

Convention on Biological Diversity
*Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing
of Benefits Arising from their Utilization*

VIEWS ON COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS
TO PROMOTE COMPLIANCE WITH THE PROTOCOL
AND TO ADDRESS CASES OF NON-COMPLIANCE

Submission by Philippines

A. Elements of Cooperative Procedures and Institutional Mechanisms

1. Reporting by Parties and non-Parties on the state of utilization of the Genetic Resources and Associated TK (GR and ATK) within their Jurisdiction

The starting point for monitoring compliance with the Protocol lies with the reporting by Parties, as well as non-Parties, concerning their implementation and adherence to the provisions of the Protocol. There will be further details to be decided by the COP-MOP on the procedures for the conduct of the reports, their content and subsequent actions and mechanisms triggered upon their submission.

a) Reporting by Parties

- 1) The Parties to the Protocol shall submit during regular intervals, at alternate periods during each COP-MOP (reporting to be made not at each time there is a COP-MOP, but during succeeding COP-MOPs), national reports on their compliance with the Nagoya Protocol.
- 2) The content of the report is an overview on how Genetic Resources (GR) and Associated Traditional Knowledge (ATK) has been utilized within its jurisdiction, including a summation of what has been forwarded to the ABS clearing-house, but with an analysis of trends, problems and prospects for the utilization of GR and ATK within a given period; the COP-MOP can make further recommendations to Parties for further elements in the content of the reports.
- 3) Independent institutions, policy think-tanks, including civil society groups and support groups of indigenous and local communities within the country and outside, especially those with particular country focus in their institutional mandates, including indigenous and local communities themselves, should be able to make submissions on the state of utilization of GR and ATK including an analysis of submissions in the ABS clearinghouse, which may or may not be endorsed by Parties to the Protocol. Once endorsed, it becomes part of the submissions of the Party; if it is not endorsed, it will be subjected to further review by the ABS Standing Committee subject to validation using existing information tools and mechanisms, as an input to the various agenda items to be taken up by the Standing Committee or the COP-MOP.

b) Reporting by Non-Parties in accordance with article 24 of the Protocol

In accordance with article 24 of the Protocol, non-Parties are likewise urged and a communication to this effect is communicated to them, to make voluntary submissions on this item. Their non-response or refusal to oblige with the request or any interpretive statement that they will make on the request shall be circulated to the Parties to the Protocol for their information.

c) Use of Other Information Tools and Mechanisms – genome, patent databases, etc.

The ABS Standing Committee shall task the Secretariat of the Protocol to use available information tools and mechanisms to validate or explore other trends in the utilization of GR and ATK.

2. Subject Matter of Reporting

This item, which refers to the content of the reports, can be further refined by the COP-MOP in its later meetings.

a) State of Utilization of GR and ATK within their Jurisdiction

1) kinds of utilization of GR and ATK

The Party can survey the various uses by which GR and ATK are being deployed by various institutions. This can be done in a generalized manner, without disclosing the specific uses of the GR and ATK. The purpose for identifying these uses is to identify the activities and players where claims for benefit-sharing can be made later. If a country does not have any capacity to make any sensible utilization of the GR and ATK at its stage of technological development, then it can just report that such is the case, or whether there are other entities, including non-nationals, who may be doing this, including the fact that such utilization is done outside the territory of the Party concerned. Customary use by indigenous and local communities should also be indicated.

2) institutions engaged in utilization of GR and ATK

This also presents an overview of the institutions currently engaged in various kinds of utilization of GR and ATK in a Party. This will also help in gauging the extent of commercial and non-commercial use of GR and ATK and enable the COP-MOP to be guided in making its decisions on this issue and any other issue that may arise from an analysis of trends on this item.

3) other players- intermediaries, facilitators, aggregators, etc.

This item in the report is important in promoting transparency in the various stages of utilization, including access, to GR and ATK. By highlighting the various channels and actors engaged in the utilization of GR and ATK, this enables the COP-MOP to develop further measures to enhance the contribution of these players to the resolution of issues and conflicts relating to matters concerning access to GR and ATK and ensuring benefit-sharing from its utilization.

4) declaration of inadequate institutional mechanisms for monitoring utilization of GR and ATK and proposed steps to improve institutional set-up

It is expected that not all Parties will have the necessary institutional mechanism to monitor utilization of GR and ATK in its jurisdiction, but a situationer and a plan of action to remedy its current situation can help in further capacity-building work and strengthening of institutional mechanisms for the Protocol.

b) Compliance with Articles 15-18

Considering that articles 15 to 18 of the Protocol are key to the implementation of the Protocol, there will be a specific section in the Reports on how these provisions are being followed through in each Party, but more so in the countries where most of the GR and ATK of countries of origin and providers are utilized.

c) Compliance with Article 30

- 1) state of policy development on ABS measures, policies, etc. (art. 6)
- 2) other provisions like arts. 5, 7,8, 9, 10, 11, 12, 13, 21, 22, 23
- 3) additional reporting on arts. 19 and 20

d) non-compliance

The determination of non-compliance starts with a review of the compliance of the provisions of the Protocol as identified in A.2.(b) and A.2.(c). There can be various states of compliance which will not come up with the standards set by the provisions of the Protocol or as set by the COP-MOP taking note of the objectives of the Protocol. The ABS Standing Committee will make its recommendations to the COP-MOP as to the steps to be taken to ensure that non-compliance provisions and mechanisms of the Protocol become an effective tool for the implementation of the Protocol.

3. Role of ABS Clearing-house

The ABS Clearing-house in article 14 has a key role to play in the over-all scheme of ensuring compliance with the Protocol. The level and state of submissions made to the clearing-house is an additional input for the determination of compliance by Parties and non-Parties to the provisions of the Protocol.

4. ABS Standing Committee

This body, established based on the UN geographic regions at 2 representative each per region, will be the regular body that will meet, electronically, or face-to-face to deal with the compliance with the execution of the various procedures and mechanisms for compliance. It can be set up in a provisional manner to determine its effectiveness after which it will be formalized as a subsidiary body, with more specific enumeration of its mandate, subject to final determination by the COP-MOP, but developed out of its actual experience in its provisional phase.

5. Trigger for Compliance Procedure

Inspired by the example of CITES but mindful of its own peculiarities, the compliance procedure can be initiated by (a) any Party over matters related to another Party including a non-Party, (b) a Party regarding itself, and (c) and by the Secretariat through the examination of reports, legislative texts as well as other special responses to information requests. Independent institutions, policy think-tanks, including civil society groups and support groups of indigenous and local communities within the country and outside, especially those with particular country focus in their institutional mandates, including indigenous and local communities themselves, should be able to make submissions either through the regular reports which may or may not be endorsed by the Party or they can make direct submissions to the COP-MOP, which the COP-MOP may refer to the Secretariat for further follow-up or to a Party, if addressed to a particular Party, including a non-Party.

6. Mechanisms or Measures to Address Non-Compliance

Similar to CITES, the ABS Standing Committee should have the leeway to make its own determination to recommend the following, among others, to address non-compliance:

- a) provide advise, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;
- b) request special reporting from the Party concerned;
- c) issue a written caution, requesting a response and offering assistance;
- d) recommend specific capacity-building actions to be undertaken by the Party concerned;
- e) provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned;
- f) send a public notification of a compliance matter through the Secretariat to all Parties, advising that compliance matters have been brought to the attention of a Party, and that up to that time, there has been no satisfactory response and action; included in the notification is information on the action of the relevant judicial authority in the Party subject to the obligation under articles 15-18 of the Protocol.
- g) issue a warning to the Party concerned that it is in non-compliance, concerning one or several provisions of the Protocol.
- h) request a compliance action plan to be submitted to the ABS Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion.
- i) other equitable measures, like, among others, giving notification to the relevant judicial authorities of a Party subject to the obligation under Articles 15-18 of the Protocol, that a specific Party or an indigenous or local community is entitled to benefit-sharing under a particular instance of a MAT involving a specific GR and ATK.

B. Options

1. ABS Standing Committee

The tasks of the ABS Standing Committee are outlined in the various elements of the Cooperative Procedures and Institutional Mechanisms for Compliance of the Protocol. It may be a transitional body that will learn while on the job, after which transition period it will review where it can be more effective to pave the way for a formal subsidiary body that will be established by COP-MOP.

2. Establishment of a Subsidiary Body for Compliance to the Protocol

This can be established after the review period of the Protocol as provided by Article 31 and after the ABS Standing Committee shall have made its recommendations.