

## How to “do” the Nagoya Protocol: a step-by-step guide

*Have you heard of the Nagoya Protocol but don't know where to start? This guide is for you!*

This guide highlights the main steps researchers need to follow to comply with the Nagoya Protocol (NP)<sup>1</sup>. It includes important clarifications and practical recommendations.



### Step 1: Determine whether the provider country regulates access.

*Identify the provider countries.* Before starting the research project, it is essential to identify the countries where the genetic resources (GR) originate from. If you are planning to collect samples in the field (*in-situ*), the provider countries are those you or your collaborators will directly collect the samples from. If you will utilize “old” material (previously collected) from a collection or another source (known as *ex-situ* access) the provider country is the one in which the material was originally collected, not the country where it is currently cultivated or stored. If you plan to utilize “old” material the basic information you should compile is where and when each sample was originally collected and whether they have an associated ABS permit.

Once you have identified the relevant provider countries, *consult the Access and Benefit-sharing Clearing House (ABS-CH)*<sup>2</sup>, the official Nagoya Protocol platform managed by the Convention on Biological Diversity (CBD)<sup>3</sup>. It compiles ABS relevant information published by national authorities in their *country profiles*, including national ABS legislation, procedural guidelines, contact information for national authorities, among others.

Keep in mind that not all the Parties to the NP regulate access to GR and/or associated traditional knowledge (aTK), furthermore, some non-Party countries do. Unfortunately, this information is not always easy to find in the ABS-CH. For instance, Germany does not regulate access to GR and while it has published ABS measures on the ABS-CH, these refer to compliance rather than access. In such cases, to understand how access is regulated, it is necessary to examine the profile of the country on the ABS-CH carefully. For instance, for some countries like Germany, this information is available under question 11 of the interim report<sup>4</sup>. However, these reports were published in 2018, and new decisions may have been made since. Updated national reports are expected by 2026. It is also possible to indirectly confirm if a country regulates access if it has issued permits (*Internationally Recognized Certification of Compliance* or IRCCs), published ABS procedures, or if its legal measures have elements related to access.

In some cases, the information available in the ABS-CH is not sufficient to determine whether a country regulates access. For example, the presence of *“zero” ABS measures on the ABS-CH does not necessarily mean that GR/aTK can be freely accessed. It may simply indicate that the country has not published its national laws on the platform.* The absence of published ABS measures on the ABS-CH is not sufficient proof of legal compliance in the event of a dispute.

If the ABS-CH does not provide enough information, consider consulting other sources. These may include national government websites, local partners, colleagues who have experience in the country in question, institutional ABS contact person and documents such as academic papers or fact sheets.

## Step 2: Verify whether the ABS rules in the provider country apply to your project



*Analyze legal definitions, scope, and exemptions to check if your specific material and type of research are under the scope of national ABS laws.* Some laws only cover certain types of organisms or organisms collected in certain areas. Some countries include exemptions or simplified procedures for basic research. In microbiological research, the applicability of ABS laws may be unclear, especially in cases of access to human microbiome, which is covered by some countries and not by others, therefore direct clarification from authorities is often necessary. For more detailed guidance on this you can check the *ABS world interactive infographic*<sup>5</sup>.

*Understand how the provider country regulates ex-situ access and check whether and how the ex-situ samples you want to utilize are covered.* This is relevant if your research involves utilizing previously collected samples. Start by determining when the country's ABS laws entered into force. If the material was collected after that date, you may have legal obligations to utilize it. Some countries have ABS rules before the NP came into force that may apply to your *ex-situ* samples. Besides that, some countries define access to include new utilization of GR and in these cases, you may require an ABS permit even if the material was collected and left the country long ago, even before the CBD and the NP came into force. Moreover, if samples housed in a collection are linked to an ABS permit, it is important to carefully review that permit to understand any conditions related to transfer and use. National ABS measures sometimes include specific sections on *ex-situ* access, which offer guidance on how to proceed.

*Contact the national authorities to request information or confirm your interpretations.* After reviewing available documentation in the ABS-CH and other sources, you may need additional clarification. In such cases, contact the ABS National Focal Points and Competent National Authorities, whose contact information is listed on the ABS-CH.

When communicating with authorities, provide as much detail as possible about your research. This includes information about the taxonomic group you intend to study (if known in advance), the exact geographic location(s) of sampling, and the objectives and methods of your project. In some fields, such as microbiology, it may be difficult to specify species or taxonomic groups in advance. If this is the case, explain that identifications will be made during the research and commit to submitting a species list once the data are available. You may also ask for relevant forms, clarification of procedures, or confirmation of your interpretation of the ABS laws. Be aware of potential language barriers and cultural differences during these communications. Authorities may take time to respond, so patience and follow-up reminders are often necessary. If no response is received, consider reaching out to the CBD National Focal Point or other officials in the Ministry of Environment or its equivalent. Collaborating with a local partner is often extremely helpful, as they can assist with communications, help navigate the national context, and facilitate the permitting process.



## Step 3: Understand each country's specific ABS requirements and procedures

Each country determines its own access rules, which can differ significantly. This includes differences in terminology, definitions, and required documentation. It is important to have clarity on each country's specific requirements and procedures. To do so, you should first *check the ABS procedures section on the ABS-CH*<sup>2</sup>. However, only a limited number of countries have published their

ABS procedures. In most cases, it will be necessary to request additional information from national authorities.

*Determine the type of permit needed, the required documents, and the submission procedures.* Some countries have online application platforms, although for some countries these may require national ID credentials or the submission of physical documents with original signatures. Other requirements might include legal authentication of signatures, translations, and payment of permit fees.

*Verify if you need other types of permits.* In addition to ABS permits, you may also need research, collection or export permits, depending on the country.

#### Step 4: Request the necessary permits

*Ensure that your permit application covers everything you need for your project,* such as all samples, access to aTK, planned methods, physical access to the sampling site, publishing genetic sequences in open access databases, project collaborators who will receive and utilize the material or be co-authors in publications, any intended deposits in *ex-situ* collections, no restrictions to transfer to third parties (it may be particularly relevant in case of description of new species). If you plan to store samples in a collection or biobank for future use or distribution, it is a good practice to compile all relevant ABS documentation and confirm under what conditions you are allowed to share the material or what requirements recipients must meet. Check the ABS strategy checklist<sup>6</sup> for more detailed guidance.



Most countries require an *agreement on benefits-sharing*. In academic research, this often involves non-monetary benefits such as scientific publications, joint research outputs with local scientists, conservation recommendations, or capacity building and technology transfer. In some countries, you may need to negotiate benefit-sharing terms with national authorities, Indigenous Peoples and Local Communities (IPLCs), or other designated providers, such as research institutions, national parks, or landowners. In others, simplified mechanisms are available, such as standardized model agreements or declarations outlining intended benefits.

Before agreeing to benefit-sharing terms, *clearly define what benefits you can offer, considering grant agreements and institutional policies.* These agreements are legally binding, and you must comply with and report on them. Seek legal advice within your institution for help with contracts and to determine who is authorized to sign them.

After receiving your permits, verify that they are valid and sufficient. *The issuing authority should match the Competent National Authority in the ABS-CH.* If there is any discrepancy, follow up with the ABS National Focal Point. In general, the national permit or its equivalent is sufficient to ensure compliance, but you may also request an IRCC, which provides a globally recognized certificate published on the ABS-CH and has a standardized global code.



#### Step 5: Check for compliance obligations.

Throughout your research, *make sure that your use of the material aligns with the terms authorized in your permit.* This includes publishing genetic sequences in public databases, transferring materials to partners, or depositing samples in collections. Ensure that all research partners using the material are covered under the permit. If the scope of your project changes,

if you intend to reuse samples for a new purpose, or if your permit is set to expire before the research concludes, you may need to request a permit modification or extension.

*Check for compliance rules in the user country.* Finally, remember that compliance obligations may also exist in the country where your research is conducted. For example, users of genetic resources in the European Union are required to seek, keep, and transfer all relevant NP documentation, including permits. They may also need to submit due diligence declarations and cooperate with compliance checks conducted by national authorities. Ensure that you are familiar with and adhere to any user-country requirements that apply to your research activities. For more details on the implementation of the EU ABS Regulation check the *guidance document*<sup>7</sup>, it includes very clear explanations and practical examples.

Upon completing your research, *share benefits as agreed and report back to the authorities in the provider country on the benefits you shared with local scientists, IPLCs, protected areas and any other entity or person considered a provider within the country.* When publishing your findings, include your IRCC number or national permit number in all scientific publications, as this enhances the visibility of research results as a form of non-monetary benefit-sharing and supports reporting under the *Kunming-Montreal Global Biodiversity Framework*<sup>8</sup>.

## Bibliography

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