

National Focal Points and Competent National Authorities

Article 13 of the Nagoya Protocol on Access and Benefit-Sharing

Introduction

Under Article 13 of the Nagoya Protocol, each Party is obliged to designate a national focal point (NFP) on access and benefit-sharing (ABS). However, it is up to each Party to decide which national institution will serve in that capacity. According to Paragraph 1 of Article 13, the NFP is responsible for making information on ABS available. It informs potential users of the procedures that are to be followed in applications for access to genetic resources and traditional knowledge associated with genetic resources. The NFP is also responsible for sharing information on competent national authorities (CNAs) and relevant stakeholders. In addition, it is the primary contact between the Party on behalf of which it acts and the Secretariat to the Protocol, which according to Article 28 of the Protocol is the Secretariat of the Convention on Biological Diversity.

Article 13 further obliges each Party to designate at least one competent national authority on ABS. The CNA has the mandate to determine, authorize, and certify access in accordance with national ABS frameworks. Unlike the NFP, which is responsible for sharing information on ABS procedures, the CNA is responsible for giving advice on access procedures and requirements.

However, it is not mandatory to have both an NFP and a CNA (or CNAs). A Party is free to designate only an NFP that will also serve as and carry out the responsibilities of a CNA – or vice versa. Whichever approach a Party opts for, it is important to notify the Secretariat about the designated NFP and CNA(s) as well as their responsibilities, and the information is then made available (by the Secretariat) through the Access and Benefit-sharing Clearing-House (ABS CH), as established under Article 14 of the Protocol.

Understanding Article 13

According to Article 13(1) of the Nagoya Protocol, the designation of an NFP is a mandatory obligation for each Party. Establishing a national focal point is an important tool in implementation of the Protocol. An NFP, like a CNA, is key in the ABS process as it performs functions relating to the Protocol at the national and local level that help facilitate compliance with the ABS obligations by Parties.

Article 13(1) envisages the NFP as the primary national source of information for a user wishing to access genetic resources and/or traditional knowledge associated with genetic resources. Making relevant information available to users is the key function of an NFP, which thus serves more or less as a “helpdesk” or “information hub”. For instance, a potential user interested in accessing genetic resources from a providing Party would know where to get information, for example, on procedures for prior informed consent (PIC) and mutually agreed terms (MAT), the national authority responsible for granting access permits, relevant stakeholders that must be consulted, etc.

In the absence of such a focal point, some of the requirements or procedures can easily be missed, resulting to an unintended breach of national ABS legislation or regulatory requirements. At the same time, the ability to access information easily facilitates access, as it is likely to save time, costs, and so on.

The NFP is required to provide information on procedures for obtaining PIC and establishing MAT and benefit-sharing to applicants interested in accessing genetic resources. This may include the following information, among others:

- Documents accompanying an application for access to genetic resources;
- Timelines for processing of access applications;
- The State agencies (i.e., CNA(s)) responsible for granting PIC and the genetic resources they are responsible for;
- Other stakeholders relevant for access to genetic resources;
- Administrative fees charged for processing access applications;
- Other consents or licenses required prior to access, for instance to enter specific territories as well as access specific genetic resources;
- Special procedures for entering specific territories as well as accessing specific genetic resources;
- Access conditions on, for example, sample depositing or involvement of local experts or institutions;
- Export conditions;
- Simplified procedures for non-commercial research;
- Permitted uses;
- Conditions on third party transfer; and
- Types of benefits to be shared and when a benefit-sharing obligation is triggered.

Where indigenous and local communities (ILCs) have the established right to grant access to genetic resources, a Party is obliged in accordance with Article 6(3)(f) of the Nagoya Protocol to set out criteria and/or processes for obtaining their PIC or approval and involvement. It is the task of the NFP to make information available on such criteria and processes to applicants seeking to access genetic resources.

Likewise, the NFP is required to give information on procedures for obtaining PIC or approval and involvement of ILCs and establishing MAT and benefit-sharing to applicants interested in accessing traditional knowledge associated with genetic resources. Such procedures may be created under Article 7 of the Protocol, which obliges each Party to take measures, as appropriate, to ensure that ILCs' traditional knowledge associated with genetic resources is accessed with their PIC or approval and involvement and that MAT have been established. It is possible that some of the procedures will emanate directly from customary laws, community protocols, and procedures of ILCs, as Article 12(1) obliges Parties to take them into consideration in implementing their Protocol obligations. Some of them could also be a combination of these and State administrative procedures.

However, it is important to note that the formulation "where possible" implies that the NFP shall provide the respective information only where it is possible.

Furthermore, the NFP has the function of giving information to potential users on:

- The CNA(s), that is informing them about the relevant institution(s) where they can apply for access. Such information may include information notified to the ABS CH for example, the contact information of CNA(s), and which CNA is responsible for the genetic resource sought.
- The relevant ILCs and stakeholders, which means other groups of people that might need to be consulted before access and involved in the decision-making or approval process.

Relevant ILCs include communities with the established right to grant access to genetic resources or holding traditional knowledge associated with genetic resources. Relevant stakeholders may include, for example, environmental organizations, research institutes, and universities. With respect to ILCs, a potential user might want to know the community's competent authority, as in many instances this might not be entirely clear.

Finally, the last sentence of Paragraph 1 specifies the NFP as the national institution responsible for communicating as well as maintaining contact with the Secretariat. Thus the NFP is the primary contact point between a Party and the Secretariat.

Under Paragraph 2, each Party is required to designate at least one CNA on ABS. This implies that a Party may also designate more than one CNA. The designation of more than one CNA might be motivated by varying country-specific considerations or differences including institutional structures or division of mandates – based either on the type of genetic resource, its geographic location, or the purpose of access. An example of this approach is South Africa, which has one CNA for access aimed at commercialization and another for access for non-commercial purposes.ⁱ Depending on how the access procedures are organized at the national and local levels (or depending on the relationship between the various ABS-related institutions), the existence of more than one CNA in a country suggests the need to carefully consider how to make the access procedure as efficient and clear as possible.

The provision furthermore indicates that a CNA is the State institution that exercises the authority granted under Article 6(1) of the Nagoya Protocol to determine access as well as conditions attached thereto on behalf of the Party that nominates it. The CNA(s) are thus charged with carrying out administrative duties in accordance with national legislation and regulatory requirements. According to Paragraph 2, they perform the following functions:



- Grant access – this will include fulfilling the obligations under Article 6(3)(d) of the Protocol;
- Issue written evidence that access requirements have been met – for example, that PIC has been granted and MAT have been established – as required under Article 6(3)(e) of the Protocol; and
- Advise on applicable procedures and requirements for obtaining PIC and establishing MAT.

Paragraph 3 indicates that Parties have the discretion to designate a single institution to serve as an NFP and a CNA at the same time. In Costa Rica, for example, the Technical Office of the Comisión Nacional para la Gestión de la Biodiversidad is both the CNA and the ABS NFP.ⁱⁱ Designating a single entity might be prompted by the need to cut down on structural and thereby transaction costs or by efforts to centralize

functions within national institutions and thus simplify the access procedure. In such a case, the nominated institution would perform the functions of both the NFP and the CNA.

Paragraph 4 requires each Party to notify the Secretariat about the contact information of its NFP and CNA(s). If a Party designates more than one CNA, it must notify the Secretariat with the

contact information for each one of them and (all) relevant information pertaining to each one's responsibilities. The information on responsibilities of CNAs must indicate which CNA is responsible for which genetic resource, where such division of mandates exists.

A Party must notify all such information on contact(s) and responsibilities to the Secretariat no later than the date the Nagoya Protocol enters into force for that Party in accordance with Article 33 of the Protocol. If any changes occur in regard to notified information on designation of the NFP or contact information or responsibilities of CNA(s), a Party is required to notify such changes to the Secretariat with immediate effect.

Any information notified to the Secretariat shall be made available on the ABS CH (Article 13(5)). This is to make it possible for others to use the ABS CH for the purpose of accessing genetic resources and/or traditional knowledge associated with genetic resources. In summary, the information transmitted to the ABS CH should include:

- NFP of the provider country;
- Contact(s) of the NFP;
- CNA(s) of the provider country;
- Contact(s) of the CNA(s);
- Responsibilities of the CNA(s); and
- The CNA responsible for the genetic resources sought if a Party designates more than one.

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ⁱ Jorge Cabrera Medaglia, Frederick Perron-Welch and Olivier Rukundo (2011). *Overview of National and Regional Measures on Access to Genetic Resources and Benefit-sharing: Challenges and Opportunities in Implementing the Nagoya Protocol*. Montreal: Centre for International Sustainable Development Law.

ⁱⁱ Jorge Cabrera Medaglia, Frederick Perron-Welch and Olivier Rukundo (2011). *Overview of National and Regional Measures on Access to Genetic Resources and Benefit-sharing: Challenges and Opportunities in Implementing the Nagoya Protocol*. Montreal: Centre for International Sustainable Development Law.

