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EXPERT MEETING ON ARTICLE 10 OF THE NAGOYA
PROTOCOL ON ACCESS AND BENEFIT-SHARING
Montreal, 17-19 September 2013
Item 7 of the provisional agenda*

REPORT OF THE EXPERT MEETING ON ARTICLE 10 OF THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING

INTRODUCTION

A. *Background*

1. In decision XI/1 B, the Conference of the Parties requested the Executive Secretary to conduct a broad consultation on Article 10 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (“Nagoya Protocol”). Parties, other Governments, relevant organizations and indigenous and local communities were invited to contribute to the consultation by submitting their views with respect to Article 10, bearing in mind the indicative list of questions in part A of annex I to the decision as well as other perspectives on the matter, in particular the additional questions contained in part B of annex I. The Executive Secretary was also requested to prepare and distribute a synthesis of the views provided in the broad consultation and to convene, subject to the availability of funds, a meeting of a regionally balanced expert group, including representatives from indigenous and local communities, to: (i) review the synthesis; (ii) identify potential areas of common understanding with respect to Article 10; and (iii) identify areas that could be further examined. The expert group was to submit the outcomes of its work for consideration by the third meeting of the Open-ended *Ad Hoc* Intergovernmental Committee for the Nagoya Protocol (“Intergovernmental Committee”).

2. In order to conduct the broad consultation on Article 10, the Secretariat organized online discussion groups convened through the Access and Benefit-Sharing (ABS) Clearing-House from 8 April to 24 May 2013. The online discussions were organized around the indicative list of questions and the additional questions contained in annex I to decision XI/1. The full text of the online discussions is available on the ABS Clearing-House at the following link: http://absch.cbd.int/Art10_groups.shtml.

3. Following the generous financial support from the European Union, the Expert Meeting on Article 10 of the Nagoya Protocol was held at the offices of the Secretariat of the Convention on Biological Diversity (CBD) from 17 to 19 September 2013.

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B. Attendance

4. By notification 2013-014 (ref. No. SCBD/SEL/KG/nc/81305) of 7 February 2013, Parties, other Governments, indigenous and local communities and relevant organizations were invited to nominate representatives to participate in the online discussion groups. The Secretariat received a total of 142 nominations. It was indicated in the notification that participants in the expert meeting would be selected from among those who were nominated to the online discussion groups, taking into account expertise, equitable geographical distribution and gender balance. The selection of experts was reviewed by the Bureau of the Intergovernmental Committee for the Nagoya Protocol.

5. The meeting was attended by experts from Albania, Antigua & Barbuda, Armenia, Australia, Belarus, Cameroon, Canada, Chile, China, Costa Rica, Egypt, the European Union, Japan, Mexico, Namibia, New Zealand, Poland, Republic of Korea, Samoa, Senegal, South Africa and Switzerland. The experts from Brazil and Malaysia, who had been selected and invited, were unable to attend the meeting.

6. Experts from the following other Governments and organizations participated in the meeting as observers: the United States of America, Consejo Regional Otomi del Alto Lerma, Eli Lilly and Company, Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture, Tulalip Tribes and Swiss Academy of Sciences. The experts from the Fridtjof Nansen Institute and the Peruvian Society for Environmental Law, who had been selected and invited, were unable to attend the meeting.

7. In addition, the Co-Chairs of the Intergovernmental Committee, Mr. Fernando Casas (Colombia) and Ms. Janet Lowe (New Zealand), attended as *ex officio* observers.

ITEM 1. OPENING OF THE MEETING

8. The meeting was opened at 9:30 a.m. on Tuesday, 17 September 2013 by the Executive Secretary of the Convention.

9. The Executive Secretary welcomed the experts to the Secretariat and thanked the European Union for providing financial support to convene the meeting. He noted progress towards entry into force of the Nagoya Protocol and indicated that more ratifications and accessions were expected in the coming weeks and months. He stated that momentum was building to bring the Protocol into force in time to hold the first meeting of the Parties to the Nagoya Protocol concurrently with the twelfth meeting of the Conference of the Parties to the Convention on Biological Diversity in October 2014 in the Republic of Korea. He recalled the mandate provided to the expert group by the Parties in decision XI/1 and emphasized that the purpose of the meeting was not to re-negotiate the Protocol but rather to contribute to the decision-making process for the implementation of the Protocol. The Executive Secretary noted that the outcomes of the expert meeting would provide valuable information for consideration by the Parties at the third meeting of the Intergovernmental Committee and he expressed his appreciation that the Co-Chairs of the Intergovernmental Committee were present as well.

ITEM 2. ORGANIZATIONAL MATTERS

10. The participants elected Ms. Teresa Agüero (Chile) and Mr. Won Seog Park (Republic of Korea) as co-chairs of the meeting.

11. The group adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/ABSEM-A10/1/1) prepared by the Secretariat:

1. Opening of the meeting.
2. Organizational matters.
3. Review of the synthesis of the online discussions on Article 10 of the Nagoya Protocol.
4. Potential areas of common understanding.
5. Areas for further examination.

6. Other matters.
 7. Adoption of the report.
 8. Closure of the meeting.
12. The meeting agreed on the organization of its work in annex I to the annotations to the provisional agenda (UNEP/CBD/ABSEM-A10/1/1/Add.1).

**ITEM 3. REVIEW OF THE SYNTHESIS OF THE ONLINE DISCUSSIONS ON
ARTICLE 10 OF THE NAGOYA PROTOCOL**

13. Under this agenda item, the group reviewed the synthesis of the online discussions on Article 10 of the Nagoya Protocol (UNEP/CBD/ABSEM-A10/1/2).

14. Co-Chair Agüero noted the extensive exploration of the indicative and additional questions in the online discussions and suggested that the expert meeting should aim to build on the online discussions in order to fulfil the tasks assigned to it by decision XI/1. She invited the experts to consider whether sections III and IV of the synthesis document captured the different perspectives raised during the online discussions. She invited the experts to make comments on the document and to identify any points that may have been missing from the synthesis.

15. The experts indicated that the document was a fair compilation of the interventions made during the online discussions. The discussions on Article 10 during the expert meeting were not limited to issues raised in the online discussions and not all of the issues raised in the online discussions were relevant to Article 10. Experts identified three points that were raised during the online discussions but that they considered had not been adequately reflected in the synthesis:

- (a) The concept of the ‘economics of information’;
- (b) The question of the definition of genetic resources from the Convention;
- (c) The issue of transaction costs, including transaction cost that may be appropriate.

16. It was noted that the synthesis of the online discussions should refer to interventions made by ‘participants’. Furthermore, it was emphasized that the views contained in the synthesis document were expressions of opinions.

17. It was also highlighted that the full text of the online discussions remained available on the ABS Clearing-House at the following link: http://absch.cbd.int/Art10_groups.shtml.

18. The Secretariat informed the meeting that the revised synthesis document would be made available as an information document to the third meeting of the Intergovernmental Committee.

ITEM 4. POTENTIAL AREAS OF COMMON UNDERSTANDING

19. In taking up agenda item 4, Co-Chair Park reminded experts that this was not a negotiating meeting and the experts should strive towards reaching a common understanding on issues related to Article 10 following the mandate from decision XI/1.

20. Experts recognized that the discussions on Article 10 were taking place against the background of the targets for resource mobilization adopted in decision XI/4 in light of the pressing need for new and additional financial resources for conservation and sustainable use of biodiversity.

21. Without prejudice to further consideration of the need for a global multilateral benefit-sharing mechanism (GMBSM), the experts identified a number of areas of common understanding among themselves:

- (a) In the exercise of their sovereignty over their natural resources, including genetic resources, Parties could create a GMBSM and could require that benefits derived from the utilization of genetic resources be shared through a GMBSM;

- (b) A GMBSM should not undermine State sovereignty;
 - (c) Discussions on a GMBSM should be guided by the language of Article 10, the objective of the Protocol and preambular paragraph 13 with a view to contribute to conservation and sustainable use of biological diversity;
 - (d) A GMBSM is not intended to replace the bilateral nature of the Nagoya Protocol but to supplement it;
 - (e) Article 11 of the Protocol can assist in situations where the same genetic resources are found *in situ* within the territory of more than one Party. Similarly, Article 11 can assist in situations where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties;
 - (f) Capacity-building to implement the Protocol is important and resources are necessary in order to undertake such capacity-building;
 - (g) It is important to build trust and enhance legal certainty and transparency for the situations identified in Article 10.
22. Experts also extensively discussed a number of issues relevant to Article 10 but where there was no convergence of views.

ITEM 5. AREAS FOR FURTHER EXAMINATION

23. In light of the discussion under agenda item 4, a number of areas for further examination were proposed:
- (a) Whether or not there is a need for a GMBSM;
 - (b) Whether there is sufficient experience with implementation of the Protocol to determine whether such a need exists;
 - (c) Whether the utilization of genetic resources without PIC would entail benefit-sharing obligations that could be met through a GMBSM;
 - (d) Whether a Party's decision not to require PIC (e.g. under Art. 6(1)) or to waive PIC (e.g. under Art. 8) can constitute situations for which it is not possible to grant or obtain PIC in the context of Article 10;
 - (e) Whether benefit-sharing requirements are waived when a Party has decided not to require PIC or has waived PIC;
 - (f) Whether there is no requirement for benefit-sharing when mutually agreed terms are not required or have not been established;
 - (g) Whether the absence of ABS legislation or regulatory requirements in a Party due to lack of capacity or lack of governance means that PIC for access to genetic resources is not required and there is no obligation to share benefits. In the context of Article 10, whether such instances would constitute situations for which it is not possible to grant or obtain PIC;
 - (h) Whether the absence of measures in a Party to implement Article 7 means that PIC for access to traditional knowledge associated with genetic resources is not required and there is no obligation to share benefits. In the context of Article 10, whether such instances would constitute situations for which it is not possible to grant or obtain PIC;
 - (i) Whether a genetic resource that is found in more than one Party constitutes a transboundary situation in the language of Article 10 (even if it is possible to identify the source of the genetic resource) or whether the bilateral approach should be applied if a genetic resource is found in more than one Party and it is possible to identify the source of the genetic resource. In the latter case, whether the bilateral approach or a GMBSM could be fair and equitable;

- (j) Whether traditional knowledge associated with a genetic resource that is found in more than one Party constitutes a transboundary situation in the language of Article 10 (even if it is possible to identify the source of the genetic resource) or whether the bilateral approach should be applied if traditional knowledge associated with a genetic resource is found in more than one Party and it is possible to identify the source of the genetic resource. In the latter case, whether the bilateral approach or a GMBSM could be fair and equitable;
- (k) Whether Article 11 is sufficient to respond to transboundary situations;
- (l) Whether a GMBSM should address the sharing of benefits arising from the utilization of:
- (i) Genetic resources in *ex situ* collections in relation to transboundary situations or for which it is not possible to grant or obtain PIC;
 - (ii) Genetic resources in *ex situ* collections used for purposes for which PIC was not granted and for which it is not possible to grant or obtain PIC;
 - (iii) Genetic resources in areas beyond national jurisdiction or whether this issue falls within the competence of the United Nations General Assembly;
 - (iv) Genetic resources in the Antarctic Treaty area;
 - (v) Traditional knowledge associated with genetic resources that is publicly available and where the holders of such traditional knowledge cannot be identified or for which it is not possible to grant or obtain PIC.

24. The experts suggested modalities by which these areas could be further examined. They recalled paragraph 6(c) of decision XI/1 A by which the Conference of the Parties decided that an exchange of views on the state of implementation of the Nagoya Protocol should be addressed by the third meeting of the Intergovernmental Committee. In this regard, they suggested that this exchange of views could bring together legislators, regulators, indigenous and local communities and relevant stakeholders, including users, to share experience in implementation of the Nagoya Protocol.

25. Furthermore, they suggested that the exchange of views could also benefit from information on the experiences gained with the development or implementation of other multilateral mechanisms, *inter alia* from the International Treaty on Plant Genetic Resources for Food and Agriculture, as well as from other processes relevant to Article 10 such as the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction established by the United Nations General Assembly and the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations.

26. The experts also suggested that it would be useful if Parties and others could be invited to provide possible scenarios on modalities for a GMBSM as well as information regarding the implications of these scenarios.

ITEM 6. OTHER MATTERS

27. Co-Chair Agüero invited the experts to raise any other matter related to Article 10 of the Nagoya Protocol. Experts inquired about the possibility of approaching the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) for information relating to global priorities for conservation and sustainable use. They were informed that the seventeenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice would be considering the possible contribution of IPBES for scientific and technical aspects of implementing the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets.

28. The experts discussed the concept of ‘global’ in Article 10 of the Protocol.

ITEM 7. ADOPTION OF THE REPORT

29. Co-Chair Park introduced the draft report of the meeting, which was adopted as orally amended.

ITEM 8. CLOSURE OF THE MEETING

30. Participants expressed their appreciation to the European Union for providing financial support for the meeting.

31. Ms. Lowe made some closing remarks on behalf of the Co-Chairs of the Intergovernmental Committee. She expressed her appreciation for the fair and frank discussion that had taken place among the experts and she noted that it was important to address Article 10 in a positive and meaningful way. She hoped that the positive spirit from this meeting would carry forward to the third meeting of the Intergovernmental Committee. Ms. Lowe was encouraged by the progress made towards entry into force of the Protocol in time for the first meeting of the Parties to the Protocol to be held concurrently with the twelfth meeting of the Conference of the Parties to the Convention on Biological Diversity. In this respect, she emphasized the role of the Intergovernmental Committee in preparing for entry into force.

32. Following the customary exchange of courtesies, the meeting was closed at 5:30 pm on Thursday, 19 September 2013.
