



Convention on Biological Diversity

Distr.
GENERAL

CBD/SBI/2/INF/3
15 May 2018

ENGLISH ONLY

SUBSIDIARY BODY ON IMPLEMENTATION

Second meeting

Montreal, Canada, 9-13 July 2018

Item 4 of the provisional agenda*

ANALYSIS OF INFORMATION CONTAINED IN THE INTERIM NATIONAL REPORTS AND INFORMATION PUBLISHED IN THE ACCESS AND BENEFIT-SHARING CLEARING HOUSE

Note by the Executive Secretary

Table of Contents

I. INTRODUCTION.....	3
II. METHODOLOGY.....	3
A. Sources of information.....	3
B. Limitations.....	5
C. Methodological notes.....	5
III. ANALYSIS OF INFORMATION PROVIDED BY COUNTRIES.....	6
A. Institutional structures for the implementation of the Protocol (questions 3 to 10).....	6
B. ABS measures: Access to genetic resources (Article 6) (questions 11 to 19).....	19
C. ABS measures: Fair and equitable benefit-sharing (Article 5) (questions 20 to 23)	30
D. ABS measures: Compliance with domestic legislation or regulatory requirements on ABS (Article 15 and 16) and monitoring the utilization of genetic resources (Article 17) (questions 24 to 30)	35
E. ABS measures: Compliance with mutually agreed terms (Article 18) (questions 31 to 34)	46
F. Special considerations: Article 8 (questions 35 to 36)	51
G. Provisions related to indigenous and local communities: Articles 6, 7 and 12 (questions 37 to 44)	59
H. Contribution to conservation and sustainable use: Article 9 (question 45 to 47)	69
I. Transboundary cooperation (Article 11) (questions 48 to 50)	71
J. Model contractual clauses, codes of conduct, guidelines and best practices and/or standards (Article 19 and 20) (questions 51 to 53)	75
K. Awareness-raising and capacity (Article 21 and 22) (questions 54 to 58)	78
L. Technology transfer, collaboration and cooperation (Article 23) (question 59)	84

* CBD/SBI/2/1.

M. Optional additional information (questions 60 to 65)	86
N. Comments on the reporting format (question 66)	90

I. INTRODUCTION

1. Article 29 of the Protocol requires each Party to monitor the implementation of its obligations under the Nagoya Protocol and to report to the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) on measures that it has taken to implement the Protocol.
2. The first meeting of COP-MOP, in decision NP-1/3, 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 twelve months prior to the third meeting of COP-MOP. The decision also welcomed submissions of relevant information by non-Parties. Interim national reports were due to be submitted by 1 November 2017.¹
3. COP-MOP requested the Executive Secretary to consolidate information contained in the interim national reports received from Parties and information published in the Access and Benefit-sharing Clearing-House (ABS Clearing-House) for the consideration of the third meeting of COP-MOP, as a contribution to the assessment and review of the effectiveness of the Protocol by COP-MOP, pursuant to Article 31, as well as to make submissions by non-Parties available for the information of the third meeting of COP-MOP (decision NP-1/3, para. 6).
4. In addition to its contribution to the assessment and review of the Protocol, this analysis will inform discussions on substantive items, such as compliance with the Protocol, monitoring and reporting, the global multilateral benefit-sharing mechanism, and resource mobilization at the third meeting of the Parties to the Protocol. Information is therefore presented according to relevant articles of the Protocol. The analysis aims to identify the progress in, and constraints to, the 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. Where relevant, implications of the information provided in the interim reports are discussed in more depth in the pre-session documents of relevant agenda items.
5. In addition, an information document providing a statistical overview of the responses by Parties and non-Parties to each of the questions of the report will also be made available for the meeting (CBD/ABS/CC/2/INF/2).
6. The methodology used is presented in section II of the present document, including sources of information, limitations of the analysis and some methodological note. Section III contains the analysis of the information provided by countries in answer to each of the questions of the report format.

II. METHODOLOGY

A. Sources of information

1. *Interim national reports*

7. Up to and including 22 of February 2018, 69 interim national reports have been received from Parties.²
8. The distribution of these reports among the United Nations regional groups is as follows:
 - (a) Africa: 27 reports received (69% of 47 Parties of that region);
 - (b) Asia and the Pacific: 13 reports received (50% of 26 Parties of that region);

¹ Through notifications 2017-017 of 23 February 2017 and the reminders 2017-076 of 9 August 2017, 2017-102 of 16 October 2017, and 2017-119 of 10 November 2017

² In addition, the Secretariat received a report from: Nigeria (however the submission was in a different format from the one agreed at COP-MOP 1) and Philippines (the report was submitted offline and several mandatory questions were not filled). The Secretariat is engaging with these countries to make the information available as soon as possible.

(c) Latin America and the Caribbean (GRULAC): 8 reports received (67% of 13 Parties of that region);

(d) Central and Eastern Europe (CEE): 7 reports (88% of 8 Parties of that region);

(e) Western Europe and Others Group (WEOG): 14 reports (93% of 15 Parties of that group).

9. In addition, 6 non-Parties submitted their national reports. Information provided by non-Parties is also made available for the information of participants in the meeting and is included in the analysis below.

10. All interim national reports received are available online on the ABS Clearing-House at the following link: <https://absch.cbd.int/reports>, with the exception of one report which was submitted offline.³ The ABS Clearing-House also hosts a report analyser tool that enables the analysis of information contained in the interim national report by question, country/ies or region.

11. A list of countries that submitted the interim national report by 22 February 2018 can be found in annex I to document CBD/ABS/CC/2/INF/2.

2. Access and Benefit-sharing Clearing-House

12. The following table summarizes the information made available to the ABS Clearing-House by Parties and non-Parties by 22 February 2018.

Table 1: Number of national records made available in the ABS Clearing-House (up to 22 February 2018)

<i>Type of information</i>	<i>Number of records published</i>	<i>Number of Parties that published records</i>	<i>Number of non-Parties that published records</i>
National Focal Point	176	103	67
Competent national authorities	68	45	7
ABS measures	205	45	5
Checkpoints	45	20	1
Permits or their equivalent constituting an internationally recognized certificate of compliance	146	12	0
Checkpoint communiqués	0	0	0

13. This information has been considered in the analysis of the first part of the interim national reports entitled “Institutional structures for the implementation of the Protocol” (section III, A below) which takes into account the information published in the ABS Clearing-House and information provided in the interim national reports on establishment of ABS measures, national focal points, competent national authorities, checkpoints and the constitution of internationally recognized certificates of compliance.

14. In cases where a country has published one of the national records mentioned above but has not included this information in their interim national report, the information available in the ABS Clearing-House has been used. The analysis also identifies information mentioned in the report which has not yet been published in the ABS Clearing-House.

3. National reports under the Convention and national biodiversity strategies and action plans

15. Decision NP-2/4 on assessment and review, identifies in its annex elements to be included in the first assessment and review of the Protocol and the sources of information. Element (a) of the annex addresses the extent of implementation of the provisions of the Protocol and related obligations of Parties,

³Kazakhstan

including assessment of progress by Parties in establishing institutional structures and access and benefit-sharing measures to implement the Protocol and includes the following sources of information: Interim national reports; Access and Benefit-sharing Clearing-House (ABS Clearing-House); national reports under the Convention; national biodiversity strategies and action plans (NBSAPs); and possible targeted survey of focal points and/or users.

16. In the light of this decision, for those countries that did not submit an interim national report, information provided through the national biodiversity strategies and action plans (NBSAPs) and the fifth national reports on the implementation of the Convention has been considered in the analysis of the first part of the interim national reports entitled “Institutional structures for the implementation of the Protocol” (section III, A below).

B. Limitations

17. The results presented in this paper should be interpreted in light of the limitations of the analysis as follows.

18. First, these reports represent 65.5% of the current number of Parties that have ratified the Protocol (105 up to 22 February 2018)⁴, and 6.5% of non-Parties (93). Therefore, results may be biased towards Parties or countries that were in a position to submit their reports for various reasons, such as stronger monitoring and reporting capacities, language capacities or determination to comply with the reporting requirement.

19. Additionally, the reports vary in terms of the amount of information submitted. Some reports provided little information to explain the answers to each question. Variations between the types of information provided for the same question were also observed (e.g. some countries shared information about their plans for implementing a provision, while others reflected on the difficulties encountered).

20. An examination of the answers also highlights some weaknesses in the interim report format that appear to have led to ambiguous and inconsistent responses. For instance, when asked whether a country has taken measures to implement a given article, some answered “yes” while others answered “no” on the basis of having a draft ABS measure or plans to address the issue in the future. There are also instances where countries answered “yes” but the narrative text seems to indicate that the answer is “no” and vice versa. In addition, a closer look at the responses leaves the impression that countries have understood certain questions in different ways.

21. It should also be noted that each question is analysed independently, and as a consequence only the answers provided to that specific question are considered. As a consequence, information provided about a country should be interpreted within the context of their entire report and not only based on the answer provided to a specific question.

C. Methodological notes

22. In light of the above, the following analysis provides: (a) quantitative information (numeric and in percentage) based on the “yes”/“no” responses; and (b) a qualitative analysis based on the information provided in the text entries. The qualitative analysis provides an indication of different types of information provided in response to a question.

23. The quantitative analysis provides disaggregated data of the “yes”/“no” responses provided by Parties and by non-Parties and a breakdown of the information by CBD regions.

24. With a view to facilitate the use of the interim national report as a tool for exchange of information and experience between countries, the qualitative analysis also includes examples of some of

⁴ For the purpose of this document the term “Parties” includes those who had ratified the Nagoya Protocol by 22 February but for whom the Protocol has not yet entered into force following the 90-day period set out in Article 33.2 of the Protocol.

the information provided by countries and identified countries that provided similar information or adopted similar approaches to implementation of the Protocol.

25. Given the amount of information analysed and the ambiguity of some of the answers provided, the lists of countries that provided similar information or adopted similar approaches to implementation are indicative and non-exhaustive. It should be noted that such examples are included to facilitate the sharing of information and should not be interpreted outside the framework of the complete report submitted by the country.

26. The narrative analysis does not differentiate between the information provided by Parties and non-Parties. The word “country” is used when the analysis incorporated both Parties and non-Parties.⁵

III. ANALYSIS OF INFORMATION PROVIDED BY COUNTRIES

A. Institutional structures for the implementation of the Protocol (questions 3 to 10)

27. The assessment of progress made by countries and the analysis of information found in this section, is based on the information provided by countries in their interim national reports and information published in the ABS Clearing-House. For those Parties that did not submit an interim national report, information provided through the NBSAPs and the fifth national reports on the implementation of the Convention has been considered. Therefore, the information presented in this section takes into account the total of Parties and non-Parties to the Protocol and not only those countries that submitted an interim national report.

28. Each question of this section of the report invites countries to provide a summary of the main difficulties and challenges encountered. Taking into account the overlap and duplication of the information provided under different questions, subsection 7 below on “Additional information” addresses all the challenges and difficulties identified to put in place the institutional structures for the implementation of the Protocol.

1. Has your country made available information to the ABS Clearing-House as provided in Article 14.2? (question 3)

29. Up to 22 February 2018, 54 Parties and 8 non-Parties have published ABS measures, competent national authorities, checkpoints or internationally recognized certificates of compliance in the ABS Clearing-House.⁶

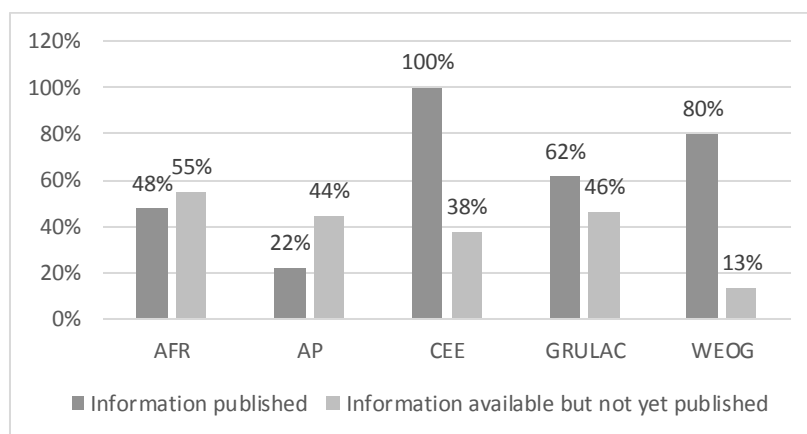
30. 46 Parties and 15 non-Parties indicated in the interim national report, NBSAP or fifth national report having ABS measures, competent national authorities, checkpoints or permits or their equivalents that have not yet been made available to the ABS Clearing-House.⁷ Some countries also indicated their plans for developing a national clearing-house.

⁵ For ease of reference during the analysis the European Union and its Member States is considered included under the term “countries”

⁶ The publication of national databases, national focal points, the interim national report, reference records or regional measures displayed in the country profile were not considered for the purposes of this overview.

⁷ Some of these Parties have published some information in the ABS Clearing-House and also indicated that they have information available that has not yet been published.

Graph 1: Status of progress by Parties in publishing information in the ABS Clearing-House (up to 22 February 2018)



2. Has your country taken legislative, administrative and policy measures on ABS? (question 4)

(a) Progress in establishing ABS legislative, administrative or policy measures to implement the provisions of the Protocol by Parties

31. Of the countries that have ratified the Protocol, 75 (71% of 105 Parties) have published measures in the ABS Clearing-House or reported having ABS measures established in the interim national report, NBSAP or fifth national report. Information provided or available varies among Parties. For example, some of the measures identified by Parties seem to address directly ABS issues, while other measures appear to be of a more general nature or of relevance to ABS. Also, not all Parties provided information on their ongoing work or plan to develop additional measures. Based on the available information, the following provides an indicative overview of progress made by Parties:

- (a) 16 Parties have adopted one or more ABS measures;⁸
- (b) 42 Parties have some measures in place and are currently revising existing or developing new ABS measures;⁹
- (c) 10 Parties have some measures in place and are planning to develop additional ABS measures;¹⁰
- (d) 2 Parties have some related measures in place, however there is no indication in the report that they are developing more;¹¹
- (e) 1 Party reported having measures in place (answered “yes” to the question) but did not provide further information in their interim national report;¹² and

⁸ Denmark, European Union, Finland, Germany, Hungary, Japan, Malta, Mozambique, Netherlands, Portugal, Slovakia, South Africa, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Viet Nam

⁹ Antigua and Barbuda, Argentina, Bhutan, Bulgaria, Burkina Faso, Burundi, Cameroon, China, Comoros, Côte d'Ivoire, Cuba, Czech Republic, Dominican Republic, Egypt, Ethiopia, France, Guyana, Honduras, India, Indonesia, Jordan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Malawi, Mauritania, Mexico, Mongolia, Norway, Pakistan, Panama, Peru, Philippines, Republic of Moldova, Sao Tome and Principe, Senegal, Seychelles, Spain, United Arab Emirates, Uruguay, Zimbabwe

¹⁰ Belgium, Benin, Democratic Republic of the Congo, Gambia, Niger, Rwanda, Sierra Leone, Swaziland, Togo, Uganda

¹¹ Albania, Belarus

¹² Qatar

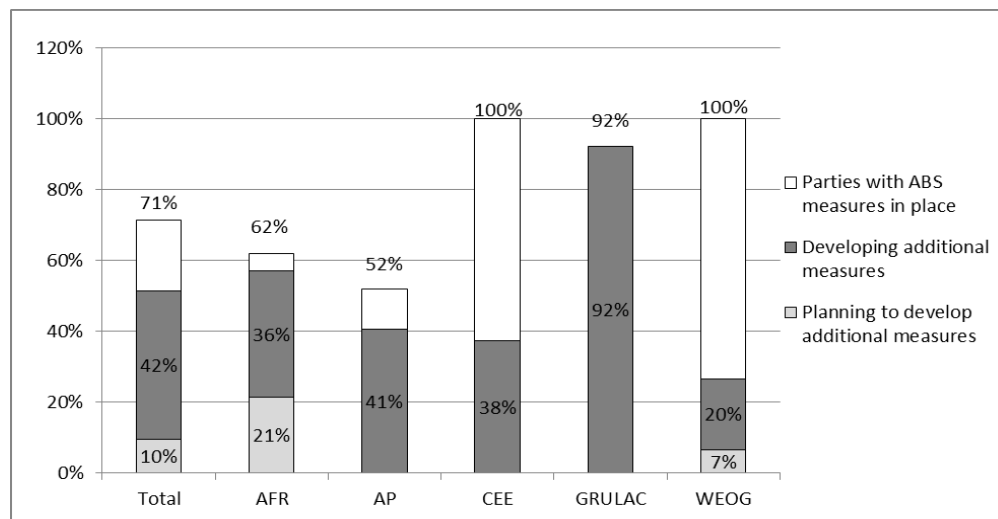
(f) 4 Parties have published measures in the ABS Clearing-House but have not submitted the interim national report, NBSAP or fifth national report. Therefore, there is no indication whether they are planning to develop additional measures.¹³

32. A total of 26 Parties (25% of 105 Parties) reported not having ABS measures in place and did not have measures published in the ABS Clearing-House. Based on the available information from these Parties:

- (a) 12 Parties are currently developing measures;¹⁴
- (b) 13 Parties are planning to develop ABS measures;¹⁵
- (c) 1 Party did not provide further information in its interim national report.¹⁶

33. The following graphs offer an overview of the information provided above.

Graph 2: Status of progress by Parties that have ABS measures in place (up to 22 February 2018)



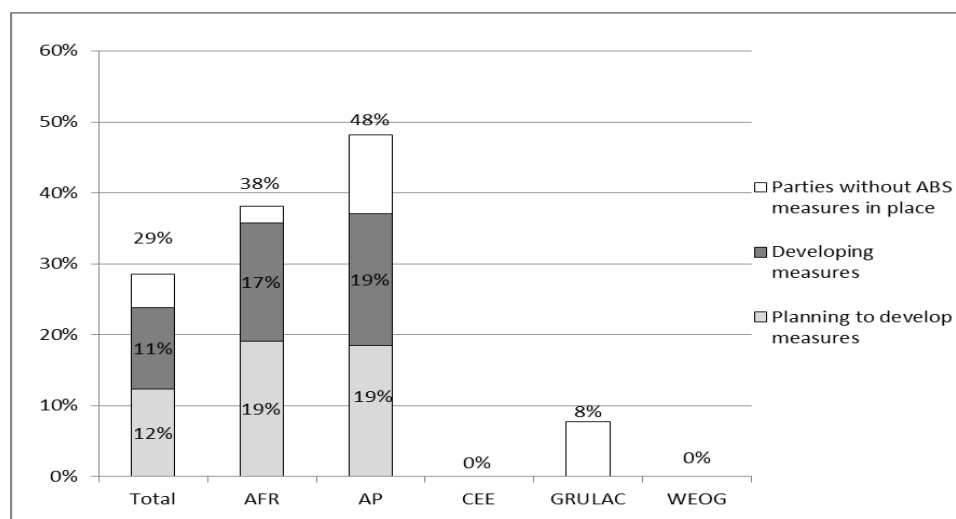
¹³ Croatia, Guatemala, Ecuador, Luxembourg

¹⁴ Angola, Cambodia, Congo, Djibouti, Lebanon, Liberia, Marshall Islands, Micronesia (Federated States of), Namibia, Republic of Korea, Sudan, United Republic of Tanzania

¹⁵ Botswana, Chad, Gabon, Guinea, Guinea-Bissau, Kazakhstan, Kuwait, Lesotho, Mauritius, Myanmar, Samoa, Tajikistan, Zambia

¹⁶ Mali

Graph 3: Status of progress by Parties that do not have ABS measures in place (up to 22 February 2018)



(b) Progress in establishing ABS legislative, administrative or policy measures to implement the provisions of the Protocol by non-Parties

34. Thirty non-Parties reported having ABS measures in place in the interim national report, NBSAP or fifth national report or have published measures in the ABS Clearing-House. Based on the available information, the following provides an overview of progress made by non-Parties:

(a) 3 non-Parties have adopted one or more ABS measures and there is no indication in the report that they are developing more;¹⁷

(b) 7 non-Parties have some measures in place and is currently revising existing or developing new ABS measures;¹⁸

(c) 13 non-Parties have some measures in place and is planning to develop additional ABS measures;¹⁹

(d) 2 non-Parties have some related measures in place, however there is no indication in the report that they are developing more;²⁰ and

(e) 3 non-Parties have published measures in the ABS Clearing-House but have not submitted information interim national report, NBSAP or fifth national report. Therefore, there is no indication whether they are planning to develop additional measures.²¹

35. In addition, 13 non-Parties²² are currently developing ABS measures and other 25²³ are planning to do so.

¹⁷ Costa Rica, Estonia, Poland

¹⁸ Algeria, Colombia, Georgia, Greece, Lithuania, Morocco, Nepal

¹⁹ Afghanistan, Australia, Austria, Canada, El Salvador, Ireland, Italia, Malaysia, Nicaragua, Romania, Slovenia, Solomon Islands, Thailand,

²⁰ Barbados, Venezuela (Bolivarian Republic of)

²¹ Brazil, Cyprus, Latvia,

²² Bahamas, Bahrain, Bangladesh, Brunei Darussalam, Central African Republic, Dominica, Palau, Paraguay, Singapore, Saint Lucia, State of Palestine, Timor-Leste, Tunisia

(c) Approaches taken by countries in establishing ABS legislative, administrative or policy measures

36. Information provided to the ABS Clearing-House and in the interim national reports indicates that different approaches have been taken to establish measures to implement the Protocol. The following provides some indicative examples of these different approaches.

37. *ABS strategies, policies and action plans:* With a view to developing a national vision for ABS, some countries have adopted strategies, policies and action plans as a precursor to the development of further ABS measures.

38. For example, a number of countries have developed a specific ABS policy or strategy²⁴ and some have developed ABS actions plans.²⁵ Several countries have opted for integrating an ABS component in National Biodiversity Strategy and Action Plans (NBSAPs),²⁶ and others have integrated ABS in broader policy instruments, such as environmental or biodiversity policy,²⁷ social and economic development,²⁸ or sustainable development instruments.²⁹

39. *Stand-alone ABS legislation:* In establishing ABS measures, some countries have decided to adopt stand-alone ABS legislation. For instance, China and Morocco are working on draft stand-alone measures to regulate ABS. Often ABS laws have remained focused on establishing general principles, mandates and procedures with specific aspects of applications left to regulations. For example:

(a) Ethiopia has issued Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation (No. 482/2006) and Regulation (No.169/2009) to implement fair and equitable sharing of benefits arising from the utilization of the genetic resources and community knowledge;

(b) Uganda adopted their national legislation on access to genetic resources and benefit-sharing in 2005 and developed guidelines for accessing genetic resources and benefit-sharing in 2007.

40. *ABS framework composed of different sectoral legislation:* Some countries have an ABS framework which is composed of several laws addressing different aspects of ABS. For example:

(a) The Norwegian ABS Framework consists of the Nature Diversity Act, the Marine Resources Act, The Patents Act, and the Act relating to the Plant Breeder's Right;

(b) Peru's ABS framework includes eleven relevant measures (as provided in the ABS Clearing-House), including regional measures (Andean Community decisions 391 and 486), as well as different regulations and decrees addressing genetic resources and traditional knowledge and other related issues;

(c) Sudan has two proposed laws relevant to ABS, one on access to genetic resources and associated traditional knowledge and benefit-sharing and the other on plant genetic resources to address access and benefit-sharing issues. These laws are in addition to other measures, such as the Forests and Renewable Natural Resources Act of 2002 and the 2006 Forest Policy (Amendment 2015 under approval), that emphasize the importance of access and benefit-sharing and contain specific clauses in this regard.

²³ Armenia, Belize, Bosnia and Herzegovina, Cabo Verde, Chile, Cook Islands, Equatorial Guinea, Eritrea, Ghana, Grenada, Jamaica, Kiribati, Maldives, Nauru, Nigeria, Niue, Papua New Guinea, Russian Federation, Sri Lanka, Saint Kitts and Nevis, The former Yugoslav Republic of Macedonia, Tonga, Trinidad and Tobago, Ukraine, Yemen

²⁴ E.g. Bhutan, Burundi, Cameroon, Côte d'Ivoire, Indonesia, Lao People's Democratic Republic, Senegal, Togo

²⁵ E.g. Cameroon, Indonesia, Mexico, Senegal

²⁶ E.g. Cuba, Democratic Republic of Congo, Ecuador, Germany, Republic of Moldova, Uruguay, Viet Nam

²⁷ E.g. Ethiopia, Peru

²⁸ E.g. Cuba

²⁹ E.g. Mongolia

41. *Revising the general environmental legislation to incorporate ABS:* Some countries have revised their biodiversity or environmental laws to incorporate chapters addressing ABS. For instance:

(a) Antigua and Barbuda's ABS legislation was included as part of their broader Environmental Protection Law of 2015 (Part VIII);

(b) The Democratic Republic of the Congo included a chapter on "biological and genetic resources and traditional knowledge" in a 2014 update to its general conservation law;

(c) Dominican Republic revised their biodiversity sectorial law (333-15) to serve as a legal basis for developing additional measures on ABS;

(d) In Malawi, the 2017 revised Environment Management Act contains substantial provisions to regulate and promote ABS. The Act also provides for the development of regulations and guidelines for ABS issues in Malawi.

42. *Adopting ABS regulations under broader legislation:* Very often countries have adopted ABS regulations on the basis of a broader environmental or biodiversity legislation; for example:

(a) Burkina Faso is preparing a draft law to implement the Nagoya Protocol under the agro-silvo-pastoral, halieutic and wildlife law (No 14/003);

(b) In South Africa, Chapter 6 of the National Environmental Management Act was given effect by the Regulations on Bioprospecting, Access and Benefit Sharing (BABS Regulations) which entered into force on 1 April 2008. These Regulations have since been amended and came into force on 19 May 2015;

(c) Switzerland's Nagoya Ordinance (which entered into force 1 February 2016) is based on specific articles of the Federal Act on the Protection of Nature and Cultural Heritage;

(d) Spain's 2007 Natural Heritage and Biodiversity Law updated by Law 33/2015, created the basis for adopting Decree 124/2017 on access to genetic resources originating from wild taxa and control of their use.

43. *Using administrative measures:* Some countries have opted for adopting administrative measures to implement ABS. For instance, Comoros reported having taken administrative measures and Swaziland has developed administrative guidelines. Other countries have used administrative measures to complement the existing framework, such as:

(a) Bhutan has an ABS Policy from 2015 and is revising the Biodiversity Act of Bhutan 2003. In addition, Bhutan issued five executive orders with regard to ABS in the country;

(b) India enacted the Biological Diversity Act in 2002 and notified the Rules (Biological Diversity Rules) in 2004 to give effect to the provisions of the Convention including those relating to ABS. The Nagoya Protocol is also being implemented through the Biological Diversity Act, 2002 at the national level. For the implementation of several of the provisions of this Act, several notifications have been issued so far as well as the Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations of 2014.

44. *Interim measures:* Two countries reported having adopted interim measures while a more developed framework is being put in place:

(a) Benin adopted a national ABS strategy which calls for the creation of a law, but, as this was considered a lengthy process, in the meantime, Benin has drafted and adopted interim directives with a view to bring legal certainty and transparency to access to genetic resources and associated traditional knowledge. These guidelines are to be reviewed as more experience is acquired;

(b) Uruguay is presently elaborating an ABS legal framework as stipulated in the General Law of Protection of the Environment N° 17.283. Until the national legal framework is in place, the Ministry of Housing, Territorial Planning and the Environment approved a Ministerial Resolution to regulate access and benefit-sharing of genetic resources as a temporary measure.

45. *Regional measures complemented by national measures:* Some regions have adopted a regional approach to the establishment of measures to be further complemented by national measures. This would be the case, for instance, of the European Union and its Member States as well as the Andean Community.

46. The European Union reported that the European Union (EU) has a specific legal framework due to its character as a regional economic integration organization and the division of competences between the EU and the Member States. The European Union has adopted the following measures: (a) Regulation (EU) 511/2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union; (b) the Commission Implementing Regulation (EU) 2015/1866 laying down detailed rules for the implementation of Regulation (EU) 511/2014 as regards register of collections, monitoring user compliance and best practices; and (c) Commission Notice-Guidance document on the scope of application and core obligations of Regulation (EU) 511/2014 (2016/C 313/1). Some Member States, in addition to the EU measures, reported on the development of national measures to implement the Protocol.³⁰

3. *Has your country designated a national focal point as provided in Article 13? (question 5)*

47. As of 22 February 2018, most countries, both Parties and non-Parties, have designated a NFP. As presented in the table below, 103 Parties to the Nagoya Protocol designated a national focal point for ABS (98% of Parties)³¹ and only two Parties³² had not. 67 non-Parties have designated a NFP on ABS.

Table 2: Progress in designating a national focal point up to 22 February 2018

	Parties to the Nagoya Protocol	Non-Parties to the Nagoya Protocol	Total Countries
Designated NFP	103 (98%)	67 (72%)	170 (86%)
No designated NFP	2 (2%)	26 (28%)	28 (14%)

48. The approach taken by most countries was to designate someone in the ministry in charge of environment or in a related institution (these could include agencies, departments, councils, offices or authorities). This was true for 78% of all countries that have a NFP (132 countries).

49. Other types of institutions that are commonly designated as NFPs are those related to science, technology, and research, which was the case for 9 countries, ministries of agriculture and/or forests (9 countries) and ministries of foreign relations or foreign affairs (8 countries).

4. *Has your country designated one or more competent national authority as provided in Article 13 (question 6)*

50. As of 22 February 2018, according to the information included in the ABS Clearing-House and in the interim national reports, 65 countries had established one or more competent national authorities (CNAs) as follows:

(a) 57 Parties (54%) designated one or more CNAs. Out of 57 Parties, 45³³ made this information available to the ABS Clearing-House³⁴ and 11 Parties³⁵ identified CNAs in their interim

³⁰ Bulgaria, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland

³¹ Kyrgyzstan and Kazakhstan have NFPs in the ABS Clearing-House however they answered “no” to question 5 of the interim national report.

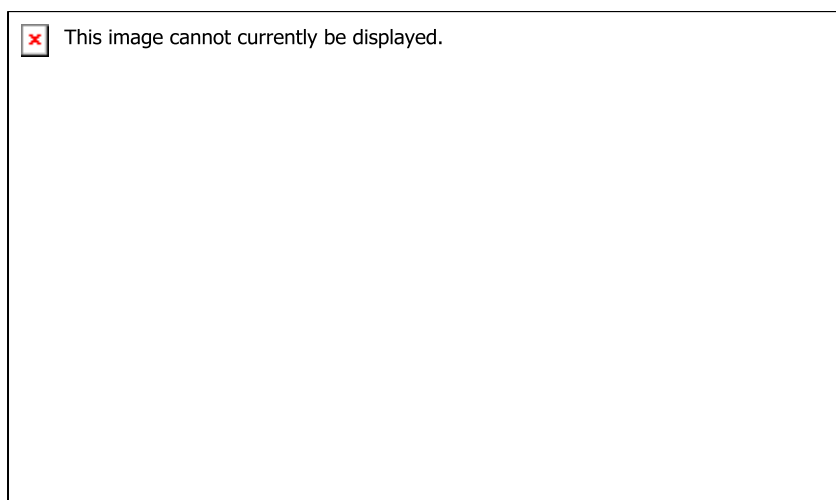
³² Marshall Islands, Zimbabwe

national report, NBSAP or fifth national report but had not yet made available this information in the ABS Clearing-House;

(b) 8 non-Parties had designated one or more CNA and published the information in the ABS Clearing-House.³⁶

51. In their reports, 9 Parties³⁷ and one non-Party³⁸ reported on work underway towards the designation of one or more CNAs; and another 5 Parties³⁹ were planning to do so.

Graph 4: Status of progress by countries in the designation of one or more competent national authorities (up to 22 February 2018)



52. An examination of available information in the interim national report and the ABS Clearing-House reveals that the majority of countries with a CNA designated a single CNA for the Protocol (44 countries); while 16 countries designated more than one CNA.⁴⁰ For 43 countries the NFPs also fulfil the role of CNA.

53. One country explained that designating a CNA was not applicable for them, since they made a determination not to established access measures based on Article 6.1 for the time being.⁴¹

54. Of the 16 countries that have multiple CNAs, some have designated the CNAs based on the type of genetic resources that are being accessed or the sectors involved.⁴² Some of the sectors typically involved are wild genetic resources, microorganisms, forest, fisheries, agriculture and livestock, science and technology or traditional knowledge. For example:

³³ Albania, Antigua and Barbuda, Belarus, Benin, Bulgaria, Burundi, Cambodia, Comoros, Côte d'Ivoire, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ethiopia, Finland, Gambia, Germany, Guatemala, Guinea-Bissau, Honduras, Hungary, India, Kenya, Malawi, Malta, Mauritania, Mexico, Netherlands, Norway, Panama, Peru, Portugal, Republic of Moldova, Sao Tome and Principe, Seychelles, Slovakia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Uganda, United Kingdom of Great Britain and Northern Ireland, Viet Nam

³⁴ Three of these Parties had entered some of the information in the ABS Clearing-House but not all.

³⁵ Bhutan, Cuba, France, Guinea, Indonesia, Kyrgyzstan, Lao People's Democratic Republic, Mongolia, Qatar, Rwanda, Swaziland, United Republic of Tanzania

³⁶ Brazil, Costa Rica, Eritrea, Estonia, Grenada, Poland, Saint Kitts and Nevis, Singapore

³⁷ Burkina Faso, China, Congo, Kazakhstan, Kuwait, Madagascar, Pakistan, Namibia, Republic of Moldova

³⁸ Morocco

³⁹ Botswana, Cameroon, Djibouti, Senegal, Sudan

⁴⁰ Three countries (Qatar, Rwanda and Swaziland) did not specified in their report the number of CNAs.

⁴¹ Japan

⁴² E.g. Bulgaria, Estonia, Finland, Indonesia, Mexico, Peru, Syrian Arab Republic and Viet Nam

(a) Bulgaria has three CNAs: the Ministry of Environment and Water for genetic resources from wild species and serves as a coordinating authority; the Ministry of Agriculture Food and Forests for agriculture and forest genetic resources; and the Ministry of economics for industrial microbiological genetic resources;

(b) Peru has designated five CNAs. The Ministry of Environment is the CNA responsible for approving the national policy and the guidelines and norms for the management of the genetic resources, while other CNAs (ministries and institutes) are designated as administrative and execution authorities responsible for handling the permitting process and signature of access contracts within their sectors (e.g. agriculture, fisheries, traditional knowledge).

55. Other Parties have multiple CNAs related to various territorial jurisdictions or based on where the genetic resource was accessed. For example:

(a) Cambodia designated a CNA for access to genetic resources nationwide and another more specifically dealing with access in protected areas. Mexico also designated a CNA to deal specifically with access to genetic resources in protected areas;

(b) France and Portugal foresee the establishment of distinct CNAs for overseas territories.

5. *Has your country made available to the ABS Clearing-House permits or their equivalents issued at the time of access as evidence of the decision to grant prior informed consent (PIC) and of the establishment of mutually agreed terms (MAT)?/ Has your country made available to the ABS Clearing-House permits or their equivalent for the constitution of the internationally recognized certificate of compliance (IRCC)?/ Number of permits or their equivalents made available through the ABS-Clearing-House since the entry into force of the Protocol for your country e (questions 7, 8 and question 16)*

56. Given the similarities between questions 7, 8 and 16, the answers are presented together. In particular, the following table provides an overview of information provided in answers to question 7 and 8 of the reports and the information available in the ABS Clearing-House.

Table 3: Parties with information on permits or their equivalent published in the ABS Clearing-House up to 22 February 2018

Party	Answer provided to question 7	Answer provided to question 8	Number of IRCC available in the ABS Clearing-House
Albania	Yes	No	0
Belarus	Not applicable since no access requirements are in place	Not applicable since no access requirements are in place	1
Bulgaria	Yes	Yes	3
Dominican Republic	Yes	Yes	1
Guatemala	Did not submit report	Did not submit report	2
India	Yes	Yes	86
Kenya	Yes	Yes	5
Malta	Yes	Yes	1
Mexico	Yes	Yes	3
Panama	Yes	Yes	12
Peru	Yes	Yes	1
South Africa	Yes	Yes	24
Spain	Yes	Yes	7

57. A total of 12 Parties have IRCCs published in the ABS Clearing-House.

58. The following table provides an overview of the number of permits or their equivalent reported by countries in the interim national report.

Table 4: Countries that reported having issued permits or their equivalents

Country	Number of permits or equivalents issued	Country	Number of permits or equivalents issued
Bhutan	Number unknown	Malawi	15 export permits
Bulgaria	1	Malta	1
Cuba	6 (2017) and 3 (2016)	Mexico	3
Côte d'Ivoire	Number unknown	Peru	87 (2009-2016)
Dominican Republic	4 with a pharmaceutical company and 3 with national universities	Seychelles	92 (since 2015)
Ethiopia	Number unknown	South Africa	56 permits (since 2008)
India	75	Spain	4 for non-commercial research
Kenya	70	Uganda	40 material transfer agreements and access permit (mainly for research purposes)

59. In comparing the IRCCs published in the ABS Clearing-House with the information on permits or their equivalent issued that was provided in the interim national reports, 11 Parties⁴³ could be identified which have permits that still need to be made available to the ABS Clearing-House.

60. The following highlights the information provided by countries that reported having issued permits or their equivalents:

(a) Côte d'Ivoire indicated that they were issuing permits and that those could only be made available to the ABS Clearing-House once the ABS measures were adopted;

(b) Ethiopia stated having issued many access permits for non-commercial and commercial purposes; however, those had not yet been published due to technical problems accessing the ABS Clearing-House, slow internet connection and lack of awareness on how to publish information;

(c) Kenya indicated that they were now streamlining the access permit with the IRCC and that the online system was yet to be completed. They indicated that only access permits had been published, and that other permits that informed the PIC and MAT processes, such as the research clearance permit, were yet to be included in the ABS Clearing-House;

(d) Peru reported having a total of 87 authorizations until 2016, all for non-commercial purposes. Peru also reported that they were working on the formalization of an information sheet about the IRCC to facilitate the transmission of information on permits already granted by the CNAs. Once this information on permits was reported to the publishing authority and the competent ministry, all permits granted would be published;

(e) South Africa indicated that 56 permits had been issued since 2008 when the ABS law came into force. Copies of these permits were not available in the ABS Clearing-House because they were treated as confidential information in terms of the South African ABS law. Insufficient human resources were also identified as a challenge for publishing information;

(f) Cuba and Bhutan identify issues related to the designation of authorities as the reason for not having published information on permits in the ABS Clearing-House.

61. In their answers, two countries reflected on how their existing requirements for access to genetic resources could be seen as equivalent to PIC and MAT:

⁴³ Bhutan, Cuba, Côte d'Ivoire, Dominican Republic, Ethiopia, Kenya, Malawi, Peru, Seychelles, South Africa, Uganda

(a) Lao People's Democratic Republic explained that their existing contracts and/or agreements (e.g. memorandum of agreement, material transfer agreements and memorandum of understandings) applied to the utilization of genetic resources and traditional knowledge associated with genetic resources and included the terms and conditions for the research activities. They further explained that based on the Nagoya Protocol, the agreements might be seen as an equivalent to PIC and MAT;

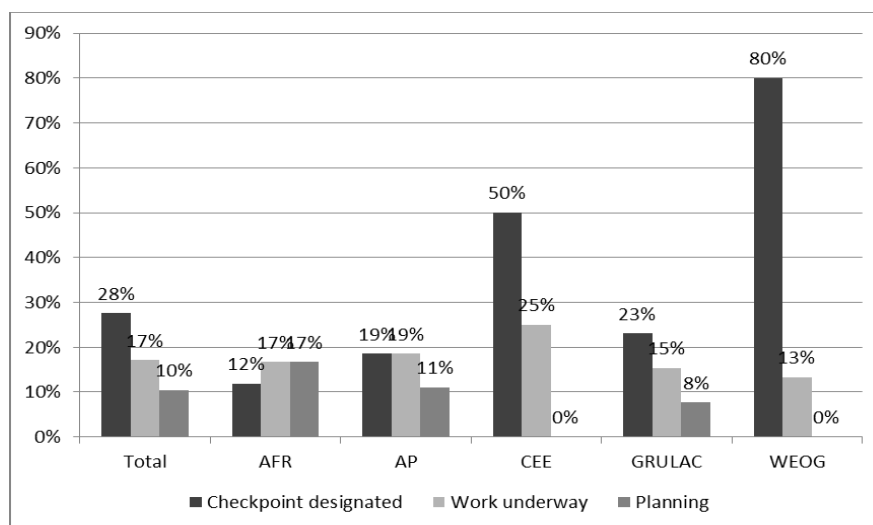
(b) Switzerland reported that the country had established a documentation and notification requirement for access to domestic genetic resources. Even though PIC and the establishment of MAT were not required, the notifications could be seen as permit equivalents and be used for the constitution of the IRCC.

6. *Has your country designated one or more checkpoints as provided in Article 17 (question 9)*

62. As of 22 February 2018, 30 countries had designated one or more checkpoints: 29 Parties⁴⁴ and 1 non-Party⁴⁵. 8 Parties⁴⁶ identified checkpoints in the interim national report but have not yet made available this information in the ABS Clearing-House.⁴⁷

63. In their reports, 18 Parties⁴⁸ and 1 non-Party⁴⁹ reported on work underway to designate one or more checkpoints and 11 Parties⁵⁰ reported that they were planning to do so.

Graph 5: Status of progress by countries in the designation of one or more checkpoints (up to 22 February 2018)



64. In their report, the European Union provided information on the establishment of two checkpoints which are applicable in all Member States. Pursuant to Article 7(1) and 7(2) of Regulation 511/2014,⁵¹

⁴⁴ Belarus, Bhutan, Bulgaria, Cuba, Denmark, Dominican Republic, European Union, Finland, France, Germany, Hungary, Indonesia, Japan, Kenya, Malta, Mauritania, Netherlands, Peru, Portugal, Qatar, Rwanda, Slovakia, Spain, South Africa, Swaziland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Viet Nam

⁴⁵ Poland

⁴⁶ Bhutan, Cuba, France, Indonesia, Qatar, Rwanda, Swaziland, Viet Nam

⁴⁷ Three of these Parties have only entered some of their designated checkpoints in the ABS Clearing-House but not all.

⁴⁸ Albania, Antigua and Barbuda, Belgium, Benin, Burundi, China, Congo, Côte d'Ivoire, Czech Republic, Guinea-Bissau, India, Kuwait, Lao People's Democratic Republic, Mexico, Norway, Philippines, Sao Tome and Principe, Seychelles

⁴⁹ Morocco

⁵⁰ Democratic Republic of Congo, Ethiopia, Guinea, Kazakhstan, Kyrgyzstan, Madagascar, Pakistan, Senegal, Sudan, Togo, Uruguay

competent authorities designated in Member States receive information as provided in Article 17(1) of the Protocol from the users in their jurisdiction. More specifically:

(a) The 1st checkpoint (competent authorities designated by individual Member States under Regulation 511/2014) receives due diligence declarations from researchers carrying out research in the EU. All recipients of research funding in the form of a grant, where such research involves utilization of genetic resources and traditional knowledge associated with genetic resources, are to be requested either by the European Commission or by the Member State to declare that they exercised due diligence. The template for this declaration is contained in annex II of the Commission Implementing Regulation;

(b) The 2nd checkpoint (competent authorities designated in Member States under Regulation 511/2014) gathers due diligence declarations at the final stage of product development. The template for this declaration is contained in annex III of the Commission Implementing Regulation. Specific events triggering submission of the declaration are defined in Article 6 of the Commission Implementing Regulation;

65. For both checkpoints, the authorities referred to above transfer the information to the ABS Clearing-House, provided it is not confidential. Alternatively, in case crucial information for publishing of a checkpoint communiqué is indicated as confidential and a checkpoint communiqué can thus not be published, the authorities contact the competent national authorities of the country providing genetic resources directly.

66. An examination of the information provided shows that countries have designated different types of authorities to serve as checkpoints. 12 countries⁵² have designated a single authority, while 14 Parties⁵³ designated multiple authorities to operate as checkpoints.⁵⁴

67. In 19 countries⁵⁵ the CNA also serves as a checkpoint and very often the institution designated as a checkpoint is related to a governmental environment authority.⁵⁶ The following provides an indication of some of the areas where checkpoints have been designated: (a) agriculture, forest and/or food⁵⁷; (b) border or customs;⁵⁸ (c) intellectual property rights;⁵⁹ (d) plant protection, veterinary, pests;⁶⁰ (e) science;⁶¹ (f) research and development⁶²; (g) research funding agency;⁶³ (h) pharmacy or health;⁶⁴ (i) economy or business;⁶⁵ or (j) market approval.⁶⁶

⁵¹ Commission Implementing Regulation (EU) 2015/1866 of 13 October 2015 is laying out detailed rules for the implementation of Regulation (EU) No 511/2014 of the European Parliament and of the Council as regards the register of collections, monitoring user compliance and best practices.

⁵² Belarus, Denmark, Germany, Indonesia, Japan, Malta, Netherlands, Poland, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland

⁵³ Bhutan, Bulgaria, Cuba, Dominican Republic, Finland, France, Hungary, Kenya, Mauritania, Peru, Slovakia, South Africa, Switzerland, Viet Nam

⁵⁴ It is unknown how many checkpoints Qatar, Rwanda and Swaziland had, as they did not specify this in their report.

⁵⁵ Belarus, Bulgaria, Cuba, Denmark, Dominican Republic, Finland, Germany, Hungary, Malta, Mauritania, Poland, Portugal, Slovakia, South Africa, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Viet Nam

⁵⁶ Belarus, Bulgaria, Denmark, Dominican Republic, Finland, Germany, Japan, Mauritania, Portugal, Slovakia, Spain, South Africa, Sweden, Switzerland

⁵⁷ E.g. Bulgaria, Denmark, Kenya, Madagascar, Netherlands, Slovakia

⁵⁸ E.g. Cuba, Kenya, Lao People's Democratic Republic, South Africa

⁵⁹ E.g. Bhutan, Cuba, France, Kenya, Peru, South Africa, Switzerland

⁶⁰ E.g. Hungary, Kenya, Malta, Slovakia

⁶¹ E.g. Dominican Republic, Hungary, Kenya

⁶² E.g. Hungary

⁶³ E.g. Slovakia

⁶⁴ E.g. Hungary, Slovakia

⁶⁵ E.g. Bulgaria, United Kingdom of Great Britain and Northern Ireland

68. Some countries with designated checkpoints shared their plans to designate additional ones.⁶⁷ For instance, Peru, in addition to the already designated checkpoints (the National Commission against Biopiracy and the intellectual property rights office, INDECOPI), is considering designating other institutions along the value chain, such as the institutions that: (a) fund scientific research; (b) grant sanitary registries; (c) control pharmaceutical products; or (d) deal with taxes.

69. Some countries that reported not yet having designated one or more checkpoints also shared information on their progress and plans. For example, China is currently developing a regulation on access to genetic resources and benefit-sharing from their utilization, which will require the establishment of a checkpoint at sectoral level and multiple checkpoints involving the departments of agriculture, forestry, education, science and technology, customs administration, examination and quarantine, and intellectual property rights administration. Mexico, for example, is carrying out pilot work towards the establishment of checkpoints, particularly for research and development activities.

7. *Additional information: summary of the main difficulties and challenges (question 10)*

70. In their reports, many Parties highlighted that the Nagoya Protocol was a new instrument, especially for those who just recently ratified it, and that they were still in the process of establishing access and benefit-sharing (ABS) measures and appropriate institutional arrangements.

71. Many Parties highlighted the cross-cutting nature of the Protocol, which is relevant to many sectors, and the need to involve many actors as an important challenge for the adoption of measures and progress towards implementation. A number of Parties recognized that this created challenges in implementation at two levels: first, in ensuring participation in ABS processes of indigenous peoples and local communities and relevant stakeholders; and second, at the institutional level, many highlighted the need for better coordination among different institutions and relevant agencies and ministries. Some also reported a lack of clear division of competencies between institutions, and either having gaps or overlaps in mandates on issues related to ABS.

72. Some explained in their reports difficulties experienced in developing ABS measures that take into account many different considerations (e.g. many sectors and actors, or the different articles of the Nagoya Protocol), while at the same time adopting measures that are balanced, promote benefit-sharing and legal certainty, and avoid complexity, delays and increased burden and costs on users.

73. Some Parties noted that the process for adopting ABS measures and making progress in implementation of the Protocol was more time consuming and slower than expected.

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

75. The lack of human resources working on ABS and the Nagoya Protocol also seems to be a challenge for many Parties. Many Parties indicated having limited human resources working on Nagoya Protocol implementation and that available staff is either temporary or has other responsibilities.

76. Many highlighted the need for building capacity and raising awareness of the Protocol of all actors involved, including institutions, indigenous peoples and local communities and relevant stakeholders (e.g. business and scientific community).

77. Many Parties considered that the difficulties mentioned above were hindering progress in adopting legislative, administrative and policy measures (ABS measures) and establishing institutional

⁶⁶ E.g. France

⁶⁷ Cuba, Kenya, Peru

arrangements to implement the Protocol, with the exception of the designation of the national focal point where Parties generally felt that there were no challenges to report.

78. The lack of ABS measures and/or institutional arrangements was considered by many as the main reason for not having made progress in the publication of mandatory information in the ABS Clearing-House, including in the constitution of the internationally recognized certificates of compliance.

79. In general, for many Parties, progress regarding the establishment of competent national authorities and checkpoints is tied to progress in adopting the necessary ABS measures. Some measures adopted prior to the Nagoya Protocol include the designation of one or more competent national authorities. However, the designation of checkpoints and the compliance provisions in general are one of the innovations of the Protocol, therefore many Parties still need to adopt or review ABS measures to incorporate these elements.

80. In addition to general difficulties in terms of resources and capacity; the most common challenges mentioned in designating one or more CNAs relate to clarifying mandates between institutions and agencies, ensuring coordination among CNAs, as well as between the CNA and other national institutions. On the other hand, some Parties reported not having experienced major difficulties in establishing competent national authorities.

81. With regard to checkpoints, some Parties identified the need for further analysis or studies as well as capacity-building to implement the compliance related provisions of the Protocol. A number of Parties, in defining checkpoints, considered it challenging to strike a balance between having effective checkpoints, covering the full range of relevant ABS activities, while avoiding creating unnecessary administrative burdens.

82. Some Parties reported that there were no perceived challenges in making information available in the ABS Clearing-House. Some of the difficulties and challenges identified by other Parties are the following: (a) delays in the designation of the publishing authority; (b) frequent changes in responsible authorities; (c) need for translation of the ABS Clearing-House in languages; (d) need for capacity to use the ABS Clearing-House; and (e) technical difficulties.

83. With respect to the internationally recognized certificates of compliance, Parties that reported having issued permits or their equivalents identified the following constraints for publishing this information in the ABS Clearing-House: (a) the need to adopt ABS measures; (b) technical problems accessing the ABS Clearing-House; (c) the need to streamline the process for making permits available to the ABS Clearing-House; (d) lack of human resources; (e) need for capacity-building; and (f) delays in the designation of publishing authorities.

84. Some countries that have already made available permits to the ABS Clearing-House noted the need to make the transfer of information to the ABS Clearing-House less time consuming. For example, a country explained that the fact that the format of the agreement was different from the IRCC format made the submission of information time consuming; another country noted that automatized transfer to the ABS Clearing-House was desirable; and other countries reported to be working on improving a standardized flow of information on permits from the CNA to the publishing authority to facilitate the publication of information on the ABS Clearing-House.

85. Some countries also mentioned the need to develop databases about genetic resources or information systems related to ABS.

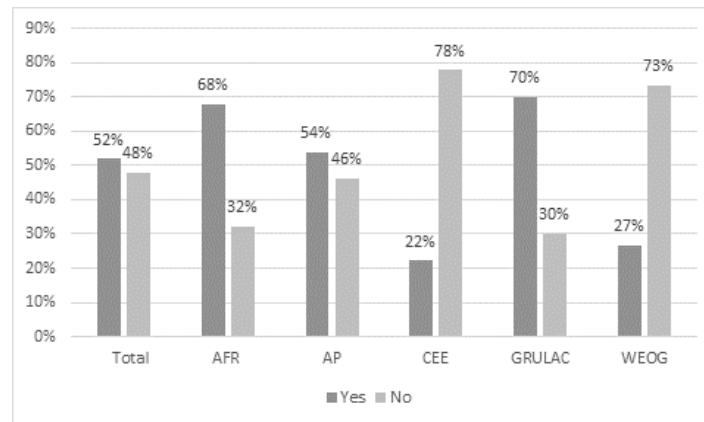
B. ABS measures: Access to genetic resources (Article 6) (questions 11 to 19)

1. Is access to genetic resources subject to PIC as provided in Article 6.1? (question 11)

86. Thirty-seven Parties and two non-Parties responded that access to genetic resources was subject to PIC while thirty-two Parties and four non-Parties indicated that access to genetic resources was not subject to PIC. Countries that answered “yes” were invited to answer questions 12 to 17, related to access.

87. The following provides the percentage of countries that answered “yes” and “no” to this question by region.

Graph 6: Access to genetic resources subject to PIC (percentage of countries)



(a) *Countries that answered “yes”*

88. Some countries referred to relevant ABS measures that include requirements for PIC or some kind of permit⁶⁸. Many countries based their answer on relevant measures that require a permit for access but that do not necessarily regulate ABS;⁶⁹ and some expressed that they are working on additional ABS measures providing details on PIC requirements.⁷⁰

89. In their response, Mexico emphasized that, according to their constitution, by ratifying the Protocol the treaty becomes incorporated into the Mexican legal system. Therefore, with the support of secondary legislation related to this matter, it can be invoked and applied by national authorities in the national territory

(b) *Countries that answered “no”*

90. Many countries noted in their answers that even though PIC was not required or ABS measures had not yet been established, other national legislations may apply that establish conditions for access or restrictions, such as: legislation on species protection or trade, conservation, territorial protection, plant genetic resources for food and agriculture, animal and plant diseases, scientific research, and private property rights.⁷¹ A number of countries explained that they were working or planning to require PIC for access to genetic resources.⁷²

91. In providing further information, some countries mentioned the following:

(a) Belarus indicated that even though there was no access regulation in place, in accordance with Article 33 of the Law of the Republic of Belarus "On International Treaties of the Republic of Belarus", the Nagoya Protocol must be observed by all legal entities and individuals;

(b) Barbados explained that administrative procedures were implemented to ensure the equitable sharing of benefits derived from scientific research on Barbados' genetic resources;

⁶⁸ E.g. Albania, Antigua and Barbuda, Benin, Bulgaria, Dominican Republic, Ethiopia, Guinea, India, Peru, Swaziland, Uganda, Viet Nam

⁶⁹ E.g. Botswana, China, Côte d'Ivoire, Comoros, Cuba, Democratic Republic of the Congo, Mauritania,

⁷⁰ E.g. China, Côte d'Ivoire, Comoros, Democratic Republic of the Congo, Mexico, Morocco, Senegal,

⁷¹ E.g. Austria, Burkina Faso, Burundi, Denmark, Congo, Germany, Japan, Kazakhstan, Lao People's Democratic Republic, Mongolia, Netherlands, Niger, Republic of Moldova, Sudan, Sweden, United Kingdom of Great Britain and Northern Ireland

⁷² E.g. Belarus, Burkina Faso, Burundi, Cameroon, Guinea Bissau, Kuwait, Lao People's Democratic Republic, Pakistan, Norway, Sudan, Uruguay

(c) The European Union indicated that there are no access measures established at the EU level; however EU Member States may establish measures at the national level if they wish. In their reports, Bulgaria, Spain and Malta reported that access to genetic resources in their country was subject to PIC;

(d) Japan reported that it will review the need for access measures at a later date after reviewing the effect of existing ABS guidelines;

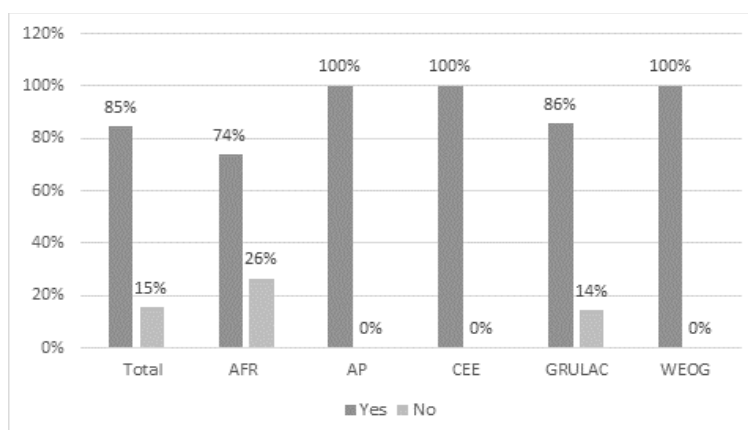
(e) Sao Tome and Principe reported having an informal authorization system in place;

(f) Switzerland explained that users of genetic resources are subject to a documentation requirement, and, in case of commercialization, to a notification requirement.

2. *Does your country have fair and non-arbitrary rules and procedures on accessing genetic resources as provided in Article 6.3 (b)? ” (question 12)*

92. Thirty-seven Parties and two non-Parties responded that access to genetic resources was subject to PIC and responded to this question. Thirty-one Parties and two non-Parties responded that they have fair and non-arbitrary rules and procedures on accessing genetic resources, while six Parties indicated not having fair and non-arbitrary rules and procedures on accessing genetic resources.

Graph 7: Fair and non-arbitrary rules and procedures on accessing genetic resources (percentage of countries)



(a) *Countries that answered “yes”*

93. Some countries made reference to relevant ABS measures dealing with access rules and procedures⁷³ or referred to their plans or work to put the necessary measures in place.⁷⁴ Two countries⁷⁵ provided detailed information on the rules and procedures for access.

94. In providing further information, some countries mentioned the following:

(a) Benin and Madagascar specified in their report that their ABS requirements applied equally to national and foreign applicants.

(b) South Africa reported that the procedures and rules are the same for all persons, but they noted that according to the Regulations a permit application may only be submitted by: (i) a natural person registered in terms of South African law; (ii) a natural person, who is a South African citizen or permanent resident of South Africa; or (iii) a juristic person that is not registered in terms of South African law or a natural person who is not a South African citizen or permanent resident of South Africa,

⁷³ E.g. Antigua and Barbuda, Albania, Benin, Bhutan, Bulgaria, Democratic Republic of the Congo, Dominican Republic, Ethiopia, India, Kenya, Malta, Panama, Peru, Portugal, Spain, South Africa, Swaziland, Uganda, Viet Nam

⁷⁴ E.g. China, Kenya, Malawi, Morocco, Panama

⁷⁵ Viet Nam, Uganda

if that juristic person or foreign national applies jointly with juristic or natural person referred to in paragraph (i) or (ii) above.

95. However, it should be noted that the majority of countries answered this question in a generic manner referring, for instance, to the requirement for PIC, and not addressing specifically whether the procedures and rules for accessing genetic resources were fair and non-arbitrary.

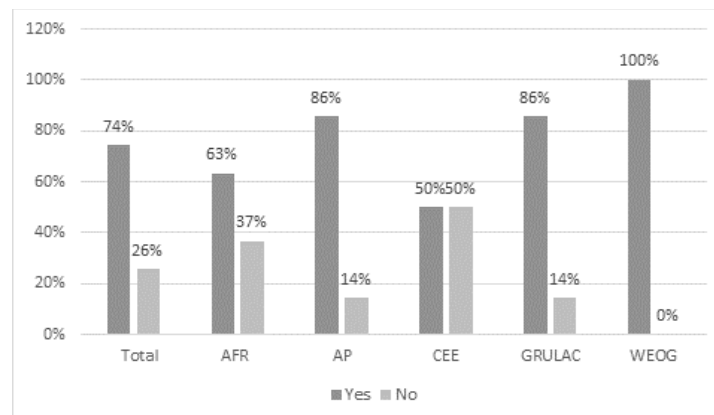
(b) *Countries that answered “no”*

96. Three of the countries that answered “no” to the question, when providing more information noted that they were planning to do so as part of the work underway.⁷⁶

3. *Does your country provide information on how to apply for PIC as provided in Article 6.3(c)? (question 13)*

97. Thirty-seven Parties and two non-Parties responded that access to genetic resources was subject to PIC and responded to this question. Twenty-seven Parties and two non-Parties responded that they provide information on how to apply for PIC, while ten Parties indicated that they do not provide such information.

Graph 8: Provision of information on how to apply for PIC (percentage by countries)



98. Three countries⁷⁷ that answered “no” to the question and four⁷⁸ that answered “yes” explained that information was provided by the NFP and/or the CNA at the request of users.

(a) *Countries that answered “yes”*

99. A number of countries made reference to the relevant ABS measures⁷⁹ and/or drafts underway.⁸⁰

100. In addition, countries reported on different ways of providing information on how to apply for PIC, such as through: (a) the application for PIC/MAT or permits or their equivalent;⁸¹ (b) guidelines for users on PIC procedures;⁸² (c) websites;⁸³ and (d) other awareness-raising activities and materials.⁸⁴ For example:

⁷⁶ Botswana, Mexico, Senegal

⁷⁷ Comoros, Côte d’Ivoire, Togo

⁷⁸ France, Malawi, Mexico, Seychelles

⁷⁹ E.g. Antigua and Barbuda, China, Dominican Republic, Ethiopia, India, Malta, South Africa, Spain, Swaziland, Viet Nam

⁸⁰ E.g. Bulgaria, China, Dominican Republic, Malawi, Morocco

⁸¹ E.g. Benin, India, Madagascar, Mexico

⁸² E.g. India, Kenya, Malta, Uganda

(a) India indicated that information on how to apply for PIC is provided in the Biological Diversity Rules, 2004. Further, ABS Regulations, 2014, provide a transparent procedure and information on how to apply for PIC. The CNA provides adequate information such as: user guidelines, interactive videos, online ABS application format and process, and FAQs to facilitate applying for PIC;

(b) Viet Nam's Decree No. 59/2017/ND-CP specifies that applications can be submitted directly at the head office of the competent state agency, sent by post or registered electronically.

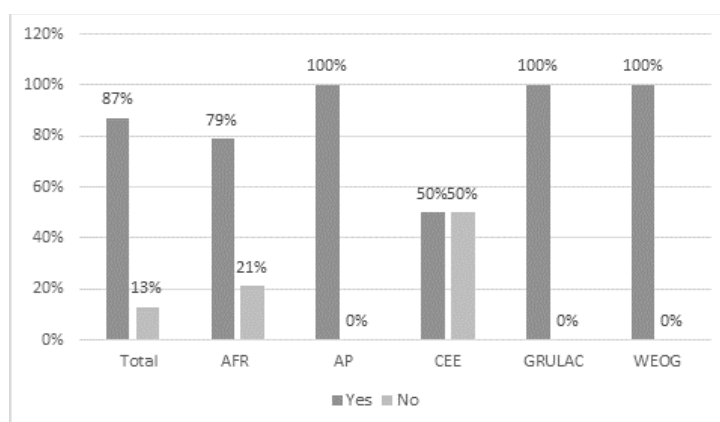
(b) *Countries that answered "no"*

101. Of those countries that answered "no", some countries indicated that they were working or planning to address this issue.⁸⁵

4. *Does your country provide for a clear and transparent written decision by a competent national authority as provided in Article 6.3 (d) (question 14)*

102. Thirty-seven Parties and two non-Parties responded that access to genetic resources was subject to PIC and responded to this question. Thirty-two Parties and two non-Parties responded that they provide for a clear and transparent written decision by a competent national authority, while five Parties indicated that they do not provide for such decision.

Graph 9: Provision of a clear and transparent written decision by a competent national authority (percentage by countries)



(a) *Countries that answered "yes"*

103. Some countries made specific reference to the relevant ABS measures dealing with this aspect⁸⁶ and/or drafts underway,⁸⁷ while others provided information on measures that establish rules or principles regarding the interaction of citizens with government administration including the issuance of permits or authorizations.⁸⁸

⁸³ E.g. China, Ethiopia, India (online application system www.nbaindia.org); Malta (<https://agriculture.gov.mt/en/phd/>); Peru (<http://genesperu.minam.gob.pe/obtener-cfp-establecer-cma/>); Portugal (http://www.formstack.com/forms/GRA-Request_Access_Sampling_Scientific_Purposes)

⁸⁴ Ethiopia

⁸⁵ Albania, Democratic Republic of Congo, Guinea, Mauritania, Senegal

⁸⁶ E.g. Antigua and Barbuda; Benin, Ethiopia, Peru, Portugal, Spain, Swaziland

⁸⁷ E.g. Rwanda, France, Dominican Republic

⁸⁸ E.g. China, Mexico

104. The written decision can take many forms, for instance: environmental licences (e.g. Cuba), contracts (e.g. Dominican Republic and India), authorization of access (e.g. Peru and Spain), resolutions (e.g. Panama); access and export permits (e.g. Malawi). Other examples of information provided are:

(a) Madagascar indicated that the written declaration are issued in two different forms: (i) receipts of declaration for access demands for research with no commercial purposes, and (ii) access authorizations for commercial purposes in the form of a permit that will have the value of an international certificate of compliance;

(b) Seychelles stated that, depending on the form it takes, some decisions may be public while others are only communicated to the applicant.

105. In some countries⁸⁹ permits or equivalent are issued after PIC has been obtained and MAT has been agreed; while for others⁹⁰, contracts signed with the relevant actors are considered to be the written decision. One country⁹¹ explained that users are only invited to pursue the process for obtaining PIC and negotiating MAT once their application is favourably received by the CNA. Only after the process for PIC and MAT is finalized a permit is issued.

106. Some countries specified that there is a written decision when access is denied.⁹² Malta, for instance, indicated that based on their legislation, once a decision concerning access is reached by the CNA this is communicated in writing to the applicant. Additionally, prior informed consent is granted through an official access permit. If access is not granted the applicant is informed of the reasons for such a refusal. Moreover, the details of persons having been granted a permit together with the conditions imposed are maintained in a register which is available for public inspection.

107. China's relevant measures⁹³ contain provisions concerning time limits for approval by related administrative departments and, in accordance with the Administrative Permit Law, plans to include a time limit for approval in the regulation on ABS they are developing.

(b) *Countries that answered "no"*

108. Some countries⁹⁴ indicated that they are planning to address this issue. One country⁹⁵ reported having a system in place that issues authorizations for access, and another⁹⁶ indicated that access was granted on a case-by-case basis.

5. *Does your country provide for the issuance at the time of access of a permit or its equivalent as provided in Article 6.3 (e)? (question 15)*

109. Thirty-seven Parties and two non-Parties responded that access to genetic resources was subject to PIC and responded to this question. Thirty-two Parties and two non-Parties responded that they provide for the issuance at the time of access of a permit or its equivalent while five Parties indicated that they do not provide for such permit.

⁸⁹ E.g. Peru, Uganda

⁹⁰ E.g. Dominican Republic, India

⁹¹ Benin

⁹² E.g. India, Malta, Viet Nam

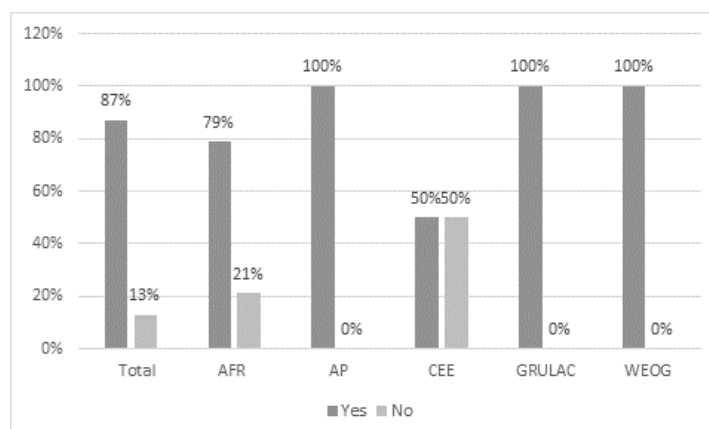
⁹³ Husbandry Law, the Seeds Law, the Rules for Approval of Import and Export of Genetic Resources of Livestock and Poultry and Their Use by Related International Collaborative Research

⁹⁴ Albania, Senegal.

⁹⁵ Côte d'Ivoire

⁹⁶ Democratic Republic of Congo

Graph 10: Provision for the issuance of a permit or its equivalent at the time of access (percentage by countries)



(a) Countries that answered “yes”

110. Some countries made specific reference to the relevant ABS measures dealing with this aspect⁹⁷ and/or drafts underway.⁹⁸

111. Countries seem to use different approaches and terminology to explain what “the permit or its equivalent issued at the time of access” is in their national context. For example, India indicated that upon approval of access, the country enters into an agreement with the applicant, and that agreement, which is an evidence of PIC and MAT, is equivalent to the permit. Other countries referred in their reports to: ABS agreements;⁹⁹ MAT;¹⁰⁰ material transfer agreements (MTA)¹⁰¹; contracts¹⁰²; access permits¹⁰³; or permits for access and utilization,¹⁰⁴ among others.

112. Sometimes the different terminology also reflects the differences in processes. For example, for some, a contract or MAT seems to be the equivalent of a permit (e.g. Bhutan) and for others permits are issued at the end of the process—once a favourable opinion is given over the contract negotiated by the user and the provider (e.g. Benin). Or, for example, South Africa provides for permit requirements when one is engaged in the commercialization phase of bioprospecting involving any indigenous biological resources for the purpose of bioprospecting or any other kind of research (Section 81 of the Act).

113. Some countries¹⁰⁵ provided information on related permits or licences (e.g. collection of plants, access to protected areas); one country¹⁰⁶ reported issuing documents but that these were not yet aligned with the Protocol; and another country specified that in the absence of ABS measures demands for access are managed on a case-by-case basis.¹⁰⁷

(b) Countries that answered “no”

⁹⁷ E.g. Antigua and Barbuda, Malta, Mexico, Peru, Portugal, South Africa, Spain, Swaziland

⁹⁸ E.g. China, Morocco, Rwanda

⁹⁹ E.g. Bhutan

¹⁰⁰ E.g. Bhutan

¹⁰¹ E.g. Bhutan, Seychelles

¹⁰² E.g. Bhutan, Dominican Republic, Venezuela

¹⁰³ E.g. Malawi, Uganda

¹⁰⁴ E.g. South Africa

¹⁰⁵ E.g. Cuba, China, Mauritania

¹⁰⁶ Comoros

¹⁰⁷ Togo

114. All countries that answered “no” to the question are planning to address the issue and three¹⁰⁸ of them provided details on related permits (e.g. CITES, collection of species, tree cutting).

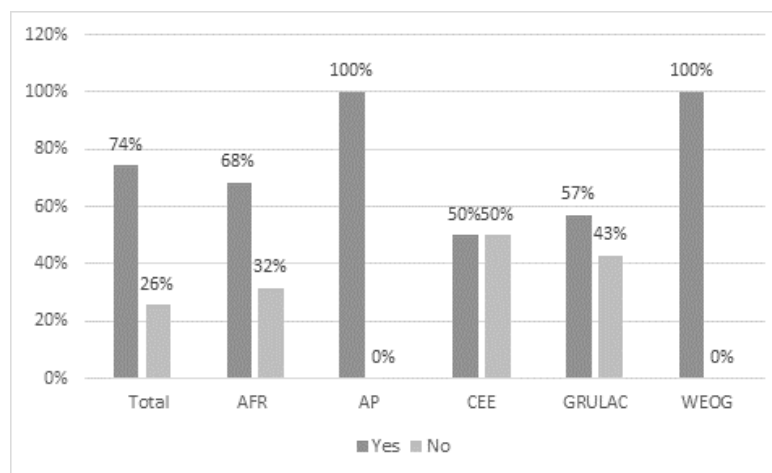
6. *Please provide the number of permits or their equivalent made available through the ABS Clearing-House since the entry into force of the Protocol in their country (question 16)*

115. See section A, subsection 5 above.

7. *Does your country have rules and procedures for requiring and establishing mutually agreed terms as provided in Article 6.3 (g) (question 17)*

116. Thirty-seven Parties and two non-Parties responded that access to genetic resources was subject to PIC and responded to this question. Twenty-eight Parties and one non-Party responded that they have rules and procedures for requiring and establishing mutually agreed terms, while nine Parties and one non-Party indicated that they do not have such rules.

Graph 11: Rules and procedures for requiring and establishing MAT (percentage by countries)



(a) *Countries that answered “yes”*

117. Some countries¹⁰⁹ made specific reference to relevant ABS measures dealing with this aspect, while others¹¹⁰ referred to the relevant contract law. Moreover, some countries reported having some terms¹¹¹ incorporated in their legislation, and others reported having model clauses¹¹² and guidelines.¹¹³

118. Some countries provided more information on the process for establishing MAT. For instance, Uganda indicated that a collector shall not access or export genetic resources without entering into material transfer agreement (MTA). The MTA is valid for a specified period and is issued upon payment of the required fee, by the collector. However, no MTA will be entered into before the collector obtains PIC and an accessory agreement. Accessory agreements are any facilitating agreement relating to PIC and include a letter of exchange, a memorandum of understanding, or an academic or research agreement.

119. For some countries, the legal requirements still need to be published¹¹⁴ or the detailed procedure for MAT still needs to be developed.¹¹⁵

¹⁰⁸ Côte d'Ivoire, Democratic Republic of the Congo, Senegal

¹⁰⁹ E.g. Albania, Antigua and Barbuda; Benin, Bhutan, China, Democratic Republic of the Congo, Ethiopia, India, Madagascar, Malawi, Malta, Mauritania, Morocco, Peru, Portugal, South Africa, Spain, Swaziland, Uganda, Viet Nam

¹¹⁰ E.g. Cuba

¹¹¹ E.g. Ethiopia, India, Indonesia, Madagascar, Malta, Viet Nam

¹¹² E.g. Dominican Republic, France, Kenya, Peru

¹¹³ E.g. Kenya

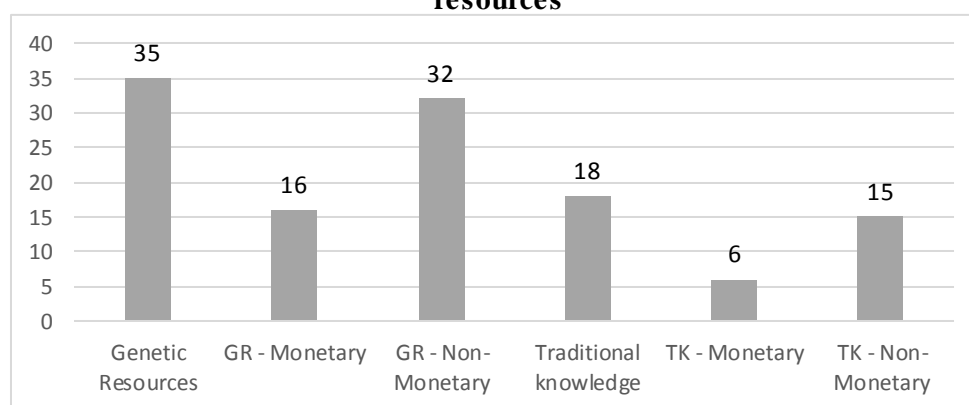
(b) *Countries that answered “no”*

120. In providing additional information, some countries¹¹⁶ indicated that they are planning to address this issue; others reported having existing terms¹¹⁷ or model agreements¹¹⁸ that could be applied in the interim.

8. *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) (question 18)*

121. Thirty-four Parties and one non-Party reported having received benefits from the utilization of genetic resources, while seventeen Parties and one non-Party reported benefits from the utilization of associated traditional knowledge. The following graph provides an overview of the responses provided by countries.

Graph 12: Number of countries having received monetary and non-monetary benefits received from the utilization of genetic resources and of traditional knowledge associated with genetic resources



122. An analysis of the responses reveals that countries provided inconsistent answers to this question. It seems that countries understood differently the implication of selecting one or more of the subcategories (e.g. genetic resources). As a consequence, it is difficult to differentiate between countries that reported on benefits received and countries that indicated that benefit-sharing is required or desirable. The following provides a summary of the information provided in answer to this question.

123. Some countries provided general information on benefits received. For example, India indicated that the benefits received are from biological resources. Mexico noted that agreements between users and providers are confidential, including the benefits shared. Lao People's Democratic Republic and Viet Nam reported seeing an increase in requests for information on ABS since the entry into force of the Protocol.

124. A number of countries explained that the question was not applicable as there were no access measures in place.¹¹⁹ Nine countries reported not having received any type of benefits¹²⁰ and two indicated not having information available on the matter¹²¹.

¹¹⁴ E.g. Rwanda

¹¹⁵ E.g. Morocco, Spain

¹¹⁶ E.g. Botswana, Bulgaria, Côte d'Ivoire, Senegal

¹¹⁷ E.g. Comoros

¹¹⁸ E.g. Côte d'Ivoire, Panama, Mexico

¹¹⁹ E.g. Denmark, European Union, Finland (for genetic resources) Germany, Japan, Netherlands, Poland, Slovakia, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland

¹²⁰ Austria, Bulgaria, Burundi, Congo, Democratic Republic of the Congo, Mongolia, Niger, Senegal, Swaziland

(a) *Monetary benefits from the utilization of genetic resources*

125. Three countries¹²² reported not having received any monetary benefits, while others provided an indication of the amount of monetary benefits received. For instance:

(a) Ethiopia indicated having received 2,314,000 Ethiopian Birr (ETB) (approximately 84,391 USD);

(b) Kenya reported a total amount received from fees, upfront payments, trainings and royalties of 171,407.51 USD (the total amount of research grants are not included);

(c) South Africa reported that more than two million rands (approximately 165,920 USD) had been paid to the stakeholders providing access to genetic resources.

126. Other examples of information provided are the following:

(a) Cameroon stated that some local communities received benefits from the sales of the roots of *Echinops giganteus* and *Mondia whitei* and is yet to receive royalties from an enterprise that had initially accessed the resources on the bases of a MAT;

(b) Cuba reported benefits from the commercialization of products (Vidatox, Salvatoxi, and Viomang) by two companies, and of having received financing for research projects;

(c) Malawi indicated that some monetary benefits had been provided to the communities for access to genetic resources by bio-traders. This was done directly from actual users to the communities, and there was no clear written documentation on MAT. The CNA has begun facilitating the establishment of MATs;

(d) Panama explained that the fees for applying for scientific permits go directly to the government to support the work of the Ministry of Environment in protected areas;

(e) Peru explained that monetary benefits received are in the form of payments for collection and salaries for supporting identification and collection.

(b) *Non-monetary benefits from the utilization of genetic resources*

127. The most common non-monetary benefits mentioned are capacity-development, knowledge transfer, specialized trainings (e.g. masters, diploma, workshops, exchange programmes)¹²³ and joint publications.¹²⁴

128. Other benefits mentioned are the following: (a) access to information about the research on the genetic resources;¹²⁵ (b) inclusion of samples in national collections¹²⁶; (c) admittance to ex situ facilities of genetic resources and to databases;¹²⁷ (d) collaboration and cooperation in research and development with the national research institutions;¹²⁸ (e) transfer of technology, including laboratory materials and equipment;¹²⁹ (f) institutional collaborations;¹³⁰ (g) awareness-raising;¹³¹ (h) community infrastructure or

¹²¹ China, Honduras

¹²² Benin, Democratic Republic of the Congo, Guinea Bissau

¹²³ E.g. Burkina Faso, Benin, Bhutan, Comoros, Cuba, Indonesia, Kenya, Lao People's Democratic Republic, Madagascar, Mauritania, Malawi, Panama, Peru, Seychelles, Sao Tome and Principe, Uganda, Viet Nam

¹²⁴ E.g. Benin, Comoros, Cuba, Indonesia, Panama

¹²⁵ E.g. Antigua and Barbuda, Burkina Faso, Botswana, Panama, Malawi

¹²⁶ E.g. Panama

¹²⁷ E.g. Benin

¹²⁸ E.g. Benin, Cameroon, Madagascar, Panama, Peru, Uganda, Venezuela (Bolivarian Republic of), Viet Nam

¹²⁹ E.g. Cameroon, Kenya, Mauritania, Malawi, Peru, Seychelles

¹³⁰ E.g. Bhutan, Cuba, Lao People's Democratic Republic

¹³¹ E.g. Burkina Faso, Mauritania

implementation of community projects;¹³² (i) improved conditions for research within the country that contribute to conservation and sustainable use of biodiversity;¹³³ and (j) conservation and management of genetic resources.¹³⁴

129. Some countries provided information on benefits received from specific ABS agreements. For example, Ethiopia reported that the initial phase of an agreement created job opportunities for 857 unemployed youth in the local community. Antigua and Barbuda received data on species to contribute to the Natural Resources Inventor. Madagascar reported having a new arboretum installed with endemic plants.

(c) Monetary benefits from the utilization of traditional knowledge associated to genetic resources

130. Very few countries provided additional information on monetary benefits related to traditional knowledge. South Africa indicated that more than four million rands (approximately 331,040 USD) had been paid to stakeholders providing access to traditional knowledge associated with genetic resources, while two countries¹³⁵ reported not having received any monetary benefits from the utilization of traditional knowledge associated to genetic resources.

(d) Non-monetary benefits from the utilization of traditional knowledge associated to genetic resources

131. The most common non-monetary benefit mentioned is capacity development on different issues related to traditional knowledge (e.g. documentation of traditional knowledge, community protocols, or sustainable use of genetic resources based on traditional knowledge).¹³⁶ Other non-monetary benefits mentioned are: (a) access to information about the research on traditional knowledge¹³⁷; (b) joint publications;¹³⁸ (c) development of pilot community protocols;¹³⁹ (d) conservation of the sociocultural heritage;¹⁴⁰ (e) awareness-raising;¹⁴¹ (f) implementation of community projects, including festivals and meetings between communities;¹⁴² (g) databases;¹⁴³ and (h) research.¹⁴⁴

9. Additional information: summary of the main difficulties and challenges (question 19)

132. Forty-one countries answered this question. Many referred to general difficulties raised earlier in this document, such as lack of financial resources, capacity or awareness. Overall, the main difficulty identified, by eighteen countries, is the absence of ABS measures in place, or the need to develop or review additional measures to be in line with the Nagoya Protocol.

133. Other difficulties mentioned are the following: (a) monitoring the utilization of genetic resources; (b) the need to develop an inventory of genetic resources or and associated traditional knowledge; (c) issues related to associated traditional knowledge (e.g. absence of relevant measures and difficulties to ascertain whether traditional knowledge was involved); and (d) the need for improved capacity to negotiate contracts.

¹³² E.g. Malawi, South Africa

¹³³ E.g. Peru

¹³⁴ E.g. Guinea Bissau

¹³⁵ E.g. Benin, Democratic Republic of the Congo

¹³⁶ E.g. Benin, Bhutan, Lao People's Democratic Republic, Mauritania, Sao Tome and Principe

¹³⁷ E.g. Albania, Benin

¹³⁸ E.g. Lao People's Democratic Republic

¹³⁹ E.g. Benin

¹⁴⁰ E.g. Guinea Bissau

¹⁴¹ E.g. Benin

¹⁴² E.g. South Africa, Cuba

¹⁴³ E.g. Cuba

¹⁴⁴ E.g. Venezuela (Bolivarian Republic of)

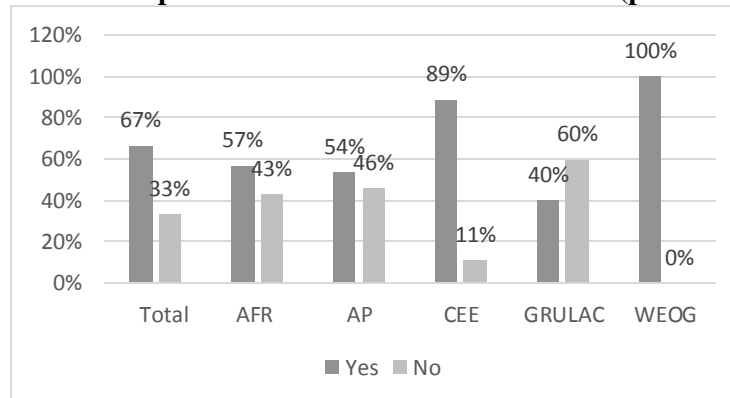
C. ABS measures: Fair and equitable benefit-sharing (Article 5) (questions 20 to 23)

1. *Has your country taken legislative, administrative or policy measures to implement Article 5.1 that provides that benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization are shared with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention as provided in Article 5.3? (question 20)*

134. Countries understood this question in different ways. When providing further information the majority of countries referred to the establishment of PIC and MAT requirements, emphasising that they require benefit-sharing from users that wish to access genetic resources or associated traditional knowledge in their country. Others understood the Article to require each Party to take measures to ensure that the benefits arising from the genetic resources being utilized within their jurisdiction are shared with the provider country.

135. Forty-six Parties and four non-Parties responded that they have taken measures to implement Article 5.1, while twenty-three Parties and two non-Parties reported that they have not taken such measures.

Graph 13: Measures to implement Article 5.1 of the Protocol (percentage of countries)



(a) Countries that answered “yes”

136. Many countries made specific reference to measures requiring benefit-sharing from access to their genetic resources or to terms included in MAT.¹⁴⁵ For example:

(a) India indicated that as per the Biological Diversity Act, 2002, the benefits arising from the utilization of biological resources for certain activities are to be shared with the identified benefit claimers in a fair and equitable manner. In case the benefit claimers are not identifiable, the benefits accrued are to be used for conservation of biological resources, and development, including socio-economic development, of the area from where such resources are accessed;

(b) South Africa explained that the Act as well as the associated BABS Regulations provides for everyone in the value chain involved in the bioprospecting activities to obtain a bioprospecting permit. The application must be submitted together with a material transfer agreement and a benefit sharing agreement concluded with the providers. This is to ensure that benefits arising from the commercialization and the subsequent applications are shared with the provider country.

¹⁴⁵ E.g. Albania, Antigua and Barbuda, Benin, Burkina Faso, Burundi, Cuba, Democratic Republic of the Congo, Guinea, Honduras, India, Kenya, Lao People's Democratic Republic, Madagascar, Mauritania, Morocco, Peru, Republic of Moldova, South Africa, Spain, Swaziland, Switzerland, Uganda, Viet Nam

137. Other countries provided information on measures taken to ensure that the benefits arising from the genetic resources being utilized within their jurisdiction are shared with the provider country.¹⁴⁶ For example:

(a) The European Union indicated that Article 4(1) of the EU ABS Regulation provides that “users shall exercise due diligence to ascertain that genetic resources and traditional knowledge associated with genetic resources which they utilize have been accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements and that benefits are fairly and equitably shared upon mutually agreed terms, in accordance with any applicable legislation or regulatory requirements.”¹⁴⁷ In addition, Spain and the Netherlands made reference to their national legislation;

(b) Japan reported that according to the ABS Guidelines, the Minister of the Environment and other competent ministers encourage users of genetic resources to conclude contracts that ensure the fair and equitable sharing of benefits arising from their utilization of genetic material, when they are requested to do so by the providers of such resources;

(c) In Norway, the Nature Diversity Act section 60 contains a provision on importing genetic material, for utilization in Norway, from a State that requires consent for collection or export of such material. Import may only take place in accordance with such consent. The person that has control of the material is bound by the conditions that have been set for consent. The State may enforce the conditions by bringing legal action on behalf of the party that set those conditions. When genetic material from another country is utilized in Norway for research or commercial purposes, it shall be accompanied by information regarding the country from which the genetic material has been received (provider country). If national law in the provider country requires consent for the collection of biological material, it shall be accompanied by information to the effect that such consent has been obtained. If the provider country is a country other than the country of origin of the genetic material, the country of origin shall also be stated.¹⁴⁸ If the information is not known, this shall be stated;

(d) Switzerland introduced a due diligence requirement to ensure that whoever utilizes genetic resources or associated traditional knowledge—or directly benefits from their utilization—complies with the domestic regulatory requirements on ABS of other Parties to the Protocol and shares the benefits fairly and equitably.

138. Some countries also refer to their plans or work to put additional measures in place to implement Article 5.1.¹⁴⁹

(b) *Countries that answered “no”*

139. Many countries indicated in their reports that they are planning to address this issue.¹⁵⁰

2. *Has your country taken legislative, administrative or policy measures with the aim of ensuring that the benefits from the utilization of genetic resources held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared with the indigenous and local communities concerned as provided in Article 5.2? (question 21)*

140. Forty-two Parties and five non-Parties responded that they have taken measures with the aim of ensuring that the benefits from the utilization of genetic resources held by IPLCs are shared with IPLCs. Twenty-seven Parties and one non-Party reported not having taken such measures.

¹⁴⁶ E.g. Bhutan, the European Union and Member States, Japan, Malawi, Norway, Switzerland

¹⁴⁷ The same information was provided by the EU Member States in their reports.

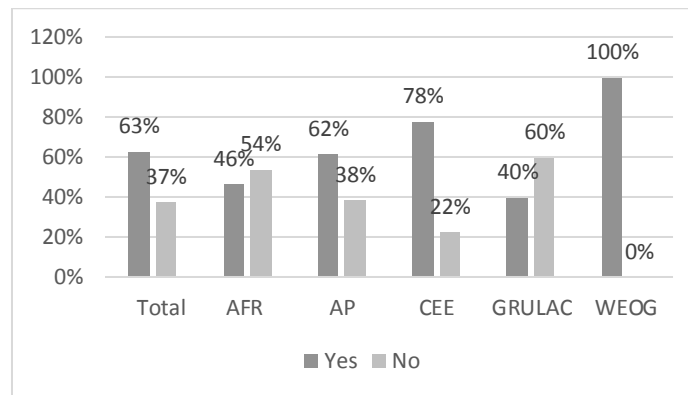
¹⁴⁸ The country of origin means the country in which the material was collected from in situ sources.

¹⁴⁹ E.g. Albania, Burkina Faso, Burundi, Cameroon, Guinea Bissau, Kenya, Lao People's Democratic Republic, Malawi, Morocco, Rwanda

¹⁵⁰ E.g. Belarus, Botswana, Cameroon, China, Comoros, Côte d'Ivoire, Dominican Republic, Guinea Bissau, Kazakhstan Mexico, Mongolia, Niger, Pakistan, Panama, Sudan, Uruguay

141. In answering this question some countries provided information about benefit-sharing from the utilization of associated traditional knowledge and not about the utilization of genetic resources held by indigenous peoples and local communities (IPLCs).

Graph 14: Measures to implement Article 5.2 of the Protocol (percentage of countries)



(a) Countries that answered “yes”

142. Many countries referred to measures requiring benefit-sharing from utilization of associated traditional knowledge¹⁵¹ or from genetic resources held by IPLCs in their country.¹⁵² Some countries also indicated their plans or work to put the necessary measures in place.¹⁵³

143. Examples of information provided by countries on the rights of IPLCs to benefit-sharing from the use of genetic resources includes the following:

(a) Benin explained that local communities are part of the national committee on ABS and have the right to benefit-sharing;

(b) Ethiopia’s measures provide that local communities shall have the rights to obtain 50% of the benefits shared by the State in the form of money from the benefits derived out of the utilization of their genetic resources;¹⁵⁴

(c) In Norway indigenous and local communities do not have established rights over these resources. As indigenous peoples, the Sami have the right to be consulted in matters that may affect them directly. The Norwegian Government and the Sami Parliament have agreed on consultation procedures to this end. Consultations regarding genetic material are also carried out in accordance with procedural guidelines.

144. Similarly to the measures taken to implement Article 5.1, the European Union reported on Article 4(1) of Regulation (EU) 511/2014,¹⁵⁵ Switzerland mentioned the due diligence requirement, and Japan referred to the ABS Guidelines.

(b) Countries that answered “no”

145. Many countries indicated that they are planning to address this issue.¹⁵⁶ Peru noted that its legislation requires that when IPLCs are providers of genetic resources, those asking for access to those

¹⁵¹ E.g. Bhutan, Democratic Republic of the Congo, Guinea, Kenya, Lao People’s Democratic Republic

¹⁵² E.g. Antigua and Barbuda, Albania, Burkina Faso, Benin, Democratic Republic of the Congo, Ethiopia, Kenya, Mauritania, Panama, Swaziland, South Africa, India, Viet Nam

¹⁵³ Bhutan, Malawi, Morocco

¹⁵⁴ Article 2 of the Access to Genetic Resources and Community Knowledge and Community Right Proclamation No 482/2006

¹⁵⁵ The same information was provided by the EU Member States in their report.

¹⁵⁶ E.g. Belarus, Botswana, Cameroon, China, Comoros, Côte d’Ivoire, Dominican Republic, Kazakhstan, Kuwait, Mexico, Niger, Pakistan, Sao Tome and Principe, Senegal, Sudan, Uruguay

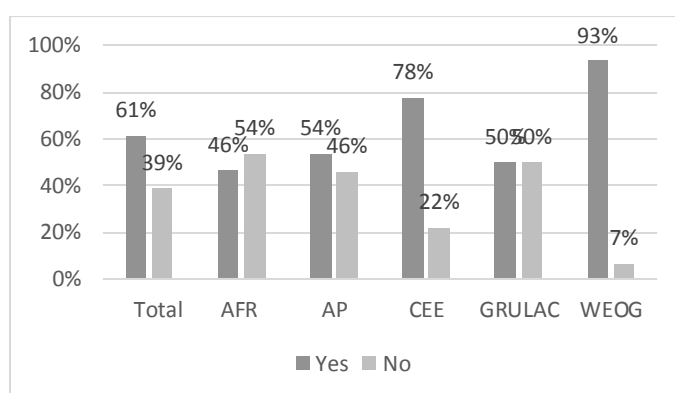
resources should come to an agreement with IPLCs through an accessory contract that includes benefit-sharing.

146. A country¹⁵⁷ noted that IPLCs do not have rights over genetic resources; two¹⁵⁸ countries indicated that their country does not have IPLCs, and another¹⁵⁹ clarified that they only have local communities.

3. *Has your country taken legislative, administrative or policy measures in order that benefits arising from the utilization of traditional knowledge associated with genetic resources are shared with indigenous and local communities holding such knowledge as provided in Article 5.5? (question 22)*

147. Forty-one Parties and five non-Parties responded that they have taken measures to implement Article 5.5, while twenty-eight Parties and one non-Party reported not having taken such measures.

Graph 15: Measures to implement Article 5.5 of the Protocol (percentage of countries)



(a) *Countries that answered “yes”*

148. Many countries referred to the measures requiring benefit-sharing from the utilization of traditional knowledge in their country.¹⁶⁰ In some countries the measures dealing with benefit-sharing from the utilization of associated traditional knowledge are measures which have as their primary objective the protection of traditional knowledge.¹⁶¹

149. Below are some of the responses provided to this question:

(a) Norway indicated having regulations¹⁶² in place that are intended to ensure that the interests of indigenous peoples and local communities are safeguarded and respected in connection with access or use by others of knowledge associated with genetic material that has been developed, used, sustained and passed on within an indigenous people or local community (traditional knowledge). The regulations apply to traditional knowledge relating to genetic material developed, used, sustained and passed on by indigenous peoples and local communities in other countries, provided that access to or use of such knowledge requires consent under the legislation of the State in question;

¹⁵⁷ Burundi

¹⁵⁸ Bulgaria, Rwanda

¹⁵⁹ China

¹⁶⁰ E.g. Albania, Antigua and Barbuda, Benin, Bhutan, Burkina Faso, Burundi, Democratic Republic of the Congo, Ethiopia, Finland, Honduras, India, Indonesia, Japan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Malawi, Malta, Netherlands, Norway, Panama, Peru, South Africa, Swaziland, Switzerland

¹⁶¹ E.g. Kenya, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Norway, Peru

¹⁶² Regulations relating to the protection of traditional knowledge associated with genetic material were adopted by Royal Decree of 25. November 2016 under section 61a of the Act of 19 June 2009 No. 100 relating to the management of biological, geological and landscape diversity.

(b) South Africa requires the issuing authority that considers the application for permits to protect any interest a stakeholder may have in the proposed bioprospecting project. Stakeholders refers to the indigenous community that has initiated, will contribute to, or form part of the proposed bioprospecting, or that has knowledge of or discoveries about the indigenous biological resource to be used for proposed bioprospecting, as per the application.

150. Similarly to the measures taken to implement Article 5.1, the European Union reported on Article 4(1) of Regulation (EU) 511/2014, Switzerland mentioned the due diligence requirement, and Japan referred to the ABS Guidelines.

151. Some countries referred to their plans or work to put necessary or additional measures in place to implement Article 5.5.¹⁶³

(b) *Countries that answered “no”*

152. Several countries indicated that they plan to address this issue.¹⁶⁴ For example, China explained that even though they are planning to develop a specialized regulation, which will contain provisions in this regard, the Chinese Medicine Law enacted in 2017 provides that the holder of traditional knowledge associated with Chinese medicine shall have the rights to inherit and use the traditional knowledge, and require prior informed consent and benefit-sharing from the use of the traditional knowledge that he/she holds. Article 24 of this law provides that the competent authorities responsible for the Chinese medicine administration in the governments at the provincial and above level shall organize the identification of academic heritage projects and inheritors for those academically important theories and technical methods of Chinese medicine, and provide enabling conditions for such activities. The Intangible Cultural Heritage Law requires that prior informed consent of the targeted audience of the survey shall be sought before proceeding with a survey of non-material cultural heritages. In addition, their cultures and customs shall be respected and no damage shall be done to their legal rights and interests.

153. Two¹⁶⁵ countries indicated that their countries do not have IPLCs, and another¹⁶⁶ clarified that they only have local communities. Another country¹⁶⁷ explained that the benefits are to be shared equally among all citizens.

4. *Additional information: summary of the main difficulties and challenges (question 23)*

154. Thirty-two countries answered this question. In their responses, many of the countries referred to general difficulties raised in relation to previous questions, such as lack of financial resources, capacity or awareness. Overall, the main difficulty identified is the absence of ABS measures in place, or the need to develop or review measures to be in line with the Nagoya Protocol. Many answers focused on the challenges related to traditional knowledge associated with genetic resources.

155. Some Parties reported challenges in clarifying what the term IPLCs meant in their national context, including providing clarity on the ownership of IPLCs over genetic resources and/or traditional knowledge associated with genetic resources. Many Parties experienced difficulties in identifying the different groups of indigenous peoples and local communities, understanding the way they are organized, and being able to link traditional knowledge with the holder/s of such knowledge.

156. Many Parties considered the need to build capacity at institutional level on issues related to traditional knowledge associated with genetic resources and IPLCs. The difficulty of developing measures that will ensure that all IPLCs issues in the Protocol are dealt with appropriately was raised and some noted the lack of experiences or examples that could be used.

¹⁶³ E.g. Albania, Burundi, Morocco,

¹⁶⁴ E.g. Belarus, Botswana, Cameroon, China, Comoros, Guinea Bissau, Kazakhstan, Mexico, Mongolia, Niger, Pakistan, Sao Tome and Principe, Senegal, Sudan, Uruguay

¹⁶⁵ Bulgaria, Rwanda

¹⁶⁶ China

¹⁶⁷ Cuba

157. Many Parties highlighted the need for capacity-building and awareness-raising about ABS for IPLCs.

158. Some countries identified the need to develop inventories, studies and or transcriptions of traditional knowledge and to valorize it. A country explained that even though they had legislation in place, they were of the view that the measures were not well known or understood by institutions, communities, or users, and this could partly explain the fact that no permits for access to associated traditional knowledge had been granted so far.¹⁶⁸

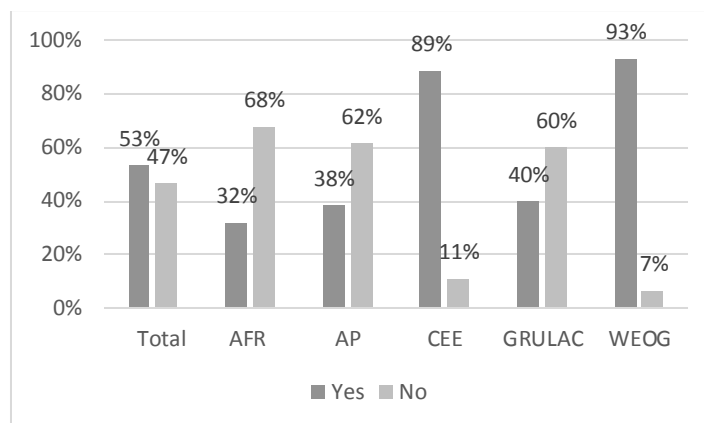
159. Other challenges identified include: (a) the need for inventories of genetic resources and studies to valorize genetic resources; (b) the need to identify different uses and users of genetic resource at the national level; (c) convincing research institutions that they need to be regulated; (d) the need for capacity-building regarding contracts; and (d) the loss of traditional knowledge.

D. ABS measures: Compliance with domestic legislation or regulatory requirements on ABS (Article 15 and 16) and monitoring the utilization of genetic resources (Article 17) (questions 24 to 30)

1.1 Has your country taken appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within your jurisdiction have been accessed in accordance with PIC and that MAT have been established as required by the domestic ABS legislation or regulatory requirements of the other Party as provided in Article 15.1? (question 24)

160. Thirty-six Parties and four non-Parties responded that they have taken legislative, administrative or policy measures to provide that genetic resources have been accessed in accordance with PIC and MAT, while thirty-three Parties and one non-Party reported not having taken such measures.

Graph 16: Measures to implement Article 15.1 of the Protocol (percentage of countries)



(a) *Countries that answered “yes”*

161. Many countries that answered positively to this question did not provide additional information. Few countries made reference to relevant existing measures,¹⁶⁹ or draft measures or processes underway.¹⁷⁰ One country indicated having relevant measures but recognized that new measures were

¹⁶⁸ Peru

¹⁶⁹ E.g. European Union, Kyrgyzstan, Republic of Moldova, Sweden

¹⁷⁰ E.g. Burundi, Dominican Republic, Rwanda

needed to address the obligations under Article 15.1 of the Protocol.¹⁷¹ Several countries indicated that they were not aware of any cases of non-compliance so far.¹⁷²

162. The European Union indicated that in the EU legal measures concerning compliance are taken at the EU level and Member States are responsible for the implementation of these measures.

(b) *Countries that answered “no”*

163. Many countries indicated that they are planning to address this issue.¹⁷³ Some countries also provided information on relevant activities and/or other measures taken. For example:

(a) Cuba reported having established a requirement to disclose the origin of the genetic resource when asking for a patent based on a genetic resource;

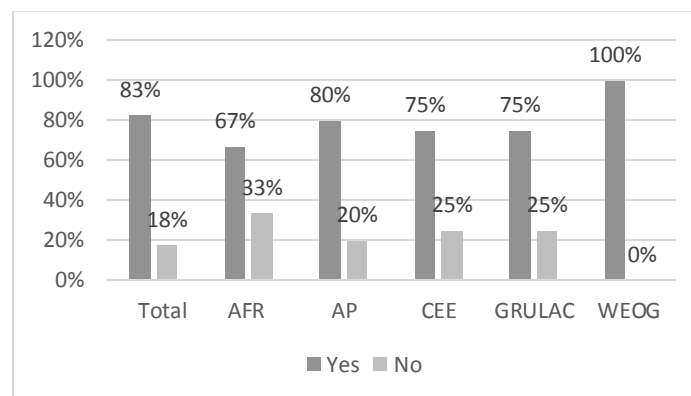
(b) Mexico indicated that they are raising awareness of national users regarding the need to comply with other countries' ABS requirements, if they use genetic resources from those countries;

(c) South Africa explained that if the issuing authority comes across a situation where a South African based institution wants to utilize genetic resources accessed from other countries within South African jurisdiction, they request for documentation to confirm compliance with the provider country's regulatory requirements. Further, the ABS NFP of the provider country is notified by the South African NFP.

1.2 Indicate whether your country has taken measures to address situations of non-compliance with those measures as provided in Article 15.2 (question 24)

164. Thirty-six Parties and four non-Parties responded that that they have taken legislative, administrative or policy measures to provide that genetic resources have been accessed in accordance with PIC and MAT as indicated above. Of those countries, twenty-nine Parties and four non-Parties reported having taken measures to address situations of non-compliance, while 7 Parties indicated not having taken such measures.

Graph 17: Measures to implement Article 15.2 of the Protocol (percentage of countries)



165. Some countries referred to the relevant existing measures¹⁷⁴ or draft measures or processes underway.¹⁷⁵ Although many have adopted measures to provide that genetic resources and associated

¹⁷¹ Republic of Moldova

¹⁷² E.g. Bhutan, Mauritania, Norway, Sweden, Switzerland, Uganda

¹⁷³ E.g. Benin, Botswana, Burkina Faso, China, Cameroon, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Ethiopia, Guinea Bissau, India, Lao People's Democratic Republic; Mexico, Mongolia; Pakistan, Panama; Senegal, South Africa

¹⁷⁴ E.g. Antigua and Barbuda Belgium, Bhutan, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Estonia, European Union, Hungary, Japan, Malta, Mauritania, Netherlands, Norway, Peru, Poland, Portugal, Slovakia, Spain, Swaziland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Viet Nam

¹⁷⁵ E.g. Morocco, Czech Republic

traditional knowledge utilized within their jurisdiction are accessed in accordance with the requirements of the other Party,¹⁷⁶ a number of others reported on measures that would address cases of non-compliance with their own domestic ABS legislation.¹⁷⁷

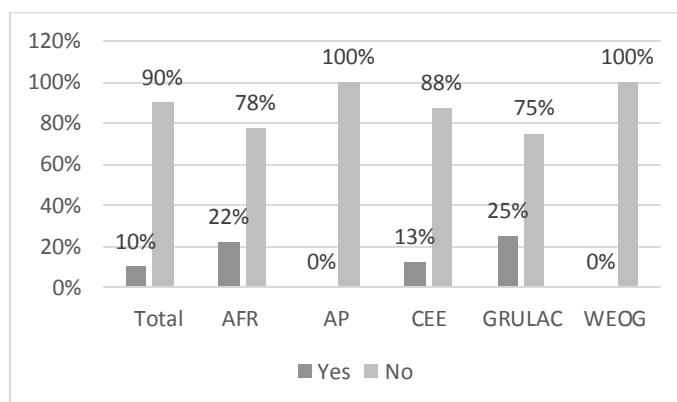
166. For instance, the European Union referred to Regulation (EU) 511/2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union and the Commission Implementing Regulation (EU) 2015/1866 laying down detailed rules for the implementation of Regulation (EU) 511/2014 as regards the register of collections, monitoring user compliance and best practices. In addition, some Member States included also information on national legislation.¹⁷⁸

167. Some countries provided information on the penalties and sanctions for non-complying with ABS measures. A number of countries provided information on: fines,¹⁷⁹ imprisonment,¹⁸⁰ denial of intellectual property rights,¹⁸¹ shutting down of the facility,¹⁸² obligation to redress the situation,¹⁸³ among others.

1.3 Have there been specific cases in which your country cooperated with other Parties in cases of alleged violation of ABS measures as provided in Article 15.3? (question 24)

168. Thirty-six Parties and four non-Parties responded that that they have taken legislative, administrative or policy measures to provide that genetic resources have been accessed in accordance with PIC and MAT as indicated above. Only 3 Parties and 1 non-Party reported on specific cases of cooperation with other Parties in cases of alleged violation of ABS measures.

Graph 18: Measures to implement Article 15.3 of the Protocol (percentage of countries)



169. In providing further information, two countries referred to their plans related to compliance.¹⁸⁴ In addition, Kenya explained that they had some inquiries, especially from Kew Gardens, on materials accessed without appropriate permits from their country. Malawi indicated that the South African ABS NFP reported on two possible cases of access to biological resources without PIC or MAT which needed follow-up by the Government of Malawi. In the first case the user was untraceable, and in the second the user of the genetic resource was brought into compliance with Malawian legislation.

¹⁷⁶ E.g. EU, Japan, Norway, Switzerland

¹⁷⁷ E.g. Madagascar, Mauritania, Morocco, Uganda, Vietnam

¹⁷⁸ E.g. Bulgaria, Denmark, Germany, Finland, France, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Viet Nam

¹⁷⁹ E.g. Hungary, Finland, Morocco, Swaziland, Switzerland, Uganda

¹⁸⁰ E.g. Morocco, Uganda

¹⁸¹ E.g. Peru

¹⁸² E.g. Morocco

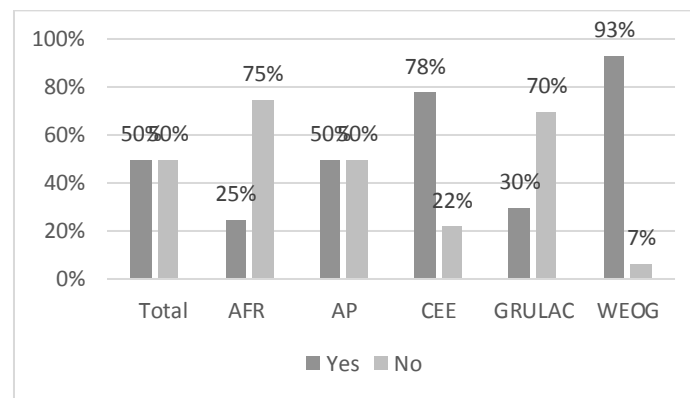
¹⁸³ E.g. Morocco

¹⁸⁴ Albania, Kenya

- 2.1 *Has your country taken appropriate, effective and proportionate legislative, administrative or policy measures to ensure that traditional knowledge associated with genetic resources utilized within your jurisdiction has been accessed in accordance with PIC or approval and involvement of indigenous and local communities and that MAT have been established as required by the domestic ABS legislation or regulatory requirements of the other Party where such indigenous and local communities are located as provided in Article 16.1? (question 25)*

170. Thirty-three Parties and four non-Parties responded that they have taken measures to implement Article 16.1 of the Protocol, while thirty-five Parties and two non-Parties reported not having taken measures. Answers provided were similar to those provided under question 24 above.

Graph 19: Measures to implement Article 16.1 of the Protocol (percentage of countries)



- (a) *Countries that answered “yes”*

171. Some countries made reference to relevant existing measures,¹⁸⁵ or draft measures or processes underway.¹⁸⁶ Very few countries provided additional information.

- (b) *Countries that answered “no”*

172. Many countries indicated that are planning to address this issue.¹⁸⁷ One country stated that the question was not applicable as the country does not have indigenous and local communities¹⁸⁸ and another expressed the need to clarify the notion of indigenous and local communities in their national context.¹⁸⁹

- 2.2 *Indicate whether your country has taken measures to address situations of non-compliance with those measures as provided in Article 16.2 (question 25)*

173. Thirty-three Parties and four non-Parties responded that they have taken measures to implement Article 16.1 of the Protocol and answered this question. Of those countries, twenty-eight Parties and four non-Parties reported having taken measures to address situations of non-compliance with measures provided in Article 16.2.

¹⁸⁵ E.g. Antigua and Barbuda, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Malta, Netherlands, Peru, Poland, Portugal, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Viet Nam

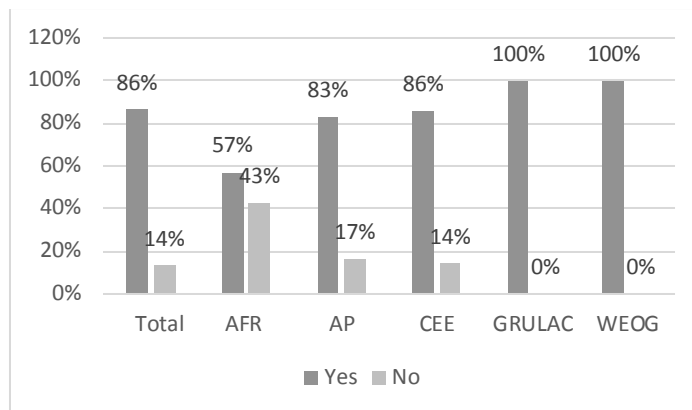
¹⁸⁶ Albania

¹⁸⁷ E.g. Burkina Faso, Benin, Botswana, Democratic Republic of the Congo, Côte d'Ivoire, Cameroon, Ethiopia, Guinea, Guinea Bissau, India, Lao People's Democratic Republic, Pakistan, South Africa

¹⁸⁸ Rwanda

¹⁸⁹ Togo

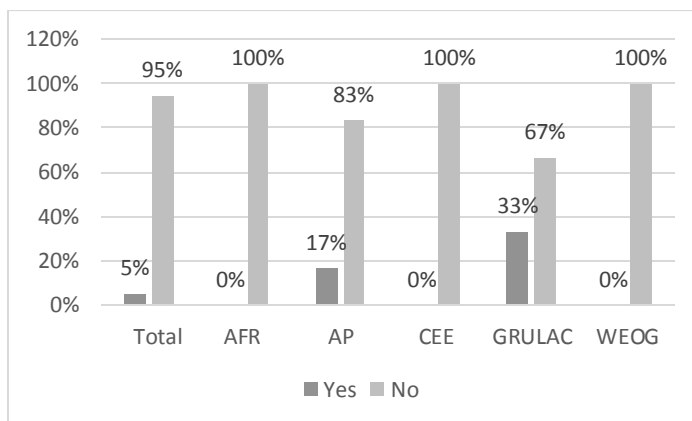
Graph 20: Measures to implement Article 16.2 of the Protocol (percentage of countries)



2.3 Has your country cooperated in specific cases of alleged violation of ABS measures as provided in Article 16.3? (question 25)

174. Thirty-three Parties and four non-Parties responded that they have taken measures to implement Article 16.1 of the Protocol and answered this question. Of those countries, only two reported having cooperated in specific cases of alleged violation of ABS measures as provided in Article 16.3.

Graph 21: Measures to implement Article 16.3 of the Protocol (percentage of countries)



175. Ten countries¹⁹⁰ reported not being aware of any cases of alleged violation. Kenya reported being in the process of carrying out studies to identify cases of non-compliance.

176. Several countries¹⁹¹ provided information on the relevant legislation. For example, Japan indicated that when a Party to the Protocol other than Japan alleges a violation to a provider country's legislation, the Minister of the Environment is to urge those about which the allegation is made, to provide information on the alleged violation. The Minister of the Environment is to supply the information obtained to the provider country through the designated national focal point or other contact points, as appropriate.

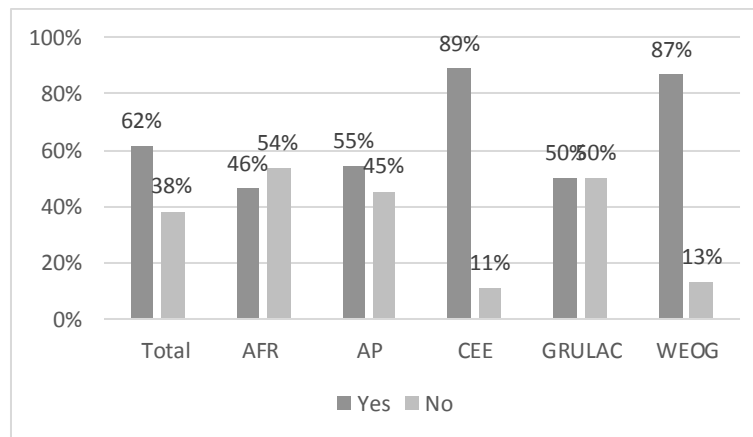
¹⁹⁰ Bhutan, Burundi, Finland, Japan, Kenya, Madagascar, Malta, Sweden, Switzerland, Uganda.

¹⁹¹ E.g. Japan, Morocco, Netherlands, Norway, Portugal, Spain.

3. *Does your country require users of genetic resources to provide information related to PIC, to the source of the genetic resource, to the establishment of MAT and/or utilization of genetic resources at a designated checkpoint, as appropriate, as provided in Article 17.1 (a) (i) and (ii)? (question 26)*

177. Forty-one Parties and four non-Parties responded that they do require users of genetic resources to provide the information provided in Article 17.1 (a) (i) and (ii) at a designated checkpoint, as appropriate, while twenty-six Parties and two non-Parties reported they do not have such a requirement.

Graph 22: Requiring users of genetic resources to provide information at checkpoints as provided in Article 17.1 (a) (i) and (ii) (percentage of countries)



(a) Countries that answered “yes”

178. A close examination of the additional information provided reveals that several countries answered “yes” on the basis of a draft measure or processes underway¹⁹² or based on requiring users to establish PIC and/or MAT.¹⁹³

179. In providing further information, some countries mentioned the following:

(a) The EU indicated that in line with Article 7(1) and 7(2) of Regulation 511/2014, users need to provide information as required by Article 17(1) of the Protocol to designated competent authorities in EU Member States. Annexes II and III to the Commission Implementing Regulation provide for the specific information requested from users; this includes information related to PIC, to the source of the genetic resource, to the establishment of the MAT, and to the utilization of the genetic resources.¹⁹⁴ Some Member States provided further information on their national implementing legislation.¹⁹⁵ For example, in Finland a user who imports genetic resources or associated traditional knowledge of indigenous communities associated into Finland, and that is subject to the provisions concerning a Party to the Nagoya Protocol, shall provide notification to the competent authority within one month from the import date;¹⁹⁶

(b) Japan: The ABS Guidelines provides that if a person submits a report indicating the intention to use genetic resources, the Minister of the Environment requests that person to provide relevant information on the utilization of genetic resources after approximately five years have elapsed from the date on which the report was submitted, as appropriate;

¹⁹² E.g. Albania, Antigua and Barbuda, Burundi, Mexico, Morocco, Rwanda, Togo, Senegal

¹⁹³ E.g. Indonesia, Madagascar, Malawi, Morocco, Uganda, Viet Nam

¹⁹⁴ The same information was provided by the EU Member States in their report.

¹⁹⁵ E.g. Finland, Germany, Malta, Spain,

¹⁹⁶ Act on the Implementation of the Nagoya protocol to the Convention on Biological Diversity, Section 5

(c) Switzerland explained that a notification of compliance with the due diligence requirement must be given to the Federal Office of the Environment before market authorization has been obtained or, if such authorization is not required, before the commercialization of products developed on the basis of utilized genetic resources;

(d) Uganda and South Africa reported asking for information at the point of entry and exit of the country. Uganda explained that a person transporting or moving genetic resources through Uganda is required to declare the genetic resources to customs control and is required to provide evidence of lawful acquisition from the country of origin when entering or exiting the country and in any other part of Uganda as may be required. South Africa also requests users that export indigenous biological resources to provide a permit as proof of compliance when entering or exiting the country.

180. Several countries¹⁹⁷ reported having established a requirement to disclose the origin of the genetic resource when asking for a patent based on a genetic resource, and one country¹⁹⁸ reported having such a requirement for patents based on traditional knowledge. Peru also provided details on the findings from the intellectual property office (INDECOPI) on the number of patent applications received during 2017 related to genetic resources, and how many of those required an access contract, and the National Commission Against Biopiracy on the number of patent application in other countries that were found to be based on Peruvian genetic resources.

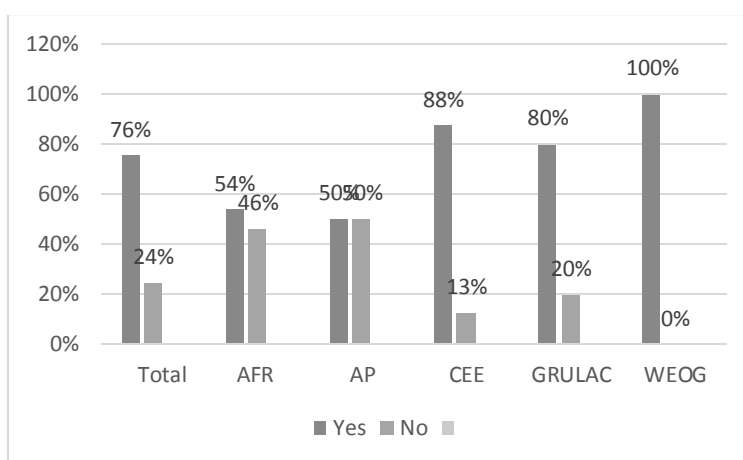
(b) *Countries that answered “no”*

181. Many countries indicated that they are planning to address this issue.¹⁹⁹ Some countries also provided information on relevant activities and/or other measures taken. For example, Norway and India reported having a mandatory disclosure requirement.

3.1 *Has your country taken measures to address situations of non-compliance? (question 26)*

182. Forty-one Parties and four non-Parties responded that they do require users of genetic resources to provide the information provided in Article 17.1 (a) (i) and (ii) at a designated checkpoint, and answered this question. Of those countries, thirty Parties and four non-Parties reported having taken measures to address situations of non-compliance.

Graph 23: Measures to address situations of non-compliance with the requirement of providing information at checkpoints (percentage of countries)



183. A number of countries made reference to the relevant ABS measures²⁰⁰ and/or drafts underway.²⁰¹ Examples of measures taken by countries include the following:

¹⁹⁷ Cuba, Germany, Indonesia, Peru, South Africa, Spain

¹⁹⁸ Kyrgyzstan

¹⁹⁹ E.g. Botswana, Burkina Faso, Cameroon, Côte d'Ivoire, Cuba, Dominican Republic, Ethiopia, Guinea Bissau, India, Norway, Pakistan, Panama, Sudan, Uruguay

(a) The European Union indicated that competent authorities in EU Member States are obliged, based on Article 9 of Regulation 511/2014, to perform checks on user compliance in accordance with periodically revised risk-based plans;²⁰²

(b) South Africa explained that if the user does not provide proof of compliance with the regulatory requirements of the provider country, the NFP alerts the NFP of the provider country about the resources that are being imported into South Africa so they can take the necessary action;

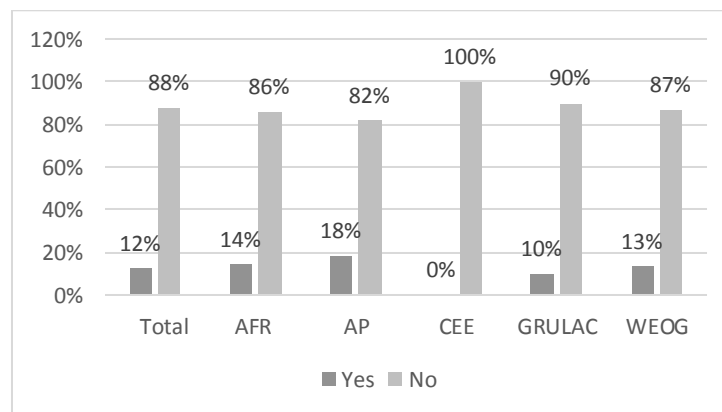
(c) Madagascar indicated that access authorizations and activities related to genetic resources or associated traditional knowledge could be suspended or cancelled and the user could be denied carrying out the same activity in the country;

(d) Peru reported that possible sanctions that could derive from infractions to the legislation are the following: suspension or cancellation of the access authorization, confiscation of the materials, fines, disqualification to apply for new access, or cancellation of the entity registry. A registry of all sanctions is kept in order to inform the public and identify cases of recidivism.

4. *Has your country provided the information referred to in Article 17.1 (a) (i) to relevant national authorities, to the Party providing PIC and to the ABS Clearing-House as provided in Article 17.1 (a) (iii)? (question 27)*

184. Nine Parties responded that they have provided the information referred to in Article 17.1 (a) (i) to relevant national authorities, to the Party providing PIC and to the ABS Clearing-House.

Graph 24: Provision of information as provided in Article 17.1 (a) (iii) (percentage of countries)



(a) *Countries that answered “yes”*

185. According to the information provided, two countries²⁰³ seemed to have answered “yes” to this question on the basis of their intention to publish information in the ABS Clearing-House. No country reported on having made use of the checkpoint communiqué.

(b) *Countries that answered “no”*

186. A number of countries reported on their plans to address this issue.²⁰⁴ Examples of information provided by countries include the following:

²⁰⁰ E.g. Albania, Antigua and Barbuda, Bhutan, European Union, Mauritania

²⁰¹ Burundi, Morocco

²⁰² The same information was provided by the EU Member States in their report, often including information on their competent authorities.

²⁰³ Bhutan, Burundi

²⁰⁴ E.g. Botswana, Burkina Faso, Kenya, Mexico, Pakistan, Peru, Viet Nam

(a) The Republic of Moldova indicated that the question was not applicable since there were no access requirements in place in their country;

(b) The EU explained that the competent authorities in Member States are responsible for providing this information to relevant national authorities in the Party granting PIC and to the ABS Clearing-House, in the form of checkpoint communiqués;

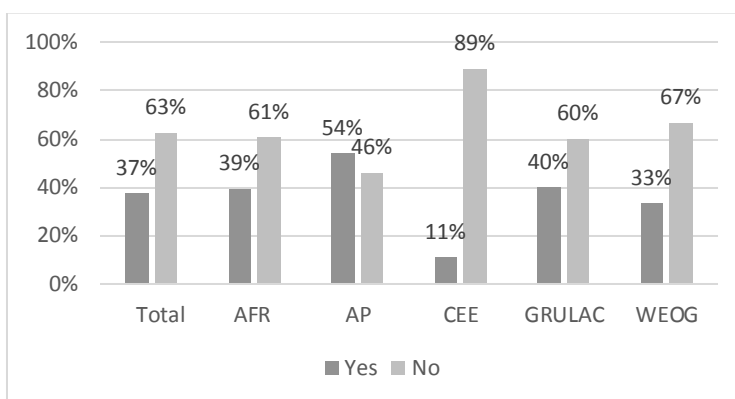
(c) Some EU Member States²⁰⁵ and Switzerland indicated that they have not yet provided the information as no diligence declarations have been yet submitted to the checkpoints;

(d) Japan reported that according to the ABS guidelines, the Minister of the Environment is to provide the ABS Clearing-House with relevant information on the utilization of genetic resources upon request of the person who provided the information for its posting to enhance transparency and credibility.

5. *Has your country taken measures to encourage users and providers to include provisions in mutually agreed terms to share information on the implementation of such terms as provided in Article 17.1(b)? ” (question 28)*

187. Twenty-six Parties and two non-Parties responded that they have taken measures to encourage users and providers to include provisions in mutually agreed terms (MAT) to share information on the implementation of such terms, while fifty-three Parties and four non-Parties reported not having taken such measures.

Graph 25: Measures to implement Article 17.1 (b) (percentage of countries)



(a) *Countries that answered “yes”*

188. A number of countries that provided further information reported addressing this issue through their current ABS measures or the draft under development or approval.²⁰⁶ One country indicated having plans to develop additional measures to address this issue.²⁰⁷

189. In their measures, some countries require users and providers to include clauses in MAT to share information on the implementation of the contracts,²⁰⁸ while others only encourage users and providers to incorporate such clauses.²⁰⁹

190. Several countries²¹⁰ indicated that they include clauses on reporting in MAT or permits. Other clauses included in MAT mentioned by countries include the provision of information on methodology for collection and use of genetic resources²¹¹ as well as on transfer of genetic resources.²¹²

²⁰⁵ E.g. Finland, Netherlands, Poland, Sweden, United Kingdom of Great Britain and Northern Ireland.

²⁰⁶ E.g. Burundi, Ethiopia, Japan, Kyrgyzstan, Morocco, Peru, Rwanda, Swaziland, Uganda, Viet Nam

²⁰⁷ Spain

²⁰⁸ E.g. Ethiopia, Morocco, Peru, Uganda, Viet Nam

²⁰⁹ E.g. Burundi, Japan, Rwanda

191. Some countries reported on activities carried out to encourage the inclusion of such provisions in MAT, for example through trainings²¹³, by including it as a component in awareness-raising strategies,²¹⁴ or by contributing to the development of model clauses.²¹⁵

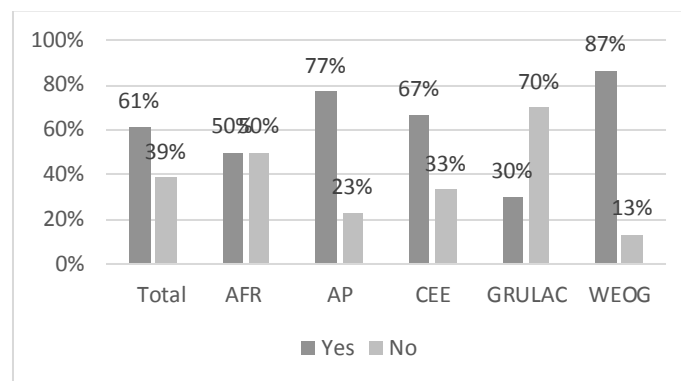
(b) Countries that answered “no”

192. Many countries reported on their plans to address this issue.²¹⁶ The United Kingdom of Great Britain and Northern Ireland explained that even though they have not adopted any formal measures, the competent national authority has encouraged sharing of information and approaches through stakeholder workshops and engaging at an association level rather than with individual users.

6. Is your country encouraging the use of cost-effective communications tools and systems as provided in Article 17.1(c) (question 29)

193. Forty-two Parties and four non-Parties responded that they encourage the use of cost-effective communications tools and systems. Twenty-seven Parties and two non-Parties responded that they have not encouraged the use of cost-effective communications tools and systems.

Graph 26: Use of cost-effective communication tools and systems (percentage of countries)



(a) Countries that answered “yes”

194. In addition to electronic communication, such as email or skype, some countries provided further information on tools and systems being developed, for example:

(a) Ethiopia reported that it has established a web-based ABS information sharing system (<http://www.ebi.gov.et/gm-access/>) where all required documents such as forms, guidelines, laws and other information are posted and regularly updated for easy access by users of genetic resources and community knowledge.²¹⁷

²¹⁰ E.g. Benin, Bhutan, Cameroon, Cuba, India, Kenya, Lao People's Democratic Republic, Madagascar, Malawi, Mexico

²¹¹ Antigua and Barbuda

²¹² Malta

²¹³ Poland

²¹⁴ Sweden

²¹⁵ Switzerland: Contribution to model clauses for the academic sector published by Swiss Academy of Sciences SCNAT <https://absch.cbd.int/database/A19A20/ABSCH-A19A20-SCBD-208298>

²¹⁶ E.g. Botswana, Burkina Faso, China, Comoros, Democratic Republic of the Congo, Mexico, Mongolia, Pakistan, Panama, South Africa, Uruguay

²¹⁷ The online available documents and information include: The Access to Genetic Resource and Community Knowledge, and Community Rights Proclamation No. (482/2006) (ABS legal framework of Ethiopia); Material Transfer Agreement forms (MTA) (in MS-Word or pdf forms) needed for Export Permit; Instruction to users (Providing information on how to process access requests of genetic materials and indigenous knowledge); Assurance Letter Sample forms (E.g. Letter of Assurance to be produced from University / Research Institutions, or Competent National authorities, etc.); and List of potential genetic resources publicized for bioprospecting and benefit sharing purposes.

(b) The European Union explained that Article 13 of Regulation 511/2014 obliges both the European Commission and EU Member States, as appropriate, to promote the development and use of cost-effective communication tools and systems in support of monitoring and tracking the utilization of genetic resources and traditional knowledge associated to genetic resources by collections and users. An EU-wide web-based application is being developed for the users to submit due diligence declarations electronically to the competent authorities. The portal will be connected to the ABS Clearing-House, thus allowing competent authorities to transfer information in a cost-effective way.

(c) Finland indicated having a national ABS Clearing-House and that a web tool for submitting user notifications to the CNA is under consideration;

(d) India, Indonesia, Kenya, and Viet Nam report work on online application/permitting systems;

(e) Antigua and Barbuda and China reported on work on web-based information systems;

(f) Mauritania and Burundi indicated that relevant information on ABS is included in the national clearing-house;

(g) Peru's ABS measures provide for information exchange systems between institutions and indicated that work was ongoing, since 2016, to develop a module for monitoring the terms included in MAT.

(b) *Countries that answered "no"*

195. Many countries²¹⁸ indicated that they are planning to address this issue. Some countries²¹⁹ identified the lack of ABS measures as the main reason for not having implemented Article 17.1(c) or being in the early stages of the implementation process.²²⁰ Mexico provided information on its plans to develop databases and interoperable systems for the exchange of information between CNAs and checkpoints and to update their information technology systems to deal with access requests. Norway also reported that it has developed a web-based information centre that may be used to provide access to relevant information under the Nagoya Protocol.

7. *Additional information: summary of the main difficulties and challenges (question 30)*

196. Twenty-seven countries answered this question. Many countries, when providing information on the main difficulties and challenges encountered, refer to similar difficulties to those mentioned before, such as lack of financial and human resources. Overall, the main difficulties are the absence of ABS measures in place or the need to develop or review measures to be in line with the Nagoya Protocol and the need to improve coordination between different institutions and actors involved.

197. The need to develop tools for monitoring and tracking genetic resources was also identified by several countries, and two of them emphasized that the international dimension of these tools was a challenge. The fact of having extensive borders or the lack of inventory of exit and entry points for genetic resources were identified as challenges by a few countries.

198. Some countries indicated the need to better understand checkpoints and having studies to assist in their designation, as well as the importance to build the capacity of checkpoints.

199. It was also mentioned that operationalizing the definitions enshrined in the Protocol, especially the definition of utilization, remains a challenge in Protocol implementation.²²¹

²¹⁸ E.g. Botswana, Burkina Faso, Democratic Republic of the Congo, Madagascar, Mexico, Pakistan, Panama, South Africa; Uruguay

²¹⁹ E.g. Congo, Côte d'Ivoire, Guinea, Guinea Bissau, Sudan,

²²⁰ E.g. Uruguay

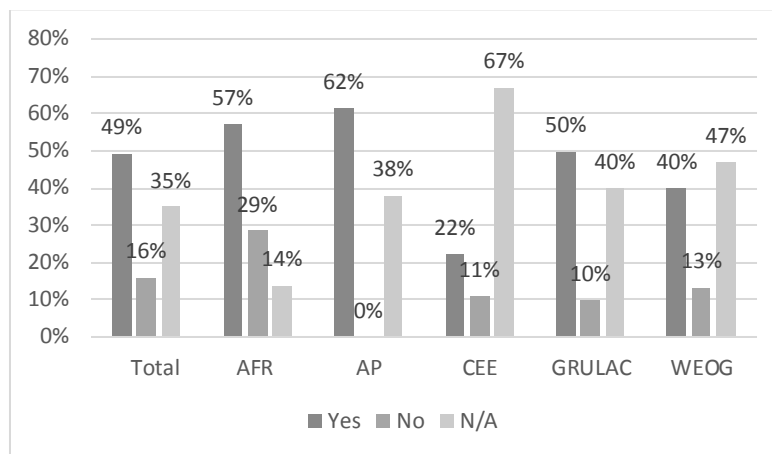
²²¹ European Union

E. ABS measures: Compliance with mutually agreed terms (Article 18) (questions 31 to 34)

1. *Is your country encouraging the inclusion of provisions in MAT to cover dispute resolution as provided in Article 18.1 (a) (b) and (c)? (question 31)*

200. Thirty-six Parties and one non-Party responded that they are encouraging the inclusion of provisions in MAT to cover dispute resolution, while twelve Parties reported not encouraging the inclusion of such provisions, and twenty-one Parties and five non-Parties responded “not applicable”.

Graph 27: Inclusion of provisions in MAT to cover dispute resolution (percentage of countries)



(a) *Countries that answered “yes”*

201. Many countries reported addressing this issue through their current ABS measures²²² or the draft under development or approval.²²³ A number of countries indicated having relevant measures in place to implement Article 18.1 but recognized that additional measures were needed.²²⁴ Some countries mentioned that dispute resolution is addressed by other applicable laws,²²⁵ while other countries reported having dispute resolution clauses included in MAT, permits or available model contracts.²²⁶

202. With respect to the methods for dispute resolution, some countries specifically mentioned that priority was given to amicable solutions²²⁷. For example, Malta indicated that disputes are to be primarily resolved by negotiation, and if disputes cannot be solved, then arbitration procedures under the laws of Malta may be initiated.

203. Some examples of information provided are the following:

(a) China explained that according to the relevant provisions of the contract law, contracts should include methods for dispute settlement. In the case of international contracts, the parties concerned have the right to choose the applicable law to resolve or settle their disputes. Parties to a contract can resolve their contractual disputes through conciliation, mediation, arbitration and resort to judicial lawsuits;

(b) Mexico explained that for the moment the inclusion of dispute resolution in MAT has been done on a case-by-case basis;

²²² E.g. Albania, Bulgaria, Cuba, Ethiopia, France, India, Peru, Swaziland, Viet Nam

²²³ E.g. China, Comoros, Dominican Republic, Mexico, Mongolia, Morocco, Senegal, Spain, Togo

²²⁴ E.g. Albania, Bulgaria, Guinea

²²⁵ E.g. Uganda, Mauritania

²²⁶ E.g. Antigua and Barbuda, Benin, Bhutan, Cameroon, Kenya, Lao People's Democratic Republic, Madagascar, Malawi, Malta, Mexico, Peru, Seychelles

²²⁷ E.g. Cuba, Lao People's Democratic Republic, Malta, Mauritania

(c) Peru reported that dispute resolution is regulated by Decision 391 of the Andean Community and provided details on the clause included on dispute resolution in the model contract for access to genetic resources adopted by Resolution 415.

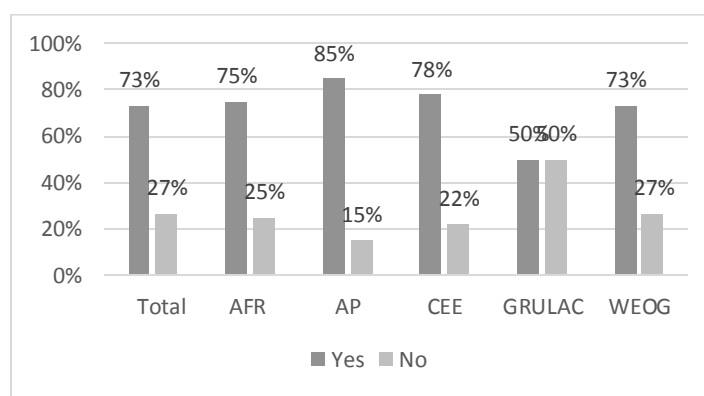
(b) *Countries that answered “no” or “not applicable”*

204. Many countries²²⁸ reported on their plans to address this issue.²²⁹

2. *Does your country ensure that opportunity to seek recourse is available under your legal systems in cases of disputes arising from MAT as provided in Article 18.2? (question 32)*

205. Fifty-one Parties and four non-Parties responded that they are ensuring that opportunity to seek recourse is available under their legal systems in cases of disputes arising from MAT, while eighteen Parties and two non-Parties responded that they are doing so.

Graph 28: Opportunity to seek recourse under the legal system in cases of disputes arising from MAT (percentage of countries)



(a) *Countries that answered “yes”*

206. A large portion of the countries reported that the opportunity to seek recourse was addressed by other legislation²³⁰ in the country and not necessarily by ABS measures. For instance, by the constitution,²³¹ civil or contract law,²³² arbitration measures²³³ or other.

207. Some countries reported also having addressed this issue in their ABS measures²³⁴ or the draft under development or approval²³⁵ and other countries reported having included this issue in MAT, permits or available model contracts.²³⁶

208. Some examples of information provided by countries include the following:

²²⁸ E.g. Botswana, Burkina Faso, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Guinea Bissau, Niger, Pakistan, Panama, South Africa, Sudan, Uruguay

²²⁹ E.g. Burkina Faso, Burundi, Democratic Republic of the Congo, Niger, Pakistan, Panama, South Africa, Uruguay

²³⁰ E.g. Belarus, Burkina Faso, China, Cuba, Democratic Republic of the Congo, Denmark, Ethiopia, Finland, France, Germany, India, Japan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Malta, Mauritania, Netherlands, Peru, Poland, Portugal, Republic of Moldova, Slovakia, Sudan, Sweden, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland.

²³¹ E.g. Democratic Republic of the Congo, Ethiopia, Kyrgyzstan, Portugal

²³² E.g. China, Cuba, Ethiopia, Germany, Japan, Lao People's Democratic Republic, Sudan, Sweden, United Kingdom of Great Britain and Northern Ireland

²³³ E.g. Peru, Sweden

²³⁴ E.g. Antigua and Barbuda, Benin, India, Swaziland

²³⁵ E.g. Burkina Faso, Burundi, China, Comoros, Dominican Republic, Malawi, Mongolia, Morocco, Seychelles, South Africa, Spain

²³⁶ E.g. Bhutan, Cameroon, Senegal

(a) In Bulgaria parties to an agreement are advised to contact the NFP for further guidance on opportunities for recourse;

(b) India and Cuba have each identified a specific tribunal to deal with environmental and natural resource affairs;

(c) Denmark and Poland indicated that foreign States, as well as persons or legal persons, have legal standing and full access to justice on the same basis as national real subjects;

(d) Ethiopia stated that suits regarding contracts (including MAT) may be instituted at the discretion of the party claimant in the court of the place where the contract was made or was to be executed, unless the parties agreed otherwise in their contract;

(e) Germany and the Republic of Moldova referred to the rules of international civil procedure;

(f) Lao People's Democratic Republic indicated that if disputes cannot be resolved by negotiations between parties, then the Contract Law (2008) will be applied through conciliation, mediation, arbitration and ultimately through judicial legal action.

(b) *Countries that answered "no"*

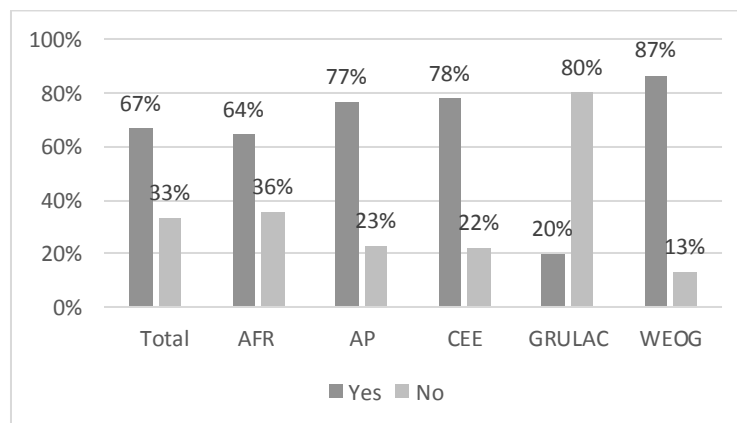
209. Several countries²³⁷ shared their plans for addressing this issue. In addition to including a provision for recourse in case of disputes arising from MAT in the ABS measures, a few countries²³⁸ stated that contracts signed so far include the possibility to seek recourse.

210. The European Union indicated that recourse to legal systems in cases of disputes arising from MAT is not dealt with at the EU level. However, recourse is available under the legal systems of individual Member States.

3.1 *Has your country taken measures regarding access to justice as provide in Article 18.3? (question 33)*

211. Forty-seven Parties and three non-Parties responded that they have taken measures regarding access to justice, while twenty-two Parties and three non-Parties responded that they have not taken such measures.

Graph 29: Access to justice (percentage of countries)



(a) *Countries that answered "yes"*

212. The answers to this question are very similar to the answers provided in to the previous question 32. The majority of countries that provided further information reported that the access to justice was

²³⁷ E.g. Botswana, Côte d'Ivoire, Mexico, Niger, Pakistan, Panama, Uruguay

²³⁸ Côte d'Ivoire, Guinea

addressed by other legislation²³⁹ in the country and not necessarily by ABS measures. For instance, by the constitution²⁴⁰, civil or contract law,²⁴¹ arbitration measures,²⁴² or other. Some countries reported addressing this issue in their ABS measures,²⁴³ or the draft under development or approval.²⁴⁴

213. Some examples of information provided by countries not mentioned in the analysis of question 32 above include:

- (a) In Cuba the environmental law foresees access to administrative, civil and penal justice;
- (b) Danish legal assistance programs do not discriminate between nationals and foreigners;
- (c) Norway indicated that both users and providers have access to civil courts provided that they have legal standing, which is assessed on case-by-case basis. The import of genetic material for utilization in Norway from a country that requires consent for collection or export of such material may only take place in accordance with such consent. The country may enforce the conditions by bringing legal action on behalf of the entity that set the conditions for the consent;
- (d) In Finland appeal of the decision by the competent authority concerning the approval of the MAT can be presented before an administrative court;
- (e) The Spanish Decree provides the possibility of appealing decisions related to access authorizations;
- (f) In India the Biological Diversity Act, 2002 (under Section 52 A) includes measures for ensuring access to justice and any person aggrieved with the determination of benefit-sharing can file an appeal to the National Green Tribunal;
- (g) A more effective legal system is under development in South Africa through the current amendment of the National Environmental Management: Biodiversity Act, 2004 and its BABS Regulations to deal with issues of access to justice in a foreign country.

(b) *Countries that answered "no"*

214. In providing further information, a number of countries²⁴⁵ indicated that they are planning to address this issue. The European Union indicated that access to justice is not dealt with at EU level but provided by individual Member States.

3.2 *Has your country taken measures on the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgements and arbitral awards as provided in Article 18.3 (question 33)*

215. Thirty-eight Parties and three non-Parties responded that they have taken measures regarding the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgements and arbitral awards, while thirty-one Parties and three non-Parties responded that they have not taken such measures.

²³⁹ E.g. Belarus, Cameroon, Comoros, China, Cuba, Denmark, Democratic Republic of the Congo, Ethiopia, Finland, Germany, India, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Malta, Mauritania, Netherlands, Niger, Norway, Poland, Portugal, Republic of Moldova, Spain, Slovakia, Sudan, Sweden, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland

²⁴⁰ E.g. Comoros, Democratic Republic of the Congo, Ethiopia, Kenya, Kyrgyzstan, Portugal, Togo, Uganda

²⁴¹ E.g. China, Germany, Norway, Sudan

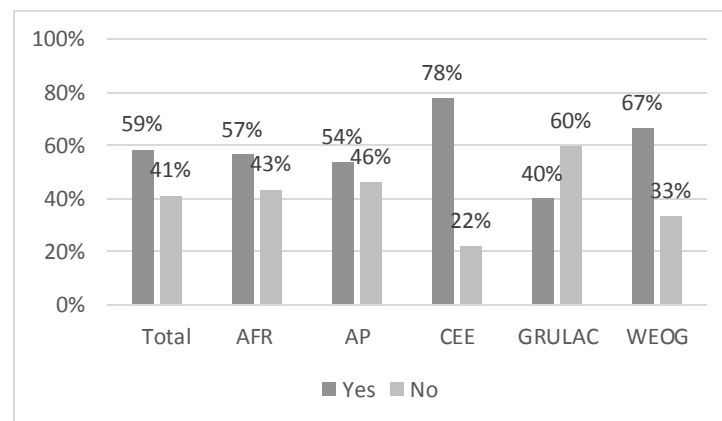
²⁴² E.g. Malta

²⁴³ E.g. Antigua and Barbuda, Bhutan, Cuba, Finland, Kenya, Norway, South Africa, Swaziland, Viet Nam

²⁴⁴ E.g. Benin, Burkina Faso, Burundi, China, Lao People's Democratic Republic, Morocco, Pakistan, Senegal, South Africa

²⁴⁵ E.g. Botswana, Côte d'Ivoire, Guinea, Mexico, Mongolia, Peru, Sao Tome and Principe, Uruguay

Graph 30: Utilization of mechanisms regarding mutual recognition and enforcement of foreign judgements and arbitral awards (percentage of countries)



(a) Countries that answered “yes”

216. The majority of countries that provided further information reported that the mechanisms for mutual recognition and enforcement of foreign judgements and arbitral awards were addressed by existing legislation in the country²⁴⁶ and some made reference to applicable international treaties.²⁴⁷ A country reported that they will address this issue in draft ABS measures.²⁴⁸

217. Some examples of information provided by countries not mentioned in the analysis of question 32 above include the following:

(a) China is a Party to a number of international conventions and up to now has signed bilateral judicial assistance treaties with about 70 countries;

(b) In Ethiopia, in principle, unless otherwise expressly provided for by international convention, foreign judgements may not be executed in Ethiopia unless substantive and formality requirements are fulfilled;

(c) Germany indicated that recognition and enforcement of foreign judgments in private contractual matters given by courts of other Member States of the European Union are generally governed by Regulation (EU) No 1215/2012 of the European Parliament and of The Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In addition, international conventions as well as national rules in the German Code of Civil Procedure provide for recognition and enforcement of foreign judgments, based on reciprocity and subject to a limited number of grounds for refusal;

(d) Norway has agreements with some countries regarding mutual recognition and enforcement of foreign judgements and arbitral awards which would also include ABS but has not entered into agreements with other countries on ABS mechanisms regarding mutual recognition and enforcement of foreign judgements and arbitral awards;

(e) Togo recognizes judicial arbitration awarded by regional and subregional courts of which it is a member.

(b) Countries that answered “no”

²⁴⁶ E.g. Belarus, Bulgaria, Cameroon, China, Comoros, Cuba, Democratic Republic of the Congo, Denmark, France, Ethiopia, Germany, India, Japan, Kenya, Mauritania, Netherlands, Niger, Norway, Peru, Poland, Portugal, Republic of Moldova, Slovakia, Sudan, Swaziland, Sweden, Switzerland, Togo, Uganda

²⁴⁷ E.g. China, Democratic Republic of the Congo, France, India, Niger, Peru

²⁴⁸ E.g. Burkina Faso

218. A number of countries²⁴⁹ indicated that they are planning to address this issue. A country²⁵⁰ explained that there was no need to adopt new measures as these are already present in their legal system. The European Union stated that this is not dealt with at EU level but provided by individual Member States.

4. *Additional information: summary of the main difficulties and challenges (question 34)*

219. Twenty-six countries answered this question, of which, many referred to similar difficulties to those mentioned earlier regarding general implementation of the Nagoya Protocol and adoption of ABS measures.

220. Some of the difficulties identified by countries in their reports 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.

221. It was noted that the disparity of national legislations renders difficult to recognize 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.

222. 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.

F. Special considerations: Article 8 (questions 35 to 36)

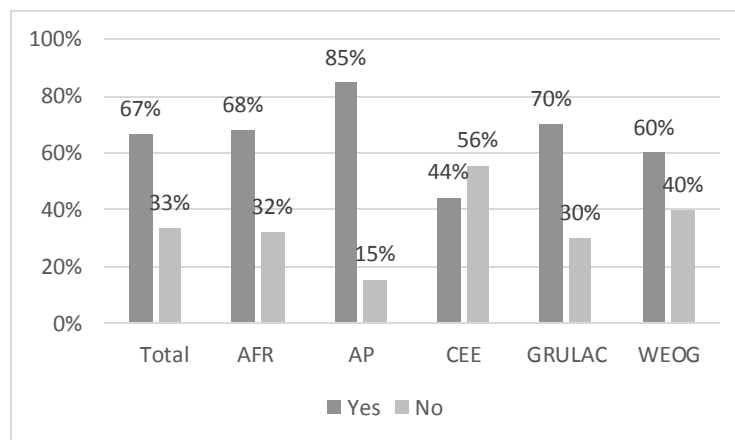
1.1 In the development and implementation of ABS legislation or regulatory requirements has your country created conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research as provided in Article 8(a)? (question 35)

223. Forty-eight Parties and two non-Parties responded that they have created conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity, while twenty-one Parties and four non-Parties reported not having created such conditions.

²⁴⁹ E.g. Benin, Botswana, Guinea, Kuwait, Mongolia, Pakistan, Panama, Sao Tome and Principe, South Africa, Uruguay

²⁵⁰ Spain

Graph 31: Conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity (percentage of countries)



(a) Countries that answered “yes”

224. Some countries²⁵¹ referred to existing ABS measures addressing this issue or to draft measures under development or approval.²⁵² Several countries²⁵³ reported having relevant measures in place, and some²⁵⁴ indicated that Article 8(a) will be given further consideration in the development/review of their ABS measures.

225. Some countries²⁵⁵ provided information on measures taken to encourage research in general (not in the context of access and benefit-sharing).

226. A number of countries²⁵⁶ answered “yes” to this question on the basis of not having requirements for access to genetic resources in their country. For example, the European Union indicated that there are no access measures at EU level, hence there are also no simplified measures on access for non-commercial research purposes. However, they reported that Article 16 of the EU ABS Regulation requires the European Commission to review the functioning and effectiveness of the Regulation in achieving the objectives of the Nagoya Protocol and that in this review the European Commission needs to consider the administrative consequences inter alia for public research institutions.

227. The following provides some examples of measures taken to implement Article 8(a) provided by countries in their report:

(a) Benin indicated that the contracts for non-commercial research are granted faster and that only non-monetary benefits and clauses to address the change of intent are negotiated;

(b) Bhutan requires material transfer agreements for non-commercial research instead of negotiating an ABS agreement. They indicated that one of the conditions of the MTA is the need to inform the CNA or NFP about the change of intent;

(c) Bulgaria’s legislation provides for gratuitous access to genetic resources if the resources are intended for non-commercial purposes, including scientific research, education, conservation of biological diversity, or public health;

²⁵¹ E.g. Antigua and Barbuda, Benin, Bhutan, Bulgaria, China, Ethiopia, France, India, Madagascar, Norway, Peru, South Africa, Spain, Swaziland, Switzerland, Viet Nam

²⁵² E.g. Burkina Faso, China, Mexico, Morocco, Niger, Seychelles, Togo

²⁵³ E.g. Albania, Burkina Faso, Cuba, Democratic Republic of the Congo, Kenya, Lao People’s Democratic Republic, Mongolia

²⁵⁴ E.g. Albania, Belarus, Lao People’s Democratic Republic

²⁵⁵ E.g. Qatar, Pakistan

²⁵⁶ E.g. Czech Republic, European Union, Finland, Germany, Netherlands, Slovakia, Sweden, United Kingdom of Great Britain and Northern Ireland

(d) China requires that simplified procedures and measures be adopted for the transfer of genetic resources as non-living specimens, epidemic disease samples and genetic resources used for exhibition and science popularization purposes as long as they comply with relevant laws and regulations;

(e) Ethiopia reported that government institutions with a mandate to conserve genetic resources may not be required to obtain access permits. However, they shall not transfer these resources to third persons or export them out of Ethiopia unless they are given a permit. Facilitated access is also provided to national public research and higher learning institutions as well as intergovernmental institutions for the purpose of development and academic research activities undertaken within the country;

(f) France reported that the French law on biodiversity foresees a declarative procedure for non-commercial research;

(g) India provides a separate process (Form B application), which can be used by Indian researchers or government institutions who intend to carry or send biological resources outside India for basic non-commercial research. The declaration to be signed by the user and the recipient (non-Indian) has to be submitted to the CNA. The applications filed under this provision are considered and disposed of expeditiously within a specified timeframe through simplified measures and no fee is charged for such applications;

(h) Madagascar reported that public research organizations are only required to submit the information in the access form for access and utilization for non-commercial purposes. They also indicated that any change of intent will require the submission of a new access request which will be subject to PIC and MAT;

(i) Malawi indicated that the issue was addressed on a case-by-case basis;

(j) Malta indicated that the application follows a simplified procedure and the benefit-sharing consists in the sharing of knowledge gained;

(k) Uganda explained that the regulations do not apply to approved research activities intended for educational purposes by Ugandan institutions recognized by the CNA, and which do not result in access to genetic resources for commercial purposes or export to other countries;

(l) Viet Nam reported having a reduced time to evaluate the application for non-commercial research (30 days instead of 90 days) and that there are provisions for shortened procedures for licences to transfer genetic resources abroad for study and research purposes (not for commercial purposes) by Vietnamese students, doctoral students and scientific and technological organizations.

(b) Countries that answered “no”

228. Some countries²⁵⁷ stated that in the development or revision of ABS legislation or regulatory requirements the conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity will be created. Some countries²⁵⁸ explained that they have not yet created such conditions due to lack of ABS measures, while other countries²⁵⁹ indicated that the question was not applicable as they did not have access requirements in place. Some countries provided information on measures taken to encourage research in general (not in the context of access and benefit-sharing).²⁶⁰

1.2 In the development and implementation of ABS legislation or regulatory requirements has your country 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) (question 35)

²⁵⁷ E.g. Botswana, Cameroon, Côte d’Ivoire, Sudan, Uruguay

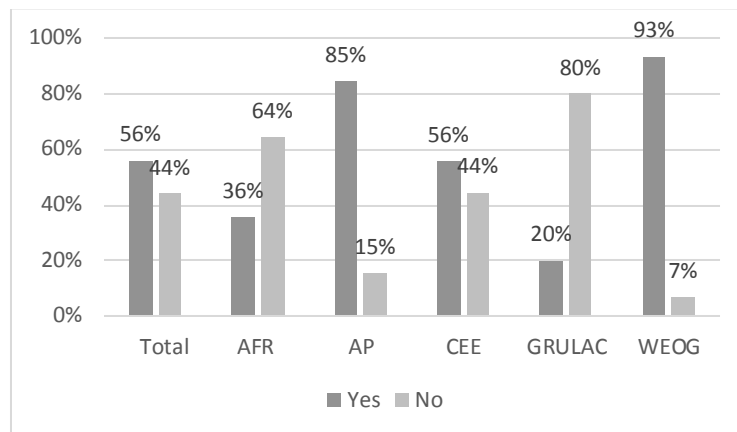
²⁵⁸ E.g. Congo, Guinea Bissau

²⁵⁹ E.g. Belgium, Estonia, Hungary, Japan, Poland

²⁶⁰ E.g. Republic of Moldova, Senegal, Sudan

229. Thirty-nine Parties and three non-Parties reported having paid due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, while thirty Parties and three non-Parties reported not having done so.

Graph 32: Due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health (percentage of countries)



(a) *Countries that answered “yes”*

230. Some countries referred to existing ABS measures addressing this issue²⁶¹ or to draft measures under development or approval.²⁶² Other countries indicated that even though they had some relevant mechanisms in place to address such emergencies,²⁶³ Article 8(b) would be given due consideration in the development/review of their ABS measures.²⁶⁴

231. Several countries²⁶⁵ provided general information on measures taken and progress made to prevent threats to human health, as part of their efforts to implement the International Health Regulations (2005) and the Pandemic Influenza Preparedness (PIP) Framework of the World Health Organization.

232. The European Union explained that there is no access legislation at EU level hence there are also no measures on expeditious access to genetic resources for that purpose.²⁶⁶ Article 4(8) of this regulation provides for a short temporal derogation from obligations contained in its Articles 4(3) and 4(5) for users acquiring a genetic resource that is determined to be, or is determined as likely to be, the causing pathogen of a present or imminent public health emergency of international concern.

233. In addition to Regulation (EU) No 511/2014, several Parties which are also Member States of the European Union reported on other measures taken at the national level to account for cases of present or imminent health emergencies:

(a) Bulgaria reported that Article 66 (4) of the Biological Diversity Act provides for gratuitous provision of genetic resources if the resources are intended for non-commercial purposes, including scientific research, education, conservation of biological diversity, or public health;

²⁶¹ E.g. Benin, Belgium, Bhutan, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Kenya, Malta, Mongolia, Netherlands, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Viet Nam

²⁶² E.g. China, Norway, Morocco, Togo

²⁶³ E.g. Kenya, Niger, Peru, Senegal

²⁶⁴ E.g. Kenya

²⁶⁵ E.g. China, Lao People's Democratic Republic, Mexico

²⁶⁶ The same information was provided by the EU Member States in their reports.

(b) France indicated that the French law on biodiversity foresees a simplified procedure (declaration) for access to this type of genetic resources when the urgency of the situation is justified;

(c) Malta reported that Regulation 23 of S.L. 549.111 of the Laws of Malta enables the national competent authority to adopt interim measures in case of imminent threats to human, animal or plant health; and

(d) Spain reported that Article 8 of its ABS Decree addresses access to genetic resources in emergency situations and provides that declaration of an emergency could justify an exceptional, provisional and immediate authorization for access to a genetic resource. Authorization is, however, granted on the condition that mutually agreed terms are established later on, and that a definitive authorization is granted within a period of six months.

234. Other countries reported on different approaches to access and benefit-sharing with regard to health emergencies:

(a) Article 16 of Benin's national ABS directives provides for simplified procedural documents for authorization requests made to the competent national authority for access to genetic resources and associated traditional knowledge in the case of emergencies pertaining to human, animal or plant health;

(b) The Biodiversity Bill of Bhutan, under Chapter 4 clause 30, provides for exemptions to be granted from procedural requirements or a fee waiver;

(c) Regulation 13 of India's ABS Regulations, through Form B, facilitates the transfer of biological resources by governmental institutions in India to carry out urgent studies to avert emergencies like epidemics etc., through an expeditious and simplified process;

(d) Article 3, paragraph 4, of Switzerland's Nagoya Ordinance provides that, in an internationally or nationally recognized emergency that threatens the health of humans, animals or plants or the environment, it suffices if the due diligence requirement for the utilization of genetic resources that are pathogenic or harmful organisms is fully met at the time of the commercialization of products developed on the basis of the utilized genetic resources.

235. Some countries provided further information on the content of their draft measures:

(a) China stated that procedures and measures will be simplified for access to genetic resources and benefit-sharing for emergency responses;

(b) Article 5 of Morocco's draft law 56-17 on ABS states that the provisions of the law do not apply when genetic resources are collected according to special measures to protect animals and plants from health dangers. Furthermore, Article 15 contains a procedure for urgent requests to access genetic resources used to fight the spread of diseases or epidemics that constitute a real or imminent danger to public health at the national or international level. The modalities of this emergency procedure will be established by regulation.

236. Peru provided information on the most relevant pathogens for their national context and the research groups working on pathogens. It also emphasized the importance of strengthening the capacities on research and development of the research institutions through cooperation and collaboration among countries.

(b) *Countries that answered "no"*

237. The majority²⁶⁷ of countries that provided further information stated that due regard would be paid to cases of present or imminent emergencies that threaten or damage human, animal or plant health in future development or revision of ABS legislation or regulatory requirements. Two countries²⁶⁸

²⁶⁷ E.g. Antigua and Barbuda, Belarus, Botswana, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Ethiopia, Madagascar, Malawi, Mexico, South Africa, Sudan, Uruguay

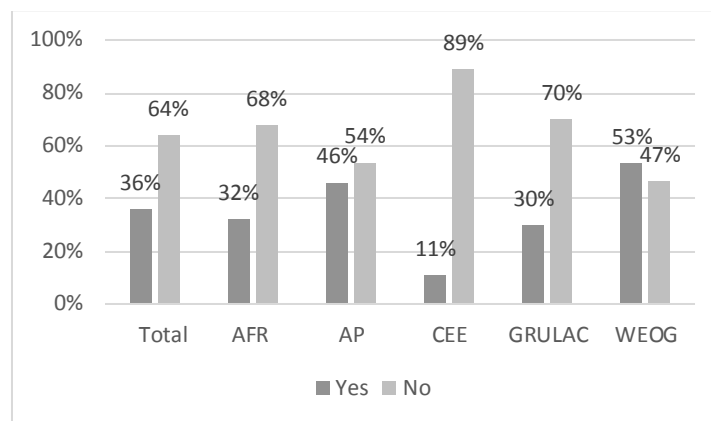
²⁶⁸ E.g. Congo, Guinea Bissau

explained that they have not yet done so due to the lack of ABS measures and another two countries²⁶⁹ indicated that the question was not applicable as they did not have access requirements in place. Some countries also noted that there had not been any relevant cases so far.²⁷⁰

1.3 In the development and implementation of ABS legislation or regulatory requirements has your country 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, including access to affordable treatments by those in need, especially, in developing countries as provided in Article 8(b) (question 35)

238. Twenty-six Parties and one non-Party stated that they had taken into consideration the need for expeditious access and expeditious benefit-sharing in the development and implementation of ABS legislation or regulatory requirements, while forty-three Parties and five non-Parties reported not having taken such considerations.

Graph 33: Consideration of the need for expeditious access and expeditious benefit-sharing (percentage of countries)



(a) Countries that answered “yes”

239. Some countries referred to existing ABS measures²⁷¹ addressing this issue or to draft measures under development or approval.²⁷² Other countries indicated that even though they had some relevant mechanisms in place to address expeditious access and expeditious benefit-sharing,²⁷³ Article 8(b) would be given due consideration in the development/review of their ABS measures.²⁷⁴ A country²⁷⁵ answered “yes” to this question on the basis of not requiring access authorization in their country.

240. Answers provided were similar to those of the question of above (due regard to cases of present or imminent emergencies). Additional information provided by countries include the following:

(a) China reported that in accordance with the International Health Regulations (2005) the country reports in a timely manner to the World Health Organization and the World Organisation for Animal Health about confirmed cases and publishes updated data on epidemics, shares relevant

²⁶⁹ E.g. Japan, Poland

²⁷⁰ E.g. Cuba, Mexico

²⁷¹ E.g. Bhutan, Malta, Spain

²⁷² E.g. China, Mexico, Niger, Norway, Uganda

²⁷³ E.g. Benin, Kenya,

²⁷⁴ E.g. Kenya

²⁷⁵ Netherlands

information with relevant organizations and their members, and reports on China's progress in preventing and controlling epidemics. China explained that the draft ABS regulation will be consistent with and mutually supportive to those international treaties and conventions China has ratified or acceded to, with adequate consideration given to existing mechanisms;

(b) Peru emphasized the importance of expeditious benefit-sharing in exchange for access to pathogens and in that regard they consider: (a) establishing expeditious procedures for access without undermining the need for PIC and MAT; (b) the confidential nature of information on pathogens accessed; (c) the interest of the country to benefit from access to vaccines and to freely distribute them among public entities and affected communities; and (d) the interest of the country to benefit from cooperation mechanisms with other countries to enhance the capacities and infrastructure of national research institutions.

(b) *Countries that answered "no"*

241. Many countries²⁷⁶ that provided further information stated that they will consider this issue in the future development or revision of ABS legislation or regulatory requirements. A number of countries indicated that there were no access rules, and hence no specific measures for expeditious access²⁷⁷ and expeditious benefit-sharing.²⁷⁸ Two countries explained that they have not yet done so due to the lack of ABS measures²⁷⁹ and one country²⁸⁰ noted that there have not been any relevant cases so far.

242. Japan indicated that ABS Guidelines specify that the procedural requirements in domestic measures based on Articles 15 and 16 are relaxed in situations that are deemed emergencies, in accordance with the International Health Regulations of the World Health Organization, or domestic legislation (e.g. Infectious Disease Act) or regulatory requirements. In those cases, the acquirer is to submit a report to prove lawful access within six months of the date on which the terms for deeming that the emergency has been settled are fulfilled.

1.4 In the development and implementation of ABS legislation or regulatory requirements has your country 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)? (question 35)

243. Forty-eight Parties and three non-Parties stated that they had taken into consideration the importance of genetic resources for food and agriculture and their special role for food security, while twenty one Parties and three non-Parties reported not having taken such considerations.

²⁷⁶ E.g. Antigua and Barbuda, Botswana, Comoros, Côte d'Ivoire, Kenya, Malawi, Mongolia, South Africa, Sudan, Uruguay

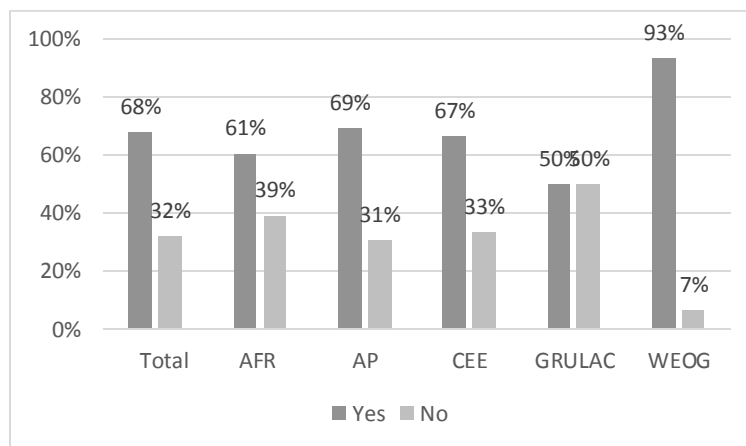
²⁷⁷ E.g. Belgium, Estonia, European Union, Finland, Germany, Japan, Poland, Slovakia, Sweden, United Kingdom of Great Britain and Northern Ireland

²⁷⁸ E.g. Belgium, Estonia, European Union, Finland, Poland, Slovakia, Sweden, United Kingdom of Great Britain and Northern Ireland

²⁷⁹ Congo, Guinea Bissau

²⁸⁰ Antigua and Barbuda

Graph 34: Consideration of the importance of genetic resources for food and agriculture and their special role for food security (percentage of countries)



(a) *Countries that answered “yes”*

244. Some countries reported having relevant measures in place recognising the importance of plant genetic resources for food and agriculture (PGRFA)²⁸¹ or are planning to do so.²⁸²

245. Examples of some of the information provided by countries includes the following :

(a) Malta’s regulation enables the CNA to adopt additional measures to promote the role of genetic resources for food security and encourage research for conservation and sustainability;

(b) Norway’s Nature Diversity Act does not require a permit for using genetic resources in public collections and for use and further breeding or cultivation in agriculture or forestry. They indicated that future access regulations will not cover use and further breeding or cultivation in agriculture or forestry;

(c) In Switzerland plant and animal breeders are given the possibility to simplify the notification procedure;

(d) In Uganda the national ABS legislation does not apply where the exchange is certified to be only for food or other consumption purposes as prescribed by relevant laws.

246. In providing further information, many countries indicated having considered the species listed in Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) in their ABS measures²⁸³ or in the development of further measures.²⁸⁴ One country reported on their plans for national coordination of institutions in order to implement the ITPGRFA and the Nagoya Protocol in a mutually supportive manner²⁸⁵ and another reported having taken ABS related aspects into account in their phytosanitary measures and food law.²⁸⁶

247. Some countries²⁸⁷ reported on how they dealt with the relationship between the ITPGRFA and the Nagoya Protocol in their ABS legislation, for example:

²⁸¹ E.g. Bhutan, Cuba, Democratic Republic of Congo, Malta, Mauritania, Norway, Peru, South Africa, Switzerland, Uganda

²⁸² Mexico, Botswana

²⁸³ E.g. Bhutan, Belgium, Benin, Bulgaria, Czech Republic, Denmark, Ethiopia, Estonia, European Union, Finland, Germany, India, Hungary, Malta, Netherlands, Norway, Poland, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

²⁸⁴ E.g. Burkina Faso, Niger, Seychelles, Norway

²⁸⁵ Togo

²⁸⁶ Comoros

²⁸⁷ E.g. Ethiopia, European Union and Member States, India, Peru, Spain

(a) The European Union referred to Recital 12 of Regulation 511/2014 which recalls Article 8(c) of the Protocol and explains that ITPGRFA is a specialized instrument within the meaning of Article 4(4) of the Protocol.²⁸⁸ The Regulation also recognizes that, where Parties have decided to use standard material transfer agreements for PGRFA which are not covered by ITPGRFA but which are under their control and in the public domain, no due diligence declaration is required;

(b) Ethiopian proclamation No. 482/2006 states that access to genetic resources under a multilateral system is achieved according to the conditions and procedures of that multilateral system (SMTA);

(c) The Government of India has issued a notification under Section 40 of the Biological Diversity Act, 2002 exempting crops listed in Annex 1 of the ITPGRFA from the provisions of the Biological Diversity Act, if they are utilized for the purpose of breeding, research and training.

(b) *Countries that answered “no”*

248. A number of countries that provided further information stated that they are planning to address this issue.²⁸⁹ Two countries explained that they have not yet done so due to a lack of ABS measures.²⁹⁰

2. *Additional information: summary of the main difficulties and challenges (question 36)*

249. Twenty-two countries that answered this question. Some countries, when providing information on the main difficulties and challenges encountered, referred to general similar difficulties to those raised earlier in the document, such as lack of financial resources. The main difficulty identified is the absence of ABS measures in place or the need to further develop or review measures to be in line with the Nagoya Protocol.

250. Some countries highlighted the lack of capacity as well as the lack of experiences to benefit from when preparing the law. The need to improve coordination between different institutions and actors involved was also highlighted by some.

251. One country mentioned the need to take into consideration possible changes in intent in non-commercial research.²⁹¹ In relation to Article 8(b), another country indicated that it was a challenge to develop measures that do not result in putting developing countries in less favourable situations than developed countries and that protect the most vulnerable populations. Another country reported having difficulties in ensuring mutually supportive implementation of the Nagoya Protocol and the ITPGRFA, and considered particularly difficult how to monitor possible changes of intent in the use of genetic resources accessed within the ITPGRFA system.

G. Provisions related to indigenous and local communities: Articles 6, 7 and 12 (questions 37 to 44)

1. Does your country have indigenous and local communities (question 37)

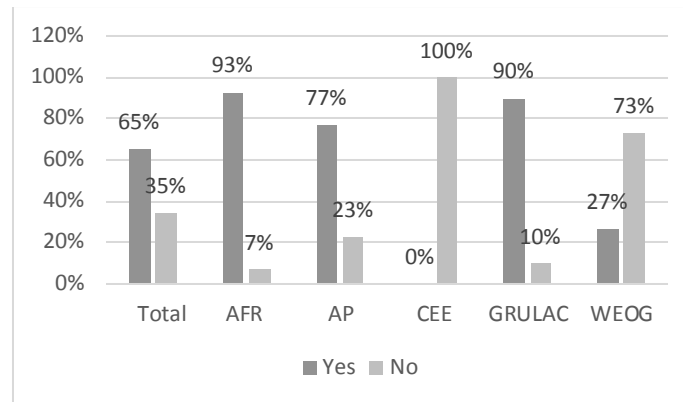
252. Forty-seven Parties and two non-Parties responded that there are indigenous peoples and local communities in their country, while twenty-two Parties and four non-Parties answered that there are not.

²⁸⁸ The same information was provided by the EU Member States in their report

²⁸⁹ E.g. Botswana, Côte d'Ivoire, Madagascar, Pakistan, Uruguay

²⁹⁰ E.g. Congo, Guinea Bissau

²⁹¹ Burundi

Graph 35: Countries with indigenous peoples and local communities (percentage)*(a) Countries that answered “yes”*

253. Some countries indicated that there are either indigenous peoples,²⁹² local communities²⁹³ or both.²⁹⁴ Some countries used a different terminology in the submissions, for instance, Japan talked about “indigenous communities” and Peru referred to “indigenous peoples, peasant communities and native communities”. In France, the law on biodiversity gives a definition of the terminology “indigenous and local communities”²⁹⁵ in order to address the situation overseas. One country²⁹⁶ recognized the need to define indigenous and local communities with respect to the local context.

254. Some countries provided information related to the organization of local communities. For example:

(a) In Côte d’Ivoire local communities are led by village or community chiefs or by kings whose authority is recognized by law;

(b) In Comoros, community organizations were formed with the establishment of protected areas;

(c) Uruguay noted that the main providers of associated traditional knowledge were local producers who were not necessarily organized as local communities;

(d) Mali indicated that the communities are not organized.

(b) Countries that answered “no”

255. Three countries²⁹⁷ stated not having indigenous peoples and local communities as commonly understood in the context of the CBD. The European Union indicated that there were no measures concerning indigenous peoples and local communities at the EU level.

256. India specified that even though local communities existed, there was no separate set of rules and regulations governing them. In addition, India provided many details regarding measures taken to implement Articles 6, 7 and 12 of the Protocol which are considered in the sections below.

²⁹² E.g. Finland, Mexico, Panama

²⁹³ E.g. Antigua and Barbuda, Bhutan, Burkina Faso, Botswana, China, Côte d’Ivoire, Comoros, Cuba, Dominican Republic, Guinea, Guinea-Bissau, Lao People’s Democratic Republic, Niger, Togo, Uruguay

²⁹⁴ E.g. Honduras, Mauritania

²⁹⁵ The expression retained and defined in Art. L. 412-4 of the French law is “communautés d’habitants”.

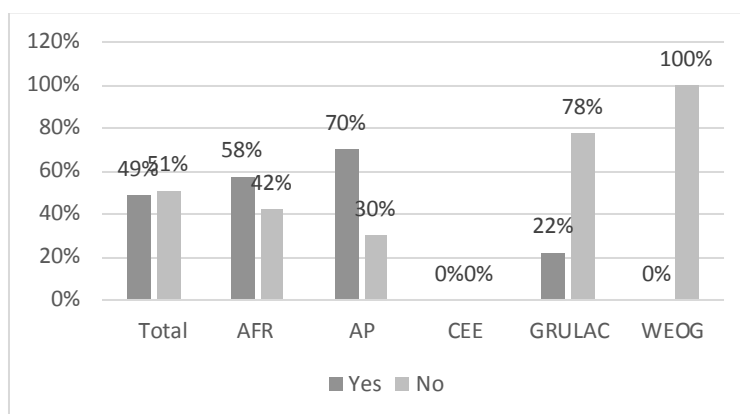
²⁹⁶ Swaziland

²⁹⁷ Republic of Moldova, Rwanda, Switzerland

2.1 *Do indigenous and local communities have the established right to grant access to genetic resources according to your domestic law? (Article 6.2) (question 38)*

257. Of the forty-nine countries that stated they there are indigenous peoples and local communities (IPLCs) in their country, half (twenty-three Parties and one non-Party) specified that IPLCs have the established right to grant access to genetic resources according to their domestic law.

Graph 36: Established rights of indigenous peoples and local communities to grant access to genetic resources (percentage of countries)



(a) *Countries that answered “yes”*

258. Countries referred to legislation related to forest,²⁹⁸ land²⁹⁹, rural development³⁰⁰, their constitution³⁰¹ or other general laws on environment or management of natural resources³⁰². Some countries include specific references in their relevant ABS laws.³⁰³ For instance, Mexico indicated that they would clarify the rights already established in different laws in the development of new ABS measures.

(b) *Countries that answered “no”*

259. Some countries³⁰⁴ indicated that genetic resources were considered to be national heritage and that as such they belonged to the State. Other countries also stated that genetic resources belonged to the State³⁰⁵ or that only the government could grant access to them.³⁰⁶

260. In some countries indigenous peoples and local communities are integrated into the process even though the government is responsible for granting access. For example:

(a) In the Democratic Republic of the Congo, access is granted by the CNA but PIC is required from local communities as well as the establishment of MAT involves local communities;

(b) In Ethiopia local communities have the right to demand the restriction or withdrawal of the PIC given by the CNA for access to their genetic resources in cases where such consent is likely to be detrimental to their socio-economic life or their natural or cultural heritages;

²⁹⁸ E.g. Comoros, Côte d’Ivoire, Guinea, Mali, Mauritania, Mexico

²⁹⁹ E.g. Benin, Côte d’Ivoire, Mali

³⁰⁰ E.g. Mexico

³⁰¹ E.g. Kenya, Swaziland

³⁰² E.g. Burkina Faso, Kuwait, Mexico, Panama, South Africa, Viet Nam

³⁰³ E.g. Bhutan, Kenya, Madagascar, Panama, South Africa, Uganda

³⁰⁴ E.g. Cameroon, Cuba, France

³⁰⁵ E.g. Burundi

³⁰⁶ E.g. Antigua and Barbuda, Democratic Republic of the Congo, Ethiopia, Peru, Togo

(c) In Togo local communities cannot grant access to genetic resources without the endorsement of the government;

(d) In Peru accessory contracts with the providers of biological resources are foreseen by the access regulation. When providers are peasants or native communities, an authorization is required to enter their territory.

261. Several countries³⁰⁷ answered “no” to the question on the basis of not yet having legislation in place.

2.2 *Does your country have measures in place with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained as provided in Article 6.2? (question 38)*

262. Of the twenty-four countries where IPCLs have the right to grant access to genetic resources, seventeen Parties and one non-Party have measures in place with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained.

263. Some countries³⁰⁸ referred to existing measures addressing this issue and/or draft measures under development or approval.³⁰⁹ South Africa, for example, indicated that when the party to the material transfer agreement is a community, a community resolution authorizing a representative to enter into material transfer agreement following a prescribed format is required.

2.3 *“Has your country set out criteria and/or process for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources in Article 6.3(f)? (question 38)*

264. Of the twenty-four countries where IPCLs have the right to grant access to genetic resources, thirteen Parties and one non-Party have set out criteria and/or process for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources.

265. In providing further information, some countries referred to existing relevant measures³¹⁰ addressing this issue or to draft measures under development or approval.³¹¹ Three countries³¹² mentioned the role of community protocols for granting PIC and establishing MAT. For example, Bhutan indicated that at the national level, the NFP was required to consult and obtain PIC from local communities prior to granting access and that the communities were engaged throughout the process. Bhutan explained that at the community level, the criteria/process for obtaining PIC and involvement of the local communities was guided by the community protocol developed by the respective communities.

3. *In accordance with domestic law has your country taken measures with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities within your country is accessed with the PIC or approval and involvement of these indigenous and local communities and that MAT have been established as provided in Article 7? (question 39)*

266. Of the forty-nine countries that stated they there are indigenous peoples and local communities in their country, twenty-one Parties and two non-Parties specified that they have taken such measures to implement Article 7, while twenty-six Parties reported not having taken such measures.

³⁰⁷ E.g. Botswana, Congo, Cameroon, Guinea-Bissau, Niger, Sudan, Uruguay

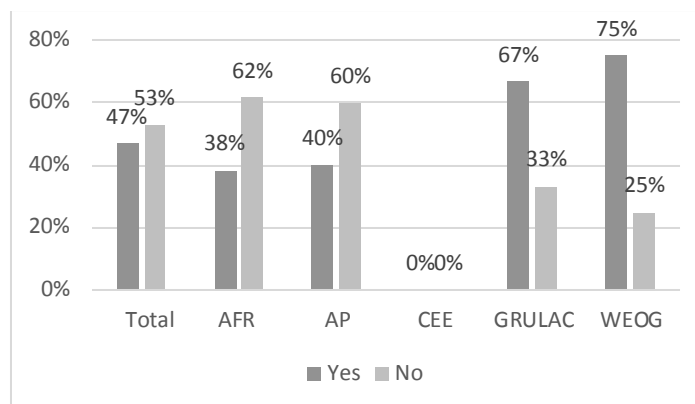
³⁰⁸ E.g. Benin, Bhutan, Burkina Faso, Kenya, Madagascar, Malawi, South Africa, Swaziland, Uganda, Viet Nam

³⁰⁹ E.g. Burkina Faso, Mongolia, Pakistan

³¹⁰ E.g. Benin, Kenya, Madagascar, Mexico, South Africa, Uganda

³¹¹ E.g. Burkina Faso, Côte d’Ivoire, Guinea, Malawi, Mongolia

³¹² Bhutan, Panama, Uruguay

Graph 37: Measures to implement Article 7 (percentage of countries)

(a) *Countries that answered “yes”*

267. Countries referred to existing relevant measures³¹³ addressing this issue or to draft measures under development or approval³¹⁴. Some countries provided further details on measures taken, for example:

(a) Benin shared information on their activities to build the capacity of communities, support the development of community protocols, and support communities in the negotiation of PIC and MAT;

(b) In China, the Chinese Medicine Law gives the holders of traditional knowledge associated with this medicine the right to pass the knowledge on to his/her inheritor(s) and to require prior informed consent for access to his/her traditional knowledge and benefit-sharing from its use;

(c) In Finland, the Sami Parliament manages a database in which traditional knowledge of the Sami people associated with genetic resources intended for research and development purposes can be recorded. Applications to access the knowledge in this database can be submitted to the competent authority, who shall notify the Sami Parliament. The mutually agreed terms between the Sami Parliament and the user are to be approved by the competent authority. The Sami Parliament may require fair and equitable sharing of benefits arising from the utilization of the knowledge to be delivered to the Sami people in a way that promotes the language and culture of the Sami people and their position as an indigenous people. Where necessary, the competent authority shall negotiate with the Sami Parliament about mutually agreed terms;

(d) In India, the Biological Diversity Act from 2002 provides for the involvement of local communities in the decision-making process relating to access to biological resources and associated traditional knowledge through the Biodiversity Management Committees;

(e) In Norway access to and use by others of traditional knowledge associated with genetic material that is unique to or characteristic of an indigenous people or local community, or that is linked to the traditional way of life of the community, requires the consent from a representative or decision-making body that is entitled to represent and make commitments on behalf of the indigenous peoples or local community. The regulations apply to traditional knowledge relating to genetic material developed, used, sustained and passed on by indigenous peoples and local communities in other countries, provided that access to or use of such knowledge requires consent under the legislation of the country in question;

(f) Peru, among other measures, has put in place a fund for the development of indigenous peoples. Resources for the fund come from the public budget, international technical cooperation, donations as well as from a percentage not less than the 10% of the net sales, before taxes, resulting from the commercialization of products developed from a collective knowledge subject of a licence contract

³¹³ E.g. Antigua and Barbuda, Benin, Bhutan, Burkina Faso, Democratic Republic of the Congo, Ethiopia, Finland, France, India, Kenya, Madagascar, Mexico, Morocco, Norway, Panama, Peru, Swaziland

³¹⁴ E.g. Mexico

and a percentage (not determined) of the value of the net sales, before taxes, resulting from the commercialization of products developed from the collective knowledge that have entered into the public domain 20 years before the adoption of Law 27811 (1982-2002).

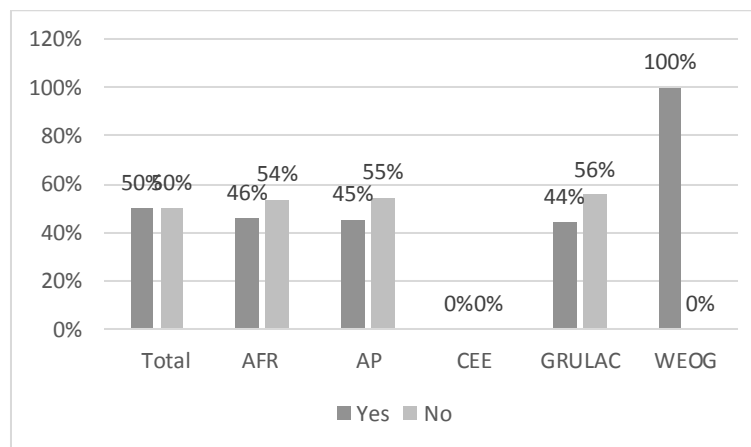
(b) Countries that answered “no”

268. A number of countries³¹⁵ indicated that they were planning to address this issue in the development or review of their ABS measures.

4. *In implementing the Protocol and in accordance with your domestic law, is your country taking into consideration indigenous and local communities’ customary laws, community protocols and procedures with respect to traditional knowledge associated with genetic resources as provided in Article 12.1? (question 40)*

269. Of the forty-nine countries that stated they there are indigenous peoples and local communities in their country, twenty-four Parties and one non-Party specified that they have taken into consideration indigenous and local communities’ customary laws, community protocols and procedures with respect to traditional knowledge associated with genetic resources, while twenty-four Parties and one non-Party reported not having done so.

Graph 38: Measures to implement Article 12.1 (percentage of countries)



(a) Countries that answered “yes”

270. Some countries provided information on relevant laws providing recognition of customary law³¹⁶ and some also indicated having recognized customary laws in their ABS measures³¹⁷. One country³¹⁸ provided information on the recognition of community protocols. A number of countries³¹⁹ indicated that they were planning to address this issue of customary laws and/or community protocols in the development or review of their ABS measures.

271. Some examples of information provided are the following:

(a) Peru, in law 27811 on a sui generis regime of intellectual property rights, incorporates elements of traditional intellectual property rights as well as elements of customary laws of indigenous peoples, for example: (a) PIC is to be obtained according to recognized norms of indigenous peoples; (b) provides for a dispute resolution mechanism among indigenous peoples; (c) the representatives of

³¹⁵ E.g. Burundi, Cameroon, Côte d’Ivoire, Dominican Republic, Guinea, Guinea-Bissau, Mongolia, Niger, Pakistan, Senegal, Sudan, Togo

³¹⁶ E.g. Benin, Cameroon, Democratic Republic of the Congo, Kenya

³¹⁷ E.g. Bhutan, Ethiopia, India, Swaziland, Peru

³¹⁸ Benin

³¹⁹ E.g. Burkina Faso, Burundi, Democratic Republic of the Congo, Malawi, Mexico, Sweden, Uganda

indigenous peoples need to have respected the traditional methods for election and organization of their own indigenous peoples; and (d) the committee administering the fund for the development of indigenous peoples use, as much as possible, mechanisms traditionally used by indigenous peoples to share and distribute benefits;

(b) In South Africa, representatives of local and indigenous communities cannot act without getting approval from the entire community. The traditional councils comprised of the elders and the chief of that community are the point of entry when engaging with indigenous and local communities. South Africa also encourages communities that do not have formal structures to organise themselves.

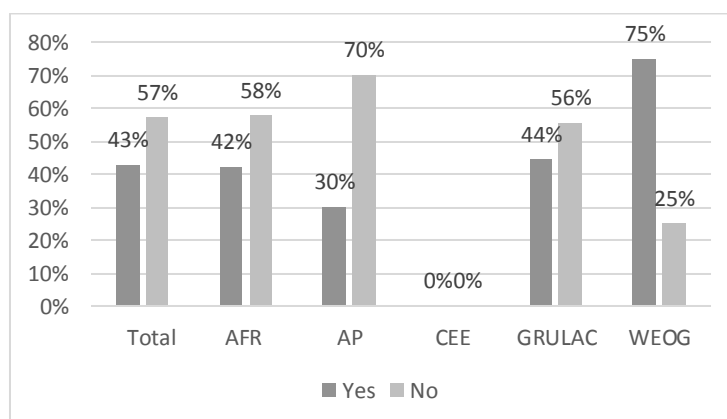
(b) *Countries that answered “no”*

272. In providing further information, ten countries³²⁰ indicated that they were planning to address the issue of customary laws or community protocols in the development or review of their ABS measures.

5. *Has your country established mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations as provided in Article 12.2? (question 41)*

273. Of the forty-nine countries that stated they there are indigenous peoples and local communities in their country, nineteen Parties and two non-Parties specified that they have established mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, while twenty-eight Parties reported not having established such mechanisms.

Graph 39: Establishment of mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations (percentage of countries)



(a) *Countries that answered “yes”*

274. Some countries³²¹ indicated that they planned to address or that they already addressed this issue in their ABS measures.

275. A number of countries shared details on activities conducted to inform potential users about their obligations, such as awareness-raising activities³²² or the development and implementation of a communication plan.³²³ For instance, Bhutan indicated that they have developed communication materials such as brochures, posters, articles and audio-visuels on material transfer agreements, the general process for ABS, ABS regime etc. and that awareness campaigns on ABS have been mainstreamed into the national plans. They further explained that more than 180 awareness raising programs have been

³²⁰ E.g. Botswana, Côte d’Ivoire, Guinea, Guinea-Bissau, Mauritania, Mongolia, Niger, Pakistan, Sudan, Uruguay

³²¹ E.g. Benin, Burkina Faso, Cameroon, Ethiopia, India, Malawi, Morocco, South Africa

³²² E.g. Antigua and Barbuda, Benin, Bhutan, Ethiopia, India, Peru

³²³ E.g. Benin

conducted at the community level and more than 50 advocacy and consultation programs were carried out for academia, policy makers, researchers, entrepreneurs etc. both at the national and international levels.

276. Other countries indicated using the ABS Clearing-House,³²⁴ websites,³²⁵ or the national clearing-house³²⁶ to inform users of associated traditional knowledge about their obligations.

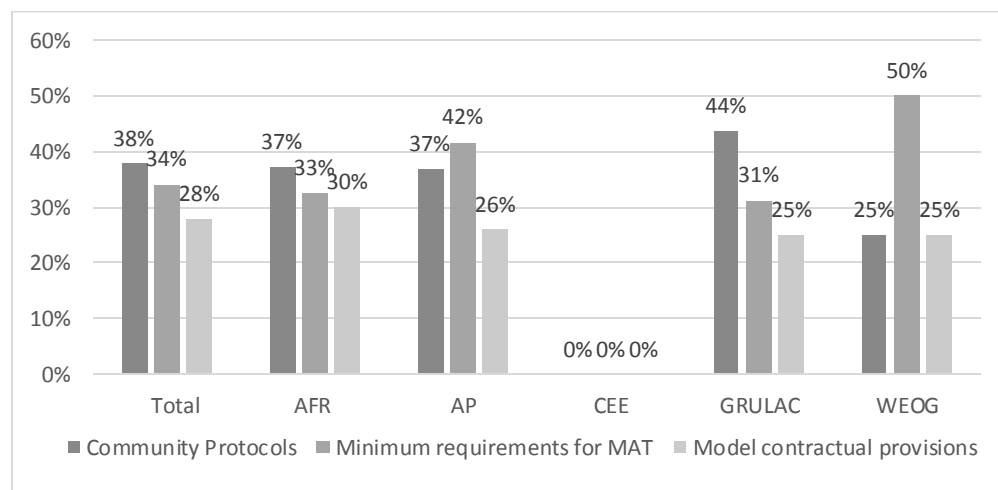
(b) *Countries that answered “no”*

277. A number of countries³²⁷ indicated that they were planning to address this issue. Nevertheless, two countries³²⁸ reported having conducted awareness-raising activities and other two countries shared their plans to develop a national ABS clearing-house or other types of information platforms.³²⁹

6. *Is your country supporting the development by indigenous and local communities of community protocols, minimum requirements for mutually agreed terms and model contractual clauses as provided in Article 12.3? (question 42)*

278. Of the forty-nine countries that stated they there are indigenous peoples and local communities in their country: 30 Parties and one non-Party responded that they were supporting the development of community protocols; 27 Parties and one non-Party indicated they are supporting the development of minimum requirements for mutually agreed terms; and 22 Parties and 1 non-Party are supporting the development of model contractual clauses.

Graph 40: Support the development by indigenous peoples and local communities of the tools provided in Article 12.3 (percentage of countries)



(a) *Community protocols*

279. Some countries³³⁰ shared information on their progress or plan to support community protocols, including information on awareness-raising and capacity-building activities.³³¹ For example:

³²⁴ E.g. Burundi, Cameroon, China, India, Kenya

³²⁵ E.g. Comoros, Ethiopia, India, Norway

³²⁶ E.g. Finland

³²⁷ E.g. Botswana, China, Comoros, Côte d'Ivoire, Dominican Republic, Lao People's Democratic Republic, Mexico, Senegal, Togo, Uruguay

³²⁸ Mexico, Niger

³²⁹ China, Comoros

³³⁰ E.g. Antigua and Barbuda, Benin, Burkina Faso, Cameroon, China, Dominican Republic, Guinea, India, Kenya, Madagascar, Mexico, Panama, Uruguay

³³¹ E.g. Bhutan, Ethiopia, Mexico, South Africa

(a) Benin indicated that the community protocols on ABS developed as pilot projects were almost finalized and that they are planning to establish a national organization representing local communities, a competent national authority for local communities and a model community protocol to support the development of community protocols by all local communities;

(b) In Bhutan, the NFP supports the development of community protocols by local communities. First, an inception workshop is conducted with local communities with a view to understand the existing customary laws and norms, decision-making process, community priorities etc. as well as to support the local communities to understand the legal aspects. On this basis and under the guidance of the NFP and legal unit a community protocol is developed and endorsed by the local communities;

(c) Kenya indicated that they have various on-going initiatives to establish community platforms and protocols for improved resource management and equitable sharing of resultant benefits;

(d) Madagascar reported that around 10 community protocols are being finalized;

(e) China, Dominican Republic, Mexico, Panama and Uruguay indicated that they were working on developing community protocols as part of regional or national capacity development projects.

(b) Minimum requirements for mutually agreed terms

280. Many countries reported on progress on the inclusion of minimum requirements for MAT in the national legal framework rather than on progress to support indigenous peoples and local communities in the development of minimum requirements for mutually agreed terms.

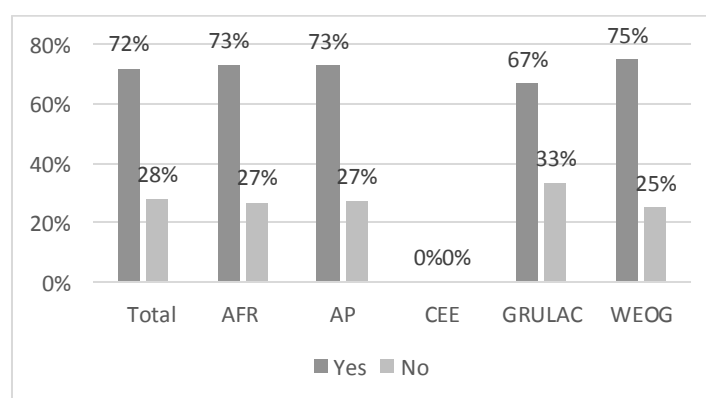
(c) Model contract clauses

281. Many countries reported on progress in the development of model contractual clauses as part of the national legal framework rather than on progress to support the development of such clauses by indigenous peoples and local communities.

7. *Has your country endeavoured not to restrict the customary use and exchange of genetic resources and associated traditional knowledge within and among indigenous and local communities as provided in Article 12.4? (question 43)*

282. Of the forty-nine countries that stated they there are indigenous peoples and local communities in their country, thirty-five Parties and one non-Party specified that they endeavoured not to restrict the customary use and exchange of genetic resources and associated traditional knowledge within and among indigenous and local communities, while thirteen Parties and one non-Party reported not having done so.

Graph 41: Endeavoured not to restrict the customary use and exchange of genetic resources and associated traditional knowledge within and among indigenous and local communities (percentage of countries)



(a) Countries that answered “yes”

283. Many countries noted that nothing in their legislation restricted customary use and exchange.³³² Nevertheless, some countries reported addressing this issue in the existing relevant ABS measures³³³ or in the draft measures under development.³³⁴ For example:

(a) The use of traditional knowledge within and between local communities within their traditional context is excluded from the scope of the ABS Policy of Bhutan of 2015;

(b) Ethiopia explained that Article 6(2) and 8 of the Proclamation No. 482/2006 provides that local communities have an inalienable right to use or exchange among themselves their genetic resources or community knowledge in the course of sustaining their livelihood systems in accordance with their customary practices or norms, and that no legal restriction shall be placed on the traditional system of use and exchange of their genetic resources and community knowledge;

(c) In Finland, according to the Act on the Implementation of the Nagoya Protocol, Section 8, the use of traditional knowledge contained in the database shall not, to more than a minor extent, weaken the opportunities of the Sami people to use their rights as an indigenous people to maintain and develop their culture and to engage in their traditional livelihoods;

(d) India provided as an example that in the Biological Diversity Act 2002 the definition of ‘commercial utilization’ does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;

(e) Lao People's Democratic Republic indicated that Lao individuals and organizations are exempted of the customary use and exchange of genetic resources and associated traditional knowledge within the country for non-commercial purposes. Vietnam has a similar provision;

(f) China and Bhutan provided information regarding seed law and breeders’ rights which allow for customary use and exchange.

284. A number of countries³³⁵ provided information on additional activities or measures taken to promote the customary use and exchange of resources and knowledge.

(b) Countries that answered “no”

285. Several countries³³⁶ indicated that they were planning to address this issue in the development or review of their ABS measures and another two countries³³⁷ said that this would depend if the genetic resource is from a protected species.

8. *Additional information: summary of the main difficulties and challenges (question 44)*

286. Twenty-eight countries answered this question. A number of countries indicated that there was a need to raise the awareness and capacity of traditional knowledge holders, and it was noted that the lack of appropriate tools and the limited access to information was an added challenge.

287. Some countries reported difficulties in identifying the different groups of indigenous peoples and local communities, understanding the way they are organized, and being able to link traditional knowledge with the holder/s of such knowledge.

³³² E.g. Cameroon, Côte d’Ivoire, Malawi, Mauritania, Niger, Norway, Panama, South Africa, Sudan

³³³ E.g. Antigua and Barbuda, Bhutan, Ethiopia, Finland, France, India, Kenya, Lao People's Democratic Republic, Mexico, Peru, Swaziland, Uganda, Viet Nam

³³⁴ E.g. Burkina Faso, Burundi, Indonesia, Panama, Sudan, Togo

³³⁵ E.g. Benin, Burkina Faso, China, Cuba, Democratic Republic of the Congo

³³⁶ E.g. Botswana, Côte d’Ivoire, Guinea, Pakistan, Uruguay

³³⁷ Comoros, Mongolia

288. Several countries highlighted the importance of documenting genetic resources, traditional knowledge or its use, in particular in view of the loss of traditional knowledge. Some countries had difficulties to address the relationship between traditional knowledge and intellectual property rights.

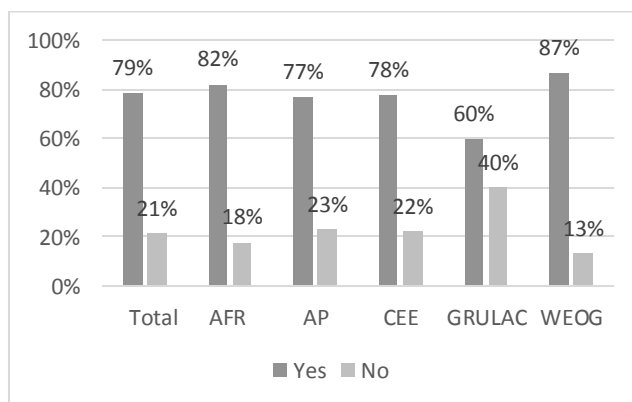
289. Other challenges identified are the following: (a) the fact that industries have resistance to conclude benefit sharing agreements with traditional knowledge holders; (b) making community protocols clear for users; and (c) the need for legal expertise in contracts dealing with traditional knowledge.

H. Contribution to conservation and sustainable use: Article 9 (question 45 to 47)

1. *Is your country encouraging 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 as provided in Article 9? (question 45)*

290. Fifty-five Parties and four non-Parties responded that they 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, while fourteen Parties and two non-Parties reported that they do not.

Graph 42: Encourage users and providers to direct benefits towards the conservation of biological diversity and sustainable use of its components (percentage of countries)



(a) *Countries that answered “yes”*

291. Some countries referred to existing relevant ABS measures³³⁸ addressing this issue or to draft measures under development or approval.³³⁹ Others reported having measures in place that direct resources for conservation and sustainable use of biodiversity,³⁴⁰ and other countries reported addressing or planning to address this issue in MAT.³⁴¹

292. Examples of provisions included in measures are the following:

(a) In Benin the interim ABS measure directs monetary benefits received to an account for further distribution among all actors and to be used primarily for financing projects for the protection of biodiversity and traditional knowledge;

³³⁸ E.g. Antigua and Barbuda, Belgium, Benin, Bhutan, Bulgaria, Burundi, Czech Republic, Democratic Republic of the Congo, Denmark, Estonia, European Union, Finland, France, Germany, Guinea, Hungary, India, Japan, Kenya, Lao People's Democratic Republic, Madagascar, Netherlands, Peru, Portugal, Slovakia, South Africa, Spain, Swaziland, Sweden, Switzerland, Togo, United Kingdom of Great Britain and Northern Ireland, Viet Nam

³³⁹ E.g. Burkina Faso, Mexico, Morocco, Sao Tome and Principe, Senegal, Sudan, Uganda

³⁴⁰ E.g. Benin, Burkina Faso, Comoros, Cuba, Mongolia,

³⁴¹ E.g. Cameroon, Dominican Republic, France, Kenya, Malawi, Malta, Mexico, Peru, Uganda

(b) Bhutan's ABS Policy encourages that ABS agreements include support for national capacities, adopt sustainable cultivation and collection methods and secure premium prices for the communities. It also ensures that part of the monetary benefits is channelled into the Bhutan ABS fund established to support conservation efforts at the grass root level;

(c) The European Union indicated Article 13 of Regulation 511/2014 provides that the European Commission and the Member States shall encourage users and providers to direct benefits from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components in accordance with the provisions of the Convention. The European Commission indicated that, when assessing applications for recognition of best practices, it encourages the applicants to incorporate this aspect into their proposed best practice;

(d) The Bioprospecting, Access and Benefit-Sharing (BABS) Regulations of South Africa provide that the monetary benefits may be utilized to support the following: (i) conservation of the indigenous genetic and biological resources; (ii) support for further research on indigenous genetic and biological resources and traditional knowledge; (iii) enhancement of the scientific knowledge and technical capacity to conserve, use and develop the indigenous genetic and biological resources; or (iv) any other activity to promote conservation, sustainable use and development of indigenous biological resources for the benefit of South Africa or improve livelihoods of the communities and enhancement of technical capacity of the communities or individuals involved;

(e) Viet Nam's Decree provides that 50% to 70% of monetary benefits from the use of genetic resources shall be remitted to the State budget for use in conservation and sustainable use of biodiversity.

293. Some countries³⁴² specified that the CNA has the responsibility to encourage users and providers to direct benefits towards conservation and sustainable use of biodiversity, and several countries³⁴³ reported doing so through awareness-raising activities.

294. India provided two specific examples on directing benefits obtained from access to red sanders (*Pterocarpus santalinus*) for conservation and sustainable use of red sanders, as well as for biodiversity conservation of bamboo, broom grass, cotton, wild cardamom, and many other commercially significant crops.

(b) *Countries that answered "no"*

295. Many countries³⁴⁴ that provided further information stated that they were planning to address this issue. Three countries³⁴⁵ explained that they have not yet done so due to the lack of ABS measures.

2. *Indicate how the implementation of the Nagoya Protocol has contributed to conservation and sustainable use of biodiversity in their country (question 46)*

296. Sixty-two countries answered this question. Many³⁴⁶ considered that it was premature to answer this question as implementation of the Nagoya Protocol was at an early stage.

297. The most common benefit reported is the fact that there is more awareness of the value of conservation and sustainable use of biodiversity³⁴⁷ and ecosystem services.³⁴⁸ Examples of other contributions highlighted by countries are the following:

³⁴² E.g. Bulgaria, Madagascar, Malta, Switzerland, United Kingdom of Great Britain and Northern Ireland

³⁴³ E.g. Czech Republic, Denmark, Poland, Sweden

³⁴⁴ E.g. Niger, Norway, Pakistan, Panama, Republic of Moldova, Uruguay

³⁴⁵ Congo, Guinea Bissau, Honduras

³⁴⁶ E.g. Albania, Belgium Benin, Botswana, Democratic Republic of Congo, Estonia, Finland, France, Guinea, Honduras, Hungary, Japan, Malta, Mexico, Pakistan, Portugal, Rwanda, Swaziland, Uruguay

³⁴⁷ E.g. Benin, Burkina Faso, Burundi, Guinea, Kenya, Niger, Peru, Senegal, Sudan, Togo, Viet Nam

³⁴⁸ E.g. Norway

(a) Managers of natural resources or authorities are more aware of the potential advantages of the Nagoya Protocol and are developing conservation practices;³⁴⁹

(b) Implementing the Nagoya Protocol helped improving the knowledge about species,³⁵⁰ including through the development of databases or inventories³⁵¹ and their population,³⁵² and supports the valorization of genetic resources and special conservation approaches;³⁵³

(c) Increased involvement of communities in conservation and sustainable use;³⁵⁴

(d) Increased compliance by users of genetic resources;³⁵⁵

(e) Recognition of research and development as a key to the country's valorization of genetic resources;³⁵⁶

(f) Implementing the Protocol played a key role in factoring elements of biodiversity conservation and use in government development agenda including in 2030 vision.³⁵⁷

298. Some countries provided specific examples:

(a) South Africa indicated that a national species management plan for *Pelargonium* species was developed, a resource assessment for *Aloe ferox* species was undertaken, and a number of species utilized for ABS are being cultivated in order to reduce pressure on the wild population;

(b) Cameroon stated that measures were taken to ensure sustainability and conservation of *Echinops giganteus* and *Mondia whitei*.

3. *Additional information: summary of the main difficulties and challenges (question 47)*

299. Twenty-seven countries answered this question. Many countries refer to similar difficulties to those mentioned before regarding implementation of the Nagoya Protocol or to general challenges on conserving and sustainably use biodiversity.

300. Examples of difficulties related to implementation of Article 9 are the following: (a) The need to evaluate the impact in conservation and sustainable use of the benefits received resulting from previous access authorizations; and (b) the need to further study the links between Article 9 of the Nagoya Protocol, Aichi Target 16 and SDG Target 15.6 to understand how benefits from ABS can contribute to biodiversity conservation.

I. **Transboundary cooperation (Article 11) (questions 48 to 50)**

1. *Is your country endeavouring to cooperate, with the involvement of indigenous and local communities concerned, with a view to implementing the Protocol in instances where the same genetic resources are found in situ within the territory of more than one Party as provided in Article 11.1?" (question 48)*

301. Thirty Parties and one non-Party responded that they endeavour to cooperate while thirty-nine Parties and five non-Parties answered that they do not.

³⁴⁹ E.g. Benin, Comoros

³⁵⁰ E.g. Antigua and Barbuda, Benin, Cameroon, Peru, Qatar, South Africa, Togo

³⁵¹ E.g. Benin

³⁵² E.g. Antigua and Barbuda

³⁵³ E.g. Kenya, Malawi, Peru Republic of Moldova, South Africa

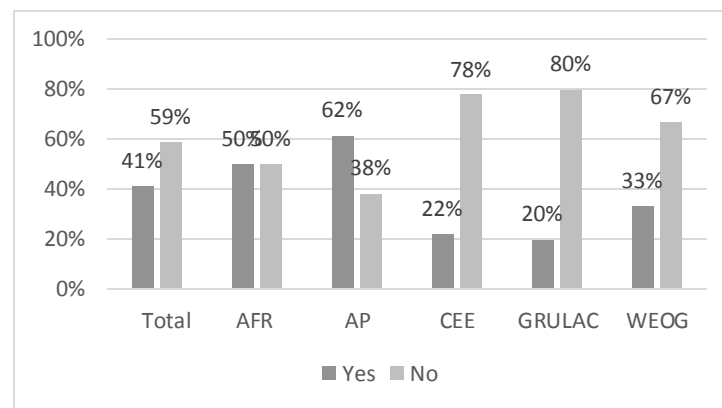
³⁵⁴ E.g. Bhutan, China, Lao People's Democratic Republic, Qatar

³⁵⁵ E.g. Benin

³⁵⁶ E.g. Kenya

³⁵⁷ E.g. Kenya

Graph 43: Cooperation in instances where the same genetic resources are found in situ within the territory of more than one Party (percentage of countries)



(a) Countries that answered “yes”

302. Some countries³⁵⁸ said that if the case arises they endeavour to cooperate, and two of them noted that the situation would be dealt on a case-by-case basis.³⁵⁹ Some countries³⁶⁰ explained that they were planning to incorporate this aspect in their ABS measures.

303. One country³⁶¹ suggested that the issue could be taken up by regional economic organizations through multilateral agreements, and another³⁶² explained that as part of a regional project on the Nagoya Protocol a regional ABS clearing-house was planned to acknowledge commonalities across territories.

304. Some countries³⁶³ 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.³⁶⁴ For example:

(a) Uganda explained that cooperation was done through the East Africa Community Protocol on Environment and Natural Resources Management which has provisions on ABS³⁶⁵ and through a number of trans-boundary projects, programmes, and agreements between Uganda and neighbouring countries;³⁶⁶

(b) India reported on cooperation projects with other countries of the region, such as the Kailash Landscape Project (a transboundary holy site) and Bay of Bengal Large Marine Ecosystem Project (a protected marine and coastal area);

(c) Belarus has implemented joint projects within the framework of the Cross-border Cooperation Programme, Poland-Belarus-Ukraine 2014-2020.

(b) Countries that answered “no”

³⁵⁸ E.g. Belarus, France, Malta, Norway Viet Nam

³⁵⁹ E.g. France, Malta

³⁶⁰ E.g. Burkina Faso, Mongolia, Pakistan, South Africa

³⁶¹ Malawi

³⁶² Antigua and Barbuda

³⁶³ E.g. Cameroon, Comoros, Kenya, Mauritania, Senegal, Mexico, Uganda

³⁶⁴ Mexico

³⁶⁵ The Protocol on Environment and Natural Resources Management was signed by the Republic of Kenya, Republic of Uganda and United Republic of Tanzania on 3rd April 2006.

³⁶⁶ For example the Lake Victoria Environment Management Project (Uganda, Kenya, Tanzania); Lake Victoria Fisheries Organization (Uganda, Kenya, Tanzania); Virunga Trans-boundary Cooperation (Uganda, Democratic Republic of Congo, Rwanda and Tanzania); Man and Biosphere Reserve (for Mount Elgon - Uganda and Kenya); and Collaborative Cross Border Wildlife Management (Uganda and South Sudan).

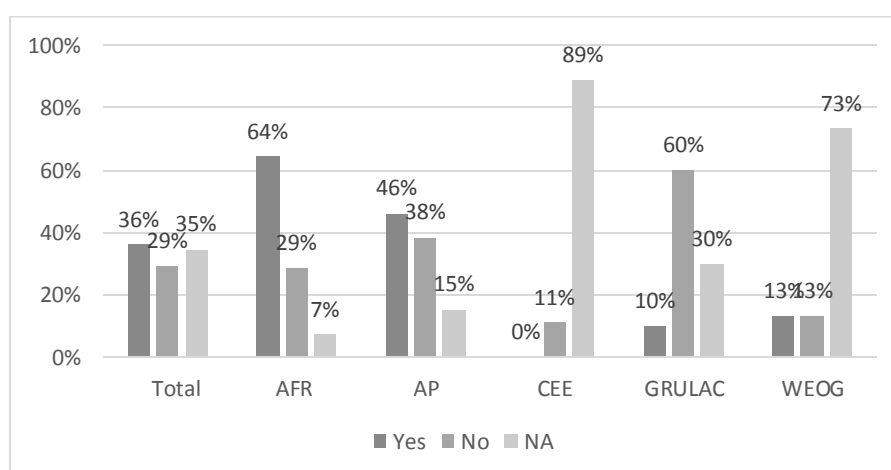
305. Some countries³⁶⁷ clarified that the question was not applicable for them as they have no access requirements in place and/or there are no IPLCs in their countries. Some countries³⁶⁸ said that if the case arises they endeavour to cooperate and other countries explained that they were planning to incorporate this aspect in their ABS measures.³⁶⁹ Some provided information on their experiences in managing regional parks or other regional cooperation projects.³⁷⁰

306. The subregional strategy on ABS developed by the Central African Forests Commission, (COMIFAC) was mentioned, and a country³⁷¹ indicated that they are planning to have a project under GEF-7 with a national and subregional component that could address this issue.

2. *Is your country endeavouring to cooperate with a view to implementing the Protocol in instances where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties as provided in Article 11.2? (question 49)*

307. Twenty-seven Parties responded that they are endeavouring to cooperate, while twenty-one Parties and one non-Party answered that they do not, and twenty-one Parties and five non-Parties responded that the question was not applicable.

Graph 44: Cooperation in instances where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties (percentage of countries)



(a) *Countries that answered “yes”*

308. Several countries reported that if the case arises they endeavour to cooperate³⁷² and others explained that they were planning to incorporate this aspect in their ABS measures³⁷³.

309. Some countries³⁷⁴ provided information on other cooperation initiatives, organizations, and instruments they are part of For example:

³⁶⁷ E.g. Bulgaria, European Union, Finland, Germany, Netherlands, Poland, Republic of Moldova, Slovakia, United Kingdom of Great Britain and Northern Ireland

³⁶⁸ Burundi, Sweden

³⁶⁹ E.g. Botswana, Ethiopia, Guinea-Bissau, Madagascar, Mexico, Niger, Panama, Uruguay

³⁷⁰ E.g. Burundi, Côte d'Ivoire, Guinea, Togo, Sudan

³⁷¹ Benin

³⁷² E.g. Bhutan, France, Malawi, Norway, Pakistan

³⁷³ E.g. Botswana, Burkina Faso, Guinea Bissau, Mongolia, South Africa, Sudan

³⁷⁴ E.g. Burkina Faso, Cameroon, Comoros, India, Kenya, Mauritania

(a) Kenya indicated that there are ongoing efforts in regional cooperation platforms to develop appropriate protocols on resource governance and utilization taking into considerations the requirements of Nagoya Protocol on Article 11.2 (e.g. Busia County Draft Policy Biodiversity Mainstreaming);

(b) Sudan indicated that they plan to implement the Article in accordance with the Intergovernmental Authority on Development (IGAD) Access and Benefit-Sharing Strategy;

(c) Togo explained that there are mechanisms in place that reinforce the historic links between different communities sharing the same cultural values, such as the Ewe peoples which are located between Benin, Ghana and Togo.

(b) *Countries that answered “no” or “not applicable”*

310. One country³⁷⁵ stated that if the case arises they endeavour to cooperate, and some other countries³⁷⁶ explained that they were planning to incorporate this aspect in their ABS measures. In this regard one country³⁷⁷ indicated that implementation of Article 11.2 of the Protocol will be done according to the Guidelines for a Coordinated Implementation of the Nagoya Protocol of the African Union. Another country³⁷⁸ additionally identified the ABS regional strategy of COMIFAC and the Treaty for the Establishment of the East African Community as relevant frameworks for the consideration of this issue.

311. Two countries³⁷⁹ noted that the situation has not yet arisen and other two³⁸⁰ indicated that they are already cooperating on this aspect.

3. *Additional information: summary of the main difficulties and challenges (question 50)*

312. Twenty-one countries answered this question. Many of those countries referred to similar difficulties to those mentioned in previous sections.

313. Some countries pointed out that it was difficult to implement this article as countries are progressing at different rhythms in the implementation of the Protocol and using different approaches in their legislation, and some noted that many countries have not yet ratified the Protocol.

314. Some noted that reinforcement of the capacity of regional structures would be needed with a view to enable them to coordinate the implementation of the Protocol. In this regard, a country pointed out that ABS regional policies were not fully implemented at national level. The need for financial resources to support transboundary cooperation was noted by a number of countries.

315. 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. The importance of sharing information and experience was highlighted. One country was of the view that the experiences acquired in other subregional and bilateral project would be of most relevance to assist in the implementation of Article 11 of the Nagoya Protocol.

316. The need to identify and document shared traditional knowledge was also mentioned by a number of countries, and one country pointed out that their associated traditional knowledge has already been partly documented or widely disseminated.

³⁷⁵ Sweden

³⁷⁶ Ethiopia, Madagascar, Niger, Panama, Uruguay

³⁷⁷ Niger

³⁷⁸ Burundi

³⁷⁹ Indonesia, Morocco

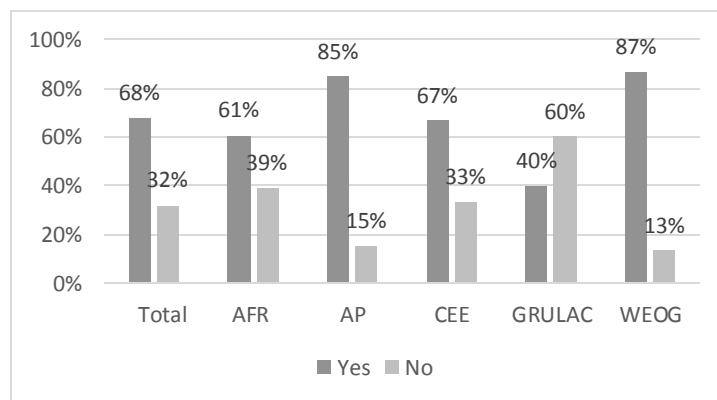
³⁸⁰ Côte d'Ivoire, Guinea

J. Model contractual clauses, codes of conduct, guidelines and best practices and/or standards (Article 19 and 20) (questions 51 to 53)

1. Is your country encouraging the development, update and use of model contractual clauses for MAT as provided in Article 19? (question 51)

317. Forty-eight Parties and three non-Parties responded that they are encouraging the development, update and use of model contractual clauses for MAT, while twenty-one Parties and three non-Parties reported that they are not.

Graph 45: Encouraging the development, update and use of model contractual clauses for MAT (percentage of countries)



(a) Countries that answered “yes”

318. In providing further information, some countries referred to existing ABS measures in their legislation that contain MAT obligations³⁸¹ or to the plans to address this issue³⁸².

319. Some countries indicated that they are encouraging different actors to develop model contractual clauses.³⁸³ For instance:

(a) The EU indicated that Article 13 of Regulation 511/2014 provides that the European Commission and the Member States shall encourage the development of codes of conduct, model contractual clauses, guidelines and best practices;³⁸⁴

(b) Japan stated that in accordance with the ABS Guidelines, the Minister of the Environment, in cooperation with other competent ministers, encourages relevant organizations to develop, update and use cross-sectoral model contractual clauses for MAT. Furthermore, competent ministers encourage industrial associations and other relevant organizations under their respective purview to develop, update and use sectoral model contractual clauses for MAT.

320. Some countries³⁸⁵ also provided information on awareness raising activities among stakeholders to encourage the development of model contractual clauses. For instance, Denmark indicated that national stakeholders receive information about the development of model contractual clauses at the national stakeholder meetings (1-4 meetings annually).

³⁸¹ E.g. Benin, Bhutan, Ethiopia, Japan, Peru, Portugal, Swaziland, Togo, Viet Nam

³⁸² E.g. Burkina Faso, China, Comoros, Dominican Republic, Lao People's Democratic Republic, Morocco, Mongolia, Seychelles, Sao Tome and Principe, South Africa, Spain

³⁸³ E.g. Belgium, Bulgaria, Côte d'Ivoire, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Hungary, Japan, Malta, Netherlands, Poland, Portugal, Senegal, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland

³⁸⁴ The same information was provided by the EU Member States in their reports

³⁸⁵ E.g. Denmark, European Union, Kyrgyzstan, Poland, Sweden

321. Several countries³⁸⁶ shared information on progress in the development of model clauses for a particular group of actors or sectors:

(a) Germany reported that the German Research Foundation (Deutsche Forschungsgemeinschaft - DFG) has developed model contractual clauses for researchers applying for funding;

(b) Côte d'Ivoire indicated model contractual clauses for animal genetic resources will be developed in the context of an ABS project;

(c) Japan stated that the National Institute of Genetics under the Ministry of Education, Culture, Sports, Science and Technology has been preparing model contracts for universities and other research institutes;

(d) Peru reported on work underway to develop model contractual clauses for biotrade activities with the support of the United Nations Conference on Trade and Development (UNCTAD);

(e) Qatar indicated that material transfer agreements for genetic resources have been prepared as a model for the Qatar Gene Bank;

322. Many countries reported having developed model clauses as part of the implementation of their national³⁸⁷ or regional³⁸⁸ framework. For example:

(a) Bhutan indicated that they have four different model contract agreements: scoping agreements, ABS agreements, material transfer agreements and standard material transfer agreements;

(b) In India reported having four different types of model contractual agreements. These relate to: research or commercial utilization or bio-survey and bio-utilization; transferring the results of research; seeking intellectual property rights; and third party transfer of resources. In addition, there are other clauses which are case specific and depend on the purpose for which access is sought.

(b) *Countries that answered "no"*

323. In providing further information, many countries³⁸⁹ indicated that they were planning to address this issue in the development or review of their ABS measures. One country indicated that even though it was not included in the legislation they encourage users to develop model clauses.³⁹⁰

2. *Is your country encouraging the development, update and use of codes of conduct, guidelines and best practices or standards as provided in Article 20 (question 52)*

324. Forty-eight Parties and three non-Parties responded that they are encouraging the development, update and use of codes of conduct, guidelines and best practices or standards and twenty-one Parties and three non-Parties reported that they do not.

³⁸⁶ E.g. Côte d'Ivoire, Germany, Japan, Kenya, Peru, Qatar, Switzerland

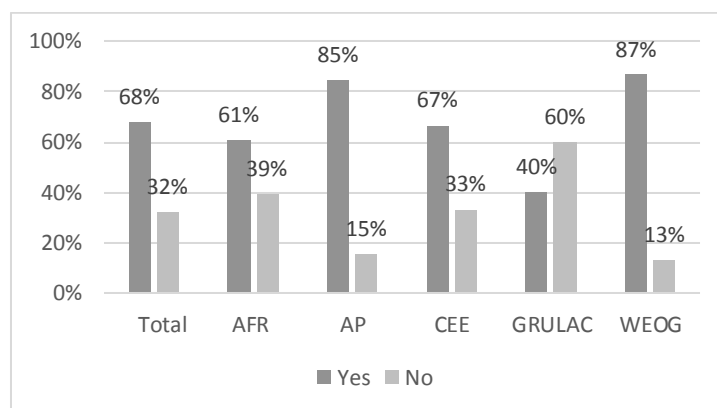
³⁸⁷ E.g. Antigua and Barbuda, Benin, Bhutan, Burundi, Cameroon, Cuba, Ethiopia, France, India, Kenya, Malta, Morocco, Peru, Viet Nam

³⁸⁸ E.g. Peru

³⁸⁹ Albania, Belarus, Botswana, Democratic Republic of the Congo, Guinea-Bissau, Mexico, Niger, Pakistan, Panama, Sudan, Uganda, Uruguay

³⁹⁰ Guinea

Graph 46: Encouraging the development, update and use of codes of conduct, guidelines and best practices or standards (percentage of countries)



(a) *Countries that answered “yes”*

325. Some countries referred to existing ABS measures³⁹¹ or to plans to address this issue³⁹².

326. Some countries indicated that they are encouraging the development, update and use of codes of conduct, guidelines and best practices by different actors in their ABS measures.³⁹³ For example,

(a) In addition to Article 13 of Regulation 511/2014, the EU indicated that Article 8 of the same regulation provides that associations of users or other interested parties may submit an application to the European Commission to have a combination of procedures, tools or mechanisms recognized as best practice. Details concerning the application and the process of recognition are laid down in the Commission Implementing Regulation. The EU also reported that the European Commission had received 3 applications for recognition as a best practice;

(b) Switzerland explained that the Nagoya Ordinance gives the possibility to recognize best practices and collections and that there are ongoing processes for such recognition;

327. Some countries³⁹⁴ also provided information on awareness raising activities among stakeholders to encourage the development update and use of codes of conduct, guidelines and best practices. For example, in line with obligation contained in Article 13 of the EU Regulation, the European Commission and two Member States³⁹⁵ reported having engaged in the preparation of guidance for "upstream" users (academics, universities, non-commercial research, and collections) as well as sectorial guidance aimed to assist various sectors which utilize genetic resources in better understanding their duties stemming from the Regulation.

328. Several countries³⁹⁶ shared information on progress in the development, update and use of codes of conduct, guidelines and best practices for a particular group of actors or sectors. For example:

³⁹¹ E.g. Benin, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Hungary, Japan, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland

³⁹² E.g. Antigua and Barbuda, Burkina Faso, Comoros, Dominican Republic, Guinea Bissau, Kenya, Lao People's Democratic Republic, Mexico, Mongolia, Sao Tome and Principe, Seychelles, South Africa, Togo, Viet Nam

³⁹³ E.g. Belgium, Bulgaria, China, Côte d'Ivoire, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Hungary, Japan, Malta, Netherlands, Poland, Portugal, Senegal, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland

³⁹⁴ E.g. Czech Republic, Denmark, European Union, Hungary, Poland, Mexico, Sweden, United Kingdom of Great Britain and Northern Ireland

³⁹⁵ E.g. Sweden, United Kingdom of Great Britain and Northern Ireland

³⁹⁶ E.g. Germany, India, Mexico, Madagascar, Switzerland

(a) Mexico reported on the development of an Ethical Code of Conduct of the Mexican Association of Botanical Gardens;

(b) Madagascar indicated that a code of conduct on access to genetic resources and the sharing of benefits arising from their utilization was developed in 2014 in collaboration with the Agricultural Research Centre for International Development (CIRAD);

(c) Switzerland reported on its contribution to the ABS Management Tool - Best Practice Standard and Handbook for Implementing Genetic Resource Access and Benefit Sharing Activities.

329. A number of countries reported having developed codes of conduct, guidelines and best practices model clauses as part of their national or regional framework to implement ABS. For example:

(a) Ethiopia, Peru, Swaziland, and Uganda reported having developed ABS guidelines;

(b) Ethiopia has developed a draft code of conduct which outlines users the responsibilities and requirements for users to access genetic resources and/or associated community knowledge;

(c) Cameroon, Swaziland, and Togo referred to the Guidelines for a Coordinated Implementation of the Nagoya Protocol of the African Union in their reports.

(b) *Countries that answered “no”*

330. In providing further information, a number of countries³⁹⁷ indicated that they were planning to address this issue in the development or review of their ABS measures.

3. *Additional information: summary of the main difficulties and challenges (question 53)*

331. Twenty-two countries that answered this question. Many countries referred to the need for financial resources or similar difficulties to those identified earlier in the document.

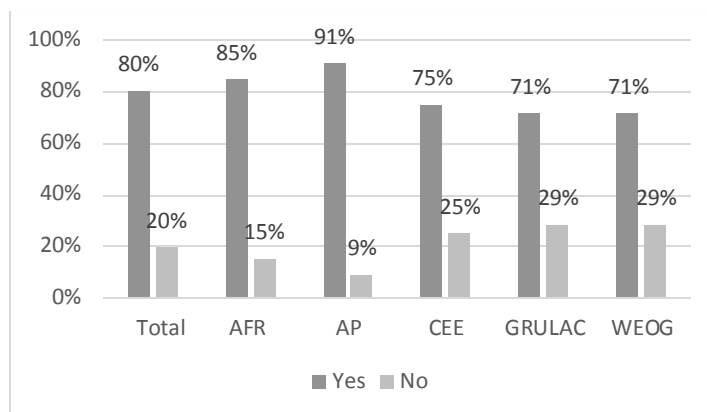
332. In addition, two countries highlighted the importance of sharing best practices, lessons learned, and templates between countries, and one country was of the view that identifying best practices and having these validated in an expeditious manner was challenging and time consuming.

K. Awareness-raising and capacity (Article 21 and 22) (questions 54 to 58)

1.1 *Has your country taken measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources and related access and benefit-sharing issues as provided in Article 21? (question 54)*

333. Sixty-one Parties and five non-Parties responded that they have taken measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources and related access and benefit-sharing issues, while eight Parties and one non-Party reported not having taken such measures.

³⁹⁷ Albania, Belarus, Botswana, Democratic Republic of the Congo, Guinea, Mauritania, Morocco, Pakistan, Panama, Sudan, Uruguay

Graph 47: Measures to implement Article 21 (percentage of countries)

(a) *Countries that answered “yes”*

334. Several countries³⁹⁸ indicated that they plan to implement Article 21 through an ABS capacity initiative or project³⁹⁹.

335. Many countries provided details on the activities carried out to raise awareness on ABS, and a large number of countries reported doing so through the organization of workshops, meetings, seminars and conferences.⁴⁰⁰ Other means to raise awareness mentioned are: (a) information leaflets, brochures or other materials⁴⁰¹; (b) national clearing-houses and websites⁴⁰²; (c) dialogues and exchanges⁴⁰³; (d) ABS committees with different stakeholders⁴⁰⁴; (e) emails or newsletters⁴⁰⁵; (f) consulting services⁴⁰⁶, helpdesk⁴⁰⁷ or provision of information by the NFP⁴⁰⁸; (g) online surveys and questionnaires⁴⁰⁹; (h) development of user databases⁴¹⁰; (i) radio or television programs⁴¹¹; and (j) scientific journals and print media⁴¹². Some countries reported on specific awareness-raising activities targeted to IPLCs.⁴¹³

336. Examples of awareness-raising activities carried out by countries are the following:

³⁹⁸ E.g. Albania, Benin, Botswana, Comoros, France, Kazakhstan, Mongolia, Senegal, Seychelles, Sudan, Swaziland

³⁹⁹ E.g. Albania, Antigua and Barbuda, Botswana, China, Comoros, Cuba, Democratic Republic of the Congo, Dominican Republic, Honduras, Malawi, Mexico, Mongolia, Sudan

⁴⁰⁰ E.g. Austria, Belgium, Belarus, Benin, Bhutan, Bulgaria, Burkina Faso, Burundi, China, Côte d'Ivoire, Comoros, Cuba, Czech Republic, Denmark, Ethiopia, Estonia, European Union, Germany, Honduras, Hungary, India, Indonesia, Japan, Madagascar, Malawi, Mexico, Morocco, Netherlands, Pakistan, Peru, Poland, Portugal, Rwanda, Sao Tome and Principe, Slovakia, Spain, South Africa, Sudan, Swaziland, Sweden, Togo, United Kingdom of Great Britain and Northern Ireland, Venezuela, Viet Nam

⁴⁰¹ E.g. Bhutan, Cameroon, China, Côte d'Ivoire, Czech Republic, Ethiopia, Germany, Japan, Kazakhstan, Kenya, Lao People's Democratic Republic, Morocco, Spain, Sweden, Viet Nam

⁴⁰² E.g. Burundi, Czech Republic, Denmark, Ethiopia, Finland, Germany, Hungary, Japan, Netherlands, Peru, Spain, Viet Nam

⁴⁰³ E.g. Belgium, Denmark, Estonia, Malawi

⁴⁰⁴ E.g. Benin, Bulgaria, Honduras

⁴⁰⁵ E.g. Austria, Denmark, Finland, Japan, Netherlands

⁴⁰⁶ E.g. Japan

⁴⁰⁷ E.g. Germany

⁴⁰⁸ E.g. Hungary

⁴⁰⁹ E.g. Estonia, Germany, Sweden

⁴¹⁰ E.g. Germany, Sweden

⁴¹¹ E.g. Cameroon, Ethiopia, Morocco

⁴¹² E.g. Belarus, Ethiopia, Lao People's Democratic Republic

⁴¹³ E.g. Bhutan, Dominican Republic, Ethiopia, Guinea-Bissau, Madagascar, Malawi, Mexico, Norway, Peru, Sao Tome and Principe, South Africa

(a) Ethiopia indicated that weekly radio programmes have been produced and disseminated addressing the importance of biological diversity, the benefits of sustainable utilization, the importance of legal transfer and access of genetic resources, and the legal consequences of illegal access to genetic resources. Short advertisements and television programmes and documentaries have been produced and aired through the Ethiopian Broadcasting Corporation and Addis TV. Billboards on the importance of genetic resources and the benefits of legal access to genetic resources have also been posted at the airport. The Ethiopia Biodiversity Institute has a newspaper column in two newspapers and has published information on biodiversity conservation, sustainable use and access and benefit-sharing in different local languages (Amharic, Oromifa and Tigrigna) and English;

(b) Malawi reported having engaged with the media about Malawi's ratification of the Nagoya Protocol;

(c) Bhutan's awareness campaigns on ABS have been mainstreamed into national plans and more than 180 awareness programs have been conducted at the community level, and more than 50 advocacy and consultation programs were carried out for academia, policy makers, researchers, entrepreneurs etc. both at national and international level. They reported that around 26 awareness programs are planned targeting communities and academia.

(b) *Countries that answered "no"*

337. Two countries indicated that they were planning to address this issue⁴¹⁴ and two other countries reported on activities done to raise awareness.⁴¹⁵

1.2 Has your country taken measures to implement the awareness-raising strategy for the Nagoya Protocol on ABS? Adopted as decision NP-1/9 (question 54)

338. Of the sixty-six countries that responded that they have taken measures to implement Article 21, fifty Parties and three non-Parties reported that they have taken measures to implement the awareness-raising strategy for the Nagoya Protocol.

339. Some indicated that such a strategy is integrated or taken into account within their current framework⁴¹⁶ and others seemed to have developed a communication or awareness-raising strategy on ABS⁴¹⁷ or are planning to do so.⁴¹⁸ For instance:

(a) Morocco indicated having developed a strategy and communication tools on ABS. The strategy has three stages: popularization of the concepts and terms of the Nagoya Protocol and ABS principles; consolidating information for stakeholders and opening to the general public; and follow up in parliamentary debate and adoption of law and regulation;

(b) China reported that the Ministry of Environmental Protection is developing a national communication strategy for the Nagoya Protocol. In collaboration with relevant departments and institutions, the ministry, with the support of the GEF project, will undertake wide-ranging communication and education activities related to ABS and organize training activities at national and local levels for over 5,000 persons working in ABS management departments, local communities, companies and social media.

340. Congo reported that it created a specific department for awareness-raising and outreach in the ministry in charge of sustainable development.

⁴¹⁴ Republic of Moldova, Panama

⁴¹⁵ Uruguay and Norway

⁴¹⁶ E.g. Benin, Cuba, Democratic Republic of the Congo, Lao People's Democratic Republic, Peru, Uganda

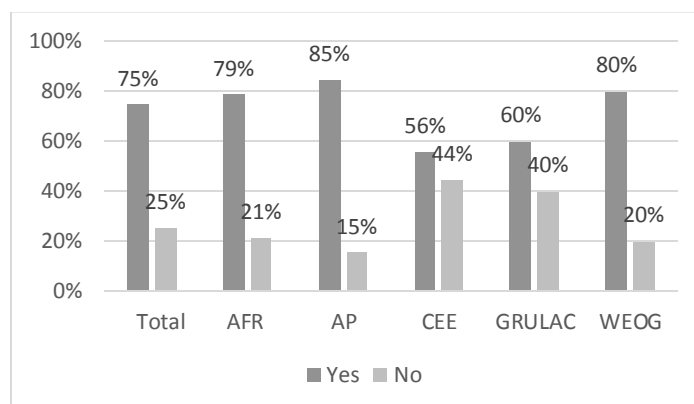
⁴¹⁷ E.g. Morocco, Seychelles, Swaziland, Sweden, Switzerland

⁴¹⁸ E.g. China, Mexico

2.1 *Has your country taken measures to build and develop capacity and strengthening of human resources and institutional capacities to effectively implement the Protocol as provided in Article 22? (question 55)*

341. Fifty-three Parties and three non-Parties responded that they have taken measures to build and develop capacity and strengthening of human resources and institutional capacities to effectively implement the Protocol and sixteen Parties and three non-Parties responded that they have not taken such measures.

Graph 48: Measures to implement Article 22 (percentage of countries)



(a) *Countries that answered “yes”*

342. Many countries⁴¹⁹ indicated that they received or are receiving external support by way of projects or funding for capacity-building projects. Other countries⁴²⁰ provided information about capacity-building activities organized within their country or about funds or technical expertise provided for capacity-building activities carried out in other countries.

343. Activities mentioned are very similar to those reported in question 21 above, being the organization of trainings and workshops the most common means for building capacity.

344. Some countries provided information on activities targeting specific audiences and many countries⁴²¹ reported on activities to build institutional capacities. Other target groups include: (a) users of genetic resources⁴²²; (b) indigenous peoples and local communities⁴²³; (d) trainers⁴²⁴; and (e) patent examiners and reviewers⁴²⁵.

345. Examples of capacity-building activities conducted by countries are the following:

(a) Peru held several capacity-building activities in 2017. For example, Peru has developed interactive modules on managing access to genetic resources and associated traditional knowledge based on national legislation and the Nagoya Protocol. The modules are designed for different target groups (i.e. civil servants, academics, researchers and entrepreneurs). Peru also carried out an intercultural capacity

⁴¹⁹ E.g. Antigua and Barbuda, Benin, Botswana, Comoros, Cuba, Dominican Republic, Ethiopia, Honduras, Kenya, Malawi, Mexico, Mongolia, Morocco, Panama, Peru, Sao Tome and Principe, Sudan, Uganda, Uruguay

⁴²⁰ E.g. Belgium, Denmark, Germany, Norway, Switzerland

⁴²¹ E.g. Belgium, Bhutan, Burundi, Cameroon, Democratic Republic of the Congo, European Union, Germany, Indonesia, Madagascar, Malawi, Mauritania, Mexico, Mongolia, Morocco, Peru, South Africa, Sudan, Uganda

⁴²² E.g. Bhutan, Burundi, Cameroon, Finland, Germany, Hungary, Malawi, Mexico, Netherlands, Peru, Rwanda

⁴²³ E.g. Bhutan, Burundi, Cameroon, Mauritania, Mexico, Morocco, Peru

⁴²⁴ E.g. Burundi

⁴²⁵ E.g. China, Cuba

programme for indigenous peoples and local communities about ABS which included gender considerations;

(b) Cuba reported having a postgraduate course on the implementation of the Nagoya Protocol on ABS.

(b) *Countries that answered “no”*

346. Countries that answered “no” to question 55 were invited to provide further information. Three countries⁴²⁶ indicated that capacity-building measures had not been taken due to the absence of an ABS legal framework, and another three countries indicated that they had started working on some capacity-building initiatives.⁴²⁷

2.2 *Has your country taken measures to implement the strategic framework for capacity-building and development to support effective implementation of the Nagoya Protocol on ABS? (question 55)*

347. Of the fifty-six countries that responded that they have taken measures to implement Article 22, forty-two Parties and three non-Parties reported taking measures to implement the strategic framework for capacity-building and development.

348. Some countries⁴²⁸ indicated that such a strategy is integrated or taken into account within their current framework while others seemed to have developed a capacity-building strategy on ABS⁴²⁹ or are planning to do so⁴³⁰. For instance:

(a) China reported on the approval of two relevant programmes: the National Programme for Strengthening Management of Genetic Resources 2014-2020 and the National Action Plan for Conservation and Sustainable Use of Timber Genetic Resources 2015-2025;

(b) Peru organized participatory workshops with civil servants, researchers, the private sector and providers of genetic resources and associated traditional knowledge to prepare a proposal for strategic measures on capacity-building. The proposal contains the following elements: a matrix of expectations and national demands in the implementation of the Nagoya Protocol; strategic measures and activities for the short, medium and long-term responding to the current ABS situation; and a roadmap with activities organized in terms of priority.

3. *Has your country received external support for building and developing capacity for the implementation of the Nagoya Protocol? (question 56)*

349. Forty-five Parties and two non-Parties responded that they have received external support, while thirty-two Parties and four non-Parties responded that they have not.

⁴²⁶ Guinea, Guinea Bissau, Niger

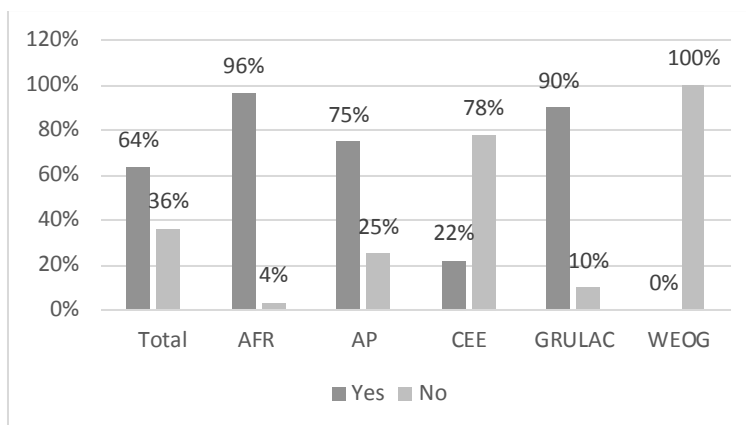
⁴²⁷ Cuba, Panama, Uruguay

⁴²⁸ E.g. Bhutan, Burkina Faso, Burundi, India, Lao People's Democratic Republic, Republic of Moldova, Togo

⁴²⁹ E.g. China, Peru, Viet Nam

⁴³⁰ E.g. Albania, Antigua and Barbuda

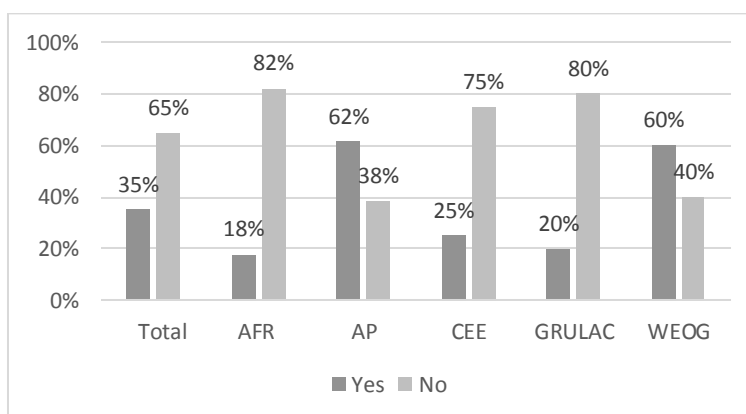
Graph 49: Receipt of external support (percentage of countries)



4. *Has your country provided external support for building and developing capacity for the implementation of the Nagoya Protocol (question 57)*

350. Twenty-seven Parties responded that they have provided external support for building and developing capacity and forty-three Parties and 5 non-Parties answered that they have not.

Graph 50: Provision of external support (percentage of countries)



351. In providing further information, many countries⁴³¹ reported on having participated in experience sharing, international workshops or providing technical expertise about the implementation of the Nagoya Protocol, and others provided information about their contributions to ABS projects, initiatives or funds⁴³², to bilateral projects⁴³³ or regional initiatives⁴³⁴ or about hosting capacity-building activities⁴³⁵. For example:

(a) Denmark, the European Union, France, Germany and Norway reported having contributed to the ABS Capacity Development Initiative;

(b) The European Union indicated that in addition to contributing to the ABS Capacity Development Initiative, they provide on-going support to the CBD Secretariat for the implementation of

⁴³¹ E.g. Belgium, Benin, Bhutan, Cameroon, China, Honduras, Lao People's Democratic Republic, Madagascar, Mexico, Pakistan, Peru, Senegal, South Africa, Viet Nam

⁴³² E.g. China, European Union, France, Germany, Japan, Switzerland, United Kingdom of Great Britain and Northern Ireland

⁴³³ E.g. Peru, Belgium, Netherlands

⁴³⁴ E.g. Burkina Faso, Denmark, India, Belgium, Norway

⁴³⁵ E.g. China, Denmark, Germany, India

the Protocol and support African-Caribbean-Pacific (ACP) countries for accession and ratification of the Protocol;

(c) Under the ASEAN India Green Fund, the Government of India collaborates with ASEAN Secretariat for capacity-building among ASEAN countries for ABS and traditional knowledge associated with bio-resources;

(d) Japan has been assisting developing country Parties and others with their capacity building for effective implementation of the Protocol through contributions to the Nagoya Protocol Implementation Fund and the Japan Biodiversity Fund as well as development assistance projects;

(e) Through the Darwin Initiative the United Kingdom of Great Britain and Northern Ireland is supporting a project in Cameroon, Namibia and South Africa to develop a Community of Practice around ABS.

5. *Additional information: summary of the main difficulties and challenges (question 58)*

352. Twenty-nine countries answered this question. Many countries referred to the need for financial resources. The majority of countries recognized that they require more capacity to implement the Protocol. The need to raise awareness of the Protocol and ABS was also noted by many.

353. 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.

354. The need to enhance the capacity of relevant stakeholders in relation to ABS and of IPLCs was also emphasized. Some noted the difficulties in raising the awareness of a large number of different communities and in different languages.

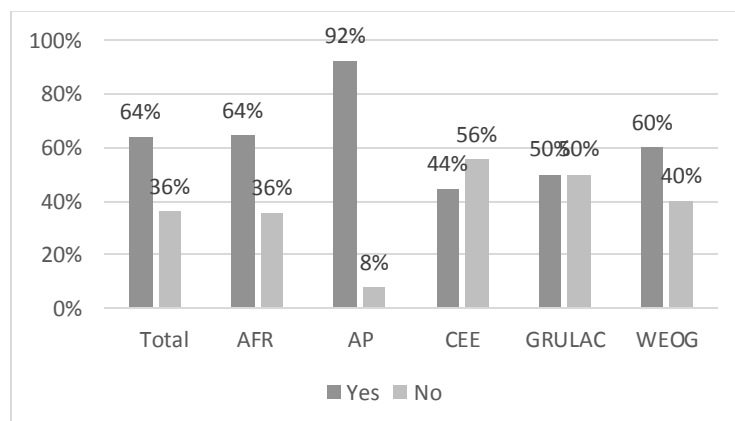
355. One country commented on the challenge of getting local expertise for capacity-building in ABS, and on the difficulties of getting timely external expertise due to the fact that it is also limited worldwide.

L. Technology transfer, collaboration and cooperation (Article 23) (question 59)

1. Is your country collaborating and cooperating in technical and scientific research and development programmes as a means to achieve that objective of the Protocol as provided in Article 23? (question 59)

356. Forty-six Parties and two non-Parties responded that they are collaborating and cooperating in technical and scientific research and development programmes as a means to achieve that objective of the Protocol, while twenty-three Parties and four non-Parties answered that they are not.

Graph 51: Collaboration and cooperation as provided in Article 23 (percentage of countries)



(a) *Countries that answered “yes”*

357. The type of information provided 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 research⁴³⁶. For example:

(a) Guinea provided details of their bilateral projects or exchanges with natural history museums and botanical gardens and indicated that the technology transfer was done through building the capacity of students and researchers;

(b) In Japan, the National Institute of Technology and Evaluation has concluded joint project agreements with several Asian countries (China, Indonesia, the Republic of Korea, Mongolia, Myanmar, Thailand and Vietnam) to transfer technology for acquisition, preservation, and utilization of microbial resources. In particular, the institute is engaged in the Sleeping Microbial Beauties Project and assisted Indonesia in constructing conservation facilities for microbial resources;

(c) Mexico explained that the internationally recognized certificated of compliance issued for access to Chayote is part of a scientific cooperation project between the national centre of genetic resources from Mexico and the University of Tsukuba, Japan, on knowledge on genetic resources for food and agriculture and technology transfer between the two countries.⁴³⁷

358. One country⁴³⁸ mentioned that the cooperation agreements with western universities were often for the benefit of the users of genetic resources and that benefit-sharing was not always effective.

359. Several countries⁴³⁹ provided information on national programmes or institutions dealing with scientific research and development programmes or shared information on their on-going research projects.⁴⁴⁰ While some other countries provided information on their funding to research and development programmes⁴⁴¹ or on their contributions to ABS capacity projects or initiatives⁴⁴².

360. In their responses, a number of countries provided information on how Article 23 of the Protocol has been incorporated in their national framework. Some countries reported having included technology transfer in MATs⁴⁴³ and/or in their ABS measures⁴⁴⁴, and some have included a requirement to partner or involve a local research institution⁴⁴⁵.

361. Examples on measures taken by countries to implement Article 23 include the following:

(a) In China foreign institutions or individuals that wish to use genetic resources of livestock and poultry on the protection list within the jurisdiction of China, need to undertake collaborative research and fairly share relevant research results with Chinese institutions or individuals. China also requires that the international collaboration and exchange programmes/projects using genetic resources from China should fully involve relevant research institutions and staff from China;

⁴³⁶ E.g. Belgium, Burkina Faso, Bhutan, Comoros, Czech Republic, Democratic Republic of the Congo, European Union, India, Indonesia, Japan, Kenya, Lao People's Democratic Republic, Mauritania, Mexico, Mongolia, Morocco, Netherlands, Niger, Norway, Peru, Republic of Moldova, Rwanda, Seychelles, Swaziland, Switzerland, United Kingdom of Great Britain and Northern Ireland

⁴³⁷ For more information see: https://www.jst.go.jp/global/english/kadai/h2407_mexico.html

⁴³⁸ Benin

⁴³⁹ Albania, Belarus, Cuba, Peru, South Africa, Uruguay

⁴⁴⁰ Kyrgyzstan, Pakistan, Qatar

⁴⁴¹ E.g. European Union, United Kingdom of Great Britain and Northern Ireland

⁴⁴² E.g. Denmark, France, Norway

⁴⁴³ E.g. Kenya, Malawi

⁴⁴⁴ E.g. China, Kenya, Mexico, Morocco, Republic of Moldova, South Africa, Venezuela (Bolivarian Republic of)

⁴⁴⁵ E.g. China, Malawi

(b) Malawi stated that technology transfer is included in the MATs under development and that most institutions that conduct research in Malawi are also required, as a condition to getting a research permit, to partner with local researchers.

(c) Morocco indicated having developed a strategy for research and development of genetic resources in the context of the Nagoya Protocol. The objective is to build the endogenous research capacities to add value to Morocco's genetic resources so that research and development of genetic resources becomes a productive sector that brings wealth to the country;

(d) In Uganda, the National Council for Science and Technology (which is the CNA) reviews and approves applications for research in Uganda. Collaborative research, capacity building and sharing of information are among the criteria that are considered during the review process.

(b) *Countries that answered "no"*

362. Some countries indicated that there has not been any cooperation or collaboration programmes developed⁴⁴⁶ and several countries provided information on their plans to address this issue.⁴⁴⁷

M. Optional additional information (questions 60 to 65)

1. Summary of the main difficulties and challenges encountered for becoming a Party to the Nagoya Protocol (question 60)

363. Thirty-five Parties and four non-Parties answered this question. Sixteen countries reported not having encountered major difficulties for ratifying the Protocol. Many countries provided information on challenges related to the implementation of the Protocol (following ratification), such as the need to strengthen human resources, technical and institutional capacity, national coordination and public awareness of ABS.

364. Nevertheless, a number of countries provided information on some difficulties and challenges to ratify the Protocol, such as: (a) raising awareness of the importance of ABS for parliamentarians and other stakeholders; (b) administrative challenges or complex procedures; and (c) clarifying institutional competencies.

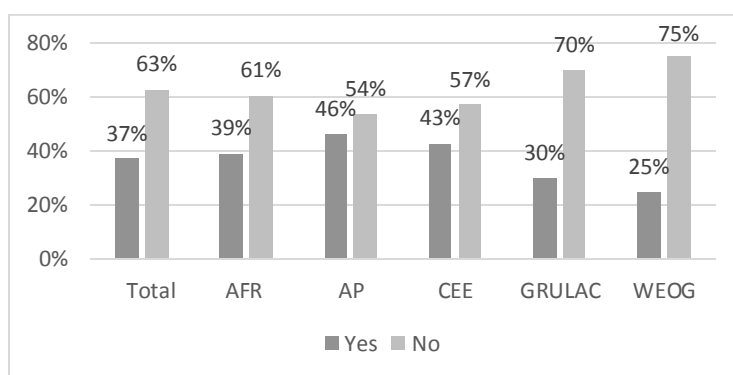
2. Has your country established a mechanism for budgetary allocations of funds for the implementation of the Nagoya Protocol? (question 61)

365. Twenty-four Parties and two non-Parties responded that they have established a mechanism for budgetary allocations of funds for the implementation of the Nagoya Protocol, and forty-one Parties and three non-Parties answered that they have not.

⁴⁴⁶ E.g. Burundi, Cameroon, Togo

⁴⁴⁷ E.g. Botswana, Cameroon, Guinea-Bissau, Panama

Graph 52: Mechanism for budgetary allocations of funds for the implementation of the Nagoya Protocol (percentage of countries)



(a) Countries that answered “yes”

366. In answering the question, some countries specified where the funds for the implementation of the Nagoya Protocol come from. For some, the State provides the funds⁴⁴⁸ or contributes funds⁴⁴⁹, and for others the funds received come from external sources.⁴⁵⁰

367. Several countries indicated that governments are using existing budget mechanisms within the responsible ministries for implementing the Nagoya Protocol.⁴⁵¹ For example, every year, Viet Nam allocates funds from the environment budget to coordinate the implementation of biodiversity related international agreements. The Government of China has established specialized funds for the implementation of the Convention on Biological Diversity which include funds for the implementation of the Nagoya Protocol.

368. Some countries specify that the mechanism exists but there are challenges to using it or it does not suffice.⁴⁵² Kenya and Sudan reported having a resource mobilization strategy.

(b) Countries that answered “no”

369. Several countries reported having allocated funds for the short-to-medium term⁴⁵³ or are planning to do so either through the national budget or through GEF projects⁴⁵⁴.

370. The most commonly identified difficulty was the lack of financial resources⁴⁵⁵, and some countries mentioned the need to raise awareness of ABS so it can be prioritized.⁴⁵⁶ One country explained that the lack of established mechanisms was due to ABS not being integrated into their development policies⁴⁵⁷.

⁴⁴⁸ E.g. Belarus, China, India, Indonesia, Malawi, Panama, Peru, Poland, South Africa, Swaziland, Viet Nam

⁴⁴⁹ E.g. Cameroon, Republic of Moldova, Rwanda, Sudan

⁴⁵⁰ E.g. Mauritania

⁴⁵¹ E.g. Belarus, China, Indonesia, Kenya, Panama, South Africa, Viet Nam

⁴⁵² E.g. Congo, Democratic Republic of the Congo, Malawi

⁴⁵³ E.g. Albania, Côte d'Ivoire

⁴⁵⁴ E.g. Comoros, Guinea, Seychelles, Togo, Uruguay

⁴⁵⁵ E.g. Albania, Barbados, Benin, Bhutan, Democratic Republic of the Congo, Lao People's Democratic Republic, Malawi, Peru, Republic of Moldova, Sao Tome and Principe, Swaziland, Uganda

⁴⁵⁶ E.g. Madagascar, Malawi, Mali, Mexico, Sudan

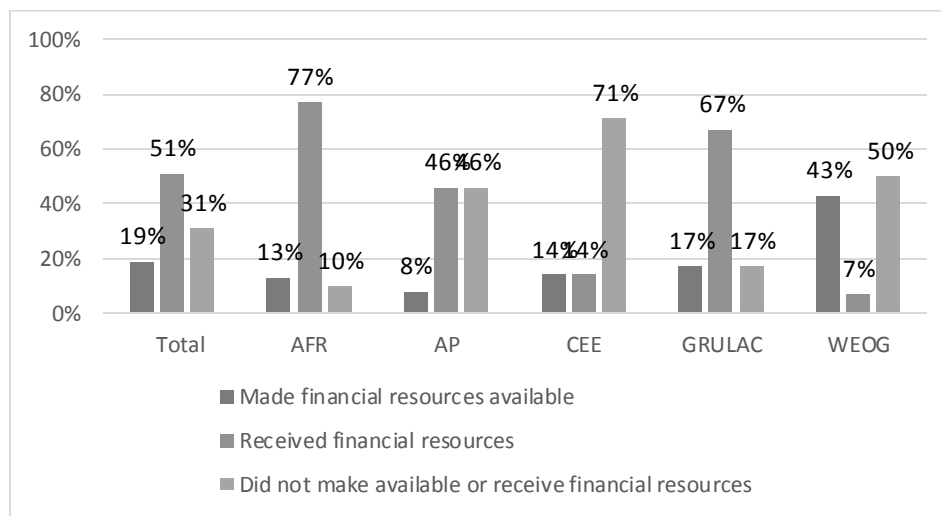
⁴⁵⁷ E.g. Burundi

371. Some countries stated that once they have ABS measures in place they would consider the allocation of funds.⁴⁵⁸ One country indicated that implementation of the Protocol was not expected to demand large amounts of funding and that funds were mobilized on a case-by-case basis.⁴⁵⁹

3. *Has your country made financial resources available to other Parties or received financial resources from other Parties or financial institutions for the purposes of implementation of the Protocol as provided in Article 25? (question 62.1)*

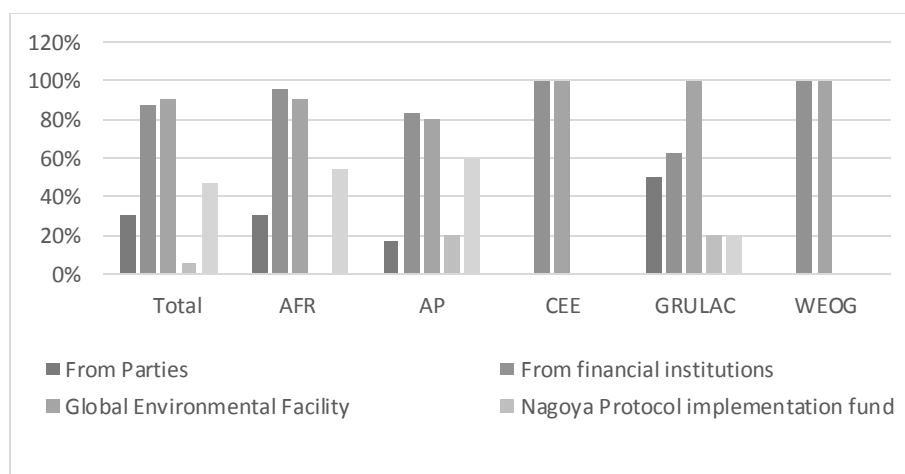
372. Thirty-five Parties and three non-Parties responded they had received financial resources, whereas thirteen Parties and one non-Party replied that they had made financial resources available. Finally twenty-one Parties and two non-Parties had not made available or received financial resources.

Graph 53: Financial resources made available or received (percentage of countries)



373. Thirty-four countries received financial resources from a financial institution, the Global Environmental Facility being the most common source of funding (thirty-one countries reported accessing these funds). In addition, two countries reported having received funds from the Nagoya Protocol Implementation Fund and twelve reported from other sources.

Graph 54: Source of funding (percentage of countries)



⁴⁵⁸ E.g. Niger, Mongolia, Pakistan

⁴⁵⁹ Malta

4. *Experiences related to the mobilization of resources in support of the implementation of the Protocol (question 62.2)*

374. Thirty countries answered this question. Many countries referred to projects planned or underway or to the sources of funding.⁴⁶⁰

375. Some countries shared experiences and lessons learned in mobilizing resources. For instance:

(a) Bhutan and Lao People's Democratic Republic indicated that playing an active role was essential for mobilizing resources, and Bhutan highlighted the importance of exposure to funding partners (e.g. at the margins of relevant meetings);

(b) Benin was of the view that partnering with a local NGO that submits ABS projects to different organizations represented in the country has helped them to mobilize resources;

(c) Malawi explained that although the resources that were allocated to ABS in a GEF project were limited due to competing needs, the amount received was useful to start developing ABS regulations and carry out capacity building activities. Further resource mobilization will be conducted to ensure the process is finalized by 2019;

(d) Sudan indicated that a national committee was established to formulate the resource mobilization plan for implementing the NBSAP and the Nagoya Protocol for the period 2015-2020;

(e) Uganda reported that targets and activities for implementing the Protocol are included in the revised NBSAP (2015-2025), which has been mainstreamed into the national development plan.

376. Some countries reported on some of the difficulties to mobilize resources. For example, it was noted⁴⁶¹ that some development partners within the country do not clearly understand ABS aspects and how they can be linked to their development activities, and that it was a challenge to prioritize ABS among other competing priorities.⁴⁶² Some countries⁴⁶³ were of the view that the process for disbursing the funds was slow and the requirements of funding partners were complex.

5. *Information on the status of funds mobilized in support of the implementation of the Protocol (question 62.3)*

377. Thirty-two countries answered this question. Many countries provided information on the funds they were able to mobilize, for what projects, and the amounts. According to the information provided, five countries⁴⁶⁴ have mobilized 3 million USD or more to implement the Protocol; four countries⁴⁶⁵ mobilized between 100,000 USD and one million; and three countries⁴⁶⁶ mobilized 100,000 USD or less.

378. Two countries provided information on their contribution to projects supporting the implementation of the Nagoya Protocol.⁴⁶⁷ One country⁴⁶⁸ explained that 10% of the yearly budget allocated to the biodiversity conservation unit is directed to the implementation of the Nagoya Protocol.

⁴⁶⁰ E.g. Albania, Belarus, Bhutan, Botswana, Burundi, Cameroon, Côte d'Ivoire, Indonesia, Malawi, Morocco, Niger, Panama, Peru, Seychelles, Togo, Uganda

⁴⁶¹ E.g. Lao People's Democratic Republic

⁴⁶² E.g. Kenya, Malawi

⁴⁶³ E.g. Democratic Republic of the Congo, Rwanda

⁴⁶⁴ Bhutan (1,360,000 USD since 2012 from 3 different projects); Cameroon (3 million USD since 2011); Kenya (approx. 3 million from different projects); Mexico (9,938,742 USD in funding and 1,282,837 USD in kind contributions); Morocco (5.3 million Euros mobilized through three projects)

⁴⁶⁵ Botswana: (350,000 USD), Niger (500,000 USD), Senegal (approx. 178,000 USD different sources), Sudan (350,000 USD)

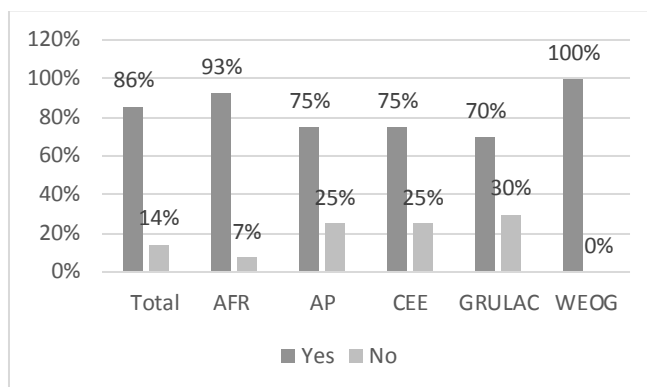
⁴⁶⁶ Lao People's Democratic Republic (40,000), Sao Tome and Principe (100,000 USD) and Swaziland (30,000 USD)

⁴⁶⁷ Albania, Germany

6. *Does your country have specific staff to administer functions directly related to the implementation of the Nagoya Protocol? (question 63)*

379. Fifty-six Parties and four non-Parties responded that they have specific staff to administer functions directly related to the Protocol and nine Parties and one non-Party answered that they do not have.

Graph 55: Specific staff to administer functions related to the implementation of the Protocol (percentage of countries)



380. Fifty-five countries provided information on the number of staff administering functions directly related to the implementation of the Protocol. Thirty-three countries out of 55 reported having less than five staff, 13 countries less than 10, and 9 countries more than 10.

381. In terms of difficulties and challenges, most countries mentioned that they have limited human resources working on Nagoya Protocol implementation, and that those working on the Nagoya Protocol or on ABS are either temporary or have other responsibilities with which they must share their time. Some countries mentioned the lack of budget or the need for better coordination between institutions as additional challenges.

7. *Any other relevant information (question 64)*

382. Twenty-three countries answered this question and addressed a variety of topics.

383. Many countries mentioned challenges to advance the implementation of the Nagoya Protocol, including the need for additional training and capacity-building to understand ABS and the Nagoya Protocol, increase negotiation skills and use of the ABS Clearing-House. Other countries mentioned the need for financial and human resources. One country mentioned that sometimes users cannot obtain accurate and timely information or cannot reach the national focal point.

384. Several other countries reported on achievements and some countries provided information on the process to prepare the interim national report. Lastly, some countries mentioned their plans to move forward in the implementation of the Protocol.

N. Comments on the reporting format (question 66)

385. Thirty-four countries answered this question. Fourteen countries reported not having experienced difficulties with the format, or indicated that it was clear or easy to understand.

386. One country indicated that the questionnaire was useful as a checklist for development of guidelines and for capacity building. One country was of the view that the format was too elaborate and that it was difficult to provide challenges and difficulties for all the sections.

387. Some countries provided suggestions to improve the reporting format and these will be taken into account by the Secretariat. Some countries identified the questions they considered to be repetitive (e.g. Questions 7, 8 and 16) and others pointed out to questions that in their view were not sufficiently clear or that could be improved (e.g. question 3).

388. Some countries identified technical issues related to the online submission of the interim national report, such as to include functions for automatic saving of drafts or to establish functions to link existing reference records or contacts.
