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ACCESS TO GENETIC RESOURCES AND THE
FAIR AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION

Third meeting

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Item 3.5 of the provisional agenda*

REPORT ON PROGRESS IN THE IMPLEMENTATION OF THE PILOT PHASE OF 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 (ABS 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 ABS 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. In accordance with recommendation 1/1 of the Ad Hoc Open-ended Intergovernmental Committee for the Nagoya Protocol (the Intergovernmental Committee), the Executive Secretary is currently implementing the pilot phase of the ABS Clearing-House based on the guidance set out in the annex to recommendation 1/1 and in recommendation 2/4. In addition, at its eleventh meeting, the Conference of the Parties (COP) to the Convention endorsed an indicative work plan and timeline for activities to take place until the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, as contained in document UNEP/CBD/COP/11/11 (decision XI/1 C, paragraph 2).

4. With a view to assisting the Executive Secretary with the implementation of the ABS Clearing-House pilot phase, in paragraph 1 of decision XI/1 C, the Conference of the Parties established an informal advisory committee (IAC) to provide technical guidance with respect to the resolution of

* UNEP/CBD/ICNP/3/1.

technical issues arising from the ongoing development of the pilot phase of the ABS Clearing-House until the first meeting of the Parties to the Protocol. The decision provided that the IAC would hold one meeting, subject to the availability of financial resources, and informal online discussions, as needed, and report on the outcomes of its work to the third meeting of the Intergovernmental Committee.

5. Thanks to the generous financial contribution of the European Union, a meeting of the IAC was held from 2 to 4 October 2013, in Montreal. The summary of outcomes has been made available to the meeting as document UNEP/CBD/ICNP/3/INF/5.

6. Furthermore, in paragraph 5 decision XI/1 C, the Conference of the Parties requested the Executive Secretary to report to the Intergovernmental Committee at its third meeting, on progress in the implementation of the pilot phase of the ABS Clearing-House, including on the registration of information related to national permits or their equivalents and on technical issues concerning the establishment of the internationally recognized certificate of compliance. In paragraph 6 of the same decision, the Conference of the Parties also requested the Executive Secretary to further refine the draft modalities of operation as set out in the annex to document UNEP/CBD/ICNP/2/9 once progress is made on the implementation of the pilot phase of the ABS Clearing-House, taking into account the views expressed at the second meeting of the Intergovernmental Committee, and submit them for the consideration of the Parties at the third meeting of the Intergovernmental Committee and the first COP-MOP.

7. Against this background, the Executive Secretary has prepared this note. Section II of the note reports on progress made in the implementation of the pilot phase of the ABS Clearing-House. Section III addresses the draft modalities of operation of the ABS Clearing-House. Section IV indicates further issues for consideration by the Intergovernmental Committee. Finally section V contains proposed recommendations for consideration by the Intergovernmental Committee at its third meeting.

II. REPORT ON PROGRESS IN THE IMPLEMENTATION OF THE PILOT PHASE OF THE ABS CLEARING-HOUSE

8. In accordance with paragraph 1 of recommendation 1/1 of the Intergovernmental Committee, the ABS Clearing-House is being implemented in a phased manner, building up its functions and activities in response to clear and identified demand, taking into account ongoing feedback from users, in line with available resources, and recognizing the importance of reaching common understanding on issues unresolved in the Intergovernmental Committee for the Nagoya Protocol.

9. The development of the ABS Clearing-House is being informed by:

(a) Guidance of the Intergovernmental Committee provided in the annex to recommendation 1/1 and in recommendation 2/4;

(b) The indicative work plan and timeline for activities to take place until the first meeting of the Parties to the Protocol, as contained in document UNEP/CBD/COP/11/11 and endorsed by the Conference of the Parties (decision XI/1 C, paragraph 2); and

(c) Technical guidance with respect to the resolution of technical issues as provided by the informal advisory committee (UNEP/CBD/ICNP/3/INF/5).

10. The following sections report on progress made based on the above mentioned guidance and experience acquired during the pilot phase of the ABS Clearing-House. The development of the pilot phase of the ABS Clearing-House took into account the experience gained from the operation of the Biosafety Clearing-House (BCH) and progress made in the development of the clearing-house mechanism (CHM).

A. *The ABS Clearing-House website*

11. The ABS Clearing-House (ABS-CH) is accessible online through a dedicated website (at <http://absch.cbd.int>) and is administered by the Secretariat of the Convention on Biological Diversity.

12. As noted in Article 14 of the Protocol, the ABS-CH is established as part of the clearing-house mechanism of the Convention. The CHM has been developed as a single and unified platform which also supports the dedicated clearing-houses of the Cartagena Protocol on Biosafety and the Nagoya Protocol. Consequently, common formats and rules of operation need to be compatible and, where possible, harmonized across the CHM. The common formats developed for the pilot phase of the ABS Clearing-House make use, as much as possible, of predefined text or controlled vocabularies that will be compatible with the controlled vocabularies of the CHM and the BCH.

13. The ABS-CH website includes a number of web pages providing an introduction and information about how to find and register information with the ABS Clearing-House. These include pages on “About the ABS Clearing-House”, “Finding information”, “Registering information” and “Resources”.

14. Most of the ABS Clearing-House web pages are publicly accessible (except the registration pages and special areas, such as dedicated forums). The information published in the ABS Clearing-House will be publicly accessible to all users through the search function.

15. The information contained in the ABS Clearing-House will be provided and published by Parties and relevant stakeholders. The Secretariat will also play an active role in publishing certain categories of information (e.g. reference records and designation of national focal points and publishing authorities). All users must be registered and signed-in to their ABS-CH account in order to submit, modify or delete information. Once registered, users will be able to submit certain categories of information depending on their specific role. Access to special areas, such as collaborative portals or dedicated forums, may also be subject to the functions assigned to a user’s role.

16. The ABS Clearing-House has been designed to support the six official languages of the United Nations, but it also offers a facility for linking to other resources in any other languages.

B. Registering records in the ABS Clearing-House

17. The ABS Clearing-House provides a web-based facility which allows authorized users to create, publish and maintain records.

18. In order to register information, users will need to choose the category of information they wish to submit from the list of pre-defined information types or common formats. The categories of information that a registered user is able to submit depends on their designated role in the ABS Clearing-House.

19. The categories of information are divided into two clusters: national records and reference records. The submission forms under the “national records” category will allow Parties to publish relevant information for the implementation of the Protocol and assist them in meeting their ABS Clearing-House related obligations under the Protocol. The submission forms under the “reference records” category will allow the submission of non-mandatory information relevant to the Protocol from any registered user (e.g. Governments, representatives of indigenous and local communities, academia, non-governmental organizations, research institutions, business representatives, etc.) to the ABS Clearing-House.

20. Metadata about the record, including status and who published a record, will be included in the way records are displayed, and a clear distinction will be made between records validated by Governments and those that have been made available by others.

21. To ensure that the national records published on the ABS Clearing-House are accurate and complete, a procedure for publishing national records has been designed based on guidance provided by the Intergovernmental Committee, the experience gained under the Biosafety Clearing-House, and technical guidance provided by the informal advisory committee and is described in the section below. The Secretariat would be responsible for publishing all reference records. The Secretariat will ensure that the submissions are relevant, but it does not exercise content control over these records on the basis of the opinions expressed.

C. *Nomination and role of the national focal point, publishing authority and national authorized users*

22. Article 13 of the Protocol requires Parties to designate a national focal point on access and benefit-sharing to make information available on procedures for prior informed consent (PIC) and mutually agreed terms (MAT) and for liaising with the Secretariat. Parties are to notify the Secretariat of their contact information and of any changes in the designation or contact information.

23. In order to ensure that the national records published in the ABS Clearing-House are reliable, Parties will be required to designate a person responsible for publishing all national records in the ABS-CH. This function is referred to hereafter as “publishing authority”. According to the guidance provided by the Intergovernmental Committee and the IAC, the duties of the national focal point (ABS NFP) could be expanded to incorporate some roles or responsibilities related to the ABS-CH, such as the role of publishing national records in the ABS Clearing-House. The latter role could also be assigned to another person. During the pilot phase, information will only be made public on the ABS Clearing-House following active clearance by the person designated to fulfil the role of the publishing authority.

24. The registration of an ABS NFP and the identification of who has the publishing authority can only be done by the Secretariat upon receipt of written communications addressed to the Executive Secretary and endorsed as follows:

(a) The designation of a national focal point on access and benefit-sharing must be endorsed by the national focal point for the Convention on Biological Diversity or by a direct expression of the Government (e.g. a Minister of State);

(b) If the publishing authority for the ABS Clearing-House is different from the ABS NFP, its designation must be endorsed by the ABS NFP.

25. A common format has been prepared to facilitate the designation of the national focal point and the identification of who has the publishing authority.

26. The publishing authority for the ABS Clearing-House also has the possibility of nominating additional national authorized users (NAU). National authorized users can create and manage draft records in all categories of national records (with the exception of the designation of national focal point and publishing authorities).

27. Countries will be given a private work area where different national authorized users could prepare draft records before their publication. When a national authorized user has finalized introducing the information in the common format, the person responsible for publishing the ABS Clearing-House records will receive an e-mail requesting validation of the record in order to make it public through the ABS Clearing-House website. The national authorized users will then receive an e-mail informing them when the information has been made public. Countries will be given flexibility in the private work area to designate multiple national authorized users and to decide which national authorized user can modify or draft which type of record.

28. When the Secretariat receives a nomination for a national focal point, a publishing authority or a national authorized user, it will create a user account for logging in to the ABS-CH and for creating, modifying or deleting records.

29. In addition to publishing records in the ABS Clearing-House, the national focal point or the publishing authority is likely to undertake the following roles and responsibilities in order to manage information in the ABS Clearing-House, as identified in paragraph 7 of the guidance for the pilot phase (annex I to recommendation 1/1 of the Intergovernmental Committee):

(a) Communicating with the Secretariat of the Convention on Biological Diversity on issues related to the ABS Clearing-House; and

(b) 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.

D. Metadata and controlled vocabularies

30. Metadata such as the owner of the record, the status of the record, the date of submission as well as the category of the common format used, are created automatically when information is submitted to the ABS Clearing-House. In addition to the automatically generated metadata, the person registering the records will also be expected to supply additional metadata to describe the information in the records (for example, by selecting descriptive terms from a list of predefined keywords).

31. Although simple keyword searches are easy to implement and carry out, problems sometimes arise when retrieving the full range of results from the incorporation of information in various languages, the use of synonyms and inconsistent terminology and spelling. Therefore, where appropriate, the ABS Clearing-House makes use of a controlled vocabulary, in order to facilitate the future ability to conduct searches in a number of different languages and return consistent search results. This is essentially a thesaurus of standardized words used to search and register information with the database in the ABS Clearing-House. As mentioned in paragraph 12 above, controlled vocabularies have been developed in harmony across the clearing-house mechanism, with a view to enabling searches of information across the different clearing-houses.

E. Confidentiality considerations

32. According to paragraph 2 of Article 14, information should be made available to the ABS Clearing-House without prejudice to the protection of confidential information. As all information published in the ABS Clearing-House is publicly available, by the act of publishing it the user confirms that the information published is not confidential. The responsibility for the protection of confidential information for the case of national records lies with the publishing authority, and for reference records, with the person who submitted that information.

F. Interoperability

33. In light of the experience of the BCH with regards to interoperability with national websites, similar applications are under implementation for the ABS Clearing-House.

34. To ensure an effective flow of information, the ABS Clearing-House is designed to share information with other databases and systems and allow other databases to retrieve information hosted by the ABS Clearing-House. Implementation of interoperability allowing a flow of information from national systems to the ABS Clearing-House would be done on a case-by-case basis and upon request.

G. Existing information in the CBD website

35. Existing information on ABS measures, competent national authorities and national focal points currently hosted on the CBD website will be made available during the pilot phase to the relevant publishing authority as a draft with a given time frame for reviewing and validating the record for its publication. Following the expiry of the time allowed, records could be made public with the indication that they have not been validated.

H. Common formats for making information available to the ABS Clearing-House

36. In order to create a new record, registered users will need to choose the type of information they wish to submit by selecting an information category. Under each category, common formats are made available to assist users to submit information in a standardized manner, facilitating the registering and retrieval of information. The common formats will be available in both online and offline formats. The offline common formats are made available on the ABS Clearing-House for download in MS Word format to assist users to gather and organize their records prior to online submission.

37. Users with limited internet access will be allowed to fill out the Word versions of the common formats and submit them, duly signed, by mail, fax or as a scanned attachment to an e-mail sent to the Secretariat for registration on their behalf.

38. As described in section B above, common formats are organized in two clusters: those for national records and those for reference records. In the “national records” cluster, common formats have been developed with a view to assisting Parties in making national information available to the ABS Clearing-House:¹

(a) Designation of ABS national focal points and publishing authorities for the ABS Clearing-House, as explained in section C above (MS Word offline format only);

(b) Competent national authority/ies (CNA);²

(c) Legislation, administrative or policy measures on access and benefit-sharing;

(d) Permit or its equivalent constituting an internationally recognized certificate of compliance (see subsection (a) below);

(e) Designation of checkpoints (see subsection (b) below); and

(f) Information on the checkpoint communiqué (see subsection (b) below).

39. A common format on an Access and Benefit-sharing “Virtual Library resource” has also been developed in harmony with the virtual library of the clearing-house mechanism of the Convention. National authorized users and other stakeholders will be able to submit information through this common format to be published by the Secretariat. A wide range of information could be made available through this common format, such as model contractual clauses, codes of conduct guidelines and best practices and/or standards, case studies, capacity-building initiatives etc.

40. Parties will also be able to submit information on national ABS websites and databases.³

(a) *Permits or their equivalent constituting an internationally recognized certificate of compliance*

41. In accordance with paragraph 2 of Article 17, a permit or its equivalent issued in accordance with paragraph 3 (e) of Article 6, and made available to the ABS Clearing-House, shall constitute an internationally recognized certificate of compliance (“the certificate”). Paragraph 3 of Article 17 establishes that such certificates shall serve as evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent.

42. Paragraph 4 of Article 17 sets out the minimum information required for the internationally recognized certificate of compliance, when it is not confidential, which in turn dictates the minimum information that will be required to be reported to the ABS Clearing-House in this regard, namely:

(a) Issuing authority;

¹ The common formats will be made available in the ABS Clearing-House <http://absch.cbd.int/resources/commonformats>

² Article 13, paragraph 4, provides that “...where a Party designates more than one competent national authority, it must provide to the Secretariat relevant information on the respective responsibilities of those authorities along with its notification designating the authority. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought...” The common format proposed takes this paragraph into account and includes a section on responsibilities.

³ Information on the location and accessibility of national clearing-houses and databases would be valuable information to include in the ABS Clearing-House. Although there is no requirement that national clearing-houses be part of the ABS Clearing-House under the Protocol, it is likely that they would also wish to connect with the ABS Clearing-House.

- (b) Date of issuance;
- (c) The provider;
- (d) Unique identifier of the certificate;
- (e) The person or entity to whom prior informed consent was granted;
- (f) Subject-matter or genetic resources covered by the certificate;
- (g) Confirmation that mutually agreed terms were established;
- (h) Confirmation that prior informed consent was obtained; and
- (i) Commercial and/or non-commercial use.

43. A common format has been prepared to make information available to the ABS Clearing-House on the permit or its equivalent constituting an internationally recognized certificate of compliance. The submission of information included in Article 17, paragraph 4, is mandatory, but the possibility is provided for declaring that such information is confidential.⁴

44. In addition to the online record, and in order to make available a printable reference to the internationally recognized certificate of compliance, a summary of the information registered and cleared for publication in the ABS Clearing-House by the publishing authority will be also made available as a downloadable file (in PDF format).

45. A courtesy copy of the internationally recognized certificate of compliance constituted from the information provided on the permit or its equivalent, will automatically be sent by electronic means to:

(a) The national focal point and the competent national authority or authorities of the country issuing the permit or its equivalent; and

(b) The person or entity to whom prior informed consent was granted.

Modifying the permit or its equivalent constituting an internationally recognized certificate of compliance

46. Following the guidance for the pilot phase (annex I to recommendation 1/1 of the Intergovernmental Committee, paragraph 11) and the technical advice from the informal advisory committee, the pilot phase provides the possibility to modify or update information being submitted for the constitution of an internationally recognized certificate of compliance. The common format prepared reflects the following possibilities in this regard:

(a) Information is being submitted for the issuance of a new internationally recognized certificate of compliance;

(b) Information is being submitted to replace a previously issued internationally recognized certificate of compliance (a new certificate will be constituted and the old one will no longer be valid);

(c) Information is being submitted to update a previously issued internationally recognized certificate of compliance (a new certificate will be constituted and the old one will still be valid); and

(d) An existing permit or its equivalent is being revoked and the internationally recognized certificate of compliance will no longer be valid.

47. If such a record is modified or updated, a revised certificate will be constituted based on the information provided, which will be linked to the original certificate through references to its unique

⁴ Please see section E above for information on confidential considerations in the ABS Clearing-House.

identifier, and will also contain information outlining the reason for the update of the permit or its equivalent with a view to ensuring transparency and traceability. In such instances, the original international recognized certificate of compliance is to be retained in archived form and its status will be reflected in the record.

Unique identifier of the certificate

48. In accordance with paragraph 4 (d) of Article 17, an internationally recognized certificate of compliance must contain a “unique identifier”. In order to facilitate search and retrieval of certificates, it is proposed that a unique identifier be generated by the ABS Clearing-House upon submission of the required information for constituting an internationally recognized certificate of compliance. In addition, the ABS Clearing-House common format will also provide an opportunity for users to register additional unique identifiers for the permit or its equivalent that may be in use at the national or regional level. The international unique identifier will help to search and retrieve information on the certificate.

Subject matter or genetic resources covered by the certificate

49. As outlined in paragraph 43 above, the minimum information required for an internationally recognized certificate of compliance, when the information is not confidential, includes the subject matter or genetic resources covered by the certificate.

50. During the pilot phase of the ABS-CH, all subject matter or genetic resources covered by the permit or its equivalent constituting a certificate can be described via descriptive text entry or by providing a link to specimen data (e.g. link to a voucher specimen held in an appropriate facility); taxonomic information (e.g. link to a record in an external database such as the Global Biodiversity Information Facility or the Catalogue of Life); geographic coordinates; or any other relevant link.

Information on third party transfers

51. The Intergovernmental Committee in its guidance for the pilot phase identified as particularly valuable the need to provide, through the ABS Clearing-House, information on third party transfer arrangements, where it is available, to be incorporated into the internationally recognized certificate of compliance.⁵

52. These conditions may be of value as part of the additional information to be made available on the permit or its equivalent constituting an internationally recognized certificate of compliance with a view to enhancing legal certainty. In light of this, a non-mandatory field on third party transfer has been included in the proposed common format. However, a number of experts of the informal advisory committee also suggested making this field mandatory.⁶

Document authenticity and security

53. To aid in ensuring authenticity of the internationally recognized certificates of compliance, during the pilot phase all downloadable certificates will be protected and will include a link to the relevant online record which is maintained in the ABS Clearing-House for comparison purposes. The use of the ABS Clearing-House as a third party server that keeps an original copy of the document will therefore allow anyone utilizing the document to instantly confirm the authenticity of its contents. The internationally recognized certificates of compliance also incorporate a bar code.

(b) Checkpoints and the checkpoint communiqué

54. In accordance with paragraph 1 (a) (i) of Article 17 of the Protocol, Parties shall designate one or more checkpoints that will collect or receive relevant information related to prior informed consent, to the source of the genetic resource, to the establishment of mutually agreed terms, and/or to the utilization of genetic resources, as appropriate. Paragraph 1 (a) (iv) of Article 17 further provides that checkpoints should be relevant to the utilization of genetic resources, or to the collection of relevant information at,

⁵ Paragraph 4 (f) of annex I to recommendation 1/1 of the Intergovernmental Committee.

⁶ Paragraph 33 of document UNEP/CBD/ICNP/3/INF/5

inter alia, any stage of research, development, innovation, pre-commercialization or commercialization. A common format has been developed for the designation of checkpoints.

55. Furthermore, paragraph 1 (a) (iii) of Article 17 provides that the information collected or received by checkpoints, including from internationally recognized certificates of compliance where they are available, will, without prejudice to the protection of confidential information, be provided to relevant national authorities, to the Party providing prior informed consent, and to the ABS Clearing-House, as appropriate.

56. In light of the above, an additional common format is proposed to assist in making the information collected or received by the checkpoint available to the ABS Clearing-House (“the checkpoint communiqué”).

57. It is proposed that following the submissions of information provided to the ABS Clearing-House in accordance with Article 17 paragraph 1 (a) (iii) of the Protocol, a courtesy copy of the checkpoint communiqué would be automatically sent to the designated national authority/ies, the national focal point of the country providing prior informed consent, and the competent national authority responsible for issuing the permit or its equivalent. In order to do that, Parties will need to identify their own national authority/ies to which they wish the ABS Clearing-House sends a courtesy copy of the checkpoint communiqué. The facility to identify the national authorities is provided in the common format for the designation of the checkpoint.

58. Following the technical advice provided by the informal advisory committee, the common format for the checkpoint communiqué has been designed to include the possibility for submitting aggregated information to the ABS Clearing-House and for an extended time period. Some members of the informal advisory committee also mentioned that many countries have not yet established checkpoints and that, therefore, the type of information to be submitted to the ABS Clearing-House may need further consideration once more experience is gained.⁷

III. DRAFT MODALITIES OF OPERATION OF THE ABS CLEARING-HOUSE

59. Decision XI/1 C, paragraph 6, requested the Executive Secretary to further refine the draft modalities of operation as set out in the annex to document UNEP/CBD/ICNP/2/9 once progress is made on the implementation of the pilot phase of the ABS Clearing-House, taking into account the views expressed at the second meeting of the Intergovernmental Committee, and submit them for the consideration by the Parties at the third meeting of the Intergovernmental Committee and the first COP-MOP.

60. The refined modalities of operation are contained in annex I and incorporate the views expressed at the second meeting of the Intergovernmental Committee, the technical guidance provided by the informal advisory committee as well as the experience acquired during the development of the pilot phase.

61. Bearing in mind that in accordance with paragraph 6 of decision X/1 C, 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, the Intergovernmental Committee may wish to defer its consideration to the first COP-MOP.

IV. FURTHER ISSUES FOR CONSIDERATION BY THE INTERGOVERNMENTAL COMMITTEE

62. Article 14, paragraph 3 (a), of the Protocol provides that additional information, if available and as appropriate, could be made available to the ABS Clearing-House. This may include information on “relevant competent authorities of indigenous and local communities, and information as so decided”.

63. Paragraph 10 of the guidance for the pilot phase contained in the annex to recommendation 1/1 (‘guidance for the pilot phase of the ABS Clearing-House’) provides that in accordance with Article 12

⁷ Paragraph 36 of document UNEP/CBD/ICNP/3/INF/5.

of the Protocol, each Party, as appropriate, could consider establishing indigenous and local community contact points for the ABS Clearing-House to facilitate effective participation of indigenous and local communities.

64. At the IAC meeting, experts were of the view that the information on relevant competent authorities of indigenous and local communities could be made available as part of a national record. Experts suggested the possibility of having competent authorities designated by indigenous and local communities and indigenous and local communities' focal points to the ABS Clearing-House. The experts also discussed the standing of the records published in the ABS Clearing-House by such an authority or focal point. The informal advisory committee advised that these matters should be referred to the Intergovernmental Committee.⁸

65. Each Party, in implementing the Protocol, may wish to consider establishing competent authorities of indigenous and local communities and contact points for the ABS Clearing-House of indigenous and local communities; and in this case, Parties may wish to provide this information to the ABS Clearing-House and clarify how these authorities will interact with the ABS Clearing-House.

66. In order to facilitate the consideration by Parties of the possibility of competent authorities of indigenous and local communities and contact points for the ABS Clearing-House of indigenous and local communities, it may be useful to build common understanding on the following issues:

(a) The possible functions in relation to the implementation of the Protocol of such competent authorities and contact points;

(b) Their role and responsibilities with respect to the ABS Clearing-House; and

(c) Who should submit the information on these authorities to the ABS Clearing-House.

67. In order to build this common understanding, the Intergovernmental Committee may wish to request the submission of views on the issues mentioned in paragraph 66.

V. ELEMENTS FOR A DRAFT RECOMMENDATION

68. In light of the above information, the Intergovernmental Committee may wish to:

(a) Note the progress made in the implementation of the pilot phase of the ABS Clearing-House;

(b) Request the Executive Secretary to continue to implement the pilot phase of the ABS Clearing-House in accordance with the guidance provided in recommendations 1/1 and 2/4 as well as the indicative work plan and timeline for activities endorsed by the Conference of the Parties in paragraph 2 of decision XI/1 C;

(c) Encourage all Parties, in particular those that have ratified the Protocol, and other Governments, to participate in the pilot phase of the ABS Clearing-House by publishing national records and providing feedback to the Executive Secretary and designate a publishing authority and one or more national authorized users with a view to having a fully functional ABS Clearing-House by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(d) Invite international organizations, indigenous and local communities, and relevant stakeholders to participate in the pilot phase of the ABS Clearing-House by registering reference records and providing feedback to the Executive Secretary;

(e) Request the Executive Secretary to further refine the modalities of operation of the ABS Clearing-House as further progress is made on the implementation of the pilot phase for their

⁸ Paragraph 40 of document UNEP/CBD/ICNP/3/INF/5.

consideration and adoption by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(f) Invite Parties, other Governments, international organizations, indigenous and local communities, and relevant stakeholders to submit to the Executive Secretary views on: (i) the possible functions of a competent authority of indigenous and local communities and of a contact point for the ABS Clearing-House of indigenous and local communities in relation to the implementation of the Protocol; (ii) their possible role and responsibilities with respect to the ABS Clearing-House; and (iii) who should be responsible for submitting the information on these authorities to the ABS Clearing-House; and

(g) Request the Executive Secretary to synthesize the views submitted in accordance with the paragraph above for consideration by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

*Annex***DRAFT MODALITIES OF OPERATION OF THE ABS CLEARING-HOUSE****A. *Role of the ABS Clearing-House***

1. The Nagoya Protocol on Access and Benefit-sharing provides that the Access and Benefit-sharing Clearing-House (ABS Clearing-House) should facilitate, at a minimum, the exchange of the following information relevant to the implementation of the 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) Checkpoints established under Article 17, paragraph 1 (a);

(e) Information collected or received by the designated checkpoints, including from internationally recognized certificates of compliance, to monitor the utilization of genetic resources (Article 17, paragraph 1 (a) (i) and (iii));

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

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

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

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

2. Additional information that could be made available through the Access and Benefit-sharing Clearing-House may include:

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

3. The ABS Clearing-House should facilitate the exchange of other information pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

B. *Characteristics of the ABS Clearing-House*

4. 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 access to information for Parties that indicate a need to access such a mechanism;

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

- (g) Making use of mandatory fields, in the common formats, without prejudice to the protection of confidential information, in order to ensure that the minimum information required to provide for legal certainty is submitted to the Access and Benefit-sharing Clearing-House;
- (h) 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;
- (i) Designed to support the six official languages of the United Nations;
- (j) 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;
- (k) Requiring that the metadata, which describes the primary data (e.g. the elements describing the content of a legislative measure 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;
- (l) 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;
- (m) 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 constituting an internationally recognized certificate of compliance. In such instances, the original internationally recognized certificate of compliance is to be retained in archived form and its status will be reflected in the record;
- (n) Making use of unique identifiers generated through the ABS Clearing-House to search and retrieve information on internationally recognized certificates of compliance;
- (o) Not including confidential data, as all information published in the ABS Clearing-House is publicly available and that through the act of publishing it the user confirms that the information published is not confidential. Such confidential information shall be exchanged on a bilateral basis;
- (p) Designed to be interoperable and to share information with other databases and systems;
- (q) Enabling the active participation of indigenous and local communities for the exchange of information related to traditional knowledge associated with genetic resources;
- (r) Support the exchange of information to assist Parties in building and developing capacity in support of the implementation of the Protocol; and
- (s) 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 ABS Clearing-House

5. The Secretariat of the Convention shall administer the central portal of the ABS Clearing-House and, *inter alia*, have the following functions:

- (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 making information available to the ABS Clearing-House;
- (c) Registering information to the ABS Clearing-House on behalf of Parties for non-electronic submissions of information;

(d) Providing hard copies of information available through the ABS Clearing-House, when requested by Parties;

(e) Enabling information exchange, as appropriate, with other data providers to support the objectives of the Protocol;

(f) Cooperating with relevant international, regional, subregional and national organizations and entities, as appropriate; and

(g) Performing other administrative functions as are requested by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

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

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

(a) Clearing national records prior to publishing them in the ABS Clearing-House;

(b) Actively participating in making information available on the ABS Clearing-House;

(c) Ensuring that the information made available on the ABS Clearing-House is complete, relevant and up-to-date;

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

(e) 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.

7. Parties shall communicate to the Secretariat the publishing authority responsible to clear all national records registered on the ABS Clearing-House prior to being published on the central portal.

E. Technical oversight and advice

8. 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 technical guidance with respect to the resolution of technical issues arising from the ongoing development of the ABS Clearing-House.

F. Reports on activities

9. 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 entities 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.; and

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

10. 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.

G. Periodic review

11. 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 long-term programme of work. Periodic reviews should then take place in accordance with Article 31 of the Protocol.
