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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

Third meeting

Pyeongchang, Republic of Korea, 24-28 February 2014

Agenda item 2

REPORT OF THE THIRD MEETING 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

INTRODUCTION

1. The third meeting 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 the Convention on Biological Diversity (the Intergovernmental Committee) was held in Pyeongchang, Republic of Korea, from 24 to 28 February 2014.

2. The meeting was attended by representatives of the following Parties and other Governments: Angola; Antigua and Barbuda; Argentina; Armenia; Australia; Bahamas; Bangladesh; Belarus; Belgium; Benin; Bhutan; Brazil; Burkina Faso; Burundi; Cambodia; Cameroon; Canada; Chad; Chile; China; Colombia; Comoros; Costa Rica; Côte d'Ivoire; Croatia; Cuba; Czech Republic; Democratic Republic of the Congo; Denmark; Djibouti; Dominica; Dominican Republic; Ecuador; Egypt; Ethiopia; European Union; Finland; France; Georgia; Germany; Greece; Guatemala; Guinea; Guinea-Bissau; Haiti; Honduras; India; Indonesia; Iraq; Italy; Japan; Kenya; Kiribati; Lao People's Democratic Republic; Latvia; Liberia; Madagascar; Malawi; Malaysia; Marshall Islands; Mauritania; Mexico; Morocco; Myanmar; Namibia; Nepal; Netherlands; New Zealand; Niger; Nigeria; Norway; Oman; Pakistan; Palau; Peru; Philippines; Poland; Republic of Korea; Rwanda; Saint Kitts and Nevis; Saint Lucia; Samoa; Saudi Arabia; Senegal; Serbia; Singapore; Solomon Islands; South Africa; Sri Lanka; Sudan; Sweden; Switzerland; Thailand; Timor-Leste; Togo; Turkmenistan; Uganda; Ukraine; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; Uruguay; Viet Nam; Yemen; Zambia; Zimbabwe; and the United States of America.

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations; Global Environment Facility; International Treaty on Plant Genetic Resources for Food and Agriculture, FAO; UNEP Regional Office for Africa; United Nations Development Programme; United Nations Environment Programme; United Nations University - Institute of Advanced Studies; World Intellectual Property Organization.

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4. The following organizations were also represented by observers:

ABS Capacity Development Initiative	International Federation of Pharmaceutical Manufacturers and Associations
African Indigenous Women Organization (Nairobi)	International Institute for Environment and Development
African Union	International Union for Conservation of Nature (IUCN)
ASEAN Centre for Biodiversity	International Union for the Protection of New Varieties of Plants
Berne Declaration	Kobe University
Catedra UNESCO de Territorio y Medio Ambiente	Korea Maritime Institute
Center for Support of Indigenous Peoples of the North/Russian Indigenous Training Centre	Korea Research Institute of Bioscience & Biotechnology (KRIBB)
Centre for International Sustainable Development Law	Korea University
Chibememe Earth Healing Association	Korean Intellectual Property Office
CIRAD - Montpellier	McGill University
Community Development Centre	National Institute of Biological Resources
Conservation International	National Institute of Technology and Evaluation
Consortium of European Taxonomic Facilities	PharmaSea
CropLife International	Pukyong National University
Deutsche Forschungsgemeinschaft (DFG)	Red de Cooperación Amazónica
EcoLomics International	Red de Mujeres Indígenas sobre biodiversidad
ECOROPA	Responsible Ecosystems Sourcing Platform (RESP)
ETC Group	Seoul National University
Fridtjof Nansen Institute	Sophia University
German Development Cooperation/Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH	South Centre
ICLEI - Local Governments for Sustainability	The Union for Ethical BioTrade
International Chamber of Commerce	Third World Network
International Development Law Organization	Tulalip Tribes
	University of Yamanashi (Japan)

ITEM 1. OPENING OF THE MEETING

5. The meeting was opened at 10.05 a.m. on 24 February 2014 by Mr. Jeong Yeon-man, Vice-Minister of the Environment, Government of the Republic of Korea.

6. Mr. Jeong Yeon-man, welcoming participants on behalf of the Government of the Republic of Korea, expressed appreciation for the international community's efforts to accelerate ratification of the Nagoya Protocol, with a view to facilitating its early entry into force. He said that the Republic of Korea was in the process of adopting legislation on access to genetic resources and sharing of benefits to enable domestic implementation and subsequent ratification of the instrument. In that connection, the Government promoted awareness-raising and capacity-building activities and supported the building of a database on domestic genetic resources to ensure their effective, efficient and sustainable use. He expressed the hope that the deliberations at the third meeting of the Intergovernmental Committee for the Nagoya Protocol would pave the way for the holding of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol concurrently with the twelfth meeting of the Conference of the Parties to the Convention on Biological Diversity, in October 2014. In closing, he invited participants to enjoy the unspoilt beauty of Pyeongchang of Gangwon province, which would also serve as venue for the forthcoming meeting of the Conference of the Parties.

7. The Governor of Gangwon province, Mr. Choi Moon-soon, welcoming participants, said that the ocean, lakes, wetlands and forests that covered 82 per cent of the province formed the core of Korean biodiversity. It was hoped that the Winter Olympic Games to be hosted in Pyeongchang in 2018 would be

the most eco-friendly yet, thanks to green energy use and forest restoration efforts. Gangwon province was also due to lead an initiative designed to enhance the role of regional governments in biodiversity conservation efforts. He expressed the hope that deliberations at the present meeting would lay the groundwork for holding the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol in October 2014, in Pyeongchang, concurrently with the twelfth meeting of the Conference of the Parties.

8. The Executive Secretary of the Convention on Biological Diversity, Mr. Braulio Ferreira de Souza Dias, said that great strides had been made in preparing for the entry into force of the Nagoya Protocol in the 15 months since the eleventh meeting of the Conference of the Parties in Hyderabad, with an additional 22 ratifications being made. The total number of ratifications now stood at 29, including countries from all five United Nations regions, which demonstrated the global appeal and significance of the Protocol. He offered encouragement to those countries that were working hard to fulfil national requirements and would soon deposit their instrument of ratification or accession - including the Democratic Republic of the Congo, Guyana, Guatemala, Liberia, Madagascar, Namibia, Niger, Pakistan, Samoa and Yemen - and urged others to follow suit.

9. With such growing momentum, he was confident that the Nagoya Protocol would enter into force in time for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to be held in October 2014, in Pyeongchang. Those who had ratified the Protocol would sit as Parties and participate in decision-making at that meeting. They would also stand to benefit from the legal certainty and transparency that the Protocol could bring.

10. Further developments since the eleventh meeting of the Conference of the Parties included the sending of a letter by Secretary-General of the United Nations Mr. Ban Ki-moon to Heads of State and government, highlighting the valuable contribution that the Nagoya Protocol could make. The Protocol had also been the subject of a special event at the Second Committee of the General Assembly held in New York, in October 2013. Meanwhile, the Secretariat had been holding expert meetings and capacity-building workshops, and developing the pilot phase of the Access and Benefit-sharing Clearing-House. He encouraged all Parties to participate in testing the Access and Benefit-sharing Clearing-House to ensure it became a tool that met their needs and could contribute to effective implementation of the Protocol.

11. He thanked those donors who had provided the necessary resources to support that work, and expressed his sincere gratitude to the Governments of Denmark, Germany, Japan, Norway, the Republic of Korea, Spain, Switzerland and the United Kingdom of Great Britain and Northern Ireland for their generous contributions, which had enabled representatives from a significant number of countries to participate in the present meeting. He thanked the Government of Japan for its continued support of the work of the Intergovernmental Committee and the Nagoya Protocol. He was also grateful to the Republic of Korea, its people and its Government, as well as to the local authorities of Gangwon province, for their invaluable efforts in making the third meeting of the Intergovernmental Committee possible. The Republic of Korea had played an active role in recent years in hosting international environmental conferences and taken concrete steps towards the conservation and sustainable use of biodiversity.

12. In 1992, the adoption of the Convention on Biological Diversity had marked a fundamental shift in the international governance of genetic resources and established the principles of access based on prior informed consent and of fair and equitable sharing of benefits based on mutually agreed terms. Those principles were also at the heart of the Nagoya Protocol; every effort should be made to ensure that they were upheld. The significance of the Nagoya Protocol was recognized in the Strategic Plan for Biodiversity 2011–2020; Aichi Biodiversity Target 16 was that the Nagoya Protocol be in force and operational by 2015, consistent with national legislation. With the number of ratifications continuing to mount and countries beginning to share information through the Access and Benefit-sharing Clearing-House, it was hoped that the target would be met ahead of time.

13. The present meeting would therefore be critical in building upon the progress made in the first two meetings of the Intergovernmental Committee. Recommendations would address key issues that would

lay the foundations for effective implementation of the Nagoya Protocol. In-depth discussions on the programme budget for the biennium, however, would instead take place at the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.

14. He closed by reminding Parties that the Secretariat stood ready to assist them as they prepared for the entry into force and implementation of the Nagoya Protocol, and wished them fruitful deliberations over the course of the week.

15. Opening statements were then made by the representatives of: India, on behalf of the Asia and Pacific Group; Saint Lucia, on behalf of the Latin American and Caribbean Group; and Uganda, on behalf of the African Group.

16. An opening statement was also made by the representative of the International Indigenous Forum on Biodiversity.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Officers

17. The Committee took up item 2.1 at the 1st session of the meeting, on 24 February 2014, under the chairmanship of Ms. Janet Lowe (New Zealand).

18. The Chair informed the meeting that the Bureau of the Intergovernmental Committee had held a meeting the previous day and that Ms. Dubravka Stepic (Croatia) had been designated to act as Rapporteur for the third meeting of the Intergovernmental Committee.

2.2. Adoption of the agenda

19. At the 1st session of the meeting, on 24 February 2014, the Intergovernmental Committee adopted the following agenda on the basis of the provisional agenda

1. Opening of the meeting.
2. Organizational matters:
 - 2.1. Officers;
 - 2.2. Adoption of the agenda;
 - 2.3. Organization of work.
3. Outstanding issues for consideration by the Intergovernmental Committee in accordance with its work plan (decision X/1, annex II):
 - 3.1. Development of a programme budget for the biennium following the entry into force of the Protocol;
 - 3.2. Consideration of rules of procedure for the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 5);
 - 3.3. Elaboration of a draft provisional agenda for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 6);
 - 3.4. The need for and modalities of a global multilateral benefit-sharing mechanism (Article 10);
 - 3.5. Modalities of operation of the Access and Benefit-sharing Clearing-House (Article 14, paragraph 4);
 - 3.6. 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 amongst them, and Parties with economies in transition, taking into account the

- needs identified by the Parties concerned for the implementation of the Protocol (Article 22);
- 3.7. Cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice or assistance, where appropriate (Article 30).
 4. Additional issues identified in decision XI/1:
 - 4.1. Monitoring and reporting (Article 29);
 - 4.2. 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);
 - 4.3. Exchange of views on the state of implementation of the Nagoya Protocol.
 5. Other matters.
 6. Adoption of the report.
 7. Closure of the meeting.

2.3. Organization of work

20. At its 1st session, on 24 February 2014, the Intergovernmental Committee approved the organization of work for the meeting on the basis of the proposal contained in annex I to the annotations to the provisional agenda (UNEP/CBD/ICNP/3/1/Add.1).

21. In the absence of Mr. Fernando Casas (Colombia), co-chair of the Intergovernmental Committee, it was decided that Ms. Janet Lowe (New Zealand) would chair all sessions of the Committee at the present meeting.

ITEM 3. OUTSTANDING ISSUES FOR CONSIDERATION BY THE INTERGOVERNMENTAL COMMITTEE IN ACCORDANCE WITH ITS WORKPLAN (DECISION X/1, ANNEX II)

3.1. Development of a programme budget for the biennium following the entry into force of the Protocol

22. The Intergovernmental Committee took up agenda item 3.1 at the 3rd session of the meeting, on 25 February 2014.

23. In considering the item, the Intergovernmental Committee had before it a draft programme budget for the biennium following the entry into force of the Protocol (UNEP/CBD/ICNP/3/2). Participants were invited to make general remarks but were told that an informal meeting would be held the following day to provide further details.

24. Statements were made by the representatives of the European Union and its Member States, Japan, Peru (on behalf of the Latin American and Caribbean Group) the Republic of Korea and South Africa (on behalf of the African Group).

25. On 26 February 2014, the Secretariat convened an informal meeting on the budget. Following an extensive question-and-answer session, it was agreed that, if necessary, the Executive Secretary would seek additional input on the budget requirements through the Bureau of the Conference of the Parties.

3.2. Consideration of rules of procedure for the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 5)

26. The Intergovernmental Committee took up agenda item 3.2 at the 1st session of the meeting, on 24 February 2014.

27. In considering the item, the Intergovernmental Committee had before it a note by the Executive Secretary on rules of procedure for meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (Article 26, paragraph 5) (UNEP/CBD/ICNP/3/3).

28. Statements were made by the representatives of Canada, China, Colombia, the Democratic Republic of the Congo (on behalf of the African Group), the European Union and its Member States, India, Mexico and Niger.

29. At the 4th session of the meeting, on 25 February 2014, the Intergovernmental Committee discussed a draft recommendation submitted by the Co-Chair, reflecting the views expressed by participants and written submissions to the Secretariat.

30. Statements were made by the representatives of Argentina, Malaysia and Timor-Leste.

31. The representative of Argentina, speaking in reference to paragraph (a) of the draft recommendation for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, said that any decision on terms of office of Bureau members should be deferred pending a final decision on the programme budget for the biennium.

32. The draft recommendation, as orally amended, was approved for formal adoption by the Intergovernmental Committee as draft recommendation UNEP/CBD/ICNP/3/L.2.

33. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.2, as recommendation 3/1. The text of the recommendation as adopted is contained in annex I to the present report.

3.3. *Elaboration of a draft provisional agenda for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 6)*

34. The Intergovernmental Committee took up agenda item 3.3 at the 4th session of the meeting, on 25 February 2014.

35. In considering the item, the Intergovernmental Committee had before it the draft provisional agenda for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (UNEP/CBD/ICNP/3/4).

36. A statement was made by the representative of the European Union and its Member States.

37. At the 7th session of the meeting, on 27 February 2014, the Intergovernmental Committee discussed a draft recommendation submitted by the Co-Chair, reflecting the views expressed by participants and written submissions to the Secretariat.

38. Statements were made by the representatives of the European Union and its Member States, and Namibia (on behalf of the African Group).

39. The draft recommendation, as orally amended, was approved for formal adoption by the Intergovernmental Committee as draft recommendation UNEP/CBD/ICNP/3/L.5.

40. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.5 as recommendation 3/2. The text of the recommendation as adopted is contained in annex I to the present report.

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

41. The Intergovernmental Committee took up agenda item 3.4 at the 3rd session of the meeting, on 25 February 2014.

42. In considering the item, the Intergovernmental Committee had before it the report of the Expert Meeting on Article 10 of the Nagoya Protocol on Access and Benefit-sharing (UNEP/CBD/ICNP/3/5) and a revised synthesis of the online discussions on Article 10 as an information document (UNEP/CBD/ICNP/3/INF/4).

43. Mr. Won Seog Park (Republic of Korea), co-chair of the expert meeting, presented the outcome of the meeting and online discussions.
44. Statements were made by the representatives of Argentina, Brazil, Canada, China, Ecuador, Egypt, the European Union and its Member States, India, Japan, Mexico, Malaysia, Namibia (on behalf of the African Group), New Zealand, Norway, Peru, Saint Lucia, South Africa (on behalf of the Group of Like-Minded Megadiverse Countries), Switzerland, Thailand and Uganda.
45. The representative of Argentina requested that the following statement be included in the report:
- “Argentina is of the view that a decision on the appropriateness of and need for a global multilateral benefit-sharing mechanism would be premature, given that the Nagoya Protocol must first enter into force, be implemented and lessons must be drawn from it as a basis for evaluating the need for such a mechanism. Therefore, Parties should first exhaust all efforts to meet the various challenges the implementation of the Protocol will no doubt pose in regard to both obtainment and granting of access and international cooperation.
- With regard to the report of the Expert Meeting on Article 10 of the Nagoya Protocol on Access and Benefit-sharing (UNEP/CBD/ICNP/3/5), Argentina notes with concern that reference is made to possible application of article 10 in areas outside national jurisdiction. Should the Parties to the Protocol eventually decide to establish a global multilateral benefit-sharing mechanism, it should be subject to the provisions of the Convention on Biological Diversity and, as such, its scope of application would be limited to areas under national jurisdiction. Article 22 of the Convention stipulates that contracting Parties shall implement the Convention with respect to marine environments consistently with their rights and obligations under the law of the sea. Argentina therefore considers the 1982 United Nations Convention on the Law of the Sea to be the essential legal framework for all marine activities, including the conservation and sustainable use of marine biodiversity outside national jurisdiction.
- The same is true for genetic resources in the area covered by the Antarctic Treaty. In this regard, it is important to remember that although the issue of bioprospecting in Antarctica is on the agenda of the Antarctic Treaty Consultative Meeting, a possible regime on access to genetic resources applicable in the area has yet to be negotiated. Resolution 6 (2013) on Biological Prospecting in Antarctica reaffirms that the Antarctic Treaty regime is the appropriate framework for managing the collection of biological material in the area covered by the Antarctic Treaty, and for examining their use.”
46. Statements were also made by the representatives of the International Chamber of Commerce and the International Indigenous Forum on Biodiversity.
47. At the 8th session of the meeting, on 27 February 2014, the Intergovernmental Committee discussed a draft recommendation submitted by the Co-Chair, reflecting the views expressed by participants and written submissions to the Secretariat.
48. Statements were made by the representatives of Argentina, Australia, Brazil, Canada, China, Egypt, the European Union and its Member States, India, Japan, Malaysia, Mexico, Namibia (on behalf of the African Group), New Zealand, Norway, Peru, the Philippines, Saint Lucia, South Africa (Group of Like-Minded Megadiverse Countries), Switzerland and Uganda.
49. The draft recommendation, as orally amended, was approved for formal adoption by the Intergovernmental Committee as draft recommendation UNEP/CBD/ICNP/3/L.8.
50. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.8 as recommendation 3/3. The text of the recommendation as adopted is contained in annex I to the present report.

3.5. Modalities of operation of the Access and Benefit-sharing Clearing-House (Article 14, paragraph 4)

51. The Intergovernmental Committee took up agenda item 3.5 at the 4th session of the meeting, on 25 February 2014.

52. In considering the item, the Intergovernmental Committee had before it a report on progress in the implementation of the pilot phase of the Access and Benefit-sharing Clearing-House, including draft modalities of operation of the Access and Benefit-sharing Clearing-House (UNEP/CBD/ICNP/3/6). The Intergovernmental Committee also had before it, as information documents, a summary of outcomes of the informal advisory committee to the pilot phase of the Access and Benefit-sharing Clearing-House as an information document (UNEP/CBD/ICNP/3/INF/5) and a summary of outcomes of the meeting of the Capacity-Building Workshop on the Access and Benefit-sharing Clearing-House (UNEP/CBD/ICNP/3/INF/8).

53. Statements were made by Brazil, Canada, the European Union and its Member States, Japan, Madagascar (on behalf of the African Group), Mexico, the Philippines, the Republic of Korea, South Africa (on behalf of the Group of Like-Minded Megadiverse Countries) Switzerland and Thailand.

54. Statements were also made by the representatives of the International Chamber of Commerce and the International Indigenous Forum on Biodiversity.

55. At the 7th session of the meeting, on 27 February 2014, the Intergovernmental Committee discussed a draft recommendation submitted by the Co-Chair, reflecting the views expressed by participants and written submissions to the Secretariat.

56. Statements were made by the representatives of Canada, the European Union and its Member States, Mexico, Saint Lucia, Switzerland and Timor-Leste.

57. The draft recommendation, as orally amended, was approved for formal adoption by the Intergovernmental Committee as draft recommendation UNEP/CBD/ICNP/3/L.6.

58. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.6 as recommendation 3/4. The text of the recommendation as adopted is contained in annex I to the present report.

3.6. 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 amongst them, and Parties with economies in transition, taking into account the needs identified by the Parties concerned for the implementation of the Protocol (Article 22)

59. The Intergovernmental Committee took up agenda item 3.6 at the 1st session of the meeting, on 24 February 2014.

60. In considering the item, the Intergovernmental Committee had before it a draft strategic framework for capacity-building and development under the Nagoya Protocol (UNEP/CBD/ICNP/3/7) and the full report of the expert meeting (UNEP/CBD/ICNP/3/INF/6).

61. Statements were made by the representatives of Argentina, Benin, Brazil, Canada, China, Cuba, the Democratic Republic of the Congo, the European Union and its Member States, Guatemala, India, Japan, Malaysia, Mexico, Niger, Norway, Saint Lucia, Saudi Arabia, Senegal (on behalf of the African Group), Sudan, Switzerland, Thailand, Timor-Leste, Togo and Uganda.

62. Statements were also made by the representatives of the International Indigenous Forum on Biodiversity International, the International Treaty on Plant Genetic Resources for Food and Agriculture, and the International Union for Conservation of Nature.

63. At the 6th session of the meeting, on 25 February 2014, the Intergovernmental Committee discussed a draft recommendation prepared by the Co-Chair, reflecting the views expressed by participants and written submissions to the Secretariat.
64. Statements were made by the representatives of Antigua and Barbuda, Argentina, Benin, Brazil, Burkina Faso, Canada, Colombia, the European Union and its Member States, Malaysia, Namibia, Senegal (on behalf of the African Group), South Africa (on behalf of the Group of Like-Minded Megadiverse Countries), Sudan, Switzerland and Togo.
65. At the 7th session of the meeting, on 27 February 2014, the Intergovernmental Committee resumed consideration of the draft recommendation.
66. The representative of the European Union and its Member States reported on the outcome of informal discussions held on outstanding issues in that version of the document.
67. At the 8th session of the meeting, on 27 February 2014, the Intergovernmental Committee resumed consideration of the draft recommendation.
68. Statements were made by Canada, the European Union and its Member States, Japan, Namibia and Senegal (on behalf of the African Group).
69. The draft recommendation, as orally amended, was approved for formal adoption by the Intergovernmental Committee as draft recommendation UNEP/CBD/ICNP/3/L.4.
70. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.4, as orally amended, as recommendation 3/5. The text of the recommendation as adopted is contained in annex I to the present report.

3.7. *Cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice or assistance, where appropriate (Article 30)*

71. The Intergovernmental Committee took up agenda item 3.7 at the 4th session of the meeting, on 25 February 2014.
72. In considering the item, the Intergovernmental Committee had before it a note by the Executive Secretary on cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and address cases of non-compliance (UNEP/CBD/ICNP/3/8).
73. At the suggestion of the Chair, a contact group was established, under the joint chairmanship of Ms. Jimena Nieto Carrasco (Colombia) and Mr. Kaspar Sollberger (Switzerland), to further refine the draft text that had been forwarded successively by the second meeting of the Intergovernmental Committee and the eleventh meeting of the Conference of the Parties. Representatives were nevertheless invited to make general remarks during the present session.
74. Statements were made by the representatives of Argentina, Colombia, the European Union and its Member States, Japan, Mexico, Norway, Peru, South Africa (on behalf of the Group of Like-Minded Megadiverse Countries) and Uganda (on behalf of the African Group).
75. A statement was also made by the representative of the International Indigenous Forum on Biodiversity.
76. At the 6th session of the meeting, on 26 February 2014, the Intergovernmental Committee heard a progress report from Ms. Jimena Nieto Carrasco (Colombia), co-chair of the contact group.
77. At the 8th session of the meeting, on 27 February 2014, the Intergovernmental Committee heard a progress report from Mr. Kaspar Sollberger (Switzerland), co-chair of the contact group.
78. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee heard a final report from Mr. Kaspar Sollberger (Switzerland) and Ms. Jimena Nieto Carrasco (Colombia), co-chairs of the contact group.

79. The Intergovernmental Committee then considered a revised version of the text on compliance procedures and mechanisms submitted by the contact group and a draft recommendation accompanying the text.

80. The Intergovernmental Committee agreed to forward the revised text to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, for its consideration and approval.

81. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.9, as recommendation 3/6. The text of the recommendation as adopted is contained in annex I to the present report.

ITEM 4. ADDITIONAL ISSUES IDENTIFIED IN DECISION XI/1

4.1. Monitoring and reporting (Article 29)

82. The Intergovernmental Committee took up agenda item 4.1 at the 3rd session of the meeting, on 25 February 2014.

83. In considering the item, the Intergovernmental Committee had before it a note by the Executive Secretary on monitoring and reporting (UNEP/CBD/ICNP/3/9).

84. Statements were made by the representatives of Canada, the European Union and its Member States, Japan, Mexico, Switzerland, Thailand and Uganda (on behalf of the African Group).

85. A statement was also made by the representative of the International Indigenous Forum on Biodiversity.

86. At the 5th session of the meeting, on 25 February 2014, the Intergovernmental Committee discussed a draft recommendation submitted by the Co-Chair, reflecting the views expressed by participants and written submissions to the Secretariat.

87. Statements were made by the representatives of Canada, the European Union and its Member States, and Timor-Leste.

88. The draft recommendation, as orally amended, was approved for formal adoption by the Intergovernmental Committee as draft recommendation UNEP/CBD/ICNP/3/L.3.

89. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.3 as recommendation 3/7. The text of the recommendation as adopted is contained in annex I to the present report.

4.2. 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 (Articles 19 and 20)

90. The Intergovernmental Committee took up agenda item 4.2 at the 5th session of the meeting, on 26 February 2014.

91. The exchange of views began with presentations by the following panellists: Mr. Rodrigo Gonzalez Videla (Secretariat of Environment and Sustainable Development, Argentina); Ms. China Williams (Royal Botanic Gardens, Kew, United Kingdom); and Mr. Geoff Burton (United Nations University – Institute of Advanced Studies). A question-and-answer session was then held.

92. A summary of the panel presentations and question-and-answer session is contained in section A of annex II to the present report.

93. Following the panel presentations and question-and-answer session, the Intergovernmental Committee proceeded to consider the item. In doing so, the Committee had before it a note by the Executive Secretary containing information and views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines, best practices and

standards (UNEP/CBD/ICNP/3/10), a survey of model contractual clauses, codes of conduct, guidelines, best practices and standards by the United Nations University – Institute of Advanced Studies ((UNEP/CBD/ICNP/3/INF/2); and the report of the Informal Meeting for the Implementation of Articles 19 and 20 of the Nagoya Protocol (UNEP/CBD/ICNP/3/INF/3).

94. Statements were made by the representatives of Argentina, Brazil, Canada, the European Union and its Member States, Sudan and Switzerland.

95. Statements were also made by the representatives of the African Union, the Food and Agriculture Organization of the United Nations, and the World Intellectual Property Organization.

96. A further statement was made by the International Indigenous Forum on Biodiversity.

97. At the 7th session of the meeting, on 27 February 2014, the Intergovernmental Committee discussed a draft recommendation submitted by the Co-Chair, reflecting the views expressed by participants and written submissions to the Secretariat.

98. Statements were made by the representatives of Argentina, Canada, the European Union and its Member States, Namibia and Switzerland.

99. A statement was also made by the representative of the Food and Agriculture Organization of the United Nations.

100. The draft recommendation, as orally amended, was approved for formal adoption by the Intergovernmental Committee as draft recommendation UNEP/CBD/ICNP/3/L.7.

101. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee adopted draft recommendation UNEP/CBD/ICNP/3/L.7 as recommendation 3/8. The text of the recommendation as adopted is contained in annex I to the present report.

4.3. Exchange of views on the state of implementation of the Nagoya Protocol

102. The Intergovernmental Committee took up agenda item 4.3 at the 2nd session of the meeting, on 24 February 2014.

103. In considering the item, the Intergovernmental Committee had before it, as an information document, an explanatory note for the exchange of views on the state of implementation of the Nagoya Protocol (UNEP/CBD/ICNP/3/INF/7).

104. The exchange of views began with presentations by the following panellists: Mr. Hem Pande (National Focal Point for the Convention on Biological Diversity and Additional Secretary, Ministry of Environment and Forests, Government of India), Mr. Hugo-Maria Schally (Head of Unit, Global Sustainability, Multilateral Environmental Agreements and Trade), Mr. Preston Hardison (Tulalip Tribes), Mr. Selim Louafi (French Agricultural Research Centre for International Development (CIRAD), France) and Ms. Maria Julia Oliva (Union for Ethical BioTrade). A question-and-answer session was then held, followed by a general discussion.

105. The Intergovernmental Committee resumed the general discussion at the 3rd session of the meeting, on 25 February 2014.

106. A summary of the panel presentations, question-and-answer session and general discussion is contained in section B of annex II to the present report.

ITEM 5. OTHER MATTERS

107. At the 5th session of the meeting, on 26 February 2014, the Executive Secretary of the Convention on Biological Diversity reminded the Intergovernmental Committee that, to date, precisely 2,500 days remained until the deadline of achievement of the Aichi Biodiversity Targets.

108. At the 7th session of the meeting, on 27 February 2014, the Intergovernmental Committee heard a short presentation by Mr. Hem Pande (India) about a Global E-Network set up by Government of India, during its Presidency of the eleventh meeting of the Conference of Parties to the Convention on Biological Diversity. Designed to facilitate achievement of Aichi Biodiversity Target 16 through capacity-building, it was officially launched by the Executive Secretary to the Convention on 26 February 2014, during a side-event at the present meeting. The network was a platform for exchange of information and experiences among members to enable them to learn from each other and help the Protocol attain the required number of ratifications in time for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to take place in conjunction with the twelfth Conference of the Parties to the Convention in October 2014. It connected over 300 registered delegates, National Focal Points for the Convention and the Nagoya Protocol and other experts from across the globe. The United Nations Development Programme of India and United Nations Solution Exchange in India would extend technical support to anchor and moderate the network.

109. At the 9th session of the meeting, on 28 February 2014, the Intergovernmental Committee took note of the outcomes on tasks 7, 10 and 12 of the programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity from the eighth meeting of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions, as contained in information document UNEP/CBD/ICNP/3/INF/1.

110. At the same session, the representative of Namibia reiterated the importance of funding at least two participants from each Party to take part in the twelfth meeting of the Conference of the Parties, if the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol were to be held at the same time. In so doing, she echoed views expressed by other delegations during the course of the week that sufficient resources should be made available to allow for a balanced representation of developing countries at the concurrent meetings.

111. Also at that session, the representative of the European Union and its Member States proposed establishing an ad hoc technical expert group on exploring options for the participation of indigenous and local communities in the work to implement Article 30 of the Nagoya Protocol, prior to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Statements were made by the representatives of Brazil (on behalf of the Latin American and Caribbean Group), China, Colombia, Cuba, Malaysia, Mexico, Norway and Uganda. A statement was also made by the representative of the International Indigenous Forum on Biodiversity. Following the exchange of views, the representative of the European Union and its Member States withdrew the proposal, agreeing instead to consider convening such a meeting independently of any specific recommendation from the third meeting of the Intergovernmental Committee.

ITEM 6. ADOPTION OF THE REPORT

112. The present report was adopted, as orally amended, at the 9th session of the meeting, on 28 February 2014, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/ICNP/3/L.1 and Add.1).

ITEM 7. CLOSURE OF THE MEETING

113. Closing statements were made by the representatives of the representatives of: Peru, on behalf of the Latin American and Caribbean Group; Uganda, on behalf of the African Group; South Africa, on behalf of the Group of Like-Minded Megadiverse Countries; and Armenia, on behalf of the Central and Eastern European Group. A further closing statement was made by the representative of the International Indigenous Forum on Biodiversity.

114. The representative of the Republic of Korea said that it had been an honour to host the third meeting of the Intergovernmental Committee. The meeting had generated considerable momentum towards entry into force of the Nagoya Protocol and the holding of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol concurrently with the twelfth meeting of the Conference of the Parties to the Convention in October 2014. The Republic of Korea

looked forward to welcoming the participants to Pyeongchang again in October. As host, the Republic of Korea stood ready to work with the global biodiversity community towards achieving the Aichi Biodiversity Targets by 2020.

115. The representative of India, as President of the Conference of the Parties, congratulated the Republic of Korea on hosting a successful meeting. The progress made augured well for the future of the Nagoya Protocol. Large sections of the population in countries like his own would benefit from its early entry into force and the meeting had heightened expectations that the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol could be held in October 2014, as planned.

116. The Executive Secretary of the Convention on Biological Diversity thanked the Co-Chair and the Bureau for their hard work in making the present meeting a success. He had been overwhelmed by the commitment of countries to ensure the early entry into force of the Nagoya Protocol, which would make the present meeting the last of its kind. He thanked all the participants for the constructive spirit that had prevailed. He thanked the Government of Japan for its significant continuous financial support for the work of the Intergovernmental Committee. In closing, he extended his gratitude to the Government of Korea and the people of Gangwon province for their hospitality and commended the Republic of Korea for its plan to build a creative economy as a vehicle towards sustainable growth. He looked forward to seeing all of the participants again in Pyeongchang in October 2014 for the twelfth meeting of the Conference of the Parties to the Convention and, so he hoped, for the concurrent first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.

117. On 28 February 2014, following the customary exchange of courtesies, Ms. Janet Lowe (New Zealand), Co-Chair, closed the third meeting of the Intergovernmental Committee at 12.20 p.m.

*Annex I***RECOMMENDATIONS**

3/1.	Consideration of rules of procedure for meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (Article 26, paragraph 5)	15
3/2.	Draft provisional agenda for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol	16
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3/4.	Modalities of operation of the Access and Benefit-Sharing Clearing-House (Article 14, paragraph 4)	19
3/5.	Measures to assist in capacity-building and development and the strengthening of human resources and institutional capacities in developing country Parties and Parties with economies in transition	21
3/6.	Cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice and assistance, where appropriate (Article 30)	41
3/7.	Monitoring and reporting (Article 29)	47
3/8.	Information and views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines, best practices and standards	48

3/1. ***Consideration of rules of procedure for meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (Article 26, paragraph 5)***

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization *recommends* that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol adopt, at its first meeting, a decision along the following lines:

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

Noting that, according to Article 26, paragraph 5, of the Protocol, the rules of procedure for meetings of the Conference of the Parties to the Convention shall be applied, *mutatis mutandis*, under the Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of Parties to this Protocol,

Decides by consensus that:

(a) When rule 21 of the rules of procedure for meetings of the Conference of the Parties to the Convention is applied to meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol, this rule shall be supplemented, in accordance with Article 26, paragraph 3 of the Protocol, by the following paragraph:

“Where a member of the Bureau of the Conference of the Parties to the Convention representing a Party to the Convention but, at that time, not a Party to the Protocol, is substituted by a member elected by and from among the Parties to the Protocol, the term of office of the substitute member shall expire at the same time as the term of office of the member of the Bureau he or she substitutes.”

(b) When the rules of procedure for meetings of the Conference of the Parties to the Convention are amended by the Conference of the Parties to the Convention, those amendments shall apply *mutatis mutandis* to meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

3/2. *Draft provisional agenda for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol*

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,

Recalling paragraph 2 of decision XI/10 and paragraph 24 of decision XI/31 of the Conference of the Parties,

Noting the ongoing process of improving the efficiency of the structures and processes under the Convention and its Protocols,

Stressing the importance for the concurrent meetings of the Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to be organized in such a way as to allow the full participation of all Parties in an efficient and effective manner,

1. *Requests* the Executive Secretary, based on the views of Parties and in consultation with the Bureau of the Intergovernmental Committee for the Nagoya Protocol and the Bureau of the eleventh meeting of the Conference of Parties, to develop a proposal for the organization of the concurrent meetings of the Conference of Parties and the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, for consideration by the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention at its fifth meeting;

2. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Protocol adopt the draft provisional agenda annexed hereto as the agenda for its first meeting.

Annex

DRAFT PROVISIONAL AGENDA FOR THE FIRST MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE NAGOYA PROTOCOL

1. Opening of the meeting.
2. Adoption of the agenda.
3. Adoption of the rules of procedure for meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.
4. Organizational matters:
 - 4.1. Election of officers;
 - 4.2. Organization of work.
5. Report on the credentials of representatives to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.
6. Report 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.
7. Exchange of information and views on the status of the ratification and implementation of the Nagoya Protocol.
8. The Access and Benefit-sharing Clearing-House and information-sharing (Article 14).
9. Monitoring and reporting (Article 29).
10. Cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and address cases of non-compliance (Article 30).

11. Model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards (Article 19 and 20).
12. Guidance to the financial mechanism (Article 25).
13. Guidance on resource mobilization for the implementation of the Nagoya Protocol.
14. Cooperation with other international organizations, conventions and initiatives.
15. Programme budget for the biennium following the entry into force of the Nagoya Protocol.
16. Measures to assist in capacity-building, capacity development and strengthening of human resources and institutional capacities in developing country Parties and Parties with economies in transition (Article 22).
17. Measures to raise awareness of the importance of genetic resources and associated traditional knowledge (Article 21).
18. The need for and modalities of a global multilateral benefit-sharing mechanism (Article 10).
19. Date and venue of the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.
20. Other matters.
21. Adoption of the report.
22. Closure of the meeting.

3/3. *The need for and modalities of a global multilateral benefit-sharing mechanism (Article 10)*

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization

1. *Welcomes* the report of the Expert Meeting on Article 10 of the Nagoya Protocol on Access and Benefit-sharing (UNEP/CBD/ICNP/3/5) and the revised synthesis of the online discussions on Article 10 (UNEP/CBD/ICNP/3/INF/4); and

2. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Protocol, at its first meeting, adopt a decision along the following lines:

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

Noting the importance of having further discussions to reach a common understanding on the need for and modalities of a global multilateral benefit-sharing mechanism,

1. *Invites* Parties, other Governments, international organizations, indigenous and local communities, and relevant stakeholders to submit to the Executive Secretary views on: (i) situations which may support the need for a global multilateral benefit-sharing mechanism that are not covered under the bilateral approach; (ii) possible modalities for a global multilateral benefit-sharing mechanism as well as information regarding the implications of different scenarios on these modalities; and (iii) the areas requiring further consideration, as identified in paragraph 23 of the report of the Expert Meeting on Article 10 of the Nagoya Protocol (UNEP/CBD/ICNP/3/5). Such views may include, where available, reflections on any experiences gained working towards the implementation of the Nagoya Protocol.

2. *Requests* the Executive Secretary to:

(a) Prepare a synthesis of the views submitted in accordance with paragraph 1 above;

(b) Commission a study [, subject to the availability of funds,] on: (i) the experiences gained with the development and implementation of the Nagoya Protocol and other multilateral mechanisms; and (ii) the potential relevance of ongoing work undertaken by other processes, including case studies in relation to *ex situ* and *in situ* genetic resources [as defined by Article 2 of the Convention on Biological Diversity], traditional knowledge associated with genetic resources, and transboundary situations;

(c) Convene[, subject to the availability of funds,] a meeting of a regionally balanced expert group to review the synthesis of views and the study referred to in subparagraphs (a) and (b) above, with a view to reaching a common understanding on the areas requiring further examination, as identified in paragraph 23 of the report of the Expert Meeting, as referred to in paragraph 1 above, and submit the outcomes of its work for consideration by the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.

3/4. Modalities of operation of the access and benefit-sharing clearing-house (Article 14, paragraph 4)

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,

Recognizing that the Access and Benefit-sharing Clearing-House is critical for the successful implementation of the Nagoya Protocol,

Recalling that the Access and Benefit-sharing Clearing-House is an integral part of the clearing-house mechanism of the Convention,

1. *Notes* the progress made in the implementation of the pilot phase of the Access and Benefit-sharing Clearing-House and the capacity-building workshops held prior to the third meeting of the Intergovernmental Committee;

2. *Requests* the Executive Secretary to continue implementing the pilot phase of the Access and Benefit-sharing Clearing-House, in accordance with the guidance provided in recommendations 1/1 and 2/4, as well as the indicative work plan and timeline for activities endorsed by the Conference of the Parties in paragraph 2 of decision XI/1 C, and to make all necessary efforts to ensure that the Access and Benefit-sharing Clearing-House is fully functional by the time of entry into force of the Nagoya Protocol;

3. *Invites* Parties to designate a publishing authority and/or one or more national authorized users with a view to having a fully functional Access and Benefit-sharing Clearing-House by the time of entry into force of the Nagoya Protocol;

4. *Encourages* all Parties, in particular those that have ratified the Nagoya Protocol, to participate in the pilot phase of the Access and Benefit-sharing Clearing-House by publishing national records, including permits or equivalents constituting an internationally recognized certificate of compliance, and to provide feedback to the Executive Secretary;

5. *Requests* the Executive Secretary to make the information on access and benefit-sharing measures, competent national authorities, and national focal points currently hosted on the website of the Convention on Biological Diversity available in the Access and Benefit-sharing Clearing-House as draft records; and *invites* Parties to validate and publish the draft records in order to ensure that all national records in the Access and Benefit-sharing Clearing-House are up-to-date and have been validated by the publishing authority by the time of entry into force of the Nagoya Protocol;

6. *Invites* international organizations, indigenous and local communities, and relevant stakeholders to participate in the pilot phase of the Access and Benefit-sharing Clearing-House by registering reference records and providing feedback to the Executive Secretary;

7. *Also invites* the informal advisory committee to continue providing technical guidance to the Executive Secretary, fully taking into account the feedback received from Parties and other stakeholders during the pilot phase, 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;

8. *Requests* the Executive Secretary to report on the progress made and feedback received during the implementation of the pilot phase to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol;

9. *Also requests* the Executive Secretary to further refine the modalities of operation of the Access and Benefit-sharing Clearing-House, especially with regards to the identification of mandatory and non-mandatory information according to the provisions of the Nagoya Protocol, as well as the functionality and user-friendliness of the Access and Benefit-sharing Clearing-House, as further progress is made on the implementation of the pilot phase, taking into account the views expressed at the third meeting of the Intergovernmental Committee, as well as further feedback received from Parties and other stakeholders, for consideration and adoption by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol;

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

11. *Requests* the Executive Secretary to prepare a synthesis of views submitted in accordance with paragraph 10 above for consideration by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.

3/5. *Measures to assist in capacity-building and development and the strengthening of human resources and institutional capacities in developing country Parties and Parties with economies in transition*

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization *recommends* that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, at its first meeting, adopt a decision along the following lines:

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

Recalling Article 22 of the Nagoya Protocol, which requires Parties to cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement the Nagoya Protocol in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition,

Underscoring the critical importance of capacity-building and development to the effective implementation of the Nagoya Protocol,

Taking note of the views and domestic needs and priorities of Parties and indigenous and local communities contained in documents UNEP/CBD/ICNP/2/10 and UNEP/CBD/ICNP/2/INF/7,

Recognizing the wealth of experiences and lessons learned as well as the instruments and methodologies that have been developed under various access and benefit-sharing capacity development initiatives, such as those led by the Secretariat and those carried out by numerous partners and organizations with support of the Global Environment Facility and other donors, including, *inter-alia*, the ABS Capacity Development Initiative that has expanded from Africa to other regions,

Noting the need for sufficient financial resources for capacity-building and development activities to support the implementation of the Nagoya Protocol,

Welcoming the financial support provided so far by various donors for capacity-building and development activities in support of the ratification and implementation of the Nagoya Protocol,

Recognizing the need for a strategic and coordinated approach to capacity-building and development to support the effective implementation of the Nagoya Protocol,

Underlining the importance of broad stakeholder involvement, country ownership and political commitment to ensure the sustainability of capacity-building and development initiatives,

Recalling Article 14, paragraph 1, of the Nagoya Protocol that the Access and Benefit-sharing (ABS) Clearing-House is part of the clearing-house mechanism,

1. *Adopts* the strategic framework for capacity-building and development to support the effective implementation of the Nagoya Protocol, contained in annex I to this decision;

2. *Decides* to establish an informal advisory committee to provide advice to the Executive Secretary, until the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, on matters related to the assessment of the effectiveness of the strategic framework in accordance with the terms of reference contained in annex II, in view of the evaluation foreseen in 2020;

3. *Invites* Parties, other Governments, indigenous and local communities and relevant organizations to develop and implement capacity-building and development activities consistent with the strategic framework;

4. *Also invites* Parties, other Governments, the Global Environment Facility, international organizations, regional development banks, other financial institutions and the private sector, as appropriate, to provide financial resources to support the implementation of the strategic framework;

5. *Further invites* Parties, other Governments, indigenous and local communities, relevant organizations, and the private sector, as appropriate, to provide to the Access and Benefit-sharing Clearing-House information on their capacity-building and development initiatives, including emerging best practices and lessons learned, and opportunities relevant to the implementation of the strategic framework;

6. *Encourages* developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, as well as indigenous and local communities to make available through the ABS Clearing-House information regarding their capacity-building and development needs and priorities identified through national capacity self-assessments; and to incorporate them in their national strategies and action plans with respect to the implementation of the Convention;

7. *Encourages* relevant organizations to assist developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition to implement the strategic framework and contribute to the implementation of the Strategic Plan for Biodiversity 2011-2020, in particular the achievement of Aichi Biodiversity Target 16;

8. *Requests* the Executive Secretary to:

(a) Promote and facilitate, in collaboration with relevant organizations, coordination and cooperation in the implementation of the strategic framework by, *inter alia*, providing relevant tools and information through the ABS Clearing-House;

(b) Ensure that information on capacity-building and development needs, opportunities and activities can be submitted to and accessed from all platforms under the Convention so that access and benefit-sharing capacity development activities are integrated into the global capacity development activities under the Convention;

(c) Compile information on existing tools that assist Parties and indigenous and local communities to assess their capacity-building and development needs and priorities and to make the resulting information available through the ABS Clearing-House, and to report to the second meeting of the Parties to the Nagoya Protocol on the need for the development of new tools;

(d) Compile information on the capacity-building and development needs and priorities identified by Parties and indigenous and local communities and make it available to relevant organizations;

(e) Prepare updates on the status of implementation of the strategic framework and its contribution to the Strategic Plan for Biodiversity 2011-2020 for consideration by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its regular meetings, with the first update made available at the second meeting, taking into account the information submitted to the ABS Clearing-House by Parties, other Governments, indigenous and local communities and relevant organizations;

(f) Prepare an evaluation of the strategic framework in 2019 and submit the evaluation report for consideration by the meeting of the Parties to the Nagoya Protocol in 2020 to facilitate the review and possible revision of the strategic framework in conjunction with the review of the Strategic Plan for Biodiversity 2011-2020.

Annex I

**DRAFT STRATEGIC FRAMEWORK FOR CAPACITY-BUILDING AND DEVELOPMENT TO
SUPPORT EFFECTIVE IMPLEMENTATION OF THE NAGOYA PROTOCOL ON ACCESS
AND BENEFIT-SHARING**

EXECUTIVE SUMMARY

This strategic framework seeks to foster a strategic, coherent and coordinated approach to capacity-building and development for the effective implementation of the Nagoya Protocol. It provides guidance on the key areas and measures requiring capacity-building and development and includes a set of practical activities to build and develop the capacities of Parties, indigenous and local communities and relevant stakeholders to enable them to undertake strategic measures in the short, medium and long-term to contribute to the effective implementation of the Protocol.

The strategic framework is designed to serve as reference document to guide the policies and actions of Parties, relevant organizations and donors in relation to capacity-building and development for implementation of the Protocol and includes practical capacity-building and development activities.

The strategic framework covers five key areas for capacity-building and development:

1. Capacity to implement and to comply with the obligations of the Protocol;
2. Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing;
3. Capacity to negotiate mutually agreed terms;
4. Capacity of indigenous and local communities and relevant stakeholders, including the business sector and the research community, in relation to the implementation of the Protocol;
5. Capacity of countries to develop endogenous research capabilities to add value to their own genetic resources.

The strategic framework focuses on capacity-building and development for strategic measures that Parties may need to undertake in the short and medium-term (i.e., within the first six years until 2020), and in the long-term (beyond 2020) to build the foundation for effective implementation of the Protocol. The measures, summarized in a table contained in Appendix I, provide an indicative sequence of actions (roadmap) organized under three indicative timeframes.

The strategic framework is intended to assist and guide Parties, regional and international organizations, research and academic institutions, indigenous and local communities and other relevant stakeholders to build and develop capacity through projects and programmes to be implemented at national, subregional, regional and international levels, taking into account specific needs and priorities of countries.

The framework includes mechanisms to facilitate coordination and cooperation between and among Parties and relevant organizations on capacity-building and development for the effective implementation of the Protocol with a view to fostering synergies, mutual supportiveness, experience-sharing and lesson-learning and efficient utilization of available resources and expertise.

A comprehensive evaluation of the strategic framework will be carried out in 2020. The evaluation report will be used by the Conference of the Parties serving as the meeting of the Parties to the Protocol to review and revise, as appropriate, the strategic framework in conjunction with the review of the Strategic Plan for Biodiversity 2011-2020.

1. INTRODUCTION

1.1 Background

1. Article 22 of the Protocol requires Parties to cooperate in capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement the Protocol in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. Parties are also required to facilitate the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.

2. Currently, most developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition lack the necessary capacities to effectively implement the Protocol. For example, many do not yet have in place functional domestic legislative, administrative or policy measures on access and benefit-sharing and have not yet set up the institutional arrangements to support implementation of the Protocol at the national level. Many of them also lack experts in the area of access and benefit-sharing and related issues. As well, key stakeholders – including government officials, indigenous and local communities, the private sector and the public – are not fully aware of the provisions of the Protocol.

3. This strategic framework has been developed to facilitate cooperation among Parties, donors and other actors on capacity-building and development for the effective implementation of the Protocol and foster a strategic, coherent and coordinated approach to capacity-building and development. It delineates the general focus and strategic direction for building and developing core capacities at the individual, institutional and systemic levels that would underpin the implementation of the Protocol over the next decade.

4. This document is a result of a broad consultative process, which was initiated after the first meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol (the Intergovernmental Committee) held in June 2011 in Montreal. In its recommendation 1/2, the Intergovernmental Committee called for the development of a strategic framework for capacity-building and development on the basis of the domestic needs and priorities and the elements identified by Parties and indigenous and local communities. Subsequently the Executive Secretary prepared a synthesis of the views and information received. The synthesis was considered by the second meeting of the Intergovernmental Committee, which was held in July 2012 in New Delhi.¹

5. On the basis of the recommendation by the second meeting of the Intergovernmental Committee, the Conference of the Parties requested the Executive Secretary to organize an expert meeting to develop a draft strategic framework, taking into account the above-mentioned synthesis of views and information received, the wealth of experiences and lessons learned from existing access and benefit-sharing related capacity-building and development initiatives and access and benefit-sharing related bilateral cooperation, as well as the views expressed at the second meeting of the Intergovernmental Committee.²

6. The expert meeting, held from 3 to 5 June 2013 in Montreal, developed the draft strategic framework on the basis of the above information. The expert meeting also took into account outcomes from the workshops on capacity-building on access and benefit-sharing, which were organized by the Secretariat of the Convention on Biological Diversity and the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture in 2011 and 2012.³ The draft strategic framework was considered by the Intergovernmental Committee at its third meeting in February 2014 in the Republic of

¹ The synthesis was made available in document UNEP/CBD/ICNP/2/10.

² Decision XI/1 D, paragraph 4 and annex III.

³ The reports of these workshops (UNEP/CBD/ICNP/2/INF/1 and UNEP/CBD/ICNP/2/INF/9) are available at <http://www.cbd.int/icnp2/documents>.

Korea and recommended to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for adoption.

7. The strategic framework is a flexible and living document. It is intended to be used and adapted by Parties according to the different situations and contexts and will be updated on the basis of emerging experiences and lessons learned.

1.2 Current situation, previous experiences and lessons learned

8. There is a wide variation among countries with regard to the current status of implementation of access and benefit-sharing measures, the existing human resources and institutional capacities and the capacity needs and priorities. In response to the questionnaire sent out by the Secretariat in October 2011, a number of Parties expressed the need for capacity to develop national access and benefit-sharing measures and institutional arrangements, participate in the Access and Benefit-Sharing (ABS) Clearing-House, conduct valuation of genetic resources and associated traditional knowledge, address transboundary situations and national capacity for bioprospecting. The representatives of indigenous and local communities expressed the need to develop their capacity to participate in decision-making and policy development processes, to understand the provisions of the Protocol, to negotiate favourable access and benefit-sharing agreements and to develop inventories and monitor their genetic resources and traditional knowledge associated with genetic resources.

9. Many countries also lack clear and harmonized institutional arrangements and rules governing access and benefit-sharing, including procedures for obtaining prior informed consent and establishing mutually agreed terms. They also lack expertise to effectively carry out access and benefit-sharing regulatory functions and the capacity to collect, manage and share information on access and benefit-sharing. Moreover, the level of awareness of the Protocol and its provisions is very low in most countries. Key stakeholders, including government officials, indigenous and local communities, the private sector and the public are not aware of the requirements under the Protocol. There is also a need for capacity-building and development in all Parties for monitoring the utilization of genetic resources, including through checkpoints.

10. Prior to the adoption of the Protocol, a number of tools and initiatives were developed to assist Parties to implement Article 15 of the Convention on Biological Diversity. For example, an Action Plan on Capacity-building for Access and Benefit-sharing was adopted by the Conference of the Parties in 2004 to facilitate and support the development and strengthening of capacities of individuals, institutions and communities for the effective implementation of the provisions of the Convention relating to access to genetic resources and benefit-sharing. The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from their Utilization adopted in 2002 also assisted Parties, *inter alia*, to develop national regimes and contractual arrangements for access and benefit-sharing.⁴

11. Furthermore, various capacity-building and development initiatives have been implemented over the last few years.⁵ Many of those initiatives have provided training to individuals through face-to-face training seminars and workshops. Few have provided technical support for institutional capacity development and strengthening of capacity at the systemic level. Some initiatives have also developed virtual learning tools, including e-learning modules on access and benefit-sharing and some are supporting on-the-job training and exchange programmes. To date, however, there are very few academic institutions offering formal degree or diploma programmes in access and benefit-sharing.

12. Some of the lessons learned from past and ongoing access and benefit-sharing capacity-building and development initiatives include the following:

- (a) Addressing access and benefit-sharing capacity needs requires a programmatic approach;

⁴ The Action Plan and the Bonn Guidelines are available at <http://www.cbd.int/abs/action-plan-capacity> and <http://www.cbd.int/abs/bonn/default.shtml>.

⁵ Examples of past and ongoing initiatives can be accessed at <http://www.cbd.int/abs/capacity-building.shtml>.

(b) Capacity-building and development on access and benefit-sharing should target and involve a wide range of stakeholder groups;

(c) It is important that all parties involved in capacity-building and development have a clear understanding of the content and the implications of the Protocol;

(d) Regional and subregional initiatives have been effective in building and developing capacities of countries that have similar needs and situations.⁶ They allow countries to pool resources and share expertise available in the region; and

(e) Capacity-building and development requires adequate and consistent support over a relatively long period of time in order to secure effective and lasting results.

13. The development of this strategic framework has taken into account the current situation, the identified needs and priorities and the experiences and lessons learned from previous capacity-building initiatives.

1.3 Guiding principles and approaches

14. Implementation of capacity-building and development policies, activities, projects and other initiatives in support of the implementation of the Protocol should be guided by principles and approaches based on experiences and lessons learned from previous and current initiatives. In general, capacity-building and development initiatives should:

(a) Be demand-driven, based on the needs and priorities identified through national self-assessments;

(b) Ensure national ownership and leadership;

(c) Build on experiences and lessons learned from past and ongoing access and benefit-sharing capacity-building initiatives;

(d) Emphasize the role of bilateral and multilateral cooperation;

(e) Ensure full involvement of indigenous and local communities and relevant stakeholders, including women, in capacity-building and development initiatives;

(f) Recognize the usefulness and cost-effectiveness of subregional and regional approaches to capacity-building and development, particularly where countries have common capacity needs;

(g) Integrate capacity-building into wider sustainable development efforts;

(h) Adopt a learning-by-doing approach;

(i) Foster development of sustainable capacities to enable Parties to comply with the requirements of the Protocol; and

(j) Consider the views and experiences of different stakeholders involved in access and benefit-sharing.

15. The above guiding principles will help to inform the Parties' capacity-building efforts to ensure that they are developed in accordance with the strategic framework and foster a more streamlined and consistent approach.

⁶ Examples the ABS Capacity-Building Initiative and the ABS initiatives by the Association of Southeast Asian Nations (ASEAN), International Centre for Integrated Mountain Development (ICIMOD), Secretariat of the Pacific Regional Environment Programme (SPREP) and the Caribbean Community (CARICOM).

2. PURPOSE AND OBJECTIVES

16. The purpose of this strategic framework is to foster a systematic, coherent and coordinated approach to capacity-building and development for the effective implementation of the Protocol in accordance with Article 22. It also seeks to catalyse and guide the development, implementation, monitoring and evaluation of capacity-building and development initiatives on access and benefit-sharing. It provides a framework that Parties, indigenous and local communities and other relevant stakeholders can use to, *inter alia*, identify their capacity needs and priorities through national self-assessment; design and implement national capacity-building and development strategies, projects and programmes; and monitor and evaluate their capacity-building and development initiatives.

17. Furthermore, the strategic framework provides a mechanism that could enable Parties, relevant organizations, donors and partners involved in capacity development to cooperate and leverage opportunities and resources through strategic partnerships and synchronized initiatives. It would also foster coordination and dialogue among countries and relevant stakeholders and promote sustainability of capacity-building and development initiatives.

18. The strategic framework is to serve as reference document to guide the policies and actions of Parties, relevant organizations and donors in relation to capacity-building and development for implementation of the Protocol and includes specific practical activities to assist developing country Parties and Parties with economies in transition to build and develop their capacities to undertake measures to facilitate the effective implementation of the Protocol.

19. The strategic framework covers the following key areas:

- (a) Capacity to implement and to comply with the obligations of the Protocol;
- (b) Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing;
- (c) Capacity to negotiate mutually agreed terms; and
- (d) Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources.

20. In addition, the capacity needs and priorities of indigenous and local communities and relevant stakeholders, including the business sector and the research community, in relation to the implementation of the Protocol are addressed by the strategic framework.

21. Accordingly, the objectives of strategic framework are:

- (a) To build and develop the capacity for enabling the ratification of, or accession to, the Protocol;
- (b) To build and strengthen the capacity of Parties to develop, implement and enforce domestic legislative, administrative or policy measures to support implementation of the Protocol;
- (c) To support Parties in raising-awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues;
- (d) To enhance the capacity of Parties to negotiate mutually agreed terms, including through training and through development of model contractual clauses;
- (e) To assist Parties in promoting compliance with domestic access and benefit-sharing legislation and regulatory requirements and mutually agreed terms;
- (f) To increase the capacity of Parties to monitor the utilization of genetic resources, including the establishment of checkpoints;
- (g) To enable Parties to develop the endogenous research capabilities to add value to their own genetic resources;

(h) To build and develop the capacity of indigenous and local communities and relevant stakeholders, including the business sector and the research community, to effectively participate in the implementation of the Protocol;

(i) To enable Parties to effectively participate in the ABS Clearing-House and use the best available communication tools and Internet-based systems for access and benefit-sharing activities; and

(j) To promote coordination and mutual supportiveness of capacity-building and development initiatives for implementation of the Protocol and other international instruments on access and benefit-sharing.

3. STRATEGIC MEASURES REQUIRING CAPACITY-BUILDING AND DEVELOPMENT

22. The strategic framework focuses on capacity-building and development for strategic measures that Parties may need to undertake in the short and medium-term (i.e. within the first six years until 2020), and in the long-term (beyond 2020) in order to lay a strong foundation for the effective implementation of the Protocol and provide leverage for future capacity-building and development efforts. The proposed measures under each of the key areas are summarized in a table contained in Appendix I.

23. The measures in the table are organized in an indicative order of priority/sequence according to their temporal importance in supporting the implementation of the Protocol and are based on the information that was submitted to the Secretariat by Parties, indigenous and local communities and relevant stakeholders in 2011. It is recognized that the specific priorities vary from Party to Party depending on the situation of each Party, including its national development priorities and budgetary limitations and level of advancement with respect to access and benefit-sharing.

4. IMPLEMENTATION OF THE STRATEGIC FRAMEWORK

4.1 Practical activities to implement the strategic framework

24. The strategic framework may be implemented through practical capacity-building and development activities carried out at national, subregional, regional and international levels. An indicative list of activities is presented in Appendix II. The proposed activities are intended to contribute to building and developing the capacity to implement the strategic measures outlined in Appendix I.

25. The mechanisms for implementing this strategic framework would vary from country to country and from region to region depending on the measures requiring capacity-building and development. In accordance with the information received from Parties in response to the questionnaire sent out in 2011, the main delivery mechanisms include targeted education and training programmes, conferences and workshops, legal and technical assistance, development of guidance and reference materials, online discussion forums, scientific and technical cooperation, and funding support (including research grants). Other mechanisms include train-the-trainers and learning-by-doing approaches, on-the-job training, multi-stakeholder policy dialogue, study tours and exchange visits and institutional support.

26. The implementation of the strategic framework promotes various approaches to capacity-building, including participatory bottom-up and national, subregional and regional approaches and opportunities.

4.2 Roles and responsibilities

27. The strategic framework is intended to assist and guide Parties, regional and international organizations research and academic institutions, indigenous and local communities and other relevant stakeholders to build and develop capacity through national, subregional and, regional projects and programmes, taking into account the specific needs and priorities of the respective Parties or regions for the implementation of the Protocol. The Secretariat of the Convention on Biological Diversity is to promote and coordinate the implementation of the strategic framework by, *inter alia*, collecting and providing

information through the ABS Clearing-House. It would facilitate activities at the regional and international levels, including the following:

- (a) Informing capacity-building providers about existing capacity-building initiatives and about areas where there are capacity-building gaps;
- (b) Organizing train-the-trainers courses and workshops;
- (c) Identifying and mapping institutions and expertise available at various levels that could assist in the implementation of the strategic framework;
- (d) Developing training materials and disseminating them through the ABS Clearing-House;
- (e) Setting up online expert networks on access and benefit-sharing capacity-building and development; and
- (f) Facilitating communication and exchange of experiences among Parties and relevant organizations, including through the ABS Clearing-House.

28. The Conference of the Parties serving as the meeting of the Parties to the Protocol will be responsible for monitoring the progress made in the implementation of the strategic framework and providing further guidance, if necessary.

4.3 Resources for implementation

29. The main sources of funding for the capacity-building and development activities proposed in this strategic framework include, but are not limited to, the following:

(a) The Global Environment Facility (GEF) is an important source of funding for implementing this strategic framework.⁷ Parties are encouraged to give priority to access and benefit-sharing projects when distributing their country allocation for biodiversity under the System for Transparent Allocation of Resources (STAR);

(b) Bilateral and multilateral development assistance is another potential source of funding for access and benefit-sharing capacity-building and development activities. Parties are encouraged to develop project proposals in line with this framework and submit them to potential donors. Partners are invited to assist Parties to formulate good project proposals. Parties are encouraged to integrate access and benefit-sharing capacity-building and development activities in their national development plans which often guide the discussions with development cooperation agencies;

(c) Technical cooperation with regional and international partners: Parties are encouraged to establish strategic partnerships with various organizations, regional bodies or centres of excellence and, as appropriate, with the private sector with a view to pooling human and technical resources and widening opportunities for mobilizing financial resources from various sources;

(d) New and additional funding: Parties are encouraged to pursue innovative ways of mobilizing resources at the national level to support access and benefit-sharing capacity-building and development activities. These might include resource recovery mechanisms, access application fees, fundraising through voluntary contributions, support from foundations, and, as appropriate, public-private partnerships. Parties are also encouraged to direct some of the resources generated from the implementation of the Protocol towards capacity-building and development;

(e) National budgets: Parties are encouraged to include in their national budgets adequate provisions to support access and benefit-sharing capacity-building and development activities.

⁷ The measures and activities outlined in this strategic framework are covered in the programme priorities contained in the guidance that the Conference of the Parties provided to the GEF in its decision XI/5, paragraphs 21-23 and Appendix I.

30. The effective implementation of the strategic framework requires availability of adequate financial resources disbursed in a predictable and timely manner. Parties are encouraged to diversify domestic and external funding sources and/or employ different means of mobilizing new and additional resources.

4.4 Sustainability of capacity-building and development initiatives

31. Parties and relevant organizations are encouraged to establish measures to secure long-term sustainability of the capacity-building and development initiatives undertaken in line with this strategic framework. For examples, Parties and relevant organizations are encouraged to involve key stakeholders, including high-level policy and decision makers, politicians, relevant authorities, indigenous and local communities and relevant stakeholders, including the business sector and the research community, in the design and implementation of those initiatives in order to build ownership and political commitment.

32. Parties are also encouraged to integrate access and benefit-sharing considerations in their national development plans, strategies and sectoral policies and plans. Furthermore, activities implemented as part of individual projects (such as training workshops or courses) should be, as much as possible, incorporated into the regular programmes of relevant existing institutions such as local universities or research institution to ensure their sustainability at the end of the projects.

33. Moreover, capacity-building and development projects should include components to develop sufficient levels of institutional capacity that would help sustain the project activities and results after the projects are completed. In addition, Parties are encouraged to devise strategies to diversify the training of staff and to minimize the rate of turnover of personnel trained, in order not to compromise future implementation of the Protocol.

5. COORDINATION AND COOPERATION

5.1 Mechanisms for coordination

34. The Protocol requires Parties to provide information on national, regional and international capacity-building and development initiatives to the ABS Clearing-House, with a view to promoting synergy and coordination on capacity-building and development for access and benefit-sharing.⁸ In addition, coordination would be facilitated through the following mechanisms:

(a) Coordination meetings of government agencies, donors and relevant organizations involved in access and benefit-sharing capacity-building; and

(b) Online discussion forums and networks.

35. The objectives of these coordination mechanisms are to:

(a) Promote cooperation and synergies in the implementation of the strategic framework;

(b) Enhance efficiency in access and benefit-sharing capacity-building and development activities by avoiding duplication at different levels and across different sectors;

(c) Facilitate the sharing of experiences and best practices on access and benefit-sharing capacity-building and development; and

(d) Promote mutual supportiveness of capacity-building and development initiatives for implementation of the Protocol and of other international instruments on access and benefit-sharing.

36. Coordination should take place at international, regional, subregional and national levels. Regional and subregional meetings and existing institutional structures may be used to coordinate access and benefit-sharing capacity initiatives. The national focal points are encouraged to oversee coordination at the national level.

⁸ Article 22, paragraph 6, of the Protocol.

5.2 Cooperation among Parties and relevant organizations

37. Parties are encouraged to establish or use existing mechanisms to facilitate cooperation between and among Parties and relevant organizations on capacity-building and development for the implementation of the Protocol. Cooperation will help Parties and stakeholders complement each other's efforts and provide opportunities for pooling and maximizing available resources and expertise.

38. Initially, it is recommended that the main focus be placed on promoting or strengthening cooperation among Parties at subregional and regional levels, building upon existing initiatives and using existing bodies⁹ and mechanisms/programmes such as the South-South cooperation programme under the Convention on Biological Diversity and the South-South Cooperation Exchange Mechanism under the United Nations Environment Programme.

39. The Secretariat will also initiate cooperation with key partners to ensure mutual supportiveness in their capacity development efforts.

40. Areas of cooperation may include the following:

- (a) Development of joint capacity-building and development initiatives;
- (b) Establishment of exchange programmes between countries;
- (c) Organization of joint meetings, conferences, workshops and trainings to promote dialogue and mutual understanding of access and benefit-sharing issues;
- (d) Joint educational programmes on access and benefit-sharing, including internships or short-term courses;
- (e) Scientific and technical cooperation, including technology transfer, information and experience exchange, and funding support of local programmes and projects; and
- (f) Establishment of regional databases and websites to facilitate information exchange.

41. The Secretariat will conduct periodic assessments and mapping of institutions and organizations (both governmental and non-governmental) involved in capacity-building and development in access and benefit-sharing. Relevant institutions are invited and encouraged to establish a regional or subregional networks or learning communities on capacity-building and development for implementation of the Protocol in the respective regions or subregions.

6. MONITORING AND REVIEW

42. The Conference of the Parties serving as the meeting of the Parties to the Protocol will monitor the implementation of this strategic framework. Parties, indigenous and local communities and relevant organizations are invited to provide to the ABS Clearing-House information on capacity-building and development initiatives, including the results of those initiatives, using a common format developed by the Secretariat.

43. The Secretariat will prepare reports on the status of implementation of the strategic framework for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its regular meetings. The reports will highlight the main activities accomplished, the key results achieved and the challenges encountered. The report will provide a general sense of the overall progress made at different levels and identify the gaps and areas that might require additional intervention. The meeting of

⁹ Existing regional bodies and institutions that may be used include: the African Union Commission (AUC), Central African Forest Commission (COMIFAC); South Asian Association for Regional Cooperation (SAARC); Economic Cooperation Organization (ECO); Association of Southeast Asian Nations (ASEAN); International Centre for Integrated Mountain Development (ICIMOD); Gulf Cooperation Council; Arab League; Secretariat of the Pacific Regional Environment Programme (SPREP) and the Caribbean Community (CARICOM).

the Parties to the Protocol will review the progress made and provide guidance on measures for improvement.

44. An evaluation of the strategic framework will be carried out in 2020. The evaluation report will be used by the Conference of the Parties serving as the meeting of the Parties to the Protocol to review, and revise as appropriate, the strategic framework in conjunction with the review of the Strategic Plan for Biodiversity 2011-2020.

Appendix I

Overview of measures requiring capacity-building and development in order to effectively implement the Protocol based on the needs and priorities expressed by Parties and indigenous and local communities

Indicative timeframe ¹⁰	Key Area 1: Capacity to implement, and to comply with the obligations of the Protocol	Key Area 2: Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing (ABS)	Key Area 3: Capacity to negotiate mutually agreed terms (MAT)	Key Area 4: Capacity needs and priorities of indigenous and local communities (ILCs) and relevant stakeholders, including the business sector and the research community	Key Area 5: Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources (GR)
Short-term	<ul style="list-style-type: none"> - Enabling ratification of, or accession to, the Protocol - Raising-awareness of the importance of genetic resources (GR) and traditional knowledge associated with genetic resources (TK), and related ABS issues - Mapping of relevant actors, including other relevant international instruments on ABS, and existing expertise for the implementation of the Protocol. - Mobilizing new and innovative financial resources to implement the Protocol - Establishing mechanisms for domestic interagency coordination - Employing the best available communication tools and Internet-based systems for ABS activities including providing information to the ABS Clearing-House - Developing mechanisms to implement and comply with the obligations of the Protocol 	<ul style="list-style-type: none"> - Developing a policy framework on ABS. - Taking stock of existing domestic ABS measures to identify gaps in light of the obligations of the Protocol. - Setting-up new or amending existing ABS legislative, administrative or policy measures with a view to implementing the Protocol - Developing regional model legislation - Establishing institutional arrangements and administrative systems for ABS - Developing procedures for granting or refusing to grant prior informed consent (PIC) 	<ul style="list-style-type: none"> - Promoting equity and fairness in negotiation of MAT, including through training in relevant legal, scientific and technical skills. - Developing model sectoral and cross-sectoral contractual clauses (to provide guidance in the negotiation of MAT) - Developing and implementing pilot ABS agreements - Promoting better understanding of business models in relation to the utilization of genetic resources - Developing capacity to enhance transparency about the utilization of GR and TK in accordance 	<ul style="list-style-type: none"> - Participating in legal, policy and decision-making processes - Developing minimum requirements, as appropriate, for MAT to secure the fair and equitable sharing of benefits arising from the utilization of TK - Developing community protocols in relation to access to TK and the fair and equitable sharing of benefits arising from the utilization of that knowledge - Developing model contractual clauses for benefit-sharing arising from the utilization of TK - Enhancing the capacity of ILCs, in particular women within those communities, in relation to access to genetic resources and/or TK 	<ul style="list-style-type: none"> - Developing and using methods for valuation of GRs and associated TK

¹⁰ The indicative timeframe relates to the period within which implementation of the identified measures may be initiated. Short-term covers the period 2014-2017; medium-term covers 2018-2020; and long-term covers the period beyond 2020.

Indicative timeframe ¹⁰	Key Area 1: Capacity to implement, and to comply with the obligations of the Protocol	Key Area 2: Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing (ABS)	Key Area 3: Capacity to negotiate mutually agreed terms (MAT)	Key Area 4: Capacity needs and priorities of indigenous and local communities (ILCs) and relevant stakeholders, including the business sector and the research community	Key Area 5: Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources (GR)
			with the Nagoya Protocol after they have left the provider country, as appropriate		
Medium-term	<ul style="list-style-type: none"> - Developing mechanisms to monitor the utilization of genetic resources, including through designation of checkpoints. - Reporting on measures taken to implement the Protocol - Developing mechanisms for promoting mutual supportiveness with other relevant international instruments 	<ul style="list-style-type: none"> - Promoting compliance with domestic legislation or regulatory requirements on ABS 		<ul style="list-style-type: none"> - Developing capacity to negotiate MAT - Increasing understanding of the obligations of the Parties under the Protocol - Enhancing the capacity of relevant stakeholders in relation to ABS 	<ul style="list-style-type: none"> - Facilitating transfer of technology and developing infrastructure for research, and building technical capacity to make such technology transfer sustainable
Long-term	<ul style="list-style-type: none"> - Promoting compliance with mutually agreed terms - Enhancing the contribution of ABS activities to the conservation of biological diversity and the sustainable use of its components - Developing measures regarding access to justice in relation to ABS cases - Addressing transboundary issues 			<ul style="list-style-type: none"> - Managing TK associated with genetic resources 	<ul style="list-style-type: none"> - Undertaking research and taxonomic studies related to conservation of biological diversity and sustainable use of its components and bioprospecting, - Developing genetic resources databases

Appendix II

PRACTICAL CAPACITY-BUILDING AND DEVELOPMENT ACTIVITIES TO SUPPORT THE EFFECTIVE IMPLEMENTATION OF THE PROTOCOL

Key Area 1: Capacity to implement and comply with the obligations of the Protocol

Strategic measure	Indicative capacity-building and development activities
1.1 Enabling ratification of, or accession to, the Protocol	<ul style="list-style-type: none"> • Development of a manual on the ratification of, or accession to, the Protocol including templates for briefing documents for high government officials based on experiences of countries that have already ratified the Protocol. • Organization of workshops for government officials on the provisions of the Protocol. • Provision of funding support and technical assistance/resource persons for organization of stakeholder consultation workshops on the provisions of the Protocol. • Organization of training for ABS National Focal Points on the management of multi-stakeholder processes in the ABS issues.
1.2 Raising awareness of the importance of GR and TK, and related ABS issues	<ul style="list-style-type: none"> • Development of toolkits to guide Parties and other stakeholders on how to design and conduct awareness-raising activities on the Protocol. • Organization of workshops for government officials and other stakeholders relevant for ABS implementation on how to communicate ABS issues. • Organization of workshops for journalists and other media and communication experts on the importance of GR and TK, and related ABS issues. • Development of guidelines on how to integrate ABS issues into post-secondary school curricula and informal education programmes. • Design and organization of short courses on ABS in universities.
1.3 Mapping of relevant actors, including other relevant international instruments on ABS, and existing expertise for the implementation of the Protocol	<ul style="list-style-type: none"> • Development of explanatory material on ABS stakeholder mapping and analysis. • Development of templates to assist Parties in taking stock of existing expertise on ABS. • Organization of training in stakeholder identification and analysis skills for government officials in charge of ABS. • Provision of technical assistance for establishment of mechanisms to facilitate networking among various actors.
1.4 Mobilizing new and innovative financial resources to implement the Protocol	<ul style="list-style-type: none"> • Organization of training of government officials in resource mobilization skills (e.g. project development, fundraising and resource recovery). • Provision of technical assistance for the development of national resource mobilization strategies.
1.5 Establishing mechanisms for domestic interagency coordination	<ul style="list-style-type: none"> • Documentation of case studies on best practices and lessons learned on interagency coordination from existing bodies involved in ABS issues. • Provision of technical assistance for the establishment of mechanisms to facilitate domestic interaction among agencies, including for assessment of options and sustainability.
1.6 Employing the best available communication tools and Internet-based systems for ABS activities including providing information to the ABS Clearing-House	<ul style="list-style-type: none"> • Provision of technical assistance and training in the use of the best available communication tools and Internet-based systems for ABS activities. • Development or adaptation of communication tools, such as webinars, social media and e-learning, for dissemination of existing information material on ABS. • Development of suitable information -sharing platforms linked to the ABS Clearing-House.

Strategic measure	Indicative capacity-building and development activities
	<ul style="list-style-type: none"> • Development of e-learning modules and hands-on training on the use of the ABS Clearing-House and the clearing-house mechanism.
1.7 Developing mechanisms to monitor the utilization of genetic resources, including the designation of checkpoints	<ul style="list-style-type: none"> • Development of guidelines for the establishment of checkpoints in-country, including roles and functioning of checkpoints. • Organization of trainings of government officials responsible for managing checkpoints.
1.8 Reporting on measures taken to implement the Protocol	<ul style="list-style-type: none"> • Provision of technical and financial assistance to prepare national reports.

Key Area 2: Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing

Strategic measure	Indicative capacity-building and development activities
2.1 Developing a domestic policy framework on ABS	<ul style="list-style-type: none"> • Provision of technical assistance for analysis of existing ABS-related policies for the identification of gaps. • Provision of technical assistance for developing policy frameworks on ABS. • Development of tools (for example guidelines, and case studies,) to facilitate integration of ABS considerations into sectoral and cross-sectoral policies and plans.
2.2 Taking stock of existing domestic measures to identify gaps in light of the obligations of the Protocol	<ul style="list-style-type: none"> • Provision of technical assistance for taking stock of existing measures relevant to the implementation of the Protocol. • Development of guidelines on how to coordinate relevant national ABS policies, laws and regulations to ensure consistency and legal clarity.
2.3 Setting-up new or amending existing ABS legislative, administrative or policy measures with a view to implementing the Protocol	<ul style="list-style-type: none"> • Provision of technical and legal assistance for reviewing, updating and/or developing domestic ABS legislative, administrative or policy measures, including, as appropriate, provisions on customary use and exchange of genetic resources and TK. • Development of guidelines on drafting or, revising ABS legislative, administrative or policy measures. • Organization of trainings (for example workshops, courses and e-learning modules) in drafting of ABS legislative, administrative or policy measures. • Provision of technical assistance for the establishment of mechanisms for conducting stakeholder consultations on the development of ABS legislative, administrative or policy measures.
2.4 Developing regional model legislation	<ul style="list-style-type: none"> • Provision of technical and legal assistance to existing regional institutions, where appropriate, to draft model regional legislation and regulations that can be adapted to the national situations. • Provision of technical assistance to regional organizations for the development of guidelines to support coherent implementation of the Protocol at the national level.
2.5 Establishing institutional arrangements and administrative systems for ABS	<ul style="list-style-type: none"> • Facilitating the establishment of institutional arrangements and coordination mechanisms for implementing ABS legislative, administrative or policy measures, through working with national institutions to enhance synergies. • Organization of trainings for government officials in the implementation of ABS legislative, administrative or policy measures. • Facilitating sharing of knowledge and expertise on ABS measures through on-job-training and peer-to-peer exchange programmes, regional and subregional learning communities and networks. • Provision of technical assistance for the development of administrative procedures for implementing the ABS measures. • Development of guidelines for differentiating requests for access to genetic resources for commercial and non-commercial use. • Development of guidelines for establishment of simplified measures on access to genetic resources for non-commercial research purposes.

Strategic measure	Indicative capacity-building and development activities
2.6 Developing procedures for granting or refusing to grant prior informed consent (PIC)	<ul style="list-style-type: none"> • Development of explanatory notes on the different components of PIC • Development of guidelines on granting PIC, including formats • Organization of trainings and orientation programmes on granting PIC
2.7 Promoting compliance with domestic legislation or regulatory requirements on ABS	<ul style="list-style-type: none"> • Provision of technical assistance to raise awareness of national ABS legislative, policy and administrative measures. • Documentation and dissemination of case studies on good practices in enforcing and promoting compliance with ABS measures. • Organization of trainings for border control personnel on biodiversity and ABS issues.

Key Area 3: Capacity to negotiate mutually agreed terms

Strategic measure	Indicative capacity-building and development activities
3.1 Promoting equity and fairness in negotiation of MAT, including through training in relevant legal, scientific and technical skills	<ul style="list-style-type: none"> • Development of explanatory notes on the different components of MAT and relevant actors. • Organization of trainings and orientation programmes on negotiation of MAT, including modules on technical and legal aspects. • Orientation programme on IPR-related issues of MATs. • Development of an operational manual on MAT, covering, <i>inter alia</i>, how to negotiate MAT and the roles and responsibilities of relevant actors. • Development of a review paper on legal frameworks linked to MAT process. • Development of toolkit on MAT and organization of trainings and orientation programmes using the toolkit. • Development of guidance on including provisions in MAT to share information on the implementation of MAT, including through reporting requirements. • Development of a manual on dispute settlement and organization of orientation programmes for legal experts and others on this regard. • Organization of training programmes for national focal points and stakeholders on issues related monitoring and compliance with MAT.
3.2 Developing model sectoral and cross-sectoral contractual clauses	<ul style="list-style-type: none"> • Development of legal training on contract law for non-lawyers • Development of model contractual clauses and contracts, including for different sectors. • Organization of trainings on how to use the model contracts.
3.3 Developing and implementing pilot ABS agreements	<ul style="list-style-type: none"> • Documentation of case studies on ABS agreements, including examples of beneficiaries, monetary and non-monetary benefits, modalities of benefit-sharing and the use of benefits.
3.4 Promoting better understanding of business models in relation to the utilization of genetic resources	<ul style="list-style-type: none"> • Development of a manual on business models in relation to the utilization of genetic resources for various sectors. • Organization of trainings in business models in relation to the utilization of genetic resources for various sectors. • Development of modules on bioprospecting and bioresource-based enterprise development.

Key Area 4: Capacity of indigenous and local communities and relevant stakeholders, including business sector and the research community, in relation to the implementation of the Protocol

Strategic measure	Indicative capacity-building and development activities
4.1 Participating in legal, policy and decision-making processes	<ul style="list-style-type: none"> • Organization of training of ILCs, including women within those communities, on the provisions of the Protocol and how it will work, including the understanding of legal, policy and decision-making processes on ABS issues, acknowledging the value of their TK. • Provision of technical assistance and trainings to enable indigenous and local communities and relevant stakeholders to participate in the development of ABS measures. • Organization of trainings for other relevant stakeholders, including the business sector and the research community, on the implementation of the Protocol.
4.2 Developing minimum requirements, as appropriate for MAT to secure the fair and equitable sharing of benefits arising from the utilization of TK	<ul style="list-style-type: none"> • Development of minimum requirements, as appropriate, for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of TK. • Development of ‘train the trainer’ workshops for ILCs and other relevant stakeholders including the business sector and the research community, on how to use minimum requirements, as appropriate, for MAT in order to secure the fair and equitable sharing of benefits arising from the utilization of TK.
4.3 Developing community protocols in relation to access to TK and the fair and equitable sharing of benefits arising from the utilization of that knowledge	<ul style="list-style-type: none"> • Development of ‘train the trainer’ workshops, including the production of materials for ILCs on how to develop community protocols in relation to access to TK and the fair and equitable sharing of benefits arising from the utilization of that knowledge. • Development of e-learning modules and other tools on how to develop community protocols in relation to access to TK and the fair and equitable sharing of benefits arising from the utilization of that knowledge.
4.4 Developing model contractual clauses for benefit-sharing arising from the utilization of TK	<ul style="list-style-type: none"> • Development of ‘train the trainer’ modules for developing and using contractual clauses and ABS agreements for benefit-sharing arising from the utilization of TK. • Development of practical guidance tools on model contractual clauses on TK.
4.5 Enhancing the capacity of ILCs, in particular women within those communities, in relation to access to genetic resources and/or TK	<ul style="list-style-type: none"> • Translation of relevant materials into local languages. • Provision of technical assistance for establishment of help desks for indigenous and local communities and relevant stakeholders. • Provision of technical assistance for establishment and implementation of peer-to-peer learning programmes, including mentorship and on-the-job training programmes. • Orientation and training programmes to enable ILCs to realize the potential of TK through its documentation, protection and use.
4.6 Negotiating favourable MAT	<ul style="list-style-type: none"> • Development of templates and guidelines to facilitate capacity needs self-assessments for MAT. • Organization of training workshops/ courses for ILCs and other relevant stakeholders, including the business sector and the research community, on negotiation of mutually agreed terms. • Development of tailored e-learning modules for ILCs and other relevant stakeholders, including the business sector and the research community, on negotiation of MAT/ ABS agreements.
4.7 Increasing understanding of the obligations of Parties under the Protocol with regard to TK and ILCs	<ul style="list-style-type: none"> • Organization of seminars and workshops on the obligations of Parties under the Protocol with regard to TK and ILCs. • Development of guidelines on how to establish mechanisms to facilitate coordination across government departments/agencies and local authorities governing ABS with regard to TK and ILCs. • Documentation and dissemination of case studies on good practices with regard to TK and ILCs relating to ABS in order to enable practitioners to learn and build on the experience of others. • Supporting the establishment of online learning platforms to facilitate self-directed learning on ABS provisions.

Key Area 5: Capacity of countries to develop endogenous research capabilities to add value to their own genetic resources

Strategic measure	Indicative capacity-building and development activities
5.1 Developing and using methods for valuation of genetic resources and associated traditional knowledge	<ul style="list-style-type: none"> • Development of methodologies for assessing the potential commercial value of specific genetic resources and TK building on good practices in the context of ABS. • Facilitating the development of inter-linkages with other initiatives/methodologies/instruments for valorizing genetic resources and TK, for example through knowledge exchange. • Documentation and dissemination of case studies on good practices and lessons learned to develop understanding of the value chain through analysing business models. • Supporting multi-stakeholder approaches to integrate the potential value of genetic resources and TK into decision-making processes for example through, the development of guidelines on how to establish mechanisms to facilitate coordination across government departments/agencies and local authorities governing ABS.
5.2 Facilitating transfer of technology and developing infrastructure for research and building technical capacity to make such technology transfer sustainable	<ul style="list-style-type: none"> • Provision of technical assistance for joint research and scientific cooperation (e.g. peer-to-peer learning programmes), including transfer and development of technology. • Provision of support (e.g. train the trainer workshops, mentorships and on the job training) to establish facilities in developing countries in order to train researchers and maintain existing skills, including on TK. • Provision of technical assistance to develop research capabilities of domestic institutions and universities to add value to genetic resources. • Supporting collaborative approaches to technical and scientific research and development programmes.
5.3 Undertaking research and taxonomic studies related to conservation of biological diversity and sustainable use of its components and bioprospecting	<ul style="list-style-type: none"> • Providing technical assistance to support the development or strengthening of genetic resources databases. • Organization of trainings on bioprospecting and value-addition for genetic resources for ILCs, small and medium enterprises and private sector. • Organization of trainings on research and taxonomic studies related to conservation of biological diversity and sustainable use of its components. • Building capacity to undertake research and development of genetic resources to the commercialization stage.

Annex II

TERMS OF REFERENCE OF THE INFORMAL ADVISORY COMMITTEE ON CAPACITY-BUILDING FOR THE IMPLEMENTATION OF THE NAGOYA PROTOCOL

I. MANDATE

1. The mandate of the informal advisory committee on capacity-building (CB-IAC) is to provide advice to the Executive Secretary on matters of relevance to the assessment of the effectiveness of the strategic framework for capacity-building and development to support the effective implementation of the Nagoya Protocol. Its specific tasks include providing advice regarding:

(a) Stocktaking of the capacity-building and development initiatives being implemented by various organizations with a view to identifying gaps in the implementation of the strategic framework;

(b) The need for the development of new tools, guidelines and training materials, including e-learning modules, to facilitate capacity-building and development initiatives of Parties, other governments, indigenous and local communities and other stakeholders;

(c) Facilitation of coordination, synergy, coherence and complementarity among capacity-building and development activities, taking into account information on capacity-building and development needs and activities available in the ABS Clearing-House and from other sources;

(d) Facilitation for matching the capacity-building and development needs identified by Parties with potential opportunities and resources to support the implementation of the strategic framework;

II. COMPOSITION

2. The informal advisory committee will comprise fifteen experts selected by Executive Secretary on the basis of nominations by Parties with due regard to equitable geographic representation and gender balance and shall include representatives of indigenous and local communities and relevant organizations.

3. The informal advisory committee may also draw on existing expertise and liaise with relevant international, regional and national organizations, as appropriate, in the execution of its mandate.

III. OPERATIONAL PROCEDURES

4. Subject to the availability of financial resources, the informal advisory committee will meet as needed to ensure timely provision of advice, and will, wherever possible, meet back-to-back with other relevant meetings.

5. Where possible, the Secretariat will use available means of electronic communication to reduce the requirement for face-to-face meetings.

3/6. *Cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice and assistance, where appropriate (Article 30)*

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,

Recalling Article 30 of the Nagoya Protocol, which requires the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, at its first meeting, to consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance,

Agrees to forward the text of the draft cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Nagoya Protocol and to address cases of non-compliance contained in the annex to the present recommendation to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for its consideration and approval.

Annex

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 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, cooperative, simple, expeditious, advisory, facilitative, flexible and cost-effective in nature.
3. The operation of the compliance procedures and mechanisms shall be guided by the principles of fairness, due process, rule of law, non-discrimination, transparency, accountability, predictability, good faith and effectiveness. 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 take into full consideration the difficulties they face in the implementation of the Protocol.

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, on the basis of three members endorsed by each of the five regional groups of the United Nations. [Nominees could include representatives of indigenous and local communities]. [In addition, [one][two] representative[s] of indigenous and local communities nominated by [Parties][x] shall serve as [observers][non-voting members][members]]. Nominees shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP)¹¹
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, in the best interests of the Protocol and in their individual expert capacity.
5. Members shall be elected by the COP-MOP for a period of four years, this being a full term. 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.

¹¹ Depending on the approach adopted in paragraph 2, consequential changes may need to be made.

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. Two-thirds of the members of the committee shall constitute a quorum.
- 9 *bis*. 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 [8][9][10][11] 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.
10. The meetings of the Committee shall be open, unless the Committee decides otherwise. When the Committee is dealing with individual cases of Parties whose compliance is under consideration, the meetings of the Committee shall be open to Parties and closed to the public, unless the Party concerned agrees otherwise.
- 10 *bis* “The Party concerned” means the Party in respect of which an issue has been raised under section D.
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*¹²

1. The Committee shall, with a view to promoting compliance with the provisions of the Protocol and addressing cases of non-compliance, perform the functions under these procedures and any other functions assigned to it by the COP-MOP.
2. In performing its functions, the Committee may consult with the compliance committees of other agreements in order to share experience on compliance issues and options for their resolution.
3. 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.
4. [The Committee shall not consider any questions concerning the interpretation of, implementation of, or compliance with mutually agreed terms [and][or compliance with] national law][as such, unless those

¹² Depending on the resolution of section D, paragraph 10, the following paragraphs may need to be addressed:

(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 national reports provided for in Article 29 of the Protocol;]

terms or laws entail cases of non-compliance with the Protocol][or non-compliance arising from failure to put in place national law by developing countries to the Protocol due to lack of capacity and resources].

5. [The Committee shall not consider any questions or complaints related to the conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources.]

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;

(c) The COP-MOP;

(d) [The Secretariat [, when a Party fails to file a report pursuant to Article 29, provided that the matter has not been resolved within ninety days by consultation with the Party concerned [, or based on information from the national reports or the ABS Clearing-House that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol][, or related information provided to the Secretariat by an indigenous and local community, related to provisions of the Nagoya Protocol of direct concern to that indigenous and local community, provided that the Secretariat has informed that Party and given that Party the opportunity to respond within [x] days]]:]

(e) [Members of the public; or]

(f) [Indigenous and local communities [supported by the Party on whose national territory they are located][on matters relating to compliance with the provisions of the Nagoya Protocol relating to their customary laws, community protocols and procedures, as applicable, with respect to their traditional knowledge associated with genetic resources][when directly affected in cases concerning traditional knowledge associated with genetic resources].]

2. Any submission is to be addressed in writing to the Committee through 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.

3. The Secretariat shall forward any submission under paragraphs 1 (a) above to the Committee within 30 calendar days of receipt.

4. The Secretariat shall forward any other submission under paragraph 1 to the Party concerned within 30 calendar days of receipt.

5. When the Party concerned has received a submission it should respond and provide relevant information within 60 calendar days from the date of receipt of the submission, unless the Party requests an extension. Such extension may be granted, by the Chair of the Committee, for a period of up to 90 calendar days.

6. 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 initial or extended period as referred to in paragraph 6 above, the Secretariat shall forward the submission to the Committee forthwith.

7. The Committee may decide not to consider any submission made pursuant to paragraphs 1 (b) to 1 (...) above that [is *de minimis* [or manifestly ill-founded]][does not meet the requirements set out in paragraph 3 above][is anonymous].

8. The Party concerned [and the Party [or entity] that made the submission] may participate in the consideration of the submission and present responses or comments to the Committee, but shall not take part in the elaboration and adoption of the recommendations of the Committee. The Committee shall make available the draft recommendations to the [Party concerned][mentioned Parties], which shall be given an opportunity to comment. [Any such comment is to be reflected in [and/or attached to] the report of the Committee.]

9. [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 may seek, receive and consider information from relevant sources [, including from affected indigenous and local communities]. The reliability of the information should be ensured.
2. The Committee may seek advice from independent experts.
3. 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 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.
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) 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;
 - (c) Invite the Party concerned to submit progress reports on its efforts to comply with its obligations under the Protocol;
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)-(c) above;
 - (b) Facilitate [or provide], as appropriate, access to financial and technical assistance, technology transfer, training and other capacity-building measures;
 - (c) Issue a written caution, statement of concern or a declaration of non-compliance to the Party concerned;
 - (d) [In cases of grave or repeated non-compliance decide the appropriate measures, according to international law];

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

(f) Decide on any other measure, as appropriate, in accordance with Article 26, paragraph 4 of the Protocol.

[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.

3/7. Monitoring and reporting (Article 29)

The Intergovernmental Committee for 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, taking into account the need for clear and simple reporting requirements, to prepare a draft format for an interim national report for consideration by the first meeting of the Conference of the Parties serving as the meeting of the Nagoya Parties to the Protocol. The draft format should:

(a) Avoid duplication in relation to the submission of information already made available through the Access and Benefit-sharing Clearing-House and national reports under the Convention on Biological Diversity;

(b) Consist of simple structured questions allowing for flexibility to respond to checkboxes, as well as to provide narrative information, in particular on difficulties encountered in implementing the Nagoya Protocol; and

(c) Allow for submission of information through the Access and Benefit-sharing Clearing-House, including the option to submit information offline.

2. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, at its first meeting, adopt a decision along the following lines:

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

1. *Requests* the Executive Secretary to make the format for the interim national report annexed hereto available through the Access and Benefit-sharing Clearing-House, including the option to submit information offline;

2. *Invites* Parties and other Governments to submit an interim national report on the implementation of their obligations under the Nagoya Protocol:

(a) In an official language of the United Nations;

(b) Through the ABS Clearing-House; and

(c) Twelve months prior to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.

3. *Requests* the Executive Secretary to consolidate information contained in the interim national reports received and information published in the Access and Benefit-sharing Clearing-House for the consideration of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, as a contribution to the assessment and review of the effectiveness of the Protocol by the Conference of the Parties serving as the meeting of the Parties to the Protocol, pursuant to Article 31;

4. *Invites* the Global Environment Facility to make financial resources available, with a view to assist eligible Parties to prepare their national reports;

5. *Decides* to consider the intervals for reporting at its third meeting; and

6. *Further decides* to keep the format of the national report under review, based on feedback received from Parties and the experience gained.

3/8. ***Information and views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines, best practices and standards***

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization *recommends* that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, at its first meeting, adopt a decision along the following lines:

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

Taking into account relevant ongoing work of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions, on Tasks 7, 10, 12 and 15, concerning standards and guidelines,

Also taking into account, as appropriate, the existing sectoral and cross-sectoral model contractual clauses, voluntary codes of conducts, guidelines and best practices and/or standards related to access and benefit-sharing developed by Parties, relevant international organizations and indigenous and local communities,

Recognizing the need for the Executive Secretary to engage, as appropriate, with relevant international processes, relevant to Articles 19 and 20,

1. *Encourages* Parties, other Governments, international organizations, indigenous and local communities as well as relevant stakeholders to submit tools developed under Articles 19 and 20 to the ABS Clearing-House;

2. *Also encourages*, as appropriate, the updating of tools relevant to Articles 19 and 20 that were developed prior to the Nagoya Protocol;

3. *Decides* to take stock of the use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing four years following the entry into force of the Protocol and in conjunction with the first assessment and review of the Nagoya Protocol.

Annex II

EXCHANGE OF VIEWS

A. EXCHANGE OF VIEWS ON THE STATE OF THE DEVELOPMENT, UPDATING AND USE OF SECTORAL AND CROSS-SECTORAL MODEL CONTRACTUAL CLAUSES, VOLUNTARY CODES OF CONDUCT, GUIDELINES AND BEST PRACTICES AND/OR STANDARDS (ARTICLES 19 AND 20)

I. BACKGROUND

1. Pursuant to paragraph 6 of decision XI/1 A of the Conference of the Parties, the third meeting 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 held an 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, at the 5th session of the meeting, on 26 February 2014, under agenda item 4.2. Prior to the meeting, Parties, other governments, relevant international organizations, indigenous and local communities and other interested stakeholders had been invited to submit information on the matter, which had been made available through the Access and Benefit-sharing Clearing-House during the pilot phase.

II. PANEL PRESENTATIONS

2. The exchange began with presentations from a panel of speakers representing a range of perspectives.

Mr. Rodrigo Gonzalez Videla, Secretariat of Environment and Sustainable Development, Argentina

3. Mr. Gonzalez Videla, giving a brief overview of the history of the access and benefit-sharing process in Argentina, said that a resolution had been adopted in 2010 that governed access to genetic resources and fair and equitable sharing of the benefits arising out of their utilization. The document was based on the Bonn Guidelines and the documents that had laid the foundations for the Nagoya Protocol. It established prior informed consent and mutually agreed terms as minimum requirements for the issuance of import or export permits for all genetic resources. Following the adoption of the resolution, capacity-building activities had been conducted, in cooperation with public and private institutions at the national and provincial levels. The key objectives were to disseminate information on access and benefit-sharing, build the capacity of the competent authorities, ensure transparency, and advise stakeholders on obtaining prior informed consent.

4. Model mutually agreed terms had been prepared, drawing on work done by relevant organizations and academic institutions, including the World Intellectual Property Organization Traditional Knowledge Documentation Toolkit. The guiding principles and related clauses contained in the models had been taken from other sources adapted in accordance with country-specific circumstances. The models had been intended to provide guidance on issues such as minimum requirements for mutually agreed terms. In cooperation with different public and private institutions, terms for the transfer of genetic materials were being drafted as a compliance tool to be used by Argentine scientific institutions. One of the three models mutually agreed terms had been developed in cooperation with the Faculty of Exact and Natural Sciences of the University of Buenos Aires. The Government also collaborated with the national scientific community on mainstreaming access and benefit-sharing issues through different capacity-building and dissemination strategies.

5. He said that Argentina was a federal State and management of natural resources was not handled the same way in all provinces; while some had adopted clear guidelines, others had not. Experience had shown that models needed to be case-specific and updated regularly. The main feature of those models was their adaptability to any given case. It was important to steer clear of airtight, inflexible structures. By evaluating the different models on a regular basis, national and provincial authorities and users gained

/...

valuable experience. Although the original models had been updated over time, the updated versions had not been published due to capacity constraints. The day-to-day learning process had prompted some provincial authorities to develop their own regulatory measures and instruments for disseminating information on issues related to access and benefit-sharing. A range of tools was available that could serve as voluntary codes of conduct, guidelines and best practices and standards. Raising stakeholders' awareness of the tools available to them, raising the profile of the issue and building capacities were the greatest challenges at hand.

Ms. China Williams, Royal Botanic Gardens, Kew, United Kingdom

6. Ms. China Williams, introducing the Kew Royal Botanic Gardens ("Kew"), explained that it was a UNESCO World Heritage Site, run as a non-departmental body and registered charity, and received between one and two million visitors a year. Its mission was to inspire and deliver science-based plant conservation worldwide, enhancing the quality of life. Kew had 19 major collections, encompassing preserved herbarium specimens, living material and documentary and visual references. Every year, over 60 overseas plant-collection trips were conducted and over 60,000 herbarium specimens and 10,000 live plants and seeds were exchanged. Kew held 60 access and benefit-sharing agreements and memoranda of collaboration with partners across the world.

7. Kew had worked to develop sectoral principles, guidelines and a code of conduct on access and benefit-sharing (ABS), on the basis of which individual institutions could develop their own ABS policies. Those tools ensured that best practices relating to access and benefit-sharing were being followed despite variations in national legislation and interpretation, and demonstrated to Governments and partners Kew's commitment to implementing the Convention on Biological Diversity. Global participation in the development of the tools had also helped to build trust between institutions and produce a comprehensive and balanced outcome. However, implementation had proved challenging for smaller gardens and the tools themselves remained static and difficult to update.

8. On the basis of the common sectoral principles, Kew had developed its own ABS policy, approved in 2004. The process had increased commitment, ownership and understanding of the issues among its staff. The most significant outcome was an institutional toolkit, which was now available on the website of the Convention on Biological Diversity. A dedicated CBD unit was set up, and training and guidelines on access and benefit-sharing and traditional knowledge were developed for staff. Policies and procedures were established for, *inter alia*, field work and data-collection; model documents were created for, *inter alia*, non-commercial research access agreements and memoranda of collaboration. Model clauses within those documents addressed issues ranging from the need to obtain prior informed consent and monetary and non-monetary benefit-sharing.

9. In Kew's experience, using model agreements and clauses helped in the planning of work, as they were transparent, predictable and legally secure. They clarified best practices and sped up the negotiation process. On the other hand, the models took time to develop and sometimes partners used different models. It should also be remembered that models were only models, and needed to remain flexible and allow for the establishment of mutually agreed terms.

10. Among current projects, Kew was currently updating internal policies and procedures in line with the Nagoya Protocol and European Union regulations. It was also working with Botanic Gardens Conservation International to develop a toolkit for botanic gardens implementing the Protocol.

11. In closing, she said that model codes and agreements needed to be followed up with monitoring and assessment mechanisms to ensure compliance. While developing institutional policies and agreements on the basis of sectoral guidelines built trust, both internally and externally, the process required time and investment. One of the main challenges remained the need to stay flexible in order to integrate changes in line with new protocols and national legislation.

Mr. Geoff Burton, United Nations University – Institute of Advanced Studies

12. Mr. Geoff Burton, delivering the presentation on behalf of Ms. Catherine Monagle, gave an overview of a study of model contractual clauses, codes of conduct, guidelines, best practices and standards,

conducted by the Institute of Advanced Studies of the United Nations University. The study examined existing model tools for access and benefit-sharing, and provided reflections on the way forward, from the perspective of the Nagoya Protocol.

13. The study had revealed that many model contractual clauses predated the Nagoya Protocol but still coincided with the objectives and provisions of both the Convention on Biological Diversity and the Nagoya Protocol. There was also relative uniformity in the range of issues covered by the agreements, including statements as to commercial or non-commercial intent and intellectual property rights. Most model agreements were flexible enough to allow for negotiation between parties and tailoring to context.

14. Codes of conduct, guidelines, best practice and standards, it emerged, were especially useful in guiding users and providers in developing access and benefit-sharing arrangements where one or both parties had not yet adhered to principles underpinning the Nagoya Protocol. The overlap between those tools and tools designed to support implementation of Article 8(j) of the Convention and Article 12 of the Protocol should also be borne in mind.

15. Among the preliminary conclusions of the study were that the tools provided for under Articles 19 and 20 were useful in translating the goals of the Protocol from broad statements to practical reality. However, it was not yet clear how many such tools existed or what lessons had been learned through using them. The Access and Benefit-sharing Clearing-House would play a key role in closing those information gaps. Consideration should be given, in that regard, to the potential for cross-referencing between the Access and Benefit-sharing Clearing-House and the databases of the World Intellectual Property Organization. Finally, despite the clear value of such models and tools, their limits should also be noted.

16. Mr. Burton then presented the main observations and recommendations of the informal meeting for the implementation of Articles 19 and 20 of the Nagoya Protocol, organized by the Government of Japan, for which the study had been prepared. The meeting had been well attended by experts from a range of backgrounds.

17. The experts observed that model contractual clauses and guidelines reduced the gap between regulation and practice by providing, *inter alia*, consistency and legal certainty. However, the development and use of such model clauses and tools needed to be supported by capacity-building. The wording of the two articles also needed to be clarified. In addition, it was agreed that there should be greater focus on conservation and sustainable use, on compliance and on the use of model clauses and guidelines by indigenous and local communities.

18. Recommendations emanating from the meeting included continuing the collection of model clauses and guidelines, while exploring common points between those tools, and learning from existing commercial practices. Differences between the various tools also needed to be better understood, along with how to approach the termination of agreements.

19. With regard to the models themselves, the experts recommended that they should be adapted to better reflect the fact that non-monetary benefits were immediate and might exceed monetary benefits; should have a greater focus on technology transfer; and should be used in awareness-raising efforts. Clarity should also be sought on how best to understand and address “change of intent” from non-commercial to commercial use within ABS agreements.

20. In closing, Mr. Burton encouraged participants to consult information document UNEP/CBD/ICNP/3/INF/2 or to contact Ms. Catherine Monagle for further details and a more comprehensive overview of the aforementioned study. He also drew their attention to the report of the informal meeting, contained in information document UNEP/CBD/ICNP/3/INF/3.

III. QUESTION-AND-ANSWER SESSION

21. Following the presentations, the representatives of Australia, the Bahamas, Canada, China, Ethiopia, the European Union and its Member States, Timor-Leste and the representatives of the International Indigenous Forum on Biodiversity and Third World Network, addressed questions to the panellists.

Response by Ms. China Williams

22. Ms. Williams, in replying to a question about the situation of smaller institutions' capacity to deal with Article 19 and 20-type tools, said that the main issue was staff time and capacity analyse policies, agreements and the internal arrangements of the institution in question.

23. In order to deal with issues of change of use and intent, she explained that Kew Gardens had a standard non-commercial agreement, which contained a clause stipulating that any commercialization would be subject to a separate written agreement and any change of use would require new prior informed consent and mutually agreed terms. Much thought had gone into finding ways to deal with such situations, especially in cases where materials were transferred to third parties. Change of use applied not only when commercialization effectively took place, but also if there was intent to commercialize.

24. When it came to benefit-sharing arising from the utilization of genetic resources and associated traditional knowledge, Kew Gardens negotiated agreements with the countries of origin of those resources and cooperated with local partners in the collection and recording of traditional knowledge in their place of origin.

25. Both national governments and indigenous and local communities had done considerable work on developing guidelines and guidance on benefit-sharing that could inform the development of model contractual clauses or codes of conduct by users.

26. Replying to a question on benefit-sharing from genetic resources, Ms. Williams noted that Kew Gardens had collected abroad and that benefit-sharing was agreed between the parties in the context of negotiating relevant agreements. Such benefit-sharing could include technology transfer, capacity-building or other measures, as appropriate. Benefit-sharing with indigenous and local communities mostly occurred through partner institutions in the country of origin.

Response by Mr. Rodrigo Gonzalez Videla

27. When asked whether all existing model contractual clauses were known to the biodiversity community, Mr. Videla said that many had been updated but not made publicly available and might not be well-known to all stakeholders. It was also important to remember, that model contractual clauses needed to be developed on a case-by-case basis to fit case-specific circumstances. Each arrangement provided an opportunity to learn. Whether or not model contractual clauses on non-commercial use of genetic resources provided for changes of use or intent was an important factor in their evaluation. Both situations required renegotiation of the existing agreement. In the case of universities, the intent underlying the research was mostly taken as point of reference. In Argentina, model contractual clauses drew no distinction between marine or terrestrial genetic resources.

28. In his country, the main obstacle to implementing the process of granting prior informed consent to the use of traditional knowledge was a lack of awareness among indigenous populations. Current efforts therefore focussed on awareness-raising, including the translation of the Protocol and other relevant instruments into indigenous languages, and capacity-building on prior informed consent. Another focus lay on building trust.

29. In response to a question about the added value of model contractual clauses and voluntary codes of conduct and guidelines in the presence of relevant national legislation, he said that guidelines were useful tools to help understand and support the implementation of existing regulations. Codes of conduct, additionally, helped raise awareness. Together, they created greater transparency and clarify for all stakeholders and thus helped achieve compliance.

Response by Mr. Geoff Burton

30. With regard to the extent to which all existing model contractual clauses were known, Mr. Burton said that the study he had presented earlier had shown that many model contractual clauses had yet to be identified, especially those developed in languages other than English. Additional research to identify those clauses and make them available to the biodiversity community should be encouraged.

31. When it came to the distinction of how to deal with non-commercial versus commercial use of genetic resources, model contractual clauses were generally developed for non-commercial use. If that purpose changed, prior informed consent and mutually agreed terms would often need to be renegotiated. In some cases, national legislation already provided for that eventuality and stipulated such renegotiation. The Access and Benefit Sharing Management Tool provided useful guidance in that regard. A common concern was the difficulty in ascertaining whether it was the use itself or the intent of use that had changed. More research needed to be done in that area. As to the meaning of “commercialization” in that context, there were two lines of thought. Some took “commercialization” to mean taking an intended research outcome to produce a “profit”, while others interpreted the term as taking an intended research outcome produce an “economic return”. If a non-profit foundation undertook research that was put on the market and generated returns, for example, those returns would not be considered profit as it had been generated by a not-for-profit organization. However, even in that case, the provider of the resource used should receive an equitable share of the return. To date, the question remained unresolved.

32. When it came to monitoring, it was critical to obtain assurances that the research was undertaken for the declared purpose. Publicly funded research could, for example, be made contingent on the submission of a report to the competent authority whereby the user proved that the requirements had been met. For genetic materials sourced outside the country where the research was being conducted, evidence of provenance could be made a requirement. Similar processes could be applied to private research institutions. It was, however, important to maintain a degree of flexibility to adapt to specific circumstances; as excessive burdens could provoke non-compliance.

33. Although issues relating to terrestrial genetic resources were much more complex than those concerning marine genetic resources, no distinction should be made when developing relevant guidelines.

34. The World Intellectual Property Organization Traditional Knowledge Documentation Toolkit, the website of the United Nations University Institute of Advanced Studies, and the Access and Benefit Sharing Management Tool as revised in the light of the Nagoya Protocol could provide useful guidance on dealing with issues surrounding traditional knowledge. In addition, some countries had already developed relevant national legislation that might assist others.

35. With regard to the question of whether it was preferable to use a bottom-up or a top-down approach when developing model contractual clauses and similar instruments, he said that often developed standards on the basis of common interest. The Access and Benefit Sharing Management Tool, which had been led by a steering group comprising experts, providers, users and representatives of indigenous and local communities, had developed valuable guidance that did not reflect the particular interest of any given stakeholder as was thus very useful. Kew Gardens had led the development of common policy lines for botanic gardens, drawing on input from gardens around the globe. He was unaware of standards developed in the abstract that had been successful. In that connection, it was important to remember that guidelines should by definition not be prescriptive, but instead provide guidance. Governments should therefore be guarded against prescribing particular models or standards that might not be practicable and thus become a deterrent rather than a tool. In the light of recent developments, he cautioned against the development of guidelines that served as de facto regulations and the application of sanctions for non-compliance. The purpose of guidelines was to inform, not prescribe.

Observations by the Executive Secretary of the Convention on Biological Diversity

36. In connection with the question about difficulties facing small institutions in the implementation of the Nagoya Protocol, the Executive Secretary suggested that networking might be an effective way to overcome problems arising from insufficient human resources or capacity. In connection with the question who would be best suited to develop model contractual clauses, voluntary codes of conduct, guidelines and best practices and standards, he said that greater attention should be awarded to models or initiatives being developed from the perspective of providers, especially indigenous and local communities. It might be useful to collect and disseminate information on community protocols to broaden perspectives.

37. The representative of the International Indigenous Forum on Biodiversity (speaking on behalf his ancestors) reminded participants that people in the Amazon region, which was his home, had considerable experience and a long-standing relationship with “botanical envoys”. With the adoption of the Nagoya Protocol that relationship had reached a turning point. The peoples of the world were facing a historic challenge to meet as brothers and sisters. Beyond piecemeal projects and divisions between Western and indigenous knowledge systems they had the opportunity to create a new, productive relationship based on respect and good faith.

B. EXCHANGE OF VIEWS ON THE STATE OF IMPLEMENTATION OF THE NAGOYA PROTOCOL

I. BACKGROUND

1. Pursuant to decision XI/1, paragraph 6, of the Conference of the Parties, the third meeting 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 held an exchange of views on the state of implementation of the Nagoya Protocol, at the 2nd and 3rd sessions of the meeting, on 24 and 25 February 2014, under agenda item 4.3. Prior to the meeting, the Executive Secretary had invited the submission of information on national or regional developments of relevance to the ratification and implementation of the Protocol, which had then been made available on the website of the Convention on Biological Diversity.

II. PANEL PRESENTATIONS

2. The exchange began with presentations from a panel of speakers representing a range of perspectives.

Mr. Hem Pande, national focal point for the Convention on Biological Diversity and Additional Secretary, Ministry of Environment and Forests, Government of India

3. Mr. Hem Pande said that his country was one of the world’s oldest and largest repositories of diverse biological and genetic resources, and of associated traditional knowledge. It had ratified the Nagoya Protocol in October 2012, though had already proven its commitment to protect biodiversity by enacting a Biological Diversity Act in 2003. The purpose of the Act was to conserve biological diversity, ensure sustainable use of its components, and guarantee fair and equitable sharing of benefits arising out of the use of biological resources.

4. A three-tiered structure had been established under the Ministry of Environment and Forests to implement the Act at the national, state and local levels. Heading that structure was the National Biodiversity Authority, which regulated and issued guidelines for access to biological resources within Indian territory, and the granting of intellectual property rights over those resources or associated knowledge, for non-Indian citizens and foreign companies. The Authority also played an advisory role to the central Government and state governments.

5. The Authority was responsible for determining equitable benefit-sharing arising out of the use of accessed biological resources and their by-products, and out of innovations, practices and knowledge associated with their use. That was done in accordance with mutually agreed terms and conditions between the person applying for approval, local bodies concerned and the “benefit claimers”, in other words the conservers of the biological resources and by-products, inter alia.

6. The criteria and time frame for benefit-sharing were decided on a case-by-case basis. The quantity of benefits was mutually agreed upon by the accessors and the National Biodiversity Authority, in consultation with the local bodies and benefit claimers, keeping in mind the extent of use, sustainability and expected impact and outcome. Where biological resources or traditional knowledge were accessed from a specific individual or group, the agreed amount would be paid directly to them.

7. In addition to monetary benefits, joint ownership of intellectual property rights was granted to the accessors and the Authority, or to benefit claimers, if identified. Areas from which biological resources were accessed also benefited from technology transfer and the establishment of research and development units, which helped to improve living standards.

8. Between 2003 and 2013, a total of 117 agreements had been concluded under the Act, relating to access to biological resources for research or commercial purposes, and third-party transfer, among others. Monetary benefits totalling INR 4.3 million had been shared in seven cases. Among the cases concerned were the export of seaweed by PepsiCo and the application for a no-objection certificate by an Ayurvedic doctor in order to obtain a patent for a herbal snake venom antidote.

9. Mr. Pande concluded by highlighting that the task ahead was to raise awareness among all stakeholders of the provisions of the Act, to strengthen institutional structures at the local level and to closely monitor all access and benefit-sharing (ABS) agreements.

Mr. Hugo-Maria Schally, Head of Unit, Global Sustainability, Multilateral Environmental Agreements and Trade, European Commission

10. Mr. Hugo-Maria Schally said that soon after the adoption of the Nagoya Protocol, the European Union (EU) had begun considering the measures necessary to enable ratification of the Protocol by the EU and by its individual Member States. An extensive impact assessment was conducted, including a broad stakeholder consultation, to examine the main elements of the Protocol and decide which would need to be addressed at EU level and which would be left to individual Member States to consider at the national level.

11. It was quickly concluded that access requirements would be left for individual Member States to determine, since that element of the Protocol was not mandatory. Only if access requirements established by individual Member States damaged the functioning of the EU internal market would the EU consider harmonization as a way of guaranteeing compliance with that principle. In line with the Protocol, it was decided that benefit-sharing would be handled through mutually agreed terms. With regard to compliance measures, the conclusion was that harmonized implementation across the EU would be necessary; a measure for which stakeholders consulted had also expressed a preference.

12. In a further study, the EU sought to identify solutions that would allow for the obligations under the Protocol to be fulfilled, while putting the least possible burden on users. The result was a proposal for an EU regulation based on the principle of “due diligence”. That proposal, together with the proposal to ratify the Protocol, was presented to the European Parliament and the Council of Ministers in October 2012.

13. An intensive period of discussions ensued between the three different institutions of the EU concerned. That process was now very close to completion, as both co-legislators had reached a political agreement on the text of a draft EU regulation, which would allow for ratification of the Protocol by both the EU and its individual Member States. The last steps would be a vote in the Plenary of the European Parliament in March and a decision in the Council of Ministers in April. At the same time, the Parliament would give its consent to the ratification of the Protocol by the EU. Finally, the Council of Ministers would adopt the regulation and authorize the deposit of the instrument of ratification, in time for holding the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol in October 2014.

14. The time schedule for ratification by individual Member States may vary according to their internal procedures. Nevertheless, individual Member States and their citizens would already be bound by the mandatory aspects of the Protocol with the entry into force of the regulation and the Protocol itself within the EU.

15. The EU regulation would also require Member States to establish sanctions and penalties at the national level, designate national entities to serve as checkpoints, and conduct checks of operators active at the national level. It would also establish important compliance facilitation tools such as “EU registered collections” and “recognized best practices”. With that regulation, therefore, the EU and its Member States would be well equipped to begin implementing the Protocol once it entered into force.

Mr. Preston Hardison, Tulalip Tribes

16. Mr. Preston Hardison said that the internal ecology of the rights and interests of indigenous peoples and local communities was made up of customary law, ancestral teachings, traditional beliefs, knowledge and practices, both sacred and secret and not secret, and stewardship obligations. Those rights were inherent, pre-existing, inalienable, based on cultural heritage and self-determination and universal in nature. The external ecology of those rights and interests was represented by treaties, agreements, laws, conventions and contracts at the State and international levels, including the Vienna Convention on the Law of Treaties and the United Nations Declaration on the Rights of Indigenous Peoples.

17. The standard Access and Benefit-sharing regime mostly took the external approach. It was decision-focused and limited to genetic resources and associated traditional knowledge, minimized considerations of conflicts of law and risks and focused on benefit-sharing and legal and procedural requirements, with a limited temporal and spatial horizon. Indigenous peoples and local communities, on the other hand, sought holistic, long-term solutions consistent with customary law, the inalienability of rights and guardianship and custodianship obligations. In that context, access and benefit-sharing solutions must be balanced against prior informed consent requirements for broad assessment of risks and benefits.

18. Indigenous peoples and local communities faced a range of challenges linked to climate change, habitat loss, marginalization and threat to cultural survival, among others. Surrounded by a non-indigenous society in which misappropriation was common, contracts were insufficient to protect those communities from cultural harm, unless biocultural community protocols were recognized. Indigenous and local communities needed procedural safeguards, restrictions on the uses of biodiversity based on respect for customary law and collective ownership, restrictions on transfers of traditional knowledge and checkpoints for changes in use. They must be guaranteed full participation in consultations, negotiations, monitoring and reporting and systems must be flexible to meet different aspirations and contexts. Community protocols could only function if close attention was paid to the ecology of each situation and outcomes were long term.

19. With the creation of national access and benefit-sharing mechanisms gaining momentum, prior informed consent and mutually agreed terms had become widely recognized concepts. The guiding principles of such regimes must be non-maleficence, progressive realization, non-regression, holism, resolution of conflict and most beneficial interpretation of law, and resource-based solutions.

Mr. Selim Louafi, French Agricultural Research Centre for International Development (CIRAD), France

20. Mr. Selim Louafi said that the research community was one of the most crucial stakeholder groups for legislation on access and benefit-sharing (ABS). The current narrative on ABS was built around direct access to genetic resources by private companies and monetary benefit-sharing. However, the research sector often played an intermediary role in situations where genetic resources are exchanged several times before reaching commercial use and it was also one of the main users of genetic resources. The benefits from such use extended beyond monetary gains to encompass broader returns, such as enhanced reputation.

21. Implementation of a protocol was not merely a legal or administrative step; rather, it involved a process of social experimentation and interactive learning. Existing practices in the research community should be documented, analysed and built upon with a view to facilitating implementation of the Nagoya Protocol. Efforts should be made to exploit opportunities provided for in the Protocol, such as those contained in Articles 8(a), 19 and 20, to accommodate the needs of research communities. Possible areas where current norms, values and practices in the research sector could contribute to the implementation of the Protocol should be identified with a view to improving mutual compatibility. For example, the documentation and monitoring practices of the research sector could contribute to the Access and Benefit-sharing Clearing-House and to monitoring of the utilization of genetic resources (Articles 14 and 17).

22. Some efforts had already been made to explore how existing practices in the research community could be best developed to facilitate implementation of the Protocol. It had emerged that the distinction between commercial and non-commercial research was not helpful; rather, the research community preferred a distinction to be drawn between “one-shot” and “long-term” collaboration, to reflect whether the exchange

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of genetic resources was a transaction or a partnership. Access and benefit-sharing agreements could pave the way for long-term partnerships that allowed for the sharing of non-monetary benefits, for example access to shared laboratories, without precluding the possibility of monetary benefits.

23. Further work was needed to determine what was of value to each partner in the exchange of genetic resources. It was also necessary to better account for the whole range of benefits generated by the research sector, in order to develop instruments able to capture and share those benefits.

Ms. Maria Julia Oliva, Union for Ethical BioTrade

24. Ms. Maria Julia Oliva said that her organization worked with the private sector to promote ethical sourcing of biodiversity. Companies attached great significance to the Nagoya Protocol and business engagement with access and benefit-sharing issues had increased significantly after its adoption. Awareness had grown, in particular, in the cosmetics sector, which had seen increased consumer interest in and demand for natural ingredients and ethical sourcing. The Biodiversity Barometer 2013 showed that a growing number of companies reported on sustainable development, biodiversity and biodiversity sourcing practices and made reference to related issues such as traditional knowledge and intellectual property rights. Those developments illustrated that companies had begun to build an understanding of access and benefit-sharing issues and integrate that knowledge into their practices. Companies had pointed out some obstacles to implementation, including difficulties in obtaining information on compliance, the absence of mechanisms to regularize operations and practices, and policy inconsistencies within the same country.

25. Publicly available, transparent information on content and operation of access and benefit-sharing requirements was crucial to implementation which, in turn, must be monitored and enforced. It would also be useful to link access and benefit-sharing with broader sustainability practices and provide support for pioneering companies. The implementation of the Protocol was a key opportunity to engage with business to discuss and find answers to putting access and benefit-sharing in practice in the context of a mutual learning process and engagement with stakeholders.

III. QUESTION-AND-ANSWER SESSION

26. Following the presentations, the representatives of Brazil, China, Colombia, Nigeria and Peru addressed questions to the panellists.

Response by Mr. Hugo-Maria Schally

27. In response to a question about checkpoints, Mr. Schally said that the European Union had established checkpoints both at the initial and the final stage of the value-chain. Once granted funding, researchers were requested to declare that they would exercise due diligence to ascertain that the genetic resources and associated traditional knowledge used were accessed in accordance with applicable legal requirements. Information on genetic resources covered by access permits would be entered into the Access and Benefit-sharing Clearing-House mechanism and providers could verify whether the permit granted in the country of origin was consistent with their own requirements. Users along the value chain could thus obtain evidence that prior informed consent, mutually agreed terms and other relevant arrangements were adhered to. The due diligence declaration was requested again at the final stage of the value-chain, feeding back into the clearing-house mechanism. In the event that a user along the value-chain had failed to exercise due diligence or in a situation where a user had been aware that the information provided on the genetic resource in question had been incomplete or missing and had failed to discontinue utilization, penalties would be applied. It would then be up to Member States to decide whether the applicable sanctions should be of an administrative or criminal nature.

28. In response to a question about ratification of the Protocol by individual European Union Member States, he said that the European regulation was mandatory for all Member States. Member States that had not ratified the Protocol would be covered through the European instrument and thus fully compliant with the Protocol. He was unable to provide specific information on the time frame for ratification by individual Member States as that depended on the internal processes of Member States and their policy decisions.

Response by Mr. Selim Louafi

29. Mr. Louafi acknowledged that some sectors of the research community showed reluctance towards the Protocol and highlighted the importance of gaining a deeper understanding of the nature and scope of such resistance. Drawing a distinction between commercial and non-commercial use of genetic resources, for example, had caused implementation problems. Understanding research practices and involving researchers in discussions at the national level was crucial. The research community would respond more favourably to information sharing and collaboration, including through tracing systems similar to the one currently piloted by the French Agricultural Research Centre for International Development, than to the establishment of checkpoints. Establishing a trusted relationship would be the way forward.

Response by Mr. Hem Pande

30. Mr. Pande said that India had set up a three-tiered structure for dealing with access and benefit-sharing issues: the National Biodiversity Authority was responsible for access requests from foreign users; the State Biodiversity Boards processed requests from domestic users at the state level; and the Biodiversity Management Committees dealt with local issues. India had had national legislation on access and benefit-sharing for over a decade. However, thus far there was no mechanism in place to track outside users and ensure prior informed consent had been obtained and/or that mutually agreed terms had been established. Therefore, an international regime such as the Nagoya Protocol was vital.

Response by Ms. Maria Julia Oliva

31. Ms. Oliva said that cosmetic companies were very concerned about their reputation and extremely careful about generating criticism. If the slightest doubt was cast on a supplier they were likely to seek alternative providers, which could sometimes work to the detriment of developing countries. Heightened awareness of the access and benefit-sharing regime among indigenous and local communities, the business community and the scientific sector had helped address such difficulties. Nevertheless, the scientific sector remained resistant to the Protocol. Good cooperation between the different competent authorities was important to overcome those challenges and greater interaction among international organizations might help achieve positive synergies.

IV. GENERAL DISCUSSION

32. Following the question-and-answer session, interventions were made by the representatives of Argentina, Australia, Benin, Brazil, Burkina Faso, Colombia, Costa Rica, Cote d'Ivoire, Egypt, Ethiopia, France, Germany, Guinea, Guinea-Bissau, Indonesia, Japan, Malaysia, Morocco, Namibia, Niger, Norway, Pakistan, Peru, Philippines, Republic of Korea, Samoa, Saudi Arabia, Senegal, South Africa, Switzerland, Thailand, Timor-Leste, the United Kingdom of Great Britain and Northern Ireland, Uruguay, and the representatives of the African Union and the United Nations Environment Programme.

33. Several Parties that had already ratified the Nagoya Protocol shared their experiences in regard to steps taken towards developing new or updating existing legislative, administrative and policy and other issues of relevance to the ratification and implementation of the Protocol. Most of them reported that the ratification process had involved broad consultations with indigenous and local communities and commercial and non-commercial users of genetic resources and other stakeholders. Various Parties that had not yet ratified or acceded to the Protocol reiterated their commitment to doing so and described the nature of the steps taken towards that goal. Many Parties had embarked on legislative processes to prepare for ratification. While regulations had been, in some cases, drafted and were awaiting adoption other Parties were still at the consultation stage. Some Parties were working on the establishment of a national database of genetic resources and some had established or were considering establishing databases and registers for traditional knowledge. Others had developed or were in the process of developing national strategies on access and benefit-sharing. A number of countries had made great strides and expected to ratify the Protocol in time for the first meeting of the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Nagoya Protocol planned for October 2014.

34. In the European region, the Andean region and the African region, simultaneous national and regional processes had been engaged. At the European level, a draft regulation establishing rules governing

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access and benefit-sharing for genetic resources and associated traditional knowledge had been proposed to enable the European Union to ratify the Protocol and formally become a Party. Some Parties stated that regional processes had delayed steps towards ratification at the national level. The Andean States were also cooperating on the establishment of regional regulations. The African Commission had developed guidelines to ensure the coordinated implementation of the Protocol; the draft guidelines had been submitted to the competent African Union bodies for adoption.

35. In several countries, national legislation already contained provisions concerning access to genetic resources and associated traditional knowledge and the sharing of benefits arising from their utilization. Elements such as mutually agreed terms, prior informed consent, sanctions and remedies for misappropriation, disclosure of source requirements, user country measures and due diligence requirements were enshrined in existing legislation of many Parties. Some Parties had adopted special provisions to protect the rights of their indigenous and local communities. However, in most cases existing provisions required updating to ensure full consistency with the Protocol and several Parties were undertaking assessments of current access and benefit-sharing laws and policies to that end. One Party described the difficulties of convincing stakeholders of the added value of the Protocol, given the existence of apparently adequate domestic provisions. Several parties noted heightened awareness of the Protocol among stakeholders as one positive development resulting from the drive for ratification.

36. Several Parties shared the lessons drawn from the implementation of domestic regulations on access and benefit-sharing that predated the adoption of the Nagoya Protocol. Parties had found it useful to draw a distinction between commercial and non-commercial utilization of genetic resources when issuing permits. They also concurred on the need to simplify and streamline existing systems to save time and resources, provide certainty, and encourage biodiversity research. In several cases, experience had shown that overly bureaucratic requirements were too costly and time-consuming. Some Parties had found it useful to centralize responsibility for issues relating to access and benefit-sharing, while others had opted for designating several competent authorities at different levels of government and in different sectors. Most Parties agreed on the value of cooperation between different sectors, stakeholders and Governments. Parties called for further debate on the interaction between the Protocol and other international instruments, especially those containing provisions on intellectual property rights and free trade. Several Parties also drew attention to the pending issues of the treatment of ex-situ collections.

37. Although many of the challenges arising in the context of ratification of the Protocol were country-specific, there were certain common denominators. Parties with federal structures of government had experienced difficulties arising from national versus provincial responsibilities, competencies, interests and ownership. Complex consultation processes had proven to be an obstacle to expeditious ratification in some cases. Some Parties mentioned considerable resistance against the Protocol in the scientific community. Geography and cultural diversity, and thus diversity of interests, were also mentioned as potential complexities in ratification. Developing Parties, in particular, had highlighted the need for assistance, both technical and financial, in the area of capacity-building, awareness-raising, drafting of legislation and other ratification-related processes. Some Parties made specific requests for assistance. Parties concluded that capacity-building should be based on the needs identified through national assessments. Some Parties shared their experiences in relation to providing financial and technical support for capacity-building towards ratification in developing countries, including assistance with the development of national access and benefit-sharing frameworks. Recipients of such support also described their experiences and mentioned the Global Environment Facility and the United Nations Development Programme as key partners. Several Parties deemed the allocation of adequate and timely financing through the Global Environment Facility as crucial.
