

# Access to Genetic Resources under the Convention on Biological Diversity

The Convention on Biological Diversity (CBD) is an international legal instrument that governs access to and use of genetic resources from plants, animals, or microorganisms. The Convention was adopted on 22 May 1992 to provide a legal framework for member countries to address global concerns about the conservation, access, and use of biological diversity, and the sharing of benefits arising from the use of genetic resources. The CBD entered into force on 29 December 1993. So far, 196 countries, including the European Union have joined the Convention as its Contracting Parties. In October 2010, the Conference of the Parties to the CBD adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. As a supplementary agreement to the CBD, the Protocol came into force on 12 October 2014 and is ratified by 120 countries, including the European Union (*see* Fact Sheet 15: Nagoya Protocol).

The Contracting Parties of the CBD have the obligation to regulate access to and use of genetic resources through legislative, administrative, and policy measures. It is the responsibility of each Contracting Party to ensure that their domestic measures do not restrict access to genetic resources for environmentally sound uses. Contracting Party must also ensure that access to genetic resources is based on prior informed consent from resource providers and mutually agreed terms between providers and users of genetic resources.

## Objectives and scope of the CBD

The CBD aims to promote:

- (1) the conservation of biological diversity;
- (2) the sustainable use of the components of biological diversity; and
- (3) the fair and equitable sharing of the benefits arising out of the use of genetic resources, including access to genetic resources and transfer of technologies.

The CBD applies to genetic resources from plants, animals, or microorganisms but not to human genetic resources. The resources covered by the CBD are those provided by States that are countries of origin of such resources or those that States have acquired in accordance with the Convention. A country of origin is defined as the country in which the resources are found *in situ*, and with regard to domesticated or cultivated species the country where they have developed their distinctive properties.

The CBD does not apply to genetic resources covered under *Annex 1* of the International Treaty on Plant Genetic Resources for Food and

Agriculture, in so far as they are used for research, breeding, and training for food and agriculture (*see* Fact Sheet 12: International Treaty on Plant Genetic Resources for Food and Agriculture).

## State sovereignty, prior informed consent, and mutually agreed terms

The CBD requires Contracting Parties to create conditions to facilitate access to genetic resources for uses deemed environmentally sound. Access to genetic resources is to be granted based on the prior informed consent of the Party providing genetic resources, and the establishment of mutually agreed terms of access and benefit sharing between providers and users of genetic resources.

## Benefit sharing

Under the CBD, States are required to ensure that when genetic resources are accessed, there is a fair and equitable sharing of benefits. Importantly, the benefits can be monetary or non-monetary.

Monetary benefits include:

- access fees/fee per sample collected or acquired;
- up-front payments;
- special fees to be paid to a trust/benefit sharing fund;
- salaries;
- research funding;
- joint ventures; and
- joint ownership of relevant intellectual property rights.

Non-monetary benefits include:

- sharing of research and development results;
- collaboration, cooperation and contribution in scientific research and development programmes, and in education and training;
- participation in product development;
- transfer of technology;
- access to scientific information, including biological inventories and taxonomic studies;
- research directed towards health, food and livelihood security; and
- social recognition.

## **Traditional knowledge**

The CBD also regulates access to traditional knowledge relevant to the conservation and sustainable use of biological diversity. The Convention requires States to promote wider usage of traditional knowledge with the involvement and consent of Indigenous and local community custodians; and encourage the equitable sharing of the benefits arising from the utilisation of traditional knowledge. Prior informed consent and mutually agreed terms are also required for access to and use of the genetic resources and traditional knowledge of Indigenous and local communities.

## **Intellectual property rights**

States are obliged to cooperate to ensure that intellectual property rights are supportive of and do not run counter to the objectives of the CBD.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

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