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Nagoya Protocol on Access and Benefit Sharing:
Rights and duties in scientific research»
September 9, 2016, 9:15-12:30, Berne

Access and Benefit-sharing: Support tools for researchers and institutions

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Program coordinator
Syntrans – Basel

Goal

- Participants are aware of the existing tools for researchers.
- They know what kind of support the tools offerThey understand the concept of the tools and their structure
- They are able to find the information needed

Overview

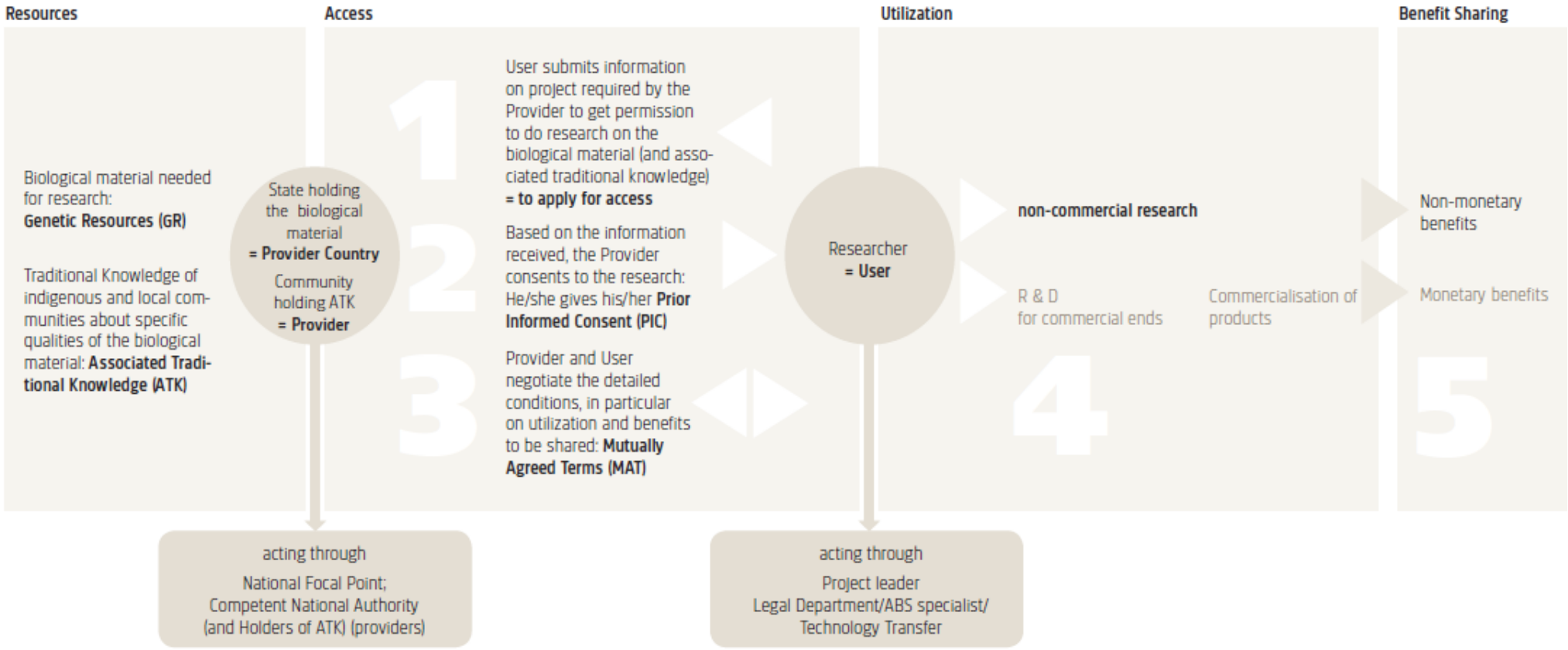
- Introduction: What we are talking about
  - ABS – refresh the terminology
  - The international ABS landscape
  - The tools – background reflections
- Tool 1: The Good Practice Guide
  - Overview
  - What information the different parts offer
- Tool 2: The Agreement Toolbox
  - Concept
  - Examples for optional clauses
  - The basic agreement
- To sum up: Essential messages

INTRODUCTION, OR WHAT WE ARE TALKING ABOUT

What we are talking about 1

ABS – REFRESH THE TERMINOLOGY

ABS: Overview of stakeholders and steps to take



Accessible at
Good Practice, Table I p. 11.
As a separate PDF document under
http://www.naturwissenschaften.ch/organisations/biodiversity/abs/overview--> table I

What we are talking about 2

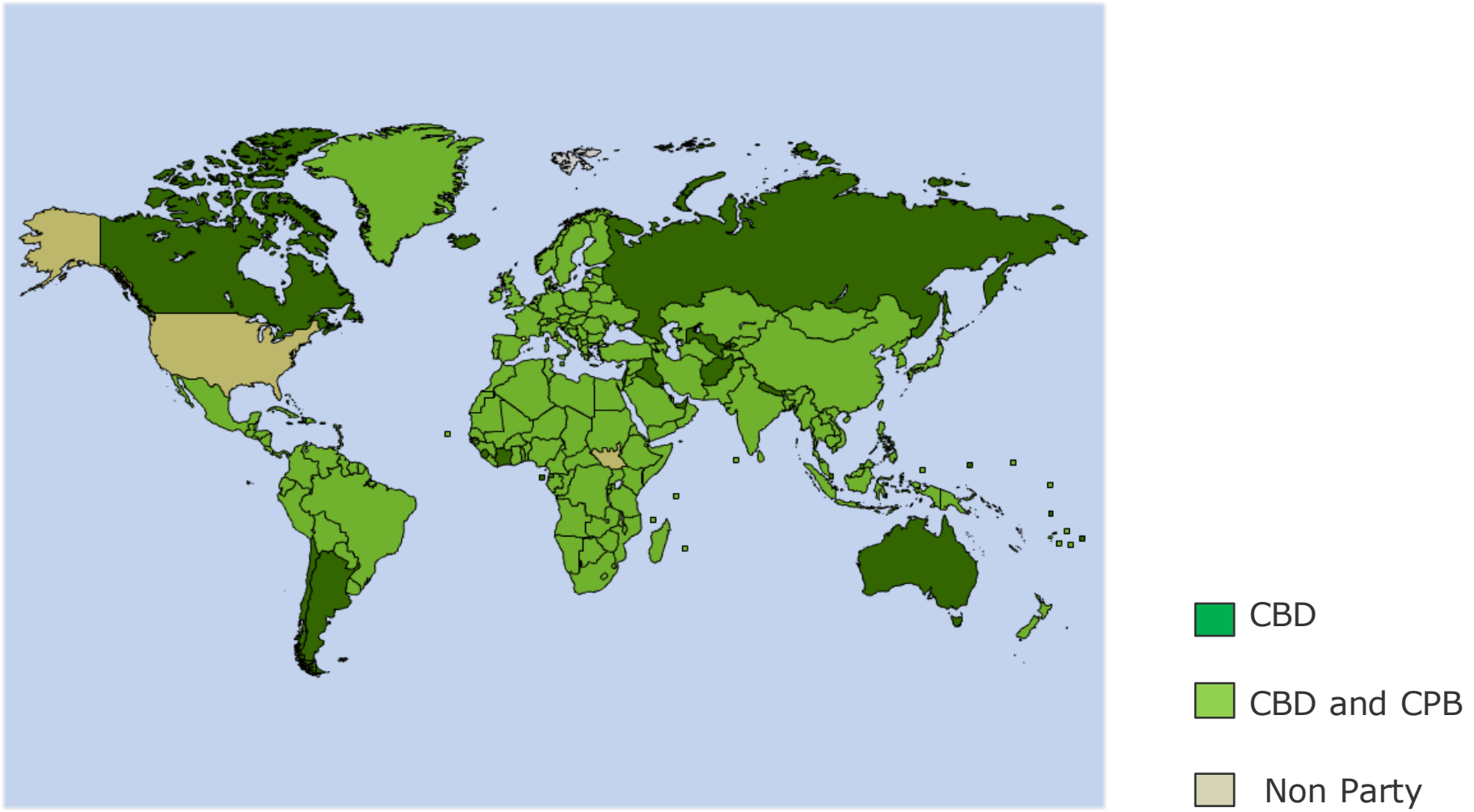
THE INTERNATIONAL ABS LANDSCAPE

International Agreements

- Convention on Biological Diversity (CBD, 1992)
  - Art. 15: Access and Benefit-sharing;
    provides the basis for Access and Benefit-sharing
- Protocol of Nagoya to the Convention on Biological Diversity (NP, 2010)
  - Specification of Art. 15 CBD
- International Treaty on Plant Genetic Resources for Food and Agriculture (FAO) (ITPGRFA, 2004)
  - Specifies ABS for domesticated plant varieties

Parties to the CBD

https://www.cbd.int/countries

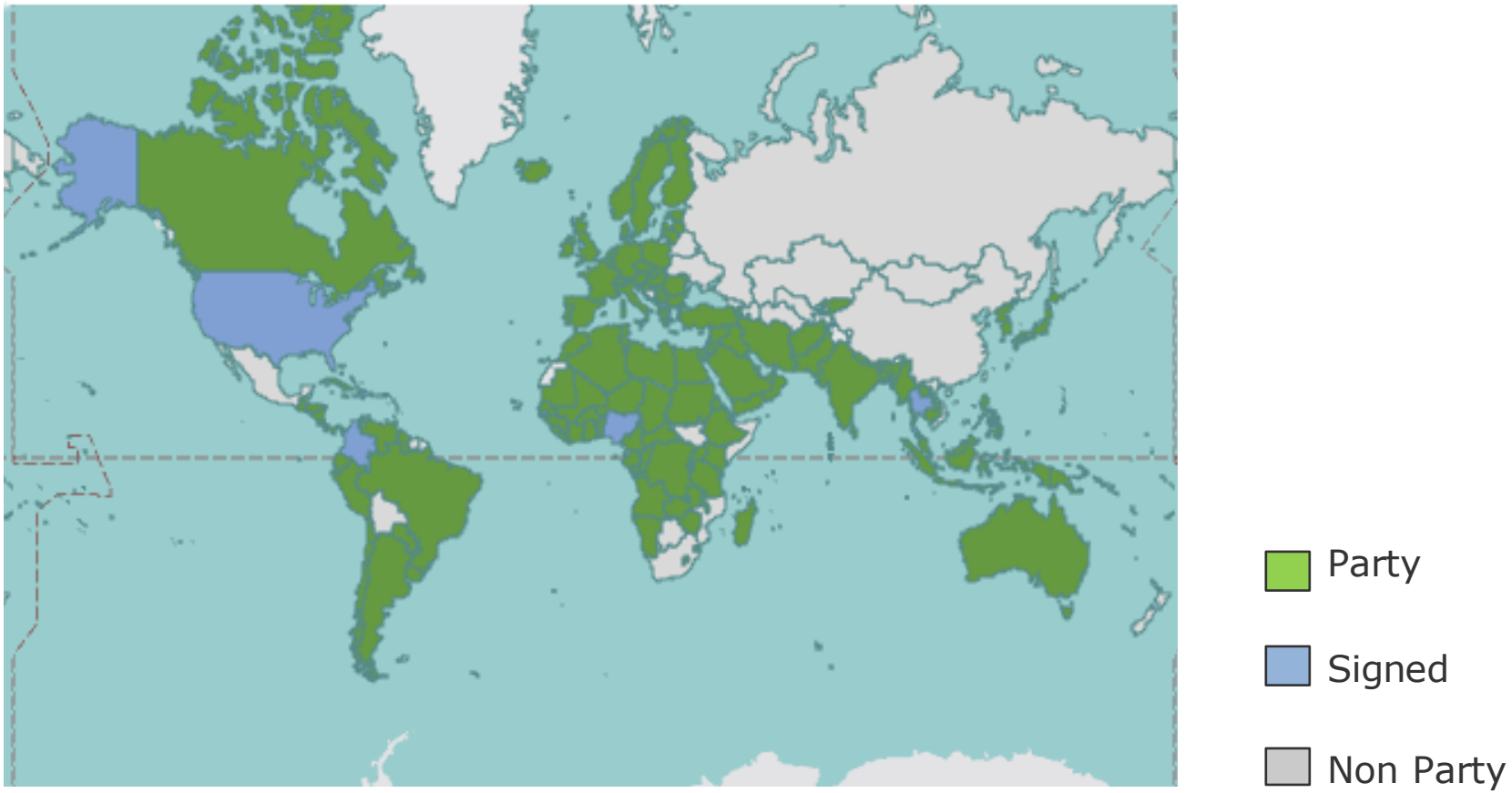


Parties to the Nagoya Protocol

https://absch.cbd.int/

The FAO International Treaty on PGRFA

http://www.fao.org/plant-treaty/countries/membership/en/



From this follows …

- The coverage of the three international treaties is not identical:
  - Nearly all states are party to the CBD.
  - Not all CBD states are party to the ITPGRFA
  - Not all CBD states are (yet) a party to the NP
  - and so on…..

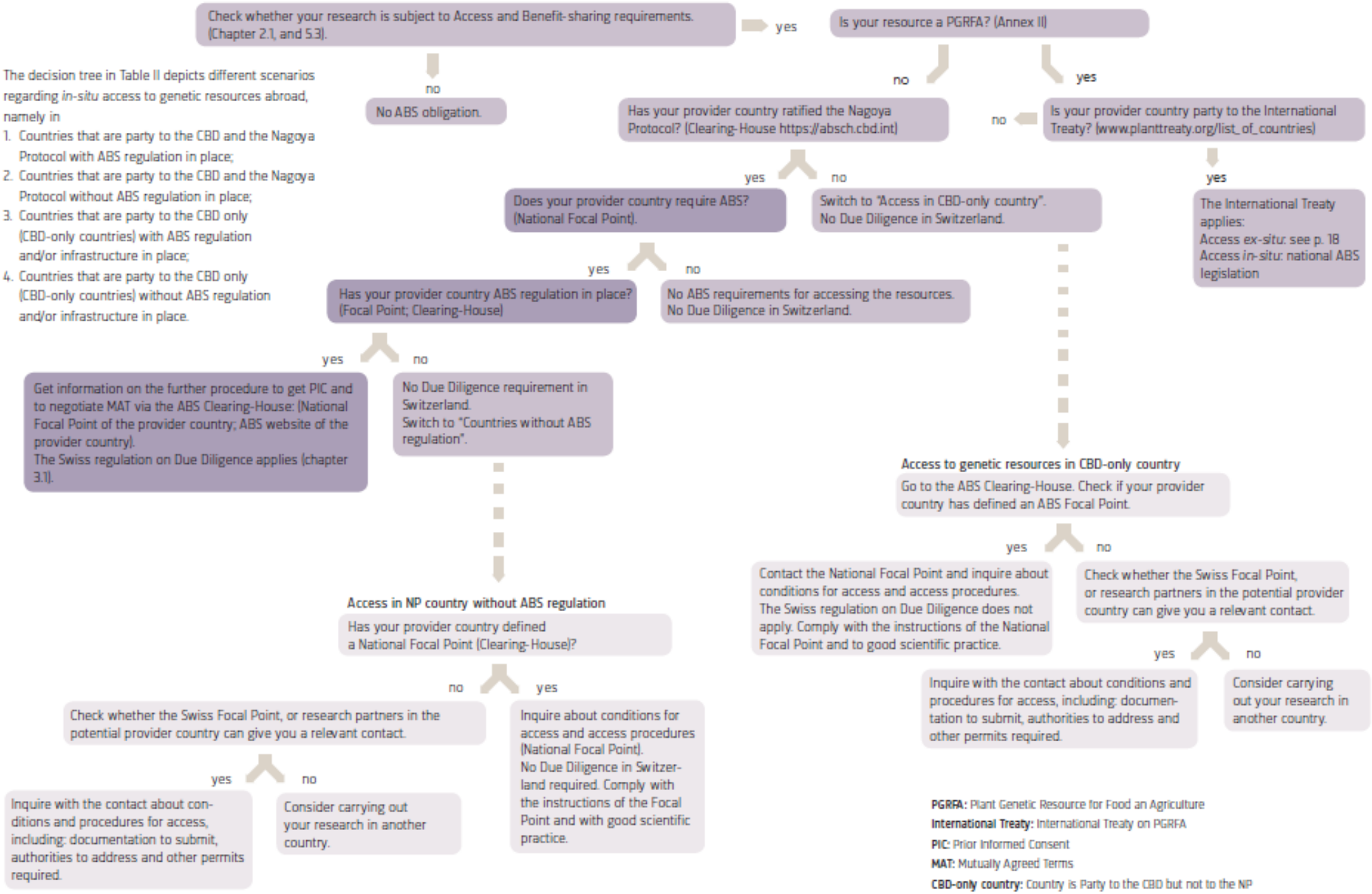
- ➢ The relevant international framework differs from State to State
- ➢ Each State that is a party to a convention has the right to decide how it implements is obligations
- ➢ Legal requirements vary from country to country

Table II: Access to genetic resources *in-situ*

Excerpt from: Susette Biber-Klemm and Sylvia I. Martinez. Utilization of genetic resources and associated traditional knowledge in academic research. Swiss Academies of Arts and Sciences (Ed.) Swiss Academies Reports 11 (4) 2016, Bern, Switzerland, page 19

The decision tree in Table II depicts different scenarios regarding *in-situ* access to genetic resources abroad, namely in

1. Countries that are party to the CBD and the Nagoya Protocol with ABS regulation in place;
2. Countries that are party to the CBD and the Nagoya Protocol without ABS regulation in place;
3. Countries that are party to the CBD only (CBD-only countries) with ABS regulation and/or infrastructure in place;
4. Countries that are party to the CBD only (CBD-only countries) without ABS regulation and/or infrastructure in place.



PGRFA: Plant Genetic Resource for Food an Agriculture
International Treaty: International Treaty on PGRFA
PIC: Prior Informed Consent
MAT: Mutually Agreed Terms
CBD-only country: Country is Party to the CBD but not to the NP

Note

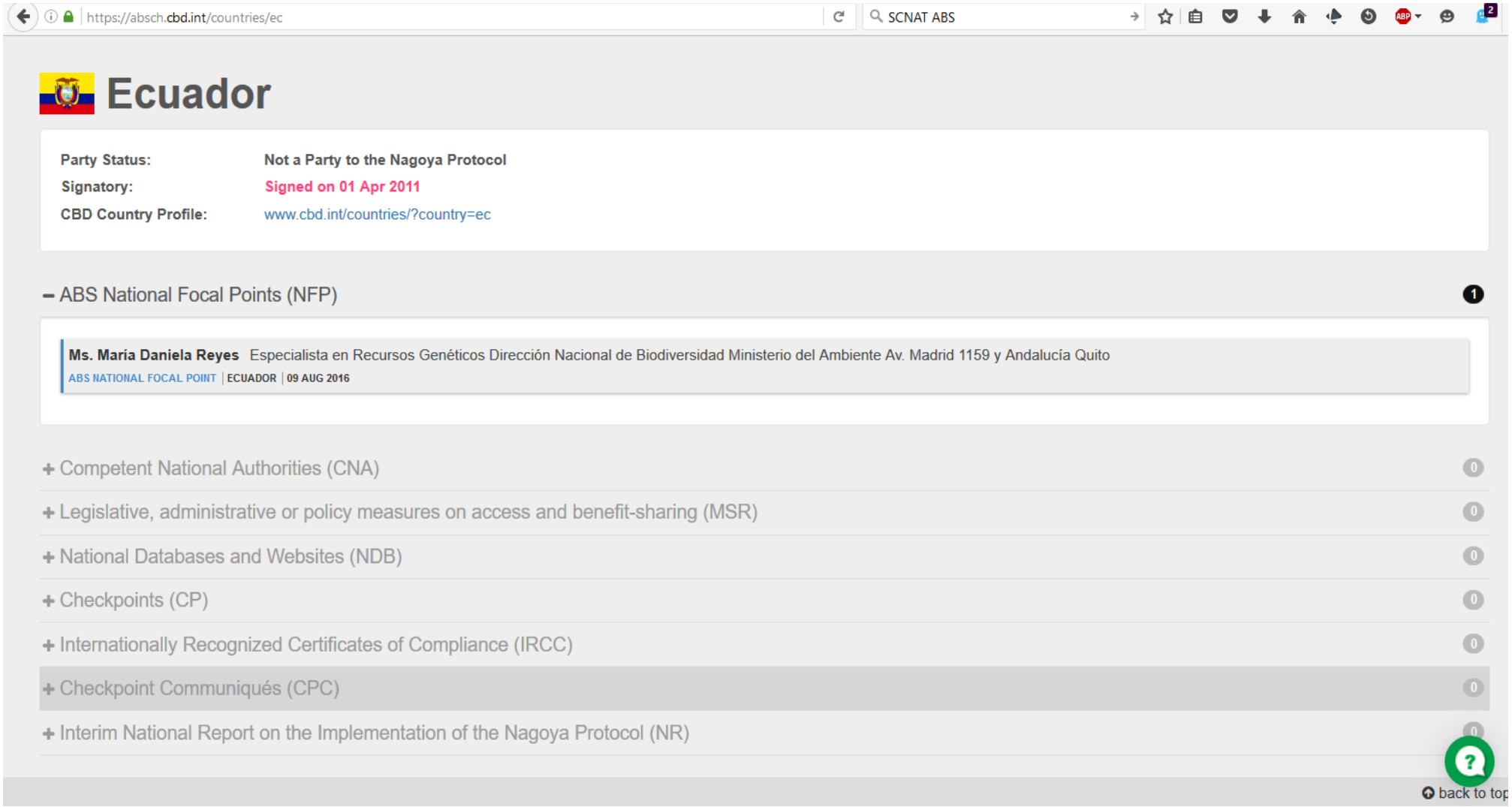
- The Swiss obligations of Due Diligence and notification apply to genetic resources that (Art. 23n para 2 and Art. 25d NHCA):
  - Have been accessed after 12 October 2014 (the entry into force of the Nagoya Protocol and of the NCHA);
  - Originate from a country that is a Party to the Nagoya Protocol and
  - Has domestic access and benefit-sharing regulatory requirements in place.

- Countries that have ratified and implemented the Nagoya Protocol may have the most transparent procedures for access and provide legal security.
  Researchers may expect challenges in CBD-only countries that lack ABS regulation and corresponding administrative infrastructure

- The ABS Clearing House is THE adress to get persistent information on the profile on the parties of the NP and the CBD (http://absch.cbd.int/) (see GP p. 57)

ABS Clearing House https://absch.cbd.int/

ABSCH 2


https://absch.cbd.int/countries/ec
SCNAT ABS
Ecuador
Party Status: Not a Party to the Nagoya Protocol
Signatory: Signed on 01 Apr 2011
CBD Country Profile: www.cbd.int/countries/?country=ec
– ABS National Focal Points (NFP) 1
Ms. María Daniela Reyes Especialista en Recursos Genéticos Dirección Nacional de Biodiversidad Ministerio del Ambiente Av. Madrid 1159 y Andalucía Quito
ABS NATIONAL FOCAL POINT | ECUADOR | 09 AUG 2016
+ Competent National Authorities (CNA) 0
+ Legislative, administrative or policy measures on access and benefit-sharing (MSR) 0
+ National Databases and Websites (NDB) 0
+ Checkpoints (CP) 0
+ Internationally Recognized Certificates of Compliance (IRCC) 0
+ Checkpoint Communiqués (CPC) 0
+ Interim National Report on the Implementation of the Nagoya Protocol (NR) 0
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What we are talking about 3

THE TOOLS: BACKGROUND REFLECTIONS

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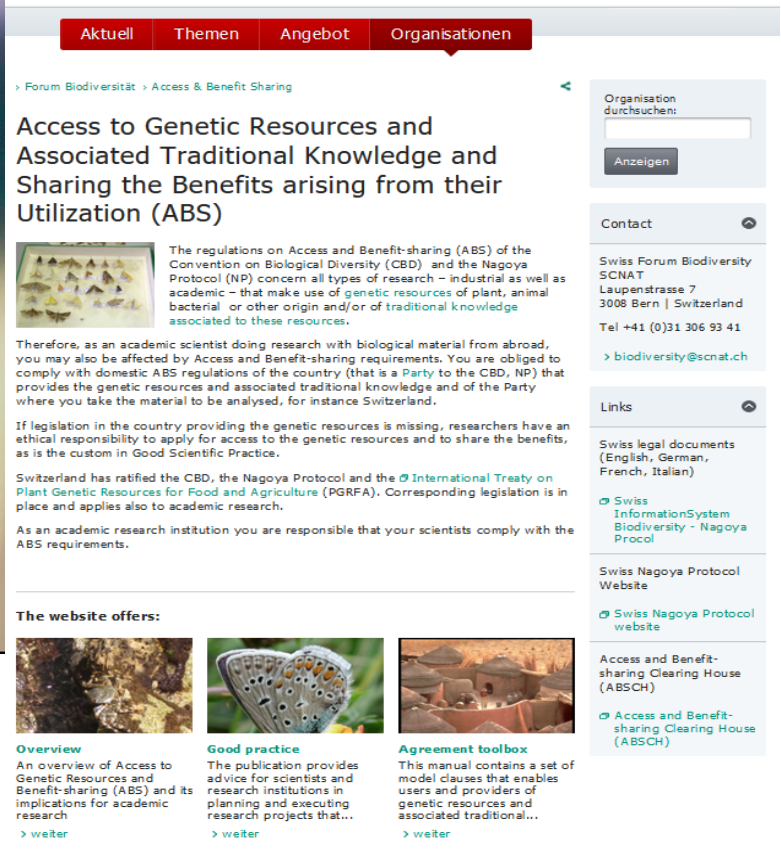

http://www.naturwissenschaften.ch/organisations/biodiversity/abs

→ Good Practice
→ Agreement Toolbox

Background reflections

Each research situation is specific, regarding

- Types of research
  - From basic (non-commercial) research to R&D in a (potential commercial context
  - Botany, Ecology, Agriculture, Medicine, Pharmacology, Ethnobotany …..
- Access situation
  - *In-situ*, within the eco-system and natural habitat
  - *Ex-situ,* outside their natural habitat (culture collections, botanic gardens, seed-banks …)
- The ABS regulatory requirements, institutions, administrative structures and specific interests and needs of the provider country.

- Involved Stakeholders
  - and their responsibilities
    - Users: researchers, project leaders, research institutions
    - Providers: Administrative bodies, land-owners, traditional and local communities …..
  - and their interests and concerns

- Good Practice Guide and Tool-box endeavour to integrate the different settings in their concept, structure and information.
- They do not offer ready-made recepies, but provide background information and indications on how best to proceed

TOOL 1
THE GOOD PRACTICE GUIDE

The Good Practice Guide

http://www.naturwissenschaften.ch/organisations/biodiversity/abs/goodpractice

Offers

- Essential background information
- Brief introductory texts and orientation tables
- Indications on how best to proceed
- Access to contact points
- Access to additional information

Adresses

- Research institutions
- Heads of departments
- Research managers
- Researchers

The Content: Overview

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First Part

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- Gives concise information on the essentials of access and benefit-sharing
- Consists in short texts and informative tables
- Informs concisely about the implementation of the Naoya Protocol in Switzerland and the respective regulatory requirements and provides links to the legal sources

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2.4 Which legal framework applies to your research?

At the international level, different legal frameworks exist for the utilization of genetic resources, in particular the CBD, the Nagoya Protocol and the International Treaty. These frameworks have to be implemented at national level by their Parties. Yet, not all states are Parties to all three Conventions. Also, there are countries that do not require ABS procedures for access to their genetic resources and associated traditional knowledge. This leads to different legal situations for ABS.

The international legal framework that applies to your research, as well as its implementation on the national level, is bound to influence the ease of access. The following decision trees can help you identify which one applies to your planned research. They may assist your strategic decisions regarding the choice of country and source of biological material for your research.

The first decision tree in Table II (see p. 19) depicts different scenarios regarding *in-situ* access to genetic resources abroad, namely in

1. Countries that are party to the CBD and the Nagoya Protocol *with* ABS regulation in place;
2. Countries that are party to the CBD and the Nagoya Protocol *without* ABS regulation in place;[9]
3. Countries that are party to the CBD only (CBD-only countries) with ABS regulation and/or infrastructure in place;
4. Countries that are party to the CBD only (CBD-only countries) without ABS regulation and/or infrastructure in place.

Useful tip

Countries that have ratified and implemented the Nagoya Protocol may have the most transparent procedures for access and legal security. Researchers may expect challenges in CBD-only countries that lack ABS regulation and corresponding administrative infrastructure.

9 This is relevant for the application of the Swiss Due Diligence requirements that only apply to utilization of resources in countries that are parties to the Nagoya Protocol and that have ABS regulatory requirements in place.

The second decision tree in Table III (see p. 20) illustrates access *ex-situ* to genetic resources hosted in collections. Here, there is a difference between

1. Access to PGRFA and access to all other genetic resources;
2. Access to PGRFA that are included in the "Multilateral System of Facilitated Access" (Multilateral System) and all other PGRFA.

The Multilateral System of Access and Benefit-sharing of the International Treaty

The International Treaty established the Multilateral System of Access and Benefit-sharing. It provides easy access *ex-situ* to selected crop and forage varieties (listed in Annex I of the International Treaty[10]) for research, breeding and training in collections that are part of the Multilateral System[11]. Only the Standard Material Transfer Agreement (SMTA) needs to be signed.

For *ex-situ* access to genetic resources not included in the Multilateral System, users have to follow the national ABS regulation of the country where the collection is located. In such cases, access will probably be simpler in countries that have ratified the Nagoya Protocol.

If you do research with PGRFA listed in Annex I of the International Treaty, the easiest approach is to access the biological material through a collection that is part of the Multilateral System (see chapter 2, Appendix II; Appendix IV).

Useful tips

Some countries may establish a system of "registered collections" (see chapter 3.1) that manages their hosted genetic resources according to ABS requirements to facilitate compliance.
Other networks of collections provide facilitated access and exchange within their own organisation (for instance the International Plant Exchange Network, IPEN).[12]

10 See www.planttreaty.org/content/crops-and-forages-annex-1
11 See www.planttreaty.org/inclusions
12 www.bgci.org/policy/ipen

Recommendations on how to proceed: Overview

Good Practice p 18-29

- Step by step recommendations for research on genetic resources
- Access to traditional knowledge associated to genetic resources
- Publication of results and data
- Recommendations for institutions

Type of Research	Phase	ABS Requirements		Action	Recommendation
Basic Research	Planning			Check at an early stage the ABS requirements of the targeted country for your planned research	Follow the scheme in Table II. Check also the conditions of the provider country regarding the exportation of your material.
			Access *in-situ*	Define schedule and budget for the preparatory phase. Define options and budget for benefit-sharing, in order to discuss possibilities with your institution and to submit a funding request to the research funding agency, together with your project. Inquire about information to be submitted for PIC and modalities for negotiating MAT (focal point, internet).	ABS negotiations might take some time; additional funds might be needed. If there is more than one option regarding the location of the study area, choose a country in which you have established contact with the authorities and/or university institutes and/or choose a country that provides an organized ABS infrastructure and facilitated access for non-commercial research (e.g. Party to the Nagoya Protocol with ABS regulation in place).
			Access *ex-situ* including acquisition from/ transfer through third persons	Inquire for the best way to obtain GR *ex-situ* for your project. Inquire if the utilization planned in your research is covered by the ABS conditions documented for the GR. If not, apply for new PIC and MAT from the provider country.	Follow Table III. If you obtain the resources from an intermediary (e.g. third person or *ex-situ* institution), ensure that the PIC and MAT of the original holder of the material, or the Material Transfer Agreement of the *ex-situ* facility allows the transfer of the material and your intended utilization.
	Preparation of research	Prior Informed Consent (PIC) / Mutually Agreed Terms (MAT) / Due Diligence	Field work (PIC and MAT)	Apply for PIC: submit the required information to the identified entry points and stakeholders of the provider country. According to the regulation of the provider country and your planned research, PIC may need to be obtained from: – The Competent National Authorities; – The relevant stakeholders, such as indigenous and local communities; – Different levels of government (central State government, decentralised authorities, etc.).	Apply for access as early as possible as the formalities may be time-consuming. Check whether you need to apply for other types of permits (exportation, research, access to protected areas ...).
				After PIC is granted, negotiate MAT. Negotiate MAT with the ABS Competent National Authority. Comply to these terms throughout the research.	– For elements and possible clauses to be included in MAT, refer to the Model Clauses at www.naturalsciences.ch/abs. – For ABS-negotiations, seek support from your institution's ABS officer, technology transfer unit or legal service department. – Document the application for PIC and all decisions regarding the granting of access to genetic resources and the MAT in written form. Store all data documenting the PIC and MAT processes also if there is no Due Diligence obligation.
	Research	Prior Informed Consent (PIC) / Mutually Agreed Terms (MAT) / Due Diligence / Benefit-sharing (BS)		Before starting your research acquire PIC and agree on MAT, including the benefits to be shared. Adhere to the agreed research plan; if this is not possible, renegotiate PIC and MAT. Respect local and national laws and regulations. Respect the customs, traditions, values and customary practices of indigenous and local communities. Respect the principles of conservation and sustainable use of biological resources.	For a list of possible benefits arising in the context of academic research, refer to Appendix III.
				Cooperate with local researchers, research institutions. Engage local research assistants.	A large part of the sharing of benefits may have to be carried out during the research itself. It might be necessary to carefully explain that academic research does not lead to economic benefits in most cases.

3 Implementation of the Nagoya Protocol and the International Treaty in Switzerland

3.1 Implementation of the Nagoya Protocol

Overview

Switzerland ratified the Nagoya Protocol on 11 July 2014, after the adoption of the respective legislation for its implementation, an amendment of the Federal Act on the Protection of Nature and Cultural Heritage (NCHA)[18] (cf. in particular Arts 23n to 23q NCHA). This amendment of the NCHA entered into force with the Nagoya Protocol on 12 October 2014. The related Nagoya-Ordinance[19] was adopted by the Federal Council on 11 December 2015 and entered into force on 1 February 2016.

The Swiss ABS regulations introduce the following measures:

1. A Due Diligence requirement to assure that those who utilize genetic resources according to the Nagoya Protocol, or benefit directly from their utilization, respect the domestic legislation or regulatory requirements of the Party to the Nagoya Protocol that provides the resource and, if required, agree on conditions for benefit-sharing.
2. A requirement to notify compliance with the due diligence obligation to the Federal Office for the Environment (FOEN) before market authorization has been obtained or, if such authorization is not required, before the commercialization of products that have been developed on the basis of utilized genetic resources.
3. The Due Diligence and notification requirements also apply to traditional knowledge of indigenous and local communities associated with genetic resources unless such traditional knowledge is already freely available to the public.
4. A requirement to document resources accessed in Switzerland and the notification to the FOEN before market authorization has been obtained or, if such authorization is not required, before the commercialization of products developed on the basis of these genetic resources.

The Swiss obligations of Due Diligence and notification apply to:
genetic resources that (Art. 23n para 2 and Art. 25d NHCA):

- Have been accessed after 12 October 2014 (the entry into force of the Nagoya Protocol and of the NCHA);
- Originate from a country that
  - Is a Party to the Nagoya Protocol and
  - Has domestic access and benefit-sharing regulatory requirements in place.

Associated Traditional Knowledge not freely available to the public (Art. 23p NHCA).

Due Diligence and notification: useful details

In case of **access *in-situ* in countries requiring PIC**, the Due Diligence obligation requires that the user must store information related to the access and the utilization of genetic resources and/or Associated Traditional Knowledge. This information may be contained in the Internationally Recognized Certificate of Compliance or the documentation of PIC and MAT. This information must be passed on to subsequent users and – in case of commercialization – included in the notification to the FOEN.

Certificate of compliance

The Internationally Recognized Certificate of Compliance serves as evidence that Prior Informed Consent has been granted and Mutually Agreed Terms on benefit-sharing have been concluded. It is constituted by a permit or its equivalent, issued by the provider country at the time of access and made available to the Access and Benefit-sharing Clearing-House (ABSCH) according to a specified template. The certificate is published on the ABSCH.

18 Of 1 July 1966 (Status as of 12 October 2014) Classified Compilation (SR) 451. www.admin.ch/opc/en/classified-compilation/19660144/index.html

19 Of 11 December 2015, SR 451.61. www.admin.ch/opc/de/classified-compilation/20150120/index.html

Part Three: In depth information

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- Contains background information
- Gives details of key topics
- Complements the first part
- Is linked to the first part by a synoptic table in part One (p. 13 and 14)

Accessing Genetic Resources *in-situ* and/or Associated Traditional Knowledge

	Chapters
1. Assess the relevance of ABS for your intended research	2.1; 5.3-5.5
2. If your research falls under ABS, go to the ABS Clearing House to:	5.6
a. Obtain the contact details of the focal point of your provider country;	
b. Check whether the provider country is Party to the Nagoya Protocol and has ABS regulation in place (relevant for the application of the Swiss legislation).	3
3. Contact the ABS National Focal Point of your provider country and inquire about:	5.6
a. Conditions to apply for PIC and MAT;	2.1; 5.6
b. Other specifics of the national legislation/ regulation (e.g. specific conditions for utilization, benefit-sharing).	
4. Inquire which additional permits may be necessary (e.g. research permits, exportation permits).	Appendix I
5. Apply for PIC.	
6. Negotiate MAT.	
7. During research, comply with MAT and the legislation of your provider country. Comply with Swiss legislation, if applicable.	3
8. Share benefits as agreed in the MAT.	Appendix III
9. After finalization of the research, proceed with the collected material as agreed in the MAT. When transferring material to *ex-situ* facilities or third persons, include relevant ABS documentation.	3

Additional points when accessing genetic resources *ex-situ*

1. Inquire with the *ex-situ* facility about the ABS conditions for the genetic resource you intend to access:	2.4; 2.5
a. From a non-registered facility, verify its legitimate acquisition, the right of the facility to transfer the genetic resources, and whether your intended research is covered by the PIC and MAT of the provider.	
b. From a registered facility, verify whether PIC and/or MAT of the provider covers your intended research.	2.5; 3.1
c. If your research is covered, comply with PIC and /or MAT. If not, apply for new PIC and MAT with the provider country.	2.1; 5.6
2. Comply with the MTA of the collection.	

Additional obligations according to the Swiss legislation (Due Diligence)

1. Store proof of legitimate access (PIC, MAT) according to the requirements of Due Diligence.	3.1
2. Hand over all relevant documentation to subsequent users.	3.1

Part two: Case Studies

The case studies have been selected according to the types of genetic resource and utilization.

They contain

- A short description of the case
- An analysis of ABS relevant elements

The exemplified types of research are

- Botany
- Ecology
- Agriculture
- Medicine
- Ethnobotany, including Associated Traditional Knowledge

Part Five: Appendix

I. Additional permits for research on Genetic Resources
II. Glossary
III. Benefit-sharing in the context of academic, non-commercial research
IV. Links and sources
V. Swiss National Focal Point

The Agreement Toolbox

http://www.naturwissenschaften.ch/organisations/biodiversity/abs/toolbox

Offers

- A basic agreement that can be used as such in simple research situations
- Optional clauses that allow to adapt the agreement to the specific needs of the user and the provider

Adresses

- Users and providers
- Competent units of research institutions
- Project managers

Serves as

- Template in a country that does not have a ready-made form
- Checklist for items to take into account

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Clauses of the Agreement

Comments

The Agreement is designed to support academic, mainly non-commercial research, such as research in taxonomy, ecology, biochemistry and genetics, to foster conservation and the environmentally sound and sustainable use of genetic resources, and to ensure the fair and equitable sharing of benefits resulting from the research in Genetic Resources and Associated Traditional Knowledge.

If the Provider is a holder of Associated Traditional Knowledge, a separate Agreement between researchers (as the User) and the holder of Associated Traditional Knowledge (individual, community, legitimate representative of the community) needs to be concluded (see Annex II for elements to include).

Agreement: Clauses and Options

Preamble

The objective of this Agreement is to provide a sound basis for cooperation, transparency, communication and trust between the parties to the Agreement, taking account of the concerns of both, Providers and Users of genetic resources.

Its purpose is to define the Mutually Agreed Terms between its parties relating to access to and utilization of the Genetic Resources as well as the sharing of benefits resulting from their Utilization in accordance with the Nagoya Protocol to the Convention on Biological Diversity.

Option 1
As the User seeks access to Traditional Knowledge Associated to Genetic Resources, he/she will conclude an ancillary agreement with the holder(s) of Associated Traditional Knowledge, according to the domestic ABS regulatory requirements of the provider country.

Option 2
As the Genetic Resources to be accessed are situated on private land/a collectively owned territory, or are in private property, an ancillary agreement will be concluded with the owner, according to the domestic ABS regulatory requirements of the Provider Country.

The Agreement has been drafted as a basis for negotiations with the competent authority that is designated by the domestic ABS regulation ("provider") as the party to the Agreement. It is responsible for fulfilling the obligations under Clause 11 of this Agreement.
The Agreement could also be applied in negotiations with competent institutions of delegated entities such as e.g. federal or decentralized governments.
Selected elements may also be used for ancillary agreements with holders of Associated Traditional Knowledge and/or private owners of Genetic Resources (see Annex II).
The User can only be a research institution; an individual researcher may act on behalf of it.
The data of both the User and Provider serve as reference and contact point in the communication between the parties. The indicated research institution shall be held as the responsible body during the term of the Agreement. The competent national agency will be responsible for maintaining the Agreement.

Parties to the Agreement

The Agreement is entered into on
[→ INSERT the date]

by and between

[→ INSERT the name and details of the following:

- *State and Institution (Competent National Authority, according to Article 13 of the Nagoya Protocol and the domestic regulations of the Provider)*
- *The contact person responsible for the implementation of the Agreement on behalf of the institution]*

together hereinafter referred to as the *"Provider"*, and

[→ INSERT the name and details of

- *The responsible research institution*
- *The representative of the research institution responsible for the implementation of the Agreement]*

Together hereinafter referred to as the *"User"*.

The Concept of the Toolbox

It is important that the User passes on the terms of this Agreement to Third Parties in order to avoid uncontrolled flow of genetic resources.

If institutions or persons are appointed for specific analytical and technical auxiliary work, the conditions of this Agreement must be included in the contract regulating the cooperation.

Options 8.1–8.3 establish different levels of control. Parties should include those that reflect the appropriate level of control in accordance with their needs.

8 Transfer of Genetic Resources [and Associated Traditional Knowledge] to Third Parties

Option 8.1
Transfer of the Genetic Resources [and of Associated Traditional Knowledge] for the purposes of academic research and collections, and for training, teaching and education, or any other non-commercial activities is allowed under the condition that the User ensures that the subsequent person or institution (Third Party) is informed about the provisions under this Agreement and undertakes to pass on the Genetic Resources [and Associated Traditional Knowledge] under the same obligations to any further recipient.

Option 8.2
The User shall require the Third Party to sign an agreement containing identical obligations on Utilization and transfer of the Genetic Resources [and their Associated Traditional Knowledge] as set out in this Agreement.

Option 8.3
The User delivers to the Provider annually *[→ INSERT date]* a list of the Third Parties to whom the Genetic Resources [and Associated Traditional Knowledge] have been transferred.

Option 8.5 is an extremely limiting measure. It is meant primarily in cases dealing with Associated Traditional Knowledge. We assume that the Provider may have an interest to keep knowledge secret and therefore may want strict control on any further transfer of the Genetic Resources and Associated Traditional Knowledge.

Clause 9 is related to clause 8. It proposes different levels of control of resources stored in ex-situ collections.

Option 9.1 refers to e.g. living genetic resources planted in a Botanic Garden.

The handling of the Genetic Resources after the termination of the research is treated in clause 16.

Option 8.4
The User shall maintain retrievable records of any transfer of the Genetic Resources [and Associated Traditional Knowledge] to Third Parties under the conditions corresponding to this Agreement.

Option 8.5
The Genetic Resources [and their Associated Traditional Knowledge] may be transferred to Third Parties only after having obtained the written consent of the Provider. Exempted is a temporary transfer of the Genetic Resources to taxonomic specialists for scientific identification.

9 Storage of Genetic Resources

Option 9.1
The User is entitled to deposit the Genetic Resources in collections that are accessible for the public as well as for research purposes.

Option 9.2
The User is entitled to deposit the Genetic Resources in collections that are accessible without restrictions for research purposes such as herbaria and culture collections.

Option 9.3
The special conditions or restrictions regarding the Utilization or storage of the Genetic Resources agreed upon have to be clearly stated on the label or otherwise linked to any samples, including the indication of where the information concerning the special conditions/restrictions can be found.

Annex III: Basic Agreement on Access and Benefit-sharing for Academic Research

Preamble

The objective of this Model Agreement is to provide a sound basis for cooperation, transparency, communication and trust between the parties to the Agreement, taking account of the concerns of both, Providers and Users of genetic resources.
Its purpose is to define the Mutually Agreed Terms between its parties relating to access to and utilization of the Genetic Resources as well as the sharing of benefits resulting from their Utilization in accordance with the Nagoya Protocol to the Convention on Biological Diversity.

Parties to the Agreement

The Agreement is entered into on
[→ INSERT the date]

by and between

[→ INSERT the name and details of the following:

- *State and Institution (competent ABS national authority according to Article 13 of the Nagoya Protocol and the domestic regulations of the Provider)*
- *The contact person responsible for the implementation of the Agreement on behalf of the institution]*

together hereinafter referred to as the "*Provider*", and

[→ INSERT the name and details of

- *The responsible research institution*
- *The representative of the research institution responsible for the implementation of the Agreement]*

Together hereinafter referred to as the "*User*".

1 Use of Terms in the Agreement

This Agreement uses the terms as defined in Article 2 of the Nagoya Protocol, unless otherwise defined in this Agreement.

1.1 Genetic Resources

Genetic Resources means any material of plant, animal, microbial or other origin containing functional units of heredity and of actual or potential value (Article 2.10 of the Convention on Biological Diversity).

1.2 Utilization of Genetic Resources

Utilization of Genetic Resources means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology (Article 2 (c) Nagoya Protocol).

1.3 Derivatives

"Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity (Art 2 (e) Nagoya Protocol.

1.4 Commercial Intent

Within the scope of this Agreement, Commercial Intent is indicated by actions such as filing a patent application, obtaining intellectual property rights or other tangible or intangible rights; or the transfer of the Genetic Resources to a for-profit organization.

1.5 Commercialization

Commercialization means the generation of any kind of economic benefits from utilized Genetic Resources [and/or Associated Traditional Knowledge]. It means in particular any sale, lease, licensing of utilized Genetic Resources, as well as applying for market admission/marketing of the Products generated thereof.

1.6 Prior Informed Consent

Prior Informed Consent means the unilateral declaration of the Provider that he/she has been informed about the planned research and that he/she is willing to provide the required access to Genetic Resources.

1.7 Mutually Agreed Terms

The Mutually Agreed Terms are an agreement negotiated between the Provider and the User of the Genetic Resources [and/or holders of Traditional Knowledge associated to the Genetic Resources] according to the ABS regulatory requirements of the country providing the resources. The Mutually Agreed Terms regulate conditions for the access to the Genetic Resources [and/or to their Associated Traditional Knowledge] and the fair and equitable sharing of benefits that result from their use. They are adapted to the specific access situation

1.8 Traditional Knowledge Associated with Genetic Resources

Associated Traditional Knowledge is knowledge resulting from intellectual activity in a traditional context that is specific or general in its relationship to genetic resources. It includes know-how, practices, skills and innovations. It can be found in a wide variety of contexts, including: agricultural knowledge; scientific knowledge, technical knowledge, ecological knowledge, medicinal

Concept of the basic Agreement

sc | nat

Swiss Academy of Sciences
Akademie der Naturwissenschaften
Accademia di scienze naturali
Académie des sciences naturelles

8 Transfer of Genetic Resources [and Associated Traditional Knowledge] to Third Parties

Transfer of the Genetic Resources [and of Associated Traditional Knowledge] for the purposes of academic research and collections, and for training, teaching and education, or any other non-commercial activities, is allowed under the condition that the User ensures that the subsequent person or institution (Third Party) is informed about the provisions under this Agreement and undertakes to pass on the Genetic Resources [and Associated Traditional Knowledge] under the same obligations to any further recipient.

9 Storage of Genetic Resources

The User is entitled to deposit the Genetic Resources in collections that are accessible for the public as well as for research purposes

Annexes

I. Indicative list of benefits
II. Suggested minimal requirements of a contract with holders of Associated Traditional Knowledge
III. Basic Agreement on Access and Benefit-sharing for academic research
IV. Elements to be included in a ABS-compatible research permit for basic research
V. National Focal Point

TO SUM UP

Essential messages…..

- Never utilize genetic resources before verifying the conditions for access and utilization
- Good Practice and the Toolbox-Agreement cannot replace legal requirements in the country providing genetic resources and/or associated traditional knowledge, nor in the country where such resources or such knowledge are utilized.
- Key to ensuring good ABS practice is to be informed about the implementation of the ABS provisions by the country that provides the resources

…. and contacts

- http://www.naturwissenschaften.ch/organisations/biodiversity/abs
- ABS Clearing House: http://absch.cbd.int
- Swiss National Focal Point:

  Swiss National Focal Point to the Nagoya Protocol
  Soil and Biotechnology Division Federal Office for the Environment (FOEN) 3003 Bern Switzerland
  E-mail: contact.np @bafu.admin.ch

Thank you

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