

ABS in Mexico

Overview of legal requirements, procedures and relevant authorities



Prepared for the European Seed Association (ESA)

by the Union for Ethical BioTrade

July 2019

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1. Legal framework

International agreements

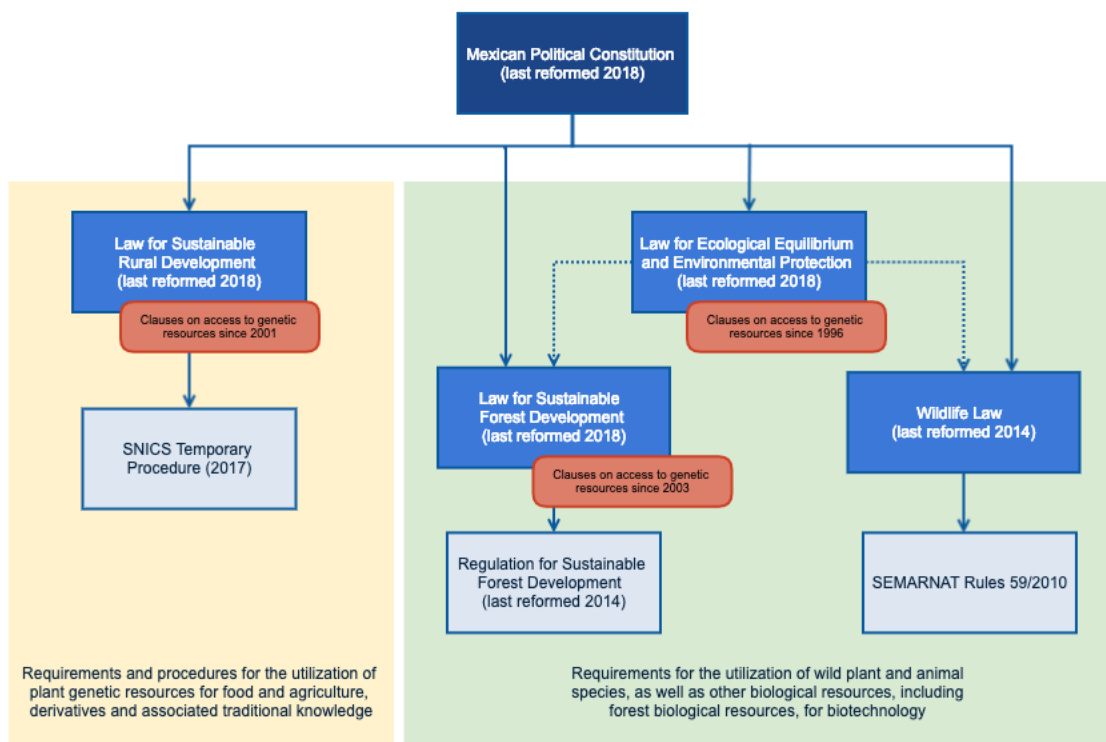
- Convention on Biological Diversity (CBD): Party since 29 December 1993
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Resulting Benefits (Nagoya Protocol): Party since 12 October 2014
- International Treaty on Plant Genetic Resources for Food and Agriculture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

National laws and regulations

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 (ABS) (see Figure 1).

- *Laws on wildlife, forestry and ecological equilibrium and environmental protection* establish requirements to collect and access wild biological resources – flora, fauna, fungi and microorganisms – for their use in research and biotechnology 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.

Figure 1. National laws and regulations with ABS-related provisions



Draft rules or amendments

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. For example, SEMARNAT is named the competent national authority to ensure that access to genetic resources and associated traditional knowledge only takes place on the basis of prior informed consent and mutually agreed terms. Other government agencies are also assigned roles in managing genetic resources under their jurisdiction, according to existing laws and regulations. The draft law also sets parameters for mutually agreed terms, including on fair and equitable benefit sharing.

The draft law on biodiversity has been approved by the Mexican Senate. It is still under discussion in the House of Representatives. In this context, public consultations were launched in 2018 to address concerns raised by civil society organizations, including indigenous peoples and local communities.

2. Scope of ABS-related requirements

In terms of substantive scope, ABS requirements in Mexico cover, in principle, 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. In practice, the scope of ABS requirements depends on the laws and regulations dealing with the specific type of resources, as illustrated in Figure 2.

In terms of temporal scope, ABS requirements apply only from the date of entry into force of the specific provisions. That is, there is no retroactive application.

Figure 2. What activities require ABS authorization in Mexico?

Type of resources	Wild plants, animals, fungi and microorganisms	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	<ul style="list-style-type: none"> • Research • Utilization for biotechnology activities 	Research and development on their genetic or biochemical composition, including through biotechnology
Type of access	<ul style="list-style-type: none"> • <i>In-situ</i> - that is, in natural habitats, including the area where domesticated and cultivated species developed their specific properties, and community seed banks • <i>Ex-situ</i> – that is, places where genetic resources are held off-site, including collections, gene banks, and botanical gardens. Rules make no distinction between public or private collections. 		

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

It is important to highlight that the term “biotechnology” under these provisions is not limited to modern biotechnology or the manipulation of genetic material. Rather, it covers any technological application that uses biological resources or its derivatives to create or modify products or processes for specific purposes. In particular, 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.

- For example, in the field of natural ingredients, analyzing plant parts for compounds with potential applications in food and beverages, cosmetics and personal care or pharmaceuticals would be considered biotechnology activities.

- On the other hand, 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.

Specific questions on scope

- *Native and non-native plants.* There is no express distinction between native and non-native species in provisions on ABS. Nevertheless the emphasis seems to be on native species. This is because rules on wild plants, animals, fungi and microorganisms only cover those that grow and develop spontaneously in Mexico. And rules for plant genetic resources for food and agriculture only cover those genetic resources conserved and developed through traditional farming methods.
- *Food and agriculture.* 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 develop new plant varieties and technologies. Access to and utilization of commercial plant varieties – that is plant varieties that are developed by seed or other companies and are subject to registration and intellectual property rights – is not subject to ABS requirements.
- *Microbes.* Microbes are covered by ABS-related provisions in Mexico. Rules on wildlife cover plants, animals, and other biological resources. “Forest biological resources” refers to species and varieties of plants, fungi and microorganisms that form part of forest ecosystems, including genetic resources in the form of pollen, seeds, and other organs of vegetative reproduction.
- *DNA samples.* Germplasm is covered by ABS-related provisions in Mexico, given the above-mentioned definitions and consideration of ex-situ access to genetic resources.

3. National rules and the ITPGRFA

The legal framework in Mexico contains no reference to the ITPGRFA. Nevertheless, there are specific ABS requirements and procedures foreseen for plant genetic resources for food and agriculture, as described in this note.

4. Access requirements

ABS-related provisions in the Mexican legal framework focus on requirements that must be fulfilled at the time of access to the biological or genetic resources, their derivatives or associated traditional knowledge. Figure 3 provides an overview of requirements to access these resources, for the purpose of their utilization. Figure 4 provides further detail on the procedure to fulfill these requirements foreseen for plant genetic resources for food and agriculture.

Figure 3. Overview of requirements and procedures to access genetic resources

Type of resources	Access requirements	Access procedures
Wild biological resources	SEMARNAT permit requires: <ul style="list-style-type: none"> • 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 permit (or notification – if user is Mexican public entity or owner of the resources) requires: <ul style="list-style-type: none"> • Prior informed consent from owner or legitimate holder of land where biological resources are located • If there is utilization of traditional knowledge associated to the biological resources, prior informed and written consent from the indigenous peoples holding this knowledge 	To be developed by SEMARNAT <ul style="list-style-type: none"> • 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 • Regulation 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 requires: <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • As described in Figure 4, to apply for a permit for access to plant genetic resources for food and agriculture, user must have previously secured prior informed consent and a benefit sharing agreement. • The user should present the access application to SEMARNAT, as the national focal point. • SEMARNAT transfers the file to SNICS, which conducts the legal and technical assessments and the consultations with other relevant agencies. • SNICS decides to issue the permit or not and notifies the user.

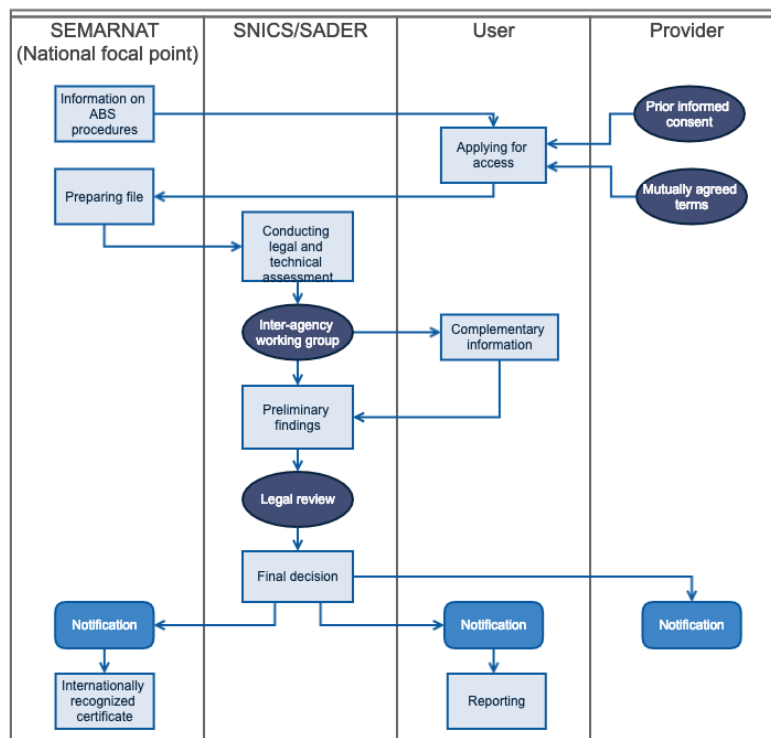
5. Benefit sharing requirements

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.
- The temporary procedure for access to plant genetic resources for food and agriculture establishes certain parameters for benefit-sharing. For example, the template for mutually agreed terms establishes that both monetary and non-monetary benefit should be shared. It also 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 will be shared.

Figure 4. Procedure of access to plant genetic resources for food and agriculture



6. 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. Fines for violating rules on use of forest resources currently range from 385 to 77'000 Euro. Similarly, there are sanctions foreseen for violating rules on the use of wild biological resources, with equivalent penalties and considerations.

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. Sanctions are doubled in case activities were undertaken for commercial purposes.

No measures are yet in place to ensure compliance of the utilization of genetic resources in Mexico with legal provisions on ABS in other countries, as foreseen in the Nagoya Protocol.

7. List and links of relevant laws and regulations

Name	Number	Date	Link
Law for Sustainable Rural Development	N/A	2001	https://absch.cbd.int/database/record/ABSCH-MSR-MX-238701
SNICS Temporary Procedure on ABS	N/A	2017	https://absch.cbd.int/database/record/ABSCH-MSR-MX-238707
Law for Ecological Equilibrium and Environmental Protection	N/A	1988	http://www.ordenjuridico.gob.mx/Documentos/Federal/html/wo83191.html
Law for Sustainable Forest Development	N/A	2003	http://extwprlegs1.fao.org/docs/pdf/mex36056.pdf
Regulation for Sustainable Forest Development	N/A	2005	https://www.ecolex.org/details/legislation/reglamento-de-la-ley-general-de-desarrollo-forestal-sustentable-lex-faoc064038/?
Wildlife Law	N/A	2000	https://absch.cbd.int/database/record/ABSCH-MSR-MX-238706
SEMARNAT rules on Environmental and Native Species Protection	59	2010	https://absch.cbd.int/database/record/ABSCH-MSR-MX-238705