



## Convention on Biological Diversity

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### SUBSIDIARY BODY ON IMPLEMENTATION

Third meeting

Online, 16 May-13 June 2021 and

Geneva, Switzerland, 14-29 March 2022

Agenda item 13

### RECOMMENDATION ADOPTED BY THE SUBSIDIARY BODY ON IMPLEMENTATION

#### **3/17. Global multilateral benefit-sharing mechanism (Article 10 of the Nagoya Protocol)**

*The Subsidiary Body on Implementation*

*Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol adopt a decision along the following lines:

*The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol,*

*[[[Recalling the sovereign rights of States over their natural resources and that the authority to determine access to genetic resources rests with the national Governments and is subject to national legislation, as recognized in Article 15, paragraph 1, of the Convention,*

*Recalling also the objective of the Nagoya Protocol,]*

*[Alt. Recalling Article 15 of the Convention and the objective of the Nagoya Protocol,]*

*Recalling further the recognition, as specified in the preamble to the Nagoya Protocol, of the requirement for an innovative solution to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent,*

*Recalling Article 11 of the Nagoya Protocol, which requires Parties to endeavour to cooperate, as appropriate, in instances where the same genetic resources are found in transboundary situations and where the same traditional knowledge associated with genetic resources are shared by one or more indigenous peoples and local communities in several Parties, with a view to implementing the Protocol,*

*Emphasizing the need for all Parties to reinforce the effective implementation of the Nagoya Protocol to make it fully operational,*

*[Determined to enhance access and benefit-sharing provisions and systems in order to contribute to [create] an ambitious and transformative resource mobilization strategy for the post-2020 global biodiversity framework,]*

*[Further determined to create a practical system to ensure fair and equitable sharing of the benefits arising from the use of digital sequence information on genetic resources and associated traditional knowledge,]*

1. *Takes note* of the submissions of views and information and the peer-reviewed study commissioned by the Executive Secretary to identify specific cases of genetic resources and

traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent;<sup>1</sup>

[2. *Also notes* possible weaknesses in multilateral systems;]

*Option 1*

[3. *Considers* the cases identified in the submissions as well as the peer reviewed study [instructive] on the need for a global multilateral benefit-sharing mechanism and [in revealing potential] the limitations [or challenges] of the bilateral approach under the Nagoya Protocol, in particular regarding efficiency, practicability, feasibility and effectiveness [and decides to proceed to explore potential modalities of a global multilateral benefit-sharing mechanism];]

*Option 2*

[3. *Considers* the cases identified in the submissions as well as the peer reviewed study provide information on cases, which, however, do not justify the need for a global multilateral benefit-sharing mechanism under Article 10 of the Nagoya Protocol;

3 *bis.* *Considers also* that the process has generated views on the potential limitations or challenges of the bilateral approach under the Nagoya Protocol, in particular regarding efficiency, practicability, feasibility and effectiveness, that merit further discussion [under the Nagoya Protocol][taking into account Articles 4(4), 11, and discussions at other related fora][, this limitation could be addressed through a multilateral approach;]

[4. *Considers further* that an evaluation of these potential limitations or challenges based on concrete cases will be needed to explore the underlying causes, [including questions on the scope of the Nagoya Protocol,] the lack of capacity to implement the bilateral approach, or any other factor, and to explore how these limitations and challenges could be addressed, including through transboundary cooperation as well as with a multilateral approach;]

[4 *alt.* *Considers further* that an evaluation of potential modalities for a multilateral approach to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent, as well as for transboundary cooperation that is needed to address the potential limitations or challenges based on concrete cases;]

[5. *Invites* Parties, other Governments, indigenous peoples and local communities, relevant stakeholders and organizations to submit to the Executive Secretary views and information on [possible modalities of a multilateral benefit-sharing mechanism, including options for modes of participation, sharing of benefits and governance as well as options for cooperation to address instances described in Article 11 of the Nagoya Protocol][potential limitations or challenges of the bilateral approach based on concrete cases, on potential underlying causes, and on how these limitations and challenges could be addressed, including through transboundary cooperation as well as with a multilateral approach;]

[6. *Decides* to establish an ad hoc technical expert group, with the terms of reference set out in the annex to the present decision;]

[6 *alt.* *Decides*, in the exercise of their sovereign rights over genetic resources, to establish a multilateral benefit-sharing mechanism, to operate as follows:

(a) Each developed country Party shall, in accordance with Articles 20 and 15.7 of the Convention, take legislative, administrative or policy measures, as appropriate, to ensure that 1 per cent of the retail price of all commercial income resulting from all utilization of genetic resources, traditional knowledge associated with genetic resources or digital sequence information on genetic

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<sup>1</sup> CBD/SBI/3/15/Add.1.

resources is shared through the multilateral benefit-sharing mechanism to support the conservation and sustainable use of biological diversity, unless such benefits are otherwise being shared on mutually agreed terms established under the bilateral system;

(b) All monetary benefits shared under the multilateral benefit-sharing mechanism shall be deposited in a global biodiversity fund operated by the Global Environment Facility, as the financial mechanism of the Convention, and this global fund shall also be open for voluntary contributions from all sources;

(c) The global biodiversity fund shall be used, in an open, competitive, project-based manner, to support on the ground activities aimed at the conservation of biological diversity and the sustainable use of its components, in line with the ecosystem-based approach, carried out by indigenous peoples, local communities and others, in pursuit of spending priorities identified from time to time by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services through scientific assessments;]

[7. *Requests* the Subsidiary Body on Implementation to consider the report of the ad hoc technical expert group referred to in paragraph 6 above and make recommendations to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, for consideration at its fifth meeting;]

[8. *Requests* the Executive Secretary to facilitate the work of the ad hoc technical expert group referred to in paragraph 6 by, among other things:

(a) Preparing a synthesis of the views and information referred to in paragraph 5 above;

(b) Establishing an online forum to consider the synthesis of the views and information referred to above;

(c) Preparing a summary report on the outcomes of the online forum and submitting it to the ad hoc technical expert group.]

[8 *alt.* *Requests* the Executive Secretary, in consultation with all Parties and the Global Environment Facility, to prepare options for national legislative, administrative or policy measures to implement the multilateral benefit-sharing system and to report back to the Conference of the Parties at its sixteenth meeting.]

[*Annex*

**TERMS OF REFERENCE OF THE AD HOC TECHNICAL EXPERT GROUP**

1. The Ad Hoc Technical Expert Group shall [consider possible modalities of a multilateral benefit-sharing mechanism of Article 10 of the Nagoya Protocol][evaluate potential limitations or challenges of the bilateral approach to access and benefit-sharing, including their underlying causes and how these limitations and challenges could be addressed, including through transboundary cooperation as well as with a multilateral approach,] taking into account the synthesis of views and information and the outcomes of the online forum;

[2. The Ad Hoc Technical Expert Group shall also identify options for modes of participation in the mechanism, sharing of benefits and governance as well as options for cooperation to address instances described in Article 11 of the Nagoya Protocol;]

3. The Ad Hoc Technical Expert Group shall:

(a) Meet, subject to the availability of financial resources, at least once prior to the fourth meeting of the Subsidiary Body on Implementation;

(b) Include experts selected on the basis of their expertise on the issues under consideration, and participants representing indigenous peoples and local communities, and ensure equitable regional representation;

(c) Submit its outcomes to the Subsidiary Body on Implementation for consideration at its fourth meeting.

4. The Ad Hoc Technical Expert Group will be convened in accordance with the procedure specified in paragraph 4, section C, of the annex to decision XIII/25, on the modus operandi of the Subsidiary Body on Implementation, which also applies, mutatis mutandis, to processes under the Nagoya Protocol. The procedure for avoiding or managing conflicts of interest in expert groups set out in the annex to decision 14/33 shall apply to the Ad Hoc Technical Expert Group.]]

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