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ABS IN **MEXICO**

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Introduction

Mexico credits its wealth of biodiversity to factors such as a unique geological history, a rugged topography and an extensive coastline. This means the country hosts almost all land and water ecosystems, in addition to numerous and remarkable cultures. There is recognition of the enormous potential of its biodiversity, including agricultural biodiversity, to diversify and add value to Mexico's economic activities, as long as these efforts are coordination with conservation and sustainable use strategies and initiatives.

In this context, Mexico is a party to the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits resulting from their Utilization. It has committed to taking necessary steps to achieve the effective implementation and operation of access and benefit sharing (ABS) at the national level. Though no specific law or regulation has yet been adopted, the country has moved forward with procedures and practices on ABS, which are described in this note.

Legal framework on ABS

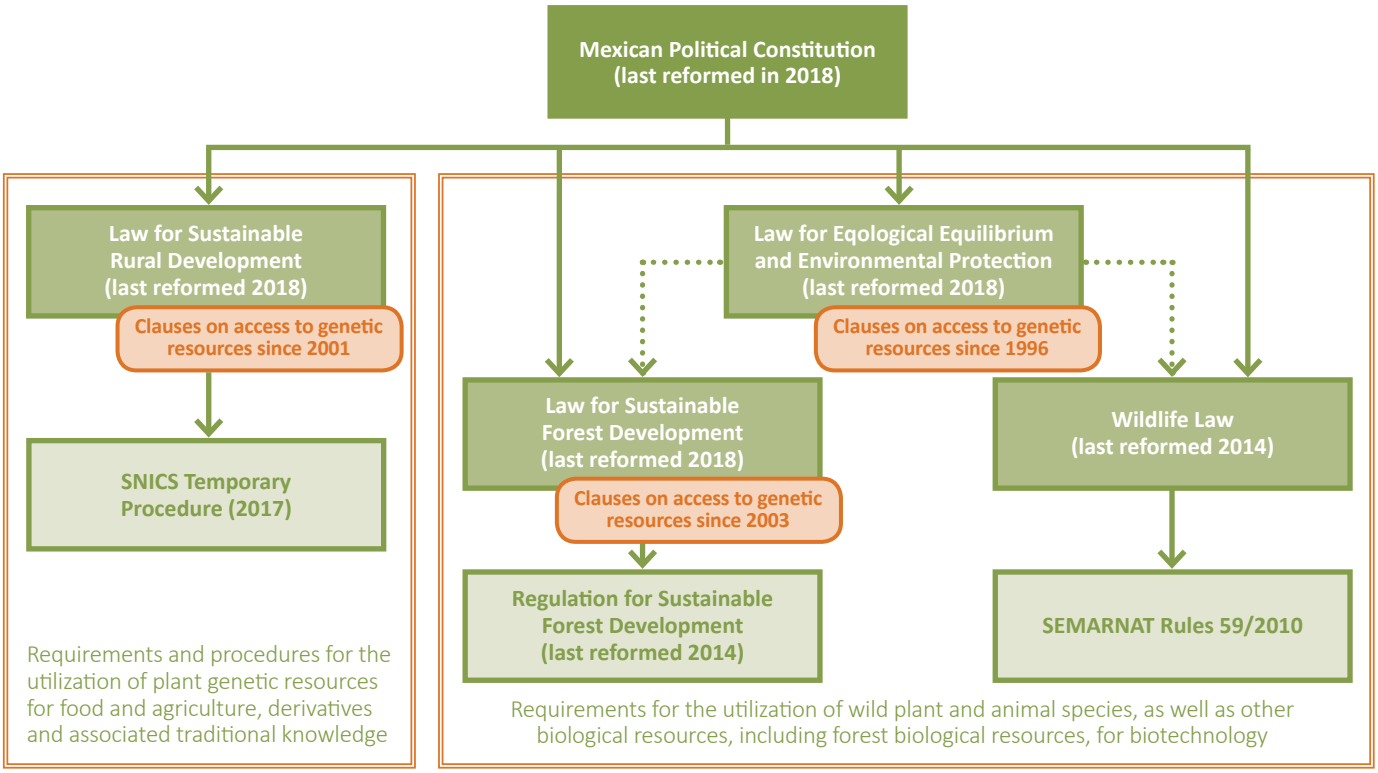
The Mexican Political Constitution and existing national laws and regulations provide the basis for regulating access to genetic resources and associated traditional knowledge and the fair and equitable sharing of benefits resulting from their utilization.

- *Laws on wildlife, forestry and ecological equilibrium and environmental protection* establish requirements to collect and access wild flora and fauna, as well as other biological resources, for their use in research and biotechnology. The Secretariat of Environment and Natural Resources (SEMARNAT) is named the competent authority.
- The *law on rural development* establishes the basis for requirements and procedures for the utilization of plant genetic resources for food and agriculture, as well as derivatives and associated traditional knowledge. The Secretariat of Agriculture and Rural Development (SADER) – specifically, the National Seed Inspection and Certification Service (SNICS) – is named as the competent authority.

International agreements

- Convention on Biological Diversity (CBD): Party since 29 December 1993
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Resulting Benefits (Nagoya Protocol): Party since 12 October 2014
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA): Non-party

National laws and regulations with ABS-related provisions in Mexico



Draft rules on ABS

In 2016, a draft law on biodiversity was presented to the Mexican Congress. This draft law would become the main regulatory instrument for the conservation and sustainable use of biodiversity, building on provisions in other environmental laws. It would also introduce specific provisions to implement the Nagoya Protocol. The draft law has been approved by the Mexican Senate, but it remains under discussion in the House of Representatives. In 2018, public consultations were launched to address concerns raised by civil society organizations, including indigenous peoples and local communities.

Scope of ABS-related requirements

ABS requirements in Mexico cover the utilization of genetic resources coming from plants, animals, fungi and microorganisms within national jurisdiction, as well as of their derivatives and associated traditional knowledge. The specific activities covered by ABS requirements depend on the type of biological resources involved, whether wild or cultivated or coming from particular ecosystems, and the applicable laws and regulations.

Which activities require an ABS authorization?

	Type of biological or genetic resources		
	Wild plants, animals and other biological resources	**Forest biological resources, including soils and non-timber forest products ***	**Plant genetic resources for food and agriculture**
Activities triggering ABS requirements	Utilization for biotechnology activities	• Research • Utilization for biotechnology activities	Research on and development of their genetic or biochemical composition, including through biotechnology
Type of access	• *In-situ* – that is, in natural habitats, including the area where domesticated and cultivated species developed their specific properties, and community seed banks • *Ex-situ* – that is, places where genetic resources are held off-site, including collections, gene banks, and botanical gardens		

* As long as not listed as under special protection, threatened or in danger of extinction under SEMARNAT rules 59/2010.

In the Mexican legal framework, the term "biotechnology" has a broad definition. It covers any technological application that uses biological resources or its derivatives to create or modify products or processes for specific purposes. For example, rules on sustainable forest development define collection for biotechnology activities as acquiring forest biological resources for activities such as generating chemical compounds, genes, proteins, molecular structures, metabolic process for commercial purposes.

Access requirements

Type of resources	Access requirements	Access procedures
Wild biological resources	• SEMARNAT authorization • Prior informed consent from owner or legitimate holder of land where biological resources are located • Agreement to equitably share benefits derived from utilization with land owners or legitimate holders	To be developed by SEMARNAT
Forest biological resources	• SEMARNAT authorization or notification (if user is Mexican public entity or owner of the resources) • Prior informed consent from owner or legitimate holder of land where biological resources are located ◦ Rights of indigenous peoples to biological resources and associated traditional knowledge must be respected • If there is utilization of traditional knowledge associated to the biological resources, it is necessary to secure prior informed and written concern from the indigenous peoples holding this knowledge	• SEMARNAT is authorized to establish terms, conditions and procedures for access, transport and commercialization of biological resources • Regulation foresees a brief process, with SEMARNAT requesting any further information on an application within 15 working days and then granting or denying access within 15 working days • List contains information and documentation to be included in notifications or applications for authorization for scientific research or R&D for commercial purposes
Plant genetic resources for food and agriculture	• SNICS authorization • Prior informed consent, based on official template, from the person or legal entity that is providing the plant genetic resources, derivatives or associated traditional knowledge. Conditions for prior informed consent include permitted uses, limitations on change of intent and transfer to third parties • Agreement based on official template, to equitably share benefits derived from utilization with provider	

What about...

- *Natural ingredients?* Purchasing dried plant leaves, for example, to obtain an extract with known properties and existing applications would not be considered to involve biotechnology, as long as there is no characterization of the extract. On the other hand, analyzing plant parts for compounds with potential applications in sectors such as food, cosmetics or pharmaceuticals would be considered biotechnological activities.
- *Cultivated plants?* ABS-related rules in Mexico cover plant genetic resources for food and agriculture. These are defined as plant genetic material that have been conserved and developed through traditional farming methods and may be used to developed new plant varieties and technologies. Access to and utilization of commercial plant varieties is not subject to ABS requirements.
- *Plants that are not native?* There is no distinction between native and non-native species. However, rules on wild plants, animals and other biological resources only cover those that grow and develop spontaneously, including – within these species – any populations or specimens that are managed or domesticated.

Benefit sharing requirements

Under Mexican laws and regulations, benefits derived from the utilization of genetic resources must be shared in a fair and equitable manner. What is “fair and equitable” is defined, through mutually agreed terms, on a case-by-case basis.

- Benefit-sharing is agreed upon between the user and the provider of the genetic resources or associated traditional knowledge.
  - For in-situ access to genetic resources, the provider is the owner or legitimate holder of land where biological resources are located.
  - For ex-situ access to genetic resources, the provider is the entity that is making available the genetic resources or derivatives. At this moment, ABS provisions do not establish any requirement for the potential user of genetic resources to verify that the gene bank, botanical garden or other ex-situ collection has, in turn, legally obtained these genetic resources.
  - For access to associated traditional knowledge, the provider is the group of indigenous peoples or local communities that holds and is willing to share the knowledge with the potential user. ABS provisions do not establish any requirement for the potential user to engage with other groups holding the same associated knowledge.
- For access to plant genetic resources for food and agriculture, certain parameters for benefit-sharing must be taken into account. For example, the template for mutually agreed terms used by the National Seed Inspection and Certification Service (SNICS) foresees that a percentage of fees and royalties deriving from the licensing of intellectual property rights resulting from the utilization of genetic resources or associated traditional knowledge must be shared.

Sanctions and compliance

Laws and regulations with ABS-related provisions grant competent authorities the power and responsibility for ensuring compliance with these provisions. For example, sanctions are foreseen for the violation of rules on the use of forest resources, as well as permits linked to such use. These sanctions include cautions, fines, confiscation and closure of operations. SEMARNAT is entitled to define the sanction based on considerations such as seriousness of the offense, intentionality, damage caused, and benefits gained. Additionally, the Mexican Criminal code has a section on biodiversity, which foresees fines and criminal sanctions for the illegal use of wild biological resources, including genetic resources and derivatives, from species that are endemic, endangered or otherwise protected by international treaties. on a case-by-case basis.

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