

FIRST ASSESSMENT AND REVIEW OF THE EFFECTIVENESS OF THE NAGOYA PROTOCOL: BUSINESS VIEWS

ICC SUBMISSION TO THE CBD

Prepared by the ICC Task Force on Access and Benefit Sharing

Summary and highlights

- ABS Clearing House Mechanism
- Best Practices and model clauses
- Impact of implementation on innovation

ICC is pleased to contribute to the first Assessment and Review of the Effectiveness of the Nagoya Protocol.

ABS Clearing House Mechanism

Business users of genetic resources are actively working to ensure that their operations and practices are in conformity with national ABS rules developed in accordance with the Nagoya Protocol. To be able to do this, they need 1) clear, accurate, complete and up-to-date information on national regimes which is easily accessible; and 2) practical information on how to comply with the rules in practice.

The ABS Clearing House (ABSCH) is the mechanism foreseen by the Protocol to communicate such information, which enables those who are using, or intending to use, genetic resources under the sovereignty of Contracting Parties to be aware of, and comply with, relevant laws and regulations. An ABSCH with up-to-date, complete and accurate information is therefore an essential enabling mechanism for the implementation and functioning of the Nagoya Protocol.

In addition, the ABSCH plays a key role in the issuance of Internationally Recognized Certificates of Compliance. IRCCs provide internationally recognized evidence that the genetic resources which they cover were accessed in accordance with national ABS requirements, and are essential instruments to facilitate legal certainty and compliance management, both from the point of view of a user and an authority. It is therefore crucial that authorities make national permits or their equivalent available to the ABSCH in a timely manner.

ICC commends the Secretariat for its efforts to continuously work on the quality of the structure and functioning of the ABSCH, as well as its initiatives to build awareness and understanding through tutorials and training materials. These activities contribute to improving the quality and quantity of information on the ABSCH.

However, the success of the ABSCH in fulfilling its objective ultimately depends on the diligence of Contracting Parties in providing clear, accurate, complete and timely information on their ABS rules and national procedures. We note that to date, several Contracting Parties have still not posted measures on the ABSCH that outline how they regulate the utilization of genetic resources. In addition, some of the information available on the ABSCH appears to be out-of-date, incomplete and/or inaccurate. Therefore, while the ABSCH in general is fully operational, the absence of necessary and accurate information limits its utility. These deficiencies have been noted for some time with little evidence of improvement. During the Expert Group Meeting on Article 10 of the Nagoya Protocol on Access and Benefit Sharing, for example, it was recommended that the COP-MOP should focus on capacity building to improve the ABSCH rather than on a global multilateral benefit-sharing mechanism. (see UNEP/CBD/ABS/A10/EM/2016/1/4).

ICC therefore calls upon Contracting Parties and other governments to focus on the timely posting on the ABSCH of clear, accurate and complete information on their applicable ABS laws and regulations and related documents, as well as the contact details of their national focal points and competent national authorities. The availability of easily understandable instructions on the practical steps that need to be taken by users would also facilitate compliance e.g. in the form of FAQs. Other useful information could include any terms that will be required as part of ABS arrangements, or examples of benefit sharing agreements.

We also encourage Parties to provide an English translation of the applicable laws as well as an English summary of the most relevant information relating to such rules and procedures. This would enable (prospective) global users to overcome any language barriers and obtain a quick overview of the key provisions, thereby significantly facilitating compliance.

Best practices and model clauses

Various sectors and companies are taking different approaches to best practices and model clauses, in accordance with the nature of their activities with genetic resources. While best practices and model clauses have been developed in some sectors or organisations, some others are awaiting better clarity relating to the scope and other elements of both access and user compliance regimes.

Impact of implementation on innovation

ICC would also urge Parties to pay closer attention to how the implementation of the Protocol affects innovation. Innovation is essential for the creation of not only monetary and non-monetary benefits, but also for the protection of biodiversity and the development of useful technologies and products for society. Users are currently often confronted with unclear and/or inconsistent access and user compliance rules which do not provide the necessary legal certainty, with difficulties in obtaining reliable information on such rules, as well as with challenging ABS processes and procedures. It is therefore essential that this dimension should be taken into account, at both national and international level.

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