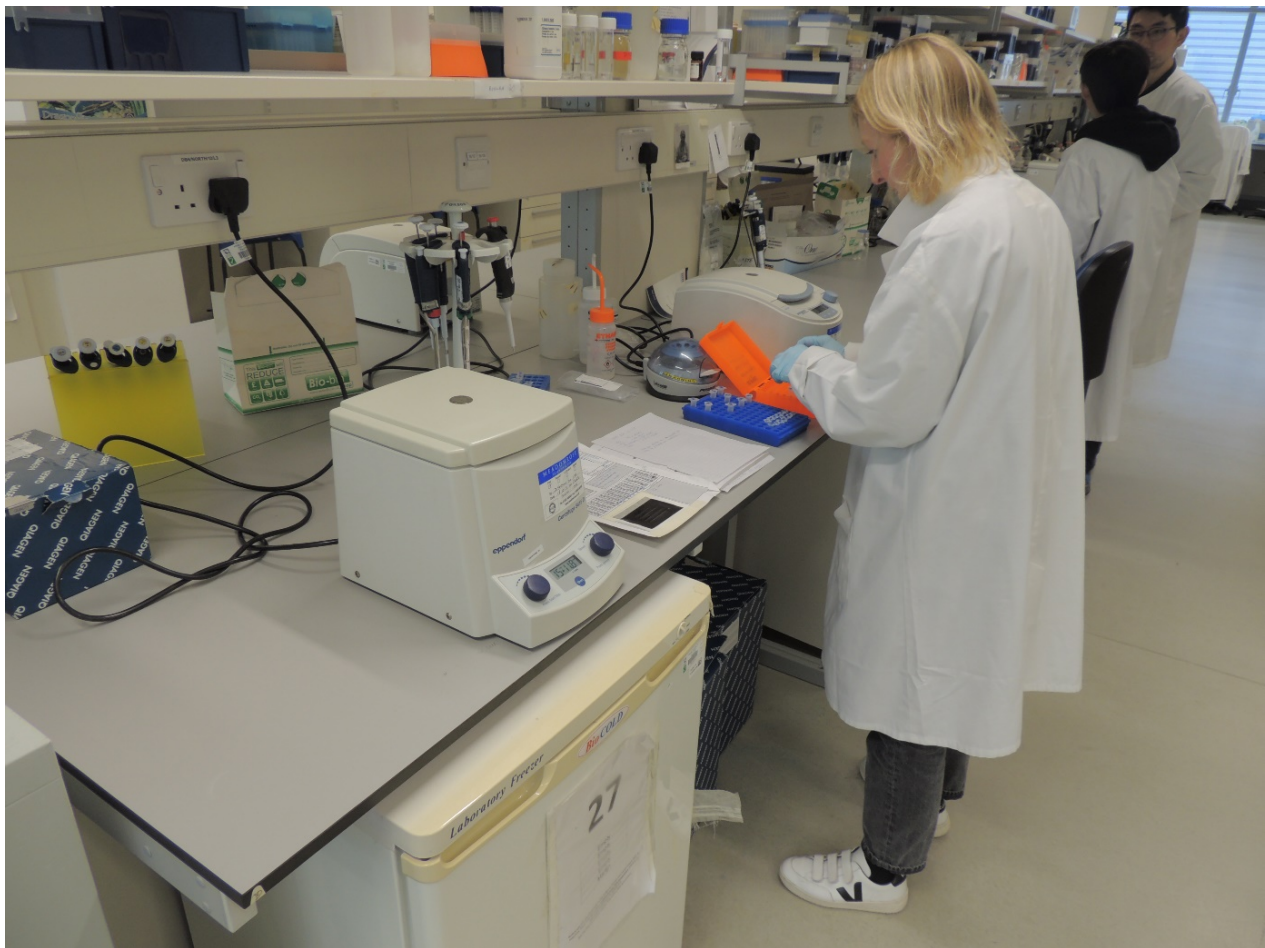


Evanson Chege Kamau (Ed.)

Implementation of the Nagoya Protocol

Fulfilling new obligations among emerging issues



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Chapter 11

ABS regime in Argentina

Luciana Carla Silvestri

1 Legislation and scope

Argentina is a party to the Convention on Biological Diversity (CBD) and the Nagoya Protocol (NP) since February 20, 1995 and March 9, 2017, respectively. The National Constitution establishes that the federal government, through the National Congress, is competent to enact minimum legal environmental standards that bound all provinces across the country. So far, the federal government has not adopted any access and benefit-sharing (ABS) law that includes minimum standards on the issue.

Instead, at the national level three administrative measures regulate ABS matters. The first one is Administrative Decision No. 226 of 2010, adopted by the Argentinian Secretariat of Environment and Sustainable Development (SE&SD). It regulates the access to genetic resources when they are to be later exported or imported. The second one is Administrative Decision No. 208 of 2011, adopted by the Federal Council of the Environment (COFEMA). Its mandate only requires scientists to obtain an authorization of competent authorities in order to access genetic resources. It does not further elaborate any details of the procedure, permits, etc. The third piece of legislation is Decision No. 81 of 2016 adopted by the National Parks authority. The Decision covers any kind of scientific research conducted in national parks, including the access to genetic resources. The three regulations only cover genetic resources as regulated by article 2 of the CBD. Only genetic resources found in Argentina fall within the scope of the legal framework. In addition, none of the regulations provide a definition of genetic resources, users, access, utilization or commercial and/or non-commercial research. According to Decision No. 226 of 2010 cultivars are exempted from its application.

Access to traditional knowledge associated to the utilisation of genetic resources has not been regulated at the national level.

Provinces in Argentina are also competent to regulate ABS issues. According to the National Constitution, provincial environmental regulations can be more stringent than the national law, in case the latter exists, but not more flexible. At the provincial level 10 out of 23 provinces have adopted ABS related legislation (Table 1). These regulations greatly differ from one another due to the absence of a national law setting minimum standards on ABS that could be used as guidance by the different provinces.

Table 11.1: Provinces with ABS-related legislation

Province	ABS regulation
Misiones	Executive Decree No. 474 of 2002 regulating Provincial Law No. 3337 on conservation and sustainable use of biological diversity and its components
Neuquén	Provincial Law No. 2503 of 2005 on access to genetic and biochemical resources
Santa Cruz	Provincial Law No. 2993 of 2007 on access to genetic and biochemical resources
Tierra del Fuego	Administrative Decision No. 570 of 2012 of the Secretariat of Environment and Sustainable Development establishing the legal regime for conducting research that entails access to genetic material
Catamarca	Administrative Decision No. 90 of 2012 of the Secretariat of Environment and Sustainable Development establishing the legal regime for conducting research that directly or indirectly involves natural and/or genetic resources
Jujuy	Administrative Decision No. 15 of 2013 of the Environment Secretariat establishing the regime for the access to provincial biodiversity
Province	ABS regulation
San Luis	Provincial Law No. 9-0851 of 2013 on access and registry of genetic and biochemical resources pertaining to provincial biodiversity and Executive Decree No. 8804 of 2015 that further regulates the before mentioned provincial law
Entre Ríos	Administrative Decision No. 1721 of 2014 of the General Directorate of Natural Resources establishing the regulation on access to genetic resources and its derivatives
Formosa	Administrative Decision No. 40 of 2015 of the Ministry of Production and Environment regulating the requirements for access to biological resources and its derivatives
Buenos Aires	Administrative Decision No. 19 of 2019 of the Ministry of Agroindustry regulating access to genetic resources

2 Authorities, access procedures and permits

According to the National Constitution, Provinces own natural resources found in their jurisdictions. These include genetic resources. Consequently, prior informed consent (PIC) and mutually agreed terms (MAT) must be requested and established, respectively, with the relevant province. Only when resources are located in a national park, the national parks Administration is competent for granting PIC and establishing MAT.

Provincial procedures for access to genetic resources have been regulated to a different extent in the various provinces that do count on ABS legislation. Neuquén and Santa Cruz for example, have no provisions on procedures for access to genetic resources despite the fact that their ABS laws date back to 2005 and 2007, respectively. In contrast, Jujuy, Formosa, Entre Ríos, Tierra del Fuego and San Luis, have regulated in a detailed manner the procedure and the requirements needed to access genetic resources found in their jurisdictions. None of the 10 provinces that have adopted ABS legislation has set a facilitated procedure to access genetic resources for purely scientific research purposes.

Some legal conditions applicable to access permits foreseen by provincial legislations include the following: a) permits cannot be transferred; b) obligation to deposit a sample of the collected biological material in a collection belonging to the province where the sample was obtained; c) obligation to submit to the province in question a report on activities undertaken, including research and developments; d) obligation to acknowledge, in any scientific publication, the geographical origin of the genetic resources and e) obligation to jointly apply with an Argentine scientific institution in case access to genetic resources is required by foreign applicants.

At the national level the competent authority for ABS issues is the SE&SD. The Secretary is only responsible for access procedures when genetic resources are to be later exported or imported. The SE&SD checks that PIC has been granted by the relevant authority (a prov-

ince or the national parks Administration) and that MAT have been established with it. If all legal requirements are satisfied, the SE&SD issues an export permit. At the national level, there is no facilitated administrative procedure for access to genetic resources for non-commercial purposes either.

3 Benefit-sharing

Even though MAT are to be established between the user of genetic resources and the province or national park that grants access to them, in practice, when genetic resources are utilised for purely scientific research purposes, MAT are established with the providing scientific institution. Likewise, if resources are obtained from an ex situ collection, the agreement is concluded with it. In both cases, the province or the national parks still has to grant its PIC.

If resources are obtained from in situ conditions, MAT has to be established with the corresponding province or national park. Some provinces, such as Neuquén, Jujuy, San Luis, Formosa, Santa Cruz, Entre Ríos, Misiones and Tierra del Fuego thoroughly regulate the fair and equitable distribution of benefits obtained from the utilisation of genetic resources. The rest of them do not. Amongst the benefits to be distributed are upfront payments, percentages of royalties, scientific research collaboration, joint technological development, etc.

4 Draft regulation on ABS

The SE&SD has prepared a legislative draft proposal on biodiversity which includes a chapter on ABS matters. The objectives of this endeavour are to satisfy legal provisions set under the NP and help solve uncertainties created due to the absence of a national law setting minimum common standards for ABS issues. The draft has been prepared in the framework of a Global Environment Facility (GEF) / United Nations Development Program (UNDP) project and it is expected to be discussed in 2020 at the National Congress.

5 Assessment of the pre and post Nagoya Protocol situation and conclusions

Argentina has not taken any measures yet to satisfy the obligations set under the NP. The main piece of regulation, namely Administrative Decision No. 226 of 2010, was enacted before the Protocol was adopted. This Decision is in a rudimentary state of development; it was not preceded by a strategic planning process and does not provide minimum ABS standards that could guide provinces in the development of their own ABS regulations. In turn, at the provincial level, the overwhelming proliferation and disparity of regulations seems to be the most urgent issue to be addressed.

On the other hand, the current ABS draft law prepared under a GEF/UNDP project does not appear to sufficiently resolve any of the aforementioned problems. The draft is superficial in its development of the regulation and lacks sufficient technical and scientific rigour to support its provisions. If it were to be submitted to Congress as it stands, it will hardly solve any of the problems it is intended to solve. It will not satisfy on the other hand, the obligations anticipated by the NP.