A decade after the Nagoya Protocol – German biodiversity researchers' perspective

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To support the implementation of the Global Biodiversity Framework, we must ensure non-commercial biodiversity research is facilitated by harmonizing access requirements and procedures as well as legal terms.

The 10th anniversary of the Nagoya Protocol affords an opportunity to take stock: are we, as a global community, beginning to achieve the Protocol's stated objectives? Non-commercial biodiversity researchers fully support fair and equitable benefit-sharing and the goal of halting "biopiracy". However, the implementation of the Nagoya Protocol has become a hindrance to many international conservation-focused research projects, which means that significant opportunities are missed for non-monetary benefit-sharing and implementation of the Kunming-Montreal Global Biodiversity Framework which guides our research. These outcomes contradict the stated objectives of the Nagoya Protocol. Here we summarize our experience to-date and put forth proposals to counteract the current trends.

1. Introduction

In order to ensure fair and equitable benefit-sharing between providers and users in the utilisation of genetic resources, the Nagoya Protocol confirms Parties' sovereign rights over how their biological diversity may be used. Access and Benefit-Sharing (ABS) principles under the Nagoya Protocol apply to the utilisation of all genetic resources from commercial to non-commercial projects and includes biodiversity research. While the Nagoya Protocol emphasises the value of biodiversity research to conserve and protect biodiversity, in practice, it has led to significant barriers including:

- wide-ranging variations in national legal requirements concerning access to genetic resources,
- differing interpretations and implementation of ABS regulations in individual cases and
- lengthy processes and enforcement periods that are mis-aligned with the project-driven timelines of academic biodiversity researchers.

Biodiversity researchers need and want to work in many countries. Yet the huge variety in implementation means that researchers have to start anew in every country they work in and continuously are confronted with legal uncertainty and incalculable delays in approval procedures. As a result, certain regions or countries on the world map where we most need new biodiversity research, become even more difficult to work in. Furthermore, impeded access to genetic resources leads to disadvantages for our international counterparts in-country and causes research projects to end before they can begin. Ultimately, this jeopardises biodiversity protection and conservation,

since knowledge that is urgently needed both locally and globally cannot be made available through biodiversity research. This can have a ripple effect on the region when comparative findings between regions, for example those that require the systematic molecular comparison of variants of different species, are impaired.

These hurdles must be overcome without weakening the central objective of benefit-sharing. From the perspective of biodiversity researchers, ABS regulations should be harmonised across national borders and international legislative instruments. Administrative procedures should be standardised, simplified and accelerated. Under Article 8 of the Nagoya Protocol, “facilitated access” is foreseen but, as yet, rarely implemented.

2. The necessity of biodiversity research for the conservation of biodiversity

The global biodiversity crisis threatens to have an enormous impact on the entire earth system and humanity. Countless animal, plant, and microbial species, most of which are not yet known to research, are disappearing at an alarming rate. Global climate change is a major contributing factor in this decline and biodiversity is a major contributing factor when it comes to controlling key ecosystem functions, such as the binding of greenhouse gases in the soil. This means biodiversity is essential to manage and contain global climate change.

The CBD acknowledges that biodiversity research is essential to achieving the Convention’s goals. The *Kunming-Montreal Global Biodiversity Framework* highlights the importance of basic research to the conservation of biodiversity and its sustainable use. Research into genetic resources in particular is vital in order to investigate the presence, diversity and lifestyle of known and newly discovered organisms, their interplay in food networks and other systems, and the causes and consequences of changes in biodiversity. Without non-commercial biodiversity research, it is impossible to gain an understanding of animal, plant and microbial organisms and the processes and interactions underlying their decline. Supporting the interplay between biodiversity research and conservation is in line with the objectives of the CBD and the Nagoya Protocol.

Moreover, the methods of modern, non-commercial biodiversity research – from field research and sampling to laboratory analyses and the systematic comparison of genetic sequences, motives and enzymatic activities at the molecular level – are dependent on access to genetic resources.

3. What challenges does the Nagoya Protocol pose for biodiversity research?

In individual cases, researchers and research institutions have had some positive experience of national regulations that implement the Nagoya Protocol. In some cases, for example, approvals for non-commercial marine research on genetic resources have been granted jointly with overall research permit needed to collect samples in the exclusive economic zone of a country. This one-

stop procedure condenses and accelerates the ABS authorisation process. A second example is the early involvement and close communication with ABS authorities which tends to speed up the application and approval process which generates “buy-in” and mutual collaboration. Third, cooperation with local partner research institutions and their willingness to submit permit requests together with Germany-based researchers generally have made the authorisation process much easier.

However, challenges are often encountered that do not compensate for the positive lessons learned. First, Parties that regulate access to genetic resources often do not implement and enforce the Nagoya Protocol uniformly. Thus, researchers must work through national legal requirements which are very heterogeneous and entail complex and lengthy official procedures. This results far too often in legal uncertainty and delays in approval procedures. Second, information about the underlying ABS legal situation is frequently not forthcoming leaving researchers in a long-standing “limbo zone” with neither the ability to move forward nor discontinue research. Third, staff turnover, for example at the National Focal Points (the official who must be contacted in the provider country) often results in different decisions being made, despite the factual and legal position being the same. As a result, some researchers have begun to refrain from submitting applications for third-party funding for international research projects in countries where they have had negative experience with ABS procedures in the past. This makes it more difficult to conduct regional or cross-national comparative analyses in particular. Marine research is frequently affected, since this regularly involves negotiations with more than one coastal state. As a result, researchers in the provider states are affected if they wish to benefit from research collaborations with foreign institutions and the funding opportunities this affords.

The problems described here reflect the experience of biodiversity researchers in various countries. Virtually no valid empirical studies have been carried out on this to date, but a survey conducted in 2018 on the impact of the Nagoya Protocol on the success of research in 39 projects carried out in 23 provider states by 14 major German biodiversity research institutes showed that approval procedures took an average of ten months. A total of six projects (15%) in four countries failed entirely due to approvals not being issued (Leibniz Biodiversity Research Network; unpublished).

Biodiversity researchers are engaged in intense debate on the question of whether biodiversity research is indirectly “steered” by the Nagoya Protocol, since it can result in research being primarily or solely conducted in countries with easily accessible ABS structures. This may mean that insufficient research is being carried out in certain regions and/or certain provider countries. This also limits the opportunities for biodiversity monitoring. Legal and administrative delays are at odds with the urgency of biodiversity research in view of the accelerating, unstoppable loss of biodiversity.

4. Proposals from the perspective of biodiversity research

In order to prevent long-term damage to international biodiversity research we propose the following:

- standardisation of terminology (e.g. *genetic resources*)
- harmonised procedures for access-and-benefit sharing and
- facilitated access for non-commercial researchers

Although the Nagoya Protocol was intended to provide standardisation and clarity, many countries have adopted unique ABS terminology. A new “ABS Glossary” could help to **standardise the terminology** of the Nagoya Protocol for daily use. In addition, the concept of *genetic resources* should be defined in a standardised way in all international treaties that refer to it. This concerns not only the CBD and the Nagoya Protocol, but also the introduction of an ABS mechanism within the framework of the United Nations agreement on biodiversity beyond national jurisdiction (BBNJ Agreement) and within the framework of the WHO Pandemic Preparedness Treaty, which is still under negotiation. The data obtained from biodiversity research should remain freely available to non-commercial basic research, in particular access to sequence and other databases, in order to ensure non-commercial benefit-sharing within the meaning of the Nagoya Protocol.

Application procedures could be significantly simplified by **harmonising ABS access procedures** based on an alignment of requirements. This harmonisation could be supported by the development of model contracts which could be developed by the CBD Secretariat or the International Standardisation Organisation (ISO), for example, and made available to provider states as a guide. As a first step, bilateral research cooperations between countries that require ABS could be handled at the beginning during the political agreement-making to ensure a **“framework ABS agreement”**, i.e., an overarching agreement that participation in this bilateral research program constitutes ABS compliance.

The simplification of procedures for non-commercial research projects is called for under Article 8(a) of the Nagoya Protocol. Much more can be done here to ensure non-commercial **research applications are facilitated** by expediting the processing and approval of applications submitted by those seeking to carry out non-commercial research projects. Simple steps like online “declarations” rather than permitting can greatly facilitate biodiversity research. The latter is also in the interests of the provider states, since it would enable them to attract collaborative research more quickly and on a larger scale.

These measures could be backed up by informal dialogue between researchers and research institutions with regard to ABS requirements and here we offer the *German Nagoya Protocol Hilfe und Beratung (HuB)* as a touchpoint for practical next steps and dialogue.

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