

Views on Elements and Options for Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Protocol and to Address Cases of Non-compliance

Submission by the Government of Thailand

1. Since there are existing compliance procedures and operational mechanisms and/or “implementation” established under several multilateral environmental agreements particularly the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (CBD), we propose that the compliance procedures and mechanisms developed in accordance with Article 34 of the Cartagena Protocol be referred to, used, and modified as the basic and primary model and an umbrella for the development of cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and to address cases of non-compliance. The compliance procedures and institutional mechanisms developed under the Cartagena Protocol are unique and characteristic to support the key issues and nature of the CBD, their adherence to the overall objectives of the CBD and the Nagoya Protocol Articles dealing with compliance such as those in Article 15 (Compliance with domestic legislation or regulatory requirements on access and benefit-sharing), Article 16 (Compliance with domestic legislation or regulatory requirements on access and benefit-sharing for traditional knowledge associated with genetic resources), and Article 18 (Compliance with mutually agreed terms).

2. The objectives, nature, and underlying principles should be more or less as those of the Cartagena Protocol in combination with the objectives under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

3. The institutional mechanisms could be similar to those of the Cartagena Protocol as a standing body consisting of members having required minimum technical and scientific qualification, be proposed and selected to represent major geographical regions by Parties of respective regions. Initially the size of the committee could be 15 and the committee should meet at least twice a year or whenever needed under certain circumstance. A consideration may be discussed to allow the establishment of the regional *ad hoc* subcommittees drawn from the main committee and additional recruitment and selection by respective regions to perform regionally oriented functions of regional origin and significance. The functions of the committee could include providing advice and reviewing compliance issues and measures to promote compliance to the Protocol, and should take into consideration the review of the monitoring and reporting of the implementation of the Nagoya Protocol under Article 29 as well.

4. In order to encourage submissions for triggering the procedure, it is advisable that the submissions could be by a party with respect to itself as self-submissions by Parties but as well as submissions by a party regarding the compliance of another party. Others could be in the form of referrals by the Secretariat or by the compliance body and communications by members of legitimate public and/or private stakeholders defined under the Aarhus Convention as in UNEP/CBD/ICNP/1/6/Rev1. The expert referrals may not be transparent enough but it is feasible with the expert review teams. This wide open opportunity may help resolve the main shortcomings related to the lack of submissions encountered under the Cartagena Protocol, the Basel Convention, the London Protocol or the Water and Health Protocol which has hindered the achievement of the objectives of the compliance procedures.

5. Processing of the submissions should be through submissions to the Secretariat forwarded to the concerned party and the compliance body provided that the admissibility of the submissions is first considered by the procedure.
 6. The sources of information and consultation to rely upon could be considered on a case by case basis depending on the compliance issues. Most certainly the confidentiality should be maintained always.
 7. The considerations and consequences on the measures to promote compliance and address cases of non-compliance are to be simple, advisory, facilitative, non-adversarial, flexible and cooperative in nature. The compliance procedure should be operated under the principles of transparency, accountability, fairness, predictability and common but differentiated responsibilities. A particular attention should be given to the special needs of the least developed and developing country Parties especially recognizing that the typical reason for a party's non-compliance is not so often intentional disregard of its obligations, but rather a lack of capacity, awareness or resources to comply with them in accordance with the UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreement.
 8. Those measures taken within other compliance regimes to promote compliance and to address cases of non-compliance listed in item 75 in UNEP/CBD/ICNP/1/6/Rev1 should be incorporated in the compliance measures and mechanisms of the Nagoya Protocol, if they are relevant. COP-MOP should enable the committee to take all measures regarding compliance and to address cases of non-compliance.
 9. It should be mandatory that the review of the compliance procedures and mechanisms adopted for the Nagoya Protocol be explicitly provided for and scheduled accordingly.
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