



## Convention on Biological Diversity

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### REPORT OF THE COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION ON THE WORK OF ITS THIRD MEETING

ONLINE, 21-23 APRIL 2020

#### INTRODUCTION

##### A. Background

1. The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, at its first meeting, adopted decision [NP-1/4](#), which includes procedures and mechanisms on compliance with the Protocol and established a Compliance Committee.
2. According to the procedures and mechanisms on compliance, the Committee is to meet at least once in each intersessional period. The rules of procedure for its meetings were approved by the Conference of the Parties serving as the meeting of the Parties to the Protocol (decision [NP-2/3](#), annex).
3. Further to section B, paragraph 7, of the compliance procedures and mechanisms (decision NP-1/4, annex), the third meeting of the Compliance Committee was held from 21 to 23 April 2020.

##### B. Attendance

4. The following members of the Committee and observers from indigenous peoples and local communities were present at the meeting:

###### Africa

Ms. El Khitma El Awad Mohammed  
Ms. Betty Kauna Schroder  
Mr. William Etim Okon

###### Asia and the Pacific

Mr. Tianbao Qin  
Mr. Won Seog Park

###### Central and Eastern Europe

Ms. Elena Makeyeva  
Ms. Elzbieta Martyniuk

###### Latin America and the Caribbean

Ms. Yolanda Otavalo Cacoango

###### Western Europe and Others

Mr. Gaute Voigt-Hanssen  
Mr. Marcus Schroeder  
Ms. Salomé Sidler

###### Indigenous peoples and local communities

Ms. Jennifer Tauli Corpuz

5. The following members and observers from indigenous peoples and local communities were unable to attend the meeting: Mr. Dilovarsho Dustov (member from the Central and Eastern Europe), Ms. Teresa Dolores Cruz Sardinias and Ms. Micaela Anabel Bonafina (members from the Latin America and the Caribbean), and Ms. Yeshing Juliana Upún Yos (observer representing indigenous peoples and local communities). Mr. Belal Alhayek, one of the members from the Asian and Pacific region, was also unable to take part in the interactive sessions of the meeting due to constraints in facilities. However, he shared his views and comments through email and the online discussion Forum that had been made available by the Secretariat in the Access and Benefit-sharing Clearing-House.

## ITEM 1. OPENING OF THE MEETING

6. The meeting was opened at 8 a.m. Montreal time on Tuesday, 21 April 2020, by the Acting Executive Secretary, Ms. Elizabeth Maruma Mrema.

7. In her opening remarks, the Acting Executive Secretary thanked the members of the Compliance Committee for their understanding and flexibility in adapting to the circumstances imposed on everyone due to the COVID-19 pandemic and for making the meeting possible by coming together and interacting remotely. She informed the Committee that the Secretariat was endeavouring to ensure the best conditions for online participation, given the circumstances, and that it would be seeking feedback from members, at the end of the meeting, regarding their experiences in the virtual meeting and suggestions for improvements in the future.

8. She also reminded members that October 2020 would mark the tenth anniversary of the adoption of the Nagoya Protocol and that such a milestone would provide an opportunity to celebrate the collective achievements as well as to reflect on how to overcome the common challenges in making benefit-sharing from the utilization of genetic resources and traditional knowledge associated with genetic resources a reality on the ground, including through access to genetic resources. In that regard, she highlighted the progress made by Parties in implementing the requirements of the Nagoya Protocol, while reminding the members of the findings of the first assessment and review of the effectiveness of the Protocol, which had indicated that more needed to be done to fully implement the Protocol.

9. Finally, she highlighted the importance of the contribution of the Committee, as requested by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its third meeting, on how to support and promote compliance with the Nagoya Protocol within the post-2020 global biodiversity framework.

10. A representative of the Secretariat confirmed that, with more than 10 members present, there was a quorum for the meeting to proceed in accordance with section B, paragraph 10, of the compliance procedures and mechanisms, contained in the annex to decision NP-1/4.

## ITEM 2. ORGANIZATIONAL MATTERS

### 2.1. Election of officers

11. A representative of the Secretariat recalled section B, paragraph 9, of the compliance procedures and mechanisms contained in the annex to decision NP-1/4, which provides that the Committee shall elect its Chair and a Vice-Chair. He also recalled that, according to rule 12 of the rules of procedure for the meetings of the Committee (decision 2/3, annex) the Chair and Vice-Chair are elected for a period of two years and, invited the Committee to elect members to fill the two vacant offices. Accordingly, the Committee elected Ms. Betty Kauna Schroder as the Chair and Mr. Tianbao Qin as Vice-Chair.

### 2.2. Adoption of the agenda

12. The Committee adopted the following agenda items on the basis of the provisional agenda ([CBD/NP/CC/3/1](#)) prepared by the Secretariat:

1. Opening of the meeting.
2. Organizational matters:
  - 2.1. Election of officers;
  - 2.2. Adoption of the agenda;
  - 2.2. Organization of work.
3. Review of the outcomes of the third meeting of the Parties to the Nagoya Protocol regarding items relevant to compliance.
4. Review of general issues of compliance.
5. Review of the format for Parties to report on the implementation of obligations under the Protocol.
6. Other matters.
7. Adoption of the report.
8. Closure of the meeting.

### 2.3. Organization of work

13. The Committee agreed on the organization of its work as proposed by the Secretariat, as specified in annex I to the annotations to the provisional agenda ([CBD/NP/CC/3/1/Add.1](#)).
14. The meeting of the Compliance Committee was held through virtual real-time sessions. An online discussion forum was also made available by the Secretariat through the Access and Benefit-sharing Clearing-House in order to facilitate further contributions by members, especially those who had challenges accessing the live sessions of the meeting.
15. The schedule of the meeting was adjusted in order to enable and facilitate the participation of all the members who were located in different time zones.
16. Accordingly, the live sessions of the virtual meeting were held from 8 a.m. to noon, Montreal time, from Tuesday, 21 April, to Thursday, 23 April 2020.
17. Upon invitation by the Chair, members introduced themselves.

#### ITEM 3. REVIEW OF OUTCOMES OF THE THIRD MEETING OF THE PARTIES TO THE NAGOYA PROTOCOL REGARDING ITEMS RELEVANT TO COMPLIANCE

18. Under this item, a representative of the Secretariat introduced the document on the review of the outcomes of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol regarding items relevant to compliance ([CBD/NP/CC/3/2](#)). The document was a review of the decisions of the Parties to the Protocol adopted at their third meeting with respect to compliance-related matters, taking into account the recommendations that were submitted to them by the Committee.
19. The Committee noted that the recommendations from their last meeting were adopted, with minimum changes, by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its third meeting. The Committee welcomed the positive consideration of its recommendations.

#### ITEM 4. REVIEW OF GENERAL ISSUES OF COMPLIANCE

20. In accordance with section D, paragraph 10, of the compliance procedures and mechanisms (decision [NP 1/4](#), annex), the Committee may examine systemic issues of general non-compliance that are brought to its attention.
21. To facilitate the discussion of this agenda item, a representative of the Secretariat introduced document [CBD/NP/CC/3/3](#) and provided updates on the progress made in the rate of submission of the interim national reports, and information on the status of compliance with some other requirements, including, the requirements to put in place ABS measures, designation of national focal points, competent national authorities and checkpoints, and making available various types of information through the Access and Benefit-sharing Clearing-House.
22. As requested by the Committee at its previous meeting, the Secretariat reported that the Executive Secretary had sent letters to those Parties that had not submitted their reports under Article 29 of the Nagoya Protocol, urging the Parties concerned to submit their national reports as soon as possible and inviting them to provide information on the challenges they had faced in completing and submitting their report.
23. The Committee recognized the progress made in the submission of interim national reports, which stood at 91 per cent by March 2020. The Committee noted that the Parties that had not yet done so, should be urged to submit their report as soon as possible. The Committee took note of the factors that had contributed to the delay in the submission of national reports as expressed by the few Parties which had responded to the letter they had received from the Secretariat, including the absence of timely financial support from the financial mechanism, the length of time needed to coordinate, to engage consultants and to conduct consultations at the national level. In that regard, the Committee noted that it was essential for Parties that were eligible for financial support by the Global Environment Facility to receive the funds in a timely manner, and at least six months prior to the deadline for the submission of

national reports by those eligible Parties which submitted a timely request for financial support. It was also noted that some reports submitted were incomplete or failed to address some questions, and that Parties to the Protocol should be encouraged to provide complete and accurate information to the extent possible.

24. The Committee requested the Executive Secretary to follow up with the letters that had been sent earlier to those Parties that had not yet submitted their reports. The Committee also requested the Executive Secretary to present the results of the follow-up communications to it at its fourth meeting.

25. In its review of the status of compliance with the obligation to put in place appropriate legislative, administrative or policy measures, the Committee recognized the steady progress made by Parties. However, members expressed concern about the delay by a number of Parties in fulfilling that obligation, which was crucial in the operationalization and effective implementation of the Protocol.

26. The Committee also reviewed the rate of compliance regarding the designation of national focal points, competent national authorities and checkpoints for monitoring the utilization of genetic resources as required by the Protocol.

27. The Committee noted the encouraging progress overall in putting in place the institutional arrangements required by the Protocol. However, it expressed concern regarding the slow pace in the designation of checkpoints and with respect to making information available in the Access and Benefit-sharing Clearing-House.

28. It was suggested that the compliance of Parties with the provisions of the Protocol related to indigenous peoples and local communities should also be further examined.

29. The Committee acknowledged that progress and compliance varied between the different geographical regions, which might be attributed to the level of capacity of Parties in the different regions. The Committee decided to further examine how to support and facilitate compliance on specific provisions of the Protocol, including Articles 14, paragraph 2, Article 17, paragraph 1 (a), and Articles 6, 7 and 12 related to indigenous peoples and local communities, taking into account the regional differences and circumstances.

30. The Committee requested the Executive Secretary to send letters to those Parties that had not yet established their ABS measures or institutional arrangements, and those that had relevant information that needed to be made available through the ABS Clearing-House, but had not yet submitted or published such information, urging them to do so as soon as possible and inviting them to provide information on the challenges they had faced in their efforts to fulfil those obligations. The Committee requested the Executive Secretary to present the results of those communications to it at its fourth meeting.

31. In decision [3/15](#) on the preparation for the follow-up to the Strategic Plan for Biodiversity 2011-2020, the Conference of the Parties serving as the meeting of the Parties to the Protocol requested that the Compliance Committee at its next meeting consider how to support and promote compliance with the Protocol within the post-2020 global biodiversity framework (para. 5).

32. A representative of the Secretariat gave a presentation on the outcomes of the second meeting of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework and, in particular, the elements proposed by participants in the meeting in relation to Goal E and Target 11 of the zero draft, which relate to ABS. The Committee was also informed, including through a compilation of extracts from the outcomes of the second meeting of the Working Group, about the proposed indicators that were included in the draft monitoring framework and that were relevant to Goal E and Target 11.

33. The Committee emphasized the importance of benefit-sharing for conservation and sustainable use of biodiversity and facilitating access to genetic resources for the realization of the objectives of the Convention. The Committee also acknowledged the central importance of the Nagoya Protocol and its full implementation for strengthening the performance and success of the post-2020 global biodiversity framework.

34. The Committee made reference to the *Global Assessment Report on Biodiversity and Ecosystem Services* issued by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, wherein progress towards Aichi Target 16.2 had been assessed to be moderate.

35. It was noted that any discussion on how compliance with the Nagoya Protocol could be supported and promoted within the post-2020 global biodiversity framework might not be comprehensive at the current stage, in which the draft of the global biodiversity framework and its elements relating to access and benefit-sharing were still under negotiation. On the other hand, members of the Committee recognized that any advance in the implementation of the Nagoya Protocol would in turn result in promoting the implementation and in increasing the positive impacts of the upcoming post-2020 global biodiversity framework. Members also noted that adopting an ambitious yet realistic biodiversity framework and its full implementation would support the implementation of the Nagoya Protocol.

36. The Committee emphasized that capacity-building and resource mobilization were key elements to promote compliance with the Nagoya Protocol and that appropriate consideration of these elements within, or in relation to the post-2020 global biodiversity framework would be important.

37. The Committee decided on a number of recommendations to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, as contained in the annex to the present report.

#### **ITEM 5. REVIEW OF THE FORMAT FOR PARTIES TO REPORT ON THE IMPLEMENTATION OF THE OBLIGATIONS UNDER THE PROTOCOL**

38. In decision [3/4](#), the Parties requested the Executive Secretary to review the format for reporting on the implementation of obligations under the Protocol for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its fourth meeting, taking into account comments received, input from the Compliance Committee, the framework of indicators contained in decision [3/1](#), the post-2020 global biodiversity framework and the alignment of national reports under the Convention and its Protocols, while bearing in mind the need for continuity in the format in order to measure progress in implementation (para. 8).

39. The Committee welcomed the draft reporting format as contained in document [CBD/NP/CC/3/4](#) and noted that it was generally clear, user-friendly and balanced.

40. The members discussed the formulation of possible responses to a number of questions in the draft reporting format and suggested changes. In particular, the Committee discussed the best way of reflecting partial implementation or implementation in progress (identified by “yes, to some extent”), and how such responses should be considered in the analysis of the responses. It was suggested that a third category of responses could be created, as appropriate, to reflect situations in which a Party has made progress towards the implementation of a specific obligation while the Party still needs to do more for the obligation to be considered fully implemented.

41. The Committee expressed concern regarding the option to respond to certain questions with “no, and not planning” when assessing the level of implementation of a given obligation through the reporting format. Some members were of the opinion that providing that option in the reporting format might imply that implementation of the obligation is optional and might appear to be inadvertently accepting a situation of non-compliance with the Protocol. The Committee agreed that the format should allow for Parties to state if they were in non-compliance with the Protocol and allow for further information to be provided on the reasons for not complying as well as the challenges experienced.

42. The Committee requested the Executive Secretary to review these systemic issues in the reporting format, taking into account the suggestions provided in the paragraphs above, and to apply the changes appropriately and consistently throughout the format.

43. Members also highlighted that having ABS measures and institutional arrangements in place (e.g. one or more checkpoints) did not necessarily mean that the measures were effective or that the institutional arrangements were operational. However, it was noted that the reporting format did contain a variety of questions that would already support the collection of information related to effectiveness, such as the free text questions on difficulties and challenges encountered, as well as those, for example, related to access, permits, functioning of checkpoints, and benefit-sharing.

44. During the discussions, the Committee noted that the question on establishing access and benefit-sharing measures (question 3) encompassed all measures taken to implement the Protocol, including those related to compliance.

45. It was pointed out that most traditional knowledge of indigenous peoples and local communities could be associated with biological resources and not only with genetic resources.

46. Members provided several specific suggestions to modify the formulation of certain questions and a number of responses in the draft reporting format as well as expanding the scope of certain questions.

47. The Committee requested the Secretariat to revise the reporting format taking into account the comments provided during the meeting and members agreed to provide further specific input to the revised draft through the online forum in the Access and Benefit-sharing Clearing-House prior to the finalization and submission of the format to the Conference of the Parties serving as the meeting of the Parties for its consideration at its fourth meeting.

#### **ITEM 6. OTHER MATTERS**

48. The Secretariat informed the Committee that, pursuant to section B, paragraphs 5 and 6 of the compliance procedures and mechanisms (decision NP-1/4, annex) and rule 10 of the rules of procedure for the meetings of the Compliance Committee (decision 2/3, annex), the terms of five members of the Committee would end on 31 December 2020, and, therefore, the Conference of the Parties serving as the meeting of the Parties to the Protocol would be invited to elect five members at its fourth meeting.

49. Members whose term would end on 31 December 2020 are: (a) Africa: Mr. William Etim Okon; (b) Asia and the Pacific: Mr. Tianbao Qin; (c) Central and Eastern Europe: Ms. Elzbieta Martyniuk; (d) Latin America and the Caribbean: Ms. Teresa Dolores Cruz Sardiñas; and (e) Western European and Others Group: Mr. Marcus Schroeder.

#### **ITEM 7. ADOPTION OF THE REPORT**

50. The Chair introduced the draft report of the Committee, which was adopted as orally amended. The report would be submitted to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, for its consideration at its fourth meeting.

#### **ITEM 8. CLOSURE OF THE MEETING**

51. Following the customary exchange of courtesies, the meeting was closed at 11.15 a.m. on Thursday, 23 April 2020.

*Annex***RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE TO THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION, FOR ITS CONSIDERATION AT ITS FOURTH MEETING**

The Compliance Committee recommends that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol decide, at its fourth meeting, to do the following:<sup>1</sup>

1. Welcome, with appreciation, the progress made by Parties in the implementation of the Protocol;
2. Urge Parties concerned to expedite the adoption and implementation of their access and benefit-sharing legislative, administrative or policy measures and institutional arrangements, among other things the designation of checkpoints, in accordance with the Protocol;
3. Urge further those Parties that have relevant national information that need to be made available to the Access and Benefit-sharing Clearing House in accordance with the requirement of Article 14, paragraph 2, of the Protocol to make this information available as soon as possible;
4. Recognize the need for further capacity-building and resource mobilization to accelerate the operationalization of the Protocol and invite Parties, non-Parties, donors and relevant organizations to provide additional resources and to support capacity-building activities;
5. Welcome the submission of [x] additional national reports after the last meeting of the Parties to the Protocol;<sup>2</sup>
6. Express appreciation to those non-Parties that submitted national reports on the implementation of the requirements of the Nagoya Protocol;
7. Urge Parties that have not yet done so to submit their national report without further delay;
8. Urge Parties to provide complete and accurate information in their national reports;
9. Invite the Global Environment Facility to make financial resources available in a timely manner to those eligible Parties in order to assist them in meeting their reporting obligation under the Protocol;<sup>3</sup>
10. Encourage Parties to take the post-2020 global biodiversity framework as an opportunity to strengthen their efforts to implement their obligations under the Protocol effectively.

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<sup>1</sup> Following previous practice, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol may wish to refer recommendations to the agenda item to which they are most closely related.

<sup>2</sup> This number will be updated in the light of the number of interim national reports received ahead of the fourth meeting of the Parties.

<sup>3</sup> As it is the Conference of the Parties that has the authority to provide guidance to the financial mechanism, this paragraph may be understood and read as follows: "Recommend to the Conference of the Parties to request the Global Environment Facility to make financial resources available in a timely manner to those eligible Parties in order to assist them in meeting their reporting obligation under the Protocol".