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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
SERVING AS THE MEETING OF THE PARTIES TO
THE NAGOYA PROTOCOL ON ACCESS TO
GENETIC RESOURCES AND THE FAIR AND
EQUITABLE SHARING OF THE BENEFITS ARISING
FROM THEIR UTILIZATION

First meeting

Pyeongchang, Republic of Korea, 13–17 October 2014

Agenda item 10

COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS TO PROMOTE COMPLIANCE WITH THE NAGOYA PROTOCOL AND TO ADDRESS CASES OF NON- COMPLIANCE

Draft decision submitted by the Chair of Working Group II

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,

Recalling Article 30 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,

Recognizing the importance of establishing cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance,

1. *Decides* to adopt cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and to address cases of non-compliance as set out in the annex to this decision and to establish the Compliance Committee referred to therein;

2. *Requests* 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:

(a) Developing rules of procedure referred to in paragraph 8 of section B of the procedures and mechanisms on compliance with the provisions of the Nagoya Protocol;

(b) 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; and

(c) Submitting recommendations to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on the outcomes of its deliberations pursuant to sub-paragraph (b) above;

3. *Invites* 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) above in order to assist the work of the Compliance Committee in its consideration of this matter.

Annex

COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS TO PROMOTE COMPLIANCE WITH THE PROVISIONS OF THE NAGOYA PROTOCOL AND TO ADDRESS CASES OF NON-COMPLIANCE

The following procedures and mechanisms are developed in accordance with Article 30 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Protocol).

A. Objectives, nature and underlying principles

1. The objective of the compliance procedures and mechanisms is to promote compliance with the provisions of the Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention on Biological Diversity (the Convention).

2. The compliance procedures and mechanisms shall be non-adversarial, cooperative, simple, expeditious, advisory, facilitative, flexible and cost-effective in nature.

3. The operation of the compliance procedures and mechanisms shall be guided by the principles of fairness, due process, rule of law, non-discrimination, transparency, accountability, predictability, good faith and effectiveness. It shall pay particular attention to the special needs of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, and take into full consideration the difficulties they face in the implementation of the Protocol.

B. Institutional mechanisms

1. A Compliance Committee, hereinafter referred to as “the Committee”, is hereby established pursuant to Article 30 of the Protocol to carry out the functions specified herein.

2. The Committee shall consist of 15 members nominated by Parties, on the basis of three members endorsed by each of the five regional groups of the United Nations. Nominees could include representatives of indigenous and local communities. In addition, two representatives of indigenous and local communities, at least one from a developing country, nominated by indigenous and local communities, shall serve as observers and shall be entitled to participate in the deliberations of the Committee except in the taking of decisions. In individual cases where only Parties are involved and the issue does not relate to the interests of indigenous and local communities and where the Party concerned chooses the deliberation to be closed to observers, the two indigenous and local communities observers shall not participate in the deliberations. Nominees shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

3. Each regional group of the United Nations should provide one alternate member to be nominated by Parties and elected by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to replace a member who resigns or is unable to complete their term of office. The indigenous and local communities should also provide one alternate observer to be elected by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol to replace an indigenous and local communities observer who resigns or is unable to complete their term of office.

4. Members of the Committee as well as the representatives of indigenous and local communities shall have recognized competence, including technical, legal or scientific expertise in the fields covered by the Protocol, such as genetic resources and traditional knowledge associated with genetic resources, and serve objectively, in the best interests of the Protocol and in their individual expert capacity.
5. Members shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for a period of four years, this being a full term. At its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol shall elect five members, one from each region, for half a term, and ten members, two from each region, for a full term. Each time thereafter, the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol shall elect, for a full term, new members to replace those whose term has expired. Members shall not serve for more than two consecutive terms.
6. The two representatives of indigenous and local communities shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for a term of four years. The representatives shall not serve for more than two consecutive terms.
7. The Committee shall meet at least once in each intersessional period and may, as necessary and subject to the availability of financial resources, hold additional meetings. In determining the dates of the meetings, due consideration should be given to the meetings schedule of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol and other relevant bodies under the Protocol, and cost-effective scheduling. Meetings should be held at least three months before the meetings of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.
8. The Committee shall develop and submit its rules of procedure, including those on confidentiality and conflict of interest, to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for its consideration and approval.
9. The Committee shall elect its Chair and a Vice-Chair, who will rotate amongst the five regional groups of the United Nations.
10. Two-thirds of the members of the Committee shall constitute a quorum.
11. The Committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a three-quarters majority of the members present and voting or by 8 members, whichever is greater. The report of any meeting of the Committee at which consensus is not reached shall reflect the views of all the Committee members. The report shall be made public once adopted.
12. The meetings of the Committee shall be open, unless the Committee decides otherwise. When the Committee is dealing with individual cases of Parties whose compliance is under consideration, the meetings of the Committee shall be open to Parties and closed to the public, unless the Party concerned agrees otherwise.
13. "The Party concerned" means the Party in respect of which an issue has been raised under section D.
14. The Secretariat shall service the meetings of the Committee and perform any additional functions assigned to it under these procedures.

C. Functions of the Committee

1. The Committee shall, with a view to promoting compliance with the provisions of the Protocol and addressing cases of non-compliance, perform the functions under these procedures and any other functions assigned to it by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.
2. In performing its functions, the Committee may consult with the compliance committees of other agreements in order to share experience on compliance issues and options for their resolution.

3. The Committee shall submit its reports, including recommendations with regard to the discharge of its functions, to the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol for consideration and appropriate action.

D. Procedures

1. The Committee shall receive any submissions relating to issues of compliance and non-compliance with the provisions of the Protocol from:

- (a) Any Party with respect to itself;
- (b) Any Party with respect to another Party;
- (c) The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.

2. Any submission is to be addressed in writing to the Committee through the Secretariat and set out:

- (a) The matter of concern;
- (b) The relevant provisions of the Protocol; and
- (c) Information substantiating the matter of concern.

3. The Secretariat shall forward any submission under paragraph 1 (a) above to the Committee within 30 calendar days of receipt.

4. The Secretariat shall forward any other submission under paragraph 1 to the Party concerned within 30 calendar days of receipt.

5. When the Party concerned has received a submission it should respond and provide relevant information within 60 calendar days from the date of receipt of the submission, unless the Party requests an extension. Such extension may be granted, by the Chair of the Committee, for a period of up to 90 calendar days.

6. Once the Secretariat has received a response and any information from the Party concerned or from other sources, it shall transmit the submission, the response and such information to the Committee. In the case where the Secretariat has not received any response or information from the Party concerned within the initial or extended period as referred to in paragraph 5 above, the Secretariat shall forward the submission to the Committee forthwith.

7. The Committee may decide not to consider any submission made pursuant to paragraph 1 (b) above that is *de minimis* or manifestly ill-founded.

8. The Party concerned and, upon invitation, the Party that made the submission, may participate in the consideration of the submission by the Committee, but shall not take part in the elaboration and adoption of the recommendations of the Committee. The Committee shall make available the draft recommendations to the Party concerned, which shall be given an opportunity to comment. Any such comment is to be forwarded with the report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.

9. The Committee may examine a situation where a Party fails to submit its national report pursuant to Article 29, or where information indicates that the Party concerned is faced with difficulties complying with its obligations under the Protocol. Such information may be received:

- (a) Through a national report or from the Access and Benefit-sharing Clearing-House;
- (b) From the Secretariat based on:
 - (i) Information on the completeness or accuracy of a Party's national report;
 - (ii) Information on the completeness or accuracy of the information submitted by a Party to the Access and Benefit-sharing Clearing-House; or
 - (iii) Other information related to compliance with Article 12(1) of the Protocol;

provided by a directly affected indigenous or local community, related to provisions of the Protocol.

The Secretariat shall review information received from indigenous and local communities against the information received from the Party concerned. It will only transmit issues to the Committee that have not been resolved. The Committee shall proceed in accordance with paragraphs 4 to 7 above.

11. In addition to the procedures under this section, the Committee may examine systemic issues of general non-compliance that come to its attention.

E. Information for and consultation by the Committee after the triggering of the procedures

1. The Committee may seek, receive and consider information from relevant sources, including from affected indigenous and local communities. The reliability of the information should be ensured.

2. The Committee may seek advice from independent experts, including, in particular where indigenous and local communities are directly affected, from an indigenous and local community expert.

3. The Committee may undertake, upon invitation of the Party concerned, information gathering in the territory of that Party.

F. Measures to promote compliance and address cases of non-compliance

1. In considering the measures specified below the Committee shall take into account:

(a) The capacity of the Party concerned to comply;

(b) The special needs of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition; and

(c) Such factors as the cause, type, degree and frequency of non-compliance.

2. The Committee with a view to promoting compliance and addressing cases of non-compliance, may:

(a) Offer advice or facilitate assistance to the Party concerned, as appropriate;

(b) Request or assist, as appropriate, the Party concerned to develop a compliance action plan to be submitted identifying appropriate steps, an agreed timeframe and indicators to assess satisfactory implementation;

(c) Invite the Party concerned to submit progress reports on its efforts to comply with its obligations under the Protocol;

3. The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, upon the recommendations of the Committee, may also, with a view to promoting compliance and addressing cases of non-compliance:

(a) Take any of the measures set out in paragraphs 2 (a)-(c) above;

(b) Facilitate, as appropriate, access to financial and technical assistance, technology transfer, training and other capacity-building measures;

(c) Issue a written caution, statement of concern or a declaration of non-compliance to the Party concerned;

(d) Decide on any other measure, as appropriate, in accordance with Article 26, paragraph 4 of the Protocol and the applicable rules of international law, bearing in mind the need for serious measures in cases of grave or repeated non-compliance.

G. *Review of procedures and mechanisms*

The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol shall undertake the review of the effectiveness of these procedures and mechanisms under the assessment and review provided for in Article 31 of the Protocol and take appropriate action.
