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### COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Fourteenth meeting  
Montreal, Canada, 8-10 May 2018

### INDIVIDUAL CASES OF NON-COMPLIANCE: CONSIDERATION BY THE COMPLIANCE COMMITTEE OF THE OBLIGATION TO SUBMIT NATIONAL REPORTS IN THE CONTEXT OF DECISION BS-V/1

*Note by the Executive Secretary*

#### INTRODUCTION

1. At its fourteenth meeting, the Compliance Committee reviewed decision CP-VIII/1 of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and decided to include a standing item on the agenda of its future meetings to facilitate consideration of ongoing individual cases of non-compliance.

2. There is currently one ongoing individual case of non-compliance before the Committee, concerning the Marshall Islands and the obligation to submit national reports. In order to inform the Committee in its consideration of this item,<sup>1</sup> the present document provides an overview of the previous efforts of the Committee to encourage and assist Parties that had not complied with their reporting obligation, including actions taken in respect of the Marshall Islands.

#### I. THE ROLE OF THE COMMITTEE IN REVIEWING COMPLIANCE WITH THE OBLIGATION TO SUBMIT NATIONAL REPORTS

3. In accordance with section IV of the procedures and mechanisms on compliance under the Cartagena Protocol adopted by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety in its decision BS-I/7 (procedures and mechanisms), the Committee receives submissions relating to compliance from a Party with respect to itself or with respect to another Party. Section VI of the procedures and mechanisms provides a number of measures the Committee may take with a view to promoting compliance and addressing cases of non-compliance.

4. In decision BS-V/1, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety decided that the Committee may consider taking certain measures 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 Biosafety Clearing-House that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol.

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<sup>1</sup> Item 6 of the provisional agenda ([CBD/CP/CC/15/1](#)).

5. Failure to submit a national report was initially considered by the Committee as a general issue of compliance, in accordance with section III(1)(d) of the procedures and mechanisms.<sup>2</sup> The Committee has reviewed the issue extensively since its second meeting and made several recommendations to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety. Following the cycle for the second national reports and in accordance with decision BS-V/1, the Committee also began addressing individual cases of Parties that had failed to submit their national report, as set out below.

## **II. CONSIDERATION OF AND ACTIVITIES UNDERTAKEN BY THE COMMITTEE WITH REGARD TO THE OBLIGATION TO SUBMIT NATIONAL REPORTS**

6. The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety decides on the timing for submission of national reports for each reporting cycle. The Secretariat issues notifications and subsequent reminders concerning the date of submission of national reports. E-mail messages are also routinely sent to the Biosafety Clearing-House national focal points as an additional reminder. At relevant meetings, the Secretariat informs the Committee of the number of reports received and provides an overview of the Parties that have failed to submit their national report. The Committee may, depending on the circumstances, such as the number of Parties concerned and on previous actions taken, decide to consider the matter either as a general issue of compliance or as individual cases of non-compliance, or both.

7. The deadline for the submission of second national reports was initially 30 September 2011. At its eighth meeting, held in October 2011, the Committee agreed to consider compliance-related information specific to individual Parties as case-studies in developing experience in the application of decision BS-V/1. In that regard, it requested the Secretariat to inform the Committee, for consideration at its ninth meeting, which Parties had the obligation to submit the interim, first, and second national reports but had not done so.<sup>3</sup>

8. By the extended deadline for submission of second national reports on 30 December 2011, reports were still due from 17 Parties, namely, the Bahamas, Barbados, Belize, Georgia, Greece, Luxembourg, the Marshall Islands, Montenegro, Nauru, Nicaragua, Oman, Pakistan, Palau, Paraguay, Suriname, Trinidad and Tobago and Turkmenistan. The Executive Secretary sent individual reminders to these Parties in March 2012.

9. At its ninth meeting, held in May-June 2012, the Committee considered the rate of submission of second national reports. It welcomed the high rate of reporting and noted the contribution of the financial resources made available by the Global Environment Facility (GEF) in achieving the high rate of reporting and the importance of maintaining such support in the future.

10. In considering the number of reports received, the Committee noted that, among the 17 Parties that had not yet submitted their second national report, 7 Parties — namely Bahamas, Luxembourg, Marshall Islands, Nicaragua, Nauru, Oman and Paraguay — had never submitted an interim, first or second report despite having had an obligation to do so. The Committee requested that the Chair of the Committee send letters to these seven Parties with a view to: (a) urging them to complete the format for the second national report; (b) seeking an explanation of the situation that may have prevented them from

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<sup>2</sup> Document UNEP/CBD/BS/CC/13/INF/1, prepared for the thirteenth meeting of the Compliance Committee, provides an overview of the Committee's consideration of national reporting as a general issue of compliance from its second meeting up until the adoption of decision BS-V/1 (paras. 7-20). It also includes the changes adopted by the Committee to its work plan and activities as a result of decision BS-V/1 and how it has approached the consideration of the reporting rate under the second reporting cycle as a result (paras. 21-32). The relevant latter information is reproduced in the present document for ease of reference.

<sup>3</sup> Report of the Compliance Committee on its eighth session (UNEP/CBD/BS/CC/8/3), para. 21.

submitting national reports; and (c) offering them any advice or assistance, as appropriate, that they might wish to receive from the Committee. The letters were sent in June and July 2012.<sup>4</sup> The Committee also requested the Secretariat to follow up with the remaining 10 Parties with a view to seeking information on the difficulties that may have prevented them from submitting a report and offering assistance, as appropriate, and to remind them of the need to submit their report without further delay.

11. Nauru, Paraguay and Suriname submitted reports in the latter half of 2012.

12. By the sixth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety held in September-October 2012, therefore, 14 Parties had not submitted their second national reports, including 5 Parties that had never fulfilled their reporting obligation under Article 33 of the Protocol.<sup>5</sup> In its decision BS-VI/14, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety urged these Parties to submit their national reports at the earliest opportunity.<sup>6</sup>

13. In response to the Committee's request and in keeping with decision BS-VI/14, the Executive Secretary sent a follow-up letter in December 2012 to the national focal points of the Parties that had not yet submitted a second national report and had not responded to previous communications from the Secretariat. The Executive Secretary sought information from the Parties on the difficulties that may have prevented them from submitting a report, reminded them of the need for the submission of their report without further delay, and offered assistance.<sup>7</sup>

14. At the tenth meeting of the Committee, the Secretariat informed members that an additional report had been submitted<sup>8</sup> and therefore, reports were now due from 13 Parties. The Committee decided that the Chair of the Committee should send a letter to the Parties concerned.

15. Accordingly, a letter signed by the Chair of the Committee was sent in September 2013 to 12 Parties that had not submitted their second national report.<sup>9</sup> Consequently, second national reports were received from Trinidad and Tobago and Georgia in September and November of 2013, respectively.

16. The Committee was informed at its eleventh meeting, that the second national report was still due from 10 Parties. The Committee agreed to recommend that at the seventh meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, Parties request the Bureau to follow up with the 10 Parties that still needed to submit their second national report to encourage them to do so as part of their national processes to complete their third national report. While this recommendation was not taken up by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety,<sup>10</sup> a further two Parties, Belize and Pakistan, submitted their reports in December 2013 and September 2014, respectively.

17. At the twelfth meeting of the Committee, in May 2015, some members briefed the Committee on their efforts to encourage Parties in their respective regions that had not yet done so, to submit their

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<sup>4</sup> Paraguay was not contacted at this time since it had already responded to the reminder sent by the Executive Secretary in March 2012.

<sup>5</sup> Bahamas, Luxembourg, the Marshall Islands, Nicaragua and Oman. These Parties were required to submit an interim, first, second and third national report.

<sup>6</sup> Decision BS-VI/14, paragraph 3 urged the 14 Parties that had not yet submitted their national reports to do so at the earliest opportunity by fully completing the report form for the second national report, as contained in the annex to decision BS-V/14.

<sup>7</sup> A full account and sample letters sent by the Chair of the Committee and the Executive Secretary in 2012 are available in the document prepared for the tenth meeting of the Committee updating the status of national reporting (UNEP/CBD/BS/CC/10/2).

<sup>8</sup> Oman submitted its report in March of 2013.

<sup>9</sup> Palau had submitted its report in June 2013.

<sup>10</sup> This was due to the inadvertent omission of the recommendation of the Committee from the suggested elements for a draft decision contained in the document on monitoring and reporting (UNEP/CBD/BS/COP-MOP/7/12).

second national reports. The Committee agreed that members would continue to remind Parties in their respective regions to fulfil their reporting obligations as regards the submission of third national reports.

18. The Committee requested the Secretariat to inform Parties that they could direct any questions on the reporting format to the Secretariat for clarification. The Committee also requested the Secretariat to make available online any clarifications that it provided so that others might also benefit. Accordingly, the Secretariat set up a Frequently Asked Questions (FAQs) page on the Biosafety Clearing-House which provides answers on the preparation and submission of third national reports and has also made available a dedicated online forum where additional questions may be posted.<sup>11</sup>

19. By the thirteenth meeting of the Committee, held in February 2016, 153 out of 161 Parties had submitted their second national report. The Committee recognized that its efforts and the efforts of individual members had contributed positively to the high rate of submission of second national reports as well as reports that were long overdue. It also welcomed the efforts made by the Secretariat in assisting Parties in submitting national reports and ensuring their completeness. Only eight Parties had not submitted a second national report,<sup>12</sup> three of which, Luxembourg, the Marshall Islands and Nicaragua, had not submitted an interim, first, second or third report.

20. At its thirteenth meeting, the Committee also considered the rate of reporting for the third national reports and noted that third national reports had only been submitted by 112 out of the 170 Parties that had an obligation to do so. The Committee further examined to what extent eligible Parties had accessed GEF funds available to them for the preparation of their third national reports and requested the Secretariat to contact GEF and to explore the possibility of extending the deadline for eligible Parties to apply for GEF funds. The Committee decided to recommend that, at its eighth meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety express concern about the lower rate of submission of third national reports in comparison with the previous reporting cycle, and urge the Parties that have not yet submitted their third national report to do so as soon as possible.<sup>13</sup>

21. In this context, the Committee reviewed the individual cases of non-compliance of Luxembourg, the Marshall Islands and Nicaragua, expressing profound concern that these three Parties had not submitted any report since they became Parties at the entry into force of the Protocol in September 2003. The Committee decided that the Chair would send a further follow-up letter to the Ministries of Foreign Affairs of Luxembourg, the Marshall Islands and Nicaragua, with a copy to their national focal points, seeking an explanation of the situation that had prevented them from submitting their interim, first, second or third national reports to date and informing them that the Committee would recommend to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety that it issue a caution at its eighth meeting to these Parties as provided for in section VI, paragraph 2(b), of the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety as contained in the annex to decision BS-I/7, unless a response was received before the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

22. Nicaragua and Luxembourg submitted their third national reports on 4 April 2016 and 9 November 2016, respectively, before the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

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<sup>11</sup> The FAQ page is available at: <https://bch.cbd.int/protocol/ThirdNationalReportFAQ.shtml>

<sup>12</sup> Second national reports had not been received from the Bahamas, Barbados, Greece, Luxembourg, the Marshall Islands, Montenegro, Nicaragua or Turkmenistan. It is encouraging to point out, however, that the Bahamas, which had been identified by the Committee at its last review of compliance as never having fulfilled its reporting obligations, duly submitted a third national report before the due date of 31 October 2015. Barbados also submitted its second and third national reports in November 2016.

<sup>13</sup> The recommendation included a footnote identifying the Parties concerned. See UNEP/CBD/BS/CC/13/6, para. 12.

23. Consequently, the Marshall Islands was the only Party considered by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for the issuance of a caution. The meeting of the Parties did not adopt the recommendation of the Committee to caution the Marshall Islands but noted with regret that one Party had not submitted its interim, first, second or third national reports and urged the Party to submit its third national report to fulfil its obligation. The meeting of the Parties also noted that the Committee and the Executive Secretary had contacted the Party on numerous occasions, in accordance with decision BS-V/1, including by offering support in preparing its reports. The meeting of the Parties encouraged the Party to accept the offers of assistance of the Committee and any other assistance, should it require support to prepare its report.

24. At its fourteenth meeting, in the context of the assessment of the outcomes of the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, the Committee reviewed decision CP-VIII/1 on compliance and recalled all the previous efforts of the Committee to encourage and assist Parties that had not complied with their reporting obligations. The Committee decided that the recommendation to issue a caution, although not taken up by the meeting of the Parties, was nevertheless very useful and likely encouraged two of the Parties concerned to submit their third national reports. The Committee furthermore noted that informal follow-up with the Marshall Islands could be beneficial and agreed that a report on any informal discussions with the Marshall Islands could be addressed at the Committee's fifteenth meeting. The Committee was also of the opinion that a videoconference could be set up during its fifteenth meeting with a representative of the Marshall Islands, if necessary.

25. At its fourteenth meeting, the Committee also considered the reporting rate of third national reports in the context of its consideration of general issues of compliance and decided that the Chair of the Committee would send a letter to those Parties that had not submitted a third national report and a separate letter to those Parties that had submitted neither their second nor their third national reports. More information on this issue is contained in CBD/CP/CC/15/3.

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