



ABS IN MADAGASCAR

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Overview

Madagascar is a wonder of biodiversity. Almost 90 percent of its plants exist nowhere else on Earth. For centuries, Madagascar has been a source of natural ingredients greatly valued in food, cosmetics and pharmaceutical products. For example, Madagascar is a top producer of vanilla and clove, essential for flavours and fragrances. It is also the focus of many projects looking for innovative ingredients.

In this context, principles on access and benefit sharing (ABS) have been recognised as a tool to harness the wealth of biodiversity and associated traditional knowledge - for example, over 2,000 plants are used for medicinal purposes in the country - for sustainable development. Another concern has been the possible misappropriation of Malagasy biodiversity, as in the often-cited case of the rosy periwinkle.

In 2017, Madagascar adopted Decree N° 2017-066 on ABS. Under these rules, national and foreign entities conducting biodiversity-based research and development need government authorisation, based on prior informed consent and benefit sharing agreements. Implementing regulations are still under development. Meanwhile, pilot cases are being considered.

What is scope of ABS requirements?

In line with the Nagoya Protocol, Decree N°2017-066 focuses on research and development on the genetic or biochemical composition of plants, animals or microorganisms. As long as biological material is not used for such research and development (for example, sourcing or trading in plant parts or extracts for known applications), these activities are expressly excluded from ABS requirements. On the other hand, ABS requirements cover both native and exotic species, occurring in both public and private property.

International rules

Madagascar is a party to the following international agreements related to access and benefit sharing (ABS):

- Convention on Biological Diversity (CBD) — since 1996.
- International Treaty on Plant Genetic Resources for Food and Agriculture — since 2006.
- Nagoya Protocol on ABS — since 2014.

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ABS rules cover traditional knowledge associated with genetic resources. Such traditional knowledge is broadly defined, including information or practices directly or indirectly related to scientific, technical economic, social or cultural aspects of Malagasy biodiversity - whether or not it has previously been published. Access to or utilisation of associated traditional knowledge is not defined.

Who needs authorisation to access genetic resources?

Any national or foreign person or organisation seeking to use plants or other biodiversity components for research and development must have an authorisation. To apply for an access authorisation, foreign individuals or organisations must have previously secured an agreement (or in some cases, a letter of support) with national, public research institutions. Such institutions must participate in the proposed research and development activities - for example, as contributors and co-authors.

Decree N° 2017-066 also foresees that persons or organisations not involved in research and development, but “benefiting” from the utilisation of genetic resources, including intermediaries, may apply for access authorisations. However, the decree does not clarify how the ABS system will deal with such applications - given, for example, that they would not necessarily be prior to research and development activities.

Who grants authorisation to access genetic resources?

The competent authority for ABS implementation is the unit charged with biodiversity management in the Ministry of Environment, Ecology and Forests. This unit is responsible for issuing authorisations for access to genetic resources and associated traditional knowledge, and negotiating and concluding the

mutually agreed terms for such access. Prior informed consent must be secured from the local providers (see next page).

The competent authority is supported by a technical secretariat, charged with providing guidance on approaches to prior informed consent and mutually agreed terms, in line with the rights of local communities and the promotion of conservation and sustainable use of biodiversity. The competent authorities also rely on an ad hoc commission, with a different composition depending on the genetic resources at issue, which provides its opinion on the proposed project, its potential for benefit sharing, and whether to grant the authorisation for access.

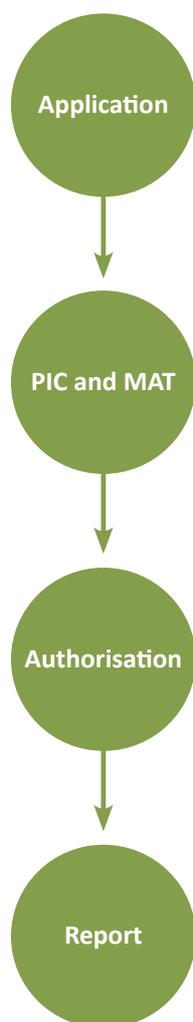
ABS in laws and regulations

Several laws and regulations in Madagascar contain provisions related to ABS, including:

- Decree N° 2017-066 on Regulating Access and Sharing of Benefits resulting from the Utilisation of Genetic Resources
- Law N° 2015-003 on the Updated Malagasy Environment Charter
- Law N° 2013-017 on Safeguarding the National Intangible Heritage



What are steps to access genetic resources and associated traditional knowledge?



Applicants must apply for access to genetic resources with the competent authority and pay relevant fees. Authorisation must be requested at least 30 days before the intended collection of biological material. A standard application form is included as an Annex in Decree N° 2017-066.

A simplified process is foreseen for scientific, non-commercial research. Applicants with commercial purposes must secure prior informed consent (PIC) and mutually agreed terms (MAT). These processes may involve individuals or organisations with property or management rights over the land or natural resources where the genetic resources are located or from the holders of associated traditional knowledge (see box). PIC and MAT may also be facilitated by the competent authority.

The competent authority, supported by the technical secretariat and in line with the opinion issued by an ad hoc commission, responds to the application within 60 days of completing the file. This period may be extended. The authorisation for access and utilisation for commercial purposes is subject to conditions, including committing not to transfer genetic resources to third parties and notifying the competent authority before applying for intellectual property rights resulting from the research and development.

Access is initially authorised for a one-year period, but may be renewed. At the end of the authorisation period, the applicant must submit a detailed report on the results of access and utilisation of genetic resources, including resulting publications.

Approaches to prior informed consent

In cases of biodiversity owned or managed by local communities or access to traditional knowledge, prior informed consent is formalised through an agreement, which also defines monetary and non-monetary benefits. The agreement must be written in a local language. According to Decree N° 2017-066, the agreement must also be negotiated in line with customary law and local practices. Any relevant tools developed by the local communities — for example, biocultural community protocols — must be consulted and integrated. Several community protocols have already been developed in Madagascar with support of organisations such as Natural Justice.



What are benefit-sharing requirements?

According to Decree N° 2017-066, fair and equitable benefit sharing is established on a case-by-case basis and outlined in mutually agreed terms. Mutually agreed terms may refer to the agreements with the local providers or with the competent authorities granting access to genetic resources, as may be relevant. In line with the Nagoya Protocol, both monetary and non-monetary benefits are foreseen and may be shared before, during or after the utilisation of genetic resources or associated traditional knowledge. A wide range of possible beneficiaries is recognised, including competent authorities, research institutions, private landowners, local communities, entities managing natural resources, holders of associated traditional knowledge, or other organisations involved in the conservation of biodiversity.

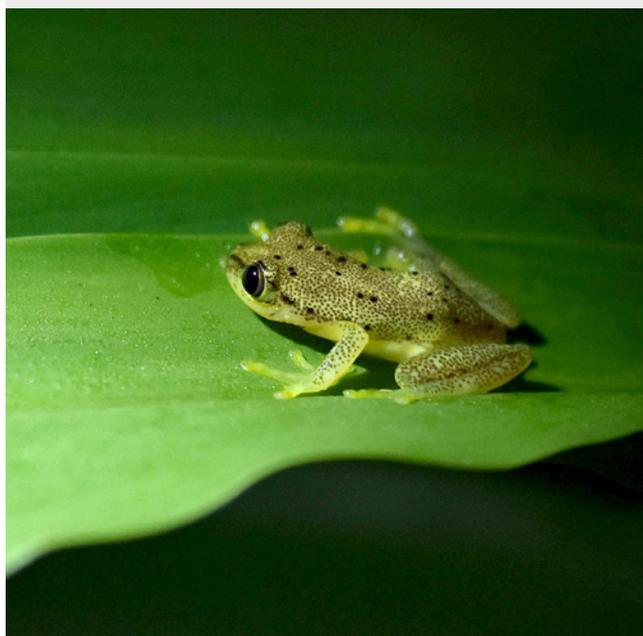
What about prior and existing uses?

For any access or agreements on access to genetic resources or associated traditional knowledge prior to the entry into force of the new rules on ABS in Madagascar — where there is new or ongoing research and development — a period of six months is foreseen for regularisation.

National focal point on ABS

For more information on ABS requirements in Madagascar, please contact:

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