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OPEN-ENDED AD HOC INTERGOVERNMENTAL
COMMITTEE FOR THE NAGOYA PROTOCOL ON
ACCESS TO GENETIC RESOURCES AND THE
FAIR AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION

Second meeting

New Delhi, 2-6 July 2012

Item 4.1 of the provisional agenda*

MODALITIES OF OPERATION FOR THE ACCESS AND BENEFIT-SHARING CLEARING-HOUSE

Note by the Executive Secretary

I. INTRODUCTION

1. Article 14, paragraph 1, of the Nagoya Protocol establishes an Access and Benefit-sharing Clearing-House as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention. The ABS Clearing-House shall serve as a means for sharing information related to access and benefit-sharing and shall provide access to information made available by each Party relevant to the implementation of the Protocol.

2. Paragraph 4 of Article 14 provides that the modalities of operation of the Access and Benefit-sharing Clearing-House, including reports of its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (COP-MOP) at its first meeting, and kept under review thereafter.

3. The modalities of operation of the Access and Benefit-sharing Clearing-House were considered during the first meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol (Intergovernmental Committee) in accordance with annex II of decision X/1 of the Conference of the Parties.

4. In its recommendation 1/1, paragraph 4, the Intergovernmental Committee recommended that the ABS Clearing-House be implemented in a phased manner and that the first phase be a pilot phase. In the annex to recommendation 1/1, the Intergovernmental Committee provided guidance on the development of the pilot phase. The Executive Secretary was requested to report on progress in the implementation of the pilot phase and explore opportunities for collaboration with partners and other data providers for the consideration of the Intergovernmental Committee at its second meeting. A note on these issues has been prepared by the Executive Secretary as document UNEP/CBD/ICNP/2/8.

* UNEP/CBD/ICNP/2/1/Rev1.

5. In addition, paragraph 4 of recommendation 1/1 requested the Executive Secretary to develop draft modalities of operation of the Access and Benefit-sharing Clearing-House, to be adapted to take into account experience acquired during the pilot phase, for consideration by the second meeting of the Intergovernmental Committee.
6. Pursuant to Article 14 of the Protocol and recommendation 1/1 of the Intergovernmental Committee, the Executive Secretary has prepared the present note which contains draft modalities of operation for the ABS Clearing-House in the annex.
7. The draft modalities of operation have been developed based on the provisions of Article 14, the guidance provided in recommendation 1/1 of the Intergovernmental Committee and the modalities of operation of the Biosafety Clearing-House.¹
8. It should be borne in mind that the draft modalities of operation contained in the annex to this document will need to be revised in light of developments and experience acquired during the implementation of the pilot phase.
9. Section II of the note contains proposed recommendations for consideration by the Intergovernmental Committee at its second meeting.

II. RECOMMENDATIONS

10. As per Article 14, paragraph 4 of the Protocol, the first COP-MOP is to adopt the modalities of operation of the ABS Clearing-House at its first meeting. In accordance with recommendation 1/1, the modalities of operation should be adapted to take into account experience acquired during the pilot phase. Therefore, the Intergovernmental Committee may wish to recommend that the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol adopt a decision along the following lines:

“The Conference of the Parties serving as the meeting of the Parties to the Protocol *adopts* the modalities of operation of the ABS Clearing House attached to the present decision;”
11. The Intergovernmental Committee may also wish to *request* that the Executive Secretary further refines the modalities of operation once further progress is made on the implementation of the pilot phase of the ABS Clearing-House for their consideration and adoption by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

¹ See decision 1/3 of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety.

Annex

DRAFT MODALITIES OF OPERATION OF THE ABS CLEARING-HOUSE

A. *Role of the ABS Clearing-House*

1. The Protocol provides that the Access and Benefit-sharing Clearing-House should facilitate, at a minimum, the exchange of the following information relevant to the implementation of the Nagoya Protocol:

(a) Legislative, administrative and policy measures on access and benefit-sharing with respect to genetic resources and traditional knowledge associated with genetic resources (Article 12, paragraph 2 and Article 14, paragraph 2 (a));

(b) The national focal point and competent national authority or authorities (Article 13, paragraph 5 and Article 14, paragraph 2 (b));

(c) Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms (Article 6, paragraph 3 (e), Article 14, paragraph 2 (c), and Article 17, paragraph 2);

(d) Relevant competent authorities of indigenous and local communities, and information as so decided (Article 14, paragraph 3 (a));

(e) Model contractual clauses (Article 14, paragraph 3 (b));

(f) Methods and tools developed to monitor genetic resources (Article 14, paragraph 3 (c));

(g) Information provided to designated checkpoints, including from internationally recognized certificates of compliance, to monitor the utilization of genetic resources (Article 17, paragraph 1 (a) (iii));

(h) Codes of conduct and best practices (Article 14 paragraph 3 (d)); and

(j) Capacity-building and development initiatives at national, regional and international levels (Article 22, paragraph 6).

B. *Characteristics of the ABS Clearing-House*

2. The ABS Clearing-House shall be developed in a manner consistent with the following characteristics:

(a) Guided by the principles of inclusiveness, transparency and equity;

(b) Providing access to information in a simple, user-friendly, efficient, secure, flexible and functional manner;

(c) Providing an opportunity for users to elicit feedback on its development;

(d) Making use of an internet-based central portal to provide access to information;

(e) Offering a mechanism for non-electronic or non-Internet information for countries that indicate a need to access such a mechanism;

(f) Making use of common formats to submit information;

- (g) Making use of metadata about each record (i.e., descriptive identifiers such as name, date, author, etc.), to facilitate the submissions, searching, location and retrieval of information;
- (h) Designed to support the six official languages of the United Nations;
- (i) Making use, where appropriate, of controlled vocabularies within the framework of the Nagoya Protocol, which can be translated into the official United Nations languages, to facilitate entry and retrieval of information, and to facilitate the ability to search for records in all languages;
- (j) Requiring that the metadata, which describes the primary data (e.g. the type of legislative measure typically chosen from a controlled vocabulary) be provided to the ABS Clearing-House in an official language of the United Nations, while recognizing that the primary data, being the substantive content of the ABS Clearing-House (e.g. a legislative measure), may be submitted to the ABS Clearing-House in the original language;
- (k) Encouraging Parties and other Governments to also provide courtesy translations of the primary data submitted to the ABS Clearing-House into one of the United Nations languages;
- (l) Allowing for a mechanism to amend or update information while preserving legal certainty, clarity and transparency in accordance with the Protocol, particularly in the case of a permit or its equivalent, if necessary and mutually agreed, to reflect new circumstances relating to the utilization of the genetic resource. In such instances, the original permit or its equivalent is to be retained in archived form;
- (m) Making use of unique identifiers to search and retrieve information on internationally recognized certificates of compliance;
- (n) Not including confidential data as such information shall be exchanged on a bilateral basis;
- (o) Enabling information exchange, as appropriate, with other data providers to support the objectives of the Protocol;
- (p) Enabling the active participation of indigenous and local communities for the exchange of information related to traditional knowledge associated with genetic resources;
- (q) Support the exchange of information to assist Parties in building and developing capacity in support of the implementation of the Protocol;
- (r) Building up its functions and activities in response to clear and identified demand, and based on further experience and available resources.

C. Administration of the Access and Benefit-sharing Clearing-House

3. The Secretariat of the Convention shall administer the central portal of the ABS Clearing-House. These functions will include:

- (a) Developing and maintaining the central portal and central databases to ensure the ABS Clearing-House is accessible, user-friendly, searchable, and understandable;
- (b) Identifying, reviewing and establishing, as necessary, common formats for reporting information to the ABS Clearing-House;
- (c) Providing hard copies of information available through the ABS Clearing-House, when requested by Parties;
- (d) Assisting Parties, on request, in the use of the ABS Clearing-House central portal, and coordinating the development of national, regional, subregional and institutional nodes that are interlinked with the central portal;

(e) Entering into administrative arrangements with relevant international, regional, subregional and national organizations and entities, as appropriate;

(f) Performing such other administrative functions as are requested by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol in other decisions.

D. Role and responsibilities of national authorities with respect to the ABS Clearing-House

4. The following roles and responsibilities are associated with the management of information in the ABS Clearing-House:

(a) Providing active clearance for publishing information registered on the ABS Clearing-House, including validation at a national level of records to make them publicly available through the central portal;

(b) Making information available on the ABS Clearing-House;

(c) Liaison with the Secretariat regarding issues of relevance to the development and implementation of the ABS Clearing-House;

(d) Facilitating networking and the building of capacity between competent national authorities, indigenous and local communities and other stakeholders that would make information available to the ABS Clearing-House.

5. Parties shall communicate to the Secretariat the national authority responsible for providing active clearance for national records registered on the ABS Clearing-House prior to being published on the central portal.

E. Technical oversight and advice

6. The Secretariat may seek assistance from an informal advisory committee, constituted and coordinated by the Executive Secretary in a transparent manner, with a particular focus on providing guidance with respect to the ongoing development of the ABS Clearing-House.

F. Reports on activities

7. The Secretariat shall provide information on the operation of the ABS Clearing-House at each meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol. This information may include:

(a) The number, regional distribution and type of records made available through the ABS Clearing-House;

(b) The number of internationally recognized certificates of compliance issued;

(c) The number of visitors accessing the ABS Clearing-House to access information, the types of information being accessed, and the time spent looking at different types of information;

(d) The availability of information in six official United Nations languages;

(e) Reports of arrangements between the ABS Clearing-House and other institutions for the exchange of relevant data;

(f) User surveys or other feedback on the operation of the ABS Clearing-House;

(g) Measurement of external use of the ABS Clearing-House, for example links being made to the website, social aggregating analysis tools, etc.;

(h) Operational costs, including funding and other resource requirements.

8. In addition, Parties and other users of the ABS Clearing-House are encouraged to provide the Secretariat with feedback on their experiences with its operation. Such feedback shall be made available to the Conference of the Parties serving as the meeting of the Parties, and may serve as a basis for further development of the ABS Clearing-House.

G. *Periodic review*

9. The implementation and operation of the ABS Clearing-House shall be subject to periodic review, which should aim to include consultation with a wide variety of Parties and participating organizations. The first review should be undertaken by the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, with a view to developing a longer-term programme of work. Periodic reviews should then take place in accordance with Article 31 of the Protocol.
