

January 2013

E



منظمة الأغذية
والزراعة للأمم
المتحدة

联合国
粮食及
农业组织

Food and
Agriculture
Organization
of the
United Nations

Organisation des
Nations Unies
pour
l'alimentation
et l'agriculture

Продовольственная и
сельскохозяйственная
организация
Объединенных
Наций

Organización
de las
Naciones Unidas
para la
Alimentación y la
Agricultura

COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 10 of the Provisional Agenda

Fourteenth Regular Session

Rome, 15 – 19 April 2013

THE STATUS OF THE COMMISSION

TABLE OF CONTENTS

	Paragraphs
I. Introduction.....	1-2
II. Background.....	3-6
III. The Commission's status in the light of recent developments within the FAO renewal process.....	7-17
IV. Budgetary implications of a change of the Commission's status	18
V. Review of the Commission's Statutes and Rules of Procedure in the light of the FAO reform.....	19-34
VI. Guidance sought	35

This document is printed in limited numbers to minimize the environmental impact of FAO's processes and contribute to climate neutrality. Delegates and observers are kindly requested to bring their copies to meetings and to avoid asking for additional copies. Most FAO meeting documents are available on the Internet at www.fao.org

I. INTRODUCTION

1. The Commission on Genetic Resources for Food and Agriculture (the Commission), at its Thirteenth Regular Session, expressed the view that it should maintain its current status as a Commission established under Article VI.1 of the FAO Constitution.¹ However, the Commission decided to keep its status and profile under review. It requested its Secretary to follow closely and report to the Commission on relevant developments within the FAO renewal process and to provide more detailed information regarding the advantages and disadvantages, and budgetary implications of a possible change of the Commission's status, for consideration by the Commission at this session. The Commission also requested the Secretary to review the Commission's Statutes and Rules of Procedure in the light of the outcome of the review of FAO's statutory bodies and the reform of the Technical Committees.²

2. This document provides information on relevant developments within the FAO renewal process, considers the advantages and disadvantages of a possible change of the Commission's status and reviews the Commission's Statutes³ and Rules of Procedure⁴ (RoP) in light of the outcome of the review of FAO's Technical Committees.

II. BACKGROUND

3. The Commission is a statutory body established by the FAO Conference (the Conference) under Article VI.1 of the FAO Constitution.⁵ According to this Article, the Conference or Council may establish commissions "*[...] to advise on the formulation and implementation of policy and to coordinate implementation of policy [...]*."

4. The framework governing the activities of the Commission consists of the FAO Constitution, the General Rules of the Organization (GRO), the Statutes of the Commission (hereinafter referred as the Statutes) and its Rules of Procedure (RoP), seen in the light of current Part O of Volume II of the Basic Texts of the FAO.⁶ The Commission reports to the Director-General, who brings to the attention of the Conference, through the Council, any recommendations adopted by the Commission that have policy implications, or that affect the programme or finances of the Organization.⁷

5. In pursuance of its mandate, the Commission has considerably contributed to the development and implementation of global, regional and national policies and regulatory frameworks for genetic resources for food and agriculture. The Commission negotiated the International Treaty on Plant Genetic Resources for Food and Agriculture, adopted by the FAO Conference in 2001. It also negotiated and agreed on global action plans for plant and animal genetic resources, Genebank Standards and other instruments. The fact that the Commission is considered a statutory body established under Article VI.1 of the Constitution never prevented it from contributing to and developing within its mandate, overall policies and regulatory frameworks.

6. Since 2007, the Commission has kept its status and profile under review. The Commission considered various options to change the Commission's status, including the option of re-establishing the Commission as a body under Article XIV of the FAO Constitution and the

¹ CGRFA-13/11/Report, paragraph 119.

² CGRFA-13/11/Report, paragraph 121.

³ CGRFA-14/13/Inf.2.

⁴ CGRFA-14/13/Inf.3.

⁵ C 1983, Resolution 9/83.

⁶ Principles and Procedures which should Govern Conventions and Agreements Concluded under Articles XIV and XV of the Constitution, and Commissions and Committees Established under Article VI of the Constitution.

⁷ Article 7 of the Statutes of the Commission.

option of transforming the Commission into a Technical Committee of FAO.⁸ At its last session, the Commission acknowledged the efficiency, effectiveness and flexibility of its current mode of operation and, while expressing the view that it should maintain its current status, decided to keep its status and profile under review.

III. THE COMMISSION'S STATUS IN THE LIGHT OF RECENT DEVELOPMENTS WITHIN THE FAO RENEWAL PROCESS

7. Within the context of the implementation of the Immediate Plan of Action (IPA) for FAO Renewal, various steps have been taken to improve the governance and strengthen synergies between global, regional and sub-regional bodies of FAO. The implementation of the IPA resulted, *inter alia*, in a review of FAO's statutory bodies and in a reform of FAO's Technical Committees.

The review of statutory bodies

8. In the context of the FAO reform process, the status of statutory bodies established under Article XIV (hereinafter referred to as Article XIV Bodies) has been under review since 2009 in response to IPA action 2.69⁹, with a view to allow Article XIV Bodies to exercise more financial and administrative autonomy and mobilize more funding from their members, while remaining within the framework of FAO and maintaining a reporting relationship with it.

9. The review of Article XIV Bodies by the Programme Committee, the Finance Committee and the Committee on Constitutional and Legal Matters (CCLM) is still on-going.¹⁰ The Committees have indicated that the review of financial and administrative authority of Article XIV Bodies is intrinsically complex given the differentiated nature of these bodies as well as different views of the Membership as to the degree of autonomy to be granted to them. The Council, at its Hundred and Forty-fifth Session in 2012, endorsed "*the adoption of a differentiated approach towards bodies established under Article XIV of the Constitution which had distinct statutory features and operational requirements*".¹¹ It further requested that "*the Administration reports on the implementation of the deliberations of the CCLM to the Finance and Programme Committees at their March session in 2013, and requested that a Report be submitted to the next session of the Council*".¹²

10. The Finance Committee, at its session in November 2012, decided to re-examine the matter in detail at its session in March 2013¹³ on the basis of information on the relevant outstanding issues and a matrix containing detailed information on the main characteristics of existing bodies. Meanwhile, without prejudice to the review that is under way before the Finance Committee, the Organization is taking steps to implement the deliberations of the CCLM, which identified areas where some relaxation could be implemented. As a general guiding principle, the CCLM held the view that increased delegation of authority to Article XIV bodies could be considered provided that the secretariats of those bodies be adequately staffed and appropriate oversight mechanisms by the Organization be in place and requested the CCLM to conduct a review in this regard.

11. Furthermore, the Director-General's Programme of Work and Budget 2014-2015¹⁴ proposes that a number of Article XIV Bodies should report to Heads of Department. This reflects, *inter alia*, a determination on the part of the Organization to facilitate the efficient operation of these bodies.

⁸ CGRFA-12/09/22; CGRFA-13/11/23.

⁹ C 2008/REP, Action Matrix.

¹⁰ See CL 136/9 (para.35), CL 137/5 (para 7-22) , CL 137/REP (para53); CL 140/8 para 27; CL 143/7 (para 19-24); CL145/2 (para.15-28).

¹¹ CL 145/REP, paragraph 34.

¹² CL 145/REP, paragraph 39.

¹³ FC 147/Rep, paragraphs 49-50.

¹⁴ C 2013/3.

12. The Commission, at its Twelfth Regular Session, examined, in some detail, the option of re-establishing the Commission as an Article XIV Body of the FAO Constitution which would require the adoption of a convention or agreement of international law.¹⁵ The Commission also considered the different features of Article XIV Bodies and bodies, like the Commission, that have been established under Article VI of the FAO Constitution. However, the Commission did not conclude that it should be re-established as an Article XIV Body and requested instead its Secretary to explore the option of transforming the Commission into a Technical Committee.¹⁶

The reform of FAO's Technical Committees

13. In 2009, the FAO Conference, adopted changes to the Constitution and the GRO which reflect the general distinction between so-called "committees of restricted membership" which deal with financial, administrative, programme and legal matters (the Programme Committee, the Finance Committee and the Committee on Constitutional and Legal Matters) and the "technical committees of open membership" of the Council (the Committee on Commodity Problems, the Committee on Fisheries, the Committee on Forestry and the Committee on Agriculture).¹⁷ The Conference also clarified the status of the Technical Committees as Governing Bodies and adopted a definition of Governing Bodies according to which these contribute, within their respective mandates, to:

- (a) *the definition of the overall policies and regulatory frameworks of the Organization;*
- (b) *the establishment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget, and*
- (c) *exercise, or contribute to the oversight of the administration of the Organization.*¹⁸

14. The amendment to the FAO Constitution also clarified that the Technical Committees report to the Council on programme and budget matters, and to the Conference on policy and regulatory matters.¹⁹

15. The reform of the Technical Committees also aimed at enhancing their role in the FAO priority-setting cycle. To this end, the Conference agreed on a revised schedule of sessions of the Governing Bodies of the Organization which ensures their full involvement in the preparation of the Strategic Framework, the Medium Term Plan and the Programme of Work and Budget and in the monitoring of the performance of the Organization against relevant performance indicators.²⁰

16. Given the improved status of Technical Committees within the constitutional framework of FAO, a transformation of the Commission into a Technical Committee may appear as promising. However, the establishment of a new Technical Committee should also be seen in the general context of the FAO reform. It is noteworthy, that the IPA, while envisaging detailed actions to strengthen FAO governance with respect to ensuring the independence, transparency and efficiency of the Governing Bodies, including the Technical Committees, does not foresee the establishment of any additional Technical Committee. The creation of an additional Technical Committee could therefore be considered as incompatible with the Members' general guidance regarding the strengthening of FAO governance. There is also the risk that proliferation of Technical Committees could lead to more fragmented and less strategic consideration of FAO's technical areas of work.

17. Even if not transformed into a Technical Committee, the Commission may continue to contribute, within its mandate, to the definition of overall policies and regulatory frameworks and may also provide, within its area of expertise, comments and suggestions relevant to FAO's

¹⁵ FAO Constitution, Article XIV.

¹⁶ CGRFA-12/09/Report, paragraph 102.

¹⁷ C 2009/Rep, Resolutions 5/2009 and 6/2009.

¹⁸ Basic Texts, Volume II, Part B.

¹⁹ FAO Constitution, Article V, paragraph 6 (b).

²⁰ C 2009/REP, Resolution 10/2009.

Strategic Framework, Medium-Term Plans and Programmes of Work and Budget.²¹ In 2009, the FAO Conference requested the Commission “to report on its work to future sessions of the Conference.”²² The report of the Commission’s Fourteenth Regular Session will be on the agenda of the forthcoming Thirty-eighth Session of the FAO Conference (15-22 June 2013).

IV. BUDGETARY IMPLICATIONS OF A CHANGE OF THE COMMISSION’S STATUS

18. The re-establishment of the Commission as an Article XIV Body would have considerable budgetary implications, given that Article XIV Bodies are expected to assume a portion or a percentage of their expenses, and as far as possible to rely on contributions from the members of the relevant constituent conventions and agreements, instead of the Regular Programme. On the other hand, statutory bodies established under Article VI of the FAO Constitution mainly – and often exclusively – rely on the FAO Regular Programme. Thus, in considering the option of re-establishing the Commission as an Article XIV Body, the Commission should take into account that membership of such Article XIV body would come at a cost, whereas membership of the Commission does not place any financial burden on its Members.

V. REVIEW OF THE STATUTES AND OF THE RULES OF PROCEDURE OF THE COMMISSION IN LIGHT OF THE FAO REFORM

19. The Commission requested the Secretary to review the Commission’s Statutes and Rules of Procedure in the light of the outcome of the review of FAO’s statutory bodies and the reform of the Technical Committees.

20. The Council, at its session in May 2010, invited the Technical Committees to examine their Rules of Procedure, taking into account the recommendations of the CCLM²³ in response to the IPA actions 2.56 – 2.63, as approved by the Conference at its Thirty-fifth (Special) Session²⁴. These recommendations relate to the role of the Chair/ Bureau; reporting lines and structure of meeting reports; and the timing of sessions.

a) Role of the Chairperson and other officers during and between the sessions

21. In line with the IPA call for an enhanced intersessional role of the Chairperson of the Technical Committees, the CCLM considered that a generic reference to the functions of the steering committee or bureau such as “ensuring preparations for the sessions” could be added to the Rules of Procedure.

22. The Commission already operates with a Bureau (a Chairperson and six Vice-Chairpersons, each coming from one of the seven regions) which stays in office between the Commission’s regular sessions.²⁵ According to Rule III.5 of the RoP, the Chairperson and the Vice-Chairpersons “provide guidance to the Secretary with regard to the preparations for, and conduct of, sessions of the Commission.” Since 2007 the Commission’s Bureau has played an active role between sessions; in 2009, the Commission confirmed the Bureau’s active intersessional role with the adoption of its Rules of Procedure.

²¹ The Director-General’s Medium Term Plan 2014-17 and Programme of Work and Budget 2014-15 is contained in the document C 2013/3.

²² C 2009/REP, paragraph 172.

²³ CL 139/6.

²⁴ C 2008/REP, Action Matrix.

²⁵ The Commission’s Bureau is elected at the first regular session of each biennium and its term of office commences with “immediate effect upon closure of the session”, Rule III.3 RoP.

b) The timing of sessions

23. The timing of sessions of the Technical Committees has been amended through Conference Resolutions 10/2009²⁶, with a view to strengthen their role in the establishment of the Strategic Framework, the Medium-Term Plan and the Programme of Work and Budget and in the oversight of relevant areas of the administration of FAO.

24. According to its Statutes, the Commission shall report to the Director-General, who shall bring to the attention of the Conference through the Council any recommendations adopted by the Commission, which have policy implications, or which affect the programme or finances of the Organization.²⁷ However, the FAO Conference, in 2009, requested the Commission “*to report on its work to future sessions of the Conference.*”²⁸ Since then, the Commission has been reporting to Conference or Council and the report of the Commission’s Fourteenth Regular Session will be on the agenda of the forthcoming Thirty-eighth Session of the FAO Conference (15-22 June 2013). The Commission may wish to ensure through an amendment of its RoP that the Programme and Finance Committees of FAO may, in addition to the reports of the Technical Committee, also take into consideration the report of the Commission in formulating advice to the Council. A possible amendment of the RoP to this end is provided in paragraph 35 (a) of this document.

c) Reports

25. In response to the IPA, the CCLM also recommended amendments to the rules of procedures of the Technical Committees regarding the clarity of meeting reports. The Commission may wish to specify in its RoP that it will make every effort to ensure that recommendations are precise and can be implemented. A possible amendment of the RoP to this end is provided in paragraph 35 (b) of this document.

d) Participation of Non-Governmental and Civil Society Organizations

26. At its 143rd Session, the FAO Council recommended “that the Organization’s Rules and procedures applicable to observers be in line with those in force in the United Nations.”²⁹ ECOSOC Resolution E/1996/31 of July 25, 1996, which outlines the eligibility requirements for consultative status, rights and obligations of non-governmental organizations in consultative status, procedures for the withdrawal or suspension of consultative status, the role and functions of the ECOSOC Committee on non-governmental organizations, and the responsibilities of the UN Secretariat in supporting the consultative relationship, was specifically referred to in a document reviewed by the Programme Committee at its 108th Session.³⁰

27. The Commission’s Statutes and RoP refer with regard to observers to the relevant provisions of the rules and principles adopted by the Conference which, however, only refer to a small fraction of stakeholders, namely international non-governmental organizations (INGOs).

28. Paragraph 3 of Rule XVII of the GRO on “Participating International Organizations” states: “*An observer of any international non-governmental organization having consultative status, accompanied by advisers and assistants, may attend the plenary meetings of the Conference and the meetings of any commission, of any technical committee of a commission and of any technical committee established under Rule XV. Such observers may, without vote, speak before such commissions and committees, participate in the discussions therein upon the request of the Chairperson and, with the consent of the General Committee, speak before plenary meetings of the Conference. They may circulate to the Conference, without abridgement, the views of the organizations which they represent.*” Arrangements for consultation, cooperation and liaison with INGOs are set out in Part L “*Cooperation with International Non-Governmental*

²⁶ C 2009/REP, Resolution 10/2009.

²⁷ Statutes, Article 7.

²⁸ C 2009/REP, paragraph 172.

²⁹ CL 143/REP, paragraph 22b).

³⁰ PC 108/10, para. 14 and Annex.

Organizations”, Part M “*FAO Policy Concerning Relations with International Non-Governmental Organizations*”, and Part N “*Granting of Observer Status (in respect of International Governmental and Non-Governmental Organizations)*” of Volume II of the FAO Basic Texts.

29. A number of statutory bodies and commissions, however, have developed specific rules and procedures. Examples include the “Principles concerning the Participation of International Non-governmental Organizations in the work of the Codex Alimentarius Commission” or the Civil Society Mechanism developed within the framework of the Committee on World Food Security (CFS)³¹ which goes well beyond the participatory status stipulated in the Basic Texts of the Organization.

30. A wider range of stakeholders, including the private sector, civil society, NGOs and foundations, is increasingly recognized at the national and global levels. New mechanisms are being put in place to involve their representatives in consultation and decision-making processes, as well as in the implementation of jointly developed work plans. Calls for global governance mechanisms that use common platforms to address national priorities are repeatedly advocated by a growing number of stakeholders from a wider variety of sectors.

31. More specifically, the steady increase in number and diversity of CSOs/NGOs in relation with FAO as well as the growing importance of country-owned multi stakeholder’s development processes call for pragmatic suggestions on how to develop FAO-CSOs/NGOs relations further. A number of statutory bodies or commissions have their own procedures allowing for the presence and participation of INGOs. Notably, the CFS Members have decided that, in addition to a specific category of observers, INGOs may be registered as participants in sessions of the CFS and no longer only observers.

32. In addition, Members have recognized the right of CSOs to autonomously establish a global mechanism for food security and nutrition which functions as a facilitation body for CSOs/NGOs consultation and participation in the CFS. As a result, the Civil Society Mechanism (CSM) is one of the largest international mechanisms of CSOs seeking to influence agriculture, food security and nutrition policies and actions at the national, regional and global level. It has been quite active during the intergovernmental negotiations of the *Voluntary Guidelines on responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security*.

33. In the last ten years, UN organizations have stepped up efforts to develop further engagement with a variety of stakeholders. Often, governments have reacted defensively. As a consequence, all attempts made to improve UN-NGOs relationship have failed.³²

34. Through its work on governance and standard-setting, FAO’s and the Commission’s roles have evolved over time. As a consequence, the Basic Texts of the Organization on civil society participation will need to be reconciled with the general trend towards more substantive involvement of non-governmental stakeholders. FAO is currently in the process of reviewing current rules and procedures aiming at enhancing collaboration of civil society with FAO, i.e. *access* and *participation*. The review will include broad consultations with representatives of CSOs/NGOs and its results will be reported to the Commission.

VI. GUIDANCE SOUGHT

35. The Commission may wish to:

- a) Reaffirm the position that it should maintain its current status as a Commission established under Article VI.1 of the FAO Constitution;

³¹ See CFS: 2009/2 Rev.2.

³² As a notable exception, at the end of 2011, the World Health Organization (WHO) Executive Board requested its Director-General to conduct further analysis on proposals to promote engagement with stakeholders.

- b) Amend its Rules of Procedure, as follows
- i. Rule IV.1 shall read:
The Commission shall normally hold one regular session each biennium. It may also decide to convene extraordinary sessions as necessary, subject to the approval of the FAO Council. Sessions of the Commission shall normally be held at the Organization's Headquarters. Regular sessions shall be held with timing that enables the Programme and Finance Committees to take into consideration the report of the Commission in formulating advice to the Council. Regular sessions shall normally not exceed five days. Sessions shall normally be preceded by regional consultations with appropriate facilities.
 - ii. The following paragraph 2 shall be added to Rule XI:
2. The Commission shall make every effort to ensure that recommendations are precise and can be implemented.
- c) Request the Secretary to report to the Commission, at its next session, on new developments in FAO with regard to the status of observers.