



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/NP/COP-MOP/1/7
10 October 2014

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

First meeting

Pyeongchang, Republic of Korea, 13-17 October 2014

Item 10 of the provisional agenda*

COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS TO PROMOTE COMPLIANCE WITH THE NAGOYA PROTOCOL AND TO ADDRESS CASES OF NON-COMPLIANCE

Note by the Executive Secretary

INTRODUCTION

1. Article 30 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization requires the Conference of the Parties serving as the meeting of the Parties to the Protocol, 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.
2. In line with its work plan (decision X/1, annex II, section A, item 4), the Intergovernmental Committee for the Nagoya Protocol considered this issue at its first meeting held in Montreal, from 5 to 10 June 2011. An expert meeting convened in February 2012 considered and refined possible draft elements and options for cooperative procedures and mechanisms under the Protocol. The outcomes from the expert meeting were submitted to the second meeting of the Intergovernmental Committee held in New Delhi, from 2 to 6 July 2012, where they were further considered and refined.
3. The Intergovernmental Committee continued to consider the cooperative procedures and institutional mechanisms to promote compliance and address cases of non-compliance at its third meeting held in Pyeongchang, Republic of Korea from 24 to 28 February 2014. It agreed to forward the text of the procedures and mechanisms to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for its consideration and approval (recommendation 3/6).
4. The Intergovernmental Committee reported on its work to the twelfth meeting of the Conference of the Parties (COP), which agreed to establish a contact group to continue deliberations on the compliance procedures and mechanisms. The contact group met during the first week of COP-12 and made further progress on the draft text. The revised draft text of the “Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Nagoya Protocol and to Address Cases of Non-compliance” is annexed to this document and is forwarded to the first meeting of the

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Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for further consideration and adoption.

5. The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol may wish to consider and adopt the draft procedures and mechanisms on compliance. The adoption of the procedures and mechanisms may also require the election of members of a compliance committee that would be established pursuant to section B of the current draft text of the compliance procedures and mechanisms.

Annex

COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS TO PROMOTE COMPLIANCE WITH THE PROVISIONS OF THE NAGOYA PROTOCOL AND TO ADDRESS CASES OF NON-COMPLIANCE

The following procedures and mechanisms are developed in accordance with Article 30 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From their Utilization (the Protocol).

A. Objectives, nature and underlying principles

1. The objective of the compliance procedures and mechanisms is to promote compliance with the provisions of the Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention on Biological Diversity (the Convention).
2. The compliance procedures and mechanisms shall be non-adversarial, cooperative, simple, expeditious, advisory, facilitative, flexible and cost-effective in nature.
3. The operation of the compliance procedures and mechanisms shall be guided by the principles of fairness, due process, rule of law, non-discrimination, transparency, accountability, predictability, good faith and effectiveness. It shall pay particular attention to the special needs of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, and take into full consideration the difficulties they face in the implementation of the Protocol.

B. Institutional mechanisms

1. A Compliance Committee, hereinafter referred to as “the Committee”, is hereby established pursuant to Article 30 of the Protocol to carry out the functions specified herein.
2. The Committee shall consist of 15 members nominated by Parties, on the basis of three members endorsed by each of the five regional groups of the United Nations. [Nominees could include representatives of indigenous and local communities]. [In addition, [one][two] representative[s] of indigenous and local communities nominated by [Parties][x] shall serve as [observers][non-voting members][members]]. Nominees shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP).*
3. Each regional group of the United Nations should provide one alternate member to be nominated by Parties and elected by the COP-MOP to replace a member who resigns or is unable to complete their term of office.
4. Members of the Committee shall have recognized competence, including technical, legal or scientific expertise in the fields covered by the Protocol, such as genetic resources and traditional knowledge associated with genetic resources, and serve objectively, in the best interests of the Protocol and in their individual expert capacity.
5. Members shall be elected by the COP-MOP for a period of four years, this being a full term. At its first meeting, the COP-MOP shall elect five members, one from each region, for half a term, and ten members, two from each region, for a full term. Each time thereafter, the COP-MOP shall elect, for a full term, new members to replace those whose term has expired. Members shall not serve for more than two consecutive terms.

* Depending on the approach adopted in paragraph 2, consequential changes may need to be made.

6. The Committee shall meet at least once in each intersessional period and may, as necessary and subject to the availability of financial resources, hold additional meetings. In determining the dates of the meetings, due consideration should be given to the meetings schedule of the COP-MOP and other relevant bodies under the Protocol, and cost-effective scheduling. Meetings should be held at least three months before the meetings of the COP-MOP.

7. The Committee shall develop and submit its rules of procedure, including those on confidentiality and conflict of interest, to the COP-MOP for its consideration and approval.

8. The Committee shall elect its Chair and a Vice-Chair, who will rotate amongst the five regional groups of the United Nations.

9. Two-thirds of the members of the committee shall constitute a quorum.

9 *bis*. The Committee shall [make every effort to] reach agreement on all matters of substance by consensus. [If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a three-quarters majority of the members present and voting or by 8 members, whichever is greater. The report of any meeting of the Committee at which consensus is not reached shall reflect the views of all the Committee members.] The report shall be made public once adopted.

10. The meetings of the Committee shall be open, unless the Committee decides otherwise. When the Committee is dealing with individual cases of Parties whose compliance is under consideration, the meetings of the Committee shall be open to Parties and closed to the public, unless the Party concerned agrees otherwise.

10 *bis* “The Party concerned” means the Party in respect of which an issue has been raised under section D.

11. The Secretariat shall service the meetings of the Committee and perform any additional functions assigned to it under these procedures.

C. Functions of the Committee

1. The Committee shall, with a view to promoting compliance with the provisions of the Protocol and addressing cases of non-compliance, perform the functions under these procedures and any other functions assigned to it by the COP-MOP.

2. In performing its functions, the Committee may consult with the compliance committees of other agreements in order to share experience on compliance issues and options for their resolution.

3. The Committee shall submit its reports, including recommendations with regard to the discharge of its functions, to the next meeting of the COP-MOP for consideration and appropriate action.

D. Procedures

1. The Committee shall receive any submissions relating to issues of compliance and non-compliance with the provisions of the Protocol from:

- (a) Any Party with respect to itself;
- (b) Any Party with respect to another Party;
- (c) The COP-MOP;

(d) [The Secretariat [, when a Party fails to file a report pursuant to Article 29, provided that the matter has not been resolved within ninety days by consultation with the Party concerned [, or based on information from the national reports or the ABS Clearing-House that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol][, or related information provided to the Secretariat by an indigenous and local community, related to provisions of the Nagoya Protocol of direct concern to that indigenous and local community, provided that the Secretariat has informed that Party and given that Party the opportunity to respond within [x] days];] or

(e) [Indigenous and local communities [supported by the Party on whose national territory they are located][on matters relating to compliance with the provisions of the Nagoya Protocol relating to their customary laws, community protocols and procedures, as applicable, with respect to their traditional knowledge associated with genetic resources].]

2. Any submission is to be addressed in writing to the Committee through the Secretariat and set out:

- (a) The matter of concern;
- (b) The relevant provisions of the Protocol; and
- (c) Information substantiating the matter of concern.

3. The Secretariat shall forward any submission under paragraphs 1 (a) above to the Committee within 30 calendar days of receipt.

4. The Secretariat shall forward any other submission under paragraph 1 to the Party concerned within 30 calendar days of receipt.

5. When the Party concerned has received a submission it should respond and provide relevant information within 60 calendar days from the date of receipt of the submission, unless the Party requests an extension. Such extension may be granted, by the Chair of the Committee, for a period of up to 90 calendar days.

6. Once the Secretariat has received a response and any information from the Party concerned or from other sources, the Secretariat shall transmit the submission, the response and such information to the Committee. In the case where the Secretariat has not received any response or information from the Party concerned within the initial or extended period as referred to in paragraph 6 above, the Secretariat shall forward the submission to the Committee forthwith.

7. The Committee may decide not to consider any submission made pursuant to paragraphs 1 (b) to 1 (...) above that is *de minimis* or manifestly ill-founded.

8. The Party concerned [and the Party [or entity] that made the submission] may participate in the consideration of the submission and present responses or comments to the Committee, but shall not take part in the elaboration and adoption of the recommendations of the Committee. The Committee shall make available the draft recommendations to the [Party concerned][mentioned Parties], which shall be given an opportunity to comment. [Any such comment is to be reflected in [and/or attached to] the report of the Committee.]

9. In addition to the procedures under this section, the Committee may examine systemic issues of general non-compliance that come to its attention.

E. Information for and consultation by the Committee after the triggering of the procedures

1. The Committee may seek, receive and consider information from relevant sources, including from affected indigenous and local communities. The reliability of the information should be ensured.

2. The Committee may seek advice from independent experts, including, in particular where indigenous and local communities are directly affected, from an indigenous and local community expert.

3. The Committee may undertake, upon invitation of the Party concerned, information gathering in the territory of that Party.

F. Measures to promote compliance and address cases of non-compliance

1. In considering the measures specified below the Committee shall take into account:

- (a) The capacity of the Party concerned to comply;
- (b) The special needs of developing country Parties, in particular the least developed countries and small island developing States amongst them, and Parties with economies in transition; and

- (c) Such factors as the cause, type, degree and frequency of non-compliance.
2. The Committee with a view to promoting compliance and addressing cases of non-compliance, may:
- (a) Offer advice or facilitate assistance to the Party concerned, as appropriate;
- (b) Request or assist, as appropriate, the Party concerned to develop a compliance action plan to be submitted identifying appropriate steps, an agreed timeframe and indicators to assess satisfactory implementation;
- (c) Invite the Party concerned to submit progress reports on its efforts to comply with its obligations under the Protocol;
2. (*bis*) The COP-MOP upon the recommendations of the Committee may also, with a view to promoting compliance and addressing cases of non-compliance:
- (a) Take any of the measures set out in paragraph 2 (a)-(c) above;
- (b) Facilitate [or provide], as appropriate, access to financial and technical assistance, technology transfer, training and other capacity-building measures;
- (c) Issue a written caution, statement of concern or a declaration of non-compliance to the Party concerned;
- (d) [In cases of grave or repeated non-compliance decide the appropriate measures, according to international law];
- (e) [Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, specific rights and privileges;]
- (f) Decide on any other measure, as appropriate, in accordance with Article 26, paragraph 4 of the Protocol.

[F(bis). Ombudsman

The Committee shall establish the office of an ABS ombudsman to provide assistance to developing countries and indigenous and local communities to identify instances of non-compliance and make submissions to the Committee.]

G. Review of procedures and mechanisms

The COP-MOP 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.
