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

Second meeting

New Delhi, 2-6 July 2012

Item 3.2 of the provisional agenda*

ELABORATION OF GUIDANCE FOR THE FINANCIAL MECHANISM

Note by the Executive Secretary

I. INTRODUCTION

1. In accordance with the work plan contained in annex II to decision X/1 of the Conference of the Parties, the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol (Intergovernmental Committee) is to consider the elaboration of guidance for the financial mechanism (Article 25) at its second meeting.
2. Pursuant to the above decision, the Executive Secretary invited Parties, other Governments, international organizations, indigenous and local communities and relevant stakeholders through notification SCBD/ABS/VN/SG/77099 (2011-142), of 1 August 2011, to provide views and/or relevant information to the Executive Secretary on the elaboration of guidance for the financial mechanism in preparation for the second meeting of the Intergovernmental Committee.
3. The Executive Secretary received submissions on this issue from Canada, China, the European Union, Mexico as well as from Waikiki Hawaiian Civic Club. These submissions are available at: www.cbd.int/icnp2/submissions/.
4. On the basis of decision X/1 and the submissions received, the Executive Secretary has prepared the present note to assist the Intergovernmental Committee in considering guidance for the financial mechanism. Section II provides a brief overview of the relationship between the Protocol and the financial mechanism of the Convention and the application of the operational arrangements between the Convention and the GEF Council with respect to the Protocol. Section III on elaboration of guidance to the financial mechanism, provides an overview of past guidance to, and responses from, the financial mechanism and then discusses issues and potential guidance to the financial mechanism for consideration by the Parties at their first meeting (COP-MOP-1) and the eleventh meeting of the Conference of the

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Parties. Section IV contains proposed recommendations for consideration by Governments at the second meeting of the Intergovernmental Committee.

II. RELATIONSHIP BETWEEN THE PROTOCOL AND THE FINANCIAL MECHANISM OF THE CONVENTION AND THE APPLICATION OF THE OPERATIONAL ARRANGEMENTS BETWEEN THE CONVENTION AND THE GEF COUNCIL WITH RESPECT TO THE PROTOCOL

5. Article 21, paragraph 1 of the Convention establishing the financial mechanism indicates that it is to “function under the authority and guidance of, and be accountable to the Conference of the Parties.” The Conference of the Parties determines the policy, strategy, programme priorities and eligibility criteria relating to access to and utilization of the financial resources provided by the mechanism. Article 21, paragraph 3 provides the basis for the Conference of the Parties to regularly review the financial mechanism’s effectiveness.

6. The Global Environment Facility serves as the institutional structure to operate the financial mechanism under the Convention. Article 21, paragraph 2 provides the basis for operational arrangements to give effect to the financial mechanism’s operations. A memorandum of understanding (MOU) between the Conference of the Parties and the GEF Council was adopted in decision III/8. The memorandum of understanding makes provision for (a) guidance from the Conference of the Parties; (b) reporting; (c) monitoring and evaluation; (d) determination of funding requirements; (e) reciprocal representation; and (f) inter-secretariat cooperation.

7. Article 25, paragraph 2 of the Protocol establishes the Convention’s financial mechanism as that of the Protocol. In light of the practice established under the Biosafety Protocol,¹ the operational arrangements reflected in the memorandum of understanding would apply, *mutatis mutandis*, to the Protocol.

8. This section provides an overview of the relationship between the Protocol and the financial mechanism organized in relation to the operational arrangements reflected in the memorandum of understanding. Based on the Biosafety Protocol’s experience, this section also makes some suggestions for adapting the existing operational arrangements between the Conference of the Parties and the GEF Council to the Nagoya Protocol’s context.

A. Guidance from the Conference of the Parties

9. Article 25, paragraph 3 of the Protocol establishes that in providing guidance to the financial mechanism, COP-MOP is required to take into account “the need of developing country Parties, in particular the least developed countries and small island developing States among them, and of Parties with economies in transition, for financial resources, as well as the capacity needs and priorities of indigenous and local communities, including women within these communities.” Paragraph 3 also establishes that guidance from COP-MOP to the financial mechanism is to be considered by the Conference of the Parties. In other words, COP-MOP would not transmit its guidance directly to the GEF Council, instead it would submit it to the Conference of the Parties which would consider it and integrate it into its overall guidance to the GEF.

10. Section 2 of the memorandum of understanding elaborates on the operational responsibilities of the Conference of the Parties and the GEF Council. The Conference of the Parties is responsible for determining the policy, strategy, programme priorities and eligibility criteria for access to and utilization of financial resources available through the financial mechanism, including monitoring and evaluation on

¹ See decision I/15 of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

a regular basis of such utilization. The GEF's responsibility is to finance activities that are in full conformity with the guidance provided to it by the Conference of the Parties.

11. Section 2 of the memorandum of understanding establishes that the Conference of the Parties is to communicate its guidance, and any revisions to such guidance it may adopt, on the following matters:

- (a) Policy and strategy;
- (b) Programme priorities;
- (c) Eligibility criteria;
- (d) An indicative list of incremental costs;
- (e) A list of developed country Parties and other Parties which voluntarily assume the obligations of developed country Parties;
- (f) Any other matter relating to Article 21, including periodic determination of the amount of resources needed as detailed in paragraph 5 of this memorandum.

12. Over the years, the Conference of the Parties has provided guidance with respect to: (i) policy and strategy; (ii) programme priorities; and (iii) eligibility criteria. It has also elaborated an updated list of developed country Parties and other Parties which voluntarily assume the obligations of developed country Parties² as required under paragraph 2.1 (e) of the memorandum of understanding. However, it has not elaborated an indicative list of incremental costs under the Convention referred to under paragraph 2.1 (d) of the memorandum of understanding. The Conference of the Parties has also provided some guidance with respect to the periodic determination of the amount of resources needed addressed under paragraph 2.1 (f) of the memorandum of understanding. This issue is further examined below under sub-section D addressing the determination of funding requirements.

13. In light of the foregoing, COP-MOP is to develop guidance to the financial mechanism with respect to the Nagoya Protocol on the first three matters (policy and strategy, programme priorities and eligibility criteria) and submit it to the Conference of the Parties for its consideration and integration into its overall guidance to the GEF. Possible guidance by COP-MOP on these areas is further elaborated under section III, sub-section C of the present document.

B. Reporting

14. Section 3 of the memorandum of understanding provides that the GEF Council will prepare and submit a report for each ordinary meeting of the Conference of the Parties, and that the reports will include specific information on how the GEF Council, its Secretariat and its Implementing and Executing Agencies have applied the guidance and implemented the policy, strategies, programme priorities and eligibility criteria determined by the Conference of the Parties, as well as any other decision of the Conference of the Parties communicated to GEF, under Article 21 of the Convention. The Council should also report on its monitoring and evaluation activities concerning projects in the biodiversity focal area. In line with past practice, the GEF is expected to include in its report to the Conference of the Parties a separate chapter on the implementation of the guidance in relation to access and benefit-sharing.

15. The Intergovernmental Committee may wish to recommend to COP-MOP that the Conference of the Parties invite the GEF Council to submit the chapter on access and benefit-sharing of its report to the Conference of the Parties directly to COP-MOP. This would increase efficiency and timeliness and

² Decision VIII/18.

help to better inform discussions by COP-MOP on matters regarding the financial mechanism with a view to providing to the Conference of the Parties well-informed recommendations on guidance to the financial mechanism with respect to access and benefit-sharing.

C. Monitoring and evaluation

16. Article 21, paragraph 3 of the Convention provides that the Conference of the Parties shall review the effectiveness of the financial mechanism on a regular basis and, based on such review, take appropriate action to improve the effectiveness of the mechanism if necessary. Paragraph 4.3 of the memorandum of understanding also provides that: “the Conference of the Parties will periodically review the effectiveness of the financial mechanism in implementing the Convention and communicate to the Council relevant decisions taken by the Conference of the Parties as the result of such review, to improve the effectiveness of the financial mechanism in assisting developing country Parties to implement the Convention.”

17. The guidance on access and benefit-sharing and the related responsiveness of the financial mechanism are expected to be covered by the review of the effectiveness of the financial mechanism by the Conference of the Parties to the Convention to ensure mutual accountability. This review in future should include a stand-alone section on guidance related to access and benefit-sharing.

18. Against this background, the review of the effectiveness of the financial mechanism by the Conference of the Parties could fully benefit from the input of COP-MOP given its expertise on access and benefit-sharing issues. The Intergovernmental Committee may therefore wish to recommend to the COP-MOP that it conducts a review of the effectiveness of the financial mechanism with respect to the implementation of the Nagoya Protocol in time for its consideration by the Conference of the Parties.

D. Determination of funding requirements

19. Section 5 of the memorandum of understanding suggests that in anticipation of the replenishment of GEF, the Conference of the Parties will make an assessment of the amount of funds that are necessary to assist developing countries, in accordance with the guidance provided by the Conference of the Parties, in fulfilling their commitments under the Convention over the next GEF replenishment cycle.

20. With a view to contributing to this overall assessment, the Intergovernmental Committee may wish to recommend to COP-MOP that it carries out an assessment of the funding requirements related to the implementation of the Nagoya Protocol in time for its consideration by the Conference of the Parties.

E. Reciprocal representation

21. Section 6 of the memorandum of understanding states that on a reciprocal basis, representatives of GEF will be invited to attend meetings of the Conference of the Parties and representatives of the Convention will be invited to attend meetings of GEF.

22. Experience has demonstrated that representatives of GEF are very informative in their updates on funding for access and benefit-sharing from the financial mechanism. To benefit regularly and formally from their information and expertise, the Intergovernmental Committee may wish to recommend to COP-MOP that the Conference of the Parties invite GEF representatives to attend, and make an official statement to, the ordinary meetings of COP-MOP. Reciprocally, the Conference of the Parties could invite GEF to consider inviting representatives of the Secretariat of the Convention on Biological Diversity responsible for the Protocol to attend the official meetings of the Global Environment Facility when access and benefit-sharing issues are discussed.

F. Inter-secretariat cooperation

23. In accordance with section 7 of the memorandum of understanding, the Secretariat of the Convention and the Secretariat of GEF will communicate and cooperate with each other and consult on a regular basis to facilitate the effectiveness of the financial mechanism in assisting developing country Parties to implement the Convention. In particular, the two Secretariats will consult on the project proposals under consideration for inclusion in a proposed GEF work programme, especially with regard to the consistency of the project proposals with the guidance of the Conference of the Parties. Official documentation of GEF will be made available to the Secretariat of the Convention on Biological Diversity.

24. As the Secretariat of the Convention shall serve as the Secretariat of the Protocol, the Secretariat of the Convention is expected to continue to communicate and cooperate with the Secretariat of the GEF on access and benefit-sharing issues.

III. ELABORATION OF GUIDANCE FOR THE FINANCIAL MECHANISM

25. As mentioned above, the Intergovernmental Committee is to consider the elaboration of guidance for the financial mechanism in accordance with its work plan contained in annex II of decision X/1 of the Conference of the Parties.

26. To assist the Intergovernmental Committee in considering this issue, the following section provides: (i) an overview of past guidance on access and benefit-sharing provided to the financial mechanism (sub-section A); (ii) a summary of GEF activities on access and benefit-sharing (sub-section B); and (iii) issues for consideration in the elaboration of future guidance to the GEF with respect to the Nagoya Protocol (sub-section C).

A. Overview of past guidance to the financial mechanism on access and benefit-sharing

27. Article 25, paragraph 5 of the Nagoya Protocol provides that guidance to the financial mechanism in relevant decisions of the Conference of the Parties, including those agreed before the adoption of the Protocol, shall apply *mutatis mutandis* to the Protocol.

28. The Conference of the Parties provided guidance to the financial mechanism of the Convention with respect to access and benefit-sharing related issues in the following decisions: III/5, IV/8, IV/13, V/13, VI/17, VII/20, IX/31, X/24 and X/25.

29. In decision IX/31, the Conference of the Parties adopted and forwarded to GEF a four-year framework of programme priorities for consideration during the fifth replenishment of the Global Environment Facility Trust Fund, as related to utilization of GEF resources for biodiversity for the period 2010 - 2014. Programme priority area 5 entitled "Promote the implementation of the Convention's third objective and support the implementation of the international regime on access to genetic resources and benefit-sharing", provides the following:

“Outcome 5.1 Measures to facilitate access to genetic resources in accordance with national legislation and in harmony with the relevant CBD provisions are promoted.

Outcome 5.2 Measures to encourage the fair and equitable sharing of benefits, on mutually agreed terms, arising from the commercial and other utilization of genetic resources and associated traditional knowledge in harmony with the relevant provisions and in accordance with national legislation are promoted.

Outcome 5.3 Development and implementation of national systems on access and benefit-sharing in accordance with relevant decisions of the Conference of the Parties are promoted.”

30. In decision X/24, a consolidated list of guidance to the financial mechanism was adopted, which superseded all previous decisions and elements of decisions related to guidance to the financial mechanism. The consolidated guidance contained in annex to decision X/24, addresses “Access to genetic resources” under section B on programme priorities and provides that the Global Environment Facility should provide financial resources to support the following:

“(a) Stocktaking activities, such as, for example, assessments of current legislative, administrative and policy measures on access to genetic resources and benefit-sharing, evaluation of the strengths and weaknesses of a country’s institutional and human capacity, and promotion of consensus-building among the different stakeholders;

(b) Capacity-building:

(i) To promote the successful development and implementation of legislative, administrative and policy measures and guidance on access to genetic resources, including scientific, technical, business, legal and management skills and capacities;

(ii) On measures on access to genetic resources and sharing of benefits, including capacity-building on economic valuation of genetic resources;

(iii) Regarding the transfer of technologies which enables providers to fully appreciate and actively participate in benefit-sharing arrangements at the stage of granting access permits;

(c) Projects that assist with the implementation of the Action Plan on Capacity-building for Access and Benefit-sharing in support of the implementation of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefit Arising out of Their Utilization;

(d) Formulation of access and benefit-sharing mechanisms at the national, subregional and regional levels, including monitoring, assessment, and incentive measures;

(e) Within biodiversity projects, other specific benefit-sharing initiatives such as support for entrepreneurial developments by local and indigenous communities, facilitation of financial sustainability of projects promoting the sustainable use of genetic resources, and appropriate targeted research components.”

31. It should be noted that this consolidated guidance will need to be implemented in light of the adoption of the Nagoya Protocol, taking into account the need to focus efforts on supporting its early entry into force and implementation.

32. In addition, in decision X/25, the Global Environment Facility was invited to provide financial support to Parties to assist with the early ratification of the Nagoya Protocol and its implementation.

B. Activities of the Global Environment Facility on Access and Benefit-sharing

1. Response by the Global Environment Facility to past guidance on access and benefit-sharing

33. The initial response by the GEF to the guidance provided by the Conference of the Parties on access and benefit-sharing was to integrate access and benefit-sharing measures in the enabling activity

funding modality. Access and benefit-sharing was addressed by the GEF through its operational strategy and activities under the biodiversity focal area.

34. The GEF operational programmes, which preceded the development of GEF biodiversity strategies, all included elements of conservation and sustainable use with minimal mention of ABS elements as the Conference of the Parties had yet to provide guidance to GEF on ABS when the programmes were developed in 1997.³ In their submission of projects for GEF support, Parties initially focused most of their work on biodiversity conservation, and less so on sustainable use.

35. Following the requests by the Conference of the Parties to provide financial resources to assist Parties with the implementation of the Bonn Guidelines on ABS, and the related Action Plan on Capacity-building for ABS,⁴ the GEF approved all projects presented by Parties to assist them in identifying their capacity needs with regards to access and benefit-sharing.⁵

36. This support allowed eligible Parties to prepare the foundation for the design and implementation of response measures on ABS. It also allowed a few of the countries supported to assess their legislative frameworks and implementation modalities related to ABS.

37. Through regular project support since its inception and through the period of GEF-3, the GEF has reported funding more than fifty projects that included an ABS component for a total of \$229 million in GEF grants and approximately \$580 million in co-financing from various partners for a total of \$ 809 million in investment.⁶ Examples of funded ABS-related projects prior to GEF-4 can be found in the report of the Global Environment Facility to the Conference of the Parties at its eight meeting (UNEP/CBD/COP/8/10).

38. Under GEF-4 (2007–2010), the biodiversity focal area strategy, approved by the GEF Council in September 2007, included a specific objective on building capacity on access and benefit-sharing aimed at supporting the establishment of measures promoting concrete access and benefit-sharing agreements that recognize the core ABS principles of prior informed consent (PIC) and mutually agreed terms (MAT) including the fair and equitable sharing of benefits, consistent with the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of Their Utilization and the related Action Plan on Capacity-building for ABS adopted under the Convention.

39. Thus under GEF-4, the GEF approved five projects on ABS submitted by Parties for a total of \$8.4 million which leveraged \$10.4 million in co-financing during the last reporting period from January 2008 to 30 June 2010. These included three regional projects (Africa, Latin American and the Caribbean, and Asia) assisting a total of 40 countries, and two country-based projects, one in India and the other in Ethiopia were approved. These projects focused on developing national ABS policies and regulations, strengthening the capacity of stakeholders and institutions on ABS, and building public awareness on ABS issues. In addition, the GEF also supported ABS through Enabling Activities in Morocco, Pakistan and Mozambique, with a total investment of \$0.7 million. Hence, the total investment in ABS during GEF 4 was \$9.1 million of GEF resources.⁷

40. The GEF-5 biodiversity strategy for the period 2011-2014 built on the experiences from GEF-4, and its fourth objective is to build capacity on ABS.⁸ According to the GEF-5 replenishment document,⁹

³ GEF Operational Programs, Global Environment Facility, 1997.

⁴ Decisions VI/17 and VII/20.

⁵ Report of the Global Environment Facility to the Conference of the Parties at its seventh meeting (UNEP/CBD/COP/7/9).

⁶ Report of the Global Environment Facility to the Conference of the Parties at its tenth meeting (UNEP/CBD/COP/10/6).

⁷ Report of the Global Environment Facility to the Conference of the Parties at its tenth meeting (UNEP/CBD/COP/10/6).

⁸ See: http://www.thegef.org/gef/sites/thegef.org/files/documents/document/GEF-5_Bio_strategy.pdf

⁹ See: http://www.thegef.org/gef/sites/thegef.org/files/documents/GEF_R5_31_CRP1.pdf

\$40 million was notionally allocated to this objective based on past demand by Parties, however, if the request for support exceeds \$40 million, GEF will respond to the demand accordingly. GEF support will respond to existing guidance from the Conference of the Parties and emanating from an agreed international regime at the tenth meeting of the Conference of the Parties, which now includes the Nagoya Protocol. Countries can receive support for ABS capacity-building through their individual country allocations under the System for Transparent Allocation of Resources (STAR) during GEF-5 which became effective from March 2011.

41. In its decision X/1 adopting the Nagoya Protocol, the Conference of the Parties requested the GEF to support the early ratification and implementation of the Protocol.¹⁰ In response to this request, the Chief Executive Officer of the GEF approved a Medium Sized Project of \$1 million implemented by the United Nations Environment Programme (UNEP) and executed by the Secretariat of the Convention for the early entry into force of the Nagoya Protocol. This project has been operational since April 2011 and will be completed in April 2013. Through the project, the Secretariat is carrying out a series of awareness-raising and capacity-building activities to support the early ratification and entry into force of the Nagoya Protocol.

2. *Nagoya Protocol Implementation Fund*

42. At the thirty-ninth meeting of the GEF Council, the Council Member representing Japan called for the need to take concrete action on goals and objectives set at the tenth meeting of the Conference of the Parties and proposed the establishment of a Trust Fund for access and benefit-sharing. On 17 March 2011, the GEF Chief Executive Officer officially announced the establishment of the Nagoya Protocol Implementation Fund (NPIF), with an initial financial contribution of \$12.24 million from Japan.

43. The NPIF was established as a multi-donor trust fund and voluntary contributions from multiple donors and the private sector can be made to the fund. It is expected that private companies and other entities that utilize genetic resources may voluntarily contribute to the NPIF and/or to related projects.

44. At its 40th meeting, the GEF Council, having reviewed document GEF/C.40/11/Rev.1, *Outstanding issues Related to the Nagoya Protocol Implementation Fund*, approved the arrangements proposed for the operation of the multi-donor trust fund, subject to the comments made at the GEF Council meeting and taking into account the provisions of the Council decision by mail on the creation of this multi-donor trust fund, approved on 18 February 2011.¹¹

45. In accordance with document GEF/C.40/11/Rev.1, the primary objective of the NPIF would be to facilitate the early entry into force of the Protocol and create enabling conditions at the national and regional levels for its implementation. In addition, the fund would initially focus its support on assisting countries that have signed the Protocol, those in the process of signing or that intend to ratify the Nagoya Protocol.

46. Activities to be supported by the NPIF include:

(a) Support Parties in reviewing their own capacities and needs on ABS with a focus on the provisions of existing national policies, laws, and regulations and to strengthen the enabling environment at national level through the development of appropriate policy and institutional measures to promote the fair and equitable sharing of benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources;

¹⁰ Decision X/1.

¹¹ See: http://www.thegef.org/gef/sites/thegef.org/files/documents/C.40.11.Rev_1_Outstanding_Issues_Nagoya_Protocol.pdf

(b) Support Parties to implement national and regional projects to promote technology transfer on mutually agreed terms, private sector engagement, and projects targeting investments in the conservation and sustainable use of genetic resources *in situ* to accelerate the ratification and implementation of the Protocol;

(c) Support Parties to build capacity as appropriate with the aim of ensuring that traditional knowledge associated with genetic resources held by indigenous and local communities is accessed with the prior and informed consent, or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established;

(d) Support Parties to undertake activities to increase public awareness regarding the implications of the Nagoya Protocol;

(e) Support Parties to further the knowledge and scientific-base for the implementation of the Nagoya Protocol.¹²

47. Furthermore, document GEF/C.40/11/Rev.1 provides that the NPIF would be governed by a Nagoya Protocol Implementation Fund Council which will utilize the operational policies and procedures, as well as the governance structure, of the GEF Council. This council will meet in the margins of GEF Council meetings and, in the future, review projects and policies associated with the NPIF. In line with GEF policies and procedures, the GEF Council, acting as the governing body of the NPIF, may modify its operational policies and procedures.

48. The NPIF Council is meant to review the operations, function and roles of the NPIF before the end of GEF-5, taking into account the outcomes of the discussions from the Intergovernmental Committee and other relevant meetings of the CBD and the Nagoya Protocol. Finally, the NPIF will terminate at the end of GEF-5, unless otherwise decided by the Conference of the Parties to the Convention.¹³

49. The GEF will keep separate and distinct the programme of activities financed by the GEF Trust Fund from those financed by the NPIF. A report on the fund will be submitted to the Council at each of its regular meetings once the fund becomes operational.¹⁴

50. The workplan set out by the Council states that the first set of projects should be approved before the second meeting of the Intergovernmental Committee. On 12 January 2012, the GEF announced the approval of the first project under the NPIF. The three-year project will be implemented in Panama with a total budget of \$4.4 million, including 1 million from the NPIF. The project is a joint-venture involving the Government of Panama, academic and research institutions, and private sector companies, and aims at supporting the discovery of nature-based products for the pharmaceutical and agrochemical industries, including compounds to cure cancer and other tropical diseases.¹⁵

51. For the 41st meeting of the GEF Council held from 8-10 November 2011, the GEF Secretariat provided a progress report on the NPIF, including a list of actions taken by the GEF Secretariat to operationalize the NPIF.¹⁶ As noted above, the NPIF started with a generous contribution of \$12.24 million from the Government of Japan. The Governments of Norway and Switzerland have also contributed \$1 million each. The Government of the United Kingdom has also signed a grant agreement

¹² Ibid

¹³ Ibid.

¹⁴ Ibid

¹⁵ Press release from the GEF Secretariat: <http://www.thegef.org/gef/content/gef-announces-approval-first-project-under-nagoya-protocol-implementation-fund>

¹⁶ See: http://www.thegef.org/gef/sites/thegef.org/files/documents/C.41.Inf_.08.NPIF_document.pdf

of \$500,000 in March 2012. During the May 2011 Council meeting, the Government of France made a pledge for EU 1,000,000. The contribution towards the Fund at this point totals to \$14.825 million.

52. GEF Council documents on the Nagoya Protocol Implementation Fund are available in information document UNEP/CBD/ICNP/2/INF/8.

C. Elaboration of guidance for the financial mechanism

53. The Intergovernmental Committee was established to prepare for the entry into force of the Nagoya Protocol and the first meeting of the COP-MOP. In accordance with Article 25 of the Protocol and the current memorandum of understanding between the Conference of the Parties and the GEF Council, COP-MOP is to provide its recommendations on the guidance to the financial mechanism with respect to access and benefit-sharing to the COP and the COP is to integrate this into its overall guidance to the GEF.

54. However, in the event that the Nagoya Protocol does not enter into force by the eleventh meeting of the Conference of the Parties and that COP-MOP 1 is not held concurrently with the eleventh meeting of the Conference of the Parties, the Intergovernmental Committee may also wish to put forward recommendations to the Conference of the Parties in order to ensure that timely guidance is provided to the GEF on certain issues related to the Nagoya Protocol, such as input to the GEF 6 replenishment and the Nagoya Protocol Implementation Fund.

55. Against this background, this section first addresses issues that will require consideration by COP-MOP 1 and then addresses issues for consideration by the eleventh meeting of the Conference of the Parties.

1. Issues for consideration by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to genetic Resources and The Fair and Equitable Sharing of the Benefits Arising from Their Utilization

56. In accordance with Article 25 and the MoU between the Conference of the Parties and the GEF, the COP-MOP is to provide recommendations on guidance to the financial mechanism with respect to access and benefit-sharing to the COP and the COP is to integrate this into its overall guidance to the GEF. The following examines guidance to the financial mechanism related to policy and strategy, programme priorities and eligibility criteria for consideration by the COP-MOP.

Policy and strategy

57. Decision X/24 provides the following consolidated guidance to the financial mechanism on policy and strategy: “Financial resources should be allocated to projects that fulfil the eligibility criteria and are endorsed and promoted by the Parties concerned. Projects should contribute to the extent possible to build cooperation at the sub-regional, regional and international levels in the implementation of the Convention. Projects should promote the utilization of local and regional expertise. The conservation of biological diversity and sustainable use of its components is one of the key elements in achieving sustainable development and therefore contributing to combating poverty.”

58. In light of the adoption of the Nagoya Protocol, the COP-MOP may wish to recommend to the COP to review and, as appropriate, revise the guidance on policy and strategy to take into account new developments such as the adoption of the Nagoya Protocol.

Programme priorities

59. Article 25, paragraph 3 of the Protocol provides that the COP-MOP, in providing guidance with respect to the financial mechanism, for consideration by the Conference of the Parties, shall take into account the capacity-building and development needs of developing country Parties, in particular the least developed countries and small island developing States among them, and of Parties with economies in transition, for financial resources, as well as the capacity needs and priorities of indigenous and local communities, including women within these communities. In addition, paragraph 5 confirms that the guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

60. The Committee may wish to consider and recommend to COP-MOP 1 the following new guidance to the financial mechanism with respect to access and benefit-sharing, which takes into account relevant elements of the consolidated guidance to the financial mechanism provided in decision X/24 as well as the capacity-building and development needs and priorities identified by Parties for the implementation of the Protocol.¹⁷ In this regard, the Committee may also wish to recommend to COP-MOP that this new guidance supersede all previous guidance to the financial mechanism with respect to access and benefit-sharing.

61. The new guidance would request the financial mechanism to consider financing projects which will assist in:

(a) Building the capacity of Parties to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing, including:

- (i) Identification of relevant actors and existing legal and institutional expertise for the implementation of the Nagoya Protocol;
- (ii) Taking stock of domestic measures relevant to ABS in light of the obligations of the Nagoya Protocol;
- (iii) Development and/or amendment of access and benefit-sharing legislative, administrative or policy measures with a view to implementing their obligations under the Nagoya Protocol as users and providers of genetic resources;
- (iv) Establishment of mechanisms to address transboundary situations; and
- (v) Establishment of institutional arrangements and administrative systems to provide access to genetic resources, ensure benefit sharing, support compliance with prior informed consent and mutually agreed terms and monitor the utilization of genetic resources.

(b) Building the capacity of Parties to negotiate mutually agreed terms to promote equity and fairness in negotiations in the development and implementation of access and benefit-sharing agreements.

(c) Building the capacity of Parties to develop their endogenous research capabilities to add value to their own genetic resources through, *inter alia*, technology transfer; bioprospecting and associated research and targeted taxonomic studies; and the development and use of valuation methods.

¹⁷ A synthesis of views and information provided by Parties regarding their domestic needs and priorities for capacity-building and development in support of the implementation of the Nagoya Protocol is presented in document UNEP/CBD/ICNP/2/10. In particular, table 1 included in the annex to this document contains a comprehensive list of measures identified by Parties to build or develop the capacity needs of developing country Parties to effectively implement the Protocol.

(d) Addressing the capacity needs and priorities of indigenous and local communities and relevant stakeholders; in particular, projects that would:

- (i) Encourage their participation in legal, policy and decision-making processes; and
- (ii) Assist in building their capacity related to genetic resources and traditional knowledge associated with genetic resources, such as through the development of community protocols, model contractual clauses and minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits.

(e) Enabling Parties to actively participate in the Access and Benefit-sharing Clearing-House and use the best available communication tools and Internet-based systems for access and benefit-sharing activities.

(f) Supporting countries in raising-awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues, notably through the development of national awareness-raising strategies.

(g) Supporting the implementation of the strategic framework for capacity-building and development in support of the implementation of the Protocol.

Eligibility criteria

62. At its first meeting held in 1994, the Conference of the Parties adopted the eligibility criteria for funding under the financial mechanism¹⁸, which is now included in the consolidated guidance adopted by the tenth meeting of the Conference of the Parties.¹⁹

63. One issue related to eligibility criteria with respect to the Protocol is the extent to which countries that are Parties to the Convention and not yet Parties to the Protocol should be eligible for funding to support ratification and implementation of the Protocol. A disincentive for joining the Protocol could be created if both Parties to the Protocol and Parties to the Convention that are not yet Parties to the Protocol are equally eligible to access funding under the financial mechanism of the Protocol while non-Parties to the Protocol would not be bound by the Protocol's requirements.

64. However, Parties intending to ratify the Nagoya Protocol may need financial support in order to adopt the appropriate measures to enable them to ratify. To give due consideration to these situations, the Intergovernmental Committee may wish to propose to COP-MOP the inclusion of some transitional clauses in the eligibility criteria for funding under the financial mechanism of the Protocol that will create an incentive for Parties to the Convention to become Parties to the Protocol.

65. For example, under the Cartagena Protocol on Biosafety, the Conference of the Parties serving as the meeting of the Parties to the Protocol recommended, and the COP agreed, to include a transitional clause in the eligibility criteria that:

“All developing countries and economies in transition that are Parties to the Convention and provide a clear political commitment towards becoming Parties to the Protocol, shall also be eligible for funding by the Global Environment Facility for the development of national biosafety frameworks and the development of national biosafety clearing houses and other necessary institutional capabilities to enable a non-Party to become a Party. Evidence of such political commitment shall take the form of a written assurance to the

¹⁸ See decision I/2, annex I of the Conference of the Parties.

¹⁹ See decision X/24 of the Conference of the Parties.

Executive Secretary that the country intends to become a Party to the Protocol on completion of the activities to be funded.²⁰

66. Similarly, the Intergovernmental Committee may wish to propose to COP-MOP the inclusion of a similar clause in the eligibility criteria. For example, a clear political commitment towards becoming a Party to the Protocol could be requested in order to be eligible to receive funding from the financial mechanism.

2. *Issues for consideration by the eleventh meeting of the Conference of the Parties*

Guidance on programme priorities for inclusion in the four-year framework for programme priorities for the period 2014-2018 (GEF-6)

69. In accordance with decision X/24, the eleventh meeting of the Conference of the Parties is to adopt and forward to GEF a four-year framework of programme priorities for consideration during the sixth replenishment of the Global Environment Facility Trust Fund, as related to utilization of Global Environment Facility resources for biodiversity for the period 2014-2018. This four-year framework will need to include support for access and benefit-sharing activities, and more specifically support for the implementation of the Nagoya Protocol as one of its priorities.

70. Against this background and in light of the information provided in paragraphs 59 to 61 above, the Intergovernmental Committee may wish to provide recommendations to the eleventh meeting of the Conference of the Parties on programme priorities for the 6th GEF replenishment period related to financial support for the implementation of the Nagoya Protocol.

71. In order to establish such guidance, the Intergovernmental Committee may wish to consider providing a sub-set of the programme priorities presented in paragraph 61 and recommend that the financial mechanism, during the GEF replenishment period of 2014-2018, consider as a priority financing projects which will assist in:

- (a) Building the capacity of Parties to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing, including:
 - (i) Identification of relevant actors and existing legal and institutional expertise for the implementation of the Nagoya Protocol;
 - (ii) Taking stock of domestic measures relevant to ABS in light of the obligations of the Nagoya Protocol;
 - (iii) Development and/or amendment of access and benefit-sharing legislative, administrative or policy measures with a view to implementing their obligations under the Nagoya Protocol as users and providers of genetic resources;
 - (iv) Establishment of mechanisms to address transboundary situations; and
 - (v) Establishment of institutional arrangements and administrative systems to provide access to genetic resources, ensure benefit sharing, support compliance with prior informed consent and mutually agreed terms and monitor the utilization of genetic resources.

²⁰ See decisions VII/20 and X/24 of the Conference of the Parties.

(b) Enabling Parties to actively participate in the Access and Benefit-sharing Clearing-House and use the best available communication tools and Internet-based systems for access and benefit-sharing activities;

(c) Supporting countries in raising-awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues, notably through the development of national awareness-raising strategies;

(d) Supporting the implementation of the strategic framework for capacity-building and development in support of the implementation of the Protocol.

Consideration of the Nagoya Protocol Implementation Fund

72. As mentioned in paragraph 48 above, the operations, functions and roles of the NPIF will be reviewed by the NPIF Council before the end of GEF 5, taking into account the outcome of discussions in the Intergovernmental Committee on the Nagoya Protocol and other relevant meetings of the Convention on Biological Diversity and the Nagoya Protocol. The NPIF will terminate at the end of GEF-5, unless otherwise decided by the Conference of the Parties to the Convention on Biological Diversity.²¹ The Intergovernmental Committee may therefore wish to forward recommendations to the eleventh meeting of the Conference of the Parties in order to provide guidance, as appropriate, with respect to the NPIF.

73. The establishment of the Nagoya Protocol Implementation Fund is a significant development that is likely to facilitate the early entry into force and implementation of the Nagoya Protocol. The Intergovernmental Committee may wish to take note of this development, and recommend that the Conference of the Parties welcomes the establishment of the Fund.

74. In light of the information provided in sub-section B above, the Intergovernmental Committee may also wish to recommend that the Conference of the Parties encourage the use of funds from the NPIF to support projects which will facilitate the early entry into force of the Nagoya Protocol and create enabling conditions at the national and regional levels for its implementation, in accordance with the primary objective of the NPIF.²² Finally, the Intergovernmental Committee may wish to recommend that the Conference of the Parties calls for the continuation of the NPIF beyond GEF 5 and urge potential donors to contribute to the NPIF with a view to ensuring continued support for the implementation of the Nagoya Protocol.

IV. RECOMMENDATIONS

75. The Intergovernmental Committee was established to prepare for the entry into force of the Nagoya Protocol and the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. With respect to the financial mechanism, as explained above, COP-MOP, in accordance with Article 25 of the Protocol and the current memorandum of understanding between the Conference of the Parties and the GEF Council would provide its recommendations on the guidance to the financial mechanism to the Conference of the Parties and the Conference of the Parties would forward this guidance to the GEF. However, in the event that the Nagoya Protocol does not enter into force by the eleventh meeting of the Conference of the Parties and that the first meeting of the Parties to the Protocol is not held concurrently with the eleventh meeting of the Conference of the Parties, the Intergovernmental Committee may wish to put forward recommendations to the eleventh meeting of the Conference of the Parties in order to ensure that timely guidance is provided to the GEF on certain issues related to the Nagoya Protocol, such as the GEF 6 replenishment and the Nagoya Protocol Implementation Fund.

²¹ See: http://www.thegef.org/gef/sites/thegef.org/files/documents/C.40.11.Rev_1_Outstanding_Issues_Nagoya_Protocol.pdf

²² Ibid

76. Against this background, the Intergovernmental Committee may wish to consider and provide two sets of recommendations, one to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol and another to the eleventh meeting of the Conference of the Parties.

A. *Recommendations to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol*

77. The Intergovernmental Committee is invited to consider and forward the following draft recommendations to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for its consideration:

1. *Operational Arrangements between the Convention and the GEF Council with respect to the Nagoya Protocol*

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

1. *Takes note* of the memorandum of understanding between the Conference of the Parties and the GEF Council adopted in decision III/8 and *confirms* that the operational arrangements reflected in the memorandum of understanding apply, *mutatis mutandis*, to the Protocol;

2. *Recommends* that the Conference of the Parties invite the Council of the Global Environment Facility to submit the chapter on access and benefit-sharing of its report directly to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, in time for its consideration;

3. *Decides* to conduct periodic reviews of the effectiveness of the financial mechanism with respect to the implementation of the Nagoya Protocol in time for its consideration by the Conference of the Parties;

4. *Decides* to undertake, in time for scheduled replenishments of the Global Environment Facility Trust Fund, an assessment of the amount of funds that are necessary to assist developing country Parties and Parties with economies in transition in fulfilling their commitments under the Nagoya Protocol, for consideration by the Conference of the Parties in its determination of funding requirements;

5. *Recommends* that the Conference of the Parties invites representatives of the Global Environment Facility to attend, and make official statements to, the ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol with a view to reporting on the implementation of the guidance to the GEF with respect to access and benefit-sharing;

6. *Recommends* that the Conference of the Parties encourages the secretariats of the Convention and the Global Environment Facility to undertake necessary information exchange and consultation prior to a meeting of the Council of the Global Environment Facility or the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.”

2. *Guidance for the financial mechanism*

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

(a) *Policy and strategy*

7. *Takes note* of the consolidated guidance to the financial mechanism related to policy and strategy adopted in decision X/24, and *invites* the Conference of the Parties to review, and as appropriate, revise this guidance to take into account new developments such as the adoption of the Nagoya Protocol;

(b) *Programme priorities*

8. *Recommends* that the Conference of the Parties considers integrating the following guidance with respect to access and benefit sharing into its overall guidance to the financial mechanism;

9. *Recommends* that the GEF finances projects which will assist in:

(a) Building the capacity of Parties to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing, including:

- (i) Identification of relevant actors and existing legal and institutional expertise for the implementation of the Nagoya Protocol;
- (ii) Taking stock of domestic measures relevant to ABS in light of the obligations of the Nagoya Protocol;
- (iii) Development and/or amendment of access and benefit-sharing legislative, administrative or policy measures with a view to implementing their obligations under the Nagoya Protocol as users and providers of genetic resources;
- (iv) Establishment of mechanisms to address transboundary situations; and
- (v) Establishment of institutional arrangements and administrative systems to provide access to genetic resources, ensure benefit sharing, support compliance with prior informed consent and mutually agreed terms and monitor the utilization of genetic resources.

(b) Building the capacity of Parties to negotiate mutually agreed terms to promote equity and fairness in negotiations in the development and implementation of access and benefit-sharing agreements.

(c) Building the capacity of Parties to develop their endogenous research capabilities to add value to their own genetic resources through, *inter alia*, technology transfer; bioprospecting and associated research and taxonomic studies; and the development and use of valuation methods.

(d) Addressing the capacity needs and priorities of indigenous and local communities and relevant stakeholders; in particular, projects that would:

- (i) Encourage their participation in legal, policy and decision-making processes; and
- (ii) Assist in building their capacity related to genetic resources and traditional knowledge associated with genetic resources, such as through the development of community protocols, model contractual clauses and minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits.

(e) Enabling Parties to actively participate in the Access and Benefit-sharing Clearing-House and use the best available communication tools and Internet-based systems for access and benefit-sharing activities;

(f) Supporting countries in raising-awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues, notably through the development of national awareness-raising strategies;

(g) Supporting the implementation of the strategic framework for capacity-building and development in support of the implementation of the Protocol.

10. *Recommends* that the above guidance supersedes all previous guidance to the financial mechanism related to access and benefit-sharing;

(c) *Eligibility criteria:*

11. *Takes note* of the eligibility criteria for funding under the financial mechanism as provided in the consolidated guidance adopted in decision X/24.

12. *Recommends* that the Conference of the Parties adopt the following transitional clause in the eligibility criteria for funding under the financial mechanism of the Protocol:

“All developing countries and economies in transition that are Parties to the Convention and provide a clear political commitment towards becoming Parties to the Protocol, shall be eligible for funding by the Global Environment Facility for the development of national measures and institutional capabilities to meet their obligations under the Protocol in order to enable a non-Party to become a Party. Evidence of such political commitment shall take the form of a written assurance to the Executive Secretary that the country intends to become a Party to the Nagoya Protocol on completion of the activities to be funded”.

B. Recommendations to the eleventh meeting of the Conference of the Parties

78. The Intergovernmental Committee may wish to recommend the adoption of the following decision by the Conference of the Parties at its eleventh meeting:

“The Conference of the Parties,

1. Programme priorities for inclusion in the four-year framework for programme priorities for the period 2014-2018

1. *Invites* the Global Environment Facility to support the following activities during its sixth replenishment period (2014-2018), *inter alia*:

(a) Building the capacity of Parties to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing, including:

- (i) Identification of relevant actors and existing legal and institutional expertise for the implementation of the Nagoya Protocol;
- (ii) Taking stock of domestic measures relevant to ABS in light of the obligations of the Nagoya Protocol;
- (iii) Development and/or amendment of access and benefit-sharing legislative, administrative or policy measures with a view to implementing their obligations under the Nagoya Protocol as users and providers of genetic resources;
- (iv) Establishment of mechanisms to address transboundary situations; and
- (v) Establishment of institutional arrangements and administrative systems to provide access to genetic resources, ensure benefit sharing, support compliance with prior informed consent and mutually agreed terms and monitor the utilization of genetic resources.

(b) Enabling Parties to actively participate in the Access and Benefit-sharing Clearing-House and use the best available communication tools and Internet-based systems for access and benefit-sharing activities;

(c) Supporting countries in raising-awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues, notably through the development of national awareness-raising strategies;

(d) Supporting the implementation of the strategic framework for capacity-building and development in support of the implementation of the Protocol.

2. The Nagoya Protocol Implementation Fund

2. *Welcomes* the establishment of the Nagoya Protocol Implementation Fund (NPIF) and notes with appreciation the initial financial contributions made by Japan, Switzerland, Norway and the United Kingdom, and the pledge from France to the Fund;

3. *Encourages* the use of funds from the NPIF to support projects which will facilitate the early entry into force and implementation of the Nagoya Protocol and create enabling conditions at the national and regional levels for its effective implementation, in

/...

accordance with the primary objective of the NPIF set out in document GEF/C.40/11/Rev.1, dated 26 May 2011;

4. *Calls* for the continuation of the NPIF beyond GEF 5 and *urges* potential donors to contribute to the NPIF with a view to ensuring continued support for the implementation of the Nagoya Protocol.”
