



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/ICNP/1/INF/4
16 May 2011

ORIGINAL: ENGLISH

OPEN-ENDED AD HOC INTERGOVERNMENTAL
COMMITTEE FOR THE NAGOYA PROTOCOL ON
ACCESS TO GENETIC RESOURCES AND THE FAIR
AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION

First meeting Montreal, 5-10 June 2011

Item 6 of the agenda*

**COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS ON COMPLIANCE:
THE CARTAGENA PROTOCOL ON BIOSAFETY AND THE INTERNATIONAL TREATY ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Note by the Executive Secretary

1. With a view to assist the Intergovernmental Committee in the consideration of agenda item 6 on “cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance”, the Executive Secretary is circulating in the annex to this document, for ease of reference, the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety (annex I) and the Procedures and Mechanisms to Promote Compliance and Address Issues of Non-compliance under the International Treaty on Plant Genetic Resources for Food and Agriculture (annex II).

2. The compliance procedures and institutional mechanisms adopted under the Cartagena Protocol on Biosafety and the International Treaty on Plant Genetic Resources for Food and Agriculture are reproduced as adopted respectively by decision BS-I/7 of Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and by the Governing Body Resolution 2/2011 of the International Treaty.

* UNEP/CBD/ICNP/1/1

Annex I

**PROCEDURES AND MECHANISMS ON COMPLIANCE UNDER THE CARTAGENA
PROTOCOL ON BIOSAFETY**

The following procedures and mechanisms are developed in accordance with Article 34 of the Cartagena Protocol on Biosafety and are separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention on Biological Diversity.

I. Objective, nature and underlying principles

1. The objective of the compliance procedures and mechanisms shall be 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.
2. The compliance procedures and mechanisms shall be simple, facilitative, non-adversarial and cooperative in nature.
3. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, fairness, expedition and predictability. It shall pay particular attention to the 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 take into full consideration the difficulties they face in the implementation of the Protocol.

II. Institutional mechanisms

1. A Compliance Committee, hereinafter referred to as "the Committee", is hereby established pursuant to Article 34 of the Cartagena Protocol on Biosafety to carry out the functions specified herein.
2. The Committee shall consist of 15 members nominated by Parties and elected by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety on the basis of three members from each of the five regional groups of the United Nations.
3. Members of the Committee shall have recognized competence in the field of biosafety or other relevant fields, including legal or technical expertise, and serve objectively and in a personal capacity.
4. Members shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for a period of four years, this being a full term. At its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety shall elect five members, one from each region, for half a term, and ten members for a full term. Each time thereafter, the Conference of the Parties to the serving as the meeting of the Parties to the Cartagena Protocol on Biosafety 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.
5. The Committee shall meet twice a year, unless it decides otherwise. The Secretariat shall service the meetings of the Committee.
6. The Committee shall submit its reports including recommendations with regard to the discharge of its functions to the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and appropriate action.

7. The Committee shall develop and submit its rules of procedure to the Conference of the Parties serving as the meeting of the Parties for its consideration and approval.

III. Functions of the Committee

1. The Committee shall, with a view to promoting compliance and addressing cases of non-compliance, and under the overall guidance of the Conference of the Parties serving as the meeting of the Parties to the Protocol, have the following functions:

(a) Identify the specific circumstances and possible causes of individual cases of non-compliance referred to it;

(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 by Parties with their obligations under the Protocol, taking into account the information provided in the national reports communicated in accordance with Article 33 of the Protocol and also through the Biosafety Clearing-House;

(e) Take measures, as appropriate, or make recommendations, to the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(f) Carry out any other functions as may be assigned to it by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

IV. Procedures

1. The Committee shall receive, through the Secretariat, any submissions relating to compliance from:

(a) Any Party with respect to itself;

(b) Any Party, which is affected or likely to be affected, with respect to another Party.

The Committee may reject to consider any submission made pursuant to paragraph 1(b) of this section that is *de minimis* or ill-founded, bearing in mind the objectives of the Protocol.

2. The Secretariat shall, within fifteen days of receipt of submissions under paragraph 1 (b) above, make the submissions available to the Party concerned, and once it has received a response and information from the concerned Party, it shall transmit the submission, the response and information to the Committee.

3. A Party that has received a submission regarding its compliance with the provisions of the Protocol should respond and, with recourse to the Committee for assistance if required, provide the necessary information preferably within three months and in any event not later than six months. This period of time shall commence on the date of the receipt of the submission as certified by the Secretariat. In the case where the Secretariat has not received any response or information from the concerned Party within the six months as referred to above, it shall transmit the submission to the Committee.

4. A Party, in respect of which a submission is made or which makes a submission, is entitled to participate in the deliberations of the Committee. This Party shall not participate in the elaboration and adoption of a recommendation of the Committee.

V. Information and consultation

1. The Committee shall consider relevant information from:

- (a) The Party concerned;
- (b) The Party that has made a submission with respect to another Party in accordance with paragraph 1(b) of section IV.

2. The Committee may seek or receive and consider relevant information from sources, such as:

- (a) The Biosafety Clearing-House, the Conference of the Parties to the Convention, the Conference of the Parties serving as the meeting of the Parties to the Protocol, and subsidiary bodies of the Convention on Biological Diversity and the Protocol;
- (b) Relevant international organizations.

3. The Committee may seek expert advice from the biosafety roster of experts.

4. The Committee, in undertaking all of its functions and activities, shall maintain the confidentiality of any information that is confidential under Article 21 of the Protocol.

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

1. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance:

- (a) Provide advice or assistance to the Party concerned, as appropriate;
- (b) Make recommendations to the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol 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 paragraph 1 (c) and (d) above, report to the Conference of the Parties serving as the meeting of the Parties 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.

2. The Conference of the Parties serving as the meeting of the Parties may, upon the recommendations of the Committee, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance, also decide upon 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 Biosafety Clearing-House;

(d) In cases of repeated non-compliance, take such measures as may be decided by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting, and thereafter in accordance with Article 35 of the Protocol, within the framework of the review process provided for in section VII below.

VII. Review of the procedures and mechanisms

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall, at its third meeting and thereafter, in line with Article 35 of the Protocol, review the effectiveness of these procedures and mechanisms address repeated cases of non-compliance and take appropriate action.

Annex II

Resolution 2/2011



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



FOURTH SESSION OF THE GOVERNING BODY

Bali, Indonesia, 14 – 18 March 2011

RESOLUTION 2/2011

**PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE AND
ADDRESS ISSUES OF NON-COMPLIANCE**

The Governing Body,

Recalling Article 21 of the International Treaty,

1. **Hereby decides** to approve the procedures and operational mechanisms included in the *Annex* hereto;
2. **Affirms** that these procedures and mechanisms are separate from and without prejudice to any other procedures and mechanisms, including the possibility to seek recourse under Article 12.5 and the settlement of disputes under Article 22 of the International Treaty;
3. **Decides** that the Compliance Committee shall develop further rules of procedure relevant to its work, including rules on confidentiality, decision making, conflict of interest of Committee members, electronic decision making, replacement of Committee members and the format for submissions by the Governing Body, and submit them to the next Session of the Governing Body for its consideration and approval;
4. **Further decides** that the Committee, in accordance with Section V of the procedures and operational mechanisms referred to in paragraph 1 above, shall develop a succinct standard reporting format for approval by the Governing Body at its next Session, taking into account harmony with other relevant reporting processes, such as those under the Commission on Genetic Resources for Food and Agriculture;
5. **Further decides** that each of the seven regions of the FAO submit to the Bureau, no later than twelve months after this Session of the Governing Body, nominations of two members for the Committee; and that the Bureau appoint such members for an interim period until the next Session of the Governing Body, at which Session members of the Committee will be elected in accordance with Section III.4 of the procedures and operational mechanisms referred to in paragraph 1 above;

6. *Recommends* that funds be made available through the *Special Fund to Support the Participation of Developing Countries* to facilitate participation in relevant meetings of the Committee by representatives of developing country Contracting Parties and Contracting Parties with economies in transition regarding whom a submission has been made.

Annex

**PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE
AND ADDRESS ISSUES OF NON-COMPLIANCE**

I. OBJECTIVES

The objective of the compliance procedures and mechanisms shall be to promote compliance with all the provisions of the International Treaty and to address issues of non-compliance. These procedures and mechanisms include monitoring, offering advice or assistance, including legal advice or legal assistance, when needed and requested, in particular to developing countries and countries with economies in transition.

II. PRINCIPLES

1. The compliance procedures and mechanisms shall be simple, cost-effective, facilitative, non-adversarial, non-judicial, legally non-binding and cooperative in nature.
2. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, accountability, fairness, expeditiousness, predictability, good faith, and reasonableness. It shall pay particular attention to the special needs of Contracting Parties that are developing countries and Contracting Parties with economies in transition.
3. Any interpretation of the International Treaty is ultimately for the Contracting Parties to make.

III. INSTITUTIONAL MECHANISMS

1. The Compliance Committee established by the Governing Body on 16 June 2006 by Resolution 3/2006, hereinafter referred to as “the Committee”, shall carry out the functions specified herein.
2. The Committee shall consist of a maximum of 14 members, being up to two from each of the FAO regions and not more than one from a Contracting Party. The members shall be elected by the Governing Body on the basis of up to two nominations from each of the seven FAO regions.
3. Members of the Committee shall have recognized competence in the field of genetic resources or other fields relevant for the International Treaty, including legal or technical expertise, and they shall serve objectively and in their individual capacity.

4. Members shall be elected by the Governing Body for a period of four years, this being a full term, commencing on January 1st of the first year of the financial period of the International Treaty following their election. At its Fifth Session, the Governing Body shall elect up to seven members, one from each FAO region, for half a term, and up to seven members for a full term. Thereafter, the Governing Body shall elect, as appropriate, new members for a full term to replace those whose term has expired or for the remainder of a term to fill any vacancy. Members shall not serve for more than two consecutive terms.

5. The Committee shall hold meetings as necessary, preferably in conjunction with meetings of other International Treaty bodies, subject to the availability of financial resources. The Secretary shall service the meetings of the Committee. The presence of members representing a two-thirds majority of the membership of the Committee shall be necessary to constitute a quorum at any meeting of the Committee.

6. Bearing in mind Rule I of the Rules of Procedure of the Governing Body, the Committee shall develop and submit any further rules of procedure, as appropriate, including rules on confidentiality, to the Governing Body for its consideration and approval.

7. The Committee shall elect its Chair and a Vice-Chair, who will rotate among the FAO regions.

IV. FUNCTIONS OF THE COMMITTEE

1. The Committee shall, with a view to promoting compliance and addressing issues of non-compliance, and under the overall guidance of the Governing Body, have the following functions:

(a) Consider information submitted to it regarding matters relating to compliance and issues of non-compliance;

(b) Offer advice and/or facilitate assistance, as appropriate, to any Contracting Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the International Treaty;

(c) Assist the Governing Body in its monitoring of the implementation by Contracting Parties of their obligations under the International Treaty on the basis of reports of the Contracting Parties in accordance with Section V below;

(d) Address issues of non-compliance and identify the specific circumstances of the issue referred to it, in accordance with Sections VI to VIII below;

(e) Promote compliance by addressing statements and questions concerning the implementation of obligations under the International Treaty, in accordance with Section IX below;

(f) Carry out any other functions as may be assigned to it by the Governing Body pursuant to Article 21 of the International Treaty;

(g) Submit a report to each regular session of the Governing Body reflecting:

(i) the work that the Committee has undertaken;

(ii) the conclusions and recommendations of the Committee; and

(iii) the future programme of work of the Committee.

2. The Committee shall not consider any questions concerning the interpretation of, implementation of, or compliance with the Standard Material Transfer Agreement by parties or potential parties to it.

V. MONITORING AND REPORTING

1. Each Contracting Party is to submit to the Committee, through the Secretary, a report on the measures it has taken to implement its obligations under the International Treaty in one of the six languages of the United Nations. The first report is to be submitted three years after the approval by the Governing Body of a standard reporting format, developed by the Committee. Subsequent reports are to be submitted every five years thereafter or periodically in accordance with any further decisions of the Governing Body on the submission of such reports.

2. The Committee shall consider the reports that it has received up to 12 months before the next session of the Governing Body taking into account any guidance of the Governing Body. In particular, the Governing Body shall consider and set, if it deems necessary, priorities for the Committee's work related to monitoring and reporting.

3. The Committee shall submit to the Governing Body for its consideration a synthesis on the basis of the reports that it has considered, along with an analysis that addresses any priorities set by the Governing Body under paragraph 2, and may submit recommendations on the issues addressed in the analysis.

4. At the request of the Governing Body, the Committee shall develop and submit recommendations on these procedures and operational mechanisms on monitoring and reporting, including a review of the standard reporting format, to the Governing Body for its consideration and approval.

VI. PROCEDURES REGARDING SUBMISSIONS RELATING TO ISSUES OF NON-COMPLIANCE

1. The Committee shall receive, through the Secretary, any submissions relating to issues of non-compliance from:

- (a) Any Contracting Party with respect to itself;
- (b) Any Contracting Party with respect to another Contracting Party; or
- (c) The Governing Body.

The Contracting Party in respect of which an issue has been raised is hereinafter referred to as "the Contracting Party concerned".

2. Any submission is to be addressed in writing to the Secretary and set out:

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

3. The Secretary shall forward any submission under paragraph 1a above to the Committee within 30 calendar days of receipt.
4. The Secretary shall forward any submission under paragraph 1b or 1c above to the Contracting Party concerned within 30 calendar days of receipt.
5. When the Contracting Party concerned has received a submission it should respond and, with recourse to the Committee for assistance if required, provide relevant information preferably within three months and in any event not later than six months. This period of time commences on the date of the receipt of the submission by the Contracting Party concerned as confirmed by the Secretary.
6. Once the Secretary has received a response and any information from the Contracting Party concerned, the Secretary shall transmit the submission, the response and such information to the Committee. In the case where the Secretary has not received any response or information from the Contracting Party concerned within the six months as referred to above, the Secretary shall forward the submission to the Committee forthwith.
7. The Committee may reject to consider any submission made pursuant to paragraph 1 (b) above that is *de minimis* or ill-founded, bearing in mind the objectives of the International Treaty.
8. The Contracting Party concerned may participate in the consideration of the submission and present responses or comments to the Committee, but it may not participate in the elaboration and adoption of a recommendation of the Committee.
9. Confidentiality will be an essential element of the consideration of the submission. Further rules on confidentiality are to be approved by the Governing Body under Section III, paragraph 6.

VII. MEASURES TO PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE

1. The Committee, with a view to promoting compliance and addressing issues of non-compliance, which are raised in accordance with Section VI and taking into account such factors as the cause, type, degree, and frequency of non-compliance, may:
 - (a) Provide advice or facilitate assistance, including legal advice or legal assistance, to the Contracting Party concerned, as appropriate;
 - (b) Request or assist, as appropriate, the Contracting Party concerned to develop an action plan, which addresses the issue of non-compliance within a timeframe to be agreed upon between the Committee and the Contracting Party concerned, taking into account its existing capacity to address the issue; and
 - (c) Invite the Contracting Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the International Treaty.
2. The Governing Body may, upon the recommendations of the Committee, decide to:
 - (a) Provide assistance, including, as appropriate, legal, financial and technical assistance, to the Contracting Party concerned;

(b) Take any other actions it deems appropriate, including for capacity-building, in accordance with the International Treaty and for the fulfilment of its objectives.

VIII. INFORMATION

1. The Committee shall consider relevant information from:

(a) The Contracting Party concerned;

(b) The Contracting Party that has made a submission with respect to another Contracting Party;

(c) The Governing Body.

2. The Committee may seek or receive, when necessary for its work, freely available information and such relevant additional information as may be provided to it by the Secretary and other relevant sources. Any Contracting Party concerned shall have access to this information.

3. The Committee may seek expert advice.

IX. OTHER PROCEDURES REGARDING THE PROMOTION OF COMPLIANCE

1. The scope and nature of the Committee's authority in exercising its functions under this Section shall be subject to further rules, to be developed by the Committee and to be submitted to the Governing Body for approval at its Fifth Session, and such other guidance as the Governing Body may provide from time to time.

2. A Contracting Party may, through the Secretary, address to the Committee statements and questions concerning the implementation of its own obligations under the International Treaty.

3. The Committee shall also consider any questions concerning the implementation of obligations under the International Treaty referred to it by decision of the Governing Body. The Secretary shall list any such questions he has or receives and present them to the Governing Body for consideration of referral to the Committee.

4. The statement or question shall be addressed in writing to the Secretary together with:

(a) the relevant provision of the International Treaty; and

(b) any relevant supporting information clarifying the statement or question.

5. The Committee may reject to consider any statement or question, bearing in mind the objectives of the International Treaty. Reasons should be given for any such rejection.

6. The Committee may only make recommendations to the Governing Body concerning statements or questions concerning the implementation of obligations under the International Treaty referred to in paragraphs 2 and 3 above, unless the Governing Body specifically provides otherwise.

7. The Committee's authority under this Section shall become operative after the Fifth Session of the Governing Body, unless the Governing Body decides otherwise.

X. REVIEW OF THE PROCEDURES AND MECHANISMS

Within six years of approval of these procedures and mechanisms and periodically thereafter, the Governing Body shall review their effectiveness and take appropriate action.
