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GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM (ARTICLE 10) OF THE NAGOYA PROTOCOL

Note by the Executive Secretary

I. INTRODUCTION

1. Article 10 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization reads as follows:

Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.

2. The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access and Benefit-Sharing considered the need for and modalities of a global multilateral benefit-sharing mechanism (Article 10) at its first, second and third meetings, adopting decisions [NP-1/10](#), [NP-2/10](#) and [NP-3/13](#), respectively. In decision NP-3/13, the Parties considered that more information on specific cases of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent accompanied by an explanation as to why such cases cannot be covered under the bilateral approach as well as options for addressing those cases, including through a global multilateral benefit-sharing mechanism, would assist in the consideration of Article 10.

3. To assist this consideration, the meeting of the Parties to the Protocol invited Parties, other Governments, indigenous peoples and local communities, relevant stakeholders and organizations to submit to the Executive Secretary information on: (a) specific cases which may support the need for a global multilateral benefit-sharing mechanism that are not covered under the bilateral approach, accompanied by an explanation as to why such cases cannot be covered under the bilateral approach set out in the Nagoya Protocol; and (b) options for possible modalities for addressing those cases, including through a global multilateral benefit-sharing mechanism (decision NP-3/13, para. 4).

4. The Conference of the Parties serving as the meeting of the Parties to the Protocol requested the Executive Secretary to compile and synthesize the information received (decision NP-3/13, para. 5).

5. By notification 2019-024 of 25 February 2019, the Executive Secretary invited the submission of information pursuant to decision NP-3/13. The deadline for the submission was extended by notification 2019-059 of 15 July 2019. Information was received from six Parties to the Nagoya Protocol: Belarus,

*CBD/SBI/3/1.

Ethiopia, Guinea-Bissau, India, Madagascar and Mexico. Information was also received from three non-Parties to the Protocol: Australia, Iran (Islamic Republic of) and Nigeria. In addition, submissions were received from four organizations and stakeholders: African Union, International Treaty for Plant Genetic Resources for Food and Agriculture (International Treaty), Researchers from Kerala Agricultural University and Ashoka Trust for Research in Ecology and the Environment (“Researchers” hereinafter) and the Peruvian Society for Environmental Law (SPDA). The full text of all submissions has been made available online.¹

6. In decision NP-3/13, the Executive Secretary was also requested to commission a peer-reviewed study to identify specific cases of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent (para. 5(a)). The peer-reviewed study, made possible with the financial support of Belgium, the European Union and South Africa, has been issued for the third meeting of the Subsidiary on Implementation (CBD/SBI/3/15/Add.1).

7. The Parties to the Protocol requested the Subsidiary Body on Implementation to consider the study and synthesis with a view to identifying: (a) specific cases, if any, that cannot be addressed through the bilateral approach; and (b) if identified, options for addressing these cases, including a possible global multilateral benefit-sharing mechanism, and make a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its fourth meeting.

8. Accordingly, section II below synthesizes the information submitted pursuant to decision NP-3/13, paragraph 4, and section III below suggests some elements of a recommendation for consideration by the Subsidiary Body on Implementation, taking also into account the study referred to in paragraph 6 above.

II. SYNTHESIS OF VIEWS AND INFORMATION

9. The synthesis consists of four subsections: (a) general views on the need for a global multilateral benefit-sharing mechanism, including advantages and disadvantages; (b) specific cases which may support the need for a global multilateral benefit-sharing mechanism that are not covered under the bilateral approach, accompanied by an explanation as to why such cases cannot be covered under the bilateral approach set out in the Nagoya Protocol; (c) options for possible modalities for addressing those cases, including through a global multilateral benefit-sharing mechanism; and (d) additional relevant information received through the submissions.

A. General views on the need for a global multilateral benefit-sharing mechanism, including advantages and disadvantages

10. Some Parties and non-Parties indicated that, thus far, they had not encountered any obstacles to the bilateral approach,² that they had so far not come across any situation in which prior informed consent could not be obtained for a biological resource,³ or that they had never faced the need to apply a multilateral mechanism for benefit-sharing between providers and users of genetic resources.⁴ In that regard, two Parties and one non-Party⁵ reported that they were using mutually agreed terms or material transfer agreements to manage access and benefit-sharing of genetic resources under the bilateral system.

11. One Party⁶ stated that the mere occurrence of genetic resources and associated traditional knowledge in transboundary situations did not support the need for a global multilateral benefit-sharing mechanism. It also stated that, even if genetic resources were to be found *in situ* within the territory of two

¹ <https://www.cbd.int/abs/art10/2019-2020/submissions.shtml>.

² Iran (Islamic Republic of).

³ India.

⁴ Belarus.

⁵ Belarus, Iran (Islamic Republic of), Mexico.

⁶ India.

or more countries, the default mechanism for benefit-sharing should be the bilateral approach by cooperation among those countries.

12. A non-Party⁷ expressed concern at the implementation of a potential global multilateral benefit-sharing mechanism, which, in its view, would cut across the bilateral model of the Nagoya Protocol and dispense with the relationship established between users and providers. A requirement for all Parties to adopt such an approach regardless of national circumstance would undermine the ability of countries with a sovereign right over a resource to choose which genetic resources would be included and in what situation.

13. The same non-Party⁸ noted the existence of some scenarios which could potentially benefit from a multilateral benefit-sharing mechanism but that these examples would not warrant the continued investigation of a global mechanism by the Protocol at this point in time as other options for addressing these scenarios exist or are being explored, such as the recognition of specialized international access and benefit-sharing instruments as outlined in Article 4 of the Protocol.⁹

14. Two Parties¹⁰ emphasized the need to continue studying and holding consultations on the need and implementation of a global multilateral benefit-sharing mechanism.

15. In their submissions¹¹ several Parties to the Nagoya Protocol, organizations and stakeholders highlight the need for a global multilateral benefit-sharing mechanism and share their views on the advantages of such a mechanism.

16. One organization¹² expressed the view that establishing a global multilateral benefit-sharing mechanism could:

(a) Help ensure that benefits derived from the utilization of genetic resources occurring outside the usual bilateral access and benefit-sharing model contribute to achieving the first two objectives of the Convention;

(b) Assist Parties in discharging their obligation under Article 9 of the Protocol, i.e. to encourage users and providers to direct benefits arising from the utilization of genetic resources towards conservation of biological diversity and the sustainable use of its components;

(c) Assist Parties in discharging (some of) their obligations under Article 11 of the Protocol at a reasonable transaction cost and without needing to deal with every instance on a case-by-case basis;

(d) Provide users with increased legal certainty about the utilization of genetic resources, especially those that must be accessed from a wide range of providers and/or sources;

(e) Serve as a conduit for benefit-sharing by users who are not under any contractual obligation to share but nevertheless want to support conservation and sustainable use.

17. It was noted that a multilateral benefit-sharing mechanism would facilitate the transboundary exchange of genetic resources through the development of an open access system for genetic resources, whereby materials could be accessed easily while sharing of benefits would be ensured.¹³

⁷ Australia.

⁸ Australia.

⁹ Australia provided examples specific to human health, such as infectious organisms, including organisms that infect humans, animals and plants, which they consider an area where the coverage provided by the Nagoya Protocol could be considered lacking. Australia explained that this example would fall within the remit of the World Health Organization.

¹⁰ Belarus, Guinea-Bissau.

¹¹ African Union, Guinea-Bissau, Nigeria, SPDA Researchers.

¹² African Union.

¹³ Researchers.

B. Specific cases which may support the need for a global multilateral benefit-sharing mechanism that are not covered under the bilateral approach, accompanied by an explanation as to why such cases cannot be covered under the bilateral approach set out in the Nagoya Protocol

18. Several Parties and one organization¹⁴ identified specific cases which could support the need for a global multilateral benefit-sharing mechanism and which are not covered under the bilateral approach set out in the Nagoya Protocol and some provided an explanation as to why such cases cannot be covered under the bilateral approach.

19. The cases and explanations shown below were submitted.

1. Specific cases related to genetic resources

20. Countries sharing the same ecosystem or species, genetic resources located across national boundaries, organisms in rivers or other waters shared by more than one country;¹⁵ genetic resources held by indigenous peoples or local communities located in different countries.¹⁶ One organization¹⁷ specified that, in most of these situations, it was impractical to obtain prior informed consent from and negotiate mutually agreed terms with all the actual and potential providers. Making an access and benefit-sharing agreement with only one provider would be neither fair nor equitable because such a bilateral agreement would fail to reward other custodians of the same resources, who then have to incur the costs of protecting the shared ecosystems, resources and knowledge without benefiting equitably. The organization also noted that Article 11 of the Nagoya Protocol provides that Parties shall endeavour to cooperate when the same genetic resources and/or associated traditional knowledge are found within their territories. Transboundary cooperation might be difficult for political or other reasons. Establishing a global multilateral benefit-sharing mechanism would assist Parties in discharging (some of) their obligations under Article 11 at a reasonable transaction cost and without needing to deal with every instance on a case-by-case basis. The same organization further explained that the practical difficulties associated with trying to reach multiple access and benefit-sharing agreements with multiple rights holders in multiple jurisdictions means that applying the bilateral approach to such situations is likely to be prohibitively expensive and/or unfair.

A real case example from South Africa:¹⁸ A company based in the United States of America collects raw material from baobab trees in multiple African countries and produces a hydrolysed baobab product that it sells to customers in South Africa (which is also a baobab range State and provider). This very complex scenario would require a global multilateral benefit-sharing mechanism to achieve fair and equitable benefit-sharing.

21. *Countries sharing cosmopolitan organisms; genetic resources for food and agriculture with a high degree of global interdependence, and utilization of genetic components shared by many genomes.*¹⁹ The reasons identified in the submission as to why this specific case cannot be adequately covered by the bilateral approach are similar to those mentioned under paragraph 20 above.

A real case example provided:²⁰ A researcher based in the European Union contacted the Competent National Authority to collect samples of mosses that occur worldwide. Very small samples will be

¹⁴ African Union, Ethiopia, India, Madagascar.

¹⁵ African Union, Ethiopia, Madagascar, SPDA.

¹⁶ African Union, Ethiopia, Madagascar.

¹⁷ African Union.

¹⁸ African Union.

¹⁹ African Union.

²⁰ African Union. The submission of the African Union also contains an [annex](#) listing examples extracted from documentation prepared for the second meeting of the Subsidiary Body on Implementation (CBD/SBI/2/5) and from the fact-finding and scoping study on digital sequence information on genetic resources in the context of the Convention on Biological Diversity and the Nagoya Protocol commissioned by the Secretariat of the Convention ([CBD/DSI/AHTEG/2018/1/3](#)).

collected from many different countries and the research work will be done using gene sequencing. If identical gene sequences found in a number of these samples are later used for commercial purposes, the benefit-sharing obligations should be discharged using a global multilateral benefit-sharing mechanism.

22. *Genetic resources in ex situ collections that are subject to access and utilization and/or of which the origin is unknown or untraceable.*²¹ One organization²² elaborated that ex situ collections can only provide legitimate access accompanied by fair and equitable benefit-sharing if they are able to identify the original provider country or community that should receive benefits. When the provider is unknown, the bilateral approach results in unfair and inequitable outcomes, creating disincentives to invest in research and development involving resources for which access and benefit-sharing requirements apply. The same submission²³ specified that numerous *ex situ* collections hold information and specimens collected a long time ago, sometimes from several different countries, without proper records about the source or origin. A global multilateral benefit-sharing mechanism can help to ensure sharing of benefits from the commercial utilization of such information and specimens when the bilateral approach cannot be used.

A real case example provided:²⁴ The National Biological Resource Centre Culture Collection in Japan is a public culture collection for microorganisms. It is known that microorganisms possess similar characteristics even though they are sourced from multiple countries. Bacterial strains deposited to this public culture collection are distributed to third parties on request. In this situation, there is currently no guarantee of benefit-sharing if the resources are accessed for commercial utilization. A global multilateral benefit-sharing mechanism would ensure that some benefits could be shared and used to support conservation and sustainable use.

23. *Areas beyond national jurisdiction including the high seas, the deep seabed and Antarctica.*²⁵ One organization²⁶ explained that, in these areas, there is no sovereign right to grant prior informed consent. Regardless of the eventual outcomes of ongoing negotiations about access and benefit-sharing rules for biodiversity beyond national jurisdiction, a bilateral approach cannot be applied here. The hypothesis is that if genetic resources from these areas can be used without any benefit-sharing obligations, they will tend to deter investments in research and development of resources accessed under the bilateral approach. The same submission suggested that including these areas in a global multilateral benefit-sharing mechanism would be a cost-effective way to maximize conservation impact by lowering administrative costs.

24. *Migratory species, including species that migrate from areas within national jurisdiction to areas beyond national jurisdiction.*²⁷ One organization²⁸ clarified that, in addition to the reasons provided under paragraph 24(a) of its submission, the bilateral approach is particularly unsuitable for migratory species because the same population occurs under different jurisdictions, or none, at different times of the year.

25. *Genetic resources obtained from countries that do not require prior informed consent for access, and therefore offer no opportunity to negotiate mutually agreed terms and share benefits.*²⁹ According to the explanation of one organization,³⁰ countries have sovereign rights to bypass the bilateral approach by

²¹ African Union, Ethiopia, India.

²² African Union.

²³ African Union.

²⁴ African Union.

²⁵ African Union, Ethiopia.

²⁶ African Union.

²⁷ African Union, Ethiopia.

²⁸ African Union.

²⁹ African Union, India.

³⁰ African Union.

providing access to their resources without any formal process for prior informed consent. Granting access to genetic resources without requiring any benefit-sharing serves as a disincentive for users to request access from countries that do require prior informed consent and mutually agreed terms. By providing this access to genetic resources, countries undermine not only fair and equitable benefit-sharing but also sustainable use and conservation.

26. *Genetic resources accessed before the entry into force of the Nagoya Protocol.* One Party³¹ suggested that potential provider countries identified for those specific cases may be considered under a global multilateral benefit-sharing mechanism.

27. *Cases where no physical access is needed to obtain a genetic resource or its derivative* (e.g. from databases or the synthetic production of biochemical components).³² The submission of one organization³³ noted that modern technology is rapidly making it cheaper and easier to optimize genetic functions using only data and then order custom-made sequences from bio-foundries, bypassing bilateral access and benefit-sharing arrangements. Such synthetic products are nevertheless, at some level, “benefits arising from the utilization of genetic resources” and profits from this utilization can contribute to conservation and sustainable use, if shared fairly and equitably through a global multilateral benefit-sharing mechanism.

A real case of the poison dart frog (*Epipedobates anthonyi*).³⁴ The species is endemic to Ecuador and Peru. However, the object of access for Abbott Laboratories was not biological matter but a molecular structure transmitted through print. That accessed information was not a sequence and was not even transmitted digitally.

28. *Uses of digital sequence information on genetic resources*³⁵ where it is impossible to grant or obtain prior informed consent, or tracking utilization and compliance with a bilateral access and benefit-sharing approach would present significant practical difficulties, for example when sequences and portions thereof have been obtained from large numbers of organisms collected from different locations. The submission explained that utilization of digital sequence information obtained from resources accessed under the bilateral approach can be controlled through mutually agreed terms, albeit at the expense of restricting subsequent access to and use of the information by users not involved in the agreements (e.g. third-party researchers). One of the greatest advantages of freely available digital sequence information – that large shared data sets provide a background against which to identify functional genetic components or discover useful mutations – is particularly vulnerable to bilateral control over access to digital sequence information, because of the practical difficulties associated with obtaining prior informed consent from a large number of providers.

29. *Genetic resources whose country of origin cannot be identified after reasonable efforts.* In the view of one Party,³⁶ the need for a global multilateral benefit-sharing mechanism would arise in situations where the countries of origin cannot be identified after reasonable efforts have been made.

A real case example provided:³⁷ A germplasm company based in the European Union buys seeds from various countries for horticultural purposes. Once the plants are grown in the user country, some may originate from multiple countries, and once identical plants mature, they may be accessed from the user country for commercial utilization. In such a case, fair and equitable benefit-sharing requires a functional global multilateral benefit-sharing mechanism.

³¹ Madagascar.

³² African Union, Ethiopia, SPDA.

³³ African Union.

³⁴ SPDA.

³⁵ African Union, Ethiopia, Madagascar, SPDA.

³⁶ India.

³⁷ African Union.

2. Specific cases related to traditional knowledge associated with genetic resources

30. *Associated traditional knowledge shared by indigenous peoples or local communities located in different countries.*³⁸ One organization³⁹ explained that the practical difficulties associated with trying to reach multiple access and benefit-sharing agreements with multiple rights holders in multiple jurisdictions mean that applying the bilateral approach to such situations is likely to be prohibitively expensive and/or unfair.

31. *Publicly available traditional knowledge of unknown origin that is subject to access and utilization; widely dispersed traditional knowledge; situations where the original holders of traditional knowledge are no longer also the owners of the associated resources;*⁴⁰ and *traditional knowledge in ex situ collections that are subject to access and utilization and of which the origin is unknown or untraceable.*⁴¹ In its submission, one organization⁴² indicated that users of publicly available traditional knowledge of unknown origin have an unfair advantage if they are not obliged to share benefits. The bilateral approach is not applicable for this case as there are no rights holders to provide prior informed consent and mutually agreed terms. For widely dispersed traditional knowledge, the reasons identified by the submission as to why this specific case cannot be adequately covered by the bilateral approach are similar to those mentioned under paragraph 20 above. With regard to traditional knowledge in ex situ collections, the same organization⁴³ elaborated that *ex situ* collections can only provide legitimate access accompanied by fair and equitable benefit-sharing if they are able to identify the original provider country or community that should receive benefits. When the provider is unknown, the bilateral approach results in unfair and inequitable outcomes, creating disincentives to invest in research and development involving resources for which access and benefit-sharing requirements apply.

C. Options for possible modalities for addressing those cases, including through a global multilateral benefit-sharing mechanism

32. Regardless of the exact modalities that would eventually be agreed, one submission⁴⁴ is of the view that a global multilateral benefit-sharing mechanism should, at a minimum:

(a) Ensure that all users of genetic resources and associated traditional knowledge who generate monetary benefits contribute fairly and equitably to the conservation and sustainable use of biodiversity;

(b) Not undermine the sovereign rights of States to regulate access to their resources;

(c) Provide a clear, globally agreed and globally supervised channel for users to share benefits derived from resources accessed outside the default bilateral access and benefit-sharing approach established under the Convention and the Nagoya Protocol.

33. Several Parties and organizations⁴⁵ described options for possible modalities for addressing cases that are not covered under the bilateral approach set out in the Nagoya Protocol through a global multilateral benefit-sharing mechanism, as described below.

³⁸ African Union, Ethiopia, Madagascar.

³⁹ African Union.

⁴⁰ African Union, Ethiopia.

⁴¹ African Union, Ethiopia, India.

⁴² African Union.

⁴³ African Union.

⁴⁴ African Union.

⁴⁵ African Union, Ethiopia, Guinea-Bissau, Madagascar, Nigeria, SPDA.

1. Sources of funding and modalities of use of funds from a global multilateral benefit-sharing mechanism

34. The primary purpose of a global multilateral benefit-sharing mechanism could be to receive monetary benefits shared by users of genetic resources and associated traditional knowledge who have obtained access in situations where the bilateral approach cannot be used;⁴⁶

35. A global multilateral benefit-sharing mechanism could be primarily funded by users of genetic resources and associated traditional knowledge in transboundary situations and where it is not possible to grant prior informed consent,⁴⁷ but should also be open for voluntary contributions from Governments, individuals, organizations and other sources;⁴⁸

36. Funds raised through a global multilateral benefit-sharing mechanism could be used for local projects around the globe that enhance conservation and sustainable use of biodiversity,⁴⁹ to support global biodiversity priorities as identified by science,⁵⁰ the implementation of the Aichi Biodiversity Targets,⁵¹ capacity-building and technology transfer,⁵² or the development of networks and exchanges between providers.⁵³

37. Decisions on how to allocate and use the income of a global multilateral benefit-sharing mechanism could be arrived at by an independent international governing body constituted according to the usual regionally balanced United Nations formula⁵⁴ or by the Secretariat of the Convention.⁵⁵ One submission sees a potential role for independent scientific advice, possibly from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, to be provided to the governing body about global funding priorities to be supported.⁵⁶

38. A global multilateral benefit-sharing mechanism could have mixed modalities for different categories of resources. Examples provided include:

(a) The International Treaty, under which certain species are listed in an annex and fall under the global multilateral benefit-sharing mechanism, supported by a standardized benefit-sharing arrangement;

(b) Earmarking funds for particular regions or sectors, dividing benefits between a specific provider and the global multilateral benefit-sharing mechanism under certain circumstances, and establishing a clearing-house mechanism for the sharing of non-monetary benefits.⁵⁷

39. A global multilateral benefit-sharing mechanism with agreed standardized benefit-sharing modalities can lower the costs associated with negotiating mutually agreed terms, even under the bilateral system, by providing an internationally agreed benchmark.⁵⁸

⁴⁶ African Union.

⁴⁷ African Union, Ethiopia.

⁴⁸ African Union.

⁴⁹ African Union, Ethiopia, Madagascar, Nigeria.

⁵⁰ African Union.

⁵¹ Guinea-Bissau.

⁵² Madagascar, Nigeria.

⁵³ Madagascar.

⁵⁴ African Union.

⁵⁵ Ethiopia.

⁵⁶ African Union.

⁵⁷ African Union.

⁵⁸ African Union.

2. *Institutional structure and arrangements for a global multilateral benefit-sharing mechanism*

40. A global multilateral benefit-sharing mechanism is intended to supplement the bilateral system, not replace it, and its design must therefore respect national sovereignty.⁵⁹

41. A global multilateral benefit-sharing mechanism should preferably be established under the Convention,⁶⁰ rather than the Nagoya Protocol, and should be open to all providers and users of genetic resources and traditional knowledge associated with genetic resources, regardless of whether they are, or are under the jurisdiction of, Parties to the Convention and/or the Protocol.⁶¹

42. The institutional arrangement for administering a global multilateral benefit-sharing mechanism is envisaged to keep administrative costs as low as possible, so that most of the income can be directed towards supporting sustainable use and conservation of biodiversity.⁶²

43. Enforcement and compliance measures for a global multilateral benefit-sharing mechanism need to be elaborated. An appropriate checkpoint might be at the point of domestic market authorization, where users who have obtained access without concluding bilateral mutually agreed terms could be obliged to accept a benefit-sharing obligation in exchange for permission to sell their products in a particular market.⁶³

D. Additional relevant information submitted pursuant to decision NP-3/13

44. In response to the invitation to submit information, the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture provided updates on activities and processes under the International Treaty that are of relevance to the ongoing consideration of Article 10 of the Nagoya Protocol by the Parties thereto and a global multilateral benefit-sharing mechanism.

45. In 2013, the Governing Body of the International Treaty launched a process to enhance the Multilateral System by establishing an Ad Hoc Open-ended Working Group, which is tasked, inter alia, with developing measures for the increase in user-based payments and contributions to the Benefit-Sharing Fund in a sustainable and predictable long-term manner. The Working Group considered, among other matters, revisions to the Standard Material Transfer Agreement as well as possible changes to the coverage of the Multilateral System. As countries' interdependence in plant genetic resources represents one of the key arguments for the Multilateral System of the International Treaty, the basis for considering its enhancement includes a fully updated estimation of such interdependence, as provided in a recent study.⁶⁴

46. During the biennium 2018-2019, the Working Group considered, among other things, criteria and options for the possible adaptation of coverage of the Multilateral System and supportive measures to facilitate the implementation of the possible expansion of the coverage of the Multilateral System. The Working Group considered a possible process to review: the status of ratifications to the amended Annex I of the International Treaty (i.e. crops and forages covered by the Multilateral System); the level of user-based income accruing to the Benefit-sharing Fund; and the availability of and access provided to material within the Multilateral System.

47. At its eighth session, in November 2019, the Governing Body of the International Treaty was unable to reach consensus on the enhancement of the Multilateral System. It encouraged informal consultations among contracting Parties and especially national consultations among sectors and relevant stakeholders. Some contracting Parties wanted the Governing Body at its ninth session to consider how to

⁵⁹ African Union.

⁶⁰ African Union, Ethiopia.

⁶¹ African Union.

⁶² African Union.

⁶³ African Union.

⁶⁴ The study is available at: <http://www.fao.org/3/a-bq533e.pdf>

carry out further work on the enhancement of the Multilateral System, noting the need to consider outcomes of relevant debates under the Convention on Biological Diversity.

III. SUGGESTED ELEMENTS OF A RECOMMENDATION

48. The Subsidiary Body on Implementation may wish to consider the synthesis of views (section II above) and the peer-reviewed study commissioned pursuant to decision NP-3/13 (CBD/SBI/3/15/Add.1), with a view to identifying (a) specific cases, if any, that cannot be addressed through the bilateral approach, and (b) if identified, options for addressing these cases, including a possible global multilateral benefit-sharing mechanism, and making a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its fourth meeting.

49. The Subsidiary Body on implementation may wish to recommend that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol adopt a decision along the following lines:

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

Recalling the sovereign rights of States over their natural resources and national Governments authority to determine access to genetic resources as recognized in Article 15, paragraph 1, of the Convention,

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

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

Recognizing the negotiation process that is under way on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, which is also expected to address access and benefit-sharing arising from the utilization of genetic resources in areas beyond national jurisdiction,

1. *Takes note* of the submissions of views and information and the peer-reviewed study commissioned by the Executive Secretary to identify specific cases of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent;

2. *Considers* the cases identified in the submissions as well as the peer reviewed study instructive, and *decides* to proceed to explore potential modalities of a global multilateral benefit-sharing mechanism;

3. *Invites* Parties, other Governments, indigenous peoples and local communities, relevant stakeholders and organizations to submit to the Executive Secretary views and information on possible modalities of a multilateral benefit-sharing mechanism, including options for modes of participation, sharing of benefits and governance as well as options for cooperation to address instances described in Article 11 of the Nagoya Protocol;

4. *Decides* to establish an ad hoc technical expert group, with the terms of reference as set out in the annex to the present decision, to consider possible modalities of multilateral benefit-sharing mechanism further to Article 10 of the Nagoya Protocol, and to submit its report to the Subsidiary Body on Implementation for its consideration at its fourth meeting;

5. *Requests* the Subsidiary Body on Implementation to consider the report of the ad hoc technical expert group referred to in paragraph 4 above and make recommendations to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, for its consideration at its fifth meeting;

6. *Requests* the Executive Secretary to facilitate the work of the ad hoc technical expert group referred to in paragraph 4 by, among other things:

- (a) Preparing a synthesis of the views and information referred to in paragraph 3 above;
- (b) Establishing an online forum to consider the synthesis of the views and information referred to above;
- (c) Preparing a summary report on the outcomes of the online forum and submitting it to the ad hoc technical expert group.

Annex

**TERMS OF REFERENCE OF THE AD HOC TECHNICAL EXPERT GROUP ON A GLOBAL
MULTILATERAL BENEFIT-SHARING MECHANISM**

1. The Ad Hoc Technical Expert Group shall identify possible modalities of multilateral benefit-sharing mechanism, taking into account:

- (a) The outcomes of the online forum;
- (b) The need to ensure that such modalities are supportive of the benefit-sharing approaches established under the Convention and the Nagoya Protocol and are complementary to other mechanisms under specialized international access and benefit-sharing instruments.

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

3. The Ad Hoc Technical Expert Group shall:

- (a) Meet, subject to the availability of financial resources, at least once prior to the fourth meeting of the Subsidiary Body on Implementation;
- (b) Include experts selected on the basis of their expertise on the issues under consideration, and participants representing indigenous peoples and local communities;
- (c) Submit its outcomes for the Subsidiary Body on Implementation for its consideration at its fourth meeting.

4. The Ad Hoc Technical Expert Group will be convened in accordance with the procedure specified in paragraph 4, section C of the annex to decision [XIII/25](#), on the modus operandi of the Subsidiary Body on Implementation, which also applies, mutatis mutandis, for processes under the Nagoya Protocol.
