



## 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 SECOND MEETING

#### 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 establishes a Compliance Committee.
2. According to the procedures and mechanisms on compliance, the Committee is to meet at least once in each intersessional period. Accordingly, the first meeting of the Compliance Committee was held from 6 to 8 April 2016 in Montreal. The Committee submitted the report on its meeting to the Conference of the Parties serving as the meeting of the Parties to the Protocol at its second meeting, in December 2016. The meeting of the Parties adopted [decision NP-2/3](#) on the report of the Compliance Committee.
3. Further to section B, paragraph 7, of the compliance procedures and mechanisms, the second meeting of the Compliance Committee was held at the offices of the Secretariat of the Convention on Biological Diversity from 24 to 26 April 2018.

##### B. Attendance

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

###### Africa

Mr. Ayman Tharwat Abdel Aziz  
Ms. Naritiana Rakotoniaina Ranaivoson

###### Asia and the Pacific

Mr. Tianbao Qin  
Mr. Luther M. Rangreji  
Mr. Clark Peteru

###### Central and Eastern Europe

Ms. Elena Makeyeva  
Ms. Elzbieta Martyniuk

###### Latin America and the Caribbean

Ms. Teresa Dolores Cruz Sardinas  
Mr. Andrés Valladolid Cavero

###### Western Europe and Others

Ms. Helge Elisabeth Zeitler  
Mr. Marcus Schroeder  
Mr. Kaspar Sollberger

###### Indigenous peoples and local communities

Mr. Preston D. Hardison

#### ITEM 1. OPENING OF THE MEETING

5. The meeting was opened at 9:30 a.m. on Tuesday, 24 April 2018, by the Chair of the Committee, Mr. Kaspar Sollberger, who welcomed the members and the observer from indigenous peoples and local communities.
6. Mr. Alexander Shestakov, Director of the Science and Policy Support Division of the Secretariat, addressed the Committee on behalf of the Executive Secretary. He welcomed participants and noted the

important role of the Committee in supporting Parties in the implementation of the Nagoya Protocol. He pointed out that there were now 105 Parties to the Protocol and more than 60 countries working towards ratification.

7. A representative of the Secretariat reported that one member of the Committee, Mr. Mike Ipanga, from the African region, had resigned from the Committee and had been replaced by Ms. Betty Kauna Shroeder pursuant to section B, paragraph 3, of the procedures and mechanisms on compliance.

8. The following members and observers from indigenous peoples and local communities were unable to attend the meeting: Ms. Betty Kauna Shroeder, Ms. Norma Munguia Alderace, Ms. Elvana Ramaj, and Mr. Onel Masardule Arias. 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.

9. Upon invitation by the Chair, members introduced themselves.

## **ITEM 2. ORGANIZATIONAL MATTERS**

### **2.1. Election of officers**

10. A representative of the Secretariat recalled section B, paragraph 9, of the compliance procedures and mechanisms, which provides that the Committee shall elect its Chair and a Vice-Chair. She also recalled that, according to rule 12 of the rules of procedure for the meetings of the Committee, the Chair and Vice-Chair are elected for a period of two years and, subject to rule 10, they serve in those capacities until their successors take office. Accordingly, the Committee re-elected Mr. Kaspar Sollberger Chair of the Committee and elected Ms. Naritiana Rakotoniaina Ranaivoson Vice-Chair.

### **2.2. Adoption of the agenda**

11. The Committee adopted the following agenda on the basis of the provisional agenda ([CBD/ABS/CC/2/1](#)) prepared by the Secretariat:

1. Opening of the meeting.
2. Organizational matters:
  - 2.1 Election of officers;
  - 2.2 Adoption of the agenda;
  - 2.3 Organization of work.
3. Review of the outcomes of the second meeting of the Parties to the Nagoya Protocol regarding items relevant to compliance.
4. Assessment and review and general issues of compliance.
5. Other matters.
6. Adoption of the report.
7. Closure of the meeting.

### **2.3. Organization of work**

12. 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/ABS/CC/2/1/Add.1](#)).

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

13. Under this item, a representative of the Secretariat introduced the review of the outcomes of the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol regarding items relevant to compliance ([CBD/ABS/CC/2/2](#)). This included a review of decisions by the meeting of the Parties that took into account the recommendations of the Committee as well as other relevant decisions taken by the second meeting of the Parties.

14. The Committee noted that its rules of procedure had been approved by the Conference of the Parties serving as the meeting of the Parties in decision NP-2/3 with only minimal changes.

15. The Committee welcomed the positive consideration of its recommendations by the Conference of the Parties serving as the meeting of the Parties.

#### **ITEM 4. ASSESSMENT AND REVIEW AND GENERAL ISSUES OF COMPLIANCE**

16. Under this agenda item, a representative of the Secretariat recalled Article 31 of the Nagoya Protocol, which addressed “assessment and review” and provided that the meeting of the Parties to the Protocol should undertake an evaluation of the effectiveness of the Protocol four years after its entry into force. In decision NP-2/4, the meeting of the Parties decided on the process for the first assessment and review of the Protocol and the elements to be included in the first assessment and review and requested the Compliance Committee to provide inputs in the form of information and findings on general issues of compliance and recommendations to assist in addressing challenges to the implementation of the Protocol.

17. It was recalled that, at its first meeting, the Committee had considered the need for and modalities of support to address challenges related to compliance with the provisions of the Protocol with a view to making effective use of the compliance mechanism. It was noted that, in decision NP-2/3 the Conference of the Parties serving as the meeting of the Parties had decided that the Committee would reassess the need for and modalities of support at a future meeting, including with a view to contributing to the assessment and review of the Protocol’s effectiveness, as required. It was also noted, however, that that had not been included in the elements for the first assessment and review of the Protocol as agreed to in decision NP-2/4, and that, as a result, the Committee might need to return to that matter at a future meeting.

18. To facilitate the discussion of this agenda item, a representative of the Secretariat introduced [CBD/ABS/CC/2/3](#), presenting information on general issues of compliance based on information gathered from the interim national reports and the Access and Benefit-sharing Clearing-House. For those Parties that had not submitted the interim national report, information provided through the national biodiversity strategies and action plans and the fifth national reports on the implementation of the Convention had also been considered. The Secretariat also pointed out that information documents had been issued for the Committee containing the following: (a) a draft analysis of information contained in the interim national reports and information published in the Access and Benefit-sharing Clearing-House ([CBD/ABS/CC/2/INF/1](#)), and (b) a statistical overview of the answers provided in the interim national reports ([CBD/ABS/CC/2/INF/2](#)).

19. A representative of the Secretariat gave a presentation providing information on the rate of submission of the interim national reports as well as an analysis of progress in the following areas necessary for implementation of the Protocol: (a) establishment of access and benefit-sharing measures (including access, benefit-sharing and compliance measures); (b) establishment of institutional arrangements; and (c) publication of information in the Access and Benefit-sharing Clearing-House.

20. The Committee discussed the information presented, including the different challenges and difficulties identified, and decided on findings and recommendations on general issues of compliance as an input to the assessment and review of the effectiveness of the Protocol, for consideration by the Subsidiary Body on Implementation at its second meeting. It requested the Executive Secretary to transmit the inputs (annex I) to the present report) to the Subsidiary Body on Implementation for its consideration.

21. As part of the discussions, the Committee recognized the importance of the availability of information on access and benefit-sharing procedures in the Access and Benefit-sharing Clearing-House. It welcomed the development of the common format on procedures, which should assist in making such information available. It also noted that the Access and Benefit-sharing Clearing-House allowed for the monitoring of the utilization of traditional knowledge associated with genetic resources, even though that was not referred to in Article 17, and that a number of internationally recognized certificates of compliance had been issued that also included traditional knowledge.

22. The Committee also considered the rate of submission of interim national reports. It welcomed the reports that had been made available thus far and recognized that a number of reports were still outstanding. Different factors were identified that might have contributed to delays in submitting interim national reports, including the short period between the availability of financial support for the preparation of reports and the deadline for their submission as well as delays in designating publishing authorities in some countries. The Committee recognized that, while the completion of national reports

could be a challenging process, it could also be useful for many Parties as a tool for assessing their level of implementation, identifying gaps and sharing experiences, challenges and solutions with other Parties.

23. The Committee requested the Executive Secretary to send letters to those Parties that had not yet submitted their reports urging them to do so as soon as possible and inviting them to provide information on challenges they had faced in completing and submitting their report. The Committee requested the Executive Secretary to present the results of those communications to it at its third meeting.

24. The Committee noted that some Parties seemed to have found some questions in the reporting format unclear or had interpreted questions differently. It agreed that that should be taken into account in the development of the next reporting format. The Committee also agreed that it could provide an input to the development of the reporting format for the next reporting cycle to assist in that regard. Furthermore, the Committee took note of the ongoing process towards the alignment of national reporting under the Convention and its Protocols, which would be considered by the Subsidiary Body on Implementation at its second meeting.

25. A representative of the Secretariat gave a presentation on the background to and initial ideas for the process towards a post-2020 framework for biodiversity. The Committee considered its possible role in contributing to that process.

26. The Committee decided on a number of recommendations to the Conference of the Parties serving as the meeting of the Parties to the Protocol, as contained in annex II.

#### **ITEM 5. OTHER MATTERS**

27. The Secretariat informed the Committee that, pursuant to section B, paragraphs 5 and 6 of the compliance procedures and mechanisms and rule 10 of the rules of procedure, the terms of 10 members of the Committee and of the two indigenous peoples and local communities observers would end on 31 December 2018 and therefore the Conference of the Parties serving as the meeting of the Parties to the Protocol would be invited to elect 10 members and 2 IPLC observers at its third meeting.

28. Members whose term would end on 31 December 2018 were: (a) *Africa*: Mr. Ayman Tharwat Abdel Aziz; Ms. Naritiana Rakotoniaina Ranaivoson; (b) *Asia and the Pacific*: Mr. Luther M. Rangreji; Mr. Clark Peteru; (c) *Central and Eastern Europe*: Ms. Elena Makeyeva; Ms. Elvana Ramaj; (d) *Latin America and the Caribbean*: Ms. Norma Munguía Aldaraca; Mr. Andrés Valladolid Caveró; (e) *Western European and Others Group*: Mr. Kaspar Sollberger; Ms. Helge Elisabeth Zeitler. The observers from indigenous peoples and local communities whose term would end were: Mr. Preston D. Hardison; Mr. Onel Masardule Arias.

#### **ITEM 6. ADOPTION OF THE REPORT**

29. 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 at its third meeting for its consideration.

#### **ITEM 7. CLOSURE OF THE MEETING**

30. Following the customary exchange of courtesies, the meeting was closed at 12.50 p.m. on Thursday, 26 April 2018.

*Annex I*

**FINDINGS AND RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE ON  
GENERAL ISSUES OF COMPLIANCE AS A CONTRIBUTION TO THE  
ASSESSMENT AND REVIEW OF THE NAGOYA PROTOCOL ON ACCESS TO  
GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING  
OF BENEFITS ARISING FROM THEIR UTILIZATION**

1. In accordance with decision NP-2/4, paragraph 5, and with a view to examining general issues of compliance, the Compliance Committee examined progress in the establishment of access and benefit-sharing (ABS) measures and institutional structures, and the publication of information in the ABS Clearing-House, on the basis of the analysis prepared by the Executive Secretary.<sup>1</sup> The following provides inputs to the first assessment and review of the Protocol, in the form of information and findings on general issues of compliance and recommendations to assist in addressing challenges to the implementation of the Protocol.s
2. The Nagoya Protocol is a new instrument, especially for those that have recently ratified it. In order to make the Protocol operational, Parties need to establish legislative, administrative and policy measures and institutional arrangements related to access and benefit-sharing, and many Parties are still in the process of establishing these measures and institutions. For many Parties, this process is time-consuming and challenging.
3. Progress in establishing institutional arrangements, such as competent national authorities and checkpoints, is closely related to progress in adopting ABS measures. Some measures adopted prior to the Nagoya Protocol included the designation of competent national authorities. However, the designation of checkpoints is a new requirement created by the Protocol and still needs to be addressed by many Parties.
4. Although the publication of mandatory information in the ABS Clearing-House is essential for the implementation of the Protocol, a number of Parties have not yet published on the ABS Clearing-House all available national information in accordance with Article 14 of the Protocol.
5. Considering its cross-cutting nature, the implementation of the Protocol requires the participation of indigenous peoples and local communities and relevant stakeholders (for example different business sectors and the scientific community) as well as coordination among different institutions and ministries (for example science and education, agriculture, trade, intellectual property). To assist in addressing this challenge, appropriate mechanisms could be established to facilitate coordination and participation, and awareness-raising and capacity-building may be required.
6. Other key challenges include developing ABS measures that support benefit-sharing while creating legal certainty, avoiding unnecessary complexity, delays and increased burdens and costs on users and limited human resources working on ABS and the Nagoya Protocol in many Parties.
7. In the light of these challenges, the development of interim measures could be considered a first step. The needs of users of genetic resources and associated traditional knowledge from different sectors should also be taken into account in developing ABS measures. Regional approaches may also be useful to support harmonized implementation of the Protocol.<sup>2</sup>
8. Implementing some of the new elements of the Protocol, namely the provisions on compliance, monitoring the utilization of genetic resources, including the designation of checkpoints, and the obligations related to indigenous peoples and local communities, presents a particular challenge.
9. The Nagoya Protocol does not distinguish between countries that are users and countries that are providers of genetic resources, and the obligations enshrined in the Protocol, including provisions related to compliance with domestic legislation or regulatory requirements in accordance with Articles 15 and 16, apply to all Parties.

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<sup>1</sup> CBD/ABS/CC/2/2 and CBD/ABS/CC/2/INF/1.

<sup>2</sup> For example, African Union, 2015, "African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa".

10. With respect to checkpoints, there is a need for Parties to better understand their functions and options for their designation in the national context. There is also a need to build the capacity of checkpoints to enable them to carry out their functions.

11. The provisions of Article 18 on compliance with mutually agreed terms are often implemented at the national level through existing laws (for example contractual law, private international law, and domestic measures related to access to justice) rather than through specific ABS measures. A mechanism for supporting national coordination, as mentioned in paragraph 5 above, could assist in drawing from the expertise of other institutions dealing with these issues.

12. With respect to indigenous peoples and local communities, challenges include: (a) determining how the concept of “indigenous peoples and local communities” applies at the national level; (b) clarifying the rights of indigenous peoples and local communities over genetic resources and/or traditional knowledge associated with genetic resources; (c) identifying the different groups of indigenous peoples and local communities; (d) understanding the way they are organized; and (e) linking traditional knowledge with the holder/s of such knowledge. In order to address these challenges, the following could be considered:

(a) Building the capacity of Parties to support the implementation of the provisions of the Protocol related to indigenous peoples and local communities as well as the capacity of indigenous peoples and local communities with respect to ABS issues;

(b) Relevant work of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions on the concept of indigenous peoples and local communities;<sup>3</sup>

(c) National mechanisms for the participation of indigenous peoples and local communities in the implementation of the provisions of the Protocol related to indigenous peoples and local communities, taking into account national circumstances;

(d) Support for coordination and institution-building within and among indigenous peoples and local communities to address ABS issues, including through the development of community protocols;

(e) Capacity-building to support indigenous peoples and local communities to develop minimum requirements for mutually agreed terms and model contractual clauses for benefit-sharing arising from the utilization of genetic resources associated with genetic resources.

13. Parties have different approaches to prior informed consent, mutually agreed terms and the issuance of permits. It is important for Parties to make clear information available on the ABS Clearing-House on the procedures to follow to access genetic resources and associated traditional knowledge.

14. In addition, in the development and implementation of ABS legislation or regulatory requirements it is important that Parties take into account special considerations in accordance with Article 8 of the Protocol. Relevant work undertaken under FAO,<sup>4</sup> the World Health Organization and other organizations may be useful in this regard.

15. Although a number of capacity-building and development initiatives are currently supporting ratification and implementation of the Nagoya Protocol, many Parties still lack the necessary capacity and financial resources to make the Protocol operational. Capacity-building and development support therefore continue to be essential in order to make progress in the implementation of the Protocol, in particular for developing country Parties and Parties with economies in transition.

16. Further funding should be provided for the capacity-building programme of the Secretariat of the Convention on Biological Diversity and the International Development Law Organization and other capacity-building initiatives to support the establishment of national legal frameworks.

17. Capacity-building could also support harmonized implementation of the Protocol among countries that share the same genetic resources or traditional knowledge associated with genetic resources.

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<sup>3</sup> For example “Compilation of views received on use of the term ‘indigenous peoples and local communities’” (UNEP/CBD/WG8J/8/INF/10/Add.1)

<sup>4</sup> For example, Food and Agriculture Organization of the United Nations, 2016, “ABS Elements: Elements to Facilitate Domestic Implementation of Access and Benefit-sharing for Different Subsectors of Genetic Resources for Food and Agriculture”.

18. The wealth of information and experience available in the national reports and in the ABS Clearing-House, as well as the exchange of experiences, may be useful to Parties in the establishment of institutional structures and the development of ABS measures. This information could also be taken into account in capacity-building projects. In addition, the use of existing tools and resources (for example guidelines, capacity-building materials) to support implementation could be encouraged.

*Annex II***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 AT ITS THIRD 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 third meeting, to do the following:<sup>5</sup>

**A. Compliance**

1. *Welcome* the progress made by Parties in the implementation of the Protocol and *urge* Parties that have not yet done so to establish access and benefit-sharing legislative, administrative and policy measures, and institutional arrangements;

2. *Welcome* the contribution of the Compliance Committee to the first assessment and review of the Protocol in the form of information and findings on general issues of compliance and recommendations to assist in addressing challenges to the implementation of the Protocol;

**B. Monitoring and reporting**

3. *Welcome* the fact that 70 of the 100 Parties that had the obligation to report have submitted their interim national report;<sup>6</sup>

4. *Also welcome* the interim national reports submitted by non-Parties;

5. *Urge* Parties that have not yet submitted their interim national report to do so as soon as possible;

6. *Express its appreciation* for the financial support provided by the Global Environment Facility for a number of eligible Parties to support the preparation of their interim national reports, and *note* the importance of timely availability of financial resources to support the preparation and submission of national reports by the reporting deadline;

7. *Welcome* the efforts made by the Secretariat to assist Parties in submitting interim national reports;

8. *Request* the Compliance Committee to provide an input to the review of the reporting format for the next reporting cycle;

**C. Access and Benefit-sharing Clearing House**

9. *Urge* Parties that have not yet done so to publish all mandatory information available at the national level on the Access and Benefit-sharing Clearing-House in accordance with the obligations in Article 14, paragraph 2, of the Protocol, as soon as possible, considering that the publication of mandatory information in the Access and Benefit-sharing Clearing-House is essential for the implementation of the Nagoya Protocol;

10. *Urge* Parties to provide information on their access and benefit-sharing procedures through the common format on procedures, as available in the Access and Benefit-sharing Clearing House;

**D. Preparation for the follow-up to the Strategic Plan for Biodiversity 2011-2020**

11. *Recommend* that the findings on general issues of compliance be considered in the development of the post-2020 global biodiversity framework;

12. *Request* that the Compliance Committee at its next meeting consider how to support and promote compliance with the Nagoya Protocol within the post-2020 global biodiversity framework.

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<sup>5</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>6</sup> This number will be updated in the light of the number of interim national reports received ahead of the third meeting of the Parties.