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ASSESSMENT AND REVIEW OF THE EFFECTIVENESS OF THE NAGOYA PROTOCOL

Note by the Executive Secretary

I. INTRODUCTION

1. In accordance with Article 31 of the Nagoya Protocol, the Parties to the Protocol at their third meeting will undertake the first assessment and review of the effectiveness of the Protocol.
2. In decision [NP-2/4](#), the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol decided to conduct the first assessment and review of the Protocol on the basis of a number of elements identified in the annex to that decision, along with sources of information, including information from the interim national reports and the ABS Clearing-House (para. 1).
3. In the same decision, the meeting of the Parties requested the Compliance Committee to provide inputs to the first assessment and review in order to assist in addressing challenges to the implementation of the Protocol in the form of information and findings on general issues of compliance and recommendations to assist in addressing challenges to the implementation of the Protocol (para. 5).
4. In addition, it requested the Executive Secretary to prepare an analysis and synthesis of relevant information as the basis for the first assessment and review (para. 3) as well as a framework of indicators as a basis for measuring, in the second assessment and review and thereafter, progress in achieving the objective of the Protocol while taking into account the preparation of and elements included in the first assessment (para. 4).
5. The present document responds to these requests. Section II reviews the sources of information used in the assessment and review. Section III provides a synthesis of the information derived from these sources for each of the elements to be included in the first assessment and review of the Protocol as specified in decision NP-2/4 and set out in paragraph 2 above. This section contains:
 - (a) A summary of the responses and analysis carried out for each of the elements, highlighting information that could serve as reference points to measure progress in future years;
 - (b) Findings and recommendations for each element, including the identification of areas where Parties are facing difficulties, to assist the Conference of the Parties serving as the meeting of the Parties to the Protocol to take decisions that will further support the implementation of the Protocol. It also includes the findings and recommendations of the Compliance Committee on general issues of compliance.

* CBD/SBI/2/1.

6. Section IV proposes a draft framework of indicators that takes into account the information collected through the first assessment and review and its different elements. Finally, section V of the note provides draft recommendations and key findings for the consideration of the Subsidiary Body on Implementation.

II. ELEMENTS AND SOURCES OF INFORMATION

7. As the first assessment and review comes while the Protocol is still in its early stages of implementation, it may be premature to reach conclusions on effectiveness of the Protocol in achieving its objective (i.e. the fair and equitable sharing of benefits arising from the utilization of genetic resources, thereby contributing to the conservation of biodiversity and the sustainable use of its components). Therefore, one of the main outcomes of this process is to assess the extent of implementation of the Protocol by Parties, as well as to gather information on reference points to establish a baseline against which progress can be measured in the future.

8. In the light of the above, the meeting of the Parties to the Protocol, in the annex to decision NP-2/4 provided guidance on the elements to be included and the sources of information that may form the basis for the first assessment and review of the effectiveness of the Protocol. These are reproduced below for ease of reference.

<i>Element</i>	<i>Source of information</i>
(a) Extent of implementation of the provisions of the Protocol and related obligations of Parties, including assessment of progress by Parties in establishing institutional structures and access and benefit-sharing measures to implement the Protocol	Interim national reports Access and Benefit-sharing Clearing-House National reports under the Convention National biodiversity strategies and action plans Possible targeted survey of focal points and/or users
(b) Establishment of a reference point to measure effectiveness	Interim national reports (questions 13, 15, 16, 18, 24, 35, 46) Access and Benefit-sharing Clearing-House
(c) Establishment of a reference point on support available for implementation	Interim national reports (questions 56, 57, 61, 62, 63) Access and Benefit-sharing Clearing-House Information on capacity-building projects and resources
(d) Assessment of effectiveness of Article 18 (extent of implementation)	Interim national reports (questions 31-34)
(e) Assessment of implementation of Article 16 in light of developments in other relevant international organizations, including, inter alia, the World Intellectual Property Organization (WIPO)	Interim national reports (question 25) Reports of, inter alia, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
(f) Stock-taking of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as well as indigenous peoples and local communities' customary laws, community protocols and procedures	Interim national reports (questions 42 and 51-53) Access and Benefit-sharing Clearing-House Possible targeted survey of focal points and/or users

<i>Element</i>	<i>Source of information</i>
(g) Review of implementation and operation of the Access and Benefit-sharing Clearing-House, including number of access and benefit-sharing measures made available; number of countries that have published information on their competent national authorities; number of internationally recognized certificates of compliance that have been constituted and number of checkpoint communiqués published	Interim national reports (question 3) Access and Benefit-sharing Clearing-House, including information on the use of the help function/dialogue box Reports of meetings of the informal advisory committee on the Access and Benefit-sharing Clearing-House Possible targeted survey of focal points and/or users

7. Interim national reports on the implementation of the Nagoya Protocol and the ABS Clearing-House are the main sources of information for the first assessment and review of the Protocol.

8. In decision [NP-1/3](#), the Parties to the Protocol agreed on the format and guidelines for submission of an interim national report on the implementation of the Nagoya Protocol and requested Parties to the Protocol to submit the report 12 months prior to the third meeting of the Parties to the Protocol. The Parties also welcomed submissions of relevant information by non-Parties. Interim national reports were due to be submitted by 1 November 2017.

9. As of 14 May 2018, 105 Parties to the Convention have ratified the Protocol, 73 interim national reports have been received from Parties and 6 from non-Parties to the Protocol. All interim national reports received are available on the Access and Benefit-sharing (ABS) Clearing-House at: <https://absch.cbd.int/reports>¹.

10. In addition, decision NP-2/4, paragraph 3, requested the Executive Secretary to, among other things, assess any needs for additional information, including consideration of a targeted survey of access and benefit-sharing national focal points and/or users. In this regard, a notification² was sent to ABS National Focal Points, CBD National Focal Points, indigenous peoples and local communities and relevant stakeholders to collect information on: (a) the use of model contractual clauses, codes of conduct, guidelines, best practices and/or standards as well as indigenous peoples and local communities' customary laws, community protocols and procedures; and (b) the implementation and operation of the ABS Clearing-House through an online survey. An invitation to complete the survey was also made available in the ABS Clearing-House website.³

11. In response to the request in decision NP-2/4, paragraph 3, the Executive Secretary has prepared several documents to support the analysis of information under each element. These are described below.

12. To address elements (a) (b) (c) (d) and (e), an analysis of information contained in the interim national reports and the ABS Clearing-House as of 22 February 2018 is made available (CBD/SBI/2/INF/3).⁴ The analysis provides: (a) quantitative information with a view to establishing reference points for each of the questions of the interim national report; and (b) a qualitative analysis based on the information provided in the text entries. With regard to the quantitative analysis, the document provides disaggregated data of the "yes"/"no" responses provided by Parties and by non-Parties. Document CBD/SBI/2/INF/4 provides additional statistical details by disaggregating information by CBD regional groups on the yes/no responses provided by Parties and non-Parties to the questions contained in the interim national report.

13. The qualitative analysis provides an indication of different types of information provided in response to a question. The analysis aims to identify the progress in, and constraints to, the

¹ With the exception of one report that was submitted offline.

² 2017-104 dated 16 October 2017

³ The survey was completed by 128 users of the ABS Clearing-House.

⁴ As of 22 of February 2018, 69 interim national reports were received from Parties and 6 from non-Parties. For those Parties that did not submit an interim national report, information provided through the national biodiversity strategies and action plans and the fifth national reports on the implementation of the Convention was also considered

implementation of the Protocol at the national level. Given the wealth of information provided, the note also provides examples of approaches taken and activities carried out by countries to implement different aspects of the Protocol.

14. With a view to providing input to element (a), the Compliance Committee, in accordance with decision NP-2/4, paragraph 5, examined general issues of compliance in relation to progress in the establishment of ABS measures and institutional structures, and the publication of information in the ABS Clearing-House, on the basis of the analysis prepared by the Executive Secretary.⁵ The Committee provided inputs to the first assessment and review of the Protocol in the form of information and findings on general issues of compliance and recommendations to assist in addressing challenges to the implementation of the Protocol.⁶ These are reproduced in the present document for consideration by the Subsidiary Body on Implementation.

15. To address element (f), document CBD/SBI/2/INF/8 takes stock of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as well as indigenous peoples and local communities' customary laws, community protocols and procedures taking into account information provided in the interim national report, the ABS Clearing-House and information submitted in response to notification referred to in paragraph 10 above.⁷

16. To address element (g), document CBD/SBI/2/INF/7 reviews the implementation and operation of the Access and Benefit-sharing Clearing-House on the basis of: (a) Information from interim national reports; (b) the ABS Clearing-House; (c) google analytics from the ABS Clearing-House website; (d) reports of the meeting of the informal advisory committee (IAC) to the ABS Clearing-House; (e) a survey targeting ABS national focal points and other users of the ABS Clearing-House; (f) information recorded from the live chat help desk; and (g) capacity-building activities for the ABS Clearing-House.

17. In addition, the following sources of information have been considered:

(a) For element (c), document CBD/ABS/CB-IAC/2018/1/2 on "Update of existing capacity-building and development initiatives and resources supporting the implementation of the Nagoya Protocol on ABS and lessons learned" prepared for the third meeting of the Informal Advisory Committee on Capacity-Building for Implementation of the Nagoya Protocol held on Montreal, Canada, from 20 to 22 March 2018;

(b) For element (e), reports of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

III. ANALYSIS OF ELEMENTS INCLUDED IN THE FIRST ASSESSMENT AND REVIEW

A. Extent of implementation of the provisions of the Protocol and related obligations of Parties, including assessment of progress by Parties in establishing institutional structures and access and benefit-sharing measures to implement the Protocol

18. Element (a) aims to assess the extent of implementation of the provisions of the Protocol and related obligations by Parties.

19. In order to make the Protocol operational, Parties need, as first step, to put in place the necessary access and benefit-sharing measures (for access, benefit-sharing and compliance), and to establish institutional arrangements to implement them (i.e. a national focal point, one or more competent national authorities and one or more checkpoints). The publication of mandatory information in the ABS

⁵ Documents CBD/ABS/CC/2/2 and CBD/ABS/CC/2/INF/1.

⁶ Document CBD/ABS/CC/2/4

⁷ Twelve submissions were received: three from Parties (Finland, Mexico and Japan), one from a regional country group (Association of Southeast Asian Nations (ASEAN)), and eight from relevant stakeholders and organizations (Centre for Agriculture and Biosciences International (CABI), European Seed Association (ESA), International Chamber of Commerce: the World Business Organization (ICCWBO), Lactic Acid Bacteria Industrial Platform (LABIP), Natural History Museum, Natural Justice and the ABS Capacity Development Initiative, Swiss Academy of Science, Union for Ethical BioTrade (UEBT)).

Clearing-House (including information on the permits or their equivalent issued at the time of access) is also essential for the implementation of the Protocol.

20. Promoting compliance with these core elements is key for the operationalization of the Protocol, and, therefore, as requested in decision NP-2/4, paragraph 5, these elements were examined by the Compliance Committee as possible general issues of compliance. As part of the progress in establishing ABS measures, the Committee looked at issues related to access, benefit-sharing, compliance (Articles 15, 16, 17 and 18 of the Protocol), special considerations, and provisions related to indigenous peoples and local communities. The Committee examined progress in these areas, considered challenges and difficulties identified and agreed on findings and recommendations on general issues of compliance as an input to the assessment and review of the effectiveness of the Protocol.

21. Given the extensive amount of information available on the extent of implementation of all provisions under the Protocol, subsection 1 provides a summary of information on some of the provisions of the Protocol which are key to assess progress in implementation. Subsection 2 includes the findings and recommendations of the Compliance Committee, and subsection 3 below addresses additional findings and recommendations.

1. Summary of the analysis and reference points⁸

22. The following provides a summary of the outcomes of the analysis of different sources of information for the establishment of ABS measures, institutional arrangements and publication of national information on the ABS Clearing-House. The information provided could serve as reference points.

Articles of the Protocol	Current status and reference points
Legislative, administrative or policy measures on ABS	75 Parties (71%) have some ABS measures in place
Institutional arrangements (Article 13 and 17)	103 Parties (98%) have established a national focal point on ABS 57 Parties (54%) have established one or more competent national authorities 29 Parties (27%) had designated one or more checkpoints
Publication of national information on the ABS Clearing-House (Article 14) ⁹	54 Parties (51%) have made the information available to the ABS Clearing-House (competent national authorities, checkpoints, ABS measures) 46 Parties (44%) have information (competent national authorities, checkpoints, ABS measures, permits) that have not yet been made available to the ABS Clearing-House ¹⁰ .

⁸ Further details and comprehensive information on all provisions is available in document CBD/SBI/2/INF/3

⁹ Article 14 of the Protocol requires Parties to make available to the ABS Clearing-House the following information: (a) legislative, administrative and policy measures on access and benefit-sharing; (b) information on the national focal point and competent national authority/ies; and (c) permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms. For the purpose of assessing the status of progress in publishing information in the ABS Clearing-House, the information on the national focal point has not been included in the analysis, as this information is not made available by Parties through the ABS Clearing-House but through official letters to the Secretariat. However, the publication of information on checkpoints has been considered, as this is a key institution for the operationalization of the Protocol.

¹⁰ Some of these Parties have published some information in the ABS Clearing-House and indicated that they had information available that had not yet been published.

23. With respect to the legislative, administrative or policy measures on ABS, the measures reported vary in the degree of specificity and comprehensiveness and many were adopted prior to the adoption of the Nagoya Protocol. Some Parties reported having general legislation which relates to ABS (for example, general environmental legislation, or measures dealing with animal husbandry, forests), while others have adopted specific ABS measures to implement the Protocol.

24. Of the 75 Parties that have ABS measures in place, 44 indicated that they are currently revising existing or developing new ABS measures to implement the Protocol, and 10 Parties are planning to develop additional ABS measures. Based in information available, it is unclear how many Parties have adopted all measures necessary to implement the Protocol.

25. A number of provisions of the Protocol require Parties to adopt legislative, administrative or policy measures on ABS. The format of the interim national report endeavours to collect information on the progress Parties are making towards fulfilment of these obligations through a number of questions on access, benefit-sharing, compliance with domestic legislation or regulatory requirements on ABS, monitoring the utilization of genetic resources, and compliance with mutually agreed terms, special considerations, as well as the questions on the provisions related to indigenous peoples and local communities.

26. The following table provides a summary of the responses provided by Parties in the interim national report to some key obligations under those areas.¹¹ The information provided could serve as reference points.¹²

Articles of the Protocol	Current status and reference points
Access (Article 6)	<p>28 Parties have rules and procedures for requiring and establishing MAT as provided in Article 6.3 (g). This represents 76% of Parties requiring prior informed consent for access to genetic resources (Q. 17).</p> <p>19 Parties have issued permits or their equivalents (Q. 7, 8 and 16)</p>
Fair and equitable benefit-sharing (Article 5)	<p>46 Parties (44%) have legislative, administrative or policy measures to implement Article 5.1 (genetic resources) (Q. 20)</p> <p>42 Parties (40%) have legislative, administrative or policy measures to implement Article 5.2 (genetic resources held by IPLCs) (Q. 21)</p> <p>41 Parties (39%) have legislative, administrative or policy measures to implement Article 5.5 (traditional knowledge associated with genetic resources) (Q. 22)</p>
Monitoring the utilization of genetic resources (Article 17)	<p>41 Parties (39%) require users of genetic resources to provide the information identified in Article 17.1 (a)(i), as appropriate, at a designated checkpoint (Q. 26)</p> <p>9 Parties (9%) provide the information collected or received at a designated checkpoint to relevant national authorities, to the Party providing prior informed consent and to the ABS Clearing-House (Q. 27)</p>

¹¹ Information on the responses provided for all questions of the interim national report is available in document CBD/SBI/2/INF/3.

¹² Information on questions related to compliance with domestic legislation or regulatory requirements on ABS (Article 15 and 16), compliance with mutually agreed terms (Article 18), and special considerations (Article 8) are addressed under other elements below.

Articles of the Protocol	Current status and reference points
Provisions related to indigenous peoples and local communities (Article 6, 7 and 12)	<p>23 Parties have measures in place with the aim of ensuring the PIC or approval and involvement of IPLCs as provided in Article 6.2. This represents 47% of the Parties where IPLCs have the established rights to grant access to genetic resources (Q 38).</p> <p>21 Parties have taken measures with the aim of ensuring that traditional knowledge associated with genetic resources that is held by IPLCs have been accessed with the PIC or approval and involvement of these IPLCs and that MAT have been established as provided in Article 7. This represents 43% of Parties with indigenous peoples and local communities in their country (Q. 39).</p>

27. *Other provisions of the Protocol* The following provides a brief summary of the type of information provided in the interim national report in relation to Article 9, 11, 21, 22 and 23 of the Protocol. These provisions are not covered by any element and were not examined by the Compliance Committee. Other specific provisions of the Protocol are addressed under elements (b) (d) and (e) in subsequent sections.

28. Most Parties encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and sustainable use of its components according to Article 9 (question 45).

29. In relation to transboundary cooperation (Article 11), some countries indicated that no cases had yet been identified of access to genetic resources or associated traditional knowledge located in the territory of more than one country, and that there was a need to gain more experience on this issue. Some countries reported that if the cases arise they endeavour to cooperate, and some stated that the situation will be dealt with on a case-by-case basis. Some countries provided information on other cooperation initiatives, organizations, and instruments they are part of, noting that the experience acquired through these initiatives could be useful for transboundary cooperation in the context of the Nagoya Protocol (questions 48 to 50).

30. Parties reported on a number of activities to implement Article 21 (awareness-raising) and Article 22 (capacity-building), the organization of workshops and meetings being the most common activity organised both to raise awareness and build capacity about the Protocol. Some reported having developed programmes or strategies to implement these articles. The majority of countries recognized that they require more capacity to implement the Protocol. The need to raise awareness about the Protocol and ABS was also noted by many.

31. Some countries specified that further capacity was needed to achieve the following goals: (a) provide information to the ABS Clearing-House; (b) mobilize financial resources; (c) communicate ABS issues; (d) identify checkpoints and monitor the utilization of genetic resources; (d) negotiate mutually agreed terms and understand the value of genetic resources; and (e) add value to their own genetic resources. The need to enhance the capacity of relevant stakeholders in relation to ABS and of IPLCs was also emphasized (question 54-58).

32. The type of information provided with respect to Article 23 on technology transfer, collaboration and cooperation (in reponse to question 59) varied from country to country. Some countries reported on research projects or instances of collaboration and cooperation between research centres or universities in technical and scientific research. Several countries provided information on national programmes or institutions dealing with scientific research and development programmes or shared information on their on-going research projects. Some other countries provided information on their funding to research and development programmes or on their contributions to ABS capacity projects or initiatives.

2. Findings and recommendations

(a) Finding and recommendations of the Compliance Committee on general issues of compliance¹³

33. The Nagoya Protocol is a new instrument, especially for those that have recently ratified it. In order to make the Protocol operational, Parties need to establish access and benefit-sharing legislative, administrative and policy measures and institutional arrangements and many Parties are still in the process of establishing these measures and institutions. For many Parties, this process is time-consuming and challenging.

34. Progress in establishing institutional arrangements, such as competent national authorities and checkpoints, is closely related to progress in adopting ABS measures. Some measures adopted prior to the Nagoya Protocol included the designation of competent national authorities. However, the designation of checkpoints is a new requirement created by the Protocol and still needs to be addressed by many Parties.

35. Although the publication of mandatory information in the ABS Clearing-House is essential for the implementation of the Protocol, a number of Parties have not yet published on the ABS Clearing-House all available national information in accordance with Article 14 of the Nagoya Protocol.

36. Considering its cross-cutting nature, the implementation of the Protocol requires the participation of indigenous peoples and local communities and relevant stakeholders (e.g. different business sectors and the scientific community) as well as coordination among different institutions and ministries (e.g. science and education, agriculture, trade, intellectual property). To assist in addressing this challenge, appropriate mechanisms could be established to facilitate coordination and participation, and awareness-raising and capacity-building may be required.

37. Other key challenges include developing ABS measures that support benefit-sharing while creating legal certainty, avoiding unnecessary complexity, delays and increased burdens and costs on users and limited human resources working on ABS and the Nagoya Protocol in many Parties.

38. In the light of these challenges, the development of interim measures could be considered as a first step. The needs of users of genetic resources and associated traditional knowledge from different sectors should also be taken into account in developing ABS measures. Regional approaches may also be useful to support harmonized implementation of the Protocol.¹⁴

39. Implementing some of the new elements of the Protocol, namely the provisions on compliance, monitoring the utilization of genetic resources, including the designation of checkpoints, and the obligations related to indigenous peoples and local communities, presents a particular challenge.

40. The Nagoya Protocol does not distinguish between countries that are users and countries that are providers of genetic resources and obligations in the Protocol apply to all Parties, including provisions related to compliance with domestic legislation or regulatory requirements according to Articles 15 and 16.

41. With respect to checkpoints, there is a need for Parties to better understand their functions and options for their designation in the light of their national context. There is also a need to build the capacity of checkpoints to enable them to carry out their functions.

42. The provisions of Article 18 on compliance with mutually agreed terms are often implemented at the national level through existing laws (e.g. contractual law, private international law, domestic measures related to access to justice) rather than through specific ABS measures. A mechanism to support national coordination, as mentioned in paragraph 36 above, could assist in drawing from the expertise of other institutions dealing with these issues.

43. With respect to indigenous peoples and local communities, challenges include: determining how the concept of “indigenous peoples and local communities” applies at the national level; clarifying the

¹³ As contained in annex I to its report (CBD/ABS/CC/2/4).

¹⁴ E.g. AU 2015 “African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa”.

rights of IPLCs over genetic resources and/or traditional knowledge associated with genetic resources; identifying the different groups of indigenous peoples and local communities; understanding the way they are organized; and linking traditional knowledge with the holder/s of such knowledge. In order to address these challenges, the following could be considered:

(a) Building the capacity of Parties to support the implementation of the provisions of the Protocol related to indigenous peoples and local communities as well as the capacity of IPLCs with respect to ABS issues;

(b) Relevant work of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions on the concept of IPLCs;¹⁵

(c) National mechanisms for the participation of IPLCs in the implementation of the provisions of the Protocol related to IPLCs taking into account national circumstances;

(d) Support for coordination and institution building within and among IPLCs to address ABS issues including through the development of community protocols;

(e) Capacity-building to support IPLCs to develop minimum requirements for mutually agreed terms and model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources;

(f) Capacity-building to support IPLCs to develop minimum requirements for mutually agreed terms and model contractual clauses for benefit-sharing arising from the utilization of genetic resources associated with genetic resources.

44. Parties have different approaches to prior informed consent, mutually agreed terms and the issuance of permits. It is important for Parties to make clear information available in the ABS Clearing-House on the procedures to follow to access genetic resources and associated traditional knowledge.

45. In addition, in the development and implementation of ABS legislation or regulatory requirements it is important that Parties take into account special considerations in accordance with Article 8 of the Protocol. Relevant work undertaken under FAO,¹⁶ WHO and other organizations may be useful in this regard.

46. Although a number of capacity-building and development initiatives are currently supporting ratification and implementation of the Nagoya Protocol, many Parties still lack the necessary capacity and financial resources to make the Protocol operational. Capacity-building and development support therefore continue to be essential in order to make progress in the implementation of the Protocol, in particular for developing country Parties and Parties with economies in transition.

47. Further funding should be provided to the SCBD-IDLO capacity-building programme and other capacity-building initiatives to support the establishment of national legal frameworks.

48. Capacity-building could also support harmonized implementation of the Protocol among countries that share the same genetic resources or traditional knowledge associated with genetic resources.

49. The wealth of information and experiences available in the national reports and in the ABS Clearing-House, as well as the exchange of experiences, may be useful to Parties in the establishment of institutional structures and the development of ABS measures. This information could also be taken into account in capacity-building projects. In addition, the use of existing tools and resources (e.g. guidelines, capacity-building materials) to support implementation could be encouraged.

(b) Additional findings and recommendations

¹⁵ E.g. “Compilation of views received on use of the term “indigenous peoples and local communities”” (UNEP/CBD/WG8J/8/INF/10/Add.1)

¹⁶ E.g. FAO 2016 “ABS Elements: Elements to Facilitate Domestic Implementation of Access and Benefit-sharing for Different Subsectors of Genetic Resources for Food and Agriculture”

50. The importance of sharing information and experience in relation to transboundary cooperation (Article 11) was highlighted. In particular, experiences acquired in other subregional and bilateral projects could be relevant to assist in the implementation of this article. Regional structures or projects were identified by some as a way to address this issue, while noting that reinforcement of the capacity of regional structures to play that role would be needed.

B. Establishment of a reference point to measure effectiveness

51. Element (b) aims to assess the extent to which the Protocol is achieving its objective, i.e. the fair and equitable sharing of benefits arising from the utilization of genetic resources, thereby contributing to the conservation of biodiversity and the sustainable use of its components.

1. Summary of the analysis and reference points¹⁷

52. The following provides a summary of the responses provided by Parties in the interim national report to the questions identified in the annex to decision NP-2/4. The information provided could serve as reference points.

Articles of the Protocol	Current status and reference points
Access (Article 6)	<p>27 Parties provide information on how to apply for prior informed consent as provided in Article 6.3(c). This represents 73% of the Parties that require prior informed consent for access to genetic resources (Q. 13)</p> <p>32 Parties provide for the issuance at the time of access of a permit or its equivalent as provided in Article 6.3 (e). This represents the 86% of Parties requiring prior informed consent. (Q. 15)</p> <p>12 Parties (11% of all Parties) have published internationally recognised certificates of compliance (IRCC) in the ABS Clearing-House. (Q. 16)</p> <p>Information on benefits received was not conclusive (Q.18)</p>
Compliance with domestic legislation or regulatory requirements on ABS (Article 15)	<p>36 Parties (34% of all Parties) have taken appropriate, effective and proportionate legislative, administrative or policy measures to implement Article 15.1. (Q. 24)</p>
Special considerations (Article 8)	<p>48 Parties (46%) created conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity as provided in Article 8(a) (Q.35.1)</p> <p>39 Parties (37%) paid due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health as provided in Article 8(b) (Q.35.2)</p> <p>26 Parties (25%) have taken into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising from the use of such genetic resources as provided in Article 8(b). (Q.35.3)</p> <p>48 Parties (46%) have taken into consideration the importance of genetic resources for food and agriculture and their special role for food security as provided in Article 8 (c). (Q.35.4)</p>

¹⁷ A more detailed analysis of the responses to these questions is available in document CBD/SBI/2/INF/3.

Articles of the Protocol	Current status and reference points
Contribution to conservation and sustainable use (Article 9)	Information received was not conclusive (Q.46)

53. Some Parties provided information and details on the monetary benefits received from the utilization of genetic resources and associated traditional knowledge, as well as examples of non-monetary benefits (in response to question 18). However, an analysis of responses to this question¹⁸ reveals that Parties provided inconsistent answers, and therefore it is difficult to differentiate between Parties that reported on having received benefits and Parties that indicated that benefit-sharing is required or desirable. As a consequence, the resulting information may not be a good reference point on the number of Parties that received benefits since entry into force of the Protocol from the utilization of genetic resource and/or traditional knowledge associated with genetic resources.

54. 59 Parties provided information on how the implementation of the Nagoya Protocol contributed to conservation and sustainable use of biodiversity in their country (question 46). Out of these Parties, 20 considered that it was premature to answer this question as implementation of the Nagoya Protocol was at an early stage.

55. The most common benefit reported was greater awareness of the value of conservation and sustainable use of biodiversity and ecosystem services. Examples of other contributions highlighted by countries are the following:

- (a) Managers of natural resources or authorities are more aware of the potential advantages of the Nagoya Protocol and are developing conservation practices;
- (b) Implementing the Nagoya Protocol helped improving the knowledge about species, including through the development of databases or inventories and their population, and supports the valorisation of genetic resources and special conservation approaches;
- (c) Increased involvement of communities in conservation and sustainable use;
- (d) Increased compliance by users of genetic resources;
- (e) Recognition of research and development as a key to the country's valorisation of genetic resources;
- (f) Implementing the Protocol played a key role in factoring elements of biodiversity conservation and use in government development agenda including in 2030 vision.

56. The question on how the implementation of the Nagoya Protocol has contributed to conservation and sustainable use of biodiversity in the country (question 46) was voluntary and its formulation did not allow gathering quantitative information that could easily be used as a reference point to measure the effectiveness of the Protocol in the future.

2. Findings

57. Some Parties reported on having received benefits from the utilization of genetic resources and associated traditional knowledge and some provided information on how the implementation of the Nagoya Protocol contributed to conservation and sustainable use of biodiversity in their country. In particular, the most common contribution reported is an increase of awareness of the value of conservation and sustainable use of biodiversity and ecosystem services. Examples of other contributions

¹⁸ Question 18: "Benefits received since entry into force of the Protocol for your country from the utilization of: genetic resources (monetary and non-monetary) and traditional knowledge associated with genetic resources (monetary and non-monetary)"

highlighted by countries are included in paragraph 55 above. Nevertheless, many considered that it was premature to answer this question as implementation of the Nagoya Protocol was at an early stage.

C. Establishment of a reference point on support available for implementation

58. Element (c) aims to assess the extent to which support is available for implementation of the Protocol, including capacity-building, financial support as well human resources.

1. Summary of the analysis and reference points¹⁹

59. The following provides a summary of the responses provided by Parties in the interim national report and information on capacity-building initiatives and resources. The information provided could serve as reference points.

Articles of the Protocol	Current status and reference points
Capacity-building (Article 22)	<p>45 Parties (43%) received external support for building and developing capacity for the implementation of the Nagoya Protocol since entry into force of the Protocol (Q. 56):</p> <p>27 Parties (26%) provided external support for building and developing capacity for the implementation of the Nagoya Protocol since entry into force of the Protocol (Q. 57)</p> <p>Capacity-building initiatives: 90 capacity-building and development initiatives have been completed or initiated after the adoption of the Nagoya Protocol in 2010 and are providing, or have provided, direct support for country level activities contributing to the ratification and implementation of the Nagoya Protocol. 57 have been made available through the ABS Clearing-House.²⁰</p> <p>Capacity-building resources: 84 resources, materials or tools related to capacity-building and awareness-raising on access and benefit-sharing have been developed. 34 of these resources are available in the ABS Clearing-House.²¹</p>
Optional additional information	<p>24 Parties (23%) established a mechanism for budgetary allocations of funds for the implementation of the Nagoya Protocol (Q.61).</p> <p>13 Parties (12%) made financial resources available to other Parties and 35 Parties (32%) received financial resources from other Parties or financial institutions for the purposes of implementation of the Protocol as provided in Article 25 (Q. 62).</p> <p>Information on having specific staff working on the Nagoya Protocol was not conclusive (Q. 63)</p>

60. With respect to question 63, 56 Parties (86%) indicated that they have specific staff working to administer functions directly related to the implementation of the Nagoya Protocol. However, many Parties mentioned that they have limited human resources working on Nagoya Protocol implementation, and that those working on the Nagoya Protocol are either temporary or have other responsibilities with which they must share their time. The formulation of the question may need to be revised to better measure the availability of whether sufficient human resources are available to implement the Protocol.

¹⁹ A more detailed analysis of the responses to these questions is available in document CBD/SBI/2/INF/3 and document CBD/ABS/CB-IAC/2018/1/2 provides further information on capacity-building initiatives and resources

²⁰ According to information available to the Secretariat as of 19 January 2018.

²¹ According to information gathered by the Secretariat as of 8 February 2018.

61. With regard to information on capacity-building initiatives and resources, since the adoption of the Nagoya Protocol, a number of capacity-building and development initiatives have been implemented to support its ratification and implementation.

62. Of the 90 capacity-building and developing initiatives providing direct support to specific countries, 75 (83%) are national projects, 13 (14%) are regional or subregional projects and 2 (2%) are global.

63. Regarding the level of funding for the initiatives, information is available on the core funding for 74 out of the 77 national projects. Of these, 26 projects (35%) are small-sized with funding of less than US\$ 500,000; 24 projects (32%) are medium sized, with funding between US\$ 500,000 and US\$ 2,000,000; and 24 projects (32%) are full sized, with funding of over US\$ 2,000,000.

2. Findings and recommendations

64. The Compliance Committee noted that although a number of capacity-building and development initiatives are currently supporting ratification and implementation of the Nagoya Protocol, many Parties still lack the necessary capacity and financial resources to make the Protocol operational. Capacity-building and development support therefore continue to be essential in order to make progress in the implementation of the Protocol, in particular for developing country Parties and Parties with economies in transition.

65. A number of capacity-building initiatives and resources have not yet been published in the ABS Clearing-House. Making this information available in the ABS Clearing-House can help to facilitate coordination and the sharing of information and avoid duplication of efforts in capacity-building; therefore countries and relevant organizations could be invited to publish this information.

66. The Committee further noted that the wealth of information and experiences available in the national reports and in the ABS Clearing-House, as well as the exchange of experiences, may be useful to Parties in the establishment of institutional structures and the development of ABS measures. This information could also be taken into account in capacity-building projects. In addition, the use of existing tools and resources (e.g. guidelines, capacity-building materials) to support implementation could be encouraged.²²

D. Assessment of effectiveness of Article 18 (extent of implementation)

67. Article 18 of the Nagoya Protocol covers compliance with mutually agreed terms. Paragraph 4 of the article provides that: “the effectiveness of this article shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to this Protocol in accordance with Article 31 of this Protocol.”

68. The Conference of the Parties serving as the meeting of the Parties to the Protocol, in the annex to decision NP-2/4, decided to assess the extent to which this article was implemented by Parties.

1. Summary of the analysis and reference points²³

69. The following provides a summary of the responses provided by Parties in the interim national report to the questions identified in the annex to decision NP-2/4. The information provided could serve as reference points.

Articles of the Protocol	Current status and reference points
Compliance with mutually agreed terms (Article 18)	36 Parties (34%) encourage the inclusion of provisions in mutually agreed terms to cover dispute resolution as provide in Article 18.1. (Q. 31) 51 Parties (49%) ensure that opportunity to seek recourse available under

²² See paragraph 46 above.

²³ See document CBD/SBI/2/INF/3 for more information.

Articles of the Protocol	Current status and reference points
	<p>the legal systems in cases of disputes arising from MAT as provided in Article 18.2 (Q. 32)</p> <p>47 Parties (45%) have taken measures regarding access to justice (Q. 33.1)</p> <p>38 Parties (36%) regarding utilization of mechanisms regarding mutual recognition and enforcement of foreign judgements and arbitral awards (Q. 33.2)</p>

70. Question 34 of the interim national report invites countries to provide additional information, including a summary of the main difficulties and challenges. Twenty-six Parties provided additional information, including challenges and difficulties. Some of the difficulties identified in relation to implementation of Article 18 of the Protocol are the following:

- (a) The need to build capacity on the negotiation of MAT, dispute resolution and access to justice in other countries;
- (b) High legal fees for access to justice;
- (c) Inadequate legal personnel in matters related to compliance and enforcement; and
- (d) The need to build the capacity of judges to deal with ABS matters.

71. It was noted that the disparity in national legislation renders difficult the recognition of foreign judgements and arbitral awards. One country noted that no cases had arisen yet where recognition of foreign judgements was required. Another country acknowledged that they had not included clauses on dispute resolution in all contracts signed.

72. Other issues mentioned include: (a) Emerging issues of digital sequence information and synthetic biology; (b) limited monitoring of the utilization of genetic resources in foreign jurisdictions; and (c) challenges related to ensuring compliance of non-Parties.

2. Findings and recommendations

73. As noted by the Compliance Committee, the provisions of Article 18 on compliance with mutually agreed terms are often implemented at the national level through existing laws (e.g. contractual law, private international law, domestic measures related to access to justice) rather than through specific ABS measures.²⁴

74. When one party of a contract resides in a foreign country, the contractual relationship falls in the domain of private international law. Private international law seeks to regulate, first, which jurisdiction applies to a dispute; second, which law applies to the dispute; and third, whether and how eventual decisions or judgments are recognized and may be enforced in another jurisdiction. Each State has its own national rules on these matters, but some of these may have been harmonized through international agreements, guidelines, and model laws.

75. Those developing ABS measures and/or implementing the Protocol may not be aware of all applicable legislation dealing with contractual law, private international law, domestic measures related to access to justice. The Compliance Committee recommended that a mechanism to support national coordination could assist in drawing from the expertise of other institutions dealing with these issues.

76. Some Parties shared information on provisions contained in relevant ABS measures that support the implementation of Article 18. Information contained in the interim national report, as well as the exchange of experiences may be useful for Parties to understand how the implementation of Article 18 can be supported.

²⁴See paragraph 42 above.

77. In their reports, Parties did not provide information that would allow assessing the effectiveness of Article 18. With a view to enabling the meeting of the Parties to the Protocol to assess the effectiveness of this Article in the future, information on experiences and challenges in cases of disputes arising from mutually agreed terms could be gathered and a future review of the reporting format could take into account the need to collect this information.

E. Assessment of implementation of Article 16 in the light of developments in other relevant international organizations, including, inter alia, the World Intellectual Property Organization

78. The Nagoya Protocol was adopted by the Conference of the Parties to the Convention in its decision X/1. In paragraph 6 of this decision, the Conference of the Parties decided that “the first review under Article 31 of the Protocol shall assess the implementation of Article 16 in the light of developments in other relevant international organizations, including, inter alia, the World Intellectual Property Organization (WIPO), provided that they do not run counter to the objectives of the Convention and the Protocol.”

79. The meeting of the Parties to the Protocol, in the annex to decision NP-2/4, decided to assess this element.

1. Summary of the analysis and reference points²⁵

80. The following provides a summary of the responses provided by Parties in the interim national report to the question identified in the annex to decision NP-2/4. The information provided could serve as reference point.

Articles of the Protocol	Current status and reference points
Compliance with domestic legislation or regulatory requirements on ABS for traditional knowledge associated with genetic resources (Article 16)	33 Parties (31%) have taken appropriate, effective and proportionate legislative, administrative or policy to implement Article 16.1 (Q.25)

81. Very few countries provided additional information or details in their reports about measures taken to implement Article 16 of the Protocol.

2. Developments under the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

82. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established in 2000 and aims, since 2009, to reach an agreement on one or more international legal instruments to ensure the protection of genetic resources, traditional knowledge and traditional cultural expressions. The last WIPO General Assembly, held from 2 to 11 October 2017, agreed on the renewal of the mandate of the IGC for the 2018-2019 biennium²⁶, as well as on the work plan for the IGC.²⁷ According to the mandate agreed upon, the IGC will continue to expedite its work, with the objective of reaching an agreement on an international legal instrument(s)

²⁵See document CBD/SBI/2/INF/3 for more information.

²⁶ The mandate is available at the following link: http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_2018-2019.pdf

²⁷ The provisional schedule of IGC meetings for 2018 is the following: IGC 35 on genetic resources from 19 to 23 March 2018; IGC 36 on genetic resources from 25 to 29 June 2018; IGC 37 on traditional knowledge and traditional cultural expressions from 27 to 31 August 2018; IGC 38 on traditional knowledge and traditional cultural expressions from 10 to 14 December 2018.

relating to intellectual property which will ensure the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions.

83. The work of the IGC will build on the existing work carried out by the Committee, including text-based negotiations, with a primary focus on narrowing existing gaps and reaching a common understanding on core issues, including definitions, beneficiaries, subject matter, objectives, scope of protection, and what traditional knowledge and traditional cultural expressions subject matter is entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain.

84. The Committee will use all WIPO working documents as well as any other contributions of member states, such as conducting/updating studies covering, *inter alia*, examples of national experiences, including domestic legislation, impact assessments, databases, and examples of protectable subject matter and subject matter that is not intended to be protected; and outputs of any expert group(s) established by the Committee.

85. The Secretariat of WIPO was requested to update the 2008 gap analysis on the existing protection regimes related to traditional knowledge and traditional cultural expressions. The Secretariat was also requested to produce a report(s) compiling and updating studies, proposals and other materials relating to tools and activities on databases and on existing disclosure regimes relating to genetic resources and associated traditional knowledge, with a view to identifying any gaps. Consequently, the WIPO Secretariat prepared a Report on the Compilation of Materials on Databases Relating to Genetic Resources and Associated Traditional Knowledge (document WIPO/GRTKF/IC/36/5) and a Report on the Compilation of Materials on Disclosure Regimes Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/36/6).²⁸

86. The General Assembly in 2019 will take stock of progress made, and based on the maturity of the texts, including levels of agreement on objectives, scope and nature of the instrument(s), decide on whether to convene a diplomatic conference and/or continue negotiations.

87. The latest draft articles on traditional knowledge, “The Protection of Traditional Knowledge: Draft Articles”,²⁹ were drafted during IGC 32, and submitted to IGC 34 and to the 2017 WIPO General Assembly. These draft articles include provisions on core issues, such as the definition of misappropriation, beneficiaries, subject matter, objectives, and what traditional knowledge subject matter is entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain.

88. In addition to the text-based negotiations, the WIPO Secretariat has prepared and made available a number of tools to provide technical guidance to countries, such as:

(a) A document containing a list and brief technical explanation of various forms in which traditional knowledge may be found;³⁰

(b) A non-exhaustive list of online databases and registries of traditional knowledge and genetic resources that are maintained and managed by WIPO member states and other organizations;³¹

(c) A toolkit to provide practical assistance to traditional knowledge holders on documenting traditional knowledge containing easy-to-use checklists and other resources to help ensure that anyone considering a documentation project can address those issues effectively.³²

²⁸ The reports are available at: http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_36/wipo_grtkf_ic_36_5.pdf and http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_36/wipo_grtkf_ic_36_6.pdf.

²⁹ The Protection of Traditional Knowledge: Draft Articles (document WIPO/GRTKF/IC/34/5) is available at: http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_34/wipo_grtkf_ic_34_5.pdf.

³⁰ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=147152

³¹ http://www.wipo.int/tk/en/resources/db_registry.html

³² <http://www.wipo.int/tk/en/resources/tkdocumentation.html>

3. Findings and recommendations

89. Very few countries provided additional information or details in their reports about measures taken to implement Article 16 of the Protocol. As noted by the Compliance Committee in their findings and recommendations, many Parties are still in the process of establishing ABS measures and institutional arrangements to implement the Protocol. The Committee identified implementing some of the new elements of the Protocol as particularly challenging. This included implementation of the provisions on compliance and the obligations related to indigenous peoples and local communities.³³

90. With respect to indigenous peoples and local communities a number of challenges were also identified by the Committee as well as some recommendations to address these challenges, including the need to build the capacity of Parties to support the implementation of the provisions of the Protocol related to indigenous peoples and local communities as well as the capacity of IPLCs with respect to ABS issues.³⁴

91. The work on one or more international legal instrument(s) relating to intellectual property with a view to ensuring the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions under WIPO is still ongoing, and it is therefore premature to assess how the outcomes of this process could contribute to implementation of the Nagoya Protocol.

92. However, there are a number of existing tools and resources that could be used by Parties in advancing the implementation of Article 16 of the Nagoya Protocol, including those developed by WIPO and mentioned in paragraph 94 above, the CBD Mo'otz Kuxtal voluntary guidelines.³⁵

F. Stock-taking of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as well as indigenous peoples and local communities' customary laws, community protocols and procedures

93. In decision NP-1/5, the Conference of the Parties serving as the meeting of the Parties decided to take stock of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as well as indigenous and local communities' customary laws, community protocols and procedures, in accordance with Articles 12, 19 and 20, four years following the entry into force of the Protocol and in conjunction with the first assessment and review of the Protocol (para. 3).

94. The meeting of the Parties to the Protocol, in the annex to decision NP-2/4, decided to assess this element.

1. Summary of the analysis and reference points³⁶

95. Information provided focused on the development of these tools rather than on their use. Therefore, the following summary provides information on the number of tools developed, according to the analysis of different sources of information. The information provided could serve as reference points.

Articles of the Protocol	Current status and reference points
Model contractual clauses (Article 19)	29 model clauses have been developed

³³ See paragraph 45 above.

³⁴ See paragraph 49 above.

³⁵ Mo'otz Kuxtal voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the "prior and informed consent", "free, prior and informed consent" or "approval and involvement", depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge

³⁶ Document CBD/SBI/2/INF/8 provides details on the information collected through these different sources of information.

Articles of the Protocol	Current status and reference points
	17 (59%) have been made available to the ABS Clearing-House.
Codes of conduct, guidelines, best practices and standards (Article 20)	33 codes of conduct, guidelines, best practices or standard have been developed. 25 (75%) have been made available to the ABS Clearing-House.
Indigenous peoples and local communities' customary laws, community protocols and procedures	Information on number of community protocols develop was not conclusive

96. In addition, 7 model contractual clauses are under development. Out of the existing 29 model clauses, 14 were developed by Parties, 1 by a non-Party, 2 by regional groups, and 12 by organizations.

97. With regard to codes of conduct, guidelines, best practices and standards, other 7 Article 20 tools are under development. Out the existing 33 tools, 7 have been developed by Parties, 4 by regional groups and 22 by organizations.

98. According to information available, 7 community protocols have been developed and 6 Parties have indicated that one or more community protocols have been developed in their country, but for which there is no further information provided. In addition, 3 community protocols are under development and 7 Parties reported that they are working on the development of one or more community protocols. Three of these protocols have been made available to the ABS Clearing-House.

99. It is unclear how many community protocols addressing ABS have been developed. Very few have been made available in the ABS Clearing-House, and countries did not provide many details in their interim national reports. As a consequence, available information may not be sufficient to establish a reference point.

2. Findings and recommendations

100. A wide range of model contractual clauses, codes of conduct, guidelines, best practices and standards have been developed both by Governments and organizations.

101. Around half of the model contractual clauses and 20% of the Article 20 tools have been developed by Governments and regional organizations to support implementation of national or regional ABS frameworks. Tools developed to support the implementation of ABS national frameworks should be made available as part of the country profiles in the ABS Clearing-House. In this regard, work is underway to develop a separate common format to submit model contractual clauses developed by Parties as part of their framework as a national record in the ABS Clearing-House.

102. User organizations and networks play an important role in addressing the needs of their members by developing tools that can bring clarity on how ABS can be incorporated in their practice and assisting their member organizations to comply with ABS requirements. Many organizations have developed material transfer agreements (MTA) incorporating ABS requirements to transfer and exchange genetic resources.

103. However, several organizations raised concerns that for users to comply with ABS requirements they need clear information on the procedures to follow to obtain PIC and MAT at national level. Providing such information through the common format under development for ABS procedures could help to address these concerns.

104. Sharing Article 19 and 20 tools through the ABS Clearing-House helps other organizations to develop similar documents adapted to their circumstances as well as providing guidance to users of

genetic resources and associated traditional knowledge that may not be aware of those tools and that want to adopt best practices for their own work.

105. As noted by the Compliance Committee, implementing the provisions related to IPLCs is one of the main challenges identified by Parties. Community protocols on ABS can help to address some of the challenges identified in paragraph 46 above.

106. Community protocols can help the IPLCs that develop them to articulate their values, practices and aspirations. They can also help Governments to implement the IPLCs related provisions of the Protocol, and they provide clarity and certainty to users on how to have access to genetic resources and/or associated traditional knowledge held by IPLCs.

107. Community protocols are being developed and used in a variety of contexts, including but not limited to ABS. Some deal with biotrade or land issues and include some ABS elements as part of a broader context. Incorporating ABS elements in existing community protocols dealing with resource or land management or biotrade may facilitate the process.

108. Supporting IPLCs to develop community protocols is essential, as well as doing so in way that ensures that the outcomes represent community values, practices and aspirations.

109. Sharing information on the community protocols developed through the ABS Clearing-House helps potential users to understand how to access traditional knowledge associated with genetic resources within a community. It can also help other IPLCs to develop their own community protocol. Sharing existing experiences and lessons learned from the development and implementation of community protocols and procedures could be useful for those working on the development of protocols or that are planning to do so.³⁷

G. Review of implementation and operation of the Access and Benefit-sharing Clearing-House, including number of access and benefit-sharing measures made available; number of countries that have published information on their competent national authorities; number of internationally recognized certificates of compliance that have been constituted and number of checkpoint communiqués published

110. At its second meeting, the Conference of the Parties serving as the meeting of the Parties decided to review the implementation and operation of the ABS Clearing-House as part of the assessment and review process to evaluate the effectiveness of the Protocol established by Article 31 of the Protocol (NP-2/2, para. 9).

111. Information on the implementation by Parties of their obligation to make information available to the ABS Clearing-House is considered under element (a) above. The following provides a summary of key findings and recommendations in relation to assessing the extent to which the implementation and operation of the ABS Clearing-House meet the needs of Parties, non-Parties, indigenous peoples and local communities and relevant stakeholders in its role to support the implementation of the Protocol. It is for that reason that information on non-Parties is also provided for this element.

1. Summary of the analysis and reference points³⁸

112. *Ease of use and functionality:* 53% of respondents of the targeted survey strongly agree or agree that the ABS Clearing-House is user friendly and easy to use. Less than 15% of users reported they did not find the ABS Clearing-House user-friendly or easy to use. However, the most common reasons for this dissatisfaction were not related to the design of the website but because the information the user was looking for was not available (e.g. clear access procedures) or other issues related to slow loading times.

³⁷ Such as the experiences and lesson learned shared by Natural Justice and the ABS Capacity Development Initiative with contributions of the ONG CESAREN (<https://www.cbd.int/abs/submissions/assessment/naturaljustice-abs-initiative-en.pdf>).

³⁸ Document CBD/SBI/2/INF/7 provides an overview of the information collected through the different sources of information and feedback received on the implementation and operation of the ABS Clearing-House.

Even though the average loading speed has been decreasing, there are still a number of countries suffering from below average website loading speeds.

113. *Visitors:* The number of visitors last year was of 18,709 visitors.³⁹ This represents an increase of 83% since entry into force of the Protocol. Geographically, the top 10 countries, representing 62% of all visitors in the last year, are as follows: Japan, Germany, France, United States of America, United Kingdom of Great Britain and Northern Ireland, Republic of Korea, Belgium, Canada, India, and Switzerland. By continent, most visitors originated from Europe (45%) followed by Asia (25%), the Americas (23%), Africa (5%) and Oceania (2%).

114. The live chat, the targeted survey and google analytics indicate that at least 50% of users of the ABS Clearing-House are users of genetic resources or associated traditional knowledge. However, to date most development and user testing of the website has prioritized government users.

115. *Languages:* 40% of respondents to the targeted survey answered that translation of the ABS Clearing-House is preventing them from publishing information. Translation of all the submission forms of the ABS Clearing-House has been completed, and all remaining elements will be sent for translation in the coming months and will be finalized by the end of the year.

116. *Availability of information:* The following tables provide a summary of the number of national and reference records published in the ABS Clearing-House as of 22 February 2018. The information provided could serve as reference points.

National records Type of information	Reference points	
	<i>Number of Parties that published records</i>	<i>Number of non-Parties that published records</i>
Competent national authorities	45	7
ABS measures	45	5
Checkpoints	20	1
Permits or their equivalent constituting an internationally recognized certificate of compliance	12	0
Checkpoint communiqués	0	0

Reference records Type of information	Reference points
	<i>Number of records published</i>
Virtual Library Record (includes Reference material, literature and capacity-building resources)	134
Capacity-building Initiatives	74
Model Contractual Clauses, Codes of Conduct, Guidelines, Best Practices and/or Standards	28
Community protocols and procedures and customary laws	3

117. As demonstrated under element (a), and (f) above, Parties, relevant stakeholders, indigenous peoples and local communities, and relevant organizations have relevant information still to be published as national or reference records.

³⁹ In the period from 22 March 2017 to 22 March 2018.

118. According to feedback received, users of genetic resources or associated traditional knowledge would like more certainty that the information available on the ABS Clearing-House, in particular the national information, is complete and up-to-date. On the other hand, many Parties in their reports have indicated that they are in the process of establishing or updating their institutional structures and ABS measures, and therefore, have yet to publish the mandatory information on the ABS Clearing-House.

64. *Capacity-building and awareness-raising for the use of the ABS Clearing-House:* As part of the outreach and engagement campaign the Secretariat has organised 34 remote trainings and 10 face-to-face trainings since August 2014 to date. It has also developed a number of materials, including an e-learning course and several step-by-step guides. The outreach, via phone and emails, is tailored to the specific needs of countries and carried out in a consistent and proactive manner.

65. The number of expert users of the ABS Clearing-House is growing, as demonstrated by the targeted survey which found that 30% of respondents considered themselves expert users of the website. However, 60% of respondents to the survey reported that they require additional technical assistance to use the ABS Clearing-House.

66. The live chat service installed on the ABS Clearing-House website for immediate support has received much positive feedback from the users of this service. Over the period of one year the help desk engaged in 235 online conversations.⁴⁰ Almost 60% of all questions received were related to the broader practical implementation of the Protocol rather than technical support to use the ABS clearing-house. Many of these conversations were related to clarifying ABS measures, in particular, access to genetic resources and associated traditional knowledge especially for those countries where information on the ABS Clearing-House is limited or ABS national focal points are unresponsive.

119. *The Informal Advisory Committee (IAC) to the ABS Clearing-House.* The IAC has been instrumental in the development and improvement of the ABS Clearing-House. The three IAC meetings have been productive in providing technical guidance as well as in setting priorities for the development of the ABS Clearing-House.

67. *Reference points:* The sources analysed provide very useful information and feedback to further develop and improve the ABS Clearing-House and it could be useful to include the information provided in future reports on progress on the ABS Clearing-House prepared by the Executive Secretary. However, in the context of assessment and review a limited set of reference points and indicators are proposed to measure future progress on the following areas (a) publication by Parties of national records (segregated by type of record); (b) publication of reference records (segregated by type); and (c) number of visitors; and (f) number of non-Parties that have published national information (ABS measures, CNAs or checkpoints) in the ABS Clearing-House.

2. Findings and recommendations

120. *Ease of use and functionality:* The most appreciated features from the ABS Clearing-House are the website map, the country profiles, search and help pages, and live chat. These features should be prioritized for optimization and refined to best meet the needs of users of the ABS Clearing-House.

121. *Visitors:* Approximately half of the users of the ABS Clearing-House are users of genetic resources or associated traditional knowledge. A number of useful suggestions have been already provided from users of genetic resources in response to the targeted survey and these have been taken into account regarding the future development of the ABS Clearing-House.

122. Relevant stakeholders in particular the business and scientific communities, could benefit from more outreach and awareness-raising both as users of genetic resources and as potential contributors of relevant information (e.g. model clauses, codes of conduct, awareness-raising materials). The implementation of the ABS Clearing-House could also benefit from a greater understanding of their needs in terms of functionality and design of the ABS Clearing-House.

⁴⁰ In the period from March 2017 to March 2018.

123. A possibility could be to enlarge the membership of the IAC to the ABS Clearing-House to allow for observers and include other users of the ABS Clearing-House, such as, users of genetic resource and associated traditional knowledge, can bring new perspectives and feedback about the ABS Clearing-House.

124. *Languages:* The urgent translation of the website, as well as, related capacity-building material in all six United National languages is a high priority. Countries also may wish to provide courtesy translations for national information published.

125. *Availability of information:* The feedback received and the questions transmitted to the Secretariat through the live chat and other means highlight the fact that users of genetic resources are consulting the ABS Clearing-House to find national information, and that there is an important need to provide information on national ABS requirements and procedures.

126. The ABS Clearing-House should be able to provide users with simple and easy to understand guidance on the necessary steps to apply for access to genetic resources and associated traditional knowledge. Work is currently underway by the Secretariat, with the technical guidance of the IAC, to develop a dedicated common format on ABS procedures that will better capture the information required and increase visibility of this information. Once the format is completed, countries should be encouraged to provide this information as well as the other missing national information, as soon as possible.

127. *Capacity-building and awareness-raising for the use of the ABS Clearing-House:* The live chat service installed on the ABS Clearing-House website for immediate support has received positive feedback from users of this service. However, the majority of questions users are asking are related to implementation of the Protocol rather than technical support for the use of the clearing-house. This may need to be taken into consideration in the future operation and administration of the help desk and live chat feature.

128. Technical assistance for use of the ABS Clearing-House is still required, in particular more capacity-building opportunities are needed:

(a) To provide training for the use the ABS Clearing-House, particularly for national users from countries in the African and Asia-Pacific region;

(b) To increase understanding on how the system works to monitor the utilization of genetic resources through the ABS Clearing-House;

(c) For the use of the ABS Clearing-House's interoperability features such as the application programming interface (API). This will be especially relevant for those Parties who have indicated they are working on implementing national clearing-houses and permitting systems;

(d) Relevant stakeholders, indigenous peoples and local communities, and relevant organizations may not be aware of possible information they have that they could contribute. Therefore, more effort is needed to build capacity as well as the awareness of these groups.

129. *The Informal Advisory Committee:* The continuity of the IAC in providing guidance to the Executive Secretary, and its possible expansion of its membership to include other stakeholders is key to inform future developments and improvements of the ABS Clearing-House.

IV. DRAFT FRAMEWORK OF INDICATORS AND REFERENCE POINTS TO MEASURE PROGRESS

130. The Conference of the Parties serving as the meeting of the Parties to the Protocol requested the Executive Secretary to prepare a framework of indicators as a basis for measuring, in the second assessment and review and thereafter, progress in achieving the objective of the Protocol while taking into account the preparation of and elements included in the first assessment (NP-2/4, para. 4).

131. In response to this request, annex II proposes a draft framework of indicators. The draft framework includes indicators for each of the elements addressed by the first assessment and review and takes into account the need to draw from information readily available and measurable through the

reporting process or other available sources of information. For this reason, indicators are mostly based on existing questions of the interim national report.

132. However, there are instances where no conclusive information could be drawn from the responses to the interim national report, and therefore, a new text is suggested for those indicators. The new indicators are clearly identified in annex II.

133. When reviewing the reporting format for the next reporting cycle, questions could be included to collect information on indicators for which no reference points could be established. However, it should be borne in mind that future review of the format of the report will need to take into account the need for continuity in its questions to allow for the collection of information that could be comparable overtime to measure progress.

134. As previously indicated, a main outcome of the analysis carried out for the first assessment and review of the Protocol is the establishment of reference points to determine a baseline to measure progress in the future on: (a) implementation of the provisions of the Protocol by Parties; (b) the extent to which the Protocol is achieving its objective; (c) support available for implementation of the Protocol; (d) engagement of indigenous peoples and local communities and relevant stakeholders in ABS processes; and (e) the implementation and operation of the ABS Clearing-House.

135. The table found in annex II below collects the reference points resulting from the analyses carried out for each of the elements, and establishes a baseline against which progress can be measured in the future for most of the indicators proposed.

136. Given that implementation of the Protocol will evolve over time, the framework of indicators should be a flexible tool that reflects progress made in implementation.

137. Against this background, the Subsidiary Body on Implementation is invited to consider the draft framework of indicators proposed in annex II below.

V. DRAFT RECOMMENDATIONS AND FINDINGS FOR CONSIDERATION BY THE SUBSIDIARY BODY ON IMPLEMENTATION

138. The Subsidiary Body on Implementation is invited to review the analysis of information, as well as the draft framework of indicators prepared by the Executive Secretary, and to submit its findings and recommendations for the consideration of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its third meeting.

139. Accordingly, the Subsidiary Body on Implementation may wish to recommend that the Conference of the Parties serving as the meeting of the Parties to the Protocol adopt a decision along the following lines:

The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol

1. *Takes note* of the key findings of the first assessment and review of the Protocol,⁴¹ which includes the input provided by the Compliance Committee;

2. *Welcomes* the framework of indicators,⁴² and *agrees* to revisit and update the framework, as may be deemed appropriate in the light of further progress made with implementation;

3. *Also welcomes* the progress made by Parties in making the Protocol operational;

4. *Notes* that further work is needed, as a priority:

(a) To support the development of access and benefit-sharing measures, taking into account special considerations in accordance with Article 8;

⁴¹ CBD/SBI/2/3, annex I.

⁴² CBD/SBI/2/3, annex II.

(b) To enhance implementation by Parties of the provisions on compliance with domestic legislation and regulatory requirements on access and benefit-sharing (Articles 15 and 16), monitoring the utilization of genetic resources (Article 17), including the designation of checkpoints, as well as the provisions related to indigenous peoples and local communities (Article 6, 7 and 12);

(c) To support the participation of indigenous peoples and local communities in the implementation of the Protocol, including by supporting the development by indigenous peoples and local communities of community protocols and procedures, minimum requirements for mutually agreed terms and model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources, and raising their awareness and capacity about access and benefit-sharing;

(d) Raise awareness among relevant stakeholders and encourage their participation in the implementation of the Protocol;

5. *Urges* Parties that have not yet done so:

(a) To establish institutional structures and legislative, administrative or policy measures on access and benefit-sharing, taking into account paragraph 4 (a) and (b) above;

(b) To take steps to address the priority areas identified in paragraph 4 (c) and (d) above;

(c) To publish in the Access and Benefit-Sharing Clearing-House all mandatory information available at the national level in accordance with the obligations enshrined in Article 14, paragraph 2, of the Protocol, as soon as possible;

6. *Encourages* Parties, non-Parties and relevant organizations in a position to do so:

(a) To expand their efforts to build the capacity of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, to implement the Nagoya Protocol, taking into account the priority areas identified in paragraphs 4 above as well as the key findings;⁴³

(b) To support capacity-building initiatives to implement the Protocol, such as the capacity-building programme of the Secretariat and the International Development Law Organization for the establishment of national legal frameworks, including by providing financial resources;

(c) To make available information on capacity-building initiatives and capacity-building resources on the ABS Clearing-House;

(d) To consider regional approaches to support harmonized implementation of the Protocol through, among other things, capacity-building activities among countries that share the same genetic resources or traditional knowledge associated with genetic resources;

(e) To facilitate the sharing of information and experiences in relation to transboundary cooperation in accordance with Article 11 of the Protocol;

7. *Invites* Parties, non-Parties, international organizations, regional development banks, other financial institutions and the private sector, as appropriate, to expand their efforts to provide financial resources to support the implementation of the Protocol;

8. *Recommends* that the Conference of the Parties, in adopting its guidance to the financial mechanism with respect to support for the implementation of the Nagoya Protocol, invite the Global Environment Facility to continue to assist eligible Parties that have not yet done so in putting in place national ABS frameworks and to make funds available to this end;

9. *Encourages* Parties, non-Parties, indigenous peoples and local communities and relevant organizations to make use of the wealth of information and experiences available in the interim national reports and the Access and Benefit-sharing Clearing-House, as well as existing tools and resources (such

⁴³ CBD/SBI/2/3, in annex I.

as guidelines and capacity-building materials) to support implementation and to promote the exchange of experiences;

10. *Invites* Parties, in view of the cross-cutting nature of the Protocol, to establish appropriate mechanisms to facilitate:

(a) National coordination among different institutions and ministries of relevance to access and benefit-sharing;

(b) The participation of indigenous peoples and local communities in the implementation of the provisions of the Protocol related to indigenous peoples and local communities, taking into account national circumstances;

(c) The participation of relevant stakeholders from different sectors with a view to taking into account their needs when developing national access and benefit-sharing frameworks;

11. *Also invites* Parties:

(a) To consider implementing interim measures in order to gain experience that can inform the development of legislative, administrative or policy measures on access and benefit-sharing;

(b) To take into account relevant work undertaken by the Food and Agriculture Organization of the United Nations, the World Health Organization and other relevant organizations in the implementation of Article 8 of the Protocol;

(c) To take into account relevant work undertaken by the World Intellectual Property Organization in the implementation of Article 16 of the Protocol;

12. *Invites* indigenous peoples and local communities to engage in access and benefit-sharing processes, including by developing community protocols and procedures for access and benefit-sharing, and to make them available through the Access and Benefit-sharing Clearing-House;

13. *Invites* relevant stakeholders and user organizations and networks to engage in access and benefit-sharing processes, including by developing tools, such as model contractual clauses, codes of conduct, guidelines, best practices and/or standards, that address the needs of their constituency and facilitate compliance with access and benefit-sharing requirements, and to make these tools available through the Access and Benefit-sharing Clearing-House;

14. *Notes* that the work on one or more international legal instruments relating to intellectual property with a view to ensuring the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions under the World Intellectual Property Organization is still ongoing and that there is no available information to measure the effectiveness of Article 18 in accordance with Article 18, paragraph 4, of the Protocol, and therefore *decides* to assess these elements at the second assessment and review of the Protocol;

15. *Requests* the Executive Secretary to take into account the indicators contained in the note⁴⁴ when reviewing the format of the interim national report;

16. *Welcomes* progress made by the Secretariat in the implementation and operation of the Access and Benefit-sharing Clearing-House, and *emphasizes* the importance of making information available on the procedures to follow in order to access genetic resources and associated traditional knowledge in a country;

17. *Requests* the Executive Secretary:

(a) To prioritize the translation of the Access and Benefit-sharing Clearing-House;

(b) To continue to improve the performance of the Access and Benefit-sharing Clearing-House;

⁴⁴ CBD/SBI/2/3, annex II.

(c) To seek feedback from all types of users of the Access and Benefit-sharing Clearing-House on its implementation and operation;

18. *Also requests* the Executive Secretary to continue providing technical assistance for the submission of information on the Access and Benefit-sharing Clearing-House, including:

(a) Encouraging the publication by Parties, as well as non-Parties, of all mandatory information available at the national level in the Access and Benefit-Sharing Clearing-House and to provide training for the use the Access and Benefit-Sharing Clearing-House;

(b) Encouraging the publication of reference records, as appropriate, by relevant stakeholders, indigenous peoples and local communities, and relevant organizations on the Access and Benefit-Sharing Clearing-House;

(c) Increasing understanding of the functioning of the system for monitoring the utilization of genetic resources through the Access and Benefit-Sharing Clearing-House;

(d) Encouraging the use of the Access and Benefit-sharing Clearing-House's interoperability features, such as the application programming interface;

*Annex I***KEY FINDINGS****Element (a) Extent of implementation of the provisions of the Protocol and related obligations of Parties, including assessment of progress by Parties in establishing institutional structures and access and benefit-sharing measures to implement the Protocol**

1. In order to make the Protocol operational, Parties need to establish access and benefit-sharing legislative, administrative and policy measures and institutional arrangements and many Parties are still in the process of establishing these measures and institutions. For many Parties, this process is time-consuming and challenging.
2. Progress in establishing institutional arrangements, such as competent national authorities and checkpoints, is closely related to progress in adopting ABS measures. Some measures adopted prior to the Nagoya Protocol included the designation of competent national authorities. However, the designation of checkpoints is a new requirement created by the Protocol and still needs to be addressed by many Parties.
3. Although the publication of mandatory information in the ABS Clearing-House is essential for the implementation of the Protocol, a number of Parties have not yet published on the ABS Clearing-House all available national information in accordance with Article 14 of the Nagoya Protocol.
4. Considering its cross-cutting nature, the implementation of the Protocol requires the participation of indigenous peoples and local communities and relevant stakeholders (e.g. different business sectors and the scientific community) as well as coordination among different institutions and ministries (e.g. science and education, agriculture, trade, intellectual property). To assist in addressing this challenge, appropriate mechanisms could be established to facilitate coordination and participation, and awareness-raising and capacity-building may be required.
5. Other key challenges include developing ABS measures that support benefit-sharing while creating legal certainty, avoiding unnecessary complexity, delays and increased burdens and costs on users and limited human resources working on ABS and the Nagoya Protocol in many Parties.
6. In light of these challenges, the development of interim measures could be considered as a first step. The needs of users of genetic resources and associated traditional knowledge from different sectors should also be taken into account in developing ABS measures. Regional approaches may also be useful to support harmonized implementation of the Protocol.⁴⁵
7. Implementing some of the new elements of the Protocol, namely the provisions on compliance, monitoring the utilization of genetic resources, including the designation of checkpoints, and the obligations related to indigenous peoples and local communities, presents a particular challenge.
8. The Nagoya Protocol does not distinguish between countries that are users and countries that are providers of genetic resources and obligations in the Protocol apply to all Parties, including provisions related to compliance with domestic legislation or regulatory requirements according to Articles 15 and 16.
9. With respect to checkpoints, there is a need for Parties to better understand their functions and options for their designation in light of their national context. There is also a need to build the capacity of checkpoints to enable them to carry out their functions.
10. With respect to indigenous peoples and local communities, challenges include: determining how the concept of “indigenous peoples and local communities” applies at the national level; clarifying the rights of IPLCs over genetic resources and/or traditional knowledge associated with genetic resources; identifying the different groups of indigenous peoples and local communities; understanding the way they are organized; and linking traditional knowledge with the holder/s of such knowledge. In order to address these challenges, the following could be considered:

45 E.g. AU 2015 “African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa”.

- (a) Building the capacity of Parties to support the implementation of the provisions of the Protocol related to indigenous peoples and local communities as well as the capacity of IPLCs with respect to ABS issues.
- (b) Relevant work of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions on the concept of IPLCs,⁴⁶
- (c) National mechanisms for the participation of IPLCs in the implementation of the provisions of the Protocol related to IPLCs taking into account national circumstances;
- (d) Support for coordination and institution building within and among IPLCs to address ABS issues including through the development of community protocols;
- (e) Capacity-building to support IPLCs to develop minimum requirements for mutually agreed terms and model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

11. Parties have different approaches to prior informed consent, mutually agreed terms and the issuance of permits. It is important for Parties to make clear information available on the ABS Clearing-House on the procedures to follow to access genetic resources and associated traditional knowledge.

12. In addition, in the development and implementation of ABS legislation or regulatory requirements it is important that Parties take into account special considerations in accordance with Article 8 of the Protocol. Relevant work undertaken under FAO,⁴⁷ WHO and other organizations may be useful in this regard.

13. The importance of sharing information and experience in relation to transboundary cooperation (Article 11) was highlighted. In particular, experiences acquired in subregional and bilateral projects could be relevant to assist in the implementation of this article. Regional structures or projects were identified by some as a way to address this issue, while noting that reinforcement of the capacity of regional structures to play that role would be needed.

14. Capacity-building could also support harmonized implementation of the Protocol among countries that share the same genetic resources or traditional knowledge associated with genetic resources.

Element (b) Establishment of a reference point to measure effectiveness

15. Some Parties reported on having received benefits received from the utilization of genetic resources and associated traditional knowledge.

16. With regard to how the implementation of the Nagoya Protocol contributed to conservation and sustainable use of biodiversity in their country, many considered that it was premature to answer this question as implementation of the Nagoya Protocol was at an early stage.

17. The most common contribution reported is an increase of awareness of the value of conservation and sustainable use of biodiversity and ecosystem services. Examples of other contributions highlighted by countries are the following:

- (a) Managers of natural resources or authorities are more aware of the potential advantages of the Nagoya Protocol and are developing conservation practices;
- (b) Implementing the Nagoya Protocol helped improving the knowledge about species, including through the development of databases or inventories and their population, and supports the valorisation of genetic resources and special conservation approaches;
- (c) Increased involvement of communities in conservation and sustainable use;
- (d) Increased compliance by users of genetic resources;

⁴⁶ E.g. “Compilation of views received on use of the term ‘indigenous peoples and local communities’” (UNEP/CBD/WG8J/8/INF/10/Add.1).

⁴⁷ E.g. FAO 2016 “ABS Elements: Elements to Facilitate Domestic Implementation of Access and Benefit-sharing for Different Subsectors of Genetic Resources for Food and Agriculture”.

(e) Recognition of research and development as a key to the country's valorisation of genetic resources;

(f) Implementing the Protocol played a key role in factoring elements of biodiversity conservation and use in government development agenda including in 2030 vision.

Element (c): Establishment of a reference point on support available for implementation

18. Although a number of capacity-building and development initiatives are currently supporting ratification and implementation of the Nagoya Protocol, many Parties still lack the necessary capacity and financial resources to make the Protocol operational. Capacity-building and development support therefore continue to be essential in order to make progress in the implementation of the Protocol, in particular for developing country Parties and Parties with economies in transition.

19. The wealth of information and experiences available in the national reports and in the ABS Clearing-House, as well as the exchange of experiences, may be useful to Parties in the establishment of institutional structures and the development of ABS measures. This information could also be taken into account in capacity-building projects. In addition, the use of existing tools and resources (e.g. guidelines, capacity-building materials) to support implementation could be encouraged.

Element (d): Assessment of effectiveness of Article 18 (extent of implementation)

20. The provisions of Article 18 on compliance with mutually agreed terms are often implemented at the national level through existing laws (e.g. contractual law, private international law, domestic measures related to access to justice) rather than through specific ABS measures.

21. When one party of a contract resides in a foreign country, the contractual relationship falls in the domain of private international law. Private international law seeks to regulate, first, which jurisdiction applies to a dispute; second, which law applies to the dispute; and third, whether and how eventual decisions or judgments are recognized and may be enforced in another jurisdiction. Each State has its own national rules on these matters, but some of these may have been harmonized through international agreements, guidelines, and model laws.

22. Those developing ABS measures and/or implementing the Protocol may not be aware of all applicable legislation dealing with contractual law, private international law, domestic measures related to access to justice. A mechanism to support national coordination could assist in drawing from the expertise of other institutions dealing with these issues.

23. Information contained in the interim national report, as well as the exchange of experiences may be useful for Parties to understand how the implementation of Article 18 can be supported.

Element (e) Assessment of implementation of Article 16 in light of developments in other relevant international organizations, including, inter alia, the World Intellectual Property Organization

24. Many Parties are still in the process of establishing ABS measures and institutions arrangements to implement the Protocol. Implementation of the provisions on compliance and the obligations related to indigenous peoples and local communities are particularly challenging for Parties.

25. The work on one or more international legal instrument(s) relating to intellectual property with a view to ensuring the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions under WIPO is still on going, and it is premature to assess how the outcomes of this process could contribute to implementation of the Nagoya Protocol.

26. However, there are a number of existing tools and resources that could be used by Parties in advancing the implementation of Article 16 of the Nagoya Protocol, including those developed by WIPO and the CBD Mo'otz Kuxtal voluntary guidelines.⁴⁸

Element (f) Stock-taking of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as well as indigenous peoples and local communities' customary laws, community protocols and procedures

27. A wide range of model contractual clauses, codes of conduct, guidelines, best practices and standards have been developed both by Governments and organizations. However, there is less information on how these tools are being used. It is unclear how the use of the tools could be measured.

28. User organizations and networks play an important role in addressing the needs of their members by developing tools that can bring clarity on how ABS can be incorporated in their practice and assisting their member organizations to comply with ABS requirements.

29. Implementing the provisions related to IPLCs is one of the main challenges identified by Parties. Community protocols on ABS can help to address some of the challenges identified in paragraph 10 above. They can help the IPLCs that develop them to articulate their values, practices and aspirations. They can also help Governments to implement the IPLCs related provisions of the Protocol, and they provide clarity and certainty to users on how to have access to genetic resources and/or associated traditional knowledge held by IPLCs.

30. Community protocols are being developed and used in a variety of contexts, including but not limited to ABS. Some deal with biotrade or land issues and include some ABS elements as part of a bigger context. Incorporating ABS elements in existing community protocols dealing with resource or land management or biotrade may facilitate the process. Supporting IPLCs to develop community protocols is essential, as well as doing so in way that ensures that the outcomes represent community values, practices and aspirations.

Element (g): Review of implementation and operation of the Access and Benefit-sharing Clearing-House, including number of access and benefit-sharing measures made available; number of countries that have published information on their competent national authorities; number of internationally recognized certificates of compliance that have been constituted and number of checkpoint communiqués published

33. Approximately half of the users of the ABS Clearing-House are users of genetic resources or associated traditional knowledge and consult the ABS Clearing-House to find national information. Feedback received highlights the important need to provide improved and clear information on national ABS requirements and procedures. This information should provide users with simple and easy to understand guidance on the necessary steps to apply for access to genetic resources and associated traditional knowledge.

34. Relevant stakeholders in particular the business and scientific communities, could benefit from more outreach and awareness-raising both as users of genetic resources and as potential contributors of relevant information (e.g model clauses, codes of conduct, awareness-raising materials). The implementation of the ABS Clearing-House could also benefit from a greater understanding of their needs in terms of functionality and design of the ABS Clearing-House.

35. Technical assistance for use of the ABS Clearing-House still required. The live chat is a very valued feature by users of the ABS Clearing-House. Capacity-building on the use of the ABS Clearing-House and implementation of the Protocol is closely related. Many questions received through the live chat and during the capacity-building activities for the ABS Clearing-House are about implementation of the Protocol rather than the technical support to use the clearing-house.

⁴⁸ Mo'otz Kuxtal voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the "prior and informed consent", "free, prior and informed consent" or "approval and involvement", depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge

Annex II

DRAFT FRAMEWORK OF INDICATORS AND REFERENCE POINTS TO MEASURE PROGRESS

1. The following table proposes indicators for each of the elements addressed by the first assessment and review. Reference points are included for most of the indicators proposed. These reference points determine a baseline against which progress can be measured in the future for each of the indicators. The indicators proposed are mostly based on existing questions of the interim national report. However, there are instances where no conclusive information could be drawn from the responses to the interim national report, and therefore, a new text is suggested for those indicators. The new or revised indicators are identified in the table.

2. It also includes the source of information used to establish the reference point. For ease of reference, it follows the structure and order of the format of the interim national report and includes reference to the element/s under which the indicator is being considered.

3. The framework is flexible tool that can be adapted as further progress is made with implementation.

Draft framework of indicators	Element	Reference point (as of 22 February 2018)	Source
1. Number of Parties to the CBD that have ratified the Nagoya Protocol		105 (54%)	United Nations Treaty Collection
Institutional structures for the implementation of the Protocol			
2. Number and percentage of Parties with legislative, administrative and policy measures on ABS	(a)	75 (71%)	Q.4 ABS-CH CBD report NBSAP
3. Number of Parties that have published information on legislative, administrative or policy measures on ABS in the ABS Clearing-House	(g)	45 (43%);	ABS-CH
4. Number and percentage of Parties with national focal points on ABS	(a)	103 (98%)	Q.5 ABS-CH
5. Number and percentage of Parties with one or more competent national authorities	(a)	57 (54%)	Q.6 ABS-CH CBD report NBSAP
6. Number and percentage of Parties that have published information on competent national authorities in the ABS Clearing-House	(g)	45 (43%);	ABS-CH
7. <i>New:</i> Number and percentage of Parties that have issued permits or their equivalents	(a)	19	NR format requires revision

Draft framework of indicators	Element	Reference point (as of 22 February 2018)	Source
8. Number and percentage of Parties that have published internationally recognised certificates of compliance (IRCC) in the ABS Clearing-House	(b) (g)	12 (11%)	Q.7, 8,16 ABS-CH
9. Number of IRCC available in the ABS Clearing-House	(g)	146	ABS-CH
10. Number and percentage of Parties with one or more checkpoints	(a)	29 (27%)	Q.9 ABS-CH CBD report NBSAP
11. Number and percentage of Parties that have published information on checkpoints	(g)	20 (19%)	ABS-CH
12. Number and percentage of Parties that have made information available to the ABS Clearing-House (CNA, checkpoint, ABS measures, IRCC)	(a)(g)	54 (51%)	Q.3 ABS-CH
13. Number and percentage of Parties that have information (CNA, checkpoint, ABS measures, permits) that have not yet been made available to the ABS Clearing-House	(a)(g)	46 (44%)	Q.4, 6, 9 ABS-CH CBD report NBSAP
Legislative, administrative or policy measures on ABS: Access to genetic resources (Article 6)			
14. Number and percentage of Parties requiring prior informed consent for access to genetic resources that provide information on how to apply for prior informed consent as provided in Article 6.3(c)	(a) (b)	27 (73%)	Q.13
15. Number and percentage of Parties requiring prior informed consent providing for the issuance at the time of access of a permit or its equivalent as provided in Article 6.3 (e)	(a) (b)	32 (86%)	Q.15
16. Number and percentage of Parties requiring prior informed consent for access to genetic resources that have rules and procedures for requiring and establishing MAT as provided in Article 6.3 (g)	(a)	28 (76%)	Q.17
17. <i>Revised:</i> Number and percentage of Parties requiring prior informed consent for access to genetic resources that received monetary benefits from granting access to genetic resources since entry into force of the Protocol	(b)	Not conclusive data	Q.18 requires revision
18. <i>New:</i> Amount of monetary benefits (in USD) received from granting access to genetic resources since entry into force of the Protocol	(b)	Not conclusive data	Q.18 requires revision

Draft framework of indicators	Element	Reference point (as of 22 February 2018)	Source
19. <i>Revised</i> : Number and percentage of Parties requiring prior informed consent for access to genetic resources that received non-monetary benefits from granting access to genetic resources since entry into force of the Protocol	(b)	Not conclusive data	Q.18 requires revision
20. <i>Revised</i> : Number and percentage of Parties with indigenous peoples and local communities in their country that received monetary benefits from granting access to traditional knowledge associated with genetic resources	(b)	Not conclusive data	Q.18 requires revision
21. <i>New</i> : Amount of monetary benefits (in USD) received from granting access to traditional knowledge associated with genetic resources	(b)	Not conclusive data	Q.18 requires revision
22. <i>Revised</i> : Number and percentage of Parties with indigenous peoples and local communities in their country that received non-monetary benefits from granting access to traditional knowledge associated with genetic resources	(b)	Not conclusive data	Q.18 requires revision
Legislative, administrative or policy measures on ABS: Fair and equitable -sharing (Article 5)			
23. Number and percentage of Parties with legislative, administrative or policy measures to implement Article 5.1 (genetic resources)	(a)	46 (44%)	Q.20
24. Number and percentage of Parties with legislative, administrative or policy measures to implement Article 5.2 (genetic resources held by IPLCs)	(a)	42 (40%)	Q.21
25. Number and percentage of Parties with legislative, administrative or policy measures to implement Article 5.5 (traditional knowledge associated with genetic resources)	(a)	41(39%)	Q.22
Legislative, administrative or policy measures on ABS: Compliance with domestic legislation or regulatory requirements on ABS (Article 15 and 16) and monitoring the utilization of genetic resources (Article 17)			
26. Number and percentage of Parties that have taken appropriate, effective and proportionate legislative, administrative or policy measures to implement Article 15.1 (genetic resources)	(b)	36 (34%)	Q.24

Draft framework of indicators	Element	Reference point (as of 22 February 2018)	Source
27. Number and percentage of Parties that have taken appropriate, effective and proportionate legislative, administrative or policy measures to implement Article 16.1 (traditional knowledge associated with genetic resources)	(e)	33 (31%)	Q.25
28. Number and percentage of Parties that require users of genetic resources to provide the information identified in Article 17.1 (a)(i), as appropriate, at a designated checkpoint	(a)	41 (39%)	Q.26
29. Number and percentage of Parties that provide the information collected or received at a designated checkpoint to relevant national authorities, to the Party providing prior informed consent and to the ABS Clearing-House	(a)	9 (9%)	Q.27
30. Number of checkpoint communiques published in the ABS Clearing-House	(g)	0	ABS-CH
Legislative, administrative or policy measures on ABS: compliance with mutually agreed terms (Article 18)			
31. Number and percentage of Parties that encourage the inclusion of dispute resolution provisions in MAT as provided in Article 18.1.	(d)	36 (34%)	Q.31
32. Number and percentage of Parties with opportunity to seek recourse available under their legal systems in cases of disputes arising from MAT as provided in Article 18.2	(d)	51 (49%)	Q.32
33. Number and percentage of Parties with measures regarding access to justice	(d)	47 (45%)	Q.33
34. Number and percentage of Parties with measures regarding utilization of mechanisms regarding mutual recognition and enforcement of foreign judgements and arbitral awards	(d)	38 (36%)	Q.33
Special considerations (Article 8)			
35. Number and percentage of Parties that created conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity as provided in Article 8(a)	(b)	48 (46%)	Q.35

Draft framework of indicators	Element	Reference point (as of 22 February 2018)	Source
36. Number and percentage of Parties that paid due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health as provided in Article 8(b)	(b)	39 (37%)	Q.35
37. Number and percentage of Parties that have taken into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources as provided in Article 8(b)	(b)	26 (25%)	Q.35
38. Number and percentage of Parties that have taken into consideration the importance of genetic resources for food and agriculture and their special role for food security as provided in Article 8 (c)	(b)	48 (46%)	Q.35
Provisions related to indigenous peoples and local communities (IPLCs) (Article 6,7 and 12)			
39. Number and percentage of Parties where IPLCs have the established rights to grant access to genetic resources with measures in place with the aim of ensuring the PIC or approval and involvement of IPLCs as provided in Article 6.2.	(a)	23 (47%)	Q.38
40. Number and percentage of Parties with indigenous peoples and local communities in their country that have taken measures with the aim of ensuring that traditional knowledge associated with genetic resources that is held by IPLCs have been accessed with the PIC or approval and involvement of these IPLCs and that MAT have been established as provided in Article 7	(a)	21(43%)	Q.39
41. <i>New:</i> Number of indigenous peoples and local communities' community protocols and procedures developed	(f)	Not conclusive data	Q.42 requires revision Targeted survey
42. Number of indigenous peoples and local communities' customary laws, community protocols and procedures made available in the ABS Clearing-House	(f)(g)	3	ABS-CH
Contribution to conservation and sustainable use (Article 9)			

Draft framework of indicators	Element	Reference point (as of 22 February 2018)	Source
43. <i>Revised</i> : Number and percentage of Parties that reported that implementation of the Nagoya Protocol has contributed to conservation and sustainable use of biodiversity in their country	(b)	Not conclusive data	Q.46 requires revision
Model contractual clauses, codes of conduct, guidelines, best practices and standards (Articles 19 and 20)			
44. Number of model contractual clauses developed	(f)	29	Q.51, targeted survey
45. Number of codes of conduct, guidelines, best practices and standards developed	(f)	33	Q.52, targeted survey
46. Number and percentage of model contractual clauses made available in the ABS Clearing-House	(f) (g)	17 (59%)	ABS-CH
47. Number and percentage of codes of conduct, guidelines, best practices and standards made available in the ABS Clearing-House	(f) (g)	25 (75%)	ABS-CH
Awareness-raising and capacity (Article 21 and 22)			
48. Number and percentage of Parties that received external support for building and developing capacity for the implementation of the Nagoya Protocol since entry into force of the Protocol	(c)	45 (43%)	Q.56
49. Number and percentage of Parties that provided external support for building and developing capacity for the implementation of the Nagoya Protocol since entry into force of the Protocol	(c)	27 (26%)	Q.57
50. Number of capacity-building and development initiatives made available completed or initiated after the adoption of the Nagoya Protocol in 2010 and are providing, or have provided, direct support for country level activities contributing to the ratification and implementation of the Nagoya Protocol	(c)	90	SCBD documents on capacity-building
51. Number of capacity-building and development initiatives made available to the ABS Clearing-House	(c)(g)	57	ABS-CH

Draft framework of indicators	Element	Reference point (as of 22 February 2018)	Source
52. Number of capacity-building and awareness-raising tools and resources on access and benefit-sharing	(c)	84	SCBD documents on capacity-building
53. Number of capacity-building and awareness-raising tools and resources made available in the ABS Clearing-House	(c)(g)	34	ABS-CH
Optional additional information			
54. Number and percentage of Parties that established a mechanism for budgetary allocations of funds for the implementation of the Nagoya Protocol	(c)	24 (23%)	Q.61
55. Number and percentage of Parties that made financial resources available to other Parties	(c)	13 (12%)	Q.62
56. Number and percentage of Parties that received financial resources from other Parties or financial institutions for the purposes of implementation of the Protocol as provided in Article 25	(c)	35 (33%)	Q.62
57. Average number of full time staff working to administer functions directly related to the implementation of the Nagoya Protocol in each Party.	(c)	Not conclusive data	Q.63- requires revision
Implementation and operation of the ABS Clearing-House			
58. Number of non-Parties that have published national information (ABS measures, CNAs or checkpoints) in the ABS Clearing-House	(g)	8	ABS-CH
59. The number of visitor to the ABS Clearing-House per year	(g)	18,709 visitors (as of 22 March 2018)	Google analytics