**ICC comments on ABS-related indicators in CBD draft monitoring framework for the post-2020 global biodiversity framework for review**

Below are general comments by the International Chamber of Commerce (ICC) on the indicators for the target 12 relating to Access and Benefit Sharing in response to the invitation to peer review draft documents for the twenty-fourth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 24).

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|  | **Page** | **Target** | **Row** | **ICC Comments** |
|  |  | T 12  By 2030, increase by [X] benefits shared for the conservation and sustainable use of biodiversity through ensuring access to and the fair and equitable sharing of benefits arising from utilization of genetic resources and associated traditional knowledge |  |  |
| 2 | 22 | T 12.1  Access to genetic resources | 141-144  *Monitoring elements* :  Trends in access  *Indicators*:  - Total number of transfers of crop material from the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) received in a country.  -Total number of permits or their equivalent granted for access to genetic resources  - Total number of internationally recognized certificates of compliance published in the ABS Clearing -House  - Number of countries that require prior informed consent that have published legislative, administrative or policy measures on access and benefit-sharing in the ABS Clearing -House.  - Number of countries that require prior informed consent that have published information on ABS procedures in the ABS Clearing -House | As a general comment, we would like to state that the ABS related indicators on access should focus on the improved implementation and compliance with the Nagoya Protocol provisions on access by the Parties, and encourage rules, interpretations or implementation on a national or regional level that comply with the obligations of a Party to the Nagoya Protocol pursuant to Article 6.3 a) *to provide for legal certainty, clarity and transparency of their domestic ABS legislation and b) provide for fair and non-arbitrary rules and procedures on accessing genetic resources.* Unfortunately this is currently not the case in many countries.  The indicators on access (Target 12.1) are focussed on the number of permits granted (and/or IRCCs published), and the number of countries that require prior informed consent and that have published legislative, administrative and policy measures.  These indicators assume that regulating access is the default situation and it is recommended that countries regulate access. This also assumes that regulating access will contribute to the benefit sharing goals (Goal C) of the GBF. This however goes against the sovereign rights of countries whether they decide to regulate access or not, and does not reflect the range of approaches that may be adopted by countries. It is perfectly legitimate for a country to decide not to control access and to focus on the creation of value via unencumbered use of its genetic resources. Many countries grant access without requiring prior informed consent; this contribution to access to genetic resources should also be captured in the indicators.  The current indicators measure or consider the number of transactions or bureaucracy, whereby more bureaucracy will be qualified as success for the parameter ‘access’. Experience has shown that increased bureaucratic measures in fact discourage or prevent access thereby decreasing the potential to create benefits to be shared. Instead of solely including quantitative indicators measuring number of permits and access regulations, the focus should be on effective access to ensure **value creation.** We recommend prioritising qualitative indicators focussed on such effective access which enables the productive use of genetic resources.  Since legal certainty is of key importance for users and for the creation of value in the context of biodiversity, target 12.1 could be reformulated to: “All countries have established whether and which access measures apply”.  For those countries which have implemented access measures, the following elements could be added as indicators to ensure the proper functioning of these measures:   * The ratio of requested and granted access requests * The number of access permits granted within a reasonable timeframe, also taking into consideration the elements listed in row 149, i.a. the number of access permits whose conditions enabled the actual use of genetic resources in R&D projects; * The number of access permits granted to public institutions and private organisations.   In this regard reference is also made to the need for a fair, equitable and balanced application of ABS requirements, to achieve the objectives of research and training as defined in Article 12 of the CBD “*to promote and cooperate in scientific advances of biological diversity research, to develop programs for scientific and technical education, and to promote technology transfer, collaboration and capacity building”*. ABS frameworks should be proportionate and supportive of research and development. A review mechanism should be applied to evaluate and ensure that the implementation of domestic ABS measures is not restricting access and having unintended consequences such as limiting or deterring research and development activities.  These elements should be taken into consideration and result in a more meaningful set of indicators to assess the actual ABS frameworks of the countries.  Albeit that coherence between different legal instruments dealing with genetic resources is important, it is important to recognise that the ITPGRFA is to be regarded as a specialised legal instrument, operating under its own (multilateral) legal concepts and principles. The elements looked at here are focused on the CBD and the Nagoya Protocol. For completeness with regard to the indicator re the ITPGRFA as included i.e. ‘the total number of transfers from the MLS received by a country’, we would like to point out that this indicator does not take into due consideration the access of PGRFA from non-parties, nor does it consider that the vast majority of transfers are between the CG centres. In addition, also the transfer to users of the private sector does not seem to be considered. Furthermore, it does not assess the amount of material that should be transferred under the MLS, but actually is not. The transfer and use of PGRFA has a multi-layered character which should be duly regarded. |
| 2 | 23 | T12.2  Benefit shared from the use of genetic resources | 146  *Monitoring element*:  - Trends in the benefits from the access to genetic resources shared  *Indicator* :  Currently none | Suggestion that the indicators should measure the amount of the value created from the utilization of genetic resources, that contributes to benefit-sharing objectives (which may comprise capacity building for R&D or value chains or any parameter in the Nagoya Protocol Annex). Contributions can be in the form of monetary and/or non-monetary shared benefits. It can be via ABS redistribution mechanisms, and/or via other mechanisms*.*  Specific indicators could include: number (value) of R&D projects set up in the provider country, number (value) of infrastructure/labs set up in provider country, number of accessions deposited in international databases by each and every country, use of information in international databases by researchers in different countries, number of best practices and/or standards developed (this is related to the fact that capacity building should be explicitly addressed and a qualitative indicator should be developed in relation thereto). |
| 2 | 23 | T12.2 | 147-148  *Monitoring element*:  - Trends in the number of countries that have adopted legislative, administrative or policy frameworks to ensure fair and equitable sharing of benefits.  *Indicators*:  - Number of countries that have legislative, administrative and policy frameworks or measures reported to the ABS Clearing-House  - Number of countries that have adopted legislative, administrative and policy frameworks to ensure fair and equitable sharing of benefits (SDG Indicator 15.6.1) | As is the case for the indicators re access, the indicators on benefit sharing also focus on the number of countries that have adopted and published legislative, administrative and policy measures. Thus again, this indicator considers the number of measures or bureaucracy, as parameters of success. The focus should be on efficacy and effectiveness e.g. workable policies and regulations and impact..  We reiterate the comments made above relating to the erroneous assumption that regulating ABS is a positive indication of value creation per se (thereby also negating the sovereign right of a country not to regulate ABS).  As pointed out above, since the focus should be on value creation, it is recommended to also define qualitative indicators related to the use of genetic resources and the value of the innovation resulting therefrom for society.  Suggestion to merge and re-formulate row 143,144,145,147,148 into a transparency indicator: *Number of countries for which the ABS-CH has the complete and up-to-date set of laws and requirements relevant to ABS.* |
| 2 | 23 | T12.2 | 149  *Monitoring element :*  - Trends in the contribution of benefits to conservation and sustainable use  *Indicators* :  - Estimated % of monetary and non- monetary benefits directed towards conservation and sustainable use of biodiversity | The indicator on the actual benefits rightfully refers to monetary and non-monetary benefits (thereby acknowledging that to assess the real value the two need to be considered in a comprehensive manner).  This indicator should also reflect the complexity of socio-economic and scientific benefits created. It is therefore important to note that the indicators need to be further refined and should provide tools for a meaningful comprehensive assessment. The following elements should be addressed:   * + The indicators should not be vague and general.   + The indicators should not solely focus on sharing from users to provider countries, but recognize the actual value created within countries from utilisation of genetic resources.   + **The indicators should not be purely quantitative (number of or a percentage) and also include key qualitative (value) elements.  This would enable a more complete assessment of the real value (economic impact assessment criteria for provider countries might be useful).**   + The actual value, including socio-economic value or benefits resulting from innovative products, i.e. re food security or human health should be explicitly included.   + The non-monetary benefits resulting from “open access and exchange” should be explicitly covered.   + There are a few additional elements that could be added to the list: number (value) of R&D projects setup in the provider country, number (value) of infrastructure/labs setup in provider country, number of accessions deposited in international databases by each and every country, number of best practices and/or standards developed (this is related to the fact that capacity building should be explicitly addressed and a qualitative indicator should be developed in relation thereto)*.*   In addition, albeit that the objective of conservation of biodiversity under the CBD should be taken into consideration when allocating benefit sharing contributions, it is important to note that the monitoring always should keep in mind that the benefit sharing contributions will not be sufficient to finance all efforts required for biodiversity conservation; and that the broader financing of biodiversity conservation is linked to the ongoing discussions on broader approaches to resource mobilisation, rather than relying primarily on Access and Benefit Sharing. |
| 2 | 24 | T12.3  Benefits resulting from use of traditional  knowledge associated with genetic resources | 150-151  *Monitoring elements:*  - Trends in use of traditional knowledge associated with genetic resources.  - Trends in benefits generated and shared from the use of traditional knowledge associated with genetic resources | The monitoring elements as covered in the previous rows on GR can be applied mutatis mutandis to traditional knowledge, keeping in mind especially that in the context of CBD and the NP we are dealing with traditional knowledge associated with genetic resources. |