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CONFERENCE OF THE PARTIES TO THE CONVENTION  
ON BIOLOGICAL DIVERSITY SERVING AS THE  
MEETING OF THE PARTIES TO THE NAGOYA  
PROTOCOL ON ACCESS TO GENETIC RESOURCES  
AND THE FAIR AND EQUITABLE SHARING OF  
BENEFITS ARISING FROM THEIR UTILIZATION

Second meeting

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Item 10 of the provisional agenda\*

**CAPACITY-BUILDING PROGRAMME TO SUPPORT THE ESTABLISHMENT OF LEGAL  
FRAMEWORKS FOR THE IMPLEMENTATION OF THE NAGOYA PROTOCOL:  
OVERVIEW AND LESSONS LEARNED**

*Note by the Executive Secretary*

### I. INTRODUCTION

1. The entry in force of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization on 12 October 2014 represented a major milestone in the global commitment to promote access and benefit-sharing (ABS). Entry into force also translated into achieving the first part of Aichi Biodiversity Target 16 of the Strategic Plan for Biodiversity 2011-2020, which provides that “by 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation”.

2. With respect to the second part of Target 16, a number of steps are to be taken by Parties to the Nagoya Protocol to ensure that it becomes operational, consistent with national legislation. Specifically, Parties to the Protocol are to (a) establish institutional structures, and (b) develop or revise legislative, administrative or policy measures on ABS to implement the Protocol.<sup>1</sup>

3. Furthermore, in decision NP-1/8, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (COP-MOP) adopted a strategic framework for capacity-building and development to support the implementation of the Nagoya Protocol (para. 1 and annex I to the decision), covering five key areas for capacity-building and development.

4. In light of the above, and with financial support from the Japan Biodiversity Fund, the International Development Law Organization (IDLO) and the Secretariat of the Convention on Biological Diversity (SCBD) established a capacity-building programme to support the implementation of the

\* UNEP/CBD/NP/COP-MOP/2/1/Rev.1.

<sup>1</sup> Further information on progress towards Aichi Biodiversity Target 16 can be found in UNEP/CBD/NP/COP-MOP/2/2.

Nagoya Protocol. This programme focuses on key area 2 of the strategic framework for capacity-building and development – capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing.

5. The present document provides an overview of the IDLO-SCBD capacity-building programme to support the establishment of legal frameworks for the implementation of the Nagoya Protocol, as well as lessons learned from its implementation. It complements information provided in UNEP/CBD/NP/COP-MOP/2/8, subsection II.

## **II. BRIEF OVERVIEW OF THE CAPACITY-BUILDING PROGRAMME TO SUPPORT COUNTRIES IN ESTABLISHING LEGAL FRAMEWORKS FOR TO SUPPORT THE IMPLEMENTATION OF THE NAGOYA PROTOCOL**

6. The programme aims to build and develop the capacity of countries to operationalize the Nagoya Protocol by providing the necessary resources and support for countries to develop or update ABS national frameworks which will provide for legal certainty, clarity and transparency. As part of this programme national lawyers and policy officers have been trained with a view to actively contribute to the development or revision of national ABS frameworks.

7. The programme includes: (a) e-learning modules on key themes related to the Protocol's implementation, for use by countries and relevant organizations; (b) capacity-building courses for countries that have ratified or acceded to the Protocol or are close to ratification, and involving e-learning sessions, face-to-face workshops and online discussions; and (c) follow-up through the online global network of ABS legal experts, to facilitate peer-to-peer knowledge-sharing, learning and networking on ABS legal issues.

## **III. PROGRESS IN THE IMPLEMENTATION OF THE THREE COMPONENTS OF THE CAPACITY-BUILDING PROGRAMME DURING THE 2015-2016 BIENNIUM, INCLUDING FEEDBACK RECEIVED FROM TRAINED LAWYERS AND POLICY-MAKERS**

### **A. E-learning modules**

8. The first component of the programme was to develop training materials on the establishment of national ABS frameworks to implement the Nagoya Protocol, which could be adapted for use by countries and relevant organizations in their capacity-building activities at the national and regional levels.

9. The e-learning modules were developed by IDLO and SCBD through consultations with experts and stakeholders and extensive research. The modules were also sent to ABS experts for peer-review.

10. The modules present in a step-by-step manner the provisions of the Protocol, possible policy options for their implementation and practical examples of measures taken by countries. They were designed for learners to build a strong foundation of knowledge on the core concepts related to the Protocol and its implementation. The modules also include a quiz to review the information learned and additional available resources for consultation. A total of 8 e-learning modules were finalized:

(a) The “Legal Reform” module outlines the importance of legislative, administrative and policy measures to implement the Protocol and includes guiding principles and indicative steps for ABS legal reform processes, approaches for stakeholder engagement, information on conducting a gap analysis for existing frameworks and the different regulatory options, and steps to take to promote the effective implementation of the chosen regulatory approach;

(b) The “Policy-setting” module provides useful information on the importance of the policy-setting process to inform the design of ABS measures, including guidance contained in the voluntary Bonn Guidelines, and outlines steps to take to define ABS policy priorities that ABS systems can be

designed to achieve, including the range of options to consider at each step, with relevant country examples;

(c) The “Institutional arrangements” module focuses on the core functions to be assigned to domestic institutions (national focal points, competent national authorities, checkpoints) to support effective ABS systems, as well as supportive functions that can be assigned, and provides options to integrate technical expertise into ABS decision-making and foster communication and collaboration among domestic institutions;

(d) The “Access to genetic resources” module details the key concepts related to access to genetic resources, the core elements required under the Protocol, including on prior informed consent and mutually agreed terms, and other elements and considerations that can inform the design of clear and transparent rules and procedures on access;

(e) The “Benefit-sharing” module outlines the concept of benefit-sharing as developed under the CBD and Protocol and the basic requirements set out by the Protocol in relation to benefit-sharing and provides an indicative three-step process for designing measures to support benefit-sharing, as well as options for tailoring measures to national contexts and for addressing transboundary cases;

(f) The “Compliance” module provides useful information on the Protocol’s requirements to support compliance with domestic regulatory requirements and mutually agreed terms, the function of the internationally recognized certificate of compliance, as well as the different options and approaches taken to date to support compliance and to monitor the utilizations of genetic resources along the ABS value chain;

(g) The “Indigenous and local communities (ILCs)” module describes the link between ILCs and ABS, examines different policy options for ABS measures related to ILCs and supportive measures and the scope of activities that cover the Protocol’s obligations on ILCs, including those related to prior informed consent, mutually agreed terms, transboundary and shared traditional knowledge, and customary law and community protocols;

(h) The “Supportive measures” module focuses on measures that support the implementation of the Protocol, including those related to awareness-raising and capacity-building, and provides information on the Protocol’s requirements and steps to take to encourage stakeholders to develop and promote supportive tools and mechanisms, such as model clauses and voluntary codes of conduct, and relevant guidance and resources on supportive measures.

11. These e-learning modules will be finalized prior to the second meeting of COP-MOP and made available online through the SCBD e-Learning Platform and the ABS Clearing-House. The modules will be made available in three languages (English, French, Spanish).

## **B. Capacity-building course on establishing legal frameworks to implement the Nagoya Protocol**

12. The second component of the capacity-building programme was to organize a training course on the development or amendment of ABS regulatory frameworks for countries that have ratified or acceded to the Protocol or are close to ratification, using a blended approach combining e-learning, face-to-face workshops, and follow-up online discussions.

(i) *Course preparation and implementation*

13. The course was designed using the latest capacity-building techniques to meet the following main learning objectives:

- (a) Learn core obligations and options to implement the Protocol;
- (b) Share national experiences on the design of ABS measures;
- (c) Apply the knowledge acquired to plan next steps at national level; and

(d) Strengthen leadership and communication skills to engage ABS stakeholders.

14. A description and a call for applications for the course, entitled “Establishing Legal Frameworks to Implement the Nagoya Protocol”, were disseminated through SCBD notification 2016-020 of 25 January 2016 as well as other channels. Outreach materials to support the call for applications were also developed and issued.

15. More than 220 applications from around the world were received by the 22 February 2016 deadline. A careful evaluation of all submitted applications was carried out by IDLO and SCBD. The applicants who best fit the following criteria were selected:

(a) Lawyer or policy officer in a position/ministry actively leading processes to implement the Nagoya Protocol, or with a position/ministry with ability to influence the process; and

(b) From a country with ongoing or imminent processes to implement the Nagoya Protocol, through ratification or intention to ratify and/or engagement in ABS-related initiatives or projects.

16. Whenever possible, two candidates were selected per country, with one candidate focused on legal aspects and the second focused on ABS policy and/or decision-making.

17. A needs assessment was then conducted to inform the grouping of candidates and the design of workshops sessions. Furthermore, a knowledge assessment survey was sent to participants to obtain an understanding of their level of knowledge prior to the course, in view of tailoring the course content and approach to the specific needs of the selected participants.

18. On the basis of the geographic region, the spoken language of the candidates and the needs and knowledge assessments, three different groups were formed for the face-to-face portion of the course. Accordingly, workshops were held for Anglophone Africa and the Caribbean in The Hague, Netherlands (11 to 15 July 2016), for the Asia-Pacific region in Bali, Indonesia (18 to 22 July 2016), and for the Latin American and the Caribbean region in Antigua, Guatemala (5 to 9 September 2016)<sup>2</sup>.

19. Four weeks prior to their face-to-face workshops, participants gained access to the dedicated course website (<http://www.nagoyalawcourse.org/>), completed the e-learning modules, and participated in an online welcome session.

20. A total of 59 participants from 40 countries joined the face-to-face workshops. 10 candidates also completed the e-learning modules and participated in the online welcome session, but were unable to attend the face-to-face workshops.

21. The three workshops followed a common training methodology, based on keeping lecture to the necessary minimum, making time for interactive sessions. Each workshop featured tailored activities, based on the needs identified in the needs assessment. The following provides several examples of the different sessions and their objectives:

(a) Pub Quiz: for this exercise, participants formed four teams (per workshop) to answer prepared questions on each of the themes covered by the 8 e-learning modules, as an interactive way to review key concepts and refresh participants' knowledge;

(b) World Café: for this exercise, participants were invited to join small, interactive group discussions guided by an expert facilitator to address the most pressing issues identified in the surveys and come up with creative solutions by sharing experiences and brainstorming. World Café sessions were held on the following themes: a closer look at Protocol implementation (e.g., a closer look to access regimes, mutually agreed terms), user perspectives (e.g. the EU Regulations), and challenges of implementation (e.g. options for establishment of checkpoints);

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<sup>2</sup> A fourth workshop for Francophone Africa is planned for 2017.

(c) **LifeMaps:** in preparation for this session, participants had to prepare a LifeMap of the status of ABS implementation in their country, reflecting on what has been achieved and the challenges faced since the adoption of the Convention for Biodiversity, the key milestones that have led them to where they are today and on what will be the key objectives to set for the successful implementation of the Protocol. For the exercise, participants were invited to draw and present their LifeMap;

(d) **Problem Tree on ABS Policy-Setting:** for this session, participants worked in groups to brainstorm and conceptualize the possible elements of an ABS policy vision, in view of breaking down challenges associated with the development of a policy into manageable and definable chunks, identifying the key priorities, mapping out all elements to take into account at country level and showing links to broader development goals beyond conservation and benefit-sharing;

(e) **Stakeholder engagement:** This session reminded all participants that stakeholder engagement is key at all stages and require them to adopt a flexible approach when engaging with external stakeholders to secure buy-in in policy discussions and gain support across sectors;

(f) **Check Your Implementation:** using a worksheet, this exercise aimed to help participants understand what has been achieved so far and what gaps remain in their countries towards the design of domestic measures that fully implement the Protocol, with a view to identify and prioritize areas for further focus and improvement;

(g) **Designing Measures:** using a worksheet, this exercise enabled participants to think through options to consider in the legal reform process to implement the Protocol while focusing on one specific step of relevance to the national context of their country;

(h) **Ignite:** this session focused on learning how to present the Nagoya Protocol to non-experts and use different techniques for more interactives PowerPoint presentations. The session tried to answer the question: “Why should we care about the Nagoya Protocol?”;

(i) **Building Leadership:** this exercise was intended to help participants become aware of the leadership qualities they admire so that they can actively develop them.

22. During and after the workshops, participants were invited to evaluate the course as a whole and provide feedback on the trainings held respectively in The Hague, Bali and Antigua. Key points drawn from the evaluations are summarized hereafter.

(ii) *Feedback from participants of the course*

23. Overall, participants expressed a high level of satisfaction with the training course, with an average rating of 92%.<sup>3</sup> Many participants praised the methodology, the quality of the information provided, the variety of activities and the organization of the course. Some participants considered that too much information was provided in a short time, or that too little time was allocated for specific activities or discussions.

24. Although the content of the workshops varied on the basis of the needs assessments, most participants<sup>4</sup> considered that additional topics could be covered by the course, or that some topics could be covered in further detail, such as:

- (a) Negotiation skills or techniques (10 out of 40 respondents);
- (b) ABS agreements, contracts, and case studies (5 out of 40 respondents);
- (c) Monitoring and compliance (4 out of 40 respondents);
- (d) Other topics mentioned included biotrade, intellectual property rights and communication strategies.

<sup>3</sup> See the evaluation of satisfaction for each workshop included in annex.

<sup>4</sup> 55% of participants from the Bali and The Hague workshops, and 78% of Antigua participants for the Antigua workshop.

25. In general, the areas where there was a more significant increase in skills and knowledge were compliance, the ABS Clearing-House, different approaches and options for domestic ABS frameworks, including country experiences, conducting stakeholder consultations and communications and leadership skills related to ABS. The course report will be made available on the ABS Clearing-House.

### **C. Online global network of ABS legal experts**

26. The third component of the capacity-building programme is to develop and maintain an online global network of legal experts on ABS, to serve as a mechanism for peer-to-peer knowledge-sharing, further learning and exchange of resources and experiences on ABS legal issues.

27. Under this component, IDLO launched the course website and Facebook page and hosted, in collaboration with the Secretariat, the online welcome session for participants to the course, with a view to fostering discussion on key ABS issues and networking opportunities.

## **IV. BEST PRACTICES AND LESSONS LEARNED FROM THE IMPLEMENTATION OF THE PROGRAMME**

28. From the implementation of the capacity-building programme in 2015-2016 the following lessons learned can be identified:

(a) National lawyers and policymakers are eager to learn from their peers and share their experience on ABS implementation;

(b) Providing a variety of capacity-building activities and methodologies is appreciated and allows participants to remain engaged throughout their learning experience;

(c) Participation of experts with national implementation experience was acknowledged as useful to provide a practical perspective;

29. During the programme participants identified a number of challenges that they were facing to implement the Nagoya Protocol, including:

(a) Difficulties in building political will to engage ministries and key decision-makers in the implementation of the Protocol;

(b) A limited number of ABS experts exist to act as trainers or knowledge transfer facilitators, especially those with national implementation experience.

30. Experts and participants also identified areas where more capacity could be built to support the implementation of the Protocol:

(a) Different sectoral perspectives on ABS;

(b) Indigenous and local communities related issues;

(c) Compliance and monitoring the utilization of genetic resources;

(d) Negotiation skills;

(e) ABS agreements.

*Annex*

**COURSE EVALUATION RESULTS (THE HAGUE, THE NETHERLANDS)**

<b>3. COURSE EVALUATION RESULTS</b>						
<b>Part I: Satisfaction with the training course</b>						
	<b>AVG</b>	<b>Min</b>			<b>Max</b>	
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1. Do you feel that the course reached its objectives?	<b>4.53</b>	0%	0%	0%	47%	53%
2. Were the topics relevant to your current work or functions?	<b>4.50</b>	0%	0%	5%	40%	55%
3. Was the course relevant to your organization/institutions needs?	<b>4.70</b>	0%	0%	0%	30%	70%
4. Did the course provide an opportunity to put in practice what you were learning?	<b>4.53</b>	0%	0%	5%	37%	58%
5. Was the training material useful?	<b>4.65</b>	0%	0%	5%	25%	70%
6. Was the quantity of training material appropriate?	<b>4.30</b>	0%	0%	15%	40%	45%
7. How useful was the facilitator to the learning process?	<b>4.75</b>	0%	0%	0%	25%	75%
8. Did you find the composition of the group appropriate?	<b>4.35</b>	0%	0%	20%	25%	55%
9. Did you receive adequate administrative assistance?	<b>4.50</b>	0%	0%	10%	30%	60%
10. Did you receive enough information before the training?	<b>4.25</b>	0%	5%	15%	30%	50%
11. Was the information you received before the training timely?	<b>3.67</b>	0%	6%	44%	28%	22%
<b>OVERALL - COURSE</b>	<b>4.43</b>	0%	1%	11%	32%	56%

### COURSE EVALUATION RESULTS (BALI, INDONESIA)

<b>3. COURSE EVALUATION RESULTS</b>						
<b>Part I: Satisfaction with the training course</b>						
	<b>AVG</b>	<b>Min</b>			<b>Max</b>	
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1. Do you feel that the course reached its objectives?	<b>4.72</b>	0%	0%	0%	28%	72%
2. Were the topics relevant to your current work or functions?	<b>4.74</b>	0%	0%	5%	16%	79%
3. Was the course relevant to your organization/institutions needs?	<b>4.74</b>	0%	0%	5%	16%	79%
4. Did the course provide an opportunity to put in practice what you were learning?	<b>4.68</b>	0%	0%	0%	32%	68%
5. Was the training material useful?	<b>4.79</b>	0%	0%	0%	21%	79%
6. Was the quantity of training material appropriate?	<b>4.53</b>	0%	0%	0%	47%	53%
7. How useful was the facilitator to the learning process?	<b>4.83</b>	0%	0%	0%	17%	83%
8. Did you find the composition of the group appropriate?	<b>4.53</b>	0%	0%	5%	37%	58%
9. Did you receive adequate administrative assistance?	<b>4.58</b>	0%	0%	5%	32%	63%
10. Did you receive enough information before the training?	<b>4.47</b>	0%	0%	11%	32%	58%
11. Was the information you received before the training timely?	<b>4.16</b>	5%	5%	5%	37%	47%
<b>OVERALL - COURSE</b>	<b>4.62</b>	0%	0%	3%	28%	67%

## COURSE EVALUATION RESULTS (ANTIGUA, GUATEMALA)

<b>3. COURSE EVALUATION RESULTS</b>						
<b>Part I: Satisfaction with the training course</b>						
	AVG	Min			Max	
		1	2	3	4	5
1. Do you feel that the course reached its objectives?	5.00	0%	0%	0%	0%	100%
2. Were the topics relevant to your current work or functions?	4.94	0%	0%	0%	6%	94%
3. Was the course relevant to your organization/institutions needs?	5.00	0%	0%	0%	0%	100%
4. Did the course provide an opportunity to put in practice what you were learning?	4.89	0%	0%	0%	11%	89%
5. Was the training material useful?	4.67	0%	0%	0%	33%	67%
6. Was the quantity of training material appropriate?	4.50	0%	0%	0%	50%	50%
7. How useful was the facilitator to the learning process?	4.89	0%	0%	0%	11%	89%
8. Did you find the composition of the group appropriate?	4.94	0%	0%	0%	6%	94%
9. Did you receive adequate administrative assistance?	4.89	0%	0%	6%	0%	94%
10. Did you receive enough information before the training?	4.78	0%	0%	0%	22%	78%
11. Was the information you received before the training timely?	3.94	6%	0%	28%	28%	39%
<b>OVERALL - COURSE</b>	<b>4.77</b>	<b>1%</b>	<b>0%</b>	<b>3%</b>	<b>15%</b>	<b>81%</b>