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Item 8 of the provisional agenda*

Review of the effectiveness of the processes under the Convention and its Protocols

Report on the implementation of the procedure for avoiding or managing conflicts of interest in expert groups

Note by the Secretariat

I. Background

1. Pursuant to section B of recommendation [2/15](#) of the Subsidiary Body on Implementation and views submitted by Parties and observers on a procedure for avoiding or managing conflicts of interest in expert groups,¹ the Conference of the Parties to the Convention, at its fourteenth meeting, adopted decision [14/33](#), in which it approved the procedure for avoiding or managing conflicts of interest in expert groups, as set out in the annex to that decision.
2. In decision 14/33, the Conference of the Parties requested the Executive Secretary to prepare a report on the implementation of the procedure and relevant developments in avoiding or managing conflicts of interest in other multilateral environmental agreements, intergovernmental initiatives or organizations and, if appropriate, to propose updates and amendments to the current procedure for consideration by the Subsidiary Body on Implementation at a meeting held prior to the sixteenth meeting of the Conference of the Parties.
3. In the same decision, the Conference of the Parties requested the Subsidiary Body on Implementation to consider the above-mentioned report of the Executive Secretary and to submit recommendations, as appropriate, for consideration by the Conference of the Parties at its sixteenth meeting. The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol and the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol took similar decisions (decisions [CP-9/10](#) and [NP-3/11](#)) at their ninth and third meetings, respectively.
4. The present note contains the relevant report of the Executive Secretary on the procedure. Section II of this note provides a summary of the implementation of the procedure in processes under the Convention and its Protocols. Section III contains a brief overview of some relevant developments in other multilateral environmental agreements, intergovernmental initiatives or organizations. Proposed updates and amendments to the procedure are presented in section IV. The Executive Secretary has highlighted some elements of a recommendation for consideration by the Subsidiary Body on Implementation at its fourth meeting, which are contained in document

* CBD/SBI/4/1.

¹ See CBD/COP/14/INF/3.

CBD/SBI/4/11 on the review of the effectiveness of the processes under the Convention and its Protocols.

II. Implementation of the procedure in processes under the Convention and its Protocols

5. The procedure applies to experts, including experts acting as chairs, nominated by Parties, other Governments, observers to the Convention and its Protocols and any body or agency, whether governmental or non-governmental, to serve as an expert member of an ad hoc technical expert group or other technical expert group. Experts are expected to act objectively, comply with the highest professional standards and exhibit a high degree of professional conduct and integrity, regardless of any government, industry, organizational or academic affiliation.²

6. In approving the procedure, the Conference of the Parties recognized the critical importance of taking decisions on the basis of the best available expert advice and the need to avoid or manage, in a transparent manner, conflicts of interest. Furthermore, in paragraph 4.4 of the procedure it is specified that in situations wherein the possibilities are limited to constitute an expert group with the full range of expertise required for it to carry out its mandate effectively without including individual experts who are otherwise qualified but may have a potential conflicts of interest, the Bureau, on the advice of the Secretariat, may include such experts provided that certain conditions are met.

7. As part of the implementation of the procedure, under paragraph 4.1, nominees for membership in expert groups have been required to complete the interest disclosure form set out in the appendix to decision 14/33. For each selection process, the Secretariat compiles the information received through the interest disclosure forms and reviews that information for any indication of potential conflicts of interest,³ in accordance with the steps set out in section 4 of the procedure.

8. Since its adoption in November 2018, the procedure has been applied in the selection of experts for seven ad hoc technical expert groups⁴ and one technical expert group,⁵ as well as, exceptionally, four informal advisory committees and groups,⁶ convened in processes under the Convention and its Protocols.

9. It is to be noted that the Secretariat takes steps to avoid or manage conflicts of interest when procuring services (in, for example, the commissioning of studies).

10. Potential conflicts of interest related to expert groups were identified, or the attention of the Secretariat was drawn to potential conflicts of interest, in at least four cases, as described below.

² Pursuant to paragraph 2.1 of the procedure.

³ As defined in paragraphs 1.3 to 1.5 of the procedure.

⁴ The Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources (March 2020); the Ad Hoc Technical Expert Group on the New Programme of Work and Institutional Arrangements on Article 8 (j) and Other Provisions of the Convention on Biological Diversity Related to Indigenous Peoples and Local Communities (July 2023); the Ad Hoc Technical Expert Group on Synthetic Biology (2019–2020); the Ad Hoc Technical Expert Group on Risk Assessment (2019–2020); the Ad Hoc Technical Expert Group on Socio-economic Considerations (2019); the Ad Hoc Technical Expert Group on Synthetic Biology (2023–2024); and the Ad Hoc Technical Expert Group on Risk Assessment (2023–2024).

⁵ The Technical Expert Group on Financial Reporting.

⁶ The Informal Advisory Group on Ecologically or Biologically Significant Marine Areas at its fourth meeting (September 2023); the Informal Advisory Committee on Capacity-building for the Implementation of the Nagoya Protocol at its fifth meeting (June 2023); the Informal Advisory Committee to the Access and Benefit-sharing Clearing-House under the Nagoya Protocol (February 2024); and the Informal Advisory Group on Technical and Scientific Cooperation, established at the fifteenth meeting of the Conference of the Parties (June 2023, November 2023 and February 2024). In accordance with paragraph 1.2 of the procedure, the Secretariat considers that the procedure applies only to ad hoc technical expert groups or other technical expert groups and that its application should not be extended to include informal advisory committees or groups.

A. Cases of potential conflicts of interest and how they have been managed

1. Potential conflicts of interest identified at the outset, and experts not selected

11. In two cases,⁷ nominees declared interests that were assessed as potential conflicts of interest, as they could lead a person to reasonably believe that the individual's objectivity in carrying out his or her duties and responsibilities for the specific expert group might be in question or that an unfair advantage might be created for any person or organization.⁸ This was taken into account in the proposal on the composition of the expert group and the concerned nominees were not selected as members of the expert group.

2. Potential conflicts of interest identified later, and experts recused from relevant discussions and decision-making

12. In paragraph 2.4 of the procedure, it is provided that when an expert already serving in an expert group is faced with a potential conflict of interest due to changed circumstances that might affect the expert's independent contribution to the work of the expert group, the expert shall immediately inform the Secretariat and the chair of the expert group of the situation. In the case of one group,⁹ after it was determined that some members were faced with potential conflicts of interest on particular matters under consideration by the group, the concerned members recused themselves from discussions and decision-making regarding those specific matters only.

3. Claims by third parties of potential conflicts of interest

13. Pursuant to paragraph 1.5 of the procedure, the mere affiliation of a nominated expert with an administrative, educational, research or scientific-technical development entity of the public sector cannot be prejudged as an indication of conflicts of interest, but the affiliation should be indicated in the interest disclosure form. In one instance,¹⁰ although the nominee did not declare affiliation to a relevant research and scientific development entity in the form, the nomination letter indicated the nominee's affiliation to that entity. The nominee was selected to be a member of the relevant expert group. Subsequently, an observer (a civil society organization) requested more information from the Secretariat on the expert concerned.

14. In its reply, the Secretariat described the process that had led to the selection of the concerned expert and shared a copy of the interest declaration form, duly signed and submitted by the expert concerned. The expert did not identify any potential conflict of interest despite affiliation with the nominating entity which managed (as specified in detail in the nominating letter) a research project that had relevance to the subject matter to be addressed by the expert group. After those exchanges, the above-mentioned observer, together with other civil society organizations, formally raised concerns regarding a potential conflict of interest arising from the affiliation of the concerned expert with the mentioned entity.

15. In their submission, the civil society organizations argued that a prima facie case could be made establishing that the expert concerned should have disclosed his situation, which might have been perceived as affecting the objectivity and independence of his contribution, thus affecting the outcome of the work of the expert group in question. They requested that, in accordance with paragraphs 4.4 and 4.5 of the procedure, the matter be brought to the attention of the relevant Bureau, for guidance, as well as to the attention of the other members of the expert group, for transparency. They also requested that steps be taken to manage potential conflicts of interest, including the possibility that the concerned expert would recuse himself. The Secretariat consequently informed the Chair of the expert group of the situation. The Chair held discussions with the expert concerned

⁷ The meeting of the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources, held from 17 to 20 March 2020.

⁸ Pursuant to paragraph 1.3 of the procedure.

⁹ The Informal Advisory Group on Technical and Scientific Cooperation at its third meeting, held from 19 to 21 February 2024.

¹⁰ The meetings of the Ad Hoc Technical Expert Group on Risk Assessment held from 1 to 3 November 2023 and from 27 February to 1 March 2024.

and the civil society organizations and reached an understanding with them on managing any potential conflicts of interest in the matter, in line with paragraph 4.4 of the procedure. The relevant Bureau was informed of the issue through its Chair.

B. Challenges and lessons learned

16. Overall, the procedure has been highly useful in strengthening the integrity and objectivity of expert groups in their work. While the procedure has brought transparency to the review of nominations and designation of members of expert groups, its application to processes under the Convention and its Protocols is still fairly new. As is reasonably to be expected, a few issues have arisen in the context of the implementation of the procedure, as highlighted below.

1. Non-submission of interest disclosure forms

17. In paragraph 4.1 of the procedure, it is provided that nominations for membership to an expert group shall be accompanied by an interest disclosure form duly completed and signed by each nominee. In a few instances, however, although the notification inviting nominations to an expert group specifically indicated that requirement, some nominations were submitted without the interest disclosure form. There is no express provision in the procedure on how such nominations without the accompanying completed forms should be treated. In a number of instances, the Secretariat followed up with the concerned nominators, requesting them to provide the missing forms.

2. Whether potential conflicts of interest have been declared

18. In accordance with paragraph 4.2 of the procedure, the Secretariat reviews the information provided in duly completed interest disclosure forms in order to identify any potential conflicts of interest. However, there is no established mechanism for verifying whether or not disclosures are complete or accurate. The assumption is that each expert will complete the interest disclosure forms in good faith and as accurately as possible. The form contains a declaration to that effect for signature by the expert.

3. Determination of potential conflicts of interest

19. A related challenge entails the determination of potential conflicts of interest. Pursuant to paragraph 1.3 of the procedure, a conflict of interest constitutes any current circumstances or interest that could lead a person to reasonably believe that an individual's objectivity in carrying out his or her duties and responsibilities for a specific expert group may be in question or that an unfair advantage may be created for any person or organization. The establishment of a potential conflict of interest may be considered to be subjective by some, especially where there is a dispute regarding whether a potential conflict exists or not. Under paragraph 4.5 of the procedure, in the event of a disagreement¹¹ on the determination of a conflict of interest, the chairperson of the relevant expert group and the concerned Bureau are expected to provide guidance. As indicated in paragraph 4.3 of the procedure, final decisions lie with the relevant Bureau.

4. Managing potential conflicts of interest

20. As noted above, the procedure allows for conflicts of interest to be managed when it is judged that they cannot be avoided without diminishing the range of expertise needed for the group to carry out its functions and provide the best available expert advice. In accordance with section 4 of the procedure, regarding implementation, the Secretariat is expected to manage such potential conflicts of interest in consultation with the concerned chair and, where appropriate, under the guidance of the relevant Bureau. As set out in paragraph 4.4, in the case of individual experts who are otherwise qualified but may have a potential conflict of interest, the Bureau, on the advice of the Secretariat, may include such experts provided that: (a) there is a balance of such potential interests in a manner

¹¹ In accordance with paragraph 4.5, the disagreement is between the Secretariat and the expert, but this formulation could be extended to include disagreement between experts.

that serves the objectives of the Convention and the Protocols, as appropriate, and which ensures that products from the expert group are comprehensive and objective; (b) information concerning the potential conflicts of interest will be made available to the expert group and to the public upon request; and (c) the experts agree to endeavour to contribute to the work of the group with objectivity or to recuse themselves where this is not possible or in doubt.

III. Relevant developments in other multilateral environmental agreements, intergovernmental initiatives or organizations

21. In addition to the information provided in paragraphs 27 to 30 of document CBD/SBI/2/16, on the experience in managing conflict of interest in other conventions and international organizations,¹² there are some relevant developments which are highlighted in the present section.

22. As described in paragraph 29 of document CBD/SBI/2/6, under the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services conflict of interest policy and implementation procedures, set out in annex II to decision IPBES-3/3, duly completed conflict of interest forms are submitted to the Committee on Conflicts of Interest for evaluation and determination. The Committee provides a report on its work to the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services at each of its sessions. The latest report of the Committee is contained in the appendix to the annex of document IPBES/10/INF/17. It is noted in paragraph 3 of the report that the Committee took the following additional actions:

“(a) All selected individuals can take up office or accept the assignment only provided that they agree, as part of their acceptance form, to the following statement: ‘I understand that I was selected in my individual expert capacity and not to represent the views of any public or private organization, and that I am expected to serve in a neutral manner, meaning that I will carry out my duties and responsibilities for the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services based on the functions and responsibilities of that institution, with full objectivity’;

“(b) The code of conduct for Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services experts, which all selected individuals, when accepting their role, have agreed to, was modified to include a reference to the Platform conflict-of-interest policy and procedures;

“(c) All Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services experts, once appointed, receive a document summarizing the conflict-of-interest policy and procedures;

“(d) Each online introductory meeting for Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services authors includes a segment on the conflict-of-interest policy and procedures and the code of conduct for authors.”

23. Other relevant developments in international processes are highlighted in a document¹³ that was made available to the ad hoc open-ended working group on a science-policy panel on chemicals, waste and pollution prevention, established to contribute further to the sound management of chemicals and waste and prevention of pollution, at its second session, held in December 2023. The document presents an overview of the relevant policies on conflict of interest from existing science-policy interfaces and provides background information on procedures for addressing potential conflicts of interest in: (a) the Intergovernmental Panel on Climate Change; (b) the Intergovernmental

¹² Namely, the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Rotterdam Convention; the Stockholm Convention; the Food and Agriculture Organization of the United Nations; the World Health Organization; the Green Climate Fund; and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.

¹³ Document UNEP/SPP-CWP/OEWG.2/INF/8, annex.

Science-Policy Platform on Biodiversity and Ecosystem Services; (c) the Global Environment Outlook; and (d) the Montreal Protocol Assessment Panels.

24. Notably, under the processes of the Montreal Protocol on Substances that Deplete the Ozone Layer, it is provided in paragraphs 20 and 21 of the annex to decision XXIV/8, adopted by the Twenty-Fourth Meeting of the Parties to the Montreal Protocol, entitled “Terms of reference, code of conduct and disclosure and conflict of interest guidelines for the Technology and Economic Assessment Panel and its technical options committees and temporary subsidiary bodies”, that:

“20. When a conflict of interest is determined to exist with respect to a particular Member, the Member should, depending on what is appropriate in the circumstances, be:

“(a) Excluded from decision-making and discussions related to a defined area of work;

“(b) Excluded from decision-making but may participate in discussions related to a defined area of work; or

“(c) Excluded from participation in the matter in any other manner deemed appropriate.

“21. A Member who is recused completely or partially from an area of work may nevertheless answer questions with respect to that work at the request of the Technology and Economic Assessment Panel, the technical options committees or the temporary subsidiary bodies.”

IV. Measures to improve application of the procedure

25. Based on experience in the implementation of the procedure since its adoption in 2018 and some relevant developments in other intergovernmental processes, highlighted, respectively, in sections II and III above, the Secretariat proposes to take the measures set out below to enhance application of the procedure.

26. The Secretariat proposes to make the following changes to the interest declaration form:

(a) In the declaration section at the end of the form, the following sentence will be added after the second sentence of the first paragraph of the present text of the declaration: “If selected as a member of the expert group, I undertake to carry out my duties and responsibilities with full objectivity and in the event that a potential conflict of interest is established, I undertake to recuse myself from relevant discussions or decision-making, as appropriate.”;

(b) In order for the information relating to the nominee’s employment to be more complete, a “JOB TITLE” field will be added after the “CURRENT EMPLOYER” field”;

(c) The interest disclosure form will be made available for completion online or through a fillable PDF text.

27. While the final responsibility for declarations of potential conflicts of interest remains with the nominee, the Secretariat is putting in place measures to enhance the review of the duly completed interest disclosure forms, taking into account the experience summarized in section II. A above.

28. The Secretariat will prepare a summary of the responsibilities of experts for complying with the procedure, which will be made available to experts upon appointment to a particular technical expert group. Prior to the initiation of any expert group, the Secretariat will provide a briefing to its members to ensure the full understanding of the procedure.
