



# Establishing functioning ABS systems: The role and relationship of PIC, MAT, ABS permits and the IRCC

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# ABS: A rights-based approach



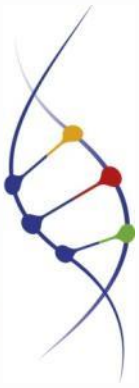
## Sovereignty and ownership

**1962:** Resolution 1803 (XVII) of the UN General Assembly declares "right of peoples and nations to permanent sovereignty over their natural wealth and resources"

**1992:** CBD Art. 15.1 reconfirms the right of States to regulate access to their genetic resources based on their sovereign rights over natural resources

**2007:** UNDRIP Art. 31.1 declares the right of indigenous peoples to maintain, control, protect and develop their traditional knowledge and manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds and medicines, as well as their intellectual property over such cultural heritage

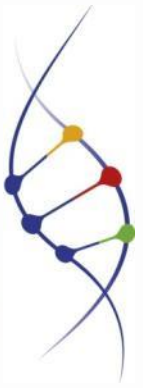
# PIC: The origin of the concept



## 25<sup>th</sup> Session of the FAO Conference 1989

- Revision of articles 2 and 9 of the international code of conduct on the distribution and use of pesticides and guidelines on the operation of prior informed consent
- "Prior Informed Consent" refers to the principle that international shipment of a pesticide that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision of the designated national authority in the participating importing country.
- "Prior Informed Consent Procedure" means the procedure for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of pesticides that have been banned or severely restricted.

# PIC: Promotion by the Rio-Summit



## Spreading beyond hazardous pesticide regulation

**1992:** Rio Declaration Principle 19 “States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.”

**1992:** CBD Art. 15.5 “Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.”

**2007:** UNDRIP Art. 10, 11, 19, 28, and 29 introduced “free, prior and informed consent” of indigenous peoples on consultations with regard to adopting and implementing legislative or administrative measures, land rights, relocation, redress, and deposition of hazardous material

# PIC: Legally binding Principle



## Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

**1994/95:** FAO Council and the UNEP Governing Council mandated their Executive Heads to launch negotiations

**1998:** Negotiations concluded and Rotterdam Convention adopted

**2004:** Entry into force of the Rotterdam Convention

### Central elements:

- Implementation of PIC procedure through detailed processes
- Appointment of responsible national competent authority
- Decision guidance document as main document to demonstrate PIC

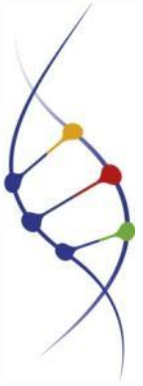
# Translation into national practice



## PIC ---> MAT & ABS Permit

- Ownership rights over genetic resources and associated traditional knowledge must be determined by national law
- Ownership can be governmental, individual, and collective
- Governments may require PIC procedure in **all** cases of access to genetic resources within the scope of national ABS regulations
- If PIC procedure is required, the CBD and the Nagoya Protocol ask for two documents
  - Mutually Agreed Terms - bilateral ABS contract under private contract law
  - ABS Permit – unilateral statement by governmental authorities to allow and regulate certain activities based on norms and rules

# Minimal scheme for access to GR and aTK



**Application for access at CNA / IPLCs**

**Prior Informed Consent**



**Mutually Agreed Terms**

**governmental ABS Permit**

# Minimal scheme for access to GR and aTK



## Application for access at CNA / IPLCs

### **Prior Informed** (process)

- Information
- Consultation

### **Mutually Agreed** (process)

- Negotiations

**Consent**

**Terms**

**governmental ABS Permit**



# Minimal scheme for access to GR and aTK



## Application for access at CNA / IPLCs

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**Terms**

**governmental ABS Permit**

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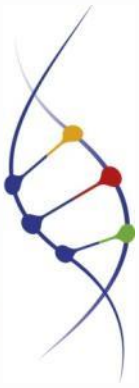
- Negotiations

### **Consent** (decision)

### **Terms** (document)

**governmental ABS Permit**

# Minimal scheme for access to GR and aTK



## Application for access at CNA / IPLCs

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### **Mutually Agreed** (process)

- Negotiations

### **Consent** (decision)

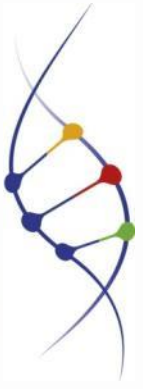
### **Terms** (document)



## **governmental ABS Permit** (document)

recognising PIC/decision and MAT/contract  
and the due processes

# Content of MAT and ABS permit



## **ABS permit is only enforceable in the issuing country**

- Detailed information on user and provider
- Recognition of the existence of PIC and MAT
- Conditions for sampling
- Conditions for handling
- Conditions for export

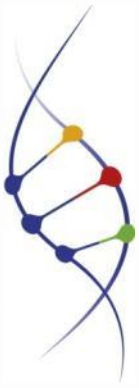
# Content of MAT and ABS permit



## **ABS contract must be enforceable in the provider country and the country where utilisation occurs**

- Description of intended utilisation
- Clauses on unintended utilisation and on restriction of utilisation
- Description and modalities of benefit sharing
- Consequences resulting from failure to comply with specific conditions
- and more – see FNI publications

# Linking PIC with compliance systems



## IRCC – Innovative instrument making ABS functional

- Goal of CBD, Nagoya Protocol and national ABS framework is benefit sharing
- If utilisation takes place outside of providing country, benefit sharing relies on three pillars
  - Effective Mutually Agreed Terms – being enforceable in providing country and the country of the user
  - Effective system monitoring utilisation – implemented in providing country and the country of the user
  - Effective compliance system – IRCC is the central link between national permit and monitoring systems
- IRCC is the “universal ABS passport” – to be recognised as core element in capacity development

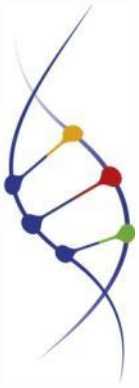
# Guidelines for implementing PIC in the context of CBD Art. 8j



## MO'OTZ KUXTAL VOLUNTARY GUIDELINES

Voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the “prior and informed consent”, “free, prior and informed consent” or “approval and involvement”, depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge

# PIC Guidelines and Nagoya Protocol



## Multiple views exist – the door is held open

- Access to TK of IPLCs should be subject to “prior and informed consent”, “free, prior and informed consent” or “approval and involvement” depending on national circumstances, of the traditional holders of such knowledge
- Defining “free”, “prior”, “informed”, and “consent”
- Describing procedures and processes
- *Recognizing* the contribution that guidance can make to the implementation of the CBD and the Nagoya Protocol
- *Underlining* that these guidelines do not apply to traditional knowledge associated with genetic resources under the Nagoya Protocol, but may be used as an input, where appropriate, for the development of specific instruments under the Protocol

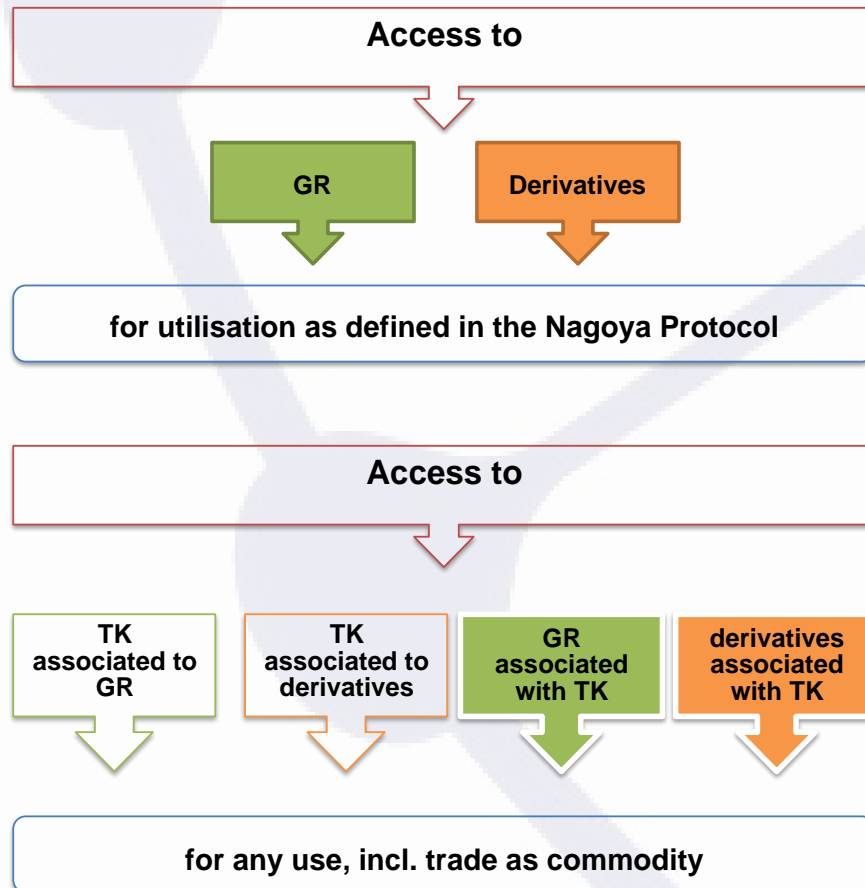


# AU Guidelines on PIC, MAT and ABS Permit



The Guidelines stipulate that PIC must be sought for and MAT negotiated in following six situations:

Entities granting PIC and negotiating MAT



**IPLC Competent Authority**  
if established by customary or written law,  
negotiates MAT with the user on IPLC GR and aTK

**Governmental Competent National Authority**  
negotiates MAT with the user on GR  
grants access permit on GR, IPLC GR and IPLC aTK