

**African Union Policy Framework
for the Coordinated Implementation
of the Nagoya Protocol on Access to
Genetic Resources and the Fair and
Equitable Sharing of Benefits Arising from
their Utilisation**

Draft verified by African ABS experts, 14 August 2014

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The XXIVth Ordinary Session of the Assembly of the African Union;

NOTING the recommendations regarding this policy instrument made by the African Ministers Conference on the Environment at its 15th Ordinary Session;

RECALLING that the objectives of the Convention on Biological Diversity are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding;

RECALLING ALSO that the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (Nagoya Protocol) was adopted under the Convention on Biological Diversity to provide an international framework for implementing the third objective of the Convention—the fair and equitable sharing of benefits arising from the utilisation of genetic resources;

TAKING INTO CONSIDERATION the United Nations Declaration on the Rights of Indigenous Peoples and the implications of its Article 31 for the implementation of the Nagoya Protocol;

FURTHER RECALLING that the objectives of the International Treaty on Plant Genetic Resources for Food and Agriculture are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

FURTHER RECALLING the Multilateral System of Access and Benefit Sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention on Biological Diversity;

RECOGNIZING that the international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilisation of genetic resources is primarily intended to create sustainable development opportunities from biological diversity and associated traditional knowledge for provider countries and indigenous and local communities;

ACKNOWLEDGING the potential contribution that access and benefit-sharing can make to the conservation and sustainable use of biological diversity, environmental sustainability and poverty eradication, thereby contributing to achieving Africa's sustainable development goals;

RECOGNIZING FURTHER that the fair and equitable sharing of benefits arising from the utilisation of genetic resources and associated traditional knowledge provides incentives for and supports the sustainable use and conservation of biological diversity, including through appropriate access, technology transfer, funding and respect for all relevant rights;

RECALLING the 2001 African Model Law for the Protection of the Rights of the Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources, and in particular its objectives and principles regarding the protection of genetic resources and associated traditional knowledge against misappropriation and misuse;

CONSIDERING its decision Assembly/AU/Dec. 353(XVI), adopted in 2011, which included biological diversity in the priorities of the African Union, encouraged Member States to become Parties to all conventions on biological diversity and requested the African Union Commission to undertake further concrete actions on issues of biodiversity;

MINDFUL that African Ministers present at the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity in Nagoya, Japan in October 2010 agreed to the adoption of the Nagoya Protocol on the understanding that a strategic and regionally coordinated approach could ensure positive access and benefit-sharing outcomes for Africa, and that the effectiveness of the Nagoya Protocol will be reviewed four years after its entry into force;

RECOGNIZING the importance of African Small Island Developing States as biodiversity hotspots and their vulnerability to the over-harvesting and unsustainable utilisation of confined endemic species and further recognising the need for the adoption of strict regulatory mechanisms to control and regulate access to their genetic resources and associated traditional knowledge;

CONSIDERING that the Nagoya Protocol on ABS enters into force on the 12th of October 2014;

MINDFUL of on-going work on access to genetic resources and associated traditional knowledge and the fair and equitable sharing of benefits arising out of their utilisation in various international, regional, sub-regional and national fora, and the need for continued elaboration and refinement of a coordinated African response;

NOW THEREFORE:

ADOPTS the *African Union Policy Framework for the Coordinated Implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation* (ABS Policy Framework) contained herein below; RECOGNIZING THAT it provides the basis for the development of Guidelines for the Coordinated Implementation of the Nagoya Protocol with a view to facilitate ABS implementation in Africa and to ensure coordination and cooperation;

ENCOURAGES African Union Member States to become Parties to the Nagoya Protocol and to adhere to this ABS Policy Framework in the implementation of the Nagoya Protocol at the national level;

CALLS UPON all indigenous and local communities and all relevant stakeholders to take this ABS Policy Framework fully into account when implementing access and benefit-sharing activities in Africa;

REQUESTS the African Union Commission, in collaboration with the Regional Economic Communities, to establish a coordination mechanism for the implementation of the Nagoya Protocol in Africa;

URGES African Union Member States to allocate financial and other resources to support efforts towards the coordinated implementation of the Nagoya Protocol and the fulfilment by Member States of their obligations under other agreements related to access and benefit-sharing;

CALLS UPON the African Union Commission to facilitate the coordinated implementation of the Nagoya Protocol on ABS in Africa in accordance with the Guidelines for the implementation of this Policy Framework;

FURTHER CALLS UPON development partners and all other relevant actors to provide financial and technical support to the African Union Commission, African Union Member States, indigenous and local communities and all relevant stakeholders for the implementation of the Nagoya Protocol in accordance with this ABS Policy Framework.

Objective

- 1) The objective of this Policy Framework is to provide policy and strategic guidance to support the implementation of the Nagoya Protocol in Africa and serve as a basis for the development of Guidelines with a view to facilitate and ensure coordination and cooperation in the implementation of the Nagoya Protocol in Africa.

Use of Terms

- 2) Terms used in this ABS Policy Framework shall be consistent with the definitions in Article 2 of the Convention on Biological Diversity and Article 2 of the Nagoya Protocol.
- 3) To encourage legal certainty about the use of terms, African Union Member States shall use the same definitions as referred to in paragraph 1 above consistently in domestic access and benefit sharing legislation and regulatory requirements.

ABS procedures, awareness raising and information sharing

- 4) African Union Member States are encouraged to notify the Access and Benefit-Sharing Clearing-House of the Nagoya Protocol about their requirements for obtaining prior informed consent for the utilisation of genetic resources and associated traditional knowledge under their jurisdiction, including applicable legislative, regulatory, administrative and/or policy measures on access and benefit-sharing in place nationally.
- 5) African Union Member States shall cooperate to develop compatible continental and regional procedures for granting prior informed consent, concluding mutually agreed terms and monitoring compliance by users, in accordance with domestic legislation or regulatory requirements.
- 6) African Union Member States shall cooperate to raise awareness of the Nagoya Protocol and related ABS issues among indigenous and local communities and all relevant stakeholders to facilitate and encourage compliance with domestic legislation or regulatory requirements, in accordance with Article 21 of the Nagoya Protocol.
- 7) African Union Member States shall encourage sharing of relevant information between countries and with indigenous and local communities and all relevant stakeholders at all levels, including through the establishment of databases and/or clearing house mechanisms as appropriate.

Access for utilisation

- 8) In the exercise of their sovereign rights over genetic resources and in accordance with national development strategies, African Union Member States shall promote sustainable utilisation of genetic resources and associated traditional knowledge by instituting transparent and functional access regulations in accordance with Articles 6.3 and 12.1 of the Nagoya Protocol.
- 9) African Union Member States as countries of origin or as countries having acquired genetic resources in accordance with the Convention on Biological Diversity resolve that prior informed consent is required for access to their genetic resources and that such genetic resources shall only be utilised as authorised with their prior informed consent and specified in mutually agreed terms, in accordance with Article 6 of the Nagoya Protocol, unless the Member State providing genetic resources has expressly waived the prior informed consent requirement. Having or obtaining physical access to such genetic resources, including from ex situ collections, does not imply that prior informed consent for their utilisation has been granted or is not required. Utilisations without prior informed consent and without the establishment of mutually agreed terms are considered illegitimate. Member States shall cooperate to enforce their sovereign rights in this regard.
- 10) African Union Member States shall take domestic legislative, regulatory, administrative and/or policy measures aimed at ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources and that mutually agreed terms have been established in situations where indigenous and local communities have existing rights to grant access to genetic resources. The absence of such domestic measures in any Member State shall not imply that prior informed consent or approval and involvement of the indigenous and local communities concerned is not required or has been granted. Member States shall cooperate to enforce their sovereign rights and the rights of indigenous and local communities in this regard.
- 11) African Union Member States shall regulate access to traditional knowledge associated with genetic resources through domestic legislative, regulatory, administrative and/or policy measures aimed at ensuring that prior informed consent or approval and involvement of indigenous or local communities is obtained for such access, and that mutually agreed terms have been established. The absence of such domestic measures in any Member State shall not imply that prior informed consent or approval and involvement of the communities concerned is not required or has been granted; Member States shall cooperate to enforce the rights of indigenous and local communities in this regard.
- 12) African Union Member States shall provide in their domestic legislative, regulatory, administrative and/or policy measures on access and benefit-sharing that prior informed consent and mutually agreed terms are also required for access to and utilisation of naturally occurring biochemical derivatives as defined in Article 2 of the Nagoya Protocol, and for access to associated traditional knowledge relevant to the utilisation of such derivatives. Benefits arising from such utilisation or from subsequent applications and commercialisation shall be shared fairly and equitably, upon mutually agreed terms.
- 13) African Union Member States shall exempt from domestic legislation or regulatory requirement all acquisitions or trade incidental to commodities where such acquisition or trade is not intended for and does not result in the utilisation of such commodities as genetic resources in accordance with the definition under Article 2 of the Nagoya Protocol.

- 14) African Union Member States shall provide in their domestic legislative, regulatory, administrative and/or policy measures on access and benefit-sharing that a user who has legally acquired a biological resource or commodity and subsequently develops the intent to utilise and/or commercialise it as a genetic resource within the meaning of the Nagoya Protocol shall inform all relevant parties of such change of intent, seek prior informed consent and conclude mutually agreed terms as applicable before commencing such utilisation or commercialisation. Such a user shall also share the benefits derived from such utilisation and the utilisation of associated traditional knowledge, as well as benefits from subsequent applications and commercialisation, fairly and equitably upon mutually agreed terms.
- 15) In accordance with Article 12. 4 of the Nagoya Protocol, African Union Member States shall exempt from their domestic legislation or regulatory requirements the sustainable customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities.
- 16) In accordance with Article 4.3 and Article 4. 4 of the Nagoya Protocol and pursuant to the obligations established by the International Treaty on Plant Genetic Resources for Food and Agriculture, African Union Member States which are Parties to both the Nagoya Protocol and the Treaty shall implement both agreements in a mutually supportive manner.
- 17) Subject to national development strategies and in accordance with Article 8 of the Nagoya Protocol, African Union Member States shall strive to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, and to:
 - a) Simplify access to genetic resources and associated traditional knowledge for non-commercial research purposes;
 - b) Recognize and provide for changes or transition from non-commercial to other utilisations of genetic resources and associated traditional knowledge;
 - c) Pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally, taking into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatments by those in need, especially in developing countries;
 - d) Support the use of genetic resources and associated traditional knowledge for food, agriculture and food security on the African continent.

Benefit-Sharing

- 18) In accordance with Article 5 of the Nagoya Protocol, African Union Member States shall ensure that benefits arising from the utilisation of genetic resources and associated traditional knowledge are shared in a fair and equitable manner with indigenous and local communities and all relevant stakeholders holding such resources and knowledge.
- 19) African Union Member States shall cooperate, share information and coordinate their policies with a view to establishing transparent, fair, equitable and uniform benefit-sharing standards that uphold the intrinsic, cultural and socio-economic values of genetic resources and associated traditional knowledge.

- 20) When benefit-sharing standards have been established, African Union Member States shall incorporate such standards into their domestic legislative, regulatory, administrative and/or policy measures on access and benefit-sharing with a view to ensuring that they are observed.
- 21) African Union Member States shall encourage the coordinated development and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms, as well as codes of conduct, guidelines, best practices and/or standards for benefit-sharing, in accordance with Articles 12, 19 and 20 of the Nagoya Protocol.
- 22) African Union Member States shall in their domestic legislation require that mutually agreed terms specify provisions for the fair and equitable sharing of benefits arising from the utilisation of genetic resources, including naturally occurring biochemical derivatives, as well as subsequent applications and commercialization of derivatives and products resulting from utilisation of genetic resources and associated traditional knowledge.
- 23) In accordance with Article 11 of the Nagoya Protocol, in instances where genetic resources and associated traditional knowledge maybe sourced from two or more countries, all African Union Member States concerned shall endeavour to cooperate and coordinate on the minimum benefit-sharing terms to be included in mutually agreed terms governing the utilisation of such shared genetic resources and associated traditional knowledge.
- 24) African Union Member States shall support the creation and effective implementation, at the national and international levels, of a Global Multilateral Benefit-Sharing Mechanism as foreseen in Article 10 of the Nagoya Protocol.

Monitoring and Compliance

- 25) African Union Member States shall endeavour to provide and implement the necessary measures to monitor the utilisation of genetic resources and associated traditional knowledge and encourage compliance with prior informed consent requirements and mutually agreed terms through the use of checkpoints and internationally recognized certificates of compliance in accordance with Article 17 of the Nagoya Protocol or other relevant certificates, as well as through regular and systematic information exchange in accordance with paragraph 5 of this ABS Framework.
- 26) To facilitate the information exchange referred to in Article 19 above the African Union Commission shall establish a database of relevant access and benefit sharing information and make it available for consultation by African Union Member States and African indigenous and local communities; Member States, indigenous and local communities and all relevant stakeholders shall provide information for inclusion in this database, as appropriate.
- 27) Mutually agreed terms shall always include a provision obliging any user who applies for intellectual property rights or product marketing authorisation resulting from the utilisation of genetic resources or associated traditional knowledge to disclose in the summary of the application the origin and source of any genetic resources and associated traditional knowledge used in the creation of such intellectual property or products, and to declare whether prior informed consent has been obtained and mutually agreed terms have been agreed in compliance with the domestic access and benefit-sharing legislation or regulatory requirements of the provider country.

- 28) African Union Member States shall seek to provide prior informed consent for access to genetic resources and associated traditional knowledge for utilisation only to users who are domiciled in their own jurisdiction, or in the jurisdiction of a Party to the Nagoya Protocol that has adequate compliance and mutual support measures in place.
- 29) African Union Member States may consider utilising relevant regional dispute settlement bodies in cases of non-compliance.

Protection and Promotion of Traditional Knowledge Associated with Genetic Resources, Community and Farmers' Rights, and Economic Development

- 30) African Union Member States shall safeguard and protect the collective rights of indigenous and local communities to their genetic resources and associated traditional knowledge and of farmers to their traditional livestock breeds and crops, including the right to derive economic development benefits from the utilisation of their genetic resources and associated traditional knowledge.
- 31) African Union Member States shall, through domestic legislation, direct benefits arising from utilisation of genetic resources and associated traditional knowledge towards promotion of conservation and sustainable use of biological diversity and improvement of the livelihoods of indigenous and local communities in accordance with Articles 9 and 12 of the Nagoya Protocol.
- 32) African Union Member States shall ensure that utilisation of genetic resources does not exceed sustainable harvesting limits, deplete biological resources or otherwise threaten the sustainability of biodiversity at the genetic, species or ecosystems levels.

Capacity building, capacity development and technology transfer

- 33) African Union Member States shall cooperate in capacity building, capacity development and strengthening of human resources and institutional capacities to effectively implement the Nagoya Protocol.
- 34) African Union Member States shall ensure that benefits arising from the utilisation of genetic resources and associated traditional knowledge, especially non-monetary benefits, contribute to national and regional capacity building and technology transfer.
- 35) In recognition of and to encourage activities by indigenous and local communities that support sustainable use and conservation of biodiversity, African Union Member States shall:
- a) Adopt policies, laws or regulations that create legal rights for indigenous and local communities and resource custodians over their genetic resources and associated traditional knowledge where such rights do not already exist;
 - b) Support and guide negotiations on mutually agreed terms between indigenous and local communities and users, and subsequently monitor fulfilment of the agreed terms;
 - c) Direct monetary payments to the sustainable use and conservation of biodiversity;
 - d) Support indigenous and local communities with capacity development and technical assistance to improve their position in the value chain, thereby empowering them to capture more of its benefits; and

e) Encourage and support indigenous and local communities to develop and use customary laws, community protocols and procedures for access and benefit-sharing in line with Article 12 and other relevant provisions of the Nagoya Protocol.

36) African Union Member States shall encourage national IP offices as well as continental and regional IP organisations to play a more active role in ABS, through capacity building, assistance in negotiating mutually agreed terms, and compliance with ABS requirements to monitor and track the utilisation of genetic resources and associated traditional knowledge.
