



## Convention on Biological Diversity

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OPEN-ENDED AD HOC INTERGOVERNMENTAL  
COMMITTEE FOR THE NAGOYA PROTOCOL ON  
ACCESS TO GENETIC RESOURCES AND THE  
FAIR AND EQUITABLE SHARING OF BENEFITS  
ARISING FROM THEIR UTILIZATION

Second meeting

New Delhi, 2-6 July 2012

Item 3.6 of the provisional agenda\*

### RECOMMENDATION ADOPTED BY THE INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA PROTOCOL AT ITS SECOND MEETING

#### 2/3. *The need for and modalities of a global multilateral benefit-sharing mechanism (Article 10)*

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

1. *Recommends* that the Conference of the Parties at its eleventh meeting adopt a decision  
along the following lines:

*The Conference of the Parties,*

1. *Requests* the Executive Secretary to conduct a broad consultation on Article 10 of  
the Nagoya Protocol;

2. *Invites* Parties, other Governments, relevant international organizations,  
indigenous and local communities, and all interested stakeholders, to contribute to the  
consultation by submitting their targeted views with respect to Article 10 on the issue bearing in  
mind the indicative list of questions in part A of the annex below as well as other perspectives on  
the matter;

3. *Requests* the Executive Secretary to prepare and distribute a synthesis of the  
views provided in the broad consultation;

4. *Further requests* the Executive Secretary, subject to the availability of funds, to  
convene a meeting of a regionally balanced expert group to: (i) review the synthesis, taking into  
account the views provided; (ii) identify potential areas of common understanding with respect to  
Article 10; and (iii) identify areas that could be further examined. The expert group shall submit

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the outcomes of its work for consideration by a future meeting of the Intergovernmental Committee or the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, following the holding of the expert group;

5. *Invites* Parties, other Governments and relevant organizations to provide financial support to convene the meeting of the expert group.

*Annex*

*Part A*

**INDICATIVE LIST OF QUESTIONS**

When submitting their views on the need for and modalities of a global multilateral benefit-sharing mechanism, respondents may bear in mind the following when submitting their views:

1. What could be the 'transboundary situations' covered by Article 10 of the Nagoya Protocol that are within the scope of the Protocol?
2. What could be the situations where it is not possible to grant or obtain prior informed consent?
3. How could a global multilateral benefit-sharing mechanism be used to support the conservation and sustainable use of biological diversity globally?
4. How might the operation of a global multilateral benefit-sharing mechanism co-exist with the underlying principles, objective and scope upon which the Nagoya Protocol is based?
5. What could be the advantages and disadvantages of a global multilateral benefit-sharing mechanism?
6. What influence might other articles of the Nagoya Protocol have in the context of a global multilateral benefit-sharing mechanism?
7. Are there any existing international instruments or processes that could offer lessons learned for consideration in the context of a global multilateral benefit-sharing mechanism under the Nagoya Protocol?
8. What other aspects of a global multilateral benefit-sharing mechanism should be considered?
9. Perspectives on other matters which should be considered.

*Part B*

**ADDITIONAL QUESTIONS RAISED BY PARTIES AT THE SECOND MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION**

1. Does the mere existence of the same species in more than one country constitute a transboundary situation?
2. Does 'transboundary situation' refer to access to genetic resources and associated traditional knowledge?
3. How could benefits derived from utilization of shared genetic resources or associated traditional knowledge be shared through a global mechanism?
4. In those situations, what would be the role of national legislation or bilateral alternatives?

5. In which situations could genetic resources or associated traditional knowledge be accessed without prior informed consent while not violating the obligations in the Nagoya Protocol?
6. Would the transfer of genetic resources or associated traditional knowledge to third parties be covered by the situations identified in the previous question?
7. How to make sure that a global multilateral benefit-sharing mechanism will only be used when there is no real possibility to obtain prior informed consent?
8. How would a global multilateral benefit-sharing mechanism address collections made (i) pre-Convention; (ii) post-Convention but pre-Nagoya Protocol; (iii) post-Nagoya Protocol?
9. How would a global multilateral benefit-sharing mechanism address new uses of pre-Convention collections and continuing uses of pre-Convention collections?
10. How to apply Art. 10 and 11 without causing harm to the principle of the sovereign right of states over their natural resources?
11. How to ensure that a global multilateral benefit-sharing mechanism does not represent a disincentive for implementation of the bilateral system of the Protocol?
12. As a provider of genetic resources or associated traditional knowledge, what problems would a global multilateral benefit-sharing mechanism (a) create and (b) solve?
13. As a user of genetic resources or associated traditional knowledge, what problems would a global multilateral benefit-sharing mechanism (a) create and (b) solve?
14. If there is no global multilateral benefit-sharing mechanism, what problems would remain?
15. If other instruments or processes exist, should Article 10 of the Nagoya Protocol be prioritized over these instruments or processes?
16. Are there any existing international instruments or processes that could cover aspects that may be relevant to a global multilateral benefit-sharing mechanism under the Nagoya Protocol?
17. Is Article 10 of compulsory or voluntary nature?
18. What incentives for the contribution of the private sector could be envisaged in the global multilateral benefit-sharing mechanism?
19. How could capacity-building activities enhance capacity of Parties to handle transboundary situations or situations where no prior informed consent has been granted?
20. What is the status with regard to the Nagoya Protocol where the country has a law which covers pre-Convention collections?

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