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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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**Procedures for the appointment of Secretaries of bodies under Article XIV
of the Constitution**

I. Introduction

1. This document addresses the processes for the selection and appointment of Secretaries of bodies established under Article XIV of the FAO Constitution. This matter is referred to the Committee in accordance with Rule XXXIV, paragraph 7, of the General Rules of the Organization (“GRO”) and, as described below, it has been the subject of extensive consideration by the Governing Bodies and two Article XIV bodies.
2. The present document provides information on the consultations carried out by the Independent Chairperson of the Council (ICC) on the matter, in light of the decision of the Council at its 155th Session on the development of a proposal on procedures for the appointment of secretaries of concerned Article XIV bodies. The present document also sets out a proposal that the interim procedure that has been applied to the most recent selection and appointment of the Secretaries of the International Treaty on Plant Genetic Resources for Food and Agriculture (“the Treaty” or “the ITPGRFA”) and the Indian Ocean Tuna Commission (“the Commission” or “the IOTC”) respectively, be confirmed as the long-term procedure for such appointments. The procedure is set out in the annex to this document.

II. Background

3. The Committee at its 103rd Session and 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 Committee acknowledged the need to balance the functional autonomy of Article XIV bodies with

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legal and administrative responsibilities borne by the Organization for such bodies.¹ The Joint Meeting stressed the urgency of filling vacant positions of Executive Secretaries of two Article XIV bodies, namely the IOTC and the Treaty.

4. Subsequently, the Council, at its 155th Session reviewed the reports of the Committee and the Joint Meeting and noted that, under the Principles and Procedures established by the Conference on Article XIV Bodies² and the provisions of the treaties concerned, the Secretaries were appointed by the Director-General with the approval of the bodies concerned. It acknowledged 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.³ 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

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.⁴

III. Implementation of the Council's guidance concerning the interim procedure

5. Following the Council's guidance, a selection procedure was initiated to appoint a Secretary of the Governing Body of the Treaty for two years. Two representatives from the Governing Body of the Treaty (the Chairperson and a Member of the Bureau) participated in the interview panel and subsequent selection panel deliberations. By letter of 22 June 2017, the Director-General informed the 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. At the Seventh Session of the Governing Body of the Treaty, convened from 30 October to 3 November 2017, the proposed appointment of Mr Kent Nnadozie as Secretary for a period of two years was approved.⁵

6. Similarly, a selection process for the selection and appointment of the Executive Secretary of the IOTC was launched.⁶ Two representatives from the Commission (the Chairperson and the Head of Delegation of one of the Members of the IOTC) participated in the interview panel and subsequent selection panel deliberations. By Circular State Letter of 29 April 2017, the Director-General informed

¹ 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

² Basic Texts, Volume II, Section O.

³ CL 155/REP 9 (paras. 25-27)

⁴ CL 155/REP 9, para. 27.

⁵ Report of the Seventh Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, IT/GB-7/17/Report, para 45.

⁶ Report of the 21st Session of the Indian Ocean Tuna Commission, IOTC-2017-S21-R[E], para. 11.

the Chairperson of the Governing Body of the Treaty of the proposed appointment of Dr Christopher O'Brien, the candidate selected by the Director-General following a review of the Report of the Interview Panel established under the selection procedure. At its 21st Session, the Commission approved the appointment of Dr Christopher O'Brien as Executive Secretary.⁷

IV. Implementation of the Council's guidance concerning the development of the long-term procedure

7. As directed by the Council, consultations were also initiated under the auspices of the Independent Chairperson of the Council ("ICC"), Mr Wilfred Ngirwa, aimed at developing a proposal on the long-term procedures for the appointment of Secretaries to be submitted to the Council.

8. On 25 January 2017, the ICC sent a letter to the Chairperson of the Treaty providing information on the outcome of the deliberations of the Council on this matter. Subsequent to that, the ICC travelled to Oslo (Norway) on 1 and 2 March 2017 for a meeting of the Bureau of the Treaty. In the course of this meeting, the ICC met the Chairperson of the Treaty and Members of the Bureau and provided information on the *ad hoc* procedure and the proposed long-term procedure, with particular reference to the long-term procedure.

9. The Governing Body of the Treaty failed to reach a consensus at its Seventh Session on the proposed long-term procedures due to concerns raised regarding the shared responsibility of the FAO Secretariat and the Governing Body. Therefore, it decided to revisit this issue at its Eighth Session and requested the FAO Secretariat to reconsider the proposal, in close consultation with the Bureau, requesting that it more appropriately reflect the concerns raised at the Seventh Session. The Eighth Session of the Governing Body of the International Treaty will be held in 2019.⁸

10. As regards the IOTC, by letter of 25 January 2017, the ICC informed the Chairperson of the Commission of the deliberations of the Council at its 155th Session in December 2016, both on the *ad hoc* procedure and on the proposed long-term procedure. The ICC also held discussions with the Chairperson of the IOTC on the occasion of a visit to Rome. On 2 May 2017, the ICC sent a further letter to the Chairperson of the IOTC suggesting that the long-term procedure be based on the process that had recently applied to fill the position of Executive Secretary. The ICC also attended the 21st Session of the Commission, in Yogyakarta, Indonesia, 22-26 May 2017. In a detailed statement to the Commission, ICC reiterated the proposal that the long-term procedure be based on the interim procedure.

11. Following a debate, the Commission did not agree to the permanent process proposed by the FAO Secretariat, on the basis that it was inconsistent with the Commission's Rules of Procedures. It formed a drafting group tasked with finalising a proposal for amendment of the IOTC Rules of Procedure for the consideration of the 22nd Annual Session of the Commission and, following approval, for submission to the FAO Council. The 22nd Session of the Commission (S22) will be convened in May 2018.⁹ The FAO Secretariat has also, through Circular State Letter to IOTC Members of 19 September 2017, presented its views on the matter under discussion.

⁷ Ibid., para 12.

⁸ ITPGRFA Report, para 47.

⁹ IOTC Report paras 15 & 16

V. Proposal for the establishment of a long-term procedure

12. Considering the limited progress made to date, and the timetables set by the Treaty and the Commission for their internal deliberations on this matter, the FAO Secretariat requests the Committee and, through the Committee, the Council to provide guidance on how the matter should be addressed [particularly noting the Council's decision to consider proposals for a long-term procedure in December 2018].

13. In this context, the FAO Secretariat highlights the objective of establishing long-term procedures that are consistent with the status of Article XIV bodies as statutory bodies of FAO, a United Nations Specialized Agency, and that are essentially uniform for all such statutory bodies. It also refers to the many aspects of the election procedures that had been previously applied in the Treaty and the Commission for the selection of the Secretaries and which are incompatible with the status of these bodies as well as the functions of Secretary, and are unprecedented in the UN System. These issues are more comprehensively addressed in documents CCLM 103/2, JM 2016.2/6 IT/GB-7/17/30, and IOTC Circular 2017-078¹⁰.

14. The FAO Secretariat maintains that there are some specific considerations that should inform the long-term procedure to be approved by the Council for the selection and appointment of the Secretaries of Article XIV bodies:

- a. The constituent instruments of the statutory bodies concerned provide for two parties (the Director-General and the body concerned) to have a role in the appointment process. These roles are fully respected in the interim procedures applied to the most recent selection processes. These procedures enable both the Director-General and the Body concerned to remain in and discharge their respective roles, with the body concerned having a final say by deciding whether to approve or reject the candidate presented by the Director-General, in accordance with the provisions of the treaties. This approach reflects a general practice throughout the UN System in the implementation of similar provisions. Indeed, the election procedures developed by some Article XIV bodies are neither in conformity with the provisions of the relevant treaties and the principles established by the Conference governing Article XIV bodies, nor in line with established UN practice.
- b. FAO and the Director-General remain fully responsible and accountable for the performance and conduct of the Secretaries. Under the FAO institutional 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. As long as the Treaty and the Commission remain as statutory bodies of FAO, this accountability arises irrespective of whether the Director-General has been able to discharge the role entrusted in him or her under the constituent instrument in the assessment and selection of the candidates for the Secretary posts.
- c. These are statutory bodies of the FAO which rely upon the FAO's legal personality (and its privileges, immunities and exemptions) and act through FAO to discharge their mandates and for the implementation of their programmes of work.
- d. The appointment of Secretaries of Article XIV bodies must be primarily seen as a professional selection process, allowing for the verification of the qualifications of the candidates, for proper reference checks, and for an assessment of all the candidates from the perspective of their integrity, conduct and suitability *vis-à-vis* the terms of reference. These verifications are normal and important elements of the process related to any professional

¹⁰ These documents are all available from the relevant FAO webpages.

appointment in the UN System. A plain reading of the treaties concerned confirms that the role of the Director-General in such selections is more than simply administrative or advisory. The efficiency, transparency and objectivity of this procedure – which respects the respective roles of the Director-General and the body concerned – has been amply illustrated in the processes undertaken to select the current Secretaries of the Treaty and the Commission.

e. Along similar lines, the position of Secretary must be primarily recognised as a position in the international civil service, governed by the conditions and standards applicable to all FAO staff. The proposed procedure supports the impartiality, independence and autonomy which should characterize the activities undertaken by FAO personnel for the Organization, including its Article XIV bodies, and respecting their multilateral nature. Secretaries are entrusted with assisting Article XIV bodies to carry out their functions.

VI. Suggested action by the Committee

15. The Committee is invited to review this document and make such observations and comments thereon to the Council as it considers appropriate.

16. The Committee is, in particular, invited:

a. to take note of the above consultations on the initiative of the ICC and the FAO Secretariat on the development of a procedure for the appointment of Secretaries of Article XIV bodies;

b. in light of the foregoing considerations, to endorse the proposal that long-term procedures for the selection of the Executive Secretaries or heads of bodies under Article XIV be based upon the standard procedures for the appointment of senior staff, with appropriate participation of representatives of the body concerned, as reflected in the annex hereto, and that the appointment of candidates so selected would be subject to subsequent approval by the body concerned.

ANNEX**PROCESS FOR THE SELECTION AND APPOINTMENT OF SECRETARIES OF
ARTICLE XIV BODIES¹¹**

Following the guidance of the 155th Session of the FAO Council, the appointment of the Secretaries will follow the procedures for appointment of FAO Senior Staff.

Accordingly, the procedure set out below, reflecting the standard practice with appropriate adjustments for participation of the Article XIV body concerned, will apply:

- 1) Vacancy Announcement drafted by technical departments with support of the Office of Human Resources;
- 2) Issuance of Vacancy Announcement, posted for 46 days, in line with standard practice;
- 3) First review and screening of candidates by the Office of Human Resources based on minimum criteria and qualifications as outlined in the Vacancy Announcement;
- 4) Second review by the offices of the relevant Deputy Directors-General and Assistant-Directors-General to identify shortlist for interviews, to contain at least 10 candidates, with at least 1 female candidate;
- 5) Interview panel composition: Chairperson (from the office of the Deputy Director-General, Coordinator for Climate and Natural Resources), 2 Senior FAO officers, 1 external member, and 1 Human Resources representative (for process support). In addition, exceptionally for recruitment of secretaries of Article XIV bodies, the interview panel will include 2 representatives of Members designated by the bodies, in line with the decision of the Council;
- 6) Interviews of shortlisted candidates by the interview panel;
- 7) Submission of the report of the panel for consideration by the Director-General. The report will contain a minimum of 5 candidates, including at least one female candidate and, in the absence of any female candidate, the panel report must contain a justification for this omission;
- 8) Reference checks undertaken by the Office of Human Resources and the managerial capabilities of the listed candidates reviewed by an external company;
- 9) The Director-General selects one candidate who is referred to the relevant Article XIV Body, or to the Members of the Body, for approval;
- 10) Approval of the candidate, as appropriate;
- 11) Appointment.

¹¹ This process applies to Article XIV bodies whose Secretaries, under the constituent instruments, are appointed by the Director-General with the appointment of the body concerned.