



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/NP/COP-MOP/2/11
15 September 2016

ORIGINAL: ENGLISH

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 THE
BENEFITS ARISING FROM THEIR UTILIZATION

Second meeting

Cancun, Mexico, 4–17 December 2016

Item 13 of the provisional agenda*

ASSESSMENT AND REVIEW OF THE EFFECTIVENESS OF THE PROTOCOL (ARTICLE 31)

Note by the Executive Secretary

I. INTRODUCTION

1. Article 31 of the Nagoya Protocol requires the Conference of the Parties serving as the meeting of the Parties to the Protocol to undertake, four years after the entry into force of the Protocol and thereafter at intervals determined by the Conference of the Parties serving as the meeting of the Parties, an evaluation of the effectiveness of the Protocol.
2. As the Protocol entered into force on 12 October 2014, the fourth anniversary will fall in October 2018. It is expected that the third meeting of the Parties to the Protocol will be convened in the third or fourth quarter of 2018.
3. The purpose of the present document is to propose a methodology for conducting the first assessment and review of the effectiveness of the Protocol.
4. Following this introduction, section II summarizes relevant provisions from the Protocol and decisions of the Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties. Section III covers the scope and purpose of the first assessment and review. Section IV provides an overview of sources of information for the assessment and review. Section V summarizes the different elements to be included in the first assessment and review and the sources of information that can be used for each element, and section VI contains an overview of the process and timeline for the first assessment and review. Finally, section VII contains elements for a draft decision.

II. RELEVANT PROVISIONS OF THE NAGOYA PROTOCOL AND DECISIONS OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION AND THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL

5. As set out in paragraph 1 above, Article 31 of the Protocol creates the mandate for the Conference of the Parties serving as the meeting of the Parties to evaluate the effectiveness of the Protocol. In

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

addition to this provision, Article 18 of the Protocol makes reference to the assessment and review process, as do a number of paragraphs in different decisions of the Conference of the Parties to the Convention and of the Conference of the Parties serving as the meeting of the Parties.

A. Article 18 of the Protocol: compliance with mutually agreed terms

6. Article 18 of the Nagoya Protocol covers compliance with mutually agreed terms.

7. Paragraph 4 of the article provides that: “the effectiveness of this article shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to this Protocol in accordance with Article 31 of this Protocol.”

B. Decision X/1 of the Conference of the Parties to the Convention

8. The Nagoya Protocol was adopted by the Conference of the Parties to the Convention in its decision X/1. In paragraph 6 of this decision, the Conference of the Parties decided that “the first review under Article 31 of the Protocol shall assess the implementation of Article 16 in light of developments in other relevant international organizations, including, inter alia, the World Intellectual Property Organization, provided that they do not run counter to the objectives of the Convention and the Protocol.”

9. Article 16 of the Protocol covers compliance with domestic legislation or regulatory requirements on access and benefit-sharing for traditional knowledge associated with genetic resources.

C. Decision NP-1/3 of the Conference of the Parties serving as the meeting of the Parties to the Protocol: monitoring and reporting (Article 29)

10. Article 29 of the Protocol covers monitoring and reporting and requires each Party to monitor the implementation of its obligations under the Protocol and to report to the Conference of the Parties serving as the meeting of the Parties on measures that it has taken to implement the Protocol. The format for the report and the intervals at which they are to be submitted are to be determined by the Conference of the Parties serving as the meeting of the Parties.

11. At the first meeting of the Parties to the Protocol, the Parties adopted decision NP-1/3 on monitoring and reporting. In the decision, the Conference of the Parties serving as the meeting of the Parties agreed to the guidelines and format for submission of the interim national report on the implementation of the Protocol and invited Parties to submit an interim national report 12 months prior to the third meeting of the Conference of the Parties serving as the meeting of the Parties.

12. The guidelines for the interim national report (as contained in annex I to the decision) indicate that the format for the interim national report is a series of questions based on those provisions of the Protocol that establish obligations for the Parties to the Protocol. These questions are mandatory. In addition, some questions are not strictly based on the provisions of the Protocol but are included in the reporting format to contribute to the assessment and review of the effectiveness of the Protocol and to identify challenges and difficulties in implementing the Protocol, and some questions concern implementation of decisions adopted by the Conference of the Parties serving as the meeting of the Parties (for example the strategic framework for capacity-building and development for the Nagoya Protocol adopted in decision NP-1/8 or the awareness-raising strategy adopted in decision NP-1/9). These questions are voluntary.

13. Furthermore, in paragraph 6 of the decision, the Executive Secretary is requested to consolidate information contained in the interim national reports received from Parties and information published in the Access and Benefit-Sharing Clearing-House for consideration by the Conference of the Parties serving as the meeting of the Parties at its third meeting as a contribution to the assessment and review of the effectiveness of the Protocol by the Conference of the Parties serving as the meeting of the Parties, and to make submissions by non-Parties available for the information of the Parties.

D. Decision NP-1/4 of the Conference of the Parties serving as the meeting of the Parties to the Protocol: cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and to address cases of non-compliance

14. Article 30 of the Protocol required the Conference of the Parties serving as the meeting of the Parties at its first meeting to consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance.

15. Accordingly, the Conference of the Parties serving as the meeting of the Parties adopted such procedures and mechanisms, which are contained in the annex to decision NP-1/4. Section G of the procedures and mechanisms states that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol “shall undertake the review of the effectiveness of these procedures and mechanisms under the assessment and review provided for in Article 31 of the Protocol and take appropriate action.”

16. The first meeting of the Compliance Committee was held in April 2016. As part of its discussions, the Committee considered the future work it may undertake. The Committee recognized that the assessment and review was coming at an early stage and that, although it was premature to define a specific role for the Committee in that process, it could provide information and findings on compliance with the Protocol.¹

17. While the procedures and mechanisms on compliance foresee that they will be considered as part of the assessment and review process, given the extremely limited experience gained to date, it may be premature to include them in this first assessment and review of the Protocol. The Compliance Committee may still be able to provide inputs to the assessment and review process, however. This aspect is considered in section VI below.

E. Decision NP-1/5 of the Conference of the Parties serving as the meeting of the Parties to the Protocol: model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards (Articles 19 and 20)

18. Article 19 of the Protocol covers model contractual clauses while Article 20 covers codes of conduct, guidelines and best practices and/or standards. Parties are required to encourage, as appropriate, the development, update and use of model contractual clauses, codes of conduct, guidelines, best practices and standards. The Conference of the Parties serving as the meeting of the Parties is to periodically take stock of the use of these tools and to consider the adoption of specific codes of conduct, guidelines, best practices and standards.

19. In decision NP-1/5, the Conference of the Parties serving as the meeting of the Parties decided to take stock of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as well as indigenous and local communities’ customary laws, community protocols and procedures, in accordance with Articles 12, 19 and 20, four years following the entry into force of the Protocol and in conjunction with the first assessment and review of the Protocol (para. 3).

F. Item regarding the Access and Benefit-sharing Clearing-House on the agenda of the second meeting of the Conference of the Parties serving as the meeting of the Parties

20. At its second meeting, Conference of the Parties serving as the meeting of the Parties is to consider the intervals to review the implementation and operation of the Access and Benefit-sharing Clearing-House (decision NP-1/2, para. 6). Following the advice of the Informal Advisory Committee on the Access and Benefit-sharing Clearing-House, the Secretariat proposes that the review of the implementation and operation of the Access and Benefit-sharing Clearing-House could form part of the

¹ See UNEP/CBD/NP/COP-MOP/2/4, para. 25.

assessment and review process to evaluate the effectiveness of the Protocol established by Article 31 of the Protocol.²

III. PURPOSE AND SCOPE OF THE FIRST ASSESSMENT AND REVIEW

21. Consideration of the methodology for the first assessment and review of the Protocol also requires consideration of the purpose and scope of the work to be undertaken. The text of Article 31 is not specific in this regard, simply referring to a requirement for the Conference of the Parties serving as the meeting of the Parties to undertake an evaluation of the effectiveness of the Protocol.

22. As described above, the format for the interim national reports focuses on the obligations of Parties under the Protocol. This information plus the information in the Access and Benefit-sharing Clearing-House will provide a good basis for the first assessment and review to examine the extent to which the provisions of the Protocol are being implemented. This approach could also serve to establish a baseline for the status of implementation that could be used to measure progress in future years.

23. More fundamentally, an evaluation of the effectiveness of the Protocol would entail an examination of the extent to which the Protocol is achieving its objective, i.e. access to genetic resources and the fair and equitable sharing of benefits arising from their utilization, thereby contributing to the conservation of biodiversity and the sustainable use of its components. As the first assessment and review will come while the Protocol is still in its early stages, however, it is likely premature to consider how the Protocol is achieving its objective. Nonetheless, certain questions have been included in the format for the interim national reports (see table 1 below) in order to gather information on the effectiveness of the Protocol. The first assessment and review can use this information to establish a baseline against which progress can be measured in the future.

24. The first assessment and review could also assist in identifying areas where Parties are facing difficulties and where further guidance from the Conference of the Parties serving as the meeting of the Parties to support implementation may be useful.

IV. SOURCES OF INFORMATION FOR THE ASSESSMENT AND REVIEW

25. There are a number of different sources of information that could contribute to the assessment and review process.

26. Key among these sources will be the interim national reports to be submitted in accordance with Article 29 of the Protocol and decision NP-1/3, as outlined above. In order for the interim national reports to serve as an effective source of information for the assessment and review process, it will be critical for Parties to submit their reports in a timely fashion. The question of the timeline for the assessment and review process is considered further below but it is worth recalling here that all Parties have an obligation to submit a national report and the more national reports are available for consideration, the more rigorous and representative will be the outcomes of the assessment and review of the Protocol. To this end, in the guidance to the financial mechanism concerning the Nagoya Protocol adopted by the Conference of the Parties at its twelfth meeting, the Global Environment Facility (GEF) is requested to make financial resources available with a view to assisting eligible Parties in preparing their national reports (see decision XII/30 D, para. 18(b)). The Compliance Committee has reinforced this request by recommending that the Global Environment Facility provide funds to assist Parties in completing their interim national reports.³

27. Another key source of information for the assessment and review will be the information published in the Access and Benefit-sharing Clearing-House. Article 14(2) of the Protocol specifies three categories of information that Parties must publish in the Clearing-House:

- (a) Legislative, administrative and policy measures on access and benefit-sharing;

² See UNEP/CBD/NP/COP-MOP/2/3.

³ See the report of the Compliance Committee under the Nagoya Protocol on the work of its first meeting (UNEP/CBD/NP/COP-MOP/2/4), annex II, para. 6.

- (b) Information on the national focal point and competent national authority or authorities;
- (c) Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms.

28. Additional information made available to the Access and Benefit-sharing Clearing-House that can be also taken into account in the assessment may include:

- (a) Information for the checkpoint communiqué;
- (b) Model contractual clauses, codes of conduct, guidelines, best practices and best practices and/or standards;
- (c) Community protocols and procedures and customary laws;
- (d) Capacity-building initiatives and resources.

29. As with the interim national reports, it will be critical for Parties to publish information in the Access and Benefit-sharing Clearing-House in order for the Clearing-House to serve as a useful and effective source of information for the assessment and review process. The Secretariat of the Convention has been undertaking an outreach and engagement campaign to assist with the publication of information in the Clearing-House. An ongoing effort in this regard will be required in the next biennium. This aspect is addressed further in the document on the Access and Benefit-sharing Clearing-House.⁴

30. The first assessment and review of the Protocol can also be informed by relevant processes under the Convention. This could include ongoing efforts towards Target 16 of the Strategic Plan for Biodiversity 2011-2020, information in national biodiversity strategies and action plans and information provided through the national reports submitted under the Convention.

V. ELEMENTS FOR THE FIRST ASSESSMENT AND REVIEW AND CORRESPONDING SOURCES OF INFORMATION

31. As outlined in section III above, the overall approach to the first assessment and review can be: (a) to examine the extent to which the Protocol's provisions are being implemented; and (b) to establish a baseline against which future progress can be measured. In addition, section II has provided an overview of specific elements that are to be included in the first assessment and review as identified in provisions of the Protocol as well as in decisions of the Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties.

32. The table below summarizes the sources of information that may be used to gather the information corresponding to the different aspects to be covered by the first assessment and review.

Table 1. Elements to be included in the first assessment and review of the Protocol and sources of information

<i>Element</i>	<i>Source of information</i>
Extent of implementation of provisions of the Protocol, including assessment of progress by Parties in establishing institutional structures and access and benefit-sharing measures to implement the Protocol	Interim national reports Access and Benefit-sharing Clearing-House National reports under the Convention National biodiversity strategies and action plans
Establishment of a baseline to measure effectiveness	Interim national reports (questions 16, 18, 46)

⁴ UNEP/CBD/NP/COP-MOP/2/3.

<i>Element</i>	<i>Source of information</i>
Establishment of a baseline on support available for implementation	Interim national reports (questions 56, 57, 61, 62, 63) Access and Benefit-sharing Clearing-House Information on capacity-building projects and resources
Assessment of effectiveness of Article 18 (extent of implementation)	Interim national reports (questions 31-34)
Assessment of implementation of Article 16 in light of developments in other relevant international organizations, including, inter alia, the World Intellectual Property Organization (WIPO)	Interim national reports (question 25) Reports of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
Stock-taking of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as well as indigenous and local communities' customary laws, community protocols and procedures	Interim national reports (questions 42 and 51-53) Access and Benefit-sharing Clearing-House
Review of implementation and operation of the Access and Benefit-sharing Clearing-House	Interim national reports (question 3) Access and Benefit-sharing Clearing-House Reports of meetings of the informal advisory committee on the Clearing-House

VI. PROCESS AND TIMELINE FOR THE FIRST ASSESSMENT AND REVIEW

33. The process for conducting the first assessment and review will require analysing and synthesizing the information available from the different sources as outlined above. The Conference of the Parties serving as the meeting of the Parties has already requested the Executive Secretary to consolidate information from the interim national reports and the Access and Benefit-sharing Clearing-House for consideration at its third meeting as a contribution to the assessment and review (decision NP-1/3, para. 6). The Conference of the Parties serving as the meeting of the Parties may wish to build on this request by requesting the Executive Secretary to prepare a comprehensive analysis and synthesis of relevant information for the purposes of conducting the first assessment and review of the Protocol.

34. The comprehensive analysis and synthesis could also benefit from inputs by other bodies under the Protocol, in particular the Compliance Committee and the Subsidiary Body on Implementation. At its first meeting, the Compliance Committee agreed that, at its next meeting, it would review systemic issues of general non-compliance on the basis of the analysis of the interim national reports and the information in the Access and Benefit-sharing Clearing-House. The Committee also noted that it could provide information and findings on compliance with the Protocol as part of the assessment and review process.⁵ This would be similar to the role played by the Biosafety Compliance Committee during the most recent

⁵ See UNEP/CBD/NP/COP-MOP/2/4, paras. 20 and 25.

assessment and review of the Biosafety Protocol.⁶ The Compliance Committee could also identify steps that may assist in addressing challenges to the implementation of the Protocol.

35. The comprehensive analysis and synthesis could also be submitted for consideration by the next meeting of the Subsidiary Body on Implementation, which may make recommendations to the third meeting of the Parties to the Protocol.

36. Careful planning of intersessional processes will be required in order for the necessary information to be ready for consideration by the Compliance Committee and the Subsidiary Body on Implementation. The importance of timely submission of interim national reports must be emphasized again.

37. Furthermore, given the limited time that will be available to prepare the analysis and synthesis of information as well as the large amount of information to be examined, it is foreseen that a consultant or individual contractor may be required to assist with this undertaking. A proposal to this effect has been included in the voluntary budget.

VII. SUGGESTED ELEMENTS OF A DRAFT DECISION

38. The Conference of the Parties serving as the meeting of the Parties to the Protocol may wish:

(a) To determine the elements to be included in the first assessment and review of the Protocol;

(b) To request the Executive Secretary to prepare an analysis and synthesis of relevant information as the basis for the first assessment and review of the Protocol;

(c) To request the Compliance Committee to provide input to the first assessment and review of the Protocol in the form of information and findings on general issues of compliance and recommendations to assist in addressing challenges to the implementation of the Protocol;

(d) To request the Subsidiary Body on Implementation to review the analysis and synthesis of information prepared by the Executive Secretary, taking into account the inputs from the Compliance Committee, and submit its finding and recommendations for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting;

(e) To urge Parties and invite other Governments to submit interim national reports no later than 12 months before the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(f) To also urge Parties and encourage other Governments, relevant organizations and indigenous and local communities to publish information in the Access and Benefit-sharing Clearing-House so that this information is available for the first assessment and review of the Protocol.

⁶ See decision BS-VII/2, para. 7.