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COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL

First meeting

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Item 4 of the provisional agenda*

SYNTHESIS OF VIEWS ON 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

Note by the Executive Secretary

INTRODUCTION

1. Article 30 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol) provides that the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. Accordingly, at their first meeting, the Parties to the Nagoya Protocol adopted decision NP-1/4, which includes procedures and mechanisms on compliance and establishes a Compliance Committee (hereinafter “the Committee”).

2. Paragraph 2(b) of decision NP-1/4 requested the Executive Secretary to arrange for at least one meeting of the Compliance Committee to be held before the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, including for the purpose of identifying and considering the need for and modalities of support, including possibly through a flexible mechanism to provide advice or assistance to Parties, in particular developing country Parties, and, where appropriate and applicable, indigenous and local communities 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 meeting is to submit recommendations to the second meeting of COP-MOP on the outcomes of its deliberations on this matter.

3. Paragraph 3 of the decision invited Parties, other Governments, international organizations, indigenous and local communities, and relevant stakeholders to submit views to the Executive Secretary on matters raised in paragraph 2(b) in order to assist the work of the Compliance Committee in its consideration of this matter.

* UNEP/CBD/ABS/CC/1/1.

4. Accordingly, in notification 2015-49 of 5 May 2015,¹ the Executive Secretary invited the submission of views on this matter. In response, views were received from three Parties to the Protocol: Belarus, India and Mexico; and two non-Parties to the Protocol: Canada and the United Kingdom of Great Britain and Northern Ireland. The full text of the submissions has been made available online.²

5. The Executive Secretary has prepared the present document to assist the Compliance Committee in its consideration of this matter. Following this introduction, section I of the document provides a synthesis of the views submitted and section II raises some additional considerations relating, in particular, to other processes or activities where information on the status of implementation of the Protocol is being gathered. Section III provides a conclusion and suggestion for the Committee.

I. SYNTHESIS OF VIEWS

6. The submissions from the three Parties included some suggestions for mechanisms to support compliance. One Party suggested three steps in order to start the activity of the Compliance Committee in an effective manner: (a) to ask Parties to provide the Compliance Committee with information on their current situations regarding implementation of the Protocol; (b) to ask Parties to submit to the Committee their needs and challenges in harmonizing their national legislation and administrative system with the Protocol; and (c) to gather information on Parties' plans to promote their ABS frameworks. The Party suggested that this information can provide a baseline for recommendations and other kinds of support to Parties from the Compliance Committee.

7. Another Party suggested that there is a need to create a support mechanism capable of providing advice and assistance to Parties to effectively address challenges related to compliance with the provisions of the Protocol arising from lack of capacity, awareness and expertise. They noted that the Committee may offer advice or facilitate assistance to the party concerned with a view to promoting compliance and address cases of non-compliance; however, it is only COP-MOP which, upon the recommendations of the Committee, may facilitate access to financial and technical assistance, technology transfer, training and other capacity-building measures. The Party suggested a number of ways in which the Committee may facilitate assistance including by identifying opportunities for bilateral/regional cooperation; assisting with the identification of organizations and projects that can help; sharing information on lessons learned and best practices in implementation; providing information on possible sources of funding for implementation; recommending to COP-MOP to provide assistance to individual or groups of Parties; and recommending priority areas for funding by the Global Environment Facility.

8. One Party suggested a number of possible modalities of support. First, they recommended that Parties and non-Parties should make available to the ABS Clearing-House a document on the compliance measures being taken. In the light of this information, meetings could be convened to exchange experiences and best practices. Such meetings could also make recommendations to COP-MOP to document positive experiences and reasons for challenges faced in implementation. They suggested that the Compliance Committee and the Secretariat could undertake an analysis of the national reports and information in the ABS Clearing-House to identify the areas where Parties are facing the greatest difficulties in complying with the Protocol and could develop mechanisms and procedures to support these cases.

9. Secondly, the Party suggested that the Secretariat could develop a questionnaire to gather compliance-related information from Parties on points such as the scope of national legislation,

¹ <https://www.cbd.int/doc/notifications/2015/ntf-2015-049-abs-en.pdf>.

² https://www.cbd.int/abs/support_submissions/.

definitions of access and research and development, the establishment of checkpoints and capacity-building activities. They indicated that having such information available in a timely manner could enable the development of specific support and strengthening frameworks. They also suggested that such information could form the basis for a COP-MOP document in order to identify gaps and inconsistencies with a view to focus compliance efforts.

10. The Party suggested that the support function should focus on promoting international cooperation to help countries overcome the obstacles they face in implementing the Protocol. They were also of the view that the Compliance Committee should be provided with more effective support tools such as mechanisms for mobilizing financial resources and technology and capacity-building projects. They were of the view that such tools would provide evidence of the ability of the Committee to support countries which would build Parties' confidence in the Committee. They also noted that building trust would depend on increasing understanding of the consequences of non-compliance. They were therefore of the view that improving the supportive role of the Committee would require ensuring that punitive measures would not be adopted as a complement to the support tools.

11. One non-Party did not see the need for additional support or a mechanism at this stage. They indicated that it is still too early to assess whether and how the compliance mechanism is achieving its aim to promote compliance with the provisions of the Protocol and pointed to the fact that the compliance mechanism is still in the process of establishing its procedures and ways of working. They noted that many States are still in the process of putting in place the necessary measures to implement the Protocol and so did not consider that there is any evidence at this stage to suggest that the challenges related to compliance with the Protocol require additional support mechanisms. They suggested that if it is found in the future that the compliance mechanism is not working effectively then this can be considered as part of the review of the effectiveness of the Protocol under Article 31.

12. The non-Party also noted that experience from other compliance mechanisms demonstrates that such bodies are effective in providing the advice and assistance necessary to promote compliance. Furthermore, they considered that establishing an additional mechanism could be counterproductive as it would imply more costs and administration and could possibly encourage a more adversarial approach.

13. Two non-Parties highlighted that the role of the Compliance Committee and the compliance procedures and mechanisms is to focus on the compliance of Parties with the obligations under the Protocol. They stated that this would not include any issues regarding compliance with mutually agreed terms as these are related to contractual obligations rather than obligations under the Protocol. The two submissions noted that there are other mechanisms in place to address issues relevant to the use of mutually agreed terms, including domestic law remedies based on the terms of the contract, capacity-building and capacity development, but they felt it important to keep these areas distinct from the compliance procedures and mechanisms adopted under the Protocol.

II. ADDITIONAL CONSIDERATIONS

14. A number of the submissions suggested different steps or activities that may be taken to support compliance with the Protocol. A number of relevant processes or activities are already underway that may provide useful context for consideration of these suggestions.

15. In preparation for the first meeting of the Subsidiary Body on Implementation to be held in May 2016, the Executive Secretary has prepared a report on progress towards implementation of Aichi Biodiversity Target 16. The target provides that by 2015, the Nagoya Protocol is in force and operational, consistent with national legislation. The progress report will be considered by the Subsidiary Body on Implementation and has also been made available for the information of the Compliance Committee (see document UNEP/CBD/SBI/1/3).

16. Article 29 of the Protocol requires each Party to monitor the implementation of its obligations under the Protocol and to report to the COP-MOP on measures it has taken to implement the Protocol. At their first meeting, the Parties to the Protocol adopted decision NP-1/3 on monitoring and reporting. Among other things, the decision contains a format for the submission of the interim national report on the implementation of the Protocol and requests Parties to the Protocol to submit an interim national report 12 months prior to the third meeting of COP-MOP. It is anticipated that the deadline for the interim national reports will be in the fall of 2017.

17. The Compliance Committee may wish to consider its role in reviewing the information that will be provided through the interim national reports under the item on its agenda on the future work of the Committee (see also document UNEP/CBD/ABS/CC/1/4).

18. The assessment and review of the Protocol as mandated by Article 31 was mentioned in one of the submissions. Assessment and review will be considered by COP-MOP at its second meeting and the Compliance Committee will be invited to consider how the assessment and review process may be related to the future work of the Committee under the agenda item on this matter (see also document UNEP/CBD/ABS/CC/1/4).

19. Extensive information on the status and scope of capacity-building initiatives supporting implementation of the Nagoya Protocol has been compiled for the Informal Advisory Committee on Capacity-building for the Implementation of the Nagoya Protocol.³ Such information may also be relevant in considering the need for and modalities of support.

20. It might also be noted that the compliance procedures and mechanisms as adopted by the Parties in the annex to decision NP-1/4 also enable the Committee to make recommendations to COP-MOP (section C, para. 3), to examine systemic issues of general non-compliance (section D, para. 10) and to offer advice or facilitate assistance to a Party in respect of which an issue has been raised under section D with a view to promoting compliance and addressing cases of non-compliance (section F, paragraph 2(a)).

III. CONCLUSION

21. The Compliance Committee may wish to consider the synthesis of views above as well as the additional considerations in its discussions and the development of recommendations for the consideration of COP-MOP at its second meeting on 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.

³ See in particular document UNEP/CBD/ABS/CB-IAC/1/2, <https://www.cbd.int/doc/meetings/abs/abscbiac-2015-01/official/abscbiac-2015-01-02-en.pdf>.