Analysis and proposals for Target 17 of the First Draft of the post-2020 Global Biodiversity Framework

Updated briefing note by Third World Network[1]
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Introduction

Target 17 of the First Draft of the Global Biodiversity Framework (GBF) addresses the issue of biosafety. There are obligations under Articles 8(g), 19(3) and 19(4) of the Convention on Biological Diversity (CBD) relating to living modified organisms (LMOs) resulting from biotechnology. The Cartagena Protocol on Biosafety is a protocol to the CBD, which operationalizes these provisions. Additionally, the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was adopted to deal with potential damage from LMOs.

Target 17 currently reads: *Establish, strengthen capacity for, and implement measures in all countries to prevent, manage or control potential adverse impacts of biotechnology on biodiversity and human health, reducing the risk of these impacts.*

Discussions at the first part of the Third Meeting of the Open-Ended Working Group on the post-2020 GBF (OEWG3.1) in August/September 2021 saw many new proposals, which are now reflected in composite text (see the report of the Co-Leads of Contact Group 4). The Co-Chairs of the Working Group have also provided their 'reflections' in document CBD/WG2020/3/6. This briefing note takes these developments into account and focuses on the key elements that are critical for Target 17.

Scope of Target 17

Who implements Target 17?

Given that the GBF is to be implemented by Parties to the CBD, Target 17 should **apply to all CBD Parties**, and not just Parties to the Cartagena Protocol on Biosafety.

This is perfectly consistent with the obligations already contained in the CBD:

- CBD Parties have obligations relating to LMOs resulting from biotechnology, notably to establish or maintain means to **regulate the risks** associated with living modified organisms (LMOs) resulting from biotechnology (Article 8(g)).

[1] This briefing note updates a previous briefing note from August 2021, and takes into consideration the discussions and proposals from the first part of the Third Meeting of the Open-Ended Working Group on the post-2020 GBF.

- Further, when there is transboundary movement of LMOs resulting from biotechnology, Article 19(4)of the CBD obliges exporting Parties (or entities under its jurisdiction) to provide any available information to importing Parties, about their **use and safety regulations** in handling such organisms, as well as on **potential adverse impacts**.
- These two articles (Article 8(g) and 19(4)), which deal with domestic and transboundary measures, respectively, are therefore **applicable to all Parties to the CBD independently of their becoming Parties to the Cartagena Protocol on Biosafety**.
- Obligations in Article 19(3) of the CBD are specifically operationalized by the Cartagena Protocol on Biosafety and refer to LMOs resulting from biotechnology that may have **adverse effect** on the conservation and sustainable use on biological diversity.

Terminology and the link to addressing potential adverse effects

There are several options for the terminology to be used in Target 17. For a biosafety target, which by definition focuses on the **potential adverse effects or risks,** it would be consistent to draw on the obligations contained in Articles 8(g), 19(3) and 19(4) as highlighted above. In those articles, the term '*LMOs resulting from biotechnology'* is used.

The use of the term 'LMOs resulting from biotechnology' in Target 17 would have the following implications[2]:

- The term applies to all CBD Parties, including those that are not Parties to the Cartagena Protocol
- The term includes LMOs produced using modern biotechnology[3]
- The focus is on the adverse effects/risks

Synthetic biology and new genetic techniques

Synthetic biology and other new genetic techniques, such as genome editing and engineered gene drives, insofar as they fall within the scope of LMOs resulting from biotechnology/modern biotechnology, are also under the purview of both the CBD and the Cartagena Protocol. The CBD COP has taken numerous decisions (X/13, XI/11, XII/24, XIII/17, 14/19) addressing synthetic biology and its risks.

During the timeframe of the GBF, synthetic biology and other new genetic techniques will be increasingly used; hence their risks should also be adequately

[2] Both the terms 'modern biotechnology' and 'LMOs resulting from biotechnology' do not exclude CBD Parties who are not Parties to the Cartagena Protocol from their obligations under articles 8(g) and 19(4).

[3] According to *An Explanatory Guide to the Cartagena Protocol on Biosafety*, the term 'LMOs resulting from biotechnology' "had been interpreted as covering all organisms resulting from biotechnology that are alive". This can be further broken down to two categories: first, organisms that have been modified using traditional techniques; and second, so-called "genetically modified" organisms, produced using modern biotechnology.

addressed. The scope of Target 17 should therefore also extend to synthetic biology and other new genetic techniques. To be clear, this could be explicitly stated in the Target.

Integrity of Target 17

The Co-Chairs, in their 'reflections' (CBD/WG2020/3/6), ask whether Target 17 should be moved up to fall under the heading 'Meeting people's needs through sustainable use and benefit-sharing', especially if a benefit-sharing element is added. This question comes in the context of some Parties commenting that Target 17 should also speak to the benefits from biotechnology and not be limited to its risks.

In the first instance, Target 17 derives directly from obligations in Articles 8(g) and 19(4), which as explained above, are focused on the adverse effects and risks of LMOs resulting from biotechnology.

Secondly, the context for discussion under the CBD of the benefits arising from biotechnologies is Article 19(2). This article calls for priority access on a fair and equitable basis by Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Parties. It is clear that the focus is not on the benefits of biotechnologies per se, but is in line with the third objective of the CBD. This issue is already addressed in Target 13 of the first draft of the post-2020 GBF.

Thirdly, regardless of whether a reference to benefits from biotechnologies is included in the section on 'Meeting people's needs through sustainable use and benefit-sharing', this should be separated out from Target 17, which needs to be kept intact insofar as it deals with the adverse effects and risks arising from LMOs resulting from biotechnology.

Finally, if there is to be any rearrangement in the order of the targets at all, Target 17 would be better placed in the first section headed 'Reducing threats to biodiversity', as it is about reducing the threats that LMOs pose to biodiversity.

Functions of Target 17[4]

Regulate and prevent, manage or control potential adverse impacts, taking into account risks to human health

Article 8(g) of the CBD obliges Parties to establish or maintain means to regulate, manage or control the risks associated with (LMOs) resulting from biotechnology, which are likely to have adverse environmental impacts, that could affect the conservation and sustainable use of biodiversity, taking also into account risks to human health.

[4] These proposals were made in the August 2021 briefing note, and have been included here for completeness.

The Cartagena Protocol on Biosafety is the legally-binding instrument for which Parties have to take necessary and appropriate legal, administrative and other measures to implement their obligations. The Protocol focuses on LMOs resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biodiversity, taking also into account risks to human health.

Establish horizon scanning, monitoring and assessment

CBD COP Decision 14/19 agreed that a broad and regular horizon scanning, monitoring and assessing of the most recent technological developments is needed for reviewing new information regarding the potential positive and potential negative impacts of synthetic biology vis-à-vis the three objectives of the Convention and those of the Cartagena Protocol and Nagoya Protocol.

Horizon scanning, monitoring and assessment are thus relevant to LMOs resulting from biotechnology, including synthetic biology and other new genetic techniques, and would allow for the rapid and fast-paced developments in the field to be reviewed, and their potential adverse effects anticipated, monitored and assessed.

Take socio-economic considerations into account

Article 26 of the Cartagena Protocol establishes the right of Parties to take into account socio-economic considerations, especially with regard to the value of biodiversity to indigenous peoples and local communities (IPLCs). The roots of this article are in the CBD's Article 8(j), which sets out obligations with respect to the "knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles".

Further, CBD COP Decision XIII/17 on synthetic biology invited Parties to take into account, in accordance with their applicable domestic legislation or national circumstances, as appropriate, socio-economic, cultural and ethical considerations.

Ensuring liability and redress for damage

Article 14 of the CBD obliges Parties to examine the issue of liability and redress for damage to biodiversity. Article 27 of the Cartagena Protocol mandated Parties to adopt a process on the elaboration of international rules and procedures on liability and redress for damage resulting from LMOs; the result is the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress. Liability and redress is a key function of biosafety that needs to be ensured.

Obtain the free, prior and informed consent of IPLCs

The principle of free, prior and informed consent (FPIC) for IPLCs is established and implemented not only by the CBD, but also international human rights

standards such as the UN Declaration on the Rights of Indigenous Peoples. CBD COP Decision 14/19 in particular calls for FPIC (or the equivalent at national level) of potentially affected IPLCs to be sought or obtained in relation to the environmental release of gene drive organisms.

Proposed text

We therefore propose that Target 17 be amended as follows (additions in bold):

Establish, strengthen capacity for, and implement ***legal, administrative and other*** *measures in all countries to* ***regulate****, prevent, manage or control potential adverse impacts of* ***living modified organisms resulting from*** *biotechnology,* ***including of synthetic biology and other new genetic techniques****, on biodiversity and human health,* ***taking also into account socio-economic considerations****, reducing the risk of these impacts* ***while establishing broad and regular horizon scanning, monitoring and assessing of the most recent technological developments, ensuring liability and redress for damage, and obtaining the free, prior and informed consent of potentially affected indigenous peoples and local communities in relation to the release of any products of modern biotechnology into their lands, territories and waters.***

Indicators

The headline indicator for this target has yet to be developed. However, component indicators and complementary indicators have been proposed. We suggest that these indicators are aligned with the indicators of the post-2020 Implementation Plan and Capacity-building Action Plan for the Cartagena Protocol, which are comprehensive in scope and were developed through an extensive consultative process.