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# Compliance under Biodiversity-related Conventions

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# Biodiversity-related Conventions

<https://www.cbd.int/brc/>

**Cartagena Protocol  
on Biosafety**

**Nagoya Protocol  
on ABS**

**Holistic  
approach**  
• **1992 CBD**

**Site-specific**  
• **1971 Ramsar**

• **2001 ITPGRFA**



• **1972 WHC**



**Species-specific**  
• **1973 CITES**



• **1979 CMS**

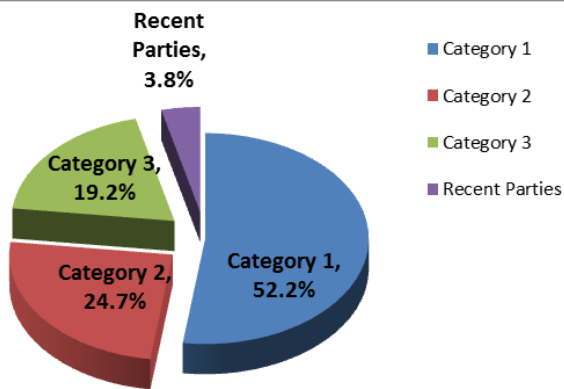


# CITES (1): evolutionary regime

- **From** controlling trade in wild species and their products shipped individually **to** controlling international trade in commodities such as live flowers, fish and timber
- **From** compliance system not being part of its original design **to** a complex machinery with the possibility to impose **trade sanctions** on parties
  - <https://cites.org/eng/resources/ref/suspend.php>
- The COP and the Secretariat, as well as the Scientific Committees and Standing Committee, not only supervise but also monitor national action and propose actions, including trade suspensions as a last resort = power of the COP to make recommendations to improve the effectiveness of the Convention (Article XI), coupled with **majority-voting** decision making

# CITES (2): National Legislation Project

<https://cites.org/eng/legislation>



- Since 1992 enabling the Secretariat to determine whether parties' national legislation adequately implements CITES, by **categorizing** it as meeting all, some or none of the requirements for implementing CITES:
  - designate at least a Management Authority & a Scientific Authority
  - prohibit trade in specimens in violation of CITES
  - penalize such trade and
  - confiscate specimens illegally-traded or possessed
- Countries have to develop a “**CITES Legislation Plan**” on agreed steps and timeframe for the adoption of national legislation
- failing to submit the Plan or to adopt adequate legislation by set deadlines may result in the recommended suspension of commercial trade with the party, but Secretariat may withhold action **if good legislative progress** (Res. Conf. 8.4)
- CITES Secretariat **assists** countries in developing or revising legislation





# CITES (3): Review of Significant Trade

- **trade trends** in Appendix II species serve to identify cases that provide a **cause for concern**:
  - data provided by parties through annual submissions on legal trade statistics (Article VIII(7)) - points of exit and entry
  - **UNEP World Conservation Monitoring Centre** (WCMC) keeps track through public registry: <http://sigtrade.unep-wcmc.org/>
  - **NGO TRAFFIC** collaborates with CITES in bringing to Parties' attention cases where illegal trade, or unrestricted legal trade places species at the brink of extinction
- CITES (through Secretariat, COP, Standing or Scientific Committees) may **suggest** establishing zero quotas, adopting regulations and/or management plans
- Scientific Committees **monitor and follow-up**, suggesting, together with Secretariat and Standing Committee, **alternatives** to bring wildlife trade back to sustainable levels.

**CBD Art. 1: objectives:** conservation, sustainable use & fair and equitable benefit-sharing

## CBD Art. 2: Definitions

- "**Biological diversity**" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.
- "**Biological resources**" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.
- "**Genetic resources**" means genetic material of actual or potential value.
- "**Ecosystem**" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.



## Thematic programmes

- Agricultural Biodiversity
- Dry and Sub-humid Lands Biodiversity
- Forest Biodiversity
- Inland Waters Biodiversity
- Island Biodiversity
- Marine and Coastal Biodiversity
- Mountain Biodiversity

## Cross-cutting issues

- 2010 Biodiversity Target
- Access to Genetic Resources and Benefit-sharing
- Traditional Knowledge, Innovations and Practices
- Biological Diversity and Tourism
- Climate Change and Biological Diversity
- Economics, Trade and Incentive Measures
- Ecosystem Approach
- Global Strategy for Plant Conservation

- Global Taxonomy Initiative
- Impact Assessment
- Assessment, Monitoring and Indicators
- Invasive Alien Species
- Liability and Redress - Article 14(2)
- Protected Areas
- Communication, Education and Public Awareness
- Sustainable Use of Biodiversity
- Technology Transfer and Cooperation

→ programmes of work; voluntary guidelines; “a body” of periodic COP decisions

<https://www.cbd.int/programmes/>

# CBD (1): why not? b) type of obligations

Art. 6. General measures for conservation and sustainable use

- mainstreaming

Art. 7: identification and monitoring

Art. 8: in situ conservation

- Protected areas
- Rehabilitation of degraded ecosystems
- Invasive alien species (h)

Art. 9: ex situ conservation

Art. 10: sustainable use

- Customary use (c)
- Support local populations in remedial action (d)
- Encourage cooperation between its governmental authorities and its private sector (e)

Art. 11: Incentives

Art. 14: Impact Assessment

→ **open-ended?**

“**bottom-up**” regime

**COP decisions**

→ **heavily qualified?**

**common but differentiated  
responsibility**





## Ex: CBD Art. 8(j)

Each Contracting Party **shall**, as far as possible and as appropriate:

- Subject to its national legislation, **respect**, preserve and maintain [traditional] knowledge
- ...**promote** [its] wider application with the approval and involvement of the holders of such knowledge
- and **encourage** the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices

[see High Court of Australia, *Commonwealth v Tasmania* (1983) on WHC Arts. 4 and 5]



# CBD (2): what if...?

- **SBSTTA** was created to provide timely advice relating to the CBD implementation, and has engaged in the analysis of national reports and the undertaking of so-called “**in-depth reviews**” of areas of activities of the Convention (Arts. 25-26)
- **Working Group on Review of Implementation** (2005-2014) to review progress in the implementation of the Strategic Plan but also to provide guidance on means to address obstacles encountered in its implementation (Dec VII/30) [www.cbd.int/wgri/](http://www.cbd.int/wgri/)
- “light-touch system of aggregate information gathering with a view to identifying best practices”
- to consider in 2012 **the possible development of additional mechanisms** to facilitate compliance with the Convention and the Plan, or strengthening of SBSTTA or WGRI to that end (Dec X/2)

# CBD (3): more promising routes?

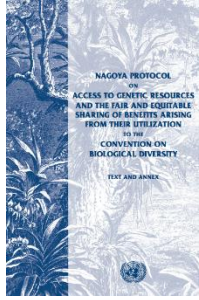
- regional and sub-regional **workshops** have been used in an effort to enhance effectiveness of NBSAPs
- **Subsidiary Body on Implementation** (Dec XII/12) + **voluntary peer review mechanism** (Dec XIII/?)



...and/or “outside” cross-compliance avenues?

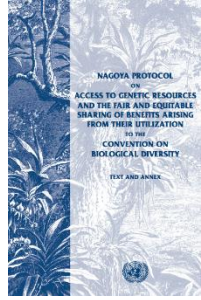
- **Inter-American Court on Human Rights**: from *Saramaka* (2007) to *Kaliña and Lokono* (2015)
- **OECD Guidelines for Multinational Enterprises**: National Contact Points (UK – Vedanta case, 2009)

# Nagoya Protocol (1): “right-holders” & compliance?



- **Art. 5(2):** Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by **indigenous and local communities (ILCs)**...are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms (MAT).
- **Art. 5(5):** Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with **indigenous and local communities** holding such knowledge. Such sharing shall be upon MAT....
- See also Arts. 6(2), 7 and 12
- [Missing link with Art. 17???

Morgera et al, [Unraveling the Nagoya Protocol: A commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity](#) (Martinus Nijhoff, 2014) - click on "open access" button

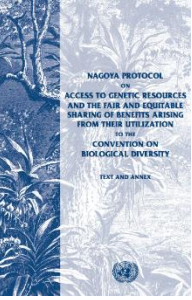


# Nagoya Protocol (2): “access” to the Compliance Committee?



- Committee’s members may include ILC representatives
- two ILC representatives, at least one from a developing country, nominated by ILCs, shall serve as observers (participating in deliberations except in the taking of decisions)
- Secretariat may submit information from ‘a directly affected ILC’
  - On specified matters (national report, info for ABS Clearinghouse; Art. 12)
  - Previously, however, Secr must try to solve the issue among that ILC and State concerned
- Committee may seek, receive and consider information from affected ILCs.
  - The reliability of the information should be ensured.
- The Committee may seek advice from independent experts, including, in particular where ILCs are directly affected, from an ILC expert.
- The Committee may undertake, upon invitation of the Party concerned, information gathering in the territory of that Party.

[Decision NP-1/4](#) (2014)



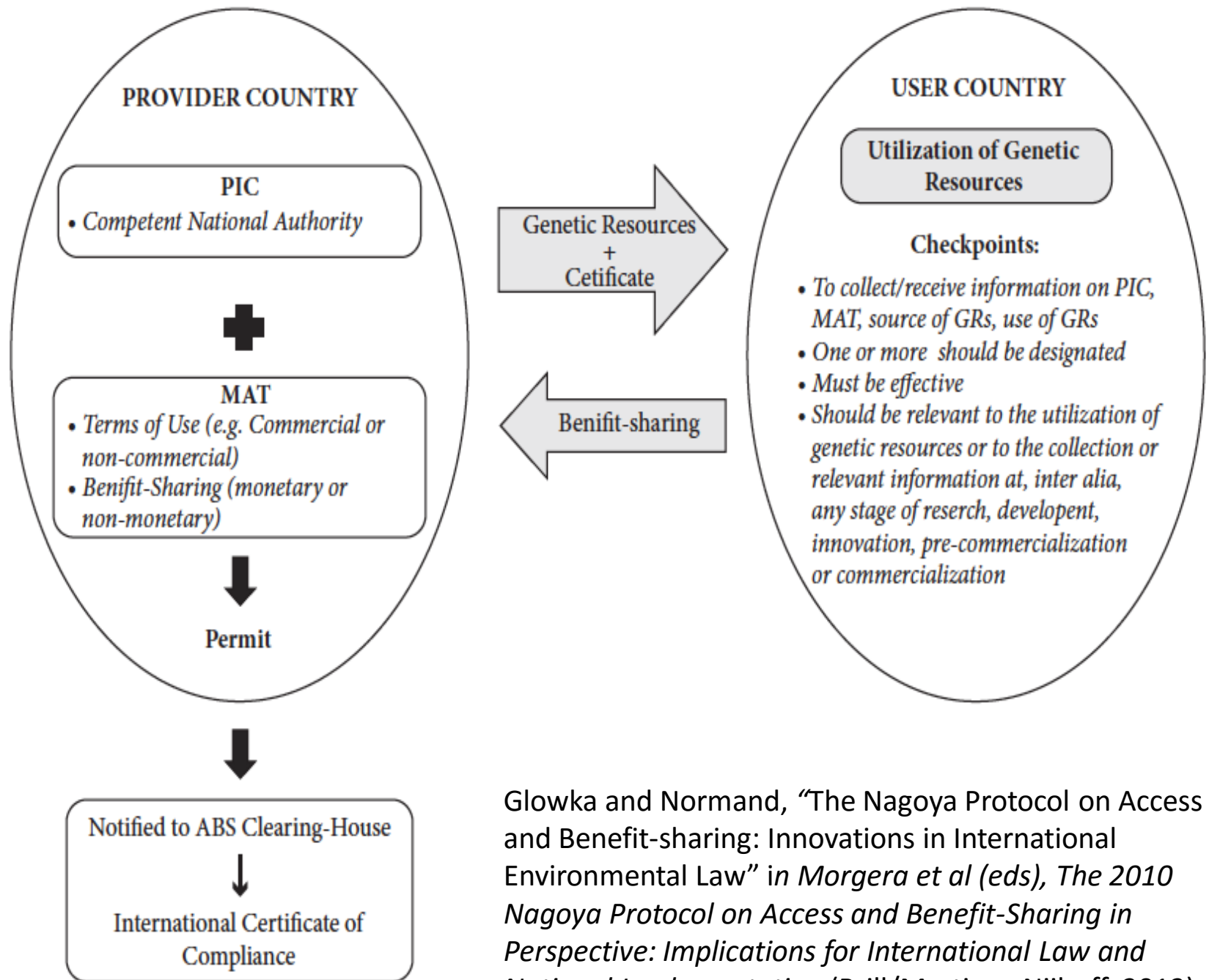
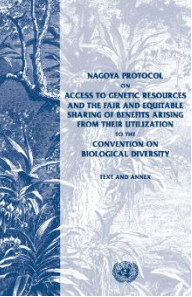
# Nagoya Protocol (3): measures

The Compliance Committee may:

- offer advice or assistance to the Party concerned, as appropriate;
- request or assist, as appropriate, the Party to develop a compliance action plan identifying appropriate steps, an agreed timeframe and indicators to assess satisfactory implementation;
- invite the Party to submit progress reports

The COP/MOP upon recommendations of the Committee, may also:

- facilitate, as appropriate, access to financial and technical assistance, technology transfer, training and other capacity-building measures;
- issue a written caution, statement of concern or a declaration of non-compliance to the Party concerned;
- decide on any other measure, as appropriate, in accordance with Art 26(4) and applicable rules of international law, bearing in mind the need for serious measures in cases of grave or repeated non-compliance.



Glowka and Normand, "The Nagoya Protocol on Access and Benefit-sharing: Innovations in International Environmental Law" in *Morgera et al (eds), The 2010 Nagoya Protocol on Access and Benefit-Sharing in Perspective: Implications for International Law and National Implementation* (Brill/Martinus Nijhoff, 2013)



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