



**Food and Agriculture  
Organization of the  
United Nations**



**The International Treaty**  
**ON PLANT GENETIC RESOURCES**  
**FOR FOOD AND AGRICULTURE**

## **Item 20 of the Provisional Agenda**

### **SEVENTH SESSION OF THE GOVERNING BODY**

**Kigali, Rwanda, 30 October – 3 November 2017**

### **Procedures for the Appointment and Renewal of the Secretary of the Governing Body of the International Treaty**

#### **Executive Summary**

This document has been prepared by the FAO Legal Office pursuant to the decision of the FAO Council and at the request of the Governing Body of the Treaty. It relates to the long-term procedures for the selection and appointment of the Secretary of the Governing Body of the International Treaty.

#### **Guidance Sought**

The Governing Body is invited to consider the proposed procedures and draft Resolution provided in this document and provide its guidance on the matter.

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detail/en/c/888771/](http://www.fao.org/plant-treaty/meetings/meetings-detail/en/c/888771/)*



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## I. BACKGROUND

1. This document proposes a new procedure for the selection and appointment of the Secretary of the International Treaty on Plant Genetic Resources (“the Treaty”) for adoption by the Governing Body of the Treaty. The procedure would supersede that procedure set out in Appendix J.2 of the Governing Body Report IT/GB-1/06/Report. It also addresses the renewal of the term of office of a Secretary in light of the request from the Governing Body contained in Resolution 12/2015.

2. Article 20 of the Treaty provides that the Secretary of the Governing Body “*shall be appointed by the Director-General of FAO, with the approval of the Governing-Body*”.<sup>1</sup> This Article is also reflected in Rule III of the Rules of Procedure of the Treaty.<sup>2</sup>

3. Article 20 of the Treaty mirrors paragraph 32(iii) of the “*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*” (“the Principles and Procedures”). Under the Principles and Procedures, “*the basic texts of bodies established under Article XIV of the Constitution shall specify that (...) the Secretary of each body shall be appointed by the Director-General and shall be administratively responsible to him. In the case of bodies referred to in paragraph 33(c) [i.e. bodies that, in addition to being financed by the Organization, have autonomous budget], the basic texts may specify that the Secretary shall be appointed by the Director-General after consultation with, or with the approval or concurrence of, the members of the body concerned*”<sup>3</sup>.

4. At its first Session in 2006<sup>4</sup>, the Governing Body adopted *the Procedures for the Appointment of the Secretary of the Governing Body of the International Treaty* (“the 2006 Procedures”) and the *Terms of Reference of the Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture* (“the Terms of Reference”). The 2006 Procedures indicated that the term of office of the Secretary was for four years and was renewable,<sup>5</sup> but did not establish a renewal procedure.

5. In 2014, when the second term of office of the former Secretary<sup>6</sup> was drawing to a close, some discussion arose concerning the need for a procedure for the renewal of the appointment of the Secretary. Consequently, at its 6<sup>th</sup> Session, the Governing Body adopted Resolution 12/2015<sup>7</sup> requesting the FAO Secretariat to prepare, in consultation with the Bureau, a procedure for renewal of the appointment of the Secretary of the Governing Body, for consideration and adoption by the Governing Body at its next Session in 2017, as well as to propose adjustments to the appointment procedure which would apply to future selection processes for the position of Secretary. At the same time, in light of shortcomings that had arisen in connection with the appointment procedure of Secretaries of the Indian Ocean Tuna Commission (“IOTC”), the General Fisheries Commission for the Mediterranean (“GFCM”) and the Treaty, the broader issues related to the selection and appointment procedures were referred to various Governing Bodies of FAO, including the Council.

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<sup>1</sup> FAO Basic Texts, Part O, Appendix.

<sup>2</sup> Rule III reads as follows : “*In accordance with Article 20.1 of the Treaty, the Director General of the FAO shall appoint, with the approval of the Governing Body, a Secretary of the Governing Body to perform the functions included in Articles 20.2 to 20.5 of the Treaty. The Secretary shall be assisted by such staff as may be required.*”

<sup>3</sup> Adopted by the 9th Session of the FAO Conference in 1957.

<sup>4</sup> IT/GB-1/06/REPORT, Appendices J.1.

<sup>5</sup> IT/GB-1/06/REPORT, Appendix J.1 under the Terms of reference - “*The Term of Office is four years, renewable.*”

<sup>6</sup> The former Secretary was selected and appointed under the 2006 Procedures in 2006. (See IT/GB-1/06/REPORT, Appendix J.2)

<sup>7</sup> IT/GB-6/15/Report, Appendix A12

## II. REASSESSMENT OF THE APPOINTMENT PROCEDURE FOR SECRETARIES OF ARTICLE XIV BODIES

6. Three treaties concluded under Article XIV of the FAO Constitution establish that the Secretary is appointed by the Director-General with the approval of the body concerned: the Agreement establishing the IOTC, the Agreement establishing the GFCM, and the Treaty.

7. A practice developed for a number of years within IOTC, GFCM and, to some extent, the Treaty, whereby paragraph 32(iii) of the Principles and Procedures referred to above in paragraph 3, was implemented through the election of a candidate by the Members of the body concerned with no, or very limited, involvement of the FAO Secretariat. The elected candidate would be subsequently referred to the Director-General for appointment as a matter of simple formality. That practice did not seem to be in line with the ordinary meaning of the Principles and Procedures, nor the provisions of the treaties which provide that the Secretaries “*are appointed by the Director-General with the approval of the body concerned*”<sup>8</sup> and which do not call, anywhere, for the conduct of an election. In addition, an election procedure was inappropriate for what is, and should remain, a professional appointment. It was also unprecedented in the United Nations System.

8. The Committee on Constitutional and Legal Matters (“CCLM”) at its 103<sup>rd</sup> session, the Joint Meeting of the 120th Session of the Programme Committee and the 164th Session of the Finance Committee (“the Joint Meeting”) examined the issue of the procedure for the selection and appointment of Secretaries of bodies established under Article XIV of the FAO Constitution and other entities hosted in FAO. The CCLM acknowledged the need to balance the functional autonomy of Article XIV Bodies with legal and administrative responsibilities borne by the Organization for such bodies.<sup>9</sup> The Joint Meeting stressed the urgency of filling vacant positions of Executive Secretaries of two Article XIV bodies, namely the IOTC and the Treaty.

9. The Council at its 155th session reviewed the reports of the CCLM and the Joint Meeting and noted that, under the Principles and Procedures established by the Conference and the provisions of the treaties concerned, the secretaries were appointed by the Director-General with the approval of the bodies concerned. While acknowledging the need to balance the functional autonomy of Article XIV bodies with the responsibilities borne by the Organization for such bodies. It stressed the urgency of filling vacant positions of Secretaries of two Article XIV Bodies, the IOTC and the Treaty<sup>10</sup>.

10. The Council decided that the following process should be followed:

*a. with immediate effect, the Independent Chairperson of the Council (ICC) and the FAO Secretariat will consult with the concerned Article XIV Bodies with a view to developing a proposal on procedures for the appointment of Secretaries of concerned Article XIV Bodies acceptable to the Bodies and to be submitted to the FAO Council by the end of 2018;*

*b. also immediately, on an exceptional basis and without setting any precedent, the Director-General will issue Vacancy Announcements for the appointment of two Secretaries (IOTC and ITPGRFA). This will follow standard procedures for the appointment of FAO Senior Staff, with inclusion of two representatives of Members, to be decided by the Bodies, in interview panels and subsequent referral by the Director-General of one candidate to the Bodies for approval at their next session; and*

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<sup>8</sup> Basic Texts, Volume 2, Part O, paragraph 32 iii

<sup>9</sup> CL 155/2; CL 155/7 (paras. 9-12); CL 155/PV/5; CL 155/PV/6; CL 155/PV/7; CL 155/PV/8

<sup>10</sup> CL 155/REP 9 (paras. 25-27)

c. the Secretaries referred to in sub-para (b) will be appointed for two years subject to confirmation by the concerned Body of the appointment at the end of that period.<sup>11</sup>

11. Taking into account the Council's guidance, a selection procedure was initiated to appoint a Secretary of the Governing Body of the Treaty for two years. By letter of 22 June 2017, the Director-General informed Mr Muhamad Sabran, Chairperson of the Governing Body of the Treaty, of the proposed appointment of Mr Kent Nnadozie, the candidate selected by the Director-General following a review of the Report of the Interview Panel established under the selection procedure. This matter is being considered under another item of the agenda.

### III. CONSIDERATIONS PERTAINING TO THE APPOINTMENT PROCEDURE

12. The views of the FAO Secretariat on the appointment procedure for Secretaries of Article XIV bodies were presented to the Members in great detail in a number of documents. Reference is made, in particular, to documents JM 2016.2/6 and CCLM 103/2 "*Procedure for the selection and appointment of Secretaries of Article XIV does and of other entities hosted in FAO*".

13. It is briefly recalled that, while Article XIV bodies enjoy a measure of functional autonomy in implementing their programme of work, administratively they are integrated with and in FAO, operate under the framework of FAO, and commit FAO and its Members in all their activities. Their constituent instruments do not vest the bodies with legal personality<sup>12</sup>.

14. Treaties under Article XIV are negotiated and adopted within FAO, in accordance with procedures set forth in the Constitution, the General Rules of the Organization ("GRO") and the above-mentioned Principles and Procedures. While these bodies may adopt and amend their Rules of Procedures and Financial Regulations, they must be consistent with the institutional framework of FAO. These bodies operate under, and in accordance with, the FAO's general policies. Any amendments to the constituent agreements must be reported to the Council or the Conference, which have the power to disallow them if they find that the amendments are inconsistent with the objectives and purposes of FAO or the provisions of the Constitution.

15. Staff of Article XIV bodies are officials of FAO appointed by the Director-General and are subject to FAO Staff Regulations and Rules, as well as to the authority of the Director-General, notwithstanding any autonomy which they may enjoy in technical matters related to the discharge of their functions for the bodies concerned. Any grievances which these staff may allege in connection with their terms and conditions of employment are, as for other staff employed by FAO, referred to the FAO Appeals Committee and the Administrative Tribunal of the International Labour Organization, where the Director-General is the respondent.

16. Similarly, it is FAO, and the Director-General as its legal representative, that must address any liabilities arising from the activities of Article XIV bodies, for instance, in connection with arbitration proceedings which could be brought against those bodies.

17. The privileges and immunities enjoyed by Article XIV bodies and their personnel are the privileges and immunities of the Organization. Thus, for example, any fiscal or other exemptions from which these bodies may benefit for their activities are those granted to FAO; there is no independent or separate entitlement to such treatment.

18. Under this general framework a few specific considerations are relevant:

18.1. The Treaty provides for two parties (i.e. the Director-General and the Body) to have a role in the appointment process. The practice of holding elections, whereby the FAO Secretariat and

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<sup>11</sup> CL 155/REP 9 (para. 27)

<sup>12</sup> CL127, paragraph 90

the Director-General were *de facto* eliminated from the appointment process, is considered to be inherently incompatible with the provisions of the various treaties. The provisions of the Treaty are similar to those of the GRO concerning the appointment of Deputy Directors-General, who are appointed by the Director-General, subject to confirmation of the Council. The application of the GRO has never resulted in elections for the positions of Deputy Directors-General. Rather, the Director-General proposes a candidate and it is up to the Council to accept or reject the proposed appointment. The same should apply to Article XIV bodies, with the Director-General and the Body concerned each remaining within their respective roles. More importantly, this approach reflects a general practice throughout the United Nations System in the implementation of similar provisions.

18.2. While FAO and the Director-General have been excluded from the processes to select the Secretaries of the bodies concerned, they have remained fully responsible and accountable for the performance and conduct of the Secretaries. Under the FAO institutional and legal framework, it is FAO and the Director-General, as the ultimate legal representative of FAO and of the Article XIV bodies concerned, who are compelled to address, and respond to, the consequences of shortcomings and deficiencies in the performance or conduct of the Secretaries. This accountability arises notwithstanding the fact that, they had limited or no involvement in the assessment and selection of the Secretaries through election processes.

18.3 The appointment of Secretaries of Article XIV bodies must be primarily seen as an appointment of a professional staff member, allowing for an assessment of the qualifications of the candidates, for proper reference checks, and for any assessment of all the candidates from the perspective of their integrity and conduct. These verifications are normal and important elements of the process related to any professional appointment in the United Nations System.

18.4 The practice that has developed of holding elections to select the Secretaries of some Article XIV bodies has had the practical consequence of undermining the impartiality, independence and autonomy which should characterize the activities undertaken by the Organization, including its Article XIV bodies, and their multilateral nature. Secretaries are entrusted with assisting Article XIV bodies to carry out their functions. However, in seeking election, or having been elected, officials will tend to regulate their conduct taking into account the positions of those who elected them or who might do so in the future, rather than discharging their functions on an impartial independent basis. This conduct is incompatible with the obligation of loyalty of a staff member *vis-à-vis* the Organization (and through the Organization, the body concerned), as well as the Standards of Conduct of the International Civil Service.

#### IV. PROPOSED PROCEDURE

19. The proposed procedure reflects the *ad hoc* procedure implemented in response to the guidance of the 155th Session of the Council, whereby the appointment of the Secretaries should follow the procedures for appointment of FAO Senior Staff with some adjustments. The standard process is set out in Annex I to this document. Two representatives of Members would participate in the interview panel. It is the considered opinion of the FAO Secretariat that this procedure should apply to all Article XIV bodies whose Secretaries are appointed by the Director-General subject to approval of the bodies concerned.

#### V. CONCLUSION

20. The Governing Body is invited to review and adopt the draft resolution set out in Annex II to this document and entitled “*Selection and Appointment of the Secretary of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture*”.

## ANNEX I

### STANDARD PROCESS FOR SELECTION AND APPOINTMENT OF FAO SENIOR STAFF

The standard procedures for appointment of FAO Senior Staff are as follows:

1. A Vacancy Announcement is drafted by technical departments with support of the Office for Human Resources (“OHR”);
2. A Vacancy Announcement is issued for the positions of senior staff members (D1 and above).
3. The Vacancy Announcement is closed after 46 days, in line with standard timing and practice.
4. A first review and screening of candidates is undertaken by OHR based on minimum criteria and qualifications as set out in the Vacancy Announcement.
5. A second review is undertaken by the offices of the relevant Deputy Directors-General and Assistant-Directors-General to establish a shortlist of candidates for interview. The interview shortlist must contain at least 10 candidates, with at least 1 female candidate.
6. An interview panel is established, which is composed of: the Chairperson (from the offices of the relevant Deputy Director-General), two Senior FAO officers, one external member, and one Human Resources representative (for process support).
7. Interviews of shortlisted candidates are conducted by the interview panel.
8. Submission of the report of the interview panel for consideration by the Director-General. The report will identify a minimum of five qualified candidates, including at least one female candidate. If there is no female candidate, the panel report must contain a justification for this omission.
9. Reference checks are undertaken by OHR and the managerial capabilities of the listed candidates are reviewed by an external company.
10. The Director-General selects one candidate.
11. Confirmation by the candidate.
12. Appointment.

## ANNEX II DRAFT RESOLUTION

### SELECTION AND APPOINTMENT OF THE SECRETARY OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

The Governing Body,

**Noting** that the process for the appointment of a Secretary of the Governing Body of the Treaty under Article 20 thereof is set forth in Appendix J of the Report of the First Session of the Governing Body entitled “Terms of Reference of the Secretary of the Governing Body and Procedures for the Appointment of the Secretary” (Document IT/GB-1/06/Report Appendix J), hereinafter referred to as “the 2006 Procedures”;

**Noting** the desirability of establishing new procedures for the selection and appointment of the Secretary of Treaty on Plant Genetic Resources for Food and Agriculture under Article 20.1 of the Treaty, whereby “*The Secretary of the Governing Body shall be appointed by the Director-General of FAO, with the approval of the Governing Body*”;

**Noting** the desirability of establishing procedures for the renewal of the appointment of the Secretary and, in particular, Resolution 12/2015 requesting the FAO Secretariat to prepare a procedure for the renewal of the appointment of the Secretary of the Treaty for consideration and adoption by the Governing Body at its next session in 2017, as well as to propose adjustments to the appointment procedure of the Secretary of the Treaty;

**Noting** the guidance of the 155<sup>th</sup> Session of the FAO Council that, inter alia, the appointment of the Secretaries should follow the procedures for appointment of other FAO Senior Staff;

**Agrees** to the following procedures for the selection and appointment of the Secretary of the Treaty (Section A), for the renewal of the appointment (Section B) and to address related matters (Section C):

#### A. SELECTION AND APPOINTMENT OF THE SECRETARY OF THE TREATY

1. The Director-General will issue, in conformity with FAO’s procedures, a Vacancy Announcement incorporating the Terms of Reference for the Secretary of the Treaty agreed upon by the Governing Body at its First Session in 2006 and set out in Appendix J.1 to the Report of that session (Document IT/GB-1/06/Report). The Vacancy Announcement will be publicized with a view to reaching the greatest possible number of candidates.
2. The applications received will be first screened by the Office of Human Resources (“OHR”) of FAO, which will establish a list of qualified candidates based on the minimum criteria and qualifications set out in the Vacancy Announcement.
3. The list of qualified candidates will be reviewed and assessed by the offices of the relevant Deputy Directors-General and Assistant Directors-General to identify a shortlist of at least ten candidates, with one female candidate, to be interviewed by a Selection Panel. In the assessment of the qualified candidates, paramount consideration will be given to the essential requirements of competence and technical qualifications as set out in the Vacancy Announcement and the Terms of Reference of the Secretary of the Treaty, having due regard to gender and geographic representation.
4. The Selection Panel will consist of two senior FAO Officers, one official of OHR (rapporteur), and two representatives of the Parties to the Treaty, designated by the Bureau.
5. The Selection Panel will interview the short-listed candidates and submit a Report to Director-General recommending a list of maximum of five candidates for consideration for the post. The list

must include at least one female candidate. If there is no female candidate, the Report of the Selection Panel will include a justification for not including a female candidate on the list.

6. The Director-General, following careful consideration of the Report of the Selection Panel, will select one candidate for the position and refer the selected candidate to the Governing Body for its approval.
7. Upon approval by the Governing Body, the Director-General will appoint the candidate.

**B. RENEWAL OF THE APPOINTMENT OF THE SECRETARY OF THE TREATY**

8. Prior to expiry of the first term of office of the Secretary, the Director-General, taking into consideration the performance of the Secretary, and in consultation with the Chairperson of the Governing Body of the Treaty, will make a recommendation to the Bureau regarding the renewal of the Secretary's appointment, for endorsement. The recommendation will be referred to the Governing Body for approval.
9. The procedure set out in Section A will apply in all cases of non-renewal of the appointment of the Secretary, including where the second term of office of the Secretary is due to expire. In determining when to initiate the process, due regard shall be had to the time required for its implementation.

**C. RELATED ISSUES**

10. The Secretary is appointed for a term of four years, which may be renewed only once for another term of four years [or less?].
11. In case the Secretary resigns before completion of the four-year term, the procedure set out in Section A of this Resolution will apply and the selected candidate will be appointed on an *ad interim* basis pending the approval of the Governing Body.
12. The procedures set out in this Resolution supersede and replace those adopted by the Governing Body at its First Session in 2006 (set out in Appendix J.2 to the Report of that session (Document IT/GB-1/06/Report)).