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COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL

First meeting
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Item 3 of the provisional agenda*

DEVELOPMENT OF RULES OF PROCEDURE FOR MEETINGS OF THE COMPLIANCE COMMITTEE OF THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING

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 (Nagoya Protocol) provides that the Conference of the Parties serving as the meeting of the Parties to the Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. Accordingly, at their first meeting, the Parties to the Nagoya Protocol adopted decision NP-1/4, which includes procedures and mechanisms on compliance and establishes a Compliance Committee (hereinafter “the Committee”).

2. Paragraph 8 of section B of the compliance procedures and mechanisms provides that the Committee “shall develop and submit its rules of procedure, including those on confidentiality and conflict of interest, to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for its consideration and approval.” Decision NP-1/4 requests the Executive Secretary to arrange for at least one meeting of the Committee to be held prior to the second meeting of the Parties to the Protocol for the purpose of, inter alia, developing rules of procedure for the Committee.

3. This document has been prepared to assist the Committee in undertaking this task. Section I outlines some general considerations that went into the preparation of the proposed rules of procedure while section II contains a set of proposed rules along with explanatory notes that elaborate on the rationale for the suggested approach. Section III suggests how the Committee may wish to proceed in its work on this matter. The annex contains the draft rules of procedure for consideration by the Committee.

I. GENERAL CONSIDERATIONS

4. The purpose of the rules of procedure for the Committee is to provide a set of rules governing the proceedings of meetings of the Committee. In general, rules of procedure address issues such as place and dates of meetings, agenda, officers, conduct of business, languages and other procedural matters. Rules of

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procedure should aim to facilitate the smooth operation of the meetings of the Committee and ensure a transparent and efficient decision-making process.

5. In considering elements to include in rules of procedure, it should be noted that the rules of procedure for meeting of the Conference of the Parties to the Convention on Biological Diversity apply, *mutatis mutandis*, to the meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (see Article 26(5) of the Nagoya Protocol and decision NP-1/1). These rules of procedure contain provisions for conducting meetings. Since many of these rules may well apply to the meetings of the Committee, it may not be necessary to repeat them in the rules of procedure for the Committee.

6. It should also be noted that the procedures and mechanisms on compliance with the Nagoya Protocol as contained in the annex to decision NP-1/4 also contain a number of provisions that address procedural aspects of the work of the Committee, including with regard to quorum, voting, the election of the Chair and Vice-Chair, whether the Committee will meet in open or closed sessions and the replacement of members who are unable to complete their term of office. The rules of procedure for the Committee, as discussed below, would complement and in some cases further elaborate upon the provisions in the compliance procedures and mechanisms.

II. PROPOSED RULES OF PROCEDURE WITH EXPLANATORY NOTES

7. This section presents draft rules of procedure for meetings of the Committee with explanatory notes for the rationale behind the proposed rules. The draft rules of procedure have been developed by examining the rules of procedure for equivalent committees under other multilateral environmental agreements, particularly the Cartagena Protocol on Biosafety, and taking into account the procedural aspects already addressed in the compliance procedures and mechanisms in the annex to decision NP-1/4.

A. Purposes

Rule 1

These rules of procedure shall apply to any meeting of the Compliance Committee under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and shall be read together with and in furtherance of the procedures and mechanisms set out in decision NP-1/4 of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

Rule 2

The rules of procedure for meetings of the Conference of the Parties to the Convention on Biological Diversity as applied, *mutatis mutandis*, to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization shall apply, *mutatis mutandis*, to any meeting of the Compliance Committee under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, except as otherwise provided in the rules set out herein and in decision NP-1/4, and provided that rules 16 to 20 on representation and credentials of the rules of procedure for the meetings of the Conference of the Parties shall not apply.

8. The proposed rule 1 defines the purpose and application of the rules of procedure. It indicates that the rules should not be read in isolation but together with the provisions in the compliance procedures and mechanisms under the Protocol. Rule 2 ensures that the standard provisions in relation to the conduct of

meetings as contained in the rules of procedure for the Conference of the Parties apply, *mutatis mutandis*, to the meetings of the Committee. It includes two exceptions. First, rules 16 to 20 of the rules of procedure for the meetings of the Conference of the Parties address representation and credentials and are not relevant in this context so their application is excluded. Secondly, an exception is also provided for where the Committee would apply rules designed for the specific purpose of the Committee as contained in the rest of the rules that follow.

9. Rules of this nature are commonly included in the rules of procedure of compliance committees under different multilateral environmental agreements. The basis for the wording of these two proposed rules is rules 1 and 2 of the rules of procedure for the Compliance Committee of the Cartagena Protocol on Biosafety.

B. Definitions

Rule 3

For the purposes of these rules:

(a) “Protocol” means the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity;

(b) “Party” means a Party to the Protocol;

(c) “Conference of the Parties serving as the meeting of the Parties to the Protocol” means the Conference of the Parties serving as the meeting of the Parties to the Protocol as provided for under Article 26 of the Protocol;

(d) “Committee” means the Compliance Committee established by decision NP-1/4 of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(e) “Chair” and “Vice-Chair” mean, respectively, the chairperson and vice-chairperson elected in accordance with paragraph 9 of section B of the annex to decision NP-1/4 and rule 12 of these rules of procedure;

(f) “Member” means a member of the Committee elected in accordance with paragraph 2 of section B of the annex to decision NP-1/4 or their replacement elected in accordance with paragraph 3 of section B of the annex to decision NP-1/4;

(g) “Indigenous and local community observer” means a representative of indigenous and local communities elected in accordance with paragraph 2 of section B of the annex to decision NP-1/4 or their replacement elected in accordance with paragraph 3 of section B of the annex to decision NP-1/4;

(h) “Secretariat” means the Secretariat referred to in Article 28 of the Protocol;

(i) “Compliance Procedures and Mechanisms” means the cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance adopted by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and set out in the annex to decision NP-1/4.

10. The proposed rule 3 provides definitions of the terms used in the rest of the rules of procedure.

C. Dates and notice of meetings

Rule 4

The Committee shall decide on the dates and duration of its meetings, bearing in mind paragraph 7 of section B of the Compliance Procedures and Mechanisms.

Rule 5

The Secretariat shall notify all members of the Committee and the indigenous and local community observers of the dates and venue of a meeting at least six weeks before the meeting is due to commence.

11. The proposed rule 4 addresses the role of the Committee in deciding on the timing and duration of its meetings while also making the link to paragraph 7 of section B of the Compliance Procedures and Mechanisms which provides some parameters for determining the dates and duration of meetings.

12. The proposed rule 5 specifies the timeframe within which the Secretariat is required to notify the Committee of the dates and venue for a meeting of the Committee.

D. Agenda

Rule 6

The agenda of the Committee shall include items arising from its functions and the procedures as specified in sections C and D, respectively, of the Compliance Procedures and Mechanisms and other matters related thereto.

Rule 7

To the extent possible, the provisional agenda, together with supporting documents, shall be made available by the Secretariat to all members of the Committee and the indigenous and local community observers at least four weeks before the opening of the meeting.

13. The proposed rule 6 addresses the basis on which the agenda for the meetings of the Committee is to be prepared, which is proposed to include items arising from the Committee's functions and the procedures as specified in sections C and D of the Compliance Procedures and Mechanisms and any other related matters so as to enable the Committee to fulfil its role.

14. The proposed rule 7 specifies the timeframe within which the Secretariat is to distribute the documents for a meeting of the Committee.

E. Distribution and consideration of information

Rule 8

1. The Committee shall be informed immediately by the Secretariat that a submission has been received under paragraph 1 of section D of the Compliance Procedures and Mechanisms or that information has been provided by a directly affected indigenous or local community under paragraph 9(b) of section D of the Compliance Procedures and Mechanisms.

2. Submissions and information received in accordance with section D of the Compliance Procedures and Mechanisms shall be transmitted by the Secretariat to the Committee according to the procedures set out in section D of the Compliance Procedures and Mechanisms.
3. Submissions from a Party, the response and the information, as referred to in section D of the Compliance Procedures and Mechanisms, shall be made in one of the six official languages of the United Nations. The Secretariat shall make arrangements to translate them into English if they are submitted in one of the languages of the United Nations other than English.

15. Section D, particularly paragraphs 3 to 6 and 9, of the Compliance Procedures and Mechanisms already specifies how submissions and information on compliance are to be handled by the Secretariat. Accordingly, paragraph 1 of the proposed rule 8 provides that the Committee is to be informed immediately by the Secretariat when such submissions or information are received. In other words, the Secretariat would send a message to the Committee to indicate that a submission or information has been received.

16. Rule 8, paragraph 2, would have the transmittal to the Committee of the actual submissions and information follow the existing process already elaborated in section D of the Compliance Procedures and Mechanisms.

17. The proposed rule 13 below would see English as the working language of the Committee or any other official United Nations language agreed by the Committee. In this light, rule 8, paragraph 3 would require material submitted to the Committee to also be in one of the six official United Nations languages and the Secretariat would arrange to translate material submitted in a language other than English.

F. Publication of documents and information

Rule 9

1. The provisional agenda, reports of meetings, official documents and any other information documents shall be made publically available.
2. Information shall be made publically available without prejudice to the protection of confidential information.

18. Paragraph 8 of section B of the Compliance Procedures and Mechanisms states that the Committee is to develop its rules of procedure, including those on confidentiality. Accordingly, the proposed rule 9 addresses this issue.

G. Members and indigenous and local community observers

Rule 10

The term of office of a member and an indigenous and local community observer shall commence on 1 January of the calendar year immediately following his or her election and end on 31 December, two or four years thereafter, as applicable.

Rule 11

1. Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member shall bring the issue to the attention of

the Committee before consideration of that particular matter. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to that matter.

2. (a) As provided for in paragraph 2 of section B of the Compliance Procedures and Mechanisms, indigenous and local community observers shall be entitled to participate in the deliberations of the Committee except in the taking of decisions. In individual cases where only Parties are involved and the issue does not relate to the interests of indigenous and local communities and where the Party concerned chooses the deliberation to be closed to observers, the two indigenous and local communities observers shall not participate in the deliberations.

(b) Where an indigenous and local community observer participates in the deliberations of the Committee, he or she shall avoid direct or indirect conflicts of interest. Where an indigenous and local community observer finds himself or herself faced with a direct or indirect conflict of interest, that indigenous and local community observer shall bring the issue to the attention of the Committee before consideration of that particular matter. The concerned indigenous and local community observer shall not participate in the deliberations of the Committee in relation to that matter.

19. Section B of the Compliance Procedures and Mechanisms specifies the composition of the Committee, how members of the Committee and indigenous and local community observers are to be elected and replaced where they resign or are unable to complete their term of office. The proposed rule 10 supplements these provisions by elaborating the specific time period of a term of office of a member and indigenous and local community observer.

20. The proposed rule 11 aims to fulfil the requirement for the Committee to develop its rules of procedure, including those on conflict of interest, as required by paragraph 8 of section B of the Compliance Procedures and Mechanisms. Paragraph 1 of the rule addresses the issue of conflict of interest for members of the Committee while paragraph 2 addresses the issue of conflict of interest for the indigenous and local community observers to the Committee. Paragraph 2(a) re-states the role of the indigenous and local community observers as set out in section B, paragraph 2 of the Compliance Procedures and Mechanisms. In light of this role, paragraph 2(b) proposes a rule for addressing conflict of interest for the indigenous and local community observers.

H. Officers

Rule 12

1. As provided for in paragraph 9 of section B of the Compliance Procedures and Mechanisms, the Committee shall elect its Chair and a Vice-Chair, who will rotate among the five regional groups of the United Nations. Subject to rule 10 of the present rules of procedure, they shall serve in those capacities until their successors take office.
2. The Chair and Vice-Chair shall be elected for a period of two years. No officer shall serve for more than two consecutive terms.

21. Paragraph 9 of section B of the Compliance Procedures and Mechanisms already provides for the election of a Chair and Vice-Chair by the Committee. The proposed rule 12 supplements this by specifying the term of office and term limits of the Chair and Vice-Chair.

22. It may also be noted that rules 22 to 25 of the rules of procedure for meetings of the Conference of the Parties relating to the powers conferred upon the Chair or the Vice-Chair will apply, *mutatis mutandis*, to meetings of the Committee.

I. Conduct of business

Rule 13

The working language of the Committee shall be English or any other official United Nations language agreed by the Committee.

Rule 14

Electronic means of communication may be used by the Committee for the purpose of conducting informal consultations on issues under consideration as well as for decision-making on matters of substance. Where electronic means of communication are used for decision-making on matters of substance, such decisions shall be made by consensus.

23. The proposed rule 13 follows the same approach as the corresponding rule of procedure for the Compliance Committee of the Biosafety Protocol. The proposed rule 14 on the use of electronic means of communication is different from the corresponding rule for the Compliance Committee under the Biosafety Protocol. Electronic means of communication have advanced significantly in the ten years since the rules of procedure for the Compliance Committee of the Biosafety Protocol were adopted. In that regard, it is suggested that the Committee may wish to allow for the possibility of decision-making via electronic means of communication provided such decisions are made on the basis of consensus. This would be a variation of section B, paragraph 11 of the Compliance Procedures and Mechanisms which allows for decisions to be taken by voting as a last resort.

J. Amendments to the rules of procedure

Rule 15

Any amendment to these rules of procedure shall be adopted by consensus by the Committee and submitted to the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and approval.

24. Since the rules of procedure for the Committee are subject to consideration and approval by the Conference of the Parties serving as the meeting of the Parties to the Protocol, any amendment to those rules should follow the same procedure.

K. Overriding authority of the Protocol and decision NP-1/4

Rule 16

In the event of a conflict between any provision in these rules and any provision in the Protocol or decision NP-1/4, the provisions of the Protocol or decision NP-1/4 shall prevail.

25. This proposed rule would give the text of the Protocol and decision NP-1/4 overriding authority over the rules of procedure for the Committee.

III. CONCLUSIONS AND RECOMMENDATION

26. The Committee may wish to consider the proposed rules of procedure and explanatory notes presented above in order to develop and agree to its rules of procedure and submit them to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and approval.

Annex

**DRAFT RULES OF PROCEDURE FOR MEETINGS OF THE COMPLIANCE COMMITTEE
UNDER THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR
AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION**

A. Purposes

Rule 1

These rules of procedure shall apply to any meeting of the Compliance Committee under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and shall be read together with and in furtherance of the procedures and mechanisms set out in decision NP-1/4 of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

Rule 2

The rules of procedure for meetings of the Conference of the Parties to the Convention on Biological Diversity as applied, *mutatis mutandis*, to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization shall apply, *mutatis mutandis*, to any meeting of the Compliance Committee under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, except as otherwise provided in the rules set out herein and in decision NP-1/4, and provided that rules 16 to 20 on representation and credentials of the rules of procedure for the meetings of the Conference of the Parties shall not apply.

B. Definitions

Rule 3

For the purposes of these rules:

(a) “Protocol” means the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity;

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(e) “Chair” and “Vice-Chair” mean, respectively, the chairperson and vice-chairperson elected in accordance with paragraph 9 of section B of the annex to decision NP-1/4 and rule 12 of these rules of procedure;

(f) “Member” means a member of the Committee elected in accordance with paragraph 2 of section B of the annex to decision NP-1/4 or their replacement elected in accordance with paragraph 3 of section B of the annex to decision NP-1/4;

(g) “Indigenous and local community observer” means a representative of indigenous and local communities elected in accordance with paragraph 2 of section B of the annex to decision NP-1/4 or their replacement elected in accordance with paragraph 3 of section B of the annex to decision NP-1/4;

(h) “Secretariat” means the Secretariat referred to in Article 28 of the Protocol;

(i) “Compliance Procedures and Mechanisms” means the cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance adopted by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and set out in the annex to decision NP-1/4.

C. Dates and notice of meetings

Rule 4

The Committee shall decide on the dates and duration of its meetings, bearing in mind paragraph 7 of section B of the Compliance Procedures and Mechanisms.

Rule 5

The Secretariat shall notify all members of the Committee and the indigenous and local community observers of the dates and venue of a meeting at least six weeks before the meeting is due to commence.

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Rule 6

The agenda of the Committee shall include items arising from its functions and the procedures as specified in sections C and D, respectively, of the Compliance Procedures and Mechanisms and other matters related thereto.

Rule 7

To the extent possible, the provisional agenda, together with supporting documents, shall be made available by the Secretariat to all members of the Committee and the indigenous and local community observers at least four weeks before the opening of the meeting.

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Rule 10

The term of office of a member and an indigenous and local community observer shall commence on 1 January of the calendar year immediately following his or her election and end on 31 December, two or four years thereafter, as applicable.

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1. Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member shall bring the issue to the attention of the Committee before consideration of that particular matter. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to that matter.

2. (a) As provided for in paragraph 2 of section B of the Compliance Procedures and Mechanisms, indigenous and local community observers shall be entitled to participate in the deliberations of the Committee except in the taking of decisions. In individual cases where only Parties are involved and the issue does not relate to the interests of indigenous and local communities and where the Party concerned chooses the deliberation to be closed to observers, the two indigenous and local communities observers shall not participate in the deliberations.

(b) Where an indigenous and local community observer participates in the deliberations of the Committee, he or she shall avoid direct or indirect conflicts of interest. Where an indigenous and local community observer finds himself or herself faced with a direct or indirect conflict of interest, that indigenous and local community observer shall bring the issue to the attention of the Committee before consideration of that particular matter. The concerned indigenous and local community observer shall not participate in the deliberations of the Committee in relation to that matter.

H. Officers

Rule 12

1. As provided for in paragraph 9 of section B of the Compliance Procedures and Mechanisms, the Committee shall elect its Chair and a Vice-Chair, who will rotate among the five regional groups of the United Nations. Subject to rule 10 of the present rules of procedure, they shall serve in those capacities until their successors take office.

2. The Chair and Vice-Chair shall be elected for a period of two years. No officer shall serve for more than two consecutive terms.

I. Conduct of business

Rule 13

The working language of the Committee shall be English or any other official United Nations language agreed by the Committee.

Rule 14

Electronic means of communication may be used by the Committee for the purpose of conducting informal consultations on issues under consideration as well as for decision-making on matters of substance. Where electronic means of communication are used for decision-making on matters of substance, such decisions shall be made by consensus.

J. Amendments to the rules of procedure

Rule 15

Any amendment to these rules of procedure shall be adopted by consensus by the Committee and submitted to the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and approval.

K. Overriding authority of the Protocol and decision NP-1/4

Rule 16

In the event of a conflict between any provision in these rules and any provision in the Protocol or decision NP-1/4, the provisions of the Protocol or decision NP-1/4 shall prevail.
