



## Convention on Biological Diversity

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CONFERENCE OF THE PARTIES TO THE  
CONVENTION ON BIOLOGICAL DIVERSITY  
Eleventh meeting  
Hyderabad, India, 8-19 October 2012  
Agenda item 2

### DECISION ADOPTED BY THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY AT ITS ELEVENTH MEETING

*XI/1. Status of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and related developments*

*A. Further work in preparation for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol*

*The Conference of the Parties,*

*Recalling* the mandate of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to undertake the preparations necessary for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, in accordance with decision X/1 of the Conference of the Parties,

*Recalling also* the work plan set out in annex II to decision X/1 of the Conference of the Parties,

*Taking note* that substantive progress has been made on several issues identified in its work plan,

*Noting* that some issues of the work plan require further consideration with a view to facilitating decision-making by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol,

1. *Welcomes* the reports of the first and second meetings of the Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;

2. *Decides* to reconvene the Intergovernmental Committee for a third meeting to address outstanding issues in its workplan, in preparation for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

/...

3. *Calls upon* Parties to the Convention on Biological Diversity that have not yet done so to initiate and expedite their internal processes leading to ratification, approval or acceptance of or accession to the Nagoya Protocol;

4. *Invites* Parties, other Governments, relevant international organizations, indigenous and local communities and all interested stakeholders to submit information to the Executive Secretary on model contractual clauses, codes of conduct, guidelines and best practices and/or standards;

5. *Requests* the Executive Secretary to make the information referred to in paragraph 4 above available through the pilot phase of the Access and Benefit-sharing Clearing-House and to compile, analyse and structure this information for consideration by the third meeting of the Intergovernmental Committee;

6. *Decides* that the following additional issues should be addressed by the Intergovernmental Committee at its third meeting, in preparation for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol:

- (a) Monitoring and reporting (Article 29);
- (b) Exchange of views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards (Article 19 and 20); and
- (c) Exchange of views on the state of implementation of the Nagoya Protocol.

**B. *The need for and modalities of a global multilateral benefit-sharing mechanism (Article 10)***

*The Conference of the Parties*

1. *Requests* the Executive Secretary to conduct a broad consultation on Article 10 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;

2. *Invites* Parties, other Governments, relevant international organizations, indigenous and local communities, and all interested stakeholders to contribute to the consultation referred to in paragraph 1 above by submitting their views with respect to Article 10, bearing in mind the indicative list of questions in part A of annex I below, as well as other perspectives on the matter, in particular the additional questions contained in part B of annex I;

3. *Requests* the Executive Secretary to prepare and distribute a synthesis of the views provided in the broad consultation;

4. *Further requests* the Executive Secretary, subject to the availability of funds, to convene a meeting of a regionally balanced expert group, including representatives from indigenous and local communities, to: (i) review the synthesis referred to in paragraph 3 above, taking into account the views provided; (ii) identify potential areas of common understanding with respect to Article 10; and (iii) identify areas that could be further examined. The expert group shall submit the outcomes of its work for consideration by the third meeting of the Intergovernmental Committee, following the holding of the expert group meeting. Based on the conclusions of the work of the expert group, the third meeting of the Intergovernmental Committee should consider the need for an additional study, including on non-market-based approaches;

5. *Invites* Parties, other Governments and relevant organizations to provide financial support to convene the meeting of the expert group.

**C. Modalities of operation of the Access and Benefit-sharing Clearing-House**

*The Conference of the Parties*

1. *Welcomes* the pilot phase of the Access and Benefit-sharing Clearing-House and *establishes* an informal advisory committee in order to assist the Executive Secretary with the implementation of the Access and Benefit-sharing Clearing-House pilot phase and to provide technical guidance with respect to the resolution of technical issues arising from the ongoing development of the pilot phase of the Access and Benefit-sharing Clearing-House until the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The informal advisory committee shall be regionally balanced and composed of fifteen experts selected on the basis of nominations provided by Parties;

2. *Endorses* the 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;

3. *Decides* that the informal advisory committee will 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;

4. *Invites* Parties, other Governments and relevant organizations to provide financial support for the organization of a meeting of the informal advisory committee;

5. *Requests* the Executive Secretary to report to the Intergovernmental Committee, at its third meeting, on progress in the implementation of the pilot phase of the Access and Benefit-sharing 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;

6. *Also requests* the Executive Secretary to further refine the draft modalities of operation<sup>1</sup> once further progress is made on the implementation of the pilot phase of the Access and Benefit-sharing 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 meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

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<sup>1</sup> As set out in the annex to document UNEP/CBD/ICNP/2/9.

***D. Measures to assist in capacity-building, capacity development and strengthening of human resources and institutional capacities in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including those that are most environmentally vulnerable***

*The Conference of the Parties*

1. *Requests* the Executive Secretary, in collaboration with relevant organizations, and subject to the availability of financial resources, to continue supporting capacity-building and development initiatives to support the ratification, early entry into force and implementation of the Protocol;

2. *Invites* Parties, other Governments, international organizations, the Global Environment Facility, regional development banks and other financial institutions to provide financial resources to support capacity-building and development initiatives to support the ratification, early entry into force and implementation of the Protocol;

3. *Invites* Parties, other Governments and relevant organizations to undertake and provide support for capacity-building and development initiatives to support the ratification, early entry into force and implementation of the Protocol, taking into account the domestic needs and priorities of Parties and indigenous and local communities contained in annex II to this decision;

4. *Requests* the Executive Secretary, subject to the availability of funds, to organize an expert meeting to develop a draft strategic framework, taking into account the synthesis of views and information on domestic needs and priorities and on the proposed elements of the strategic framework for capacity-building and development under the Nagoya Protocol contained in document UNEP/CBD/ICNP/2/10, the wealth of experiences and lessons learned from existing capacity-building and development initiatives related to access and benefit-sharing and bilateral cooperation related to access and benefit-sharing, as well as the summary of views expressed at the second meeting of the Intergovernmental Committee, as contained in annex III below, in accordance with the following terms of reference:

(a) *Composition:* A maximum of up to three experts per region and five observers will be selected, taking into account their expertise and the need to ensure equitable geographical distribution, and with due regard to gender balance;

(b) *Duration:* The expert meeting will take place over a period of three days; and

(c) *Reporting:* The draft strategic framework developed by the expert meeting will be submitted for consideration by the third meeting of the Intergovernmental Committee;

5. *Invites* Parties, other Governments and relevant organizations to provide financial support for the organization of the expert meeting.

***E. Measures to raise awareness of the importance of genetic resources and associated traditional knowledge, and related access and benefit-sharing issues***

*The Conference of the Parties,*

*Recognizing* the importance of awareness-raising in supporting the ratification, early entry into force and implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,

1. *Requests* the Executive Secretary, in collaboration with relevant organizations, as appropriate, and subject to the availability of financial resources, and taking advantage of activities and resources developed under other programmes of work of the Convention, notably under the communication, education and public awareness (CEPA) programme, to carry out awareness-raising activities to support the ratification, early entry into force and implementation of the Protocol;

2. *Invites* Parties, other Governments, international organizations, the Global Environment Facility, regional development banks and other financial institutions to provide financial resources to support awareness-raising initiatives in support of the ratification, early entry into force and implementation of the Nagoya Protocol;

3. *Also invites* Parties, other Governments, international organizations and other relevant actors to carry out awareness-raising activities to support the ratification, early entry into force and implementation of the Protocol, taking into account the draft awareness-raising strategy set out in recommendation 2/6 of the Intergovernmental Committee.

***F. Cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and address cases of non-compliance***

*The Conference of the Parties*

*Decides* to forward the draft “Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Protocol and to Address Cases of Non-compliance”, as contained in annex IV to this decision, to the third meeting of the Intergovernmental Committee, to enable the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol to consider and approve them.

*Annex I*

**NEED FOR AND MODALITIES OF A GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM**

*Part A*

***Indicative list of questions***

When submitting their views on the need for and modalities of a global multilateral benefit-sharing mechanism, respondents may bear in mind the following:

1. What could be the 'transboundary situations' covered by Article 10 of the Nagoya Protocol that are within the scope of the Protocol?
2. What could be the situations where it is not possible to grant or obtain prior informed consent?
3. How could a global multilateral benefit-sharing mechanism be used to support the conservation and sustainable use of biological diversity globally?
4. How might the operation of a global multilateral benefit-sharing mechanism co-exist with the underlying principles, objective and scope upon which the Nagoya Protocol is based?
5. What could be the advantages and disadvantages of a global multilateral benefit-sharing mechanism?
6. What influence might other articles of the Nagoya Protocol have in the context of a global multilateral benefit-sharing mechanism?
7. Are there any existing international instruments or processes that could offer lessons learned for consideration in the context of a global multilateral benefit-sharing mechanism under the Nagoya Protocol?
8. What other aspects of a global multilateral benefit-sharing mechanism should be considered?
9. Perspectives on other matters which should be considered.

*Part B*

***Additional questions raised by Parties at the second meeting of the Intergovernmental Committee***

1. Does the mere existence of the same species in more than one country constitute a transboundary situation?
2. Does 'transboundary situation' refer to access to genetic resources and associated traditional knowledge?
3. How could benefits derived from utilization of shared genetic resources or associated traditional knowledge be shared through a global mechanism?
4. In those situations, what would be the role of national legislation or bilateral alternatives?



5. In which situations could genetic resources or associated traditional knowledge be accessed without prior informed consent and while not violating the obligations in the Nagoya Protocol?
6. Would the transfer of genetic resources or associated traditional knowledge to third parties be covered by the situations identified in the previous question?
7. How to make sure that a global multilateral benefit-sharing mechanism will only be used when there is no real possibility to obtain prior informed consent?
8. How would a global multilateral benefit-sharing mechanism address collections made (i) pre-Convention; (ii) post-Convention but pre-Nagoya Protocol; (iii) post-Nagoya Protocol?
9. How would a global multilateral benefit-sharing mechanism address new uses of pre-Convention collections and continuing uses of pre-Convention collections?
10. How to apply Articles 10 and 11 without causing harm to the principle of the sovereign right of States over their natural resources?
11. How to ensure that a global multilateral benefit-sharing mechanism does not represent a disincentive for implementation of bilateral system of the Protocol?
12. As a provider of genetic resources or associated traditional knowledge, what problems would a global multilateral benefit-sharing mechanism (a) create and (b) solve?
13. As a user of genetic resources or associated traditional knowledge, what problems would a global multilateral benefit-sharing mechanism (a) create and (b) solve?
14. If there is no global multilateral benefit-sharing mechanism, what problems would remain?
15. If other instruments or processes exist, should Article 10 of the Nagoya Protocol be prioritized over these instruments or processes?
16. Are there any existing international instruments or processes that could cover aspects that may be relevant to a global multilateral benefit-sharing mechanism under the Nagoya Protocol?
17. Is Article 10 of compulsory or voluntary nature?
18. What incentives for the contribution of the private sector could be envisaged in the global multilateral benefit-sharing mechanism?
19. How could capacity-building activities enhance capacity of Parties to handle transboundary situations or situations where no prior informed consent has been granted?
20. What is the status with regard to the Nagoya Protocol where the country has a law which covers pre-Convention collections?

*Annex II*

**Overview of measures to build or develop capacity to effectively implement the Protocol based on the needs and priorities of Parties and indigenous and local communities**

	<b>Key area: (a) capacity to implement, and to comply with the obligations of the Protocol</b>	<b>Key area: (b) capacity to negotiate mutually agreed terms</b>	<b>Key area: (c) capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing</b>	<b>Key area: (d) capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources</b>	<b>Particular capacity needs and priorities of indigenous and local communities and relevant stakeholders, including the business sector and the research community</b>
<b>Phase 1</b>	<ul style="list-style-type: none"> <li>-Ratification of the Protocol</li> <li>- Legal and institutional development</li> <li>- Raising-awareness of the importance of genetic resources and TK associated with genetic resources, and related ABS issues</li> <li>- Special measures to increase the capacity of ILCs with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or TK associated with genetic resources.</li> <li>- Mapping of relevant actors and existing expertise for the implementation of the Nagoya Protocol.</li> <li>- Mobilising new and innovative financial resources to implement the Nagoya Protocol</li> <li>- Establishing mechanisms for interagency coordination.</li> </ul>	<ul style="list-style-type: none"> <li>- Promotion of equity and fairness in negotiations, such as training to negotiate MAT</li> <li>- Supporting the development of model contractual clauses.</li> <li>- Developing and implementing pilot ABS agreements</li> </ul>	<ul style="list-style-type: none"> <li>- Developing a policy framework on ABS.</li> <li>- Taking stock of domestic measures relevant to ABS in light of the obligations of the Nagoya Protocol.</li> <li>- Setting-up new or amended ABS legislative, administrative or policy measures with a view to implementing the Nagoya Protocol</li> <li>-Development of regional model legislation</li> </ul>		<ul style="list-style-type: none"> <li>-Participating in legal, policy and decision-making processes</li> <li>- Developing minimum requirements for MAT to secure the fair and equitable sharing of benefits arising from the utilization of TK associated with genetic resources</li> <li>- Developing community protocols in relation to access to TK associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of that knowledge</li> <li>- Developing model contractual clauses for benefit-sharing arising from the utilization of TK associated with genetic resources</li> </ul>
<b>Phase 2</b>	<ul style="list-style-type: none"> <li>- Monitoring the utilization of genetic resources, including the designation of one or more checkpoints.</li> <li>- Special measures to increase the capacity of relevant stakeholders in relation to ABS</li> <li>- Employment of best available communication tools and Internet-based systems for ABS activities</li> <li>-Enforcement of ABS legislation</li> </ul>			<ul style="list-style-type: none"> <li>-Technology transfer and infrastructure and technical capacity to make such technology transfer sustainable.</li> <li>- Development and use of valuation methods</li> </ul>	<ul style="list-style-type: none"> <li>- Capacity to negotiate MATs.</li> <li>- Understanding the obligations of the Parties under the Nagoya Protocol</li> </ul>
<b>Phase 3</b>	<ul style="list-style-type: none"> <li>- The monitoring and enforcement of compliance.</li> <li>- Enhancement of the contribution of ABS activities to the conservation of biological diversity and the sustainable use of its components</li> <li>- Developing measures regarding access to justice</li> <li>- Addressing transboundary issues .</li> <li>- Providing information to the ABS Clearing-House.</li> </ul>	<ul style="list-style-type: none"> <li>- Development and use of valuation methods</li> <li>- Promoting better understanding of business models in relation to the utilisation of genetic resources</li> </ul>		<ul style="list-style-type: none"> <li>-Research and taxonomic studies related to conservation of biological diversity and sustainable use of its components and bioprospecting.</li> <li>-Development of genetic resources databases</li> </ul>	<ul style="list-style-type: none"> <li>- Managing TK associated with genetic resources</li> </ul>

*Annex III*

**SUMMARY OF VIEWS ON THE PROPOSED ELEMENTS OF THE STRATEGIC  
FRAMEWORK FOR CAPACITY-BUILDING AND DEVELOPMENT UNDER THE NAGOYA  
PROTOCOL**

1. The following summarizes the views expressed at the second meeting of the Intergovernmental Committee on the proposed elements of the strategic framework for capacity-building and development under the Nagoya Protocol.

**A. Objectives**

2. It was suggested that Article 22, paragraph 1, of the Protocol could serve as basis for the objective of the strategic framework.

3. With regard to the role and nature of the strategic framework, a number of delegations were of the view that it should be designed as plan of action or programme providing services on capacity-building and development to developing countries. Some delegations were of the view that the strategic framework should be designed both as reference document to guide policies and actions of Parties for capacity-building and development in support of the effective implementation of the Protocol and a plan of action.

4. One Party was of the view that the strategic framework should serve as a reference document and not as a plan of action but that it should establish priorities identified by recipients to facilitate implementation of the Nagoya Protocol.

**B. *Experience and lessons learned from past and ongoing access and benefit-sharing capacity-building and development initiatives***

5. The following was suggested in relation to this element:

(a) Incorporation of some of the lessons learned outlined in section III B of the note by the Executive Secretary on synthesis of views and information on domestic needs and priorities and on the proposed elements of the strategic framework for capacity-building and development in support of the implementation of the Nagoya Protocol, prepared for the second meeting of the Ad Hoc Open-ended Intergovernmental Committee for the Nagoya Protocol (UNEP/CBD/ICNP/2/10) as guiding principles of the strategic framework, including those in relation to ensuring sustainability; and

(b) Publication of lessons learned on capacity-building and development in the ABS Clearing-house.

**C. *Guiding principles and approaches to capacity-building and development***

6. The following guiding principles and approaches were suggested:

(a) The strategic framework should promote the development of sustainable capacities for Parties to comply with the requirements of the Nagoya Protocol; and

(b) The strategic framework should enable the identification of gaps in past and existing ABS capacity development initiatives and areas where capacity-building assistance is further needed.

***D. Key areas for capacity-building and development and measures to build or develop capacity under the key areas***

7. Capacity-building and development for promoting the ratification of the Protocol was identified as a priority.

***E. Mechanisms for the implementation of capacity-building and development measures***

***F. Coordination mechanism***

8. The following was suggested in relation to this element:

(a) Linking the coordination mechanism to the ABS Clearing-House as a way of promoting coordination and exchange of experiences among Parties; and

(b) Coordination of donors and users on the basis of factual reports of activities and outcomes in recipient countries as a means to identify sustainability, priority actions and gaps.

***G. Cooperation among Parties and with relevant processes and programmes***

9. The following was suggested in relation to this element:

(a) Promotion of cooperation at the bilateral, regional and international levels; and

(b) Establishment cooperation between and among Parties, relevant processes and programmes within their mandates on a voluntary basis.

***H. Monitoring and review***

10. It was suggested that the Conference of the Parties serving as the meeting of the Parties to the Protocol should monitor and review the strategic framework.

***I. Possible sequence of actions for the implementation of the strategic framework***

11. It was suggested that given that capacity-building will be country-specific, the sequence of actions for the implementation of the strategic framework will depend upon the stage of development of access and benefit-sharing processes within each country.

***J. Financial and other resource requirements***

12. It was suggested that capacity-building and development be financed through established multilateral and bilateral channels, including the Global Environment Facility.

***K. Other possible elements***

13. Sustainability of capacity-building and development activities was identified as a possible additional element of the strategic framework.

*Annex IV*

**COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS TO PROMOTE  
COMPLIANCE WITH THE PROVISIONS OF THE NAGOYA PROTOCOL AND TO  
ADDRESS CASES OF NON-COMPLIANCE**

The following procedures and mechanisms are developed in accordance with Article 30 [and related articles] of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From their Utilization (the Protocol).

**A. *Objectives, nature and underlying principles***

1. The objective of the compliance procedures and mechanisms is to promote compliance with the provisions of the Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention on Biological Diversity (the Convention).
2. The compliance procedures and mechanisms shall be non-adversarial, [non-judicial,] cooperative, simple, expeditious, advisory, facilitative, flexible,[ preventive,] cost-effective, [voluntary,] [positive, ] [and legally non-binding][and legally binding] in nature.
3. The operation of the compliance procedures and mechanisms shall be guided by the principles of fairness, due process, [rule of law], flexibility, [non-confrontation,] non-discrimination, transparency, accountability, predictability, [consistency,] good faith, [supportiveness,] [effectiveness] [and expeditiousness,] [recognizing the common but differentiated responsibilities of Parties][recognizing that all obligations apply equally to all Parties]. [It shall pay particular attention to the special needs of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, [and indigenous and local communities,] and take into full consideration the difficulties they face in the implementation of the Protocol.]
4. The application of the cooperative procedures and institutional mechanisms, whenever possible, should, with the aim of mutual supportiveness, [be coordinated with and/or build on other relevant procedures and mechanisms under the Convention, the Protocol and other relevant instruments [and other international agreements] [, including compliance and other *sui generis* mechanisms of indigenous and local communities taking into account their customary laws, norms and practices in accordance with national legislation]].

**B. *Institutional mechanisms***

1. A Compliance Committee, hereinafter referred to as “the Committee”, is hereby established pursuant to Article 30 of the Protocol to carry out the functions specified herein.
2. The Committee shall consist of 15 members nominated by Parties, endorsed by the respective regional group of the United Nations [and [could] include representatives of indigenous and local communities [as observers]][as well as one representative of indigenous and local communities as a member of the Committee]-and elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) on the basis of three members from each of the five regional groups of the United Nations.

3. Each regional group of the United Nations should provide one alternate member to be nominated by Parties and elected by the COP-MOP to replace a member who resigns or is unable to complete their term of office.

4. Members of the Committee shall have recognized competence, including technical, legal or scientific expertise in the fields covered by the Protocol, such as genetic resources and traditional knowledge associated with genetic resources, and serve objectively [and in the best interests of the Protocol][ and in their personal and individual capacity][as representatives of Parties].

5. Members shall be elected by the COP-MOP for [a period of [four][two] years, this being a full term.][two intersessional periods of the COP-MOP, this being a full term. An intersessional period begins at the end of one ordinary meeting of the COP-MOP and expires at the end of the next ordinary meeting of the COP-MOP.] At its first meeting, the COP-MOP shall elect five members, one from each region, for half a term, and ten members, two from each region, for a full term. Each time thereafter, the COP-MOP shall elect, for a full term, new members to replace those whose term has expired. Members shall not serve for more than [two consecutive terms][one term], [unless the COP-MOP decides otherwise].

6. The Committee shall meet, at least once in each intersessional period and may, as necessary [and subject to the availability of financial resources], hold additional meetings. In determining the dates of the meetings, due consideration should be given to the meetings schedule of the COP-MOP and other relevant bodies under the Protocol, and cost-effective scheduling. Meetings should be held at least three months before the meetings of the COP-MOP.

7. The Committee shall develop and submit its rules of procedure, including those on confidentiality and conflict of interest, to the COP-MOP for its consideration and approval.

8. The Committee shall elect its Chair and a Vice-Chair, who will rotate amongst the five regional groups of the United Nations.

9.

**Option 1:** The Committee shall reach agreement on all matters of substance by consensus. The report of any meeting of the Committee at which consensus is not reached shall reflect the views of all the Committee members.

**Option 2:** The Committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a [two-thirds][three-quarters] majority of the members present and voting [or by {...} members, whichever is greater]. The report of any meeting of the Committee at which consensus is not reached shall reflect the views of all the Committee members. The report shall be made public once adopted. If it contains confidential parts, a public summary of such parts shall be made available to the public.

10. [The meetings of the Committee shall be open to Parties, signatories to the Protocol and the public, unless the Committee decides otherwise. [When the Committee is dealing with individual submissions, the meetings of the Committee shall be open to Parties and closed to the public, unless the Party whose compliance is in question agrees otherwise.] [Nevertheless, in such cases, oral hearings will be public. Only members of the Committee may participate in the business of the Committee.]]

11. The Secretariat shall service the meetings of the Committee and perform any additional functions assigned to it under these procedures.

### **C. Functions of the Committee**

1. The Committee shall, with a view to promoting compliance with the provisions of the Protocol and addressing cases of non-compliance and under the overall guidance of the COP-MOP have the following functions:

(a) [Consider information [submitted to it][acquired through formal submission [or other sources]] regarding matters relating to compliance and cases of non-compliance related to the submissions and make its recommendations directly to the Parties concerned;]

(b) Identify the specific circumstances and possible causes of individual cases of non-compliance referred to it;

(c) Offer advice to the Part[y][ies] concerned and/or facilitate assistance on matters relating to compliance and cases of non-compliance;

(d) [Assess the extent of implementation and compliance with the Protocol by Parties by reviewing the monitoring and reporting provided for under Article 29;]

(e) Identify and review any general issues of compliance by the Parties with the obligations under the Protocol, including on the basis of information provided to the Access and Benefit-sharing Clearing-House;

(f) [Prepare reports on compliance on the basis of, *inter alia*, information provided in the Party reports provided for in Article 29 of the Protocol;]

(g) [Recommend any appropriate measure directly or through the COP-MOP;]

(h) [Respond to requests submitted by Parties for advice and assistance in the establishment of cooperation between Parties in cases of alleged violation of domestic ABS legislation or regulatory requirements;]

(i) [Respond to requests submitted by Parties for assistance in legal training or advice and in the provision of capacity-building by recommending to COP-MOP that such assistance be provided to Parties;]

(j) [Consult with the compliance committees of other agreements in order to share experience on compliance issues and options for their resolution; and]

(k) Carry out any other functions assigned to it by the COP-MOP.

2. [The Committee shall submit its reports including recommendations with regard to the discharge of its functions to the next meeting of the COP-MOP for consideration and appropriate action.][The Committee will submit a report of its activities to the COP-MOP, for its consideration.]

### **D. Procedures**

1. The Committee shall receive any submissions relating to issues of compliance and non-compliance with the provisions of the Protocol from:

(a) Any Party with respect to itself;

(b) [Any Party with respect to another Party][Any Party affected or that may be affected by the alleged non-compliance of another Party][Any Party affected by the alleged non-compliance of another Party][Any Party over matters related to another Party including a non-Party];

(c) [The COP-MOP;]

(d) [The Compliance Committee members [only for general issues of compliance];]

(e) [The Secretariat[, for failure to file a report pursuant to Article 29, providing that the matter has not been resolved within ninety days by consultation with the Party concerned];]

(f) [Members of the public; or]

(g) [Indigenous and local communities [supported by the Party on whose national territory they are located].]

2. The Party in respect of which an issue has been raised is hereinafter referred to as “the Party concerned”.

3. Any submission is to be addressed in writing to the Secretariat and set out:

(a) The matter of concern;

(b) The relevant provisions of the Protocol; and

(c) Information substantiating the matter of concern.

4. The Secretariat shall forward any submission under paragraphs 1 (a) above to the Committee within [15][30][60]-calendar days of receipt.

5. The Secretariat shall forward any submission under paragraphs 1 (b) to 1 [(c)][(g)] above to the Party concerned within [15][30][60] calendar days of receipt.

6. When the Party concerned has received a submission it should respond and, with recourse to the [Committee][Secretariat][Committee and the Secretariat] for assistance if required, provide relevant information [preferably] within [three][two] months and in any event not later than [six][five] months. This period of time commences on the date of the receipt of the submission by the Party concerned [as confirmed by the Secretariat].

7. Once the Secretariat has received a response and any information from the Party concerned or from other sources, the Secretariat shall transmit the submission, the response and such information to the Committee. In the case where the Secretariat has not received any response or information from the Party concerned within the [six][five] months as referred to in paragraph 6 above, the Secretariat shall forward the submission to the Committee forthwith.

8. The Committee may refuse to consider any submission made pursuant to paragraphs 1 (b) to 1 (g) above that [is *de minimis* or ill-founded bearing in mind the objectives of the Protocol][do not meet the requirements set out in paragraph 3 above].



9. The Party concerned [and the Party that made the submission] may participate in the consideration of the submission and present responses or comments to the Committee [at all stages of the process]. [The Party concerned][The mentioned Parties] shall not take part in the elaboration and adoption of the recommendation of the Committee. The Committee shall make available the draft findings and recommendations, including measures, to the Party concerned and invite the Part[y][ies] to [respond][propose any adjustment on the accuracy of findings and facts]. [Any such response is to be reflected in the report of the Committee.]

10. [In addition to the procedures under this section, the Committee may decide to examine any question of compliance, including systemic issues of general non-compliance of interests to all Parties to the Protocol that come to its attention. It may consider such questions on the basis of national reports and reporting requirements under Article 29 of the Protocol or of any other relevant information that becomes available to the Committee, particularly by members of the public which have a legitimate specific interest in the question concerned, including indigenous and local communities as well as information generated under Articles 14 and 17 of the Protocol. If a question affects one Party more than others, the procedural rules shall apply *mutatis mutandis*.]

**E. Information for and consultation by the Committee after the triggering of the procedures**

1. The Committee shall consider relevant information from:

- (a) The Party concerned [and from the Party or entity that has made the submission];
- (b) [The Party that has made the submission with respect to another Party in accordance with paragraph 1 (b) of section D above;]
- (c) [The entity that has made the submission with respect to a Party in accordance with paragraphs 1 (c) to 1 (g) of section D above; and]
- (d) [Affected indigenous and local communities.]
- (e) [Any other relevant source].

2.

**Option 1:** The Committee may seek or receive, when necessary for its work, relevant information from the following sources [, such as]:

- (a) The Secretariat;
- (b) The Access and Benefit-sharing Clearing-House;
- (c) The Conference of the Parties to the Convention;
- (d) The COP-MOP;
- (e) Subsidiary bodies of the Convention and to the Protocol;
- (f) International organizations [with a relevant mandate on genetic resources and access to genetic resources and benefit-sharing]; and
- (g) [Other relevant and reliable sources.]

**Option 2:** The Committee may [seek, receive and] consider information from all possible sources. The reliability of the information should be ensured.

3. The Committee may seek [expert advice, taking into account possible conflicts of interest][advice of independent experts].

4. The Committee may undertake, upon invitation of the Party concerned, information gathering in the territory of that Party.

***F. Measures to promote compliance and address cases of non-compliance***

1. In considering the measures specified below the Committee shall take into account:

(a) The capacity of the Party concerned to comply;

(b) The special [circumstances and] needs of developing country Parties, in particular the least developed countries and small island developing States amongst them, and Parties with economies in transition; and

(c) Such factors as the cause, type, degree and frequency of non-compliance.

**Option 1**

2. [The Committee][The COP-MOP upon the recommendation of the Committee]-with a view to promoting compliance and addressing cases of non-compliance, may:

(a) Offer advice or assistance to the Party concerned, as appropriate;

(b) [[Recommend][Provide][Facilitate] [financial and] technical assistance, [technology transfer,] training and other capacity-building measures, according to availability;]

(c) [Request or assist, as appropriate,][Assist, upon request,] the Party concerned to develop a compliance action plan to be submitted identifying appropriate steps, an agreed timeframe and indicators to assess satisfactory implementation;

(d) Invite the Party concerned to submit progress reports on its efforts to comply with its obligations under the Protocol;

(e) Issue a written [caution][statement of concern][declaration of non-compliance] to the Party concerned after consultation with COP-MOP;

(f) [Publish cases of non-compliance after consultation with COP-MOP;]

(g) [Send a [public] notification of a compliance matter through the Secretariat to all Parties advising that a Party has been notified that it may be in non-compliance and that, up to that time, there has been no satisfactory response or action;]

(h) [In cases of [grave or] repeated non-compliance notify the COP-MOP for it to decide the appropriate measures, according to international law;]

(i) [Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, specific rights and privileges;]

- (j) [Apply financial penalties;]
- (k) [Apply trade consequences;]
- (l) [Require the appointment of a representative in the provider country for notification purposes to facilitate administrative and/or criminal procedures; and]
- (m) [Give notification to the relevant judicial authorities of a Party subject to the obligation under Articles 15 to 18 of the Nagoya Protocol, that a specific Party or an indigenous or local community is entitled to benefit-sharing under a particular instance of mutually agreed terms involving a specific genetic resource and associated traditional knowledge.]
- (n) [Require the Party concerned to take action and, after appropriate procedures, apply sanctions against those who are non-compliant with Article 15(2) and 16(2) of the Protocol within their jurisdictions.]

## **Option 2**

2. The Committee with a view to promoting compliance and addressing cases of non-compliance, may:

- (a) Offer advice or facilitate assistance to the Party concerned, as appropriate;
- (b) [Facilitate][Recommend] [financial and] technical assistance, [technology transfer], training and other capacity-building measures;
- (c) Request or assist, as appropriate the Party concerned to develop a compliance action plan to be submitted identifying appropriate steps, an agreed timeframe and indicators to assess satisfactory implementation;
- (d) Invite the Party concerned to submit progress reports on its efforts to comply with its obligations under the Protocol;
- (e) [Recommend any other measure, for the consideration of the COP-MOP].

2. (*bis*) The COP-MOP upon the recommendations of the Committee may also, with a view to promoting compliance and addressing cases of non-compliance:

- (a) Take any of the measures set out in paragraph 2 (a)-(e) above;
- (b) Issue a written caution, statement of concern or a declaration of non-compliance to the Party concerned after consultation with COP-MOP;
- (c) [Publish cases of non-compliance after consultation with COP-MOP];
- (d) Send a public notification of a compliance matter through the Secretariat to all Parties advising that a Party has been notified that it may be in non-compliance and that, up to that time, there has been no satisfactory response or action;
- (e) [[Recommend the suspension][Suspend], in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, specific rights and privileges.]

*[F(bis). Ombudsman*

The Committee shall establish the office of an ABS ombudsman to provide assistance to developing countries and indigenous and local communities to identify instances of non-compliance and make submissions to the Committee.]

**G. *Review of procedures and mechanisms***

The COP-MOP shall undertake the review of the effectiveness of these procedures and mechanisms under the assessment and review provided for in Article 31 of the Protocol and take appropriate action. [The Committee may identify the need for any additional review.]

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