

**Convention on  
Biological Diversity**

Distr.  
GENERAL

UNEP/CBD/BS/L&R/IRW/1/2  
14 June 2012

ORIGINAL: ENGLISH

**INTER-REGIONAL WORKSHOP ON CAPACITY NEEDS  
FOR THE IMPLEMENTATION OF THE NAGOYA –  
KUALA LUMPUR SUPPLEMENTARY PROTOCOL ON  
LIABILITY AND REDRESS**

Riga, Latvia, 9-11 May 2012

**REPORT OF THE WORKSHOP****INTRODUCTION**

1. The Inter-regional Workshop on Capacity Needs for the Implementation of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was held in Riga, Latvia on 9-11 May 2012.
2. The workshop was attended by 40 participants from Parties to the Cartagena Protocol on Biosafety and relevant organizations. The following countries were represented: Benin, Brazil, Bulgaria, Cameroon, Colombia, Croatia, Gabon, Honduras, India, Japan, Lao People's Democratic Republic, Latvia, Liberia, Lithuania, Malaysia, Mexico, Mongolia, Morocco, Oman, Philippines, Republic of Moldova, South Africa, Ukraine, United Kingdom of Great Britain and Northern Ireland, and Viet Nam. The following non-governmental organizations were also represented: African Centre for Biosafety and Friends of the Earth Latvia.
3. Representatives of the United Nations Environment Programme and the European Commission also attended the workshop and contributed as resource persons.
4. The workshop was a follow up to the four regional workshops organized by the Secretariat last year in Africa, Asia and Pacific, Central and Eastern Europe, and Latin America and the Caribbean. The regional workshops were mainly intended to raise awareness and promote the signature and ratification of the Supplementary Protocol. The inter-regional workshop was to build on the discussions held during the regional workshops by bringing together participants from the different regions to share information and exchange experiences with respect to development and implementation of domestic regulatory instruments that address liability issues or response measures for environmental damage or damage to biological diversity and to review potential capacity needs in these areas with an emphasis on capacity requirements to implement the Supplementary Protocol.

/...

In order to minimize the environmental impacts of the Secretariat's processes, and to contribute to the Secretary-General's initiative for a C-Neutral UN, this document is printed in limited numbers. Delegates are kindly requested to bring their copies to meetings and not to request additional copies.

## **ITEM 1. OPENING OF THE WORKSHOP**

5. The workshop was opened by His Excellency Mr. Edvards Smiltens, Parliamentary Secretary of the Ministry of Agriculture of Latvia. Mr. Smiltens welcomed the participants and thanked them for their presence at the workshop. He also thanked the Secretariat of the Convention on Biological Diversity for organizing the workshop to raise understanding regarding the new Supplementary Protocol on Liability and Redress. He noted the importance of ensuring safe transboundary movement of living modified organisms. Mr. Smiltens mentioned that Latvia had some experience to share with workshop participants with regard to applying domestic measures on liability for environmental damage which also responded to the requirements of the Nagoya – Kuala Lumpur Supplementary Protocol. He wished participants a successful workshop and a pleasant stay in Riga.

6. In his opening remarks, Mr. Andris Eglājs, Head of Administration, Ministry of Environmental Protection and Regional Development of Latvia, stated that Latvia was honored to host the workshop which had the protection of biodiversity as its ultimate objective and was therefore consistent with the coming United Nations Conference on Sustainable Development (Rio+20). The protection of biodiversity, Mr. Eglājs noted, was a difficult but important process to ensure ecosystem services and to guarantee sustainable development. He expressed gratitude to the Government of Japan for its generous financial support that enabled the Secretariat to organize the workshop.

7. Mr. Charles Gbedemah, Principal Officer for the Biosafety Unit in the Secretariat of the Convention on Biological Diversity, made remarks on behalf of the Executive Secretary of the Convention. Mr. Gbedemah welcomed the participants to the workshop. He thanked the Government of Latvia for hosting the workshop and providing excellent facilities; and the Government of Japan for its generous financial support that enabled participants from eligible countries to attend the workshop.

8. In his brief remarks, Mr. Isao Tojo, Senior Adviser for Biosafety in the Ministry of Agriculture, Forestry & Fisheries of Japan recalled the tragic earthquake and tsunami that hit Eastern Japan on 11 March 2011 and expressed his gratitude for the overwhelming response of sympathy and support that his country received from around the world. He noted that the Supplementary Protocol on Liability and Redress would increase confidence in the environmentally sound application of modern biotechnology. He thanked the Secretariat for its hard work in promoting the Supplementary Protocol and facilitating its signature and ratification. Mr. Tojo mentioned that Japan would continue with its support and contribution towards the effective implementation of the Cartagena Protocol on Biosafety.

9. Following the opening remarks, participants introduced themselves and indicated their expectations from the workshop.

10. Participants adopted the revised workshop programme attached herewith as annex I.

## **ITEM 2. UPDATE ON THE STATUS OF THE NAGOYA – KUALA LUMPUR SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS**

11. Mr. Worku Damena Yifru of the Secretariat of the Convention on Biological Diversity gave an overview of the provisions of the Supplementary Protocol. He highlighted the core provisions of the Supplementary Protocol including its objective, the scope, the elements that constitute damage, response measures to damage, entities responsible to take response measures and the implementation requirements in terms of developing or applying rules and procedures addressing damage as defined in the Supplementary Protocol. Mr. Yifru mentioned that the purpose of the presentation was to bring up to speed those participants who did not have the chance to attend the previous workshop conducted in their respective region. He then updated participants on the status of signature and ratification of the Supplementary Protocol.

12. Following the presentation, participants raised questions, including on the steps that countries should take to ratify or accede to the Supplementary Protocol. Mr. Yifru highlighted the procedures of ratification, approval, acceptance or accession to the Supplementary Protocol.

### **ITEM 3. EXPERIENCES RELATING TO THE DEVELOPMENT AND IMPLEMENTATION OF ENVIRONMENTAL LIABILITY RULES**

#### ***3.1. The European Union Environmental Liability Directive***

13. Under this item, Mr. Hans Lopatta, Policy and Legal Officer in the Directorate-General for the Environment of the European Commission made a presentation on the Environmental Liability Directive of the European Union (EU).

14. Mr. Lopatta highlighted the historical background to the Environmental Liability Directive, the basic features, main provisions and implementation of the Directive. He noted that the Directive was a framework based on the polluter-pays-principle intended for the prevention and remedying of certain types of environmental damage to nature, water and soil. The Directive, he stated, focused, primarily on restoration in-kind as remedy to damage to the environment and represented a minimum requirement and left a wider margin for EU Member States, which were allowed to maintain or adopt more stringent environmental liability rules. He also highlighted the results and conclusions of the report of 2010 on the effectiveness of the Environmental Directive, in particular as regards the development of financial security market to cover environmental liability. He mentioned that although there was no mandatory requirement at EU level for operators to maintain financial security, providers such as insurance companies were encouraged to develop products covering environmental liability. He further mentioned that according to the report most insurers described the financial security market development as positive, albeit its delay due to the financial crisis.

15. Mr. Lopatta indicated that the implementation of the Directive was limited. He said that 16 Environmental Liability Directive cases were reported in 2010. He mentioned, as possible reasons for the limited implementation, the following: (i) challenging technical requirements such as economic evaluation, environmental remediation methods etc.; (ii) limited awareness and knowledge of operators; (iii) the preventive effect of the Directive; (iv) maintenance of existing laws i.e. Member States maintain more stringent laws; (v) exceptions and defences available under the Directive; and (vi) the “severity threshold” that requires public authorities to show the existence of “significant damage”.

16. Following the presentation, participants raised questions, including on the conditions for exemptions under the Directive, how the operator was identified, and whether there was a list of activities for which the Environmental Liability Directive applies. Mr. Lopatta answered these and other questions and invited participants to visit the web page: <http://ec.europa.eu/environment/liability/index.htm> or to contact him for any further questions.

#### ***3.2. National experiences***

17. Under this item, presentations were made on the experiences of two countries, namely Latvia (EU Member State) and South Africa. The first presentation was on Latvia’s experience in transposing the EU Environmental Liability Directive. The presentation was jointly made by: (i) Ms. Daiga Vilkaite, Director, Department of Nature Protection; (ii) Mr. Eriks Leitis, Senior Consultant, Department of Nature Protection, and (iii) Mr. Gustavs Gailis, Head of Legal Division, Legal Department. All of them were from the Ministry of Environmental Protection and Regional Development of Latvia.

18. The presentation outlined Latvia’s environmental policy and sustainable development strategy documents, in particular concerning the management and protection of biodiversity. It highlighted the various sections of the Environmental Protection Law, adopted in 2006, as well as various cabinet regulations and other domestic laws which incorporated the relevant rules and principles of the EU Environmental Liability Directive. It was noted that precautionary approach and integrated natural resources management were the most important considerations underlying the environmental policy and strategy and the various laws and regulations adopted by Latvia with respect to the protection of the environment in general and biological diversity in particular.

19. The second national experience to be presented was South Africa’s regulatory and administrative approaches in addressing environmental damage. In her presentation, Ms. Wadzanayi Mandivenyi,

Director of Biodiversity Risk Management in the Department for Environmental Affairs of South Africa, highlighted the domestic laws of South Africa which provide the basis for addressing liability for environmental damage. The laws or legal provisions she highlighted were: Section 24 of the Constitution, which provides for environmental right; National Environmental Management Act 107 of 1998 (NEMA); Environment Conservation Act 73 of 1989; Genetically Modified Organisms Act 15 of 1997 as Amended by Act 23 of 2006 (GMO Act); National Water Act; and Conservation of Agricultural Resources Act. Ms. Mandivenyi mentioned that the analysis of these existing laws indicated that the GMO Act and NEMA may provide sufficient coverage of response measures for damage as defined in the Supplementary Protocol.

20. Following the presentations and discussions held throughout the day, participants were asked to form small groups and to continue sharing experiences on their domestic legal and administrative situation in addressing environmental damage by responding to some guiding questions and to identify commonalities, if any, as well as weaknesses or strengths and priority steps. Accordingly, participants formed three small groups. Participants were also asked to examine one hypothetical case prior to sharing information on their domestic administrative and regulatory rules and approaches.

21. After discussions within the small groups, each group presented, through its rapporteur, its views and suggestions on how the facts, scenarios and issues arising from the case might be addressed and also their conclusions of their discussions on existing domestic situations.<sup>1</sup>

#### **ITEM 4. CAPACITY-BUILDING NEEDS AND OPPORTUNITIES FOR THE IMPLEMENTATION OF THE SUPPLEMENTARY PROTOCOL**

##### ***4.1. The requirements of the Supplementary Protocol and possible capacity needs for implementation***

22. This part of the workshop started with a presentation by Mr. Yifru of the Secretariat. Mr. Yifru highlighted the core requirements of the Supplementary Protocol and suggested capacity needs corresponding to each requirement that may be necessary to be developed or maintained by each Party at the national level in order to implement the requirements. He grouped the requirements of the Supplementary Protocol into three broad categories, namely (i) legal; (ii) administrative; and (iii) information sharing/awareness-raising-related requirements. Mr. Yifru mentioned that some of the requirements identified in his presentation such as public awareness and participation were requirements of the Cartagena Protocol on Biosafety which may apply *mutatis mutandis* to the Supplementary Protocol by virtue of paragraph 3 of Article 16 of the Supplementary Protocol.

##### ***4.2. Options and opportunities available for building or maintaining capacities for the implementation of the Supplementary Protocol***

23. Mr. Alex Owusu-Biney, Portfolio Manager (Biosafety), Global Environment Facility Coordination, Division of Environmental Policy Implementation of the United Nations Environment Programme made a presentation under this item. He outlined, as options for implementing the Supplementary Protocol with limited requirements and capacity needs, the use of existing legal provisions; adopting subsidiary regulations; including provisions on liability and redress in existing draft biosafety frameworks or implementation measures; and the use or consideration of experiences and best practices from other countries or regions such as the Environmental Directive of the EU.

24. As regards opportunities for capacity-building support, Mr. Owusu-Biney stated that the financial mechanism; a possible decision by the Parties to the Biosafety Protocol, including a recommendation for inclusion in the guidance to the financial mechanism; and the potential use of existing judiciary facilities and other legal infrastructure at the domestic level, represented some of the opportunities that were available for Parties in their efforts to implement the Supplementary Protocol.

---

<sup>1</sup> The guiding questions that were provided to participants and the summaries of the discussions of the small groups as reported by each group are attached herewith as annex III.

25. Participants raised questions and made comments on the presentation. Following the presentations and discussions held during the day, participants went back to their respective small groups to further discuss what the implementation of the requirements of the Supplementary Protocol would entail, the potential capacity needs that may arise, and the options available to meet those capacity needs. Participants had some guiding questions before them to facilitate their small group discussions. After discussions within the small groups, each group presented a report summarizing the discussions and suggestions made.<sup>2</sup>

**ITEM 5. COMPLEMENTARY CAPACITY-BUILDING MEASURES IN THE  
CONTEXT OF THE ACTION PLAN FOR BUILDING CAPACITIES  
UNDER THE PROTOCOL**

26. Mr. Erie Tamale of the Secretariat of the Convention on Biological Diversity made a presentation under this item. He highlighted the scope of the Capacity-building Action Plan under the Cartagena Protocol on Biosafety; the independent evaluation of the Action Plan, its findings and emerging recommendations; the Strategic Plan of the Protocol and the operational objectives relevant to capacity-building; and priority areas of complementary capacity-building measures in support of the implementation of the Supplementary Protocol that may possibly be integrated into the revised Capacity-Building Action Plan and complement the relevant operational objectives of the Strategic Plan.

27. Mr. Tamale outlined the following activities as potential complementary capacity-building measures that may be considered in order to achieve the capacity-building operational objectives indicated in the Strategic Plan of the Protocol:

- (a) Stocktaking and analysis of existing national policies, laws and administrative systems to determine the extent to which they address liability and redress for LMOs;
- (b) Designation/establishment of competent authorities for the purposes of the Supplementary Protocol;
- (c) Development of guidelines to assist competent authorities in discharging their duties in accordance with the Supplementary Protocol;
- (d) Strengthening the scientific and technical capacity of the competent authorities to evaluate damage, establish causal links and determine appropriate response measures;
- (e) Establishment of databases and knowledge management systems to facilitate the establishment of baselines and monitoring of the status of biodiversity at genetic, species and ecosystem levels;
- (f) Strengthening capacity to provide for administrative or judicial review of decisions on response measures to be taken by the operator in accordance with Article 5.6 of the Supplementary Protocol;
- (g) Analysis of mechanisms for providing financial security;
- (h) Compilation and exchange of information on experiences and lessons learned in the implementation of the Supplementary Protocol through the Biosafety Clearing-House.

28. Participants raised questions and discussed the elements suggested for complementary capacity-building measures for the implementation of the Supplementary Protocol. In order to facilitate the discussions, the Secretariat also circulated among participants excerpts from the outcomes of the Seventh Coordination Meeting of Governments and Organizations Implementing or Funding Biosafety Capacity-Building Activities (Coordination Meeting), which was held in Chisinau, Republic of Moldova,

---

<sup>2</sup> The guiding questions and the small group reports are attached to this report as annex IV.

from 4 to 6 April 2011.<sup>3</sup> The Coordination Meeting has identified some areas and activities relating to the implementation of the Supplementary Protocol for which capacity-building needs could arise.

## ITEM 6. CONCLUSIONS AND EVALUATION OF THE WORKSHOP

29. Under this item, participants made general observations, conclusions and suggested some follow-up actions.

30. Accordingly, the Participants in the Inter-regional Workshop on Capacity Needs for the Implementation of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress:

(a) Noted that the implementation of the Supplementary Protocol and associated capacity needs vary from country to country;

(b) Recognized the existence of a range of regulatory and administrative options, at the domestic level, to achieve the objective of the Supplementary Protocol and to implement its requirements. These include existing domestic laws on environmental protection, biodiversity, environmental liability, and biosafety;

(c) Recognized further the need to review existing regulatory and administrative arrangements in order to determine their adequacy to address the requirements of the Supplementary Protocol. In the event these arrangements do not exist or are found to be not adequate, new rules may be developed and implemented;

(d) Noted that the Supplementary Protocol represents a minimum requirement and Parties may consider a more comprehensive approach to address damage to biodiversity;

(e) Noted the importance of capacity to develop, synthesize and utilize data on biodiversity with a view to establishing baselines and undertaking monitoring and evaluation of damage, and consider that capacity-building focal areas may, as a priority, include; (i) identification and evaluation of damage, (ii) monitoring and valuation of biodiversity loss, (iii) determination of appropriate response measures and; (iv) implementing response measures, as appropriate;

(f) Recognized the importance of valuation of biological diversity in facilitating the implementation of the Supplementary Protocol, in particular in determining and implementing response measures; and the need to develop criteria and methodology for that purpose;

(g) Encouraged the compilation and sharing of information on experiences and lessons learned with respect to the implementation of liability rules to address damage to biodiversity, including through the Biosafety Clearing-House;

(h) Recognized the need for continued efforts to increase understanding of the requirements of the Supplementary Protocol, including through the development of an explanatory guide on the provisions of the Supplementary Protocol;

(i) Encouraged Parties to the Cartagena Protocol on Biosafety to expeditiously ratify or accede to the Supplementary Protocol in order to have an additional instrument that contributes to the conservation and sustainable use of biological diversity by addressing damage resulting from the transboundary movement of living modified organisms; and

(j) Expressed appreciation and gratitude to the Government of Latvia for hosting the workshop and for the warm hospitality received; the Government of Japan for providing the financial resources that enabled them to participate in the workshop; and the Secretariat for organizing and conducting the workshop.

---

<sup>3</sup> Report of the seventh Coordination Meeting available at: <http://www.cbd.int/doc/meetings/bs/bscmcb-07/official/bscmcb-07-03-en.pdf>

31. Participants also completed an evaluation of the workshop. The results of the evaluation are summarized in annex II below.

#### **ITEM 5. CLOSURE OF THE WORKSHOP**

32. Ms. Inese Aleksejeva, Deputy Head of the Division of Biotechnology and Quality in Veterinary and Food Department at the Ministry of Agriculture of Latvia thanked participants for their active participation. She thanked members of her team for their dedication and efficiency prior to and during the workshop. She also thanked the Secretariat for organizing and conducting the workshop in a very effective way. She expressed her confidence that the workshop met all the objectives and expectations of all participants.

33. After further exchange of courtesies, the workshop was closed at 3:30 p.m. on Friday, 11 May 2012.

*Annex I***PROGRAMME OF WORK FOR THE WORKSHOP (revised)**

<b>Date and time</b>	<b>Agenda item</b>	<b>Facilitator/Presenter</b>
<b>Wednesday, 9 May 2012</b>		
9:30 a.m. – 10.00 a.m.	1. Opening of the workshop	<i>Facilitator:</i> Ms. Inese Aleksejeva (Latvia)
10.00 a.m. – 10:30 a.m.	2. Update on the status of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress	<i>Facilitator:</i> Ms. Inese Aleksejeva (Latvia)
10:30 a.m. – 10:50 a.m.	Discussion	<i>Presenter:</i> Mr. Worku Damena Yifru (SCBD)
<i>10:50 a.m. – 11:10 a.m.</i>	<i>Coffee/Tea Break</i>	
11:10 a.m. – 11:40 a.m.	3.3. Experiences relating to the development and implementation of environmental liability rules	<i>Facilitator:</i> Ms. Inese Aleksejeva (Latvia)
11:40 a.m. – 12:30 a.m.	3.1 Environmental Liability Directive of the European Union	<i>Presenter:</i> Mr. Hans Lopatta (European Commission)
	<i>Discussion</i>	
<i>12:30 p.m. – 2.00 p.m.</i>	<i>Lunch Break</i>	
2:00 p.m. – 2:45 p.m.	3.3 National experiences Latvia's experience in transposing the EU Environmental Liability Directive	<i>Facilitator:</i> Mr. Worku Damena Yifru (SCBD)
2:45 p.m. – 3:15 p.m.	South African experience	<i>Presenters:</i> Mr. Eriks Leitis and Mr. Gustavs Gailis (Latvia)
3:15 p.m. – 3:30 p.m.	<i>Discussion</i>	<i>Presenter:</i> Ms. Wadzanayi Mandivenyi (South Africa)
<i>3:30 p.m. – 3:50 p.m.</i>	<i>Coffee/Tea Break</i>	
3:50 p.m. – 5:00 p.m.	3.3 National experiences ( <i>continued</i> ) Domestic regulatory and administrative approaches in addressing environmental damage  <i>Discussions in small groups</i>	<i>Facilitator:</i> Mr. Worku Damena Yifru (SCBD)   <i>Workshop participants</i>



Date and time	Agenda item	Facilitator/Presenter
<b>Thursday, 10 May 2012</b>		
9:30 a.m. – 10:50 a.m.	3.3 National experiences ( <i>continued</i> )  <i>Reports from the small groups and discussion</i>	<i>Facilitator:</i> Mr. Worku Damena Yifru (SCBD)  <i>Group rapporteurs</i>
10:50 a.m. – 11:15 a.m.	<i>Coffee/Tea Break</i>	
11:15 a.m. – 12:00  12:00 – 12:30 p.m.	4. Capacity-building needs and opportunities for the implementation of the Supplementary Protocol  4.1. The requirements of the Supplementary Protocol and possible capacity needs for implementation  <i>Discussion</i>	<i>Facilitator:</i> Mr. Erie Tamale (SCBD)  <i>Presenter:</i> Mr. Worku Damena Yifru (SCBD)
12:30 p.m. – 2.00 p.m.	<i>Lunch Break</i>	
2:00 p.m. – 2:45 p.m.  2:45 p.m. – 3:15 p.m.	4. Capacity-building needs and opportunities ( <i>continued</i> )  4.2 Options and opportunities available for building or maintaining capacities for the implementation of the Supplementary Protocol  <i>Discussion</i>	<i>Facilitator:</i> Mr. Erie Tamale (SCBD)  <i>Presenter:</i> Mr. Alex Owusu-Biney (UNEP)
3:15 p.m. – 3:45 p.m.	<i>Coffee/Tea Break</i>	
3:45 p.m. – 5:00 p.m.	4. Capacity-building needs and opportunities ( <i>continued</i> )  Small groups discussions on capacity needs and opportunities	<i>Facilitator:</i> Mr. Erie Tamale (SCBD)  <i>Workshop participants</i>

Date and time	Agenda item	Facilitator/Presenter
<b>Friday 11 May 2012</b>		
9:30 a.m. – 10:45 a.m.	4. Capacity-building needs and opportunities ( <i>continued</i> )  <i>Reports from the small groups and discussion</i>	<i>Facilitator:</i> Mr. Erié Tamale (SCBD)  <i>Group rapporteurs</i>
<i>10:45 a.m. – 11:10 a.m.</i>	<i>Coffee/Tea Break</i>	
11:10 a.m. – 11:40 a.m.	5. Complementary capacity-building measures in the context of the Action Plan for Building Capacities under the Protocol	<i>Facilitator:</i> Mr. Charles Gbedemah (SCBD)  <i>Presenter:</i> Mr. Erié Tamale (SCBD)
11:40 a.m. – 12:00	<i>Discussion</i>	
12:00 – 1:00 p.m.	6. Conclusions of the workshop and evaluation	<i>Facilitator:</i> Worku Damena Yifru (SCBD)
<i>1:00 p.m. – 2:30 p.m.</i>	<i>Lunch Break</i>	
2:30 p.m. – 3:15 p.m.	6. Conclusions of the workshop and evaluation ( <i>continued</i> )	<i>Facilitator:</i> Mr. Worku Damena Yifru (SCBD)
3:15 p.m. – 3:30 p.m.	7. Closure of the workshop	<i>Facilitator:</i> Ms. Inese Aleksejeva (Latvia)

*Annex II*

**WORKSHOP EVALUATION**

1. At the end of the workshop, participants were asked to complete a workshop evaluation form. They were asked to rate, on a scale of 1 to 6, the extent to which the workshop had improved their understanding of: (i) the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress; (ii) the development and implementation of environmental liability rules; and (iii) capacity needs and opportunities for the implementation of the Nagoya – Kuala Lumpur Supplementary Protocol, including complimentary capacity building measures. The participants were also invited to provide an overall assessment of the workshop in terms of how well it was organized and conducted and the extent to which it had met their expectations. The results of the evaluation are summarized in the table below.

<b>Part 1: Nagoya – Kula Lumpur Supplementary Protocol on Liability and Redress</b>	<i>Average rating</i>	<b>Rating</b>	<b>Satisfaction (%)</b>
(i) Improving your understanding of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress?	5	Very useful	80%
(ii) Improving your understanding of the context in which the Supplementary Protocol might be applicable?	5	Very useful	76%
(iii) Improving your understanding of the status of ratification and requirements for entering into force of the Supplementary Protocol?	4	Useful	74%
<b>Part 2 Development and Implementation of Environmental Liability Rules</b>			
(i) Improving your understanding of the European Union Environmental Liability Directive?	4	Useful	71%
(ii) Improving your understanding of the existing approaches and rules adopted by other countries concerning liability for damage to the environment or biological diversity?	5	Very useful	77%
(iii) Identifying appropriate approaches or practices in the development and/or implementation of domestic rules on liability for damage in the context of the Supplementary Protocol?	4	Useful	73%

<b>Part 3: Capacity needs and opportunities for the implementation of the Nagoya – Kuala Lumpur Supplementary protocol, including complimentary capacity building measures</b>	<b>Average rating</b>	<b>Rating</b>	<b>Satisfaction (%)</b>
(i) Improving your understanding of the requirements of the Supplementary Protocol that need action at the domestic level?	5	Very useful	76%
(ii) Identifying specific areas or issues for which maintaining or building some level of capacity may be necessary?	4	Useful	74%
(iii) Improving your understanding on options and opportunities that are available for building capacity to address environmental damage?	4	Useful	72%
(iv) Improving your understanding on how complimentary capacity building measures for the Supplementary Protocol may be considered in the context of the Action Plan for Building Capacities under the Cartagena Protocol on Biosafety?	4	Useful	69%
<b>Part 4: Overall workshop assessment</b>	<b>Average rating</b>	<b>Rating</b>	<b>Satisfaction (%)</b>
(i) Has the workshop met your expectations?	5	Fully	79%
(ii) How useful has the workshop been in improving your understanding of how your country could address damage resulting from living modified organisms?	5	Very useful	79%
(iii) How useful has the workshop been in assisting you to identify the capacity needs of your country for the development or implementation of domestic rules on liability for damage in the context of the Supplementary Protocol?	4	Useful	73%
(iv) How useful was the workshop for you as an individual?	5	Very useful	82%
(v) How well organised was the workshop?	5	Very well organized	84%
(vi) How did you find the balance between presentations and the discussions?	5	Very well balanced	79%
(vii) Overall, how would you rate the workshop?	5	Excellent	81%

2. As far as written personal comments were concerned under Part 5 of the evaluation form, the following were indicated by participants:

- (i) What did you consider the most helpful part of the workshop?
- sharing experiences, part III (x14);
  - update on and overview of the Supplementary Protocol (x5);
  - the presentation on requirements and identificaion of capacity needs (x 3);
  - case-study (better if the case was one where the Supplementary Protocol applies);
  - good balance between presentations and group discussion (x2);
  - the presentation and discussion on the EU Environmental Liability Directive (x2);
  - the presentations (x3);

- well facilitated question and answer sessions.
- (ii) What did you find the least helpful about the workshop?
- group exercise on capacity needs (x2);
  - the presentation on the experience of the EU Environmental Liability Directive (x2);
  - the controversy about compensation measures (payment of compensation operators);
  - definition of damage and its evaluation;
  - facilitation of the morning session of final day;
  - complimentary capacity building measures;
  - too many participants in unstructured group discussions.
- (iii) Would you recommend to your Government to ratify or accede to the Supplementary Protocol?
- yes (x22);
  - no (x1);
  - already in the process of ratification (x2);
  - no response (x3).
- (iv) What suggestions do you have for improving future workshops?
- allow more discussion time among participants (x2);
  - define/organize the roles of participants in group discussion;
  - better to have facilitators in small group discussions;
  - more case-studies;
  - practical cases;
  - merits/challenges and identifying best practices in national and international litigation on environmental damage (cases);
  - prepare summary of previous day's work;
  - visa arrangements (x2);
  - more info on financial security and capacity-building;
  - make presentations available to the participants ahead of time (x2);
  - allow more time for discussion;
  - less time for non-party intervention (NGOs and others);
  - identification of specific capacity-building will require visioning (?) and a little longer time;
  - solve critical points for Supplementary Protocol;
  - more awareness (media) of the Supplementary Protocol around the world;
  - improving the understanding of the status of ratification and requirements for entering into force;
  - supply participants with other relevant documents such as the EU directive;
  - need to explain further what a country may have to do in order to ratify;
  - allocate more time to discussion that could improve understanding of text of the Supplementary Protocol; discuss pros and cons of ratifying;
  - more participation from NGOs, producers and industry.

### *Annex III*

#### **GUIDING QUESTIONS**

##### ***Item 3.3. National experiences: domestic regulatory and administrative approaches in addressing environmental damage***

*Keeping in mind the presentations made and the discussions held so far on the Nagoya – Kuala Lumpur Supplementary Protocol (an overview), the UNEP guidelines, the Environmental Liability Directive of the European Union, the experiences of the few individual countries, and based on the information or knowledge you have as regards the situation in your country with respect to the subject, please consider the questions below in your small group discussion:*

*Each participant is expected to respond to the first two questions and share the information he/she has with other members of the group. The last three questions need to be addressed by the group as a whole.*

*Each small group is invited to prepare the summary of its discussions with regard to the last three questions and present it to the workshop plenary through its rapporteur.*

- 1/ Are there any legal or administrative arrangements in place in your country to hold operators whose activities cause environmental damage liable for remedying the damage?
- 2/ Does your domestic approach focus on specific components of the environment (such as biodiversity, water, land) and specific sources of environmental damage (such as industrial, agricultural, living modified organisms) OR on damage to the environment in general and the effects of the damage?
- 3/ What elements, approaches or trends could you identify as common to all or most domestic jurisdictions that you heard about in this group?
- 4/ What limitations/weaknesses or strengths have you noticed in some of these elements or approaches?
- 5/ Identify and discuss at least three priority steps that countries need to take with a view to put in place a functioning domestic legal or administrative system to address damage to the environment or biological diversity, and to incorporate the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress.

#### **DISCUSSION SUMMARY AS REPORTED BY EACH SMALL GROUP**

##### **Group 1 (Liberia, Lithuania, Malaysia, Mexico, Mongolia, Morocco, Oman, Peru, Philippines)**

- 1) Are there any legal or administrative arrangements in place in your country to hold operators whose activities cause environmental damage liable for remedying the damage?

*All have general laws “related to the Cartagena protocol”.*

- 2) Does your domestic approach focus on specific components of the environment (such as biodiversity, water, land) and specific sources of environmental damage (such as industrial, agricultural, living modified organisms) OR on damage to the environment in general and the effects of the damage?

*Focus of domestic Law (not necessarily related to liability and redress/SP):*

- a) Biodiversity
- b) Industry/agriculture
- c) General damage

*All participants stated that they have laws that cover all three aspects.*

- 3) What elements, approaches or trends could you identify as common to all or most domestic jurisdictions that you heard about in this group?-

*All participants claim to have all three kinds (administrative, civil and criminal liability rules), except for Lithuania (which has only civil and administrative) and Oman and Morocco (N/A).*

- 4) What limitations/weaknesses or strengths have you noticed in some of these elements or approaches?

*Weaknesses: Lack of specific law/norms*

*Strengths: General laws*

5) Identify and discuss at least three priority steps that countries need to take with a view to put in place a functioning domestic legal or administrative system to address damage to the environment or biological diversity, and to incorporate the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress.

*Priorities: Baseline / define operator/ elements for evaluation / determine response measures*

*Steps: List of requirements under protocol/ Match in existing law/ incorporate new elements for damage*

Group 2 (Benin, Brazil, Bulgaria, Japan, Macedonia, Moldova, Ukraine, Vietnam, UK and Zambia)

- 1) Are there any legal or administrative arrangements in place in your country to hold operators whose activities cause environmental damage liable for remedying the damage? and;
- 2) Does your domestic approach focus on specific components of the environment (such as biodiversity, water, land) and specific sources of environmental damage (such as industrial, agricultural, living modified organisms) OR on damage to the environment in general and the effects of the damage?

*Benin: No specific law (on GMO or Environmental liability). There is 10 year moratorium until March 2013 (based on precautionary principle). There is general wildlife law which also deals with general environmental damage.*

*Brazil: Specific GM law to prevent/remediate against infractions (2003 or 5(?) i.e. post entry into force of the Cartagena Protocol. There is also general environmental law (1981) - A combination of general approach and specific provisions. Provisions of the Supplementary Protocol may be covered by both laws.*

*Bulgaria: Two laws: Transposition of the ELD deals with administrative liability (not focused on GMO – though technically covers all environmental damage) - Civil law follows 2001/18/EC – two articles under consideration one on damages (compensation) and the other on operator.*

*Japan: Environmental protection law (general). GMO law (specific law for implementation of Cartagena Protocol. Also includes provisions on liability. Focuses on specific components. Need more examination whether it is sufficiently covers/meets the requirements of the Supplementary Protocol.*

*Macedonia: General environmental law focuses on general issues. It includes liability and redress. There is also a specific GMO law (2005) - no provision for liability and redress. It may probably need to be amended to cover the Supplementary Protocol.*

*Moldova: Law on biosecurity. It doesn't currently include liability and redress. It may need to be amended to cover the supplementary Protocol. Law of permission of activities (Licensing law) – covers GM activities. There is a national committee on biosafety.*

*Ukraine: General Environmental law. Law on Environmental expertise ?? A number of other codes(??) including on water, land, atmosphere, forest... There is also a specific GM law - Under this a number of Acts of the competent Ministry covering various GM activities. Amendments across legislation may be needed to cover liability and redress.*

*Viet Nam: 2005 Environmental Protection Law. 2008 Law regarding biodiversity including GMO. Decree 2009 (maize, cotton, soybean, field trials, ...etc) No liability and redress yet.*

*UK: Transposed EU ELD via Environmental Damage Regulations. General principles of environmental protection and liability and redress exist. GM transposed under existing specific environmental acts, including liability and redress.*

*Zambia: Biosafety Act (2009) - Receiving authority (Biosafety authority) - regulates GMO management. Also the Zambian Environmental Management Agency deals with wider environmental issues (mining, etc).*

*Both have liability provisions. Polluter pays principle in both. Amendments of the Biosafety Act may possibly be needed to implement the Supplementary Protocol.*

3) What elements, approaches or trends could you identify as common to all or most domestic jurisdictions that you heard about in this group?

*Most have a general environmental framework that spells out the broad principles of environmental protection.*

*Most have specific laws (sometimes separate from and sometimes under existing general law) dealing with the management of GMOs. Less harmonized framework for L&R.*

4) What limitations/weaknesses or strengths have you noticed in some of these elements or approaches?

*Weaknesses: - Difficult to prove causal link between GMO and loss/damage to biodiversity.*

- Not everyone has a clear mechanism to trigger response measures in case of damage from GMO.*
- Difficult to separate damage to biodiversity from GMO production and general/other damage from agriculture.*

5) Identify and discuss at least three priority steps that countries need to take with a view to put in place a functioning domestic legal or administrative system to address damage to the environment or biological diversity, and to incorporate the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress.

- Clarification in area of civil liability (Supplementary Protocol doesn't detail civil liability provisions).*
- Countries must assess the compatibility of their existing legal frameworks and the provisions of the Supplementary Protocol;*
- Awareness-raising amongst political officials (managing political process). New governments may be particularly challenging.*

Group 3: (Cameroon, Colombia, Croatia, Gabon, Honduras, India, Laos (People's Democratic Republic of), Latvia): No written report



*Annex IV*

**GUIDING QUESTIONS**

***Item 4. Capacity needs and opportunities for the implementation of the Supplementary Protocol***

*Keeping in mind the presentations made and the discussions held under sub-item 4.1 on the requirements of the Supplementary Protocol and the possible capacity needs, and sub-item 4.2 on options and opportunities for building or maintaining capacities for the implementation of the Supplementary Protocol, please discuss, in your small group, ways and means that Parties may consider adopting to fill capacity gaps in their efforts to address damage as specified in the Supplementary Protocol. You may consider responding to the questions below in order to facilitate your discussion.*

*Each small group is invited to prepare the summary of its discussions and present a report to the workshop plenary through its rapporteur.*

1/ Depending on the circumstances of each country, what should the priorities be? Consider the following actions:

- (i) Ratifying or acceding to the Supplementary Protocol;
- (ii) Updating national biosafety frameworks to incorporate rules and administrative procedures in line with the Supplementary Protocol;
- (iii) Updating environmental management regulatory frameworks or environmental liability rules.

2/ Which of the following approaches do you think would be more efficient in the context of capacity or institutional resources needs?

- (i) Creating or maintaining a domestic environmental liability regime that also takes into account damage that may be caused by living modified organisms;
- (ii) Creating a stand-alone system for damage to biological diversity resulting from living modified organisms.

3/ What are the capacity-building needs with regard to the following requirements under the Supplementary Protocol:

- (i) Identification of operators;
- (ii) Monitoring the status of biodiversity and evaluation of damage;
- (iii) Determination and implementation of appropriate response measures.

4/ What are the capacity-building needs with regard to the following?

- (i) Promotion of public awareness and education concerning damage to biological diversity resulting from LMOs ;
- (ii) Education of operators about the requirements of the Supplementary Protocol and available remedies
- (iii) Exchange of information (including through the BCH) on incidents of damage to biological diversity and appropriate response measures taken or to be taken
- (iv) Compilation and sharing of information on the availability of insurance or other financial security mechanisms covering liability for environmental damage or damage to biological diversity

5/ What are the possibilities of obtaining or accessing financial or technical support from: (i) domestic sources; (ii) bilateral; and (iii) multilateral arrangements, including the Global Environment, to meet the capacity needs associated with the legal, administrative and other requirements of the Supplementary Protocol.

- 6/ Identify at least two measures that you think would enable Parties to achieve the objective of the Supplementary Protocol with minimum cost or capacity needs – consider better and more efficient policy, legal or administrative approaches to address damage to the environment, biological diversity and human health.

### **DISCUSSION SUMMARY AS REPORTED BY EACH SMALL GROUP**

#### Group 1:

1. Not all members of the group have signed the Supplementary Protocol. Some have already made a political commitment to ratify or accede to the Supplementary Protocol. Others are in the process of evaluating its significance or implications to national interests or policies.

The group considered that, first of all, there is the need to study and evaluate their domestic law related to environment and liability and redress, review their legal institutions and see if they are complementary or cover what is established in the Supplementary Protocol.

2. The majority of the group considered that it will be better to create a stand-alone system for biological diversity resulting from LMO's in terms of implementation and identification of competences; some others prefer to make their existing law adequate. We agreed that it was practical to adequate their existing laws. Independently of the ratification of the SP it has helped the Parties to be conscious about the need to cover the issue of liability and redress related to damage to biological diversity resulting from LMO's.

3. A) operator: The group considered that it is very important to identify first the criteria to determine who is or are the operator/s. We also agreed about the importance to have a clear register to track the activity, the LMO's, to develop a network, a list of operators and standard operator procedures.

B) Monitoring: The group raised the importance to identify basic parameters (criteria) in order to monitor status of biodiversity and evaluation of damage: to develop capacity building related to the generation of base lines. The existence of regional networks that can help in this regard was also mentioned. A monitoring system has to be created, train people for monitoring.

C) Was agreed the need to identify possible management regimes (management requirements); identify what can go wrong first.

4. i) and ii) the group agreed on the need to identify the appropriate means to reach general public and the operators to enhance awareness and education concerning damage to biological biodiversity resulting from LMO's. The group considered that this work can be done for the Cartagena Protocol and the SP at the same time to optimize resources and fulfill also the obligation in this sense in the Cartagena Protocol.

iii) The group considered the importance to continue with the BCH work including the information related to Supplementary Protocol. We identified the need for capacity building for the focal points, many of them are not directly related to the SP or have been changed. This can be done by workshops.

iv) Insurance or other financial security mechanism will depend on legal requirement in domestic legislation. Different approaches according to different realities.

5. Accessing financial or technical support from the GEF was considered the best option, as support is available. In parallel we can work bilaterally or multilaterally but we need more information in this regard.

6. Measures: a) adequate our existing laws (practical approach) as new laws have to be elaborated in Congress (more time). Regulations are elaborated at the Executive level (faster) b) In parallel, pursue work on a specific law.

#### Group 2:

- 1/ Depending on the circumstances of each country, what should the priorities be? Consider the following actions:

- (a) Ratifying or acceding to the Supplementary Protocol;

- (b) Updating national biosafety frameworks to incorporate rules and administrative procedures in line with the Supplementary Protocol;
- (c) Updating environmental management regulatory frameworks or environmental liability rules.

Order of priorities by country:

*Macedonia (2,3,1), South Africa (2,1), Brazil (2,1), Benin (1, 2), Bulgaria (1), Viet Nam (2), UK ( 1), Japan (2, 1), Moldova (2,1) and Zambia (3,2,1).*

2/ Which of the following approaches do you think would be more efficient in the context of capacity or institutional resources needs?

- (i) Creating or maintaining a domestic environmental liability regime that also takes into account damage that may be caused by living modified organisms; *Macedonia, Bulgaria, Ukraine, UK, Moldova*
- (ii) Creating a stand-alone system for damage to biological diversity resulting from living modified organisms. *South Africa, Brazil, Benin, Viet Nam, Japan and Zambia*

3/ What are the capacity-building needs with regard to the following requirements under the Supplementary Protocol.

4/ What are the capacity-building needs with regard to the following.

Answer to 3 and 4: *technical and human resources to achieve all these.*

5/ What are the possibilities of obtaining or accessing financial or technical support from: (i) domestic sources; (ii) bilateral; and (iii) multilateral arrangements, including the Global Environment Facility, to meet the capacity needs associated with the legal, administrative and other requirements of the Supplementary Protocol.

- *Reduced availability of resources worldwide – global crisis.*
- *Look for opportunities to harmonize within the country and within the convention.*
- *Spend money in the most efficient way possible.*

6/ Identify at least two measures that you think would enable Parties to achieve the objective of the Supplementary Protocol with minimum cost or capacity needs – consider better and more efficient policy, legal or administrative approaches to address damage to the environment, biological diversity and human health.

- *Identify possible risks caused by GMOs and ways to identify possible damage.*
- *Consult experts from different countries with experience.*
- *Utilize existing monitoring networks.*

Group 3:

### ***Legal requirements***

**Q1:** Depending on the circumstances of each country what should the priorities be?

This can be dependent on each country situation:

- Some states go through the process of ratification/update/review for example Mexico where the GMO law is already existed
- However, some nations are following the update/review and ratification

**Q2:** What is more efficient in the context of capacity resource needs?

From this our group believes that harmonizing domestic environmental liability will be a more efficient manner dealing with the capacity needs.

### ***Administrative***

**Q3:** What are the capacity building (CB) needs

3.1 Operators: data, strengthening competent authority (CA) and institutions supporting the CA put in place traceability mechanism.

3.2 Monitoring & evaluation: base line development approach and methodology to identify and evaluate damage-strengthening institutions including scientific and technical experts to identify the damage.

3.3 strengthen technical and scientific institutions for developing approach response measures

***Sharing information***

**Q4:** What CB need?

- General education: let people know the process about what, why and how based on causes and effects concerning the result from LMOs...
- Keeping update information on BCH: lesson learnt from other nations, strengthen roster of experts, lot of capacity building for BCH directory undertaken
- Phase I and II BCH...

**Q5:** Possibilities of obtaining financial and technical support:

Fund from domestic, bilateral, multilateral exists –lack of co-ordination among inter-governmental debts is overall the main problem...

**Q6:** Not discussed due to lack of time.

----