

# Eleventh Conference of Parties Convention on Biological Diversity COP11

## Summary for Policymakers



**XI Conference of Parties**  
CONVENTION ON BIOLOGICAL DIVERSITY  
**HYDERABAD INDIA 2012**

8-19, October 2012



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Convention on Biological Diversity  
COP11

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## FOREWORD

The hugely positive burst by the international community to back sustainable and equitable management of biodiversity resources led to the adoption of the Nagoya Protocol on the ABS in November 2010 during the 10th Conference of the Parties to the Convention on Biological Diversity.

The eleventh conference being held in this year in Hyderabad is a new step that is just as important. Its main aim is to seek out paths, methods and mechanisms to execute the Strategic Action Plan for Biodiversity 2011-2020 and the Aichi Targets as well as work towards the ratification of the Nagoya Protocol with a view to its entry into force.

As you know, this guide is the traditional contribution from the Francophonie to the participants playing an active role in the negotiating process for the Convention on Biological Diversity. It aims to provide as much information and knowledge as possible on the current negotiating points and thus help negotiators in developing countries to take an appropriate stand on the recommendations and decisions of the conference.

Apart from the Ten-Year Programme 2011-2020 and the Nagoya Protocol on the ABS, the creation of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) is enhancing the commitment of different categories of players to promoting the sustainable use of biodiversity resources as a means to combat poverty. The Rio+20 Declaration refers to this in the chapter on the action and follow-up framework in the section on biodiversity.

The dynamics triggered for the next decade in biodiversity need increased support and assistance for developing countries in terms of building up human, scientific, technical and financial capacities to achieve the three objectives of the Convention. The current Francophone initiative, among others, conducted by the IEPF is along the same lines. It has come about with the technical collaboration of IHQEDS of Université Laval and for the first time an English version is also available, as requested strongly by the English-speaking developing countries. UNEP has made this translation possible.

In the name of the OIF authorities and the IEPF team, our sincere thanks go to all these partners.

Pleasant reading and enjoy the conference !

Fatimata DIA Touré

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# 1. INTRODUCTION

The Hyderabad Conference marks the start of a new cycle for the CBD. It is the first to take place since the adoption of the Strategic Plan 2011-2020 and is expected to review its implementation. As such, the establishment of a list of indicators corresponding to each of the twenty Aichi Targets should assist in monitoring it in the years to come. The mobilisation of financial resources to assist the Parties in achieving these targets is, however, likely to generate the most lively debates. The COP11 must, especially, examine the implementation of the Resource Mobilisation Strategy and provide guidance for the Global Environment Facility (GEF), which acts as the CBD financial mechanism, with a view to its sixth replenishment (2014-2018). This period will be critical in achieving the Aichi Targets, most of which have deadlines of 2015 or 2020. The estimated sums required to assist developing countries and those in transition in fulfilling their commitments vary from US\$17 to 41 billion. In the current economic context, it is clear that these requirements will be difficult to fill.

Hyderabad is also the first Conference since the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (ABS). Although it will not be in force as the COP11 meets, it should clarify what happens until its operationalisation. The Protocol text is still unclear on several aspects of its implementation and the COP11 will have a major task in clarifying the interpretation of certain provisions. This is especially true of Article 10 which requests a review of the "need" for a global benefit-sharing multilateral mechanism. Setting up such a mechanism could extend the scope of the Protocol to the ex situ collections or to the general resources where it is impossible to obtain prior consent. This will surely have an influence on the willingness of some countries to ratify it, or not. The COP11 should also clarify the operation of the compliance mechanism - and the Parties are particularly divided on this - and clarify the modalities surrounding the notification of permits and the updating of internationally-recognised compliance certificates. Lastly, the COP11 should guide the financial mechanism by making sure that the mobilisation of resources allows all the Parties to access the financing and benefit from the positive fallout of the ABS. Any failure of these negotiations could inhibit the entry into force of the Nagoya Protocol, at least in the foreseeable future.

Following on, the COP11 will examine how its Ad Hoc Working Group on Article 8(j), tasked with providing opinions on how to preserve the traditional knowledge of indigenous and local communities, could help to implement the Nagoya Protocol, mainly by supplying guidelines on how to ensure the fair and equitable sharing of benefits resulting from the use of traditional knowledge. The COP should mainly clarify the notion of *sui generis* systems. It is nowadays acknowledged that the knowledge,

innovations and practices of indigenous and local communities are "collective properties" and must be protected. How this is done is still unclear. To this end, the COP11 could set up an Ad hoc Technical Expert Group (AHTEG) dedicated to preparing a report on the sui generis systems. In this way, the COP will contribute to the negotiations within the World Intellectual Property Organisation (WIPO) of a scheme to protect genetic resources, traditional knowledge and cultural expressions, mainly targeting the sui generis protection.

The change in the United Nations Convention on the Law of the Sea (UNCLOS) also calls on the CBD. The preparation of any implementation agreement on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction is a chance to plug the gaps in the CBD, whose mandate is restricted to living organisms and areas falling under the jurisdiction of States (which cover less than half of the surface area of the oceans). The Aichi Target to conserve 10% of marine and coastal areas by 2020 may therefore not be achieved, unless an agreement on the conservation and sustainable exploitation of the open ocean waters is reached in the meantime. This issue should retain the attention of delegates who could provide guidance on the description of "ecologically and biologically significant marine and coastal areas".

Delegates will also be looking at the implementation of the United Nations Framework Convention on Climate Change (UNFCCC). Not only because climate change is a major cause of the erosion of the biodiversity on a global scale, but also because the planned mitigation measures to deal with it risk increasing the pressure on the ecosystems. There is especially a fear that the projects to enhance forest carbon stocks implemented under the REDD+ encourage the conversion of natural forests into plantations of fast-growing species.

Another important theme for the CBD is the interrelations between the biodiversity and poverty eradication. It is a given fact nowadays that losing the biodiversity increases the vulnerability of poor populations, whilst protecting and even increasing services rendered by the ecosystems can help to eradicate poverty. It is therefore crucial for developing countries that biodiversity and the notion of ecosystem services be included in the national schedules and accounts; the development and poverty eradication programmes of cooperation agencies, international institutions and multilaterals must get involved. As such, the COP11 should approve or take note of the Dehradun Recommendations resulting from the first meeting of the Expert Group on Biodiversity for Poverty Eradication and Development (Dehradun, December 2011). It could also decide to continue the work of the AHTEG with a view to preparing a roadmap on the inclusion of the biodiversity at the service of poverty eradication and development in the context of the Strategic Plan 2011-2020.

The COP11 should also draw the conclusions from creating the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). Although everyone agrees that this will help to achieve the CBD objectives, it does,

however, shake up the institutional environment in which it has been evolving for twenty years. To take account of this, the COP should think deeply about the operation of its Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) and on the future of the report on the Global Biodiversity Outlook (GBO).

Lastly, the new Executive Secretary of the CBD, Mr Bráulio Ferreira de Souza Dias, took office in February 2012. The appointment of this Brazilian diplomat as successor to Mr Ahmed Djoghlaif could bring a change of culture within the Secretariat. In the medium term, however, it should not alter the orientations of the CBD, as it comes after the adoption of the Strategic Plan 2011-2020 by the COP10 in Nagoya.



## 2. CBD BACKGROUND AND PROVISIONS

Negotiated in record time to comply with the deadline of the Rio Conference on Environment and Development, the Convention on Biological Diversity (CBD) entered into force on 29 December 1993. This initiative responded to three major concerns: (i) lawyers, concerned about "rationalising" the conservation of natural resources by assembling under same commitment the principles contained in a multitude of partial agreements, thereby leading to coordinate and effective implementation of legal instruments and existing agreements, (ii) general public and scientists, concerned about responding to the cries of alarm and to giving new impetus to the protection of ecosystems that are home to a large variety of species and (iii) States and private enterprises, concerned about building an ordered system that ultimately governs access to genetic resources, sharing of benefits derived from exploiting these resources and the trade in genetically-modified organisms. The CBD is therefore pursuing three objectives:

1. the conservation of biological diversity
2. the sustainable use of the components of biological diversity
3. the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources

The CBD is a framework convention, i.e. a legal instrument that sets out principles and general parameters for defining a problem and international cooperation methods to resolve it. Restrictive obligations are very few and even non-existent in an agreement such as this. A framework convention is then defined by negotiating one or more protocols that are signed and ratified separately.

Over the years, the CBD contracting Parties have therefore sought to clarify the provisions of the CBD by preparing protocols, themed and multisectorial programmes, guidelines or targets. This led to the adoption in 2000 of the *Cartagena Protocol on Biosafety* and in 2010 of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits*. As the Nagoya Protocol is not yet in force, the COP11 should clarify what happens until its operationalisation.

In addition, the adoption of its Strategic Plan 2011-2020 gave the CBD twenty targets, christened the "Aichi Targets". Coordinated action by the Parties to the CBD is required if they are to be achieved. Although they aspire to global satisfaction, the COP urges the governments to help to achieve them by forming coherent national and regional objectives, mainly by incorporating the Aichi Targets in their national biodiversity strategies and action plans<sup>1</sup>. Most of the Aichi Targets include quantified targets that must be achieved by 2020. These include:

1. Decision X/2 "Strategic Plan for Biodiversity 2011-2020 with its Aichi Targets"

- extending the protected areas to 17% of land areas and inland waters and 10% of marine and coastal areas (Target 11);
- restoring 15% of degraded ecosystems, to increase their resilience and contribute to carbon sequestration (Target 15);
- reduce at least by half the loss rate of all natural habitats, including forests, and, if possible, bring it back to near zero (Target 5);
- end overfishing and manage fish and invertebrate stocks sustainably and introduce recovery measures for all depleted species (Target 6);
- manage sustainably the agriculture, aquaculture and forestry areas to ensure the conservation of the biodiversity (Target 7);
- return to sustainable levels the pollution caused by excessive nutrients in the ecosystems (Target 8);
- prevent the introduction and establishment of invasive alien species (Target 9);
- prevent the extinction of endangered species and improve their state of conservation (Target 12);
- maintain the genetic diversity of cultivated plants, farm and domestic animals and their wild relatives by reducing their genetic erosion as much as possible (Target 13);
- incorporate the value of the biodiversity in the strategies and planning processes, national accounting and reporting systems (Target 2);
- eliminate, reduce or reform the incentives and grants that are harmful to the biodiversity and apply positive incentives to promote conservation and sustainable use (Target 3);
- take measures at all levels (government, business and other stakeholders) to ensure sustainable production and consumption (Target 4);
- take into consideration the traditional knowledge, innovations and practices of indigenous and local communities (Target 18);
- increase the financial resources required to implement the Strategic Plan 2011-2020 effectively (Target 20).

In addition, three targets have a shorter deadline, as they must be achieved by 2015:

- reduce the anthropogenic pressures on the coral reefs and the other ecosystems affected by climate change and ocean acidification (Target 10);
- operationalise the Nagoya Protocol on ABS (Target 16);

- prepare, adopt and start to implement - in all the States party to the CBD - national biodiversity strategies and action plans (Target 17).

These targets give a glimpse of the ambitious CBD programme and provide a starting point for understanding the questions that will be raised by the COP11.

## 2.1. Off to Hyderabad

The text of the Convention creates three bodies: the Conference of the Parties (COP), the Secretariat (SCBD) and the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). The SBSTTA has met twice before the COP11: its fifteenth and sixteenth sessions took place in Montreal on 7-11 November 2011 and 30 April-5 May 2012 respectively.

The CBD also permits the COP to create bodies that can provide it with recommendations on special aspects of its implementation or negotiate the text of protocols. Two *ad hoc*<sup>2</sup> working groups met before the COP11 and sent it their recommendations:

- the fourth meeting of the WGRI<sup>3</sup> which took place in Montreal on 7-11 May 2010;
- and the seventh meeting of the WG8J<sup>4</sup> which also took place in Montreal on 31 October-4 November 2011.

The WGRI-4 was the first chance to review the progress made in implementing the Strategic Plan 2011-2020 adopted two years early by the COP10 in Nagoya. The delegates mainly discussed financial issues likely to contribute to achieving the Aichi Targets and submitted eight recommendations to the COP11.

The WG8j-7 examined how continuing with its work programme could contribute to the implementation of the ABS regime whilst respecting the customary rights of indigenous peoples and local communities.

The COP can also set up expert groups or ask the Secretariat to organise liaison groups, workshops and other informal meetings. As such, the COP11 should consider the conclusions of three Ad-Hoc Technical Expert Groups<sup>5</sup> convened by the COP10 on:

- the indicators for the Strategic Plan for Biodiversity 2011-2020;
- the risks associated with the introduction of alien species as pets, aquarium or terrarium species and as live bait and live food;

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2. The Latin *ad hoc* is used in English but not in French.  
 3. *Ad Hoc Open-ended Working Group on the Review of Implementation of the Convention (WGRI)*  
 4. *Ad Hoc Open-ended Working Group on Article 8(j) and related provisions (WG8j)*  
 5. *AHTEG is the English acronym.*

- biodiversity for poverty eradication and development.

Lastly, by adopting the Nagoya Protocol, the COP-10 set up an Ad Hoc Open-ended Intergovernmental Committee for the Nagoya Protocol (ICNP) to prepare its first Conference of the Parties sitting as a Meeting of the Parties (MOP-1). The ICNP has met on two occasions - in Montreal (6-10 June 2011) (ICNP-1) and New Delhi (2-6 July 2012) (ICNP-2) - and submitted several recommendations to the COP. During the first meeting of the ICNP, the delegates commenced the detailed work on modalities of certain mechanisms, mainly the ABS clearing house mechanism and the strategic framework capacity building and creation. This first meeting also highlighted the need to create a climate of cooperation and trust so that delegates could address the unresolved questions relating to the Nagoya Protocol, such as the compliance mechanism and the multilateral benefit-sharing mechanism. The discussions on these sensitive issues were carried forward to the ICNP-2 where they were addressed, without making significant progress, and once more set aside for discussion during a forthcoming meeting of the ICNP (to be convened by the COP-11) or possibly a first session of the MOP.

### 3. OVERVIEW OF THE WORK OF THE COP11

To deal efficiently with a heavy agenda, the work of the CBD will be split between two working groups and at least one contact group.

Some of the most sensitive issues will be dealt with by Working Group II, mainly:

- progress of the Nagoya Protocol (item 2);
- implementation of the Strategic Plan 2011-2020 and progress made towards achieving the Aichi Targets (item 3);
- mobilisation of financial resources to achieve the Aichi Targets (item 4); and
- redefinition of the role of the SBSTTA, following the creation of the IPBES (item 6).

This working group will also examine the question of biodiversity at the service of poverty eradication and development (item 12) and questions relating to the mobilisation of stakeholders (including the private sector and sub-national authorities) and cooperation with the other conventions and international organisations (item 5).

Working Group I will address the majority of themed programmes and multi-sector questions of the CBD on the COP11 agenda<sup>6</sup>. Most of them fall under item 13 on "other substantive issues arising from the COP10", but some will be examined under separate items. These include island biodiversity (item 8), the work programme on Article 8(j) on traditional knowledge, innovations and practices (item 7), marine and coastal biodiversity (item 10) and questions about climate change (item 11).

To finish, the "contact group on the budget" will address item 14 on the administrative issues and the work programme for the two-year financial period 2012-2014.

Note that the plenary must meet three times, on 8, 12 and 19 October. Established practice dictates that the opening plenary will adopt the agenda and clarify the organisation of work, the mid-way plenary will examine the progress made by working groups and the contact group on the budget and the closing plenary will adopt the decisions of the COP.

In addition, a high-level segment will take place on 16-19 October 2012 under the auspices of the Indian Minister for the Environment. This ministerial segment, which could help to resolve questions that are still hanging, will include four panels, focusing respectively on:

6. Except for the biodiversity serving development, agricultural and forest biodiversity, which will be examined by Working Group II.

- the implementation of the Strategic Plan 2011-2020;
- the biodiversity-related subsistence means and the reduction of poverty;
- marine and coastal biodiversity; and
- the operationalisation of the Nagoya Protocol.

This is a glimpse of the main agenda items for the COP11:

### **3.1. Progress of the Nagoya Protocol (item 2)**

The implementation modalities of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation* and the scheduling of tasks for its operationalisation will take centre stage in the Hyderabad discussions. Successful negotiations within the COP could encourage some countries to ratify it, whilst failure could inhibit its entry into force. Only five countries have ratified the Nagoya Protocol, which must enter into force ninety days following the lodging of the fiftieth instrument of ratification. Although this low accession level can be explained by the extremely cumbersome national procedures and that several ratifications are expected by the end of the year, this process should speed up considerably to acquire the 45 missing instruments by the COP12, when the first COP sitting as Meeting of the Parties (MOP-1) to the Nagoya Protocol could take place.

The COP11 should therefore create a climate of trust, by setting out the interpretation of certain provisions of the Nagoya Protocol and by making sure that the mobilisation of resources gives all Parties the chance to benefit from the positive fallout of the ABS. The text of the Protocol remains vague on certain aspects of its implementation. The question of derivatives of genetic resources has been by-passed by adopting an inclusive definition (commodities are thus excluded, at the insistence of the developed countries). The resources acquired prior to the Protocol entering into force are not dealt with, but could be through a "global benefit-sharing multilateral mechanism" which would target the benefits from cross-border resources or those to which the prior informed consent does not apply and which could, once established, cover the case of genetic resources acquired before the entry into force of the Protocol. Lastly, the adopted text provides for the setting up of check points, designated by the Parties and intended to monitor the use of genetic resources, but remains flexible on the information that should be divulged.

As such, the COP11 should examine the recommendations of the ICNP to clarify the provisions of the Nagoya Protocol listed below or determine what must be done to achieve them. These provisions cover:

- the need for and modalities of a global benefit-sharing multilateral mechanism (Nagoya Protocol, Article 10);
- the operating modalities of the access and benefit-sharing clearing house (Art. 14, paragraph 4);

- guidance for the financial mechanism and for the mobilisation of resources (Art. 25);
- measures for the creation and building up of capacities (Art. 22) and raising public awareness (Art. 21);
- cooperative procedures and institutional mechanisms to promote compliance with provisions and address cases of non-compliance (Art. 30).

### 3.2. Implementation of the Strategic Plan 2011-2020 and indicators (item 3)

Following the example of the Nagoya Protocol, the implementation of the Strategic Plan for Biodiversity 2011-2020 and achieving its Aichi Targets are one of the main questions on the agenda of this COP. By adopting the Strategic Plan, the Parties have committed themselves, given their respective national circumstances, to developing national and regional targets and to updating their national biodiversity strategies and action plans. Three different questions are therefore raised:

- What progress has been made in incorporating the Strategic Plan targets at national level?
- What support can be given to the Parties for this purpose?
- How can the achievement of Aichi Targets be measured?

#### Implementation at national level (items 3.1 and 3.2)

The review of the implementation of Strategic Plan at national level, mainly the incorporation of Aichi Targets in the revised national strategies and action plans, has mainly been addressed by the WGRI-4. The Plan will above all be implemented through national and sub-national activities, with the support of regional and global measures. National biodiversity strategies and action plans (NBSAP) (even the forty or so revised since 2010) linked explicitly to specific elements of the Strategic Plan are rare. The draft decision (based on WGRI recommendation 4/1) *strongly urges* the parties to update their national strategies and action plans in line with the Strategic Plan.

The question of means adopted to assist the Parties in implementing the Strategic Plan at global and national level should give rise to serious discussions. This question has three sections: (i) scientific and technical cooperation; (ii) support for capacity-building; and (iii) the financial resources. The third section will be highly controversial and could dominate the discussions at the COP11. Several countries have attributed the lukewarm progress in revising their NBSAPs to lack of financing and have asked for "on-going", "additional" and/or "increased" support. As no conclusion was reached during the discussions, the final WGRI recommendation contains four options which should be resolved by the COP.

### **Measuring the Aichi Targets (item 3.3)**

Indicators have also had to be set up to monitor the implementation. As measuring is also a political act, anything that seems technical can sometimes give rise to legitimate questions that involve not only the relevance of the indicator and the reliability of the data it represents, but also the comparability of data, the potential use of the indicator and the political impacts of its use.

This question was dealt with principally by the SBSTTA-15 in the light of work by the AHTEG on the indicators of the Strategic Plan for Biodiversity 2011-2020. Following recommendation XV/1, the COP11 should *take note* of the list of *fundamental* and *operational* indicators for each of the twenty Aichi Targets that must be achieved by 2015 or 2020. It should also ask the Parties to apply at national level the indicators available at global level and to use them in preparing their national biodiversity strategies and action plans and their national reports.

The WG8j-7 also contributed to this thinking by focusing more specifically on indicators relating to traditional knowledge and customary sustainable use. Following its recommendation 7/7, the COP11 could decide to refine, in conjunction with the indigenous and local communities, three indicators focusing on: (i) the use of land and land tenures in the traditional territories of indigenous and local communities; (ii) the practice of traditional trades; and (iii) the linguistic diversity and number of speakers of indigenous languages.

### **3.3. Mobilisation of financial resources to achieve the Aichi Targets (item 4)**

The mobilisation of financial resources to help the Parties in achieving the Aichi Targets will more than likely be the most controversial issue at the COP11. Many feel that the lack of resources is the main obstacle to achieving the CBD objectives, but the Parties do not agree on the sums required to implement the Strategic Plan and achieve the Aichi Targets. Under this agenda item, the COP11 should examine the implementation of the Resource Strategy Mobilisation, including the definition of objectives (item 4.1) and should examine the report of the GEF, provide it with guidelines (4.3) and assess its need for its sixth replenishment (4.4).

### **3.4. Redefinition of the role of the SBSTTA and follow-up to the creation of the IPBES (item 6)**

The COP11 should examine the need for additional mechanisms and their potential development or the possibility of improving the existing mechanisms, such as the SBSTTA and the WGRI, to respond better to the needs of the Parties. As such, the repercussions from the creation of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) in April 2012, on the operation of



the SBSTTA should give rise to extensive discussions. The COP11 should mainly determine if the SBSTTA can entrust specific mandates to the IPBES or if its requests must firstly be approved by the COP. The COP11 should also clarify the SBSTTA mandate to take account of this new institutional environment, requesting it to (i) identify the scientific and technical needs linked to the implementation of the Strategic Plan that could be considered by the IPBES and (ii) to take account of relevant IPBES results in preparing its recommendations.

### **3.5. Biodiversity serving poverty eradication and development (item 12)**

It is crucial for developing countries to include biodiversity in the strategies and plans for eradicating poverty and in the development processes: The loss of the biodiversity increases the vulnerability of poor populations, whilst protecting ecosystems and maintaining their services can help to eradicate this loss. This question has been paid special attention since the COP10 set up an Ad Hoc Technical Expert Group on the biodiversity for poverty eradication and development. This AHTEG has met once, in Dehradun in December 2011, where it adopted a series of recommendations that were revised in the light of work by the WGRI-4 and communications submitted by the Parties. The COP11 should examine the new version of the *Dehradun Recommendations* contained in the Executive Secretary's summary report<sup>7</sup> and decide whether to *approve* or *take note* of them. In addition, following the WGRI recommendation 4/4, the COP11 could decide that "biodiversity serving poverty eradication and development" should be considered as an intersectorial issue in all the relevant CBD work programmes. The COP11 could also decide to prepare a roadmap on the inclusion of the biodiversity serving poverty eradication and development.

### **3.6. Traditional knowledge: Article 8(j) and related provisions (item 7)**

The COP11 should also consider the recommendations of the seventh meeting of the WG8j which met in Montreal on 31 October-4 November 2011. These recommendations focus mainly on: (i) the review of tasks 7, 10 and 12 of the revised work programme and the adoption of terms of reference for task 15; (ii) the launch of a process with a view to preparing an "*action plan on customary sustainable use*" to take account of the inclusion of Article 10(c) in the work programme; and (iii) the elements of sui generis systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities.

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7. UNEP/CBD/COP/11/33

## Revised multi-year work programme

Following the revision of the multi-year work programme on Article 8(j), the COP-10 decided to continue with certain tasks, taking account of the Nagoya Protocol and the Strategic Plan 2011-2020. The execution of tasks 7, 10 and 12<sup>8</sup> could help to prepare the Parties in ratifying the Nagoya Protocol. However, some countries believe it would be premature to address them before the ABS regime enters into force and negotiations are finalised with the World Intellectual Property Organisation (WIPO) on the protection of genetic resources, traditional knowledge and cultural expressions and the sui generis protection of traditional knowledge. To consider these various viewpoints, the COP11 should decide, following recommendation 7/3, to advance with these tasks, starting with identifying how their implementation could contribute to the work of the CBD, its Nagoya Protocol and the WIPO Intergovernmental Committee.

The COP11 will also examine task 15 whereby the WG8J must prepare guidelines that would facilitate repatriation of information, including cultural property, in order to facilitate the recovery of traditional knowledge of biological diversity. This point raises several questions, however, on the duplication of UNESCO legal instruments and the availability of its knowledge and should be discussed further by the COP.

## Article 10(c)

The COP11 should follow up the decision by the COP11 to include Article 10(c) on sustainable use in the Article 8(j) work programme<sup>9</sup>. By virtue of this article, each contracting Party, wherever possible and as appropriate "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with their conservation or sustainable use". As recommended by the WG8j, the COP11 could launch a process to develop an action plan on the customary sustainable use as a new component of the Article 8(j) work programme.

## *Sui generis* systems

The COP11 should continue to prepare elements of sui generis systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities; These systems can be considered as a means of succeeding with task 7

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8. Prepare guidelines on preparing mechanisms, laws or other initiatives specifically to ensure that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their traditional knowledge (task 7); develop standards and guidelines for the reporting and prevention of unlawful appropriation (task 10); develop guidelines that will assist Governments in the development of legislation or other mechanisms to implement Article 8(j) (task 12).
  9. Decision X/43

(and tasks 10 and 12), as task 7 aims to ensure that the indigenous and local communities obtain their fair share of benefits resulting for the use of their traditional knowledge. This process should also be connected with the work of the WIPO. At its 20th General Meeting (Geneva, September-October 2011), it was decided to accelerate the negotiating of the text for an internal legal instrument for the effective protection of genetic resources, traditional knowledge and cultural expressions and the *sui generis* protection of traditional knowledge. Following the WG8j-7 recommendation 7/5, the COP11 should decide to widen the dialogue on the *sui generis* systems to include the conservation and promotion of biodiversity-related traditional knowledge and set up an Ad Hoc Technical Experts Group (AHTEG) specifically to report on the *sui generis* systems.

### **3.7. Marine and coastal biodiversity (item 10)**

Marine and coastal biodiversity is difficult to address under the CBD, as the mandate for the convention is restricted to living organisms and areas falling under the national jurisdiction, whereas successful action in conserving the marine and coastal biodiversity also depends on areas beyond national jurisdictions. It is therefore essential to coordinate measures taken inside and beyond areas of national jurisdiction. These international areas are governed by the United Nations Convention on the Law of the Sea (UNCLOS)<sup>10</sup> which has embarked on a process on the conservation and sustainable use of the marine biodiversity that could lead to the adoption of an implementation agreement.

To support this process, the COP11 should provide guidelines on identifying ecologically and biologically significant areas (EBSA). In the light of SBSTTA recommendation XVI/4 (April-May 2012), the COP11 could approve the description of EBSA identified during four regional workshops organised under the auspices of the CBD, with a view to describing the EBSA of the regions of the Western South Pacific (Fiji, November 2011), the Caribbean and Western Mid-Atlantic (Brazil, 28 February-March 2012), the Southern Indian Ocean (Mauritius, July-August 2012) and the Eastern Tropical and Temperate Pacific (Ecuador, August 2012).

In addition, the SBSTTA has prepared two draft decisions covering respectively: (i) marine spatial planning and the Voluntary guidelines for the consideration of biodiversity in environmental impact assessments and strategic environmental assessments in marine and coastal areas (recommendation XVI/6); and (ii) sustainable fisheries and addressing adverse impacts of human activities on marine and coastal biodiversity (recommendation XVI/5).

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10. See Sheet 11, Annex I

### **3.8. Climate change and related issues (item 11)**

Under item 11 on biodiversity and climate change, the COP-11 should issue advice on the "relevant guarantees for the biodiversity in terms of REDD+<sup>11</sup>", to prevent projects to boost stocks of forest carbon under the auspices of the UNFCCC from contributing to the erosion of the biodiversity (by encouraging the afforestation of areas rich in biodiversity or the conversion of natural forests into plantations of fast-growing species) or from applying more pressure to the indigenous territories.

Another question relating to the mitigation measures involves the potentially harmful effects of geoengineering techniques planned to combat climate change. This issue will be discussed under item 11, but could also be raised under item 9 on the restoration of ecosystems.

### **3.9. Ecosystem restoration (item 9)**

As the specific means and methods to support ecosystem restoration have only been examined so far on the fringes of CBD work programmes, the COP10 decided to focus on this question at its eleventh session<sup>12</sup>. The CBD has listed 240 guidance or guidelines (including over half focusing on particular ecosystems) and more than one thousand tools and technologies on ecosystem restoration. Following the SBSSTA-15 recommendation XV/2, the COP should study the need to prepare practical guidance and underline the relevance of creating an Ad Hoc Technical Expert Group (AHTEG) for this purpose.

### **3.10. Substantive issues arising from the COP10 decisions (item 13)**

The COP11 agenda also features seven questions arising from the decisions of the COP10. They mostly involve the implementation of themed programmes and multisectorial questions of the CBD. Three of them should give rise to serious discussions: protected areas, bushmeat (sustainable use of the biodiversity) and the invasive alien species. These components are summarised below:

#### **Protected areas (item 13.4)**

The question of protected areas is closely linked to achieving Aichi Target 11 on the conservation by 2020 of at least 17% of land areas and inland waters and 10% of marine and coastal areas. To help to achieve this target, the CBD is inviting the countries to prepare national protected area action plans, based on the Work Programme

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11. Reducing emissions from deforestation and degradation of forests and the role of the conservation, sustainable management of forests and the enhancement of forest carbon stocks in developing countries (REDD+)
  12. Decision X/9 "Multi-year work programme of the Conference of the parties for the 2011-2020 period and meeting frequency"

on Protected Areas (PoWPA)<sup>13</sup>. To help them in this task, the Secretariat organised eight capacity-building workshops over the last two years. The workshops have prepared a hundred or so national action plans<sup>14</sup>. If they are fully implemented, the global target for the terrestrial areas will almost have been achieved, but there will still be a great deal to do to protect 10% of marine and coastal areas. What is more, their implementation is not guaranteed and relies on several factors, including on-going capacity-building activities and the mobilisation of adequate funds. To this end, based on the recommendation in the Executive Secretary's note on the protected areas<sup>15</sup>, the COP11 could, especially *invite* the Parties to include their PoWPA action plans in their revised national biodiversity strategies and action plans and *invite* the GEF and its implementation agencies to facilitate the harmonisation of the development and implementation of protected area projects with the actions identified in the action plans.

### **Sustainable use of the biodiversity: the question of bushmeat (item 13.6)**

The question of bushmeat is particularly complex, as hunting is both a means of subsistence which provides, in some tropical countries, between 30% and 70% of the protein intake of rural populations and a fast-growing commercial activity. Consequently, the sustainable use of bushmeat is reliant on the development of other sources of protein and revenue, at small scales, that are acceptable culturally and economically viable for the populations who will have to alter their means of subsistence. It necessitates introducing a range of measures to manage, monitor and control captures and trade in regions that can be huge and isolated<sup>16</sup>. To take account of this, the COP10 requested the Executive Secretary to prepare a revised version of recommendations for the Liaison Group on Bushmeat which were prepared in the light of the joint meeting of the CBD and CITES (Nairobi, June 2011). They list some twenty measures to be implemented locally and internationally to end the overuse of these species. Following the SBSTTA-15 recommendation XV/6, the COP should *welcome* these revised recommendations of the Liaison Group on Bushmeat and *invite* the Parties to apply the solutions listed.

### **Invasive alien species (item 13.9)**

Invasive alien species are a major concern for the CBD Parties who, by virtue of Aichi Target 9, have given themselves until 2020 to control or eradicate the most harmful invasive alien species and introduce measures to manage their penetration

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13. Decision X/31

14. As at 26 June 2012, 105 countries had forwarded their PoWPA action plans. They can be consulted here: [www.cbd.int/protected/implementation/actionplans/](http://www.cbd.int/protected/implementation/actionplans/)

15. UNEP/CBD/COP/11/26

16. UNEP/CBD/SBSTTA/15/12

pathways. As such, the COP10 created an Ad Hoc Technical Expert Group on addressing the risks associated with invasive alien species introduced as pets, including aquarium and terrarium species, or as live bait or food (AHTEG-IAS). In the light of its work, the SBSTTA-15 recommends that the COP11 *encourages* the governments to cooperate efficiently, calling on all existing standards, to protect against the risks from introducing invasive alien species such as domestic pets and live bait and food and asks the Executive Secretary to prepare more detailed guidance on preparing and implementing national measures to this end, for consideration by the COP12<sup>17</sup>. It also recommends that the COP *recognises* that the trade, especially the sale and purchase of live animals on the Internet, is one of the major penetration pathways for invasive alien species and, to this end, asks the Secretariat to compile and broadcast control instruments used by police forces, customs and inspection bodies. In addition, to plug the gaps in the international standards relating to invasive alien species, the COP-11 should *encourage* the conventions involved<sup>18</sup> to continue with the efforts in this respect. Lastly, it should ask the Executive Secretary to prepare a "practical, non-normative toolbox" for the application of existing standards, guidance and international recommendations.

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17. Recommendation XV/4

18. World Health Organisation (WHO), International Plant Protection Convention (IPPC) of the FAO and the World Organisation for Animal Health (OIE).

# ANNEX I

## TECHNICAL SHEETS

### Sheet 1

## Convention on Biological Diversity (CBD)

**Adoption:** 22 May 1992

**Entry into force:** 29 December 1993

**Ratification status:** 193 Parties, including the European Union<sup>19</sup>

**Governing body:** Conference of the Parties

**Secretariat:** Montreal (UNEP)

**Other bodies:** Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) • Working Group on the Review of Implementation (WGRI) • Working Group on Article 8(j) (WG8j) • Working Group on Protected Areas (WGPA)

**Protocols:** Nagoya Protocol on ABS • Cartagena Protocol on Biosafety • Additional Protocol of Nagoya-Kuala Lumpur

Although the idea of a global convention on the conservation of living resources was proposed by the International Union for the Conservation of Nature (IUCN) in the early 1980s, formal negotiations only started at the turn of the decade and terminated in 1992, slightly before the Rio Earth Summit, where the Convention on Biological Diversity was opened for signature. The three objectives of the CBD are the conservation of the biodiversity, the sustainable use of its elements and the fair and equitable sharing of benefits arising from their utilisation.

In terms of conservation, the Parties must prepare measures (Art. 6) and identify the components of the biodiversity that are significant for its conservation and sustainable use (Art. 7). They must also establish a system of protected areas and encourage the protection of ecosystems and natural habitats for the conservation *in situ* (Art. 8). The Parties must also adopt measures to conserve *ex situ* components of the biodiversity, for example in museums, botanical gardens and zoos, seed or gene banks. (Art. 9).

19. Note that the United States is not Party to the CBD

However, the CBD is not just a convention on conservation and also covers the sustainable use of the biodiversity. By virtue of its Article 10, the Parties must, in particular, adopt measures to prevent or mitigate the unfavourable effects of exploiting biological resources and encourage their customary uses.

Articles 15, 16 and 19 address the complex questions of access to genetic resources and the transfer and management of biotechnologies, which led to the adoption of the *Cartagena Protocol on Biosafety* and the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits*.

In addition, the developed countries undertake to provide new and additional financial resource" so that the developing countries can face up to all the extra costs forced on them by the implementation of measures required by the CBD. To this end, the COP requested the Global Environment Facility (GEF) to act as the financial mechanism of the CBD.

**Site:** [www.cbd.int](http://www.cbd.int)

**Convention text:** [www.cbd.int/doc/legal/cbd-fr.pdf](http://www.cbd.int/doc/legal/cbd-fr.pdf)



## Sheet 2

# Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the CBD

**Adoption:** 29 October 2010

**Entry into force:** N/A

**Ratification status:** 5 States Parties

**Governing body:** Conference of the Parties sitting as the Meeting of the Parties (MOP)

**Secretariat:** UNEP (Montreal)

**Other bodies:** N/A

**Protocols:** N/A

To establish the rules and procedures for implementing the third objective of the Convention on Biological Diversity (CBD), the COP10 adopted the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the CBD*. The Nagoya Protocol will enter into force ninety days after the fiftieth instrument of ratification, acceptance, approval or accession has been deposited. To date, 90 countries in addition to the European Union have signed the Nagoya Protocol, but only five countries have ratified it<sup>20</sup>. Some of its provisions are however vague so that the COP10 decided to create an Ad Hoc Open-ended Intergovernmental Committee for the Nagoya Protocol (ICNP) entrusted with preparing the MOP-1 by looking into the questions hanging in the air.

By virtue of the Nagoya Protocol, access to genetic resources must be subject to prior informed consent of the Party providing these resources under the national legislation for ABS (Art. 6) and the benefits resulting from their use must be shared with it, according to the mutually-agreed terms (Art. 5). The Protocol also provides for a potential global benefit-sharing multilateral mechanism (Art. 10), an ABS clearing house (Art. 14), a financial mechanism (Art. 25) and a provision compliance mechanism (Art. 30). It also includes measures for development and capacity building (Art. 22), awareness-raising (Art. 21) and transfer of technologies (Art. 23) and also provisions relating to traditional knowledge and access to it which must also be subject to the mutually-agreed terms (Arts. 7 and 12).

**Site:** [www.cbd.int/abs](http://www.cbd.int/abs)

**Protocol text:** [www.cbd.int/abs/doc/protocol/nagoya-protocol-fr.pdf](http://www.cbd.int/abs/doc/protocol/nagoya-protocol-fr.pdf)

20. Gabon, Jordan, Rwanda, Seychelles and Mexico.

## Sheet 3

# Cartagena Protocol on Biosafety to the Convention on Biological Diversity

**Adoption:** 29 January 2000

**Entry into force:** 11 September 2003

**Ratification status:** 163 Parties, including the European Union

**Governing body:** Conference of the Parties sitting as the Meeting of the Parties (MOP)

**Secretariat:** Montreal (UNEP)

**Other bodies:** Obligation Compliance Committee

**Protocols:** Nagoya-Kuala Lumpur Additional Protocol

The risks from introducing genetically modified organisms (GMO), that the CBD describes as "modified living organisms" (MLO) were already raising some questions when the Convention was being negotiated. Faced with the complexity of issues and given the very short negotiating times, the delegates preferred to negotiate later any commitments in framework of a protocol that would define the appropriate procedures in the transfer, handling and safe use of MLO with a potential negative impact on the conservation and sustainable use of the biodiversity (Article 19 of the CBD).

After several years of intense negotiations, the *Cartagena Protocol on Biosafety* was finally adopted in Montreal in 2000 (Decision EM-1/3). The Protocol aims to protect the biodiversity from potential risks posed by the modified living organisms resulting from modern biotechnologies and restates the precautionary (or prudent) approach enshrined in Principle 15 of the *Rio Declaration* (Art. 1). Having said that, it opposes free exchange, advocated by GMO-producing countries and import controls, advocated by the importing countries<sup>21</sup>. To guarantee the transparency of exchanges, the importing countries must be in possession of all the relevant information before allowing this type of organism onto their territory. It thus set up a procedure of prior informed consent (Arts. 7-10 and 12) and created a biosafety clearing house (Art. 20).

Following its entry into force, the MOP-3 (Curitiba, 2006) determined how to identify the MLO intended for human and animal consumption or processing,

21. Jean-Maurice Arbour, Sophie Lavallée, Hélène Trudeau, "La biodiversité" in *Droit international de l'environnement*, 2<sup>nd</sup> edition, Cowansville, Éditions Yvon Blais, 2012 (to be published).

by adopting the list of components required for their documentation and identification. Subsequently, the MOP-5 (Nagoya, 2010) adopted the *Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety* which defines the rules procedures for liability and redress. The need to form a subsidiary body to provide scientific and technical opinions will be examined by the MOP-6 (Hyderabad, 1-5 October 2012).

Site: <http://bch.cbd.int/protocol>

Text of the Protocol: <http://bch.cbd.int/protocol/publications/cartagena-protocol-fr.pdf>

## Sheet 4

### **Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety**

**Adoption:** 15 October 2010

**Entry into force:** N/A

**Ratification status:** 2 States Parties

**Governing body:** MOP to the Cartagena Protocol

**Secretariat:** Montreal (UNEP)

**Other bodies:** N/A

**Protocols:** N/A

The *Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress* was adopted by the 5th Conference of the Parties sitting as the Meeting of the Parties to the Cartagena Protocol of the CBD (Nagoya, October 2010). It will enter into force once the fortieth instrument of ratification has been deposited. Although fifty countries plus the European Union have signed so far, only two countries, Latvia and the Czech Republic, have ratified it.

The aim of the additional Protocol is to contribute to the conservation and sustainable use of the biodiversity, whilst taking account of risks for human health and provided international rules and procedures in terms of liability and redress linked to the modified living organisms (MLO) (Art. 1). It applies to damage resulting from cross-border movements of MLO intended for human or animal consumption, the use in a confined environment or the intentional introduction into the environment (Art. 3). It stipulates that a causal link must be established between the damage and the targeted MLO, in accordance with national legislation (Art. 4). Once this causality has been checked, the additional Protocol provides for intervention measures to be implemented by one or more operators under conditions laid down by the competent authority (Art. 5). There are provisions for the Parties to insert exemptions, delays or financial limits to the measures provided for by the additional Protocol in their national legislation (Arts. 6 to 8). Other articles outline, especially, the right to recourse, financial safety and implementation of the additional Protocol linked to civil liability and provide for its assessment, review and institutional operation.

**Site:** <http://bch.cbd.int/protocol/supplementary>

**Text of the Protocol:** [http://bch.cbd.int/protocol/NKL\\_text.shtml](http://bch.cbd.int/protocol/NKL_text.shtml)

# ANNEX II

## HIGH LEVEL SEGMENT OF COP11 TO CBD

Ministers and Heads of Delegations are invited to take part in the high-level segment which begins Tuesday, October 16, from 15:30 to 16:30, with opening statements from several dignitaries, including the Prime Minister of India, the Head of Government of Andhra Pradesh, the Chairman of COP11 and the Executive Secretary of the CBD. The opening plenary will be followed over the next three days by "parallel panel discussions" that could contribute to the resolution of outstanding issues. Here is the program of the parallel discussions<sup>22</sup>:

Sessions	17 October (Wed)	18 October (Thus)	19 October (Fri)
Morning session 10h00 AM - 1h00 PM	Statements by Heads of Ministerial Delegations and participating International Organisations  Panel-I: Implementation of the Strategic Plan on Biodiversity 2011-2020	Statements by the participants at Ministerial level  Panel-III: Coastal and Marine Biodiversity	Chair's Summary HLS Panels (I - IV)
Lunch 1h00 - 3h00 PM	Lunch by Government of India	Lunch by Government of India	Lunch by Government of India
Afternoon Session 3h00 - 6h00 PM	Statements by the participants at Ministerial level  Panel-II: Biodiversity for Livelihoods and Poverty Reduction	Statements by the participants at Ministerial level  Panel-IV: Implementation of Nagoya Protocol on Access to Genetic Resources and Benefit Sharing	Closing Plenary of COP11
Evening Session	Reception hosted by Government of India (7h00 à 9h00 PM)	Reception hosted by Government of Andhra Pradesh (7h00 à 9h00 PM)	Reception by Republic of Korea (6h00 PM)

22. Dated 14 September 2012. The final agenda of the high-level segment will be posted on this page: [www.cbd.int/cop11/events/hls.shtml](http://www.cbd.int/cop11/events/hls.shtml)



## United Nations Decade on Biodiversity

This summary for the decision-makers of the *Guide to the Negotiations of the eleventh session of the Conference of the Parties to the Convention on the Biological Diversity* discusses the main items on the COP-11 agenda.



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