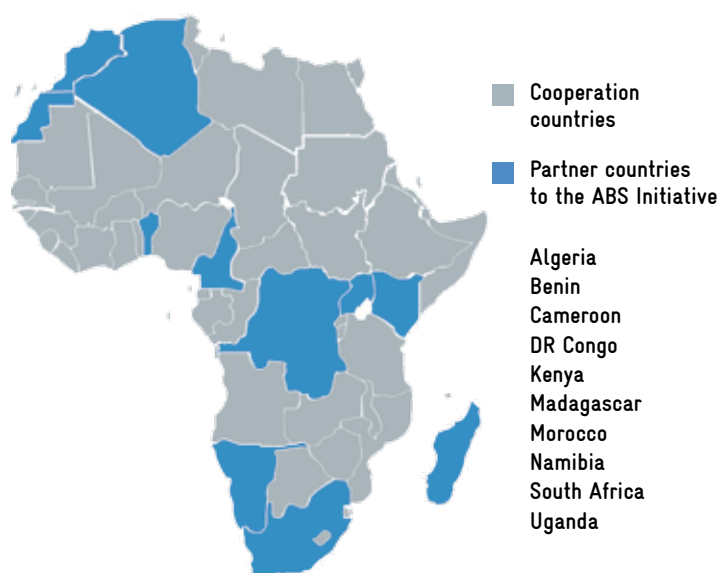




Before entering into ABS negotiations indigenous peoples and local communities (IPLC) must be made aware of their rights. Creating Bio-cultural Community Protocols (BCPs) allows them to reflect on their values and lifestyle and linkages to the legal and political environments. In the process, IPLCs develop 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)



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



The ABS Initiative provides the following support packages which are tailored to meet the needs of countries depending on their progress towards 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, for example on user sectors or intellectual property rights
- Trainings on the negotiation of MAT clauses, including benefit-sharing, information on monitoring and compliance systems in user countries as well as on relevant market standards
- Setting up of dialogue and exchange fora with ABS stakeholders
- Identification of cooperation partners and innovation opportunities leading to ABS agreements
- Specific awareness raising on ABS among relevant stakeholders such as policy makers, public administration, academia, private sector and IPLCs

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 maintains an interface between national activities and international processes through participation in meetings and joint activities with international actors.

Tools used by the Initiative

Jointly with partners, the ABS Initiative developed and applied a substantial amount of tools in three main areas:

Knowledge generation and management

The Initiative documents processes and reviews lessons learnt. It also fosters communication and learning among all its stakeholders. Studies and assessments are conducted to stimulate discussion and support decision-making processes. The Initiative further develops conceptual approaches, i.e. on the harmonized national implementation of the Nagoya Protocol and the International Treaty on Plant Genetic Resource for Food and Agriculture (ITPGRFA). Last but not least, management and dissemination tools are used to compile and disseminate knowledge on ABS (e.g. ABS Initiative website and weekly 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 of capacity development. Many of these tools are tailored to meet specific needs at national and local levels. Examples are a basic ABS training for national focal points, a training course on building legal ABS frameworks for lawyers and multi-stakeholder strategy workshops.

Awareness raising tools

Awareness raising triggers reflection and action. Thus the ABS Initiative puts emphasis on developing communication tools. Some target lay audiences (e.g. videos to explain ABS and standard presentations), others focus on particular stakeholders' needs at the national level (e.g. the ABS-CEPA [Communication, Education and Public Awareness] 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 on a national and international scale. Highlights of the Initiative's accomplishments are:

African interests reflected in the Nagoya Protocol: During the negotiations 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 to 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*, endorsed by the 27th Ordinary Session of the Executive Council of the AU. The 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 provided assistance in the development of a sub-regional ABS strategy, 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 advised the development of draft Nagoya Protocol compliant policies and regulations in countries such as Benin, Cameroon, Madagascar, Micronesia, Morocco, Namibia, Palau, Samoa and Senegal.

ABS agreements: The ABS Initiative supported the negotiation of access and benefit sharing agreements for several indigenous natural products. The support consisted of 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 others, facilitate the establishment of ABS agreements between IPLCs and industry. Facilitated by the Initiative, a BCP process in South Africa led to the non-disclosure agreement between a local Healer Association and a domestic cosmetic company.

ABS toolkit and training course for lawyers and legal drafters: In partnership with the ABS Initiative the International Development Law Organization (IDLO) has launched a toolkit and training course to point out essential legal requirements of the Nagoya Protocol, key technical resources available and the latest research on relevant legal frameworks.

What makes the ABS Initiative unique

The ABS Initiative is combining a set of features that are essential for 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. Jointly with collaborators on-site the Initiative supports partner countries in assessing the status quo, developing strategies and finding solutions.

ABS knowledge broker: Studies, assessments, guides, workshop reports and multimedia tools on the Nagoya Protocol and ABS serve as a profound 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 learning from experiences generated in the different regions.

Inter-professional expertise: Over time the ABS Initiative has developed a considerable network of experts and partner organizations from diverse professional fields – from academics to praxis-oriented professionals and lawyers. Their expertise may be applied



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). Jointly 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.

in different ABS relevant areas such as law, research & development (R&D) processes, 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 sharing background on sectoral industrial patterns in areas such as sampling, R&D, Intellectual Property (IP) and marketing with providers and regulators.

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

Multi-stakeholder facilitation: The ABS Initiative uses strictly participatory approaches in addressing ABS actors and their often unclear interrelations in order to set the stage for working ABS systems. 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 informed and advised on ABS policy options, legal implications and technical requirements when translating the Nagoya Protocol into national context – be it for development or revision of 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.

Indigenous Peoples and Local Communities (IPLCs) are custodians and owners of genetic resources and holders of traditional knowledge and therefore play a significant role in ABS. They receive sup-

port 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 center – are indispensable when initiating value chains in conformity with the Nagoya Protocol. Some of them may be the actual providers of genetic resources, others have different roles, e.g. in wild collection, cultivation schemes, the R&D process or initial processing steps of the resources. These key actors benefit from conceptual, technical and legal advice for establishing ABS compliant research cooperation and value chains.

Users are challenged by the still evolving legal and administrative systems in both user and provider countries. Industry and research interested in establishing ABS agreements in partner countries of the ABS Initiative are familiarized with domestic regulatory contexts, relevant governmental and non-governmental actors and national particularities. Options of Public-Private-Partnerships may be identified. Cooperation with the ABS Initiative enhances transparency, user-provider understanding and thus reduces transaction costs through better prepared ABS processes.

Partners of the ABS Initiative

- AU Commission
- Bioversity International
- BMZ funded bilateral projects and programmes
- CARICOM Secretariat
- COMIFAC
- CISDL
- FNI
- GEF
- GEF/SGP
- IDLO
- ITPGREFA
- IUCN
- Natural Justice
- PhytoTrade Africa
- SADC
- SCBD
- SPREP
- UEBT
- UNDP
- UNEP
- University of Cape Town



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