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COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL

First meeting
Montreal, Canada, 6-8 April 2016

REPORT 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 ON THE WORK OF ITS FIRST MEETING

INTRODUCTION

1. In its decision NP-1/4, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (COP-MOP) adopted cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Nagoya Protocol and to address cases of non-compliance (hereinafter referred to as the compliance procedures and mechanisms) and also established the Compliance Committee.
2. The COP-MOP elected 15 members to serve on the Committee on the basis of three members endorsed by each of the five regional groups of the United Nations. It also elected two representatives of indigenous and local communities to serve as observers.
3. The COP-MOP also requested the Executive Secretary to arrange for at least one meeting of the Committee to be held prior to COP-MOP 2. Accordingly, the first meeting of the Compliance Committee was held in Montreal from 6 to 8 April 2016.
4. The following members of the Committee and indigenous and local community (ILC) observers were present at the meeting:

Africa

Mr. Ayman Tharwat Abdel Aziz
Ms. Naritiana Rakotoniaina
Ranaivoson
Ms. Christine Echookit Akello

Asia and the Pacific

Mr. Luther M. Rangreji
Mr. Clark Peteru
Mr. Achmad Gusman Catur Siswandi

Central and Eastern Europe

Ms. Elena Makeyeva
Ms. Elvana Ramaj
Ms. Elzbieta Martyniuk

Latin America and the Caribbean

Ms. Norma Munguía Aldaraca
Mr. Andrés Valladolid Cavero

Western Europe and Others

Mr. Kaspar Sollberger
Ms. Helge Elisabeth Zeitler
Sr. Alejandro Lago Candeira

Indigenous and local communities:
Mr. Preston D. Hardison

Mr. Onel Masardule Arias

ITEM 1. OPENING OF THE MEETING

5. The Executive Secretary, opened the meeting at 9.30 a.m. on 6 April 2016. He welcomed participants and noted the important role of the Committee in supporting Parties in their implementation of the Nagoya Protocol.

6. A representative of the Secretariat reported on attendance to the meeting. She indicated that one member of the Committee, Mr. Indarjit Ramdass, had been unable to attend. However, there was quorum enabling the meeting to proceed in accordance with section B, paragraph 10, of the compliance procedures and mechanisms.

7. She also recalled section B, paragraph 12, of the compliance procedures and mechanisms which provide that the meetings of the Committee shall be open, unless the Committee decides otherwise. Accordingly, the Secretariat had received nominations for two observers from the Government of Canada and one observer from the Government of Slovakia, who were present at the meeting.

ITEM 2. ORGANIZATIONAL MATTERS

2.1 Election of officers

8. The representative of the Secretariat recalled section B, paragraph 9, of the compliance procedures and mechanisms, which provides that the Committee shall elect its Chair and a Vice-Chair, who will rotate among the five regional groups of the United Nations. Mr. Kaspar Sollberger was elected Chair and Ms. Christine Echokit Akello was elected Vice-Chair.

2.2 Adoption of the agenda

9. The Committee adopted the following agenda on the basis of the provisional agenda ([UNEP/CBD/ABS/CC/1/1](#)) prepared by the Secretariat:

1. Opening of the meeting.
2. Organizational matters:
 - 2.1 Election of officers;
 - 2.2 Adoption of the agenda;
 - 2.3 Organization of work.
3. Development of rules of procedure for meetings of the Compliance Committee under the Nagoya Protocol.
4. Need for and modalities of support to address challenges related to compliance with the provisions of the Nagoya Protocol with a view to making effective use of the compliance mechanism.
5. Future work of the Compliance Committee.
6. Other matters.
7. Adoption of the report.
8. Closure of the meeting.

2.3 Organization of work

10. The Committee agreed on the organization of its work as proposed by the Secretariat, as specified in annex I to the annotations to the provisional agenda ([UNEP/CBD/ABS/CC/1/1/Add.1](#)).

ITEM 3. DEVELOPMENT OF RULES OF PROCEDURE FOR MEETINGS OF THE COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL

11. A representative of the Secretariat introduced the note by the Executive Secretary on the development of rules of procedure for meetings of the Compliance Committee under the Nagoya Protocol ([UNEP/CBD/ABS/CC/1/2](#)). She recalled section B, paragraph 8, of the compliance procedures and mechanisms, which require the Committee to develop and submit its rules of procedure, including those on confidentiality and conflict of interest, to COP-MOP for its consideration and approval. She also outlined a number of general considerations that had gone into the preparation of the draft rules of procedure, including the following: (a) that the rules of procedure for meetings of the Conference of the Parties to the Convention on Biological Diversity would apply, mutatis mutandis, to the meetings of the Compliance Committee; (b) that the compliance procedures and mechanisms adopted in decision NP-1/4 already address a number of procedural issues; and that (c) the rules of procedure of the compliance committees under other multilateral environmental agreements, particularly those of the Compliance Committee under the Cartagena Protocol on Biosafety, had been considered in the preparation of the document.

12. Following some general comments on the document, the Chair invited the Committee to go through the draft rules of procedure rule by rule. Following extensive discussions, the Committee agreed on its rules of procedure as contained in annex I to the present report and to recommend them to COP-MOP 2 for consideration and approval.

ITEM 4. NEED FOR AND MODALITIES OF SUPPORT TO ADDRESS CHALLENGES RELATED TO COMPLIANCE WITH THE PROVISIONS OF THE NAGOYA PROTOCOL WITH A VIEW TO MAKING EFFECTIVE USE OF THE COMPLIANCE MECHANISM

13. A representative of the Secretariat recalled that one of the purposes of this meeting was to identify and consider the need for and modalities of support, including possibly through a flexible mechanism to provide advice or assistance to Parties, in particular developing country Parties, and, where appropriate and applicable, indigenous and local communities to address challenges related to compliance with the provisions of the Nagoya Protocol, with a view to making effective use of the compliance mechanism. She drew the Committee's attention to the note by the Executive Secretary ([UNEP/CBD/ABS/CC/1/3](#)) which contained a synthesis of the views submitted by three Parties and two non-Parties on the need for and modalities of support as well as additional considerations regarding other relevant processes and activities under the Nagoya Protocol.

14. The participants discussed the information before them and noted that the Committee had a dual role: to facilitate compliance and to address cases of non-compliance. Recognizing that the Protocol had only recently entered into force, the Committee agreed that its current focus should be on supporting Parties in implementing the Protocol and complying with their obligations. The Committee invited Parties to share difficulties and challenges related to the implementation of the Protocol and to include such information in their national reports.

15. The Committee noted that there were a number of existing mechanisms that can support implementation, such as capacity-building and the ABS Clearing-House. It recognized the importance of capacity-building initiatives and the development of guidelines in supporting the implementation of the Nagoya Protocol. In that respect, some members pointed to the African Union guidelines which had been adopted by African heads of State in December 2015; an ILC observer noted the draft voluntary guidelines being developed in the context of the Working Group on Article 8(j) under the Convention on Biological Diversity.

16. In addition, the Committee welcomed the work being undertaken by the Secretariat in the development and implementation of the ABS Clearing-House, including new features which enable publishing and accessing information on capacity-building resources and initiatives as well as the work planned to enable the sharing of information on capacity-building opportunities. The Committee noted the

need for Parties to meet their obligations under Article 14.2 of the Protocol by publishing their national information, to make better use of the ABS Clearing-House, and to seek the support of the Secretariat in addressing any challenges in using the ABS Clearing-House.

17. In this context, the Committee agreed that it was premature to determine whether there is a need for an additional mechanism. Once further progress is made with implementation, the Committee could reassess the need to strengthen existing mechanisms or establish any additional mechanisms.

ITEM 5. FUTURE WORK OF THE COMPLIANCE COMMITTEE

18. A representative of the Secretariat introduced document [UNEP/CBD/ABS/CC/1/4](#), which had been prepared to assist the Committee in considering the future work it might wish to undertake. She indicated that the document contained a summary of the experience from the Compliance Committee under the Cartagena Protocol on Biosafety and the work it had done as well as a summary of activities and processes foreseen under the Nagoya Protocol for 2017-2018 of potential relevance to the future work of the Committee.

19. The Committee discussed its future work in relation to monitoring and reporting, the ABS Clearing-House and assessment and review.

20. The 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 on the ABS Clearing-House that the Executive Secretary had been requested to prepare in paragraph 6 of decision NP-1/3. It underlined the importance of the timely submission of the interim national reports.

21. The Committee recalled the invitation by COP-MOP to Parties, non-Parties and relevant organizations to support capacity-building and development activities for submitting the interim national report (decision NP-1/3, para. 8). In that context, the Committee noted the importance of the availability of financial resources to support Parties in completing their national reports, as that had proven to be a key to success in raising reporting rates under the Convention on Biological Diversity and the Cartagena Protocol on Biosafety.

22. It was also pointed out that the format for the interim national report can provide a useful checklist of the obligations that need to be met in implementing the Protocol, as was already highlighted in decision NP-1/3.

23. The participants also discussed future work that the Committee could undertake on the basis of the information in the ABS Clearing-House. They recalled the obligations Parties have to make information available to the ABS Clearing-House including on national focal points, competent national authorities, and legislative, administrative and policy measures. They recognized that publishing information in the ABS Clearing-House is not only an obligation but will also benefit Parties by providing easy access to information, including on procedures for access and benefit-sharing in a country. They noted that implementation of the Protocol is still in its early stages and so the amount of information available will continue to increase.

24. The Committee recalled that the format for the interim national report accorded Parties an opportunity to provide feedback on difficulties and challenges encountered in making information available to the ABS Clearing-House.¹

25. The Committee also considered its possible contribution in the assessment and review of the Protocol (Article 31), including the review of procedures and mechanisms provided for in section G of the compliance procedures and mechanisms. It recognized that the assessment and review was coming at an early stage and that, although it was premature to define a specific role of the Committee in that process, it could provide information and findings on compliance with the Protocol.

¹ See, in particular, question 3.

26. The Committee agreed on a number of recommendations to the Conference of the Parties serving as the meeting of the Parties to the Protocol at its second meeting, as reflected in annex II.

ITEM 6. OTHER MATTERS

27. The Secretariat informed the Committee that, in the light of section B, paragraph 5 of the compliance procedures and mechanisms and rule 10 of the proposed rules of procedure, the terms of five of the Committee members would end on 31 December 2016 and, therefore, the Conference of the Parties serving as the meeting of the Parties to the Protocol would be invited to elect five members at its second meeting. Members of the Committee whose terms would end on 31 December were: (a) Africa: Ms. Christine Ehookit Akello; (b) Asia and the Pacific: Mr. Achmad Gusman Catur Siswandi; (c) Central and Eastern Europe: Ms. Elzbieta Martyniuk; (d) Group of Latin American and Caribbean Countries: Mr. Indarjit Ramdass; (e) Western Europe and Others Group: Mr. Alejandro Lago Candeira.

ITEM 7. ADOPTION OF THE REPORT

28. The Chair introduced the draft report of the meeting, which was adopted as orally amended.

ITEM 8. CLOSURE OF THE MEETING

29. In closing, the Chair thanked the Committee for the constructive discussions, which he felt had set a strong foundation for the future work of the Committee. He also thanked the Secretariat for its support.

30. He declared the meeting closed at 1 p.m. on Friday, 8 April 2016.

*Annex I***DRAFT RULES OF PROCEDURE FOR THE MEETINGS OF THE COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL**

The following rules of procedure were developed in accordance with section B, paragraph 8 of 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 Conference of the Parties serving as the meeting of the Parties to the Protocol at its first meeting and set out 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.

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 Conference of the Parties serving as the meeting of the Parties to the Protocol at its first meeting 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 section B, paragraph 7, 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 its earliest convenience and in any case, no later than six weeks before the meeting is due to commence.

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.

E. Distribution and consideration of information

Rule 8

1. The Committee shall be informed immediately by the Secretariat when a submission has been received under section D, paragraph 1, of the Compliance Procedures and Mechanisms or when information has been provided by a directly affected indigenous or local community under section D, paragraph 9(b), 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 an official language of the United Nations other than English.

F. Publication and confidentiality 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. These documents shall not contain confidential information.

2. The Committee, any Party or others involved in its deliberations shall protect confidential information.

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 shall 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 conflicts of interest. Where a member finds himself or herself faced with a conflict of interest, that member shall bring the issue to the attention of the Committee before consideration of that particular matter. The member concerned shall not participate in the deliberations and the taking of decisions by the Committee in relation to that matter.

2. A “conflict of interest” refers to any current interest that could:

- (a) Significantly impair the individual’s objectivity as a Committee member;
- (b) Create an unfair advantage for any person or organization.

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. The Committee may accommodate interventions by the Party concerned in any other official language of the United Nations.

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.

J. Amendments to the rules of procedure

Rule 15

Any amendment to these rules of procedure shall be developed 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.

*Annex II***RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE TO THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE NAGOYA PROTOCOL AT ITS SECOND MEETING**

The Compliance Committee recommends that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol decide, at its second meeting, to:²

Compliance

1. *Approve* the rules of procedure for the meetings of the Compliance Committee under the Nagoya Protocol as annexed to the present decision;

2. *Note* that implementation of the Protocol is still in its early stages, wherein it is important to focus on enabling Parties to implement the Protocol, and therefore the need for and modalities of support to address challenges related to compliance with the provisions of the Protocol with a view to making effective use of the compliance mechanism cannot yet be fully assessed;

3. *Decide* that the Compliance Committee shall reassess the need for and modalities of support as provided for in paragraph 2(b) of decision NP-1/4 at a future meeting in the light of the experience gained by the Committee in carrying out its functions and further developments in implementation of the Protocol;

4. *Underline* the importance of the timely submission of the interim national reports in line with paragraph 4(c) of decision NP-1/3 and *encourage* Parties to include information in their interim national reports on difficulties and challenges related to implementation of the Protocol;

Access and Benefit-Sharing Clearing-House and information-sharing

5. *Encourage* Parties to make available information to the Access and Benefit-Sharing Clearing-House in accordance with the obligations in Article 14, paragraph 2, of the Protocol;

Financial mechanism and resources

6. *Recommend* that the Conference of the Parties, in adopting its guidance to the financial mechanism with respect to support for the implementation of the Nagoya Protocol, invite the Global Environment Facility to provide funding for eligible Parties for the preparation of their interim national reports under the Nagoya Protocol in line with Article 29 of the Protocol and decision NP-1/3;

² The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol may wish to follow the practice adopted by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and refer recommendations to the agenda item to which they are most closely related.