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COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL

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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

Note by the Executive Secretary

INTRODUCTION

1. The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol held its second meeting in Cancun, Mexico, from 4 to 17 December 2016. The Parties considered, among other things, the report, including recommendations, submitted by the Compliance Committee, and adopted decisions accordingly.
2. The present document provides an overview of the outcomes of the second meeting of the Parties to the Protocol relating to compliance. Section II of the document examines how the Committee's recommendations were taken up by the Parties to the Protocol in the different decisions adopted at the meeting. The decisions are reviewed vis-à-vis the recommendations that the Committee proposed in annex II of its report.¹ For ease of reference, a table is also provided as an annex to the present document showing how and to what extent the recommendations of the Compliance Committee have been integrated into the decisions adopted by the Parties to the Protocol at their second meeting. Section III considers other relevant decisions adopted by the Parties to the Protocol that are of relevance to the Compliance Committee. Section IV of the document sets out the activities of the Committee for the current intersessional period, as mandated by the Parties to the Protocol and taking into account the Committee's conclusions on its future work as reflected in the report on its first meeting.
3. Finally, for information purposes, the document also indicates the new composition of the Committee following the election of members by the Parties to the Protocol at its second meeting.

II. DECISIONS TAKEN BY THE PARTIES TO THE PROTOCOL AT THEIR SECOND MEETING AND THE CONFERENCE OF THE PARTIES TO THE CONVENTION AT ITS THIRTEENTH MEETING TAKING INTO ACCOUNT THE RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE

4. Ms. Christine Akello, the Vice-Chair of the Committee, made a statement at the opening plenary of the second meeting of the Parties to the Protocol and submitted the report on the Committee's first meeting, including its recommendations, for the consideration of the Parties to the Protocol.
5. Following the suggestion of the Committee as specified in the annex to its report, the recommendations of the Committee were considered under the relevant [agenda](#) items of the second meeting of the Parties to the Protocol as follows:

¹ [UNEP/CBD/NP/COP-MOP/2/4](#).

- (a) Recommendations 1 to 4 remained under the agenda item on compliance (item 4);²
 - (b) Recommendation 5 was allocated to the item on the Access and Benefit-Sharing Clearing-House and information-sharing (item 6);³
 - (c) Recommendation 6 was considered under the item on the financial mechanism and resources (item 7).⁴
6. The overview below highlights the decisions taken by the Parties to the Protocol at their second meeting on these agenda items, taking into account the recommendations of the Compliance Committee.

NP-2/3. Report of the Compliance Committee

7. The Committee's first recommendation as well as annex I to its report addressed the rules of procedure for the meetings of the Committee. In decision [NP-2/3](#), the Parties to the Protocol approved the rules of procedure with some amendments. The most significant of these amendments concerns using electronic means of communication for decision-making. The Committee had proposed a rule (rule 14) that would have enabled it to use electronic means of communication for decision-making. The Parties to the Protocol qualified this rule by excluding "substantive decisions such as on submissions relating to issues of compliance and non-compliance with the provisions of the Protocol" from the possibility of using electronic means of communication for decision-making.
8. Other changes to the rules of procedure are outlined in the context of decision [NP-2/7](#) and discussed in section III below and in the annex to the present document.
9. The second and third of the Committee's recommendations concerned its consideration of 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. Its consideration of this matter had been requested by the Parties to the Protocol at their first meeting (decision [NP-1/4](#)).
10. The Parties to the Protocol adopted these recommendations with only one change: the addition of the phrase "with a view to contributing to the assessment and review of the Protocol's effectiveness as required". This addition linked reassessing the need for and modalities of support with a future assessment and review of the Protocol.
11. The Committee's fourth recommendation concerned the submission of interim national reports, specifically the importance of timely submission of the national reports and encouraging Parties to include information in their interim national reports on difficulties and challenges related to implementation of the Protocol. The Parties to the Protocol adopted this recommendation unchanged.

NP-2/2. Access and Benefit-Sharing Clearing-House and information-sharing (Article 14)

12. As part of its consideration of the need for and modalities of support to address challenges related to compliance with the provisions of the Nagoya Protocol with a view to making effective use of the compliance mechanism, the Committee had also noted a number of existing mechanisms that could support implementation, including the Access and Benefit-sharing (ABS) Clearing-House. In this context, the Committee recommended to the Conference of the Parties serving as the meeting of the Parties to the Protocol that it encourage Parties to make available information to the ABS Clearing-House in accordance with the obligations in Article 14(2) of the Protocol.
13. This recommendation was very similar to one of the elements for a draft decision included in the report on progress in the implementation and operation of the ABS Clearing-House ([UNEP/CBD/NP/COP-MOP/2/3](#), para. 104(j)). Accordingly, paragraph 11 of decision [NP-2/2](#) largely followed the language proposed in the pre-session document on the ABS Clearing-House with the incorporation of the phrase "in accordance with the obligations in Article 14, paragraph 2, of the Protocol" which had been derived from the Committee's

² See [CBD/NP/MOP/2/13](#), paras. 27-31.

³ Ibid., paras. 51-60.

⁴ Ibid., paras. 61-70.

recommendation. It may also be noted that paragraph 11 of decision NP-2/2 uses the verb “urges”, rather than “encourages” as had been recommended by the Committee.

XIII/21. The financial mechanism

14. The Committee’s sixth recommendation suggested that the Parties to the Protocol recommend to the Conference of the Parties to the Convention that, in adopting its guidance to the financial mechanism, it invite the Global Environment Facility to provide funding for eligible Parties for the preparation of their interim national reports under the Nagoya Protocol in line with Article 29 of the Protocol and decision [NP-1/3](#).

15. The Committee’s recommendation was incorporated with some minor changes into decision [XIII/21](#) adopted by the thirteenth meeting of the Conference of the Parties to the Convention (para. 38).

16. This reinforced the request made in 2014 by the Conference of the Parties at its twelfth meeting for the Global Environment Facility to make financial resources available with a view to assisting eligible Parties to the Nagoya Protocol in preparing their national reports (decision [XII/30](#), para. 18(b)).

III. OTHER RELEVANT DECISIONS TAKEN BY THE PARTIES TO THE PROTOCOL AT THEIR SECOND MEETING

NP-2/4. Assessment and review of the effectiveness of the Protocol (Article 31)

17. At their first meeting, the Parties to the Nagoya Protocol adopted decision [NP-1/3](#) on monitoring and reporting. In paragraph 6 of the decision, they requested the Executive Secretary to consolidate information contained in the interim national reports of Parties received and information published in the ABS Clearing-House for the consideration of the Parties to the Protocol at their third meeting, as a contribution to the assessment and review of the effectiveness of the Protocol.

18. At its first meeting, the Compliance Committee decided that, at its next meeting, it would review systemic issues of general non-compliance on the basis of the analysis of the interim national reports and the information on the ABS Clearing-House that the Executive Secretary had been requested to prepare in decision NP-1/3, para. 6.⁵

19. The Committee also “considered its possible contribution in the assessment and review of the Protocol (Article 31), including the review of procedures and mechanisms provided for in section G of the compliance procedures and mechanisms. It recognized that the assessment and review was coming at an early stage and that, although it was premature to define a specific role of the Committee in that process, it could provide information and findings on compliance with the Protocol”.⁶ The Committee did not adopt a recommendation to the Parties to the Protocol on this matter.

20. At its second meeting, the Parties to the Protocol adopted decision [NP-2/4](#) on assessment and review of the effectiveness of the Protocol, in which it decided on the process for conducting the first assessment and review of the Protocol. In paragraph 5 of the decision, the Parties to the Protocol requested the Compliance Committee to provide 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. The Subsidiary Body on Implementation at its second meeting will then review the analysis and synthesis of information, taking into account the inputs from the Compliance Committee, and submit its findings and recommendations to the Parties to the Protocol at their the third meeting.

NP-2/7. Use of the term “indigenous peoples and local communities”

21. In 2014, following a recommendation from the United Nations Permanent Forum on Indigenous Issues, the Conference of the Parties to the Convention adopted decision [XII/12 F](#). Among other things, the Parties decided to use the terminology “indigenous peoples and local communities” in future decisions and secondary documents under the Convention, as appropriate (para. 1).

⁵ See [UNEP/CBD/NP/COP-MOP/2/4](#), para. 20.

⁶ *Ibid.*, para. 25.

22. In 2015, the Ad hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention at its the ninth meeting recommended that the Conference of the Parties invite the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to consider taking a decision to apply, mutatis mutandis, decision XII/12 F of the Conference of the Parties ([recommendation 9/4](#)). At its thirteenth meeting, the Conference of the Parties made the invitation to the Parties to the Nagoya Protocol (decision [XIII/19 C](#)). The invitation was taken up by the Parties to the Protocol at its second meeting, which resulted in the adoption of decision [NP-2/7](#), wherein it decided to apply, mutatis mutandis, decision XII/12 F of the Conference of the Parties to the Convention on the use of the terminology “indigenous peoples and local communities”.

23. Accordingly, the terminology “indigenous peoples and local communities” was reflected in the other decisions of the Parties to the Nagoya Protocol, including in the rules of procedure for the meetings of the Compliance Committee as contained in the annex to decision [NP-2/3](#). References to “indigenous and local community observer” now refer to “indigenous peoples and local community observer”.

IV. ACTIVITIES OF THE COMPLIANCE COMMITTEE DURING THE PERIOD PRIOR TO THE THIRD MEETING OF THE PARTIES

24. As described in paragraph 18 above, the Committee had agreed that it would review systemic issues of general non-compliance at its second meeting. This has now been supplemented by the request from the Parties to the Protocol at their second meeting to provide inputs to the first assessment and review of the Protocol as outlined in paragraph 22 above. Accordingly, the Committee at its second meeting may focus on an assessment of the outcomes of the second meeting of the Parties to the Protocol relating to compliance (i.e. discussion of this document) and a review of general issues of compliance, including as an input to the first assessment and review of the Protocol.

V. MEMBERSHIP

25. As the Committee had noted at its last meeting, the term of five members came to an end on 31 December 2016. Accordingly, the Parties to the Protocol at their second meeting elected or re-elected the following members to serve on the Compliance Committee:

- (a) *Africa* – Mr. Mike Ipanga Mwaku (Democratic Republic of the Congo);
- (b) *Asia and the Pacific* – Mr. Qin Tianbao (China);
- (c) *CEE* – Ms. Elzbieta Martyniuk (Poland);
- (d) *GRULAC* – Ms. Teresa Cruz (Cuba);
- (e) *WEOG* – Mr. Markus Schröder (Germany).

26. In February 2018, Mr. Ipanga Mwaku informed the Secretariat that he was resigning from the Committee. Accordingly, the Secretariat turned to the replacement for the African region, Ms. Kauna Schroeder, who had been elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol pursuant to section B, paragraph 3, of the compliance procedures and mechanisms (decision [NP-1/4](#), annex). Ms. Schroeder will continue with the rest of Mr. Ipanga Mwaku’s term on the Compliance Committee.

27. Accordingly, the composition of the Committee is as follows:

- 1. Mr. Ayman Tharwat Abdel Aziz (31 December 2018)
- 2. Ms. Naritiana Rakotoniaina Ranaivoson (31 December 2018)
- 3. Ms. Kauna Schroeder (31 December 2020)
- 4. Mr. Luther M. Rangreji (31 December 2018)
- 5. Mr. Clark Peteru (31 December 2018)
- 6. Mr. Qin Tianbao (31 December 2020)
- 7. Ms. Elena Makeyeva (31 December 2018)
- 8. Ms. Elvana Ramaj (31 December 2018)
- 9. Ms. Elzbieta Martyniuk (31 December 2020)
- 10. Ms. Teresa Cruz (31 December 2020)
- 11. Ms. Norma Munguía Aldaraca (31 December 2018)
- 12. Mr. Andrés Valladolid Caveró (31 December 2018)

13. Mr. Kaspar Sollberger (31 December 2018)
14. Ms. Helge Elisabeth Zeitler (31 December 2018)
15. Mr. Markus Schröder (31 December 2020)
16. Mr. Preston D. Hardison (indigenous peoples and local community observer) (31 December 2018)
17. Mr. Onel Masardule Arias (indigenous peoples and local community observer) (31 December 2018).

V. CONCLUSION

31. At their second meeting, the Parties to the Protocol considered most of the recommendations of the Committee favourably. The table in the annex below shows how the recommendations were considered, accepted and included in decisions of the Parties to the Protocol under the items to which they were considered to be relevant.

Annex

EXTENT OF INTEGRATION OF THE RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE INTO THE DECISIONS OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE NAGOYA PROTOCOL AT ITS SECOND MEETING⁷

<i>Recommendations of the Committee (UNEP/CBD/NP/COP-MOP/2/4, annexes I and II)</i>	<i>Decision of the Parties to the Protocol at their second meeting</i>	<i>Remarks/clarifications</i>
<p>The Compliance Committee recommends that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol decide, at its second meeting, to:</p> <p>1. <i>Approve</i> the rules of procedure for the meetings of the Compliance Committee under the Nagoya Protocol as annexed to the present decision;</p> <p>2. <i>Note</i> that implementation of the Protocol is still in its early stages, wherein it is important to focus on enabling Parties to implement the Protocol, and therefore 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 cannot yet be fully assessed;</p>	<p>NP-2/3. Report of the Compliance Committee (Article 30)</p> <p><i>The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol,</i></p> <p>1. <i>Approves</i> the rules of procedure for the meetings of the Compliance Committee under the Nagoya Protocol as annexed to the present decision;</p> <p>2. <i>Notes</i> that implementation of the Protocol is still in its early stages, wherein it is important to focus on enabling Parties to implement the Protocol, and therefore 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 cannot yet be fully assessed;</p>	<p>The recommendation was adopted with some changes to the rules of procedure as outlined below.</p> <p>Recommendation adopted with no changes</p>

⁷ Changes introduced by the Parties to the Protocol to the wording of the recommendations of the Committee appear in bold in the second column.

<p><i>Recommendations of the Committee (UNEP/CBD/NP/COP-MOP/2/4, annexes I and II)</i></p>	<p><i>Decision of the Parties to the Protocol at their second meeting</i></p>	<p><i>Remarks/clarifications</i></p>
<p>3. <i>Decide</i> that the Compliance Committee shall reassess the need for and modalities of support as provided for in paragraph 2(b) of decision NP-1/4 at a future meeting in the light of the experience gained by the Committee in carrying out its functions and further developments in implementation of the Protocol;</p> <p>4. <i>Underline</i> the importance of the timely submission of the interim national reports in line with paragraph 4(c) of decision NP-1/3 and encourage Parties to include information in their interim national reports on difficulties and challenges related to implementation of the Protocol;</p> <p>Annex I. Rules of procedure for the meetings of the Compliance Committee under the Nagoya Protocol</p> <p>Rule 3. For the purposes of these rules: [...] (g) “Indigenous and local community observer” means a representative of indigenous and local communities elected in accordance with paragraph 2 of section B of the annex to decision NP-1/4 or their replacement elected in accordance with paragraph 3 of section B of the annex to decision NP-1/4;</p>	<p>3. <i>Decides</i> that the Compliance Committee shall reassess the need for and modalities of support as provided for in paragraph 2(b) of decision NP-1/4 at a future meeting in the light of the experience gained by the Committee in carrying out its functions and further developments in implementation of the Protocol, and with a view to contributing to the assessment and review of the Protocol’s effectiveness as required;</p> <p>4. Urges Parties to submit in a timely manner the interim national reports in line with paragraph 4(c) of decision NP-1/3 and <i>encourages</i> Parties to include information in their interim national reports on difficulties and challenges related to implementation of the Protocol.</p> <p>Annex. Rules of procedure for the meetings of the Compliance Committee under the Nagoya Protocol</p> <p>Rule 3. For the purposes of these rules: [...] (g) “Indigenous peoples and local community observer” means a representative of indigenous peoples and local communities elected in accordance with paragraph 2 of section B of the annex to decision NP-1/4 or their replacement elected in accordance with paragraph 3 of section B of the annex to decision NP-1/4;</p>	<p>Recommendation adopted with the addition of the last phrase “with a view to contributing to the assessment and review of the Protocol’s effectiveness as required”. This addition links reassessing the need for and modalities of support with a future assessment and review of the Protocol.</p> <p>The first part of the recommendation was changed and directed at Parties who are urged to submit their interim national reports in a timely manner.</p> <p>With the adoption of decision NP-2/7 on use of the term “indigenous peoples and local communities”, references to “indigenous and local community” in the rules of procedure were changed to “indigenous peoples and local community”. In addition to affecting para. 3(g) of the rules of procedure as reflected here, this change was also made in rules 5, 7, 10 and 11 as well as the title of section G. These other parts of the rules of procedure have not been reproduced in this table unless other changes were also made to the text by the Parties to the Protocol.</p>

<p><i>Recommendations of the Committee (UNEP/CBD/NP/COP-MOP/2/4, annexes I and II)</i></p>	<p><i>Decision of the Parties to the Protocol at their second meeting</i></p>	<p><i>Remarks/clarifications</i></p>
<p>Rule 10. The term of office of a member and an indigenous and local community observer shall commence on 1 January of the calendar year immediately following his or her election and shall end on 31 December two or four years thereafter, as applicable.</p> <p>Rule 11. 1. Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid conflicts of interest. Where a member finds himself or herself faced with a conflict of interest, that member shall bring the issue to the attention of the Committee before consideration of that particular matter. The member concerned shall not participate in the deliberations and the taking of decisions by the Committee in relation to that matter.</p>	<p>Rule 10 The term of office of a member and an indigenous peoples and local community observer shall commence on 1 January of the calendar year immediately following his or her election and shall end on 31 December four years the reafter.</p> <p>Rule 11 1. Each member of the Committee and the indigenous peoples and local community observers shall, with respect to any matter that is under consideration by the Committee, avoid conflicts of interest. Where a member or indigenous peoples and local community observer finds himself or herself faced with a conflict of interest, that member or indigenous peoples and local community observer shall bring the issue to the attention of the Committee before consideration of that particular matter. The member or indigenous peoples and local community observer concerned shall not participate in the deliberations and the taking of decisions by the Committee in relation to that matter.</p>	<p>Given that half terms (i.e. two-year terms) were only foreseen for the intersessional period following the first meeting of the Parties to the Protocol (see para. 5, section B of the compliance procedures and mechanisms as contained in the annex to decision NP-1/4), the language concerning terms of office ending after two years was removed as this will no longer be applicable or relevant in the future.</p> <p>As proposed by the Committee, rule 11 on conflict of interest only addressed the possibility of a conflict of interest for a member of the Committee. The rule was revised to also include the possibility of a conflict of interest for an indigenous peoples and local community observer.</p>

<i>Recommendations of the Committee (UNEP/CBD/NP/COP-MOP/2/4, annexes I and II)</i>	<i>Decision of the Parties to the Protocol at their second meeting</i>	<i>Remarks/clarifications</i>
<p>2. A “conflict of interest” refers to any current interest that could:</p> <p>(a) Significantly impair the individual’s objectivity as a Committee member;</p> <p>(b) Create an unfair advantage for any person or organization.</p> <p>Rule 14. Electronic means of communication may be used by the Committee for the purpose of conducting informal consultations on issues under consideration as well as for decision-making.</p>	<p>2. A “conflict of interest” refers to any current interest that could:</p> <p>(a) Significantly impair the individual’s objectivity as a Committee member or indigenous peoples and local community observer;</p> <p>(b) Create an unfair advantage for any person or organization.</p> <p>Rule 14. Electronic means of communication may be used by the Committee for the purpose of conducting informal consultations on issues under consideration as well as for decision-making except for substantive decisions such as on submissions relating to issues of compliance and non-compliance with the provisions of the Protocol.</p>	<p>As proposed by the Committee, rule 14 would have enabled the Committee to use electronic means of communication for decision-making. The Parties to the Protocol qualified this rule by excluding “substantive decisions such as on submissions relating to issues of compliance and non-compliance with the provisions of the Protocol” from the possibility of using electronic means of communication for decision-making.</p>

<i>Recommendations of the Committee (UNEP/CBD/NP/COP-MOP/2/4, annexes I and II)</i>	<i>Decision of the Parties to the Protocol at their second meeting</i>	<i>Remarks/clarifications</i>
<p>5. <i>Encourage</i> Parties to make available information to the Access and Benefit-Sharing Clearing-House in accordance with the obligations in Article 14, paragraph 2, of the Protocol;</p>	<p>NP-2/2. The Access and Benefit-sharing Clearing-House and information-sharing (Article 14)</p> <p>11. <i>Urges</i> 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, and to ensure that the information published is complete and relevant and kept up-to-date, with a view to having all existing information available in the Access and Benefit-sharing Clearing-House by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol;</p>	<p>This language follows the proposal in the elements for a draft decision in the document on the ABS Clearing-House (UNEP/CBD/NP/COP-MOP/2/3), which reflected the same idea as the recommendation from the Compliance Committee.</p>
<p>6. <i>Recommend</i> that the Conference of the Parties, in adopting its guidance to the financial mechanism with respect to support for the implementation of the Nagoya Protocol, invite the Global Environment Facility to provide funding for eligible Parties for the preparation of their interim national reports under the Nagoya Protocol in line with Article 29 of the Protocol and decision NP-1/3;</p>	<p>Conference of the Parties decision XIII/21. The financial mechanism</p> <p>38. <i>Invites</i> the Global Environment Facility to provide support to eligible Parties for interim national reports under the Nagoya Protocol.</p>	<p>Guidance on the Nagoya Protocol was provided to the financial mechanism in decision XIII/21 of the Conference of the Parties to the Convention. The language largely follows the recommendation of the Compliance Committee with some minor changes. The word “funding” was replaced with “support”, the reference to “preparation” was deleted as were references to the source of the reporting requirements in Article 29 and decision NP-1/3.</p>