

Compliance Procedures and Mechanisms: Experiences under the Cartagena Protocol on Biosafety

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Convention on
Biological Diversity

Cartagena Protocol on Biosafety



Background:

- Adopted in January 2000
- Entered into force September 2003
- Five meetings of the Parties to date
- Currently have 163 Parties
- Article 34 of the Biosafety Protocol addresses compliance
 - o Called for COP-MOP 1 to consider and approve cooperative procedures and institutional mechanisms to promote compliance with the Biosafety Protocol
 - o Substantively the same as Article 30 of Nagoya Protocol
- COP-MOP 1 (2004): the Parties adopted procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety in decision BS-I/7.

Procedures & mechanisms on compliance: key aspects



I. Objective, nature and underlying principles

- Objective of the compliance procedures and mechanisms is “to promote compliance with the provisions of the Protocol, to address cases of non-compliance by Parties, and to provide advice or assistance, where appropriate.”
- “simple, facilitative, non-adversarial and co-operative in nature”
- Operation guided by principles of transparency, fairness, expedition and predictability.
 - Paying particular attention to special needs of developing country Parties, in particular the least developed and small island developing States among them, and Parties with economies in transition, and taking into full consideration the difficulties they face in the implementation of the Protocol.

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Procedures & mechanisms on compliance: key aspects



II. Institutional mechanisms

- Procedures and mechanisms establish a Compliance Committee.
- Committee consists of 15 members nominated by Parties and elected by COP-MOP → three members from each of five regional groups.
 - o Members serve in a personal capacity
 - o 4-year terms. Members cannot serve more than two consecutive terms.
 - ❖ Also initially had five members serve half-term of two years. Provides for some continuity so not all members of Committee are up for election at the same time.
- Committee reports to MOP and can make recommendations for consideration by MOP.

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Procedures & mechanisms on compliance: key aspects



III. Functions of the Committee

- With a view to promoting compliance and addressing cases of non-compliance, Committee has six functions:
 - a) Identify specific circumstances and possible causes of individual cases of non-compliance referred to Committee;
 - b) Consider information submitted to it regarding matters relating to compliance and cases of non-compliance;
 - c) Provide advice and/or assistance, as appropriate, to the concerned Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the Protocol;
 - d) Review general issues of compliance, taking into account information provided in the national reports submitted under the Protocol and also through the BCH;
 - e) Take measures, as appropriate, or make recommendations to MOP;
 - f) Carry out any other functions that may be assigned by MOP.

Procedures & mechanisms on compliance: key aspects



IV. Procedures

- Committee receives, through the Secretariat, any submissions relating to compliance from:
 - a) any Party with respect to itself (self-trigger); and
 - b) any Party, which is affected or likely to be affected, with respect to another Party (Party-to-Party trigger).
- Under Party-to-Party trigger, the Secretariat makes the submission available to the Party concerned and, once Secretariat has received a response and information from the concerned Party, it transmits the submission, the response and the information to the Committee.
- a Party under both the self-trigger and Party-to-Party trigger is entitled to participate in the deliberations of the Committee but not in the elaboration and adoption of a recommendation of the Committee.

Procedures & mechanisms on compliance: key aspects



V. Information and consultation

- The Committee is to consider relevant information from:
 - (a) the Party concerned; and
 - (b) the Party that has made the submission with respect to another Party
- the Committee may also seek or receive and consider information from other sources such as the BCH, COP, COP-MOP, subsidiary bodies of the Convention and the Protocol, and relevant international organizations

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Procedures & mechanisms on compliance: key aspects



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

- Committee can take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance:
 - a) Provide advice or assistance to the Party concerned, as appropriate;
 - b) Make recommendations to COP-MOP regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;
 - c) Request or assist, as appropriate, the Party concerned to develop a compliance action plan regarding the achievement of compliance with the Protocol within a timeframe to be agreed upon between the Committee and the Party concerned; and
 - d) Invite the Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the Protocol;
 - e) Pursuant to latter two paragraphs, report to COP-MOP on efforts made by Parties in non-compliance to return to compliance and maintain this as an agenda item of the Committee until adequately resolved.

Procedures & mechanisms on compliance: key aspects



VI. Measures to promote compliance and address cases of non-compliance *(continued)*

- COP-MOP may decide on one or more of the following measures:
 - a) Provide financial and technical assistance, technology transfer, training and other capacity-building measures;
 - b) Issue a caution to the concerned Party;
 - c) Request the Executive Secretary to publish cases of non-compliance in the BCH;
 - d) In cases of repeated non-compliance, take such measures as may be decided by COP-MOP at its third meeting.

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Procedures & mechanisms on compliance: key aspects



VII. Review of the procedures and mechanisms

- At its third meeting and thereafter in line with Art. 35 (assessment and review) of the Protocol, COP-MOP is to review the effectiveness of the procedures and mechanisms on compliance, address repeated cases of non-compliance and take appropriate action.
- Postponed to MOP-4 and combined with overall assessment and review of Protocol

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Rules of procedure



- Section II, paragraph 7 of the procedures and mechanisms required the Committee to develop and submit its rules of procedure to COP-MOP for the latter's consideration and approval.
- Compliance Committee did this at its first meeting (March 2005) and rules of procedures were submitted to and adopted by MOP-2 (June 2005).

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Rules of procedure



- Key aspects of the rules of procedure:

a) Officers – rule 12

- Committee elects a Chair and a Vice-Chair for a term of two years. Officers cannot serve in these positions for more than two consecutive terms.

b) Conduct of business – rules 14 to 16

- Committee decides whether to meet in open or closed sessions.
 - ❖ Committee has decided that its general practice will be to meet in open sessions unless specific circumstances require otherwise.
- Ten members of the Committee constitutes a quorum.

c) Voting – rules 17 and 18

- Bracketed text in rule 18 provides that as a last resort, decisions of the Committee may be made through by voting.
 - ❖ The Parties have been unable to agree to remove the brackets or otherwise change the rule. Accordingly, the Committee operates on the basis of consensus.

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Experience to date



- Compliance Committee under the Biosafety Protocol has held eight meetings to date. The ninth meeting is scheduled for May 2012.
- According to the procedures and mechanisms, the Compliance Committee is to meet twice a year, unless it decides otherwise.
 - o At MOP-4, the Parties encouraged the Committee to meet less than twice a year, if deemed sufficient and within the budget adopted by the MOP.
 - o Since then, the Parties have provided funds in the core budget for one meeting of the Committee per year so this has become the *de facto* rule.

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Experience to date: Implementation of functions



Review general issues of compliance

- Committee has reviewed general issues of compliance at a number of its meetings on basis of information available in national reports and BCH.
- Has made a number of recommendations to MOP in this regard.

Consider information submitted to it regarding matters relating to compliance and cases of non-compliance

- Committee has not received a submission from a Party.
- Two submissions from NGOs alleging the non-compliance of a Party but the Committee has not considered the submissions as it lacks the mandate to do so.

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Experience to date: Implementation of functions



- MOP-5 adopted revisions to Committee's mandate:
 - a) In the event of a submission relating to compliance by any Party with respect to itself, Committee is to consider taking only two of the available measures to promote compliance and address non-compliance
 - ❖ i.e. providing advice or assistance to the Party concerned or making recommendations to MOP regarding provision of financial and technical assistance, technology transfer, training and other capacity-building measures;
 - b) Committee may also consider providing advice or assistance to a Party where a Party fails to submit its national report, or information has been received through a national report or the Secretariat, based on information from the BCH, that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol.

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Experience to date: Implementation of functions



- Committee reviewed this new mandate at its last meeting (October 2011).
- It adopted an approach to guide its functions in the context of decision BS-V/1 and an organization of work for applying the new mandate
- It will begin to implement the approach and organization of work at its next meeting in light of information now available from second national reports under the Biosafety Protocol.

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Thank you

http://bch.cbd.int/protocol/cpb_art34_info.shtml

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