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COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Fourteenth meeting

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Item 4 of the provisional agenda*

REVIEW OF COMPLIANCE ON THE BASIS OF THE THIRD NATIONAL REPORTS, WITH A FOCUS ON THE PRIORITY ISSUES IDENTIFIED BY THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY

I. INTRODUCTION

1. At its eighth meeting, the Compliance Committee agreed to a cycle for the organization of its work (see figure 2 in document UNEP/CBD/BS/CC/8/3). In accordance with this organization of work, the Committee is expected, at its fourteenth meeting, to review compliance on the basis of third national reports, focusing on priority issues as identified by the Conference of the Parties serving as the meeting of the Parties to the Protocol.¹

2. In its decision BS-VI/1, on compliance, the Conference of the Parties serving as the meeting of the Parties recognized that the fulfilment by each Party of the obligation to introduce legal, administrative and other measures necessary for the implementation of the Protocol is the topmost priority in the domestic implementation of the Protocol. In the same decision, the Conference of the Parties serving as the meeting of the Parties called upon Parties to expedite their efforts in this regard, consistent with the Strategic Plan for the Cartagena Protocol for the period 2011-2020, adopted under decision BS-V/16, which identifies the task of putting operational biosafety frameworks in place as the topmost priority area.²

3. As part of the third assessment and review of the effectiveness of the Protocol and the midterm evaluation of the Strategic Plan for the Cartagena Protocol on Biosafety for the period 2011-2020, the Conference of the Parties serving as the meeting of the Parties noted with concern that only approximately half of the Parties have fully put in place legal, administrative and other measures for the implementation of the Protocol (decision CP-VIII/15). It urged Parties that have not yet fully done so to put in place their national biosafety frameworks, in particular biosafety legislation, as a matter of priority. In the same decision, the Conference of the Parties serving as the meeting of the Parties called upon

* CBD/CP/CC/14/1.

¹ As confirmed by the Compliance Committee, at its thirteenth meeting. See paragraph 23 of the report of the thirteenth meeting of the Compliance Committee (UNEP/CBD/BS/CC/13/6).

² Paragraph 7 of annex I to decision BS-V/16 provides that “The focal areas underlying the five strategic objectives are, in their order of priority, as follows: 1. Facilitating the establishment and further development of biosafety systems for the implementation of the Protocol; [...]”. The first operational objective of the Strategic Plan, operational objective 1.1, is to enable all Parties to have operational national biosafety frameworks in place for the implementation of the Protocol.

Parties, for the remaining period of the Strategic Plan, to consider prioritizing the operational objectives relating to the development of biosafety legislation, risk assessment and risk management, detection and identification of living modified organisms (LMOs), and public awareness, education and training in view of their critical importance in facilitating the implementation of the Protocol.

4. It is noted that, in the past, the Committee already addressed compliance with key obligations within these priority areas, in particular: the introduction of legal, administrative and other measures,³ risk assessment,⁴ handling, transport, packaging and identification,⁵ as well as public awareness, education and participation.⁶ These issues were usually considered under 'general issues of compliance'.⁷ In its consideration of these issues, the Committee focused on key obligations arising from the Protocol.⁸ In relation to compliance with most of these obligations, the Committee formulated recommendations as presented in sections II and III below.

5. This note is intended to serve as a basis for the review by the Committee of compliance with obligations in relation to these priority areas. Section II provides an assessment of Parties' compliance with obligations within each priority area. A subsection is dedicated to each priority area, which provides a brief introduction of the main obligations arising from the Protocol in relation to the priority area and an overview of compliance with these obligations on the basis of information provided in the third national reports and other sources.⁹ Section III provides some general considerations on the Committee's role in relation to compliance. Section IV provides some suggestions to facilitate the review of Parties' compliance by the Committee.

II. REVIEW OF COMPLIANCE BY PRIORITY AREA

A. National biosafety frameworks, in particular biosafety legislation

6. The Protocol requires Parties to take the necessary and appropriate legal, administrative and other measures to implement their obligations under the Protocol (Article 2(1)). Subsection 1 below presents an overview of information provided by Parties in their third national report on the introduction of such measures. The Committee had reviewed compliance with this obligation following the submission of the second national reports and took some follow-up actions, which are described in subsection 2.

³ At the Committee's 2nd, 4th, 5th, 9th, 10th, 11th and 13th meetings.

⁴ At the Committee's 2nd, 5th, 6th, 7th, 9th, 10th, 11th, 12th and 13th meetings. The Committee focused on risk assessment, rather than risk management.

⁵ At the Committee's 2nd meeting. The issue was brought up in document UNEP/CBD/BS/CC/2/2, para. 6, but did not result in a specific recommendation by the Committee.

⁶ At the Committee's 2nd, 4th, 5th, 9th and 10th meetings.

⁷ With the exception of the Committee's 11th, 12th and 13th meetings, where the discussion took place under the following agenda items respectively: Status of compliance with respect to cases reviewed at the previous meeting (where the following issues were considered: establishment of biosafety frameworks; and making information available to the Biosafety Clearing-House); review of compliance on the basis of information in the Biosafety Clearing-House (where the following issue was discussed: putting in place operational biosafety frameworks); and Evaluation of the status of implementation of the Protocol in meeting its objectives: input to the third assessment and review and the midterm evaluation of the Strategic Plan (where the following issues were discussed: putting in place legal, administrative and other measures to implement the obligations under the Protocol; making available information to the Biosafety Clearing-House, including summaries of risk assessments).

⁸ In its activities, the Committee has focused on compliance with key obligations under the Protocol. A wider assessment and review of the implementation of the Protocol, including on supportive actions taken by Parties, takes place in the context of Article 35 of the Protocol (Assessment and Review). The Committee provided its input to the third Assessment and Review of the effectiveness of the implementation of the Protocol and the midterm evaluation of the Strategic Plan at its 13th meeting.

⁹ The 134 third national reports registered in the Biosafety Clearing-House by 20 February 2017 have been considered for the preparation of this note. To facilitate comparison, data are based on third national reports from Parties that provided answers to the same question both in the second and third reporting cycle ('the responding Parties'). An analyser tool that facilitates comparison of data of the second and third reporting cycles is available at <http://bch.cbd.int/database/reports/analyser>

1. *Information provided in the third national reports*

7. In their third national reports, 46 per cent of the responding Parties reported that a domestic regulatory framework is fully in place (a 7% increase as compared to the second reporting cycle). In addition, 39 per cent of responding Parties reported that their domestic regulatory framework is partially in place (a decrease of 3% as compared to the second reporting cycle). Of the responding Parties, 2% reported that only temporary measures have been taken (a 1% decrease) and 11 per cent of the responding Parties reported that only draft measures exist (a decrease of 3% in comparison to the second reporting cycle). Finally, 1 per cent of the Parties reported that no measures have been taken, which is a decrease of 1 per cent in comparison to the second reporting cycle.¹⁰

8. Some Parties indicated in their free-text responses that further measures are under development or that the adoption of measures is pending, although some Parties reported that measures have been awaiting adoption for many years. In this respect, some Parties indicated that awareness at the political and decision-making level is insufficient and that this results in a lack of priority being accorded to the strengthening of national biosafety frameworks. Some Parties that reported having specific biosafety instruments in place, indicate in their free-text submission that these instruments are still to be adopted.¹¹

9. Parties also reported on the type of instruments in place.¹² Of the responding Parties, 27% reported that one or more biosafety laws are in place, which is a 1% increase in comparison to the second reporting cycle. Of the responding Parties, 25 per cent reported that one or more biosafety regulations are in place (no change as compared to the second reporting cycle), and 18 per cent of Parties reported that one or more sets of biosafety guidelines are in place, which constitutes a 1 per cent increase as compared to the second reporting cycle. In their free text submissions, some Parties indicated that secondary legislation is required for the effective implementation of the Protocol.¹³

2. *Additional information on the status of compliance by certain individual Parties*

10. In its decision BS-VI/1, the Conference of the Parties serving as the meeting of the Parties requested Parties that had not yet put in place an operational biosafety framework to submit information on the challenges they were faced with in this regard, and the plans and timelines, as appropriate, they envisaged for taking the necessary measures. The Conference of the Parties serving as the meeting of the Parties requested the Executive Secretary to compile the information and submit it to the Committee for its consideration and appropriate action.

11. Based on the information provided in the second national reports, the Secretariat identified 38 Parties that appeared not to have put in place an operational biosafety framework.¹⁴ The Executive Secretary invited these Parties to provide information on the challenges they were faced with in this regard and the plans and timelines, as appropriate, they envisaged for taking the necessary measures. In total, 22 of the 38 Parties responded.¹⁵

¹⁰ Question 14 of the reporting format for the third national reports.

¹¹ Question 21 of the reporting format for the third national reports.

¹² Question 16 of the reporting format for the third national reports.

¹³ Question 21 of the reporting format for the third national reports.

¹⁴ These Parties had reported in their second national report not to have taken measures or to have taken temporary or draft measures only in relation to the introduction of measures to implement the Protocol. All other Parties had reported that a domestic regulatory framework was either fully or partially in place.

¹⁵ The Executive Secretary sent letters to these 38 Parties in the period November–December 2012. Thirteen Parties responded. At the request of the Compliance Committee, the Executive Secretary wrote follow-up letters to the 25 remaining Parties in June 2013, to which 5 Parties responded. In November 2013, the Chair of the Committee sent follow-up letters to the twenty Parties that had not responded, following which responses from 4 Parties were received.

12. In their responses, ten Parties indicated that draft legislation had been developed and some of these Parties indicated the timeframe within which they expected the legislation to be adopted. A number of Parties described their difficulties in this regard. Together with the challenges identified by these Parties in written contributions in their second national reports, the following difficulties were identified: insufficient technical and financial capacities as well as human resources (8 Parties); controversial nature and lack of awareness of LMOs (3 Parties); the absence of an overall policy framework (2 Parties); general political reasons (2 Parties).¹⁶

13. The Committee, at its tenth meeting, considered the information provided by Parties and requested the Executive Secretary to liaise with the Global Environment Facility (GEF) and seek its cooperation in facilitating the availability of funding to support eligible Parties with the aim to update, finalize and implement their national biosafety frameworks, taking into account the list of 38 Parties identified as not having introduced the legal, administrative or other measures necessary to implement the Protocol.¹⁷ Following the tenth meeting of the Committee, further second national reports were submitted and an additional 5 Parties reported not to have functional biosafety framework, bringing the total to 43 Parties.

14. At its eleventh meeting, the Committee was informed that GEF had informally indicated that it would not consider a separate window for biosafety and that eligible Parties would need to prioritize biosafety activities in their allocation from the System for Transparent Allocation of Resources (STAR) if they wished to access GEF funds for this purpose. Against this background, the Committee decided to recommend that the Conference of the Parties serving as the meeting of the Parties, at its seventh meeting, invite GEF to consider making funds available through a focal area set aside for small-scale projects to Parties that inform the Committee of their difficulties in complying with the Protocol.¹⁸ This recommendation was not taken up by the Conference of the Parties serving as the meeting of the Parties.

15. At the time of writing of this note, 24 of the 43 Parties that had reported not to have a functional biosafety framework in their second national reports, had registered their third national report. Of these 24 Parties, 7 reported that a domestic regulatory framework is now partially in place and two Parties reported that their domestic regulatory frameworks are fully in place.¹⁹ A total of 15 of these 24 Parties continue reporting not to have a functional biosafety framework in their third national report.

16. In addition to these 15 Parties, three Parties that did not submit a second national report reported in their third national report that only a draft framework exists. Three Parties that reported in the second reporting cycle that their domestic regulatory framework was partially in place, reported in their third national reports that only draft or temporary measures have been taken. As a consequence, 21 of the 134 Parties that have submitted their third national report appear not to have introduced an operational biosafety framework.²⁰ Given that third national reports of 19 of the 43 Parties are still outstanding and further third national reports are expected to be submitted, this figure may change.

17. In the written contributions in their third national reports, none of these 21 Parties identified specific challenges that may have prevented them from putting in place their domestic regulatory framework.

¹⁶ Most Parties identified more than one challenge.

¹⁷ UNEP/CBD/BS/CC/10/5, para. 28(c).

¹⁸ UNEP/CBD/BS/CC/11/4, para. 19(c).

¹⁹ The Secretariat invited these nine Parties to provide background information on the circumstances that may have contributed to the introduction of operational biosafety frameworks. An update on the responses received will be provided at the 14th meeting of the Committee.

²⁰ These Parties are: Bahamas, Barbados, Botswana, Burundi, Dominica, Eritrea, Gambia, Grenada, Guinea, Guyana, Kyrgyzstan, Mauritania, Morocco, Niger, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Suriname, Tunisia, United Arab Emirates, Yemen.

B. Risk assessment and risk management

18. In the context of the advance informed agreement procedure, Article 10(1) of the Protocol requires that decisions taken by the Party of import shall be in accordance with Article 15. Article 15(2) requires that the Party of import shall ensure that risk assessments are carried out for decisions taken under Article 10 and that the Party of import may require the exporter to carry out the risk assessment. The Protocol also requires that the Party of export or exporter notify the competent national authority of the Party of import prior to the first intentional transboundary movement of an LMO for intentional introduction into the environment (Article 8(1)). The notification must contain, as a minimum, the information specified in Annex I to the Protocol, which includes, among others, a previous and existing risk assessment report consistent with Annex III to the Protocol.

19. Furthermore, Article 11(1) of the Protocol requires that a Party that makes a final decision regarding domestic use, including placing on the market, of an LMO intended for direct use as food or feed, or for processing (LMOs-FFP) that may be subject to transboundary movement, must inform other Parties through the Biosafety Clearing-House (BCH). The information must contain, at a minimum, the information specified in Annex II of the Protocol, which includes a risk assessment report.

20. The Protocol, in Article 20(3)(c), requires that Parties make available to the Biosafety Clearing-House summaries of risk assessments associated with relevant decisions.

21. In relation to risk management, Article 16(1) of the Protocol requires that Parties establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of the Protocol associated with the use, handling and transboundary movement of LMOs. Parties are furthermore required to take appropriate measures to prevent unintentional transboundary movements of LMOs, including such measures as requiring a risk assessment to be carried out prior to the first release of a LMOs (Article 16(3)). Article 16(4) provides that Parties must endeavour to ensure that any LMO has undergone an appropriate period of observation commensurate with its life-cycle or generation time before it is put to its intended use.

22. While the Committee has so far not reviewed compliance with the provisions related to risk management, it has reviewed compliance with certain obligations related to risk assessment,²¹ focusing on compliance with the obligation in Article 20(3)(c) of the Protocol.

23. Information derived from the third national reports on compliance in this priority area is provided in subsection 1. Additional information on the status of compliance by certain individual Parties is provided in section 2, focusing on the Committee's most recent efforts in relation to compliance with the obligation to make available to the BCH summaries of risk assessments for relevant decisions.

1. Information provided in the third national reports

24. In their third national reports, Parties provided information in relation to risk assessment and risk management.²² Of the responding Parties, 55 per cent reported positively to the question whether they had ever conducted a risk assessment of an LMO (a 9% increase as compared to the previous reporting cycle).²³ The Parties that responded positively were subsequently asked to indicate whether "risk assessments [were] conducted for all decisions taken on LMOs for intentional introduction into the environment or on domestic use of LMOs for direct use as food, feed, or for processing".²⁴ Of the

²¹ At the Committee's 2nd, 5th, 6th, 7th, 9th, 10th, 11th, 12th and 13th meetings.

²² The questions in the reporting format concern amongst other things, available capacities to carry out risk assessments and risk management, availability of training and guidance materials and observation and monitoring of LMOs. Parties were not requested to provide specific information on whether their domestic regulatory framework requires a risk assessment to be carried out, in accordance with Articles 8, 10, 15 or 11.

²³ Question 89 of the reporting format.

²⁴ Question 92 of the reporting format.

responding Parties, 86 per cent reported to have always done so (an increase of 11% in comparison with the second reporting cycle), while 10 per cent reported to have done so in some cases only (as compared to 8% in the second reporting cycle). Of the responding Parties, 4 per cent reported not to have done so (a 14% decrease).²⁵

25. It is noted that the reporting format does not require Parties to report whether their national legal frameworks require risk assessments to be conducted as part of the decision-making, in accordance with Articles 8(1), 10(1) and 11(1) of the Protocol. Furthermore, the reporting format does not require Parties to provide information on the establishment and maintenance of appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of the Protocol. Consequently, this information is not available.²⁶

2. *Additional information on the status of compliance by certain individual Parties*

26. At its thirteenth meeting, the Committee provided an input to the third assessment and review of the effectiveness of the Protocol and the midterm evaluation of the Strategic Plan and reviewed the extent to which information in the BCH was reliable and up-to-date. In that context, it reviewed whether risk assessment reports had been made available for each relevant decision registered in the BCH. The Executive Secretary had prepared a note to facilitate the review, which indicated that, at the time, the total number of decisions on LMOs available in the BCH was 1,787 and that 1,702 associated risk assessment reports were available (95% completeness).²⁷ For 85 decisions made available by a total of eight Parties in all regions, risk assessment reports were missing. Three of these Parties had not submitted one risk assessment report, one Party had not submitted four risk assessment reports and four Parties had not submitted several risk assessment reports (between 8 and 32). The Secretariat contacted these eight Parties. It was clarified that decisions by two Parties were related to imports of living modified organism intended for direct use as food, feed or for processing. For one Party, a risk assessment summary was missing for a single decision that had been taken prior to the entry into force of the Protocol so there was no requirement to make it available on the BCH. Risk assessment reports remain unavailable for some decisions by the remaining five Parties.²⁸

C. Detection and identification

27. The Protocol addresses identification and detection mainly through Article 18, where it provides for documentation requirements for different categories of LMOs (LMOs intended for direct use as food, feed or for processing; LMOs destined for contained use; and LMOs intended for intentional introduction into the environment as well as any other LMOs within the scope of the Protocol), which facilitate the identification of LMOs. Through a series of decisions, the Conference of the Parties serving as the meeting of the Parties has further developed these documentation requirements.²⁹ While the Committee reviewed compliance with identification requirements at its second meeting, it has so far not made recommendations to the Conference of the Parties serving as the meeting of the Parties on this matter, or undertaken any follow-up actions.³⁰

28. In their third national reports, Parties provided information on their implementation of the Protocol's identification requirements. Of the responding Parties:

²⁵ The formulation of the question ("were risk assessments conducted for all decisions") in combination with the formulation of the answers ("in some cases only" and "no") may have led to inconsistency in the answers.

²⁶ Presumably, some requirements may be included in domestic frameworks of those Parties reporting that their domestic regulatory framework is fully in place.

²⁷ UNEP/CBD/BS/CC/13/3.

²⁸ Colombia, Mexico, Nigeria, Romania, South Africa.

²⁹ In particular decisions BS-I/6 and BS-III/10.

³⁰ UNEP/CBD/BS/CC/2/2, para. 6.

(a) 46 per cent (a 9% increase in comparison to the second reporting cycle) reported having taken measures to require that documentation accompanying LMOs-FFP clearly states that, in cases where the identity of the LMOs is not known through means such as identity preservation systems, they may contain LMOs and are not intended for intentional introduction into the environment, as well as a contact point for further information;

(b) 18 per cent reported to have done so to some extent (a 1% increase);

(c) 37 per cent reported not to have done so (a decrease of 9%).³¹

29. Of the responding Parties:

(a) 48 per cent (a 7% increase in comparison to the second reporting cycle) reported having taken measures to require that documentation accompanying LMOs-FFP clearly states that, in cases where the identity of the LMOs is known through means such as identity preservation systems, they contain LMOs and are not intended for intentional introduction into the environment, as well as a contact point for further information;

(b) 19 per cent reported to have done so to some extent (a decrease of 2%);

(c) 33 per cent reported not to have done so (a decrease of 5%).³²

30. Of the responding Parties, 54 per cent (a 7% increase in comparison to the second reporting cycle) reported having taken measures to require that documentation accompanying LMOs that are destined for contained use clearly identifies them as LMOs and specifies any requirements for the safe handling, storage, transport and use, the contact point for further information, including the name and address of the individual and institution to whom the LMO are consigned. Of the responding Parties, 18 per cent reported to have done so to some extent (a 3% decrease), while 27 per cent of the responding Parties reported not to have done so (a decrease of 5%).³³

31. Of the responding Parties, 53 per cent (a 6% increase in comparison to the second reporting cycle) reported having taken measures to require that documentation accompanying LMOs that are intended for intentional introduction into the environment of the Party of import, clearly identifies them as LMOs; specifies the identity and relevant traits and/or characteristics, any requirements for the safe handling, storage, transport and use, the contact point for further information and, as appropriate, the name and address of the importer and exporter; and contains a declaration that the movement is in conformity with the requirements of this Protocol applicable to the exporter. Of the responding Parties, 18% reported having done so to some extent (an increase of 1%), while 29 per cent of the responding Parties reported not having done so (a decrease of 7%).³⁴

³¹ Under question 54 of the reporting format, 39 Parties reported having taken decisions in the current reporting period regarding the import of LMOs-FFP. Of these Parties, 25 reported under question 107 as having taken measures to require that documentation accompanying LMOs-FFP clearly states that they may contain LMOs, in cases where the identity of the LMO is not known through means such as identity preservation; 8 Parties reported to have done so to some extent (Brazil, Kenya, Malaysia, Mexico, Paraguay, Republic of Moldova, Uruguay, Yemen); 6 Parties reported not to have done so (China, Cuba, Denmark, Indonesia, Mozambique, Romania).

³² Under question 54 of the reporting format 39 Parties reported having taken decisions in the current reporting period regarding the import of LMOs-FFP. Of these Parties, 26 reported under question 108 as having taken measures to require that documentation accompanying LMOs-FFP clearly states that they contain LMOs, in cases where the identity of the LMO is known through means such as identity preservation; 8 Parties reported to have done so to some extent (Brazil, China, Georgia, Malaysia, Paraguay, Republic of Moldova, Uruguay, Yemen); 5 Parties reported not to have done so (Colombia, Cuba, Indonesia, Mexico, Romania). It is to be noted that this documentation specification derives from decision BS-III/10.

³³ Question 110 of the reporting format. The reporting format does not require Parties to report on the number of decisions taken regarding contained use.

³⁴ Question 112 of the reporting format. In Question 36 of the reporting format, 30 Parties reported having approved at least one LMO for import for intentional introduction to the environment. Of these Parties, 22 Parties reported having fully fulfilled the documentation requirements of Article 18(2)(c), while 8 Parties reported having fulfilled them to some extent (China, Colombia, Costa Rica, El Salvador, Guatemala, Mexico, Nigeria, Paraguay, Uganda and Uruguay).

32. In providing additional details on the implementation of Article 18, a total of 10 Parties that reported not to have fully taken all documentation measures referred to above indicated that draft legislation is under development.³⁵

D. Public awareness, education and training

33. The Protocol requires Parties to promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of LMOs in relation to the conservation and sustainable use of biological diversity (Article 23(1)(a)). Paragraph 2 of Article 23 requires Parties to consult the public in the decision-making process regarding LMOs, in accordance with their respective laws and regulations, and to make the results of such decisions available to the public. In addition, Article 23 contains a number of exhortative provisions, including requiring Parties to endeavour to ensure that public awareness and education encompass access to information and to endeavour to inform the public about the means of public access to the Biosafety Clearing-House.

34. The Committee addressed public awareness, education and participation in the past.³⁶

35. Information derived from the third national reports on compliance in this priority area is provided in subsection 1. Additional information on the status of compliance by certain individual Parties is provided in section 2, based on a dedicated survey carried out in support of the review of the programme of work, prior to the eighth meeting of the Conference of the Parties serving as the meeting of the Parties.

1. Information provided in the third national reports

36. In their third national reports, of the responding Parties, 37 per cent (a 1% decrease in comparison to the second reporting cycle) reported to have established a strategy or put in place legislation for promoting and facilitating public awareness, education and participation concerning the safe transfer, handling and use of LMOs. Of the responding Parties, 45 per cent reported to have done so to some extent (an 8% increase), while 18 per cent of the responding Parties reported not to have done so (a decrease of 7%).³⁷

37. Of the responding Parties, 53 per cent (a 6% decrease in comparison to the second reporting cycle) reported to have established a mechanism to consult the public in the decision-making process regarding LMOs, while 26 per cent (a 26% increase) reported to have done so to some extent and 22 per cent of the responding Parties reported not to have done so (a 19% decrease).³⁸

38. Of the responding Parties, 57 per cent (a 4% decrease) reported to have established a mechanism to make available to the public the results of decisions taken on LMOs, while 19 per cent of the responding Parties reported to have done so to some extent (a 19% increase) and 23 per cent of the responding Parties reported not to have done so (a 16% decrease).³⁹

39. Of the responding Parties, 52 per cent (a 26% decrease) reported to have informed the public about existing modalities for public participation in the decision-making process regarding LMOs, while 26 per cent of the responding Parties reported to have done so to some extent (a 26% increase) and 22 per

³⁵ Questions 107, 108, 110, 112 and 122 of the reporting format. These Parties are: Antigua and Barbuda, Benin, Burundi, Eritrea, Kenya, Lebanon, Morocco, Niger, Saint Lucia and Tajikistan.

³⁶ At the Committee's 2nd, 4th, 5th, 9th and 10th meetings. The Committee focused on participation, education and participation. As regards training, the Committee has stressed the importance of capacity building and the availability of resources to support Parties in complying with their obligations under the Protocol. See for example UNEP/CBD/BS/CC/13/6, para. 15(d).

³⁷ Question 158 of the reporting format.

³⁸ Question 165 of the reporting format.

³⁹ Question 166 of the reporting format.

cent of the responding Parties reported not to have done so (no change in comparison to the second reporting cycle).⁴⁰

40. In their free-text responses, seven Parties indicated that further measures are included in draft instruments that contribute to the implementation of Article 23.⁴¹

2. *Additional information on the status of compliance by Parties*

41. In its decision BS-V/13, the Conference of the Parties serving as the meeting of the Parties adopted the programme of work on public awareness, education and participation concerning the safe transfer, handling and use of LMOs to facilitate the implementation of Article 23 of the Protocol (programme of work). At its ninth meeting, the Committee reviewed compliance with the obligations related to public awareness, education and participation and recommended that the Conference of the Parties serving as the meeting of the Parties reiterate its invitation to Parties to make use of the programme of work to facilitate their obligations to promote public awareness and participation as specified in Article 23 of the Protocol.⁴² At its tenth meeting, the Committee recognized the advantages of incorporating elements regarding public awareness, education and participation in national biodiversity strategies and action plans (NBSAPs) under the Convention on Biological Diversity and noted how the implementation of the obligations in this area was closely linked to the introduction of legal, administrative or other measures to implement the Protocol in a Party.⁴³

42. The Conference of the Parties serving as the meeting of the Parties, at its eighth meeting, reviewed the programme of work and had before it a note prepared by the Executive Secretary. The note provided, among others, an overview of the status of implementation of the programme of work, based on data provided in third national reports and additional data provided through a dedicated survey.⁴⁴

43. Of the Parties that responded to the survey, 13 per cent (6 Parties) indicated that they have well-functioning institutional mechanisms and/or funding to improve institutional mechanisms related to Article 23, while most Parties indicated having such mechanisms and/or funding to some extent (61% or 28 Parties).

44. Forty-four Parties responded to the survey question on review mechanisms for public participation. Of these, 41 per cent (18 Parties) indicated that they have fully put in place a review mechanism for public participation, including outcomes of public consultations, while 25 per cent (11 Parties) indicated to have done so to some extent, and 34 per cent (15 Parties) responded not to have done so.⁴⁵

45. Of the Parties providing information on this issue in the survey, 48 per cent (21 Parties) indicated they have fully involved the public in the development and review of legal biosafety frameworks related to Article 23, while 25 per cent of Parties indicated having done so to some extent and 18% (8 Parties) indicated not to have done so. The remaining Parties indicated to have involved only scientific or

⁴⁰ Question 167 of the reporting format. In the second reporting cycle, Parties could only answer this question with 'yes' or 'no', which explains the difference in results between the second and third reporting cycle.

⁴¹ Questions 158, 165, 166 and 176 of the reporting format. These Parties are: Grenada, Lao People's Democratic Republic, Niger, Nigeria, Saint Lucia, Uganda and Zimbabwe.

⁴² UNEP/CBD/BS/CC/9/4, para. 16(e). The recommendation was reflected in paragraph 5 of decision BS-VI/1.

⁴³ UNEP/CBD/BS/CC/10/5, para. 34.

⁴⁴ UNEP/CBD/BS/COP-MOP/8/15. The survey results, based on responses provided by 46 Parties and 7 organizations, are available here: http://bch.cbd.int/onlineconferences/portal_art23/surveyresults.shtml. The dis-aggregated responses by Parties only are provided in UNEP/CB/BS/COP-MOP/8/15.

⁴⁵ Question 17 of the survey.

government experts, or to have only involved the public in the development of the national biosafety framework policy document.⁴⁶

46. Of the Parties providing information on this issue in the survey, 64 per cent (27 Parties) indicated that the outcomes of public consultations are fully taken into consideration in decision-making regarding LMOs, while 26 per cent (11 Parties) indicated doing so to some extent and 10 per cent (4 Parties) indicated not to do so. Some Parties indicated that they only took into consideration the outcomes of public consultations concerning decisions on certain types of LMOs, whereas other Parties indicated that not necessarily all outcomes are taken into consideration.⁴⁷

III. GENERAL CONSIDERATIONS

47. The information provided in the third national reports and other sources shows that the vast majority of Parties implement at least to some extent their obligations relating to the priority areas identified by the Conference of the Parties serving as the meeting of the Parties. A much smaller percentage of Parties report to fully implement these obligations. From the information reported, it seems that implementation has generally improved from the second to the third reporting cycle.⁴⁸ In the past, the Committee addressed compliance with obligations relating to the four priority areas referred to in this document, mainly in the context of its consideration of general issues of compliance and took a variety of actions. In this context, the Committee made a number of recommendations to the Conference of the Parties serving as the meeting of the Parties on compliance with obligations in relation to all priority areas.⁴⁹ These recommendations included:

(a) Urging Parties to comply with their obligations to submit summaries of risk assessments to the BCH;⁵⁰

(b) Urging Parties to implement requirements under Article 23 of the Protocol within a mechanism appropriate to their national circumstances;⁵¹

(c) Requesting Parties that have not yet put in place an operational biosafety framework to submit information on the difficulties they are faced with in this regard, and the plans and timelines they envisage as appropriate for the purpose of taking the necessary measures;⁵²

(d) Reminding Parties experiencing difficulties putting in place legal, administrative and other measures necessary for the implementation of the Protocol that they may submit their difficulties to the Committee in order to seek assistance;⁵³

(e) Inviting Parties to make use of the programme of work on public awareness, education and participation;⁵⁴

(f) Requesting Parties and encouraging other Governments to provide in a timely manner to the BCH information on their domestic decisions approving LMOs and the risk assessment reports associated with such decisions.⁵⁵

⁴⁶ Question 19 of the survey.

⁴⁷ Question 21 of the survey.

⁴⁸ As noted by COP-MOP in paragraph 1 of decision CP-VIII/1.

⁴⁹ With the exception of obligations in the priority area related to detection and identification.

⁵⁰ UNEP/CBD/BS/COP-MOP/8/2, annex, para. 7.

⁵¹ UNEP/CBD/BS/COP-MOP/7/2, annex, para. 4.

⁵² UNEP/CBD/BS/COP-MOP/6/2, annex, para. 2.

⁵³ UNEP/CBD/BS/COP-MOP/6/2, annex, para. 4.

⁵⁴ UNEP/CBD/BS/COP-MOP/6/2, annex, para. 5.

48. In addition, following the requests from the Conference of the Parties serving as the meeting of the Parties, and the guidance provided by the Committee, the Executive Secretary has followed up with some Parties on compliance with certain obligations, as set out above in paragraphs 11 and 26.

49. Following decision BS-V/1, the Committee may take certain measures “in a situation 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”.⁵⁶ The Conference of the Parties serving as the meeting of the Parties also requested that the Committee carry out its supportive role in confidence and with the cooperation of the concerned Party.⁵⁷

50. In accordance with the approach to guide its functions in the context of decision BS-V/1, agreed to by the Committee at its eighth meeting,⁵⁸ the Committee has taken steps in relation to compliance with obligations related to most priority areas, as described above. The annex below presents an overview of which of the priority areas have been considered at the different stages in the approach guiding the functions of the Committee in the context of decision BS-V/1.

51. At its twelfth meeting, the Committee assessed the outcomes of the seventh meeting of the Conference of the Parties serving as the meeting of the Parties as they relate to compliance. In that context, it noted the invitation in decision BS-VII/1 to Parties facing difficulties complying with one or more of their obligations under the Protocol to seek assistance from the Committee or the Secretariat.⁵⁹ In this context, the Committee agreed on a brief information note explaining the kind of assistance the Committee be able to provide, identifying the following types of assistance the Committee can offer:

- (a) Identifying opportunities for regional cooperation;
- (b) Assisting with the identification of organizations and projects that can help;
- (c) Sharing information on lessons learned and best practices in implementation;
- (d) Providing information on possible sources of funding for implementation;
- (e) Recommending to the Conference of the Parties serving as the meeting of the Parties to provide assistance to individual or groups of Parties;
- (f) Recommending priority areas for GEF funding;
- (g) Advising on the availability of the roster of experts and the possible use of experts from that roster;
- (h) Clarifying use of terms and procedures.

IV. SUGGESTIONS FOR THE CONSIDERATION OF THE COMMITTEE

52. In view of the status of compliance by Parties with key obligations related to the priority areas identified by the Conference of the Parties serving as the meeting of the Parties, the Committee may wish to consider possible follow-up actions and recommendations, mindful of past actions taken and recommendations made in this regard. In doing so, the Committee may wish to refer to the types of

⁵⁵ UNEP/CBD/BS/COP-MOP/5/2, annex, para. 9(a).

⁵⁶ Decision BS-V/1, para. 1(b). The measures are those in section VI, para. 1(a) and (b) of the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety, as adopted in decision BS-I/7.

⁵⁷ Decision BS-V/1, para. 2.

⁵⁸ See figure 1 in UNEP/CBD/BS/CC/8/3.

⁵⁹ UNEP/CBD/BS/CC/12/5, para. 10. The Committee referred to paragraph 4 of decision BS-VII/1, which mentioned in particular the obligations ‘[...] in such areas as making information available to the BCH and the development or updating of national biosafety frameworks’.

assistance identified at its twelfth meeting, and to the measures referred to in decision BS-V/1, while carrying out its supportive role in confidence and with the cooperation of the concerned Party.

53. In the light of the expansion of the number of priority areas, the Committee may wish to focus its interventions within the different priority areas on certain key obligations, or decide on which priority areas it wishes to address first. In this context, it is recalled, as indicated in paragraph 2 above, that the Conference of the Parties serving as the meeting of the Parties recognized that the obligation to introduce legal, administrative and other measures necessary for the implementation of the Protocol is the topmost priority for domestic implementation of the Protocol.

54. In the light of the above, the Committee may wish to take the following actions:

(a) Express its appreciations to those Parties that responded to the requests for additional information from the Executive Secretary;

(b) Focus its activities on key obligations related to the priority areas, in particular the introduction of legal, administrative and other measures for the implementation of the Protocol and determine the next steps to be taken in light of the agreed approach to guide its functions;

(c) Stress the importance of obtaining full information from Parties on the measures they have taken to implement their obligations under the Protocol.

55. The Committee may furthermore wish to request the Executive Secretary:

(a) To alert Parties identified not to be in compliance with their obligations to relevant capacity building opportunities;

(b) To ensure that appropriate questions are added that address whether domestic regulatory frameworks require risk assessments to be conducted, where required by the Protocol, when developing a revised format for the fourth national reports, in accordance with decision CP-VIII/14;

(c) To seek additional information from Parties on the status of their compliance with the key obligations related to the priority areas, including on challenges encountered, and circumstances that have led to improvements reported, as appropriate.

56. The Committee may also consider making recommendations to the Conference of the Parties serving as the meeting of the Parties at its ninth meeting:

(a) To recall that Parties facing difficulties complying with one or more obligations under the Protocol are encouraged to seek assistance from the Committee;

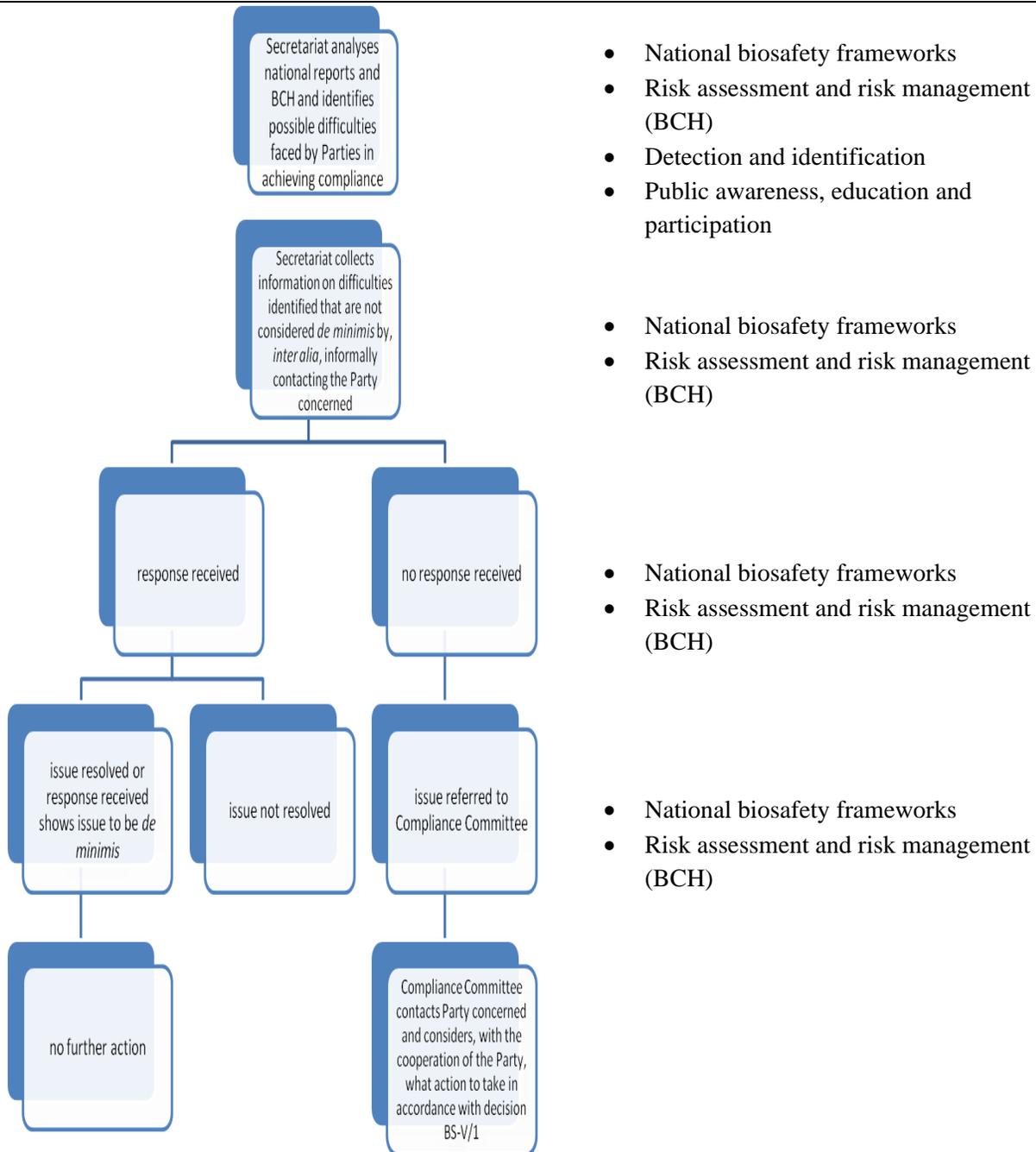
(b) To request Parties to collaborate fully when requested to provide information in relation to their compliance with obligations under the Protocol;

(c) To invite Parties that have made progress in complying with certain obligations to share relevant information in their fourth national reports on the circumstances that may have contributed to their progress.

Annex

Approach to guide functions of the Committee in the context of decision BS-V/1⁶⁰

Priority areas addressed by the Committee



⁶⁰ This figure appears as figure 1 in UNEP/CBD/BS/CC/8/3, page 5.