

03 July 2018

IOTC CIRCULAR
2018-31

Dear Sir/Madam

**A LETTER FROM THE IOTC SMALL WORKING GROUP ON EXECUTIVE RECRUITMENT – TALKING POINTS
RELATING TO THE SELECTION OF THE IOTC EXECUTIVE SECRETARY**

Please find attached a letter from the IOTC small working group relating to the process for the recruitment of the IOTC Executive Secretary.

Yours sincerely



Christopher O'Brien
Executive Secretary

Attachments:

- Letter from the IOTC small working group

Distribution

IOTC Contracting Parties: Australia, Bangladesh, China, Comoros, Eritrea, European Union, France (Territories), Guinea, India, Indonesia, Iran (Islamic Rep of), Japan, Kenya, Rep. of Korea, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Pakistan, Philippines, Seychelles, Sierra Leone, Somalia, South Africa, Sri Lanka, Sudan, United Rep. of Tanzania, Thailand, United Kingdom (OT), Yemen. **Cooperating Non-Contracting Parties:** Liberia, Senegal. **Intergovernmental Organisations, Non-Governmental Organisations. Chairperson IOTC. Copy to:** FAO Headquarters, FAO Representatives to CPCs.

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Australian Government
**Department of Agriculture
and Water Resources**

Indian Ocean Tuna Commission Members
C/- IOTC Secretariat
PO Box 1011
Victoria Mahé
SEYCHELLES

Dear IOTC Members

The Small Drafting Group on Executive Recruitment would like to thank the Commission for your guidance at the recent IOTC Annual meeting for progressing the draft IOTC Rules of Procedures.

Following on from your guidance, there will be an opportunity for all IOTC members to assist with socialising and encouraging FAO engagement to consider the Process for Executive Recruitment for Article XIV Bodies, such as IOTC.

Attached are talking points for your use, and for you to share with your relevant representatives who will be attending the upcoming FAO Committee on Fisheries (COFI) to be held on 9-13 July 2018 in Rome.

I trust this information will be of assistance to you, and will be useful in order for IOTC to work with FAO to ascertain an acceptable solution.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Neil'.

Gordon Neil
Assistant Secretary
Fisheries Branch
Department of Agriculture and Water Resources
27 June 2018

ARTICLE XIV BODIES AND THE INDIAN OCEAN TUNA COMMISSION EXECUTIVE SECRETARY RECRUITMENT PROCESS

Work collaboratively with other Indian Ocean Tuna Commission (IOTC) member States at COFI to gather appropriate attention, support and traction on this matter.

SUMMARY of Key Issues:

FAO seeks to change executive recruitment processes for Article XIV Bodies including the IOTC.

The FAO through the Committee on Constitutional and Legal Matters (CCLM) is currently considering changing their approach for Executive Secretary recruitment for Article XIV Bodies including the IOTC and International Treaty on Plant Genetic Resources for Food and Agriculture.

The IOTC (through the Small Drafting Group (SDG) on Executive Secretary Recruitment) has been working through possible amendments for the Executive Recruitment process of the IOTC Rules of Procedure to address the FAO's concerns while also trying to maintain IOTC's autonomy and ability to select its own Executive Secretary. The proposed amendments have been provided to the FAO for consideration. Recent feedback from the FAO highlighted FAO's resistance to work with the IOTC to find a compromise on a process for the appointment of an Executive Secretary, or to agree suitable IOTC Rules of Procedure.

Following IOTC22 in May 2018, IOTC members agreed to take advantage of the COFI meeting to consult with the FAO in order to ascertain an acceptable solution. IOTC recommended that depending on the outcome of the consultation at COFI that the SDG would then redraft the proposed text on the Rules of Procedure to reflect consultations and present a revised text at the next Commission meeting in 2019.

Handling Notes

- **Seek support** from COFI members for the IOTC (and other Article XIV Bodies) to have autonomy in managing their organisations including processes for the appointment of their Executive Secretary.
 - *The IOTC Commission (S22, May 2018) agreed to take advantage of this COFI meeting to consult with the FAO in order to ascertain an acceptable solution. IOTC recommended that depending on the outcome of the consultation that the SDG would then redraft the proposed text on the Rules of Procedure to reflect consultations and present a revised text at the next IOTC Annual Commission meeting in 2019.*
- *In the margins of COFI, engage other FAO members to progress the interests of IOTC and other Article XIV Bodies for their recruitment processes ahead of further discussion at CCLM (October 2018) and other FAO meetings.*
- **Seek support** for the CCLM to keep the agenda item open for further discussion while the IOTC Small Drafting Group continues to work through the feedback from the FAO and provide to IOTC Commission in June 2019.
 - **Do not support** the FAO to push their own recruitment processes on Article XIV Bodies without consultation or selection by relevant members of the Article XIV bodies including IOTC.
- *Suggested talking points are provided below for IOTC members and COFI representatives to draw on if required.*

Talking Points for the margins of FAO COFI

- Acknowledge that IOTC is an Article XIV Body of FAO.
- Seek FAO to work cooperatively to resolve the executive recruitment process for IOTC (and other FAO Article XIV Bodies).
- Note that resolving the process for future IOTC Executive Secretary recruitment is a priority for the IOTC. This matter was considered at the recent IOTC Annual Commission meeting held in May 2018, in Bangkok, Thailand.
- Seek FAO to support IOTC to operate with autonomy as an independent, specialised and regionally focused body, which is entirely funded and driven by its members. Bodies established by a convention under Article XIV of the FAO Constitution are given this autonomy under the FAO Constitution, so that they are able to deliver the specialised technical functions required by their members.
 - In addition, the responsibility of the Executive Secretary is to implement the policies and activities of the IOTC, which are agreed by IOTC members to give effect to their international obligations.
 - Consistent with this, the IOTC (as the collective of its members) must be able to select its own Executive Secretary.
- Seek further consideration by the FAO on the IOTC proposed draft Rules of Procedure (**Attachment A**) as IOTC believes that the current proposed amendments go a long way to agreeing a suitable process for FAO and for IOTC on Executive Secretary appointments.
- The IOTC member states are seeking to work cooperatively with FAO representatives to ensure that the IOTC Executive Secretary recruitment processes is at the forefront of discussions at FAO meetings.

Background

- The IOTC was established in 1993 under Article XIV of the FAO constitution.
 - The IOTC Agreement establishes the structure and functions of the IOTC.
 - The IOTC Rules of Procedure include provisions addressing various operations of the IOTC including Executive Secretary recruitment process, Sessions of the Commission, participation by observers, voting procedures, and responsibilities of the Secretariat.
- The Executive Secretary is responsible for implementing the policies and activities of IOTC. However, because the IOTC is established by a convention under Article XIV of the FAO Constitution, the IOTC Agreement specifies that the Executive Secretary shall, for administrative purposes, be responsible to the FAO Director-General.
 - The Executive Secretary position is fully funded by IOTC members.
- The current procedure for recruiting the Executive Secretary is set out in Appendix II of the IOTC Rules of Procedure (updated in 2014) and has been used for all previous Executive Secretary recruitment by the IOTC, with support from the FAO.

- The current process (as the IOTC Rules of Procedure) involves shortlisting of applications by IOTC members, interview by heads of IOTC delegations at the IOTC Commission meeting and, upon notification from the IOTC of the selected candidate, appointment of that candidate by the FAO Director-General.
- However in 2016 when IOTC was undertaking a recruitment process for an Executive Secretary, the FAO notified the IOTC that it had changed its decision and would instead appoint the Executive Secretary 'in accordance with its established procedures for the appointment of FAO senior staff'.
 - This procedure largely removed the IOTC's established role in selecting the appointee or overseeing the process and instead saw only two representatives of the IOTC participate in the recruitment process.
 - A full history of the decisions by IOTC and FAO are at **Attachment B**.
- Subsequently, the IOTC has been working through the IOTC Rules of Procedure to address the original concerns raised by FAO on the recruitment process.
 - The IOTC established a Small Drafting Group to propose appropriate amendments to the IOTC Rules of Procedure.
 - IOTC members of the Small Draft Group include Australia, Maldives, EU, France, Korea and Indonesia.
- The proposed draft IOTC Rules of Procedure were provided to the FAO Independent Chair on 7 March 2018 (**Attachment A**).
 - The draft text was considered on 12–14 March 2018 by the FAO Committee on Constitutional and Legal Matters (CCLM).
 - The CCLM referred the matter of Article XIV Bodies to their next meeting to be on 22–24 October 2018.
- On 6 April 2018, the FAO Secretariat provided feedback on the proposed draft Rules of Procedure (**Attachment C**), however the feedback generally does not accept or support the proposed draft Rules of Procedure. Specifically the FAO Secretariat:
 - considers that the Draft Proposal does not address the concerns which led to the initiation of the ongoing process to develop a long-term procedure for the selection and appointment of the Executive Secretary;
 - recommends that the interim procedure be confirmed as the long-term procedure for the selection and appointment of the Executive Secretary; and
 - asserts that the Draft Proposal – and the terms of reference that informed the development of the Draft Proposal – are inconsistent with the status of the IOTC Commission as a statutory body of FAO.
- Generally the feedback highlights FAO's resistance to work with the IOTC to appoint their own Executive Secretary, or to agree suitable IOTC Rules of Procedure.
- On 21–25 May 2018, the 22nd Session of the IOTC Annual Commission agreed to continue to discuss amendments to the Rules of Procedure on Executive Recruitment in

the margins of the COFI meeting with the FAO. The IOTC would like to continue to develop the IOTC Rules of Procedure and to work with FAO in order to ascertain an acceptable solution for the executive recruitment process.

- Throughout 2016–2018 a few IOTC members raised their concerns with FAO members and sought to address the matter. Now with a unified approach agreed at the IOTC Commission meeting, each IOTC member State should seek to socialise the proposed draft IOTC Rules of Procedure.
- IOTC members at COFI should propose that CCLM to keep the agenda item open for further discussion whilst the Small Drafting continues to work through the recent feedback from the FAO Independent Chair.

Attachments

- A: Draft IOTC Rules of Procedure
- B: Chronology of IOTC Executive Secretary Recruitment Process
- C: FAO Secretariat feedback to IOTC on Draft Rules of Procedure

RULE V: THE SECRETARIAT

1. The Secretariat shall consist of the Executive Secretary and such staff appointed by him/her and under his/her supervision.
2. The Executive Secretary of the Commission shall be selected by the Commission and appointed by Director-General, in accordance with the procedure set out at Appendix II.
3. The Executive Secretary shall be appointed for a term of four years and shall be eligible for re-appointment for one further term of four years, subject to approval by the Commission.
4. If possible, the incumbent Executive Secretary will remain in position for two weeks after the newly appointed Executive Secretary has taken up duties to enable a period of handover to occur.
5. The Executive Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission. In the exercise of his/her functions, the Executive Secretary will have direct contact with all Members of the Commission as well as with FAO at all levels.
6. The duties of the Executive Secretary are listed in Appendix II.

APPENDIX II

PROCEDURE FOR THE SELECTION AND APPOINTMENT OF THE EXECUTIVE SECRETARY OF THE COMMISSION

1. The Chairperson shall prepare a draft advertisement for the Executive Secretary position (including required qualifications and the terms of reference detailed below) and circulate to the Commission for approval. Once approved the vacancy announcement will be advertised by the IOTC Secretariat through international means, including the FAO website and the Commission's website.
2. Applications are to be received by the FAO and the IOTC Secretariat with a deadline of 45 days after the publication of the vacancy announcement. FAO will select the eligible candidates according to the required competencies of the position and principles of FAO. The pre-selected candidates will be ~~and~~ distributed to Members ~~and the FAO Director-General~~ no later than ~~30~~45 days after the deadline for application.
3. From the list of pre-selected candidates, five of them~~candidates~~ are to be ranked in order of preference by Members on a point score of five to one within 60 days of receiving the applications from the Secretariat. Five points are to be awarded for a first preference, four points for a second preference, three points for a third preference, two points for a fourth preference and one point for a fifth preference. Rankings are to be transmitted by each Member to the Secretariat, collated, and the final ranking of all candidates conveyed to all Members and the FAO Director-General as soon as possible.
4. The FAO Director-General, or their representative, may conduct the necessary checks to confirm the suitability of applicants for the position prior to interview. The FAO Director-General, or their representative, shall determine how many applicants will be subjected to such checks, taking into account the likelihood of an applicant to be interviewed. Any such checks will relate to the ability of the candidate to meet the qualifications and competencies of the position, and the principles of the FAO. Once completed, within 14 days of the closing deadline, the FAO Director-General, or their representative, shall provide a written notification to all ~~m~~Members ~~of on~~ the outcome of all checks. Where checks have raised questions over the ability of a candidate to meet the requirements of the position, the written notification shall include specific advice regarding the nature of the concern and any resulting recommendations, including a recommendation not to include a candidate ~~from on~~ the interview list.
5. Members shall consider any concerns raised, or any recommendations made by the FAO Director-General, or their representative, in relation to a candidate before finalising the list of candidates for interview. Where Members accept a recommendation made by the FAO Director-General, or their representative, to remove a candidate from the interview list, Members shall invite the next suitably ranked candidate to be interviewed in accordance with paragraph [6].
6. Subject to paragraphs [4 and 5], the five candidates with the greatest number of points, and are recommended by the FAO check, are to be invited to the next Session of the Commission for interview by Heads of Delegation of Members of the Commission, on the Commission's behalf. The interviews may take place immediately prior to, or during the regular Session. The FAO Director-General, or their representative, will be invited to attend the interviews, and may engage in discussions and may veto any applicant that does not meet the FAO principles, but shall not participate in the voting process set out in paragraph [7]. Those

candidates including those vetoed by the FAO, not proceeding to interview shall be notified by the Secretariat as soon as possible to advise they have not been selected.

7. The new Executive Secretary is to be selected by the Heads of Delegation of Members of the Commission, on the Commission's behalf, by consensus including any applicants the FAO Director-General has rejected. If consensus cannot be reached, the selection will be made in accordance with the following process:

- a) Polling shall be done by secret ballot.
- b) Each Head of Delegation shall cast a vote selecting one candidate.
- c) If no candidate obtains, on the first ballot, a majority of the votes cast, there shall be taken a second ballot confined to the two candidates obtaining the largest number of votes. If the votes are equally divided on the second ballot, as many ballots as necessary will be held to determine the selected candidate.

8. The FAO Director-General ~~of the FAO~~ is to be informed of the decision of the Commission within 14 days and shall proceed with the appointment of the new Executive Secretary as soon as practicable.

9. Personal or sensitive information obtained in the course of the recruitment process will be treated as confidential by all Members, the Secretariat, the FAO and any other persons involved in the recruitment process. Such information will not be shared unless required as part of the Executive Secretary recruitment process.

10. In order to remove potential conflicts of interest, including where an existing staff member of the IOTC Secretariat has applied for the Executive Secretary position, the functions of the IOTC Secretariat in this procedure may be outsourced to an independent consultant with appropriate expertise and capabilities with the approval of the Commission.

11. Any existing staff member of the IOTC Secretariat who has applied for the Executive Secretary position shall not participate in the administrative or other functions of the IOTC Secretariat in relation to the selection and appointment process.

Qualifications and benefits

1. The applicant should have university level qualifications, preferably at post-graduate level, in fisheries biology, fisheries science, fisheries economics or related field. He/she should have at least fifteen years of experience in fisheries management, policy formulation, preferably including bilateral and international relations. He/she should have the ability to exercise a high degree of professional initiative. The applicant should also be conversant with the preparation of budgets, documents and the organisation of international meetings. He/she should have working knowledge, level C on the FAO scale, of either English or French. Special consideration may will be given to suitable candidates who have working knowledge in both languages working knowledge of the other official language.

2. Other essential requirements include competence in the selection of staff; demonstrated ability to supervise professional matters in subject field; and familiarity with the use of word processing, spread sheets and database management systems.

3. Desirable requirements include: a high degree of adaptability and ability to cooperate effectively with people of different nationalities and of various social and cultural backgrounds and education levels, as well as experience on fisheries management in a regional context.

4. The Executive Secretary will be graded at the D–1 level based on the United Nations salary scheme for professional and higher categories. He/she will in addition, be entitled to a variable element for post adjustment, pension, insurance, etc. The Executive Secretary is appointed under the same terms and conditions as staff members of FAO.

Terms of reference

Pursuant to Article VIII.2 of the Agreement, the Executive Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission. He/she shall also act as Executive Secretary to the subsidiary bodies established by the Commission, as required.

The incumbent will have overall responsibility for planning, coordination and administration of the Commission in accordance with the Agreement and the decisions of the Commission.

He/she shall, for administrative purposes, be responsible to the Director–General of FAO.

He/she will in particular:

- a) receive and transmit the Commission's official communications;
- b) maintain high level contacts with appropriate government officials, fishery institutions and international organizations concerned with tuna fisheries to facilitate consultation and cooperation between them on information collection and analysis;
- c) maintain an active and effective network of national focal points for routine communication of progress and results of the activities of the Commission;
- d) prepare and implement work programmes, prepare budgets and ensure timely reporting to the Commission;
- e) authorize disbursement of funds in accordance with the Commission's budget;
- f) account for the funds of the Commission;
- g) stimulate interest among Members of the Commission and potential donors in the activities of the Commission and in possible financing or in implementing of pilot projects and complementary activities;
- h) promote, facilitate and monitor the development of databases for resource assessment and biological and socio–economic research to provide a sound basis for conservation management;
- i) coordinate the Members' programmes of research when required;
- j) organize sessions of the Commission and its subsidiary bodies and other related *ad hoc* meetings, and to maintain records of the proceedings;
- k) prepare background papers and a report on the Commission's activities and the programme of work for submission to the Commission at the regular sessions, and arrange the subsequent publication of the report and the proceedings of the Commission as well as its subsidiary bodies and related *ad hoc* meetings;
- l) perform other related duties as required by the Commission.

Managerial competencies – Standard FAO requirements

1. Strategic vision: Capacity to develop a vision, mission statement and strategies and to focus on the needs of member countries and to adjust strategies to take changing circumstances into account.

2. **Managing people:** Fosters team spirit through building trust and commitment to common objectives and recognizing team successes.
3. **Result Orientation:** Demonstrates an ability to manage programmes and projects efficiently under shifting priorities, in order to achieve targets.
4. **Partnering:** Negotiates effectively with partners to enable successful outcomes for all stakeholders and actively supports interdisciplinarity across the Commission.
5. **Strong Communication Skills:** Demonstrates a high level of communication skills in negotiations with stakeholders and promoting the Commission's messages.

Attachment B

Chronology

Oct 2015	Mr Rondolph Payet resigns as IOTC Executive Secretary. Mr David Wilson appointed as Acting ES.
Nov 2015	Vacancy announcement is advertised through intersessional means including FAO and IOTC webpages and circulars.
Jan 2016	Applications for position closed.
Feb 2016	FAO do not distribute applications to IOTC members. FAO intervened in the recruitment process and put forward an alternate process.
April 2016	FAO provides letter outlining reasons for intervention.
May 2016	FAO installed Mr Alejandro Anganuzzi as IOTC interim Executive Secretary.
May 2016	Recruitment process discussed at IOTC20 – no agreement was reached between FAO and IOTC. FAO did not change its proposed <i>ad hoc</i> recruitment process.
July 2016	Recruitment process discussed at COFI32. FAO did not change its proposed recruitment process.
Dec 2016	IOTC Chair update Commission on FAO Council meeting.
May 2017	At the 21 st meeting of the IOTC, the Terms of Reference for a Small Drafting Groups were established.
June 2017	FAO appoint Dr Chris O'Brien as IOTC Executive Secretary.
June 2017	SDG (Australia, EU, France, Indonesia, Korea, Maldives) work to amend the IOTC Rules of Procedure for the recruitment of future ES.
Nov 2017	SDG agree amended IOTC Rules of Procedure.
Mar 2018	SDG sent letter to FAO, including draft Rules of Procedure.
Mar 2018	FAO CCLM meet, including discussion on Article XIV Bodies and defer matter until October 2018.
April 2018	FAO Director General send letter to IOTC further opposing.
May 2018	IOTC Commission Meeting agree to continue to work on drafting Rules of Procedure.
July 2018	IOTC members seek to socialise the concerns of IOTC with COFI members.

PROCEDURES FOR THE SELECTION AND APPOINTMENT OF SECRETARIES OF ARTICLE XIV BODIES

1. Reference is made to the communication dated 7 March 2018 to the Independent Chairperson of the Council from the Vice-Chairperson of the Indian Ocean Tuna Commission (“IOTC” or “the Commission”) transmitting updated draft IOTC Rules of Procedure containing proposals for procedures for the selection and appointment of the Executive Secretary of the Commission (hereinafter “the Draft Proposal”).

I. Background

2. It is recalled that the Council, at its 155th Session, having considered the reports of its subsidiary committees concerning the issue of the appointment of Secretaries of Article XIV Bodies decided, *inter alia*, to initiate a process by which “*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*”¹.

3. By the above-mentioned communication from the Vice-Chairperson of the Commission, FAO was requested to provide its feedback and advice on the Draft Proposal, which was prepared by a small drafting group established by the Commission at its 21st Session to develop a proposal for a permanent procedure to select the Executive Secretary of the Commission². The present document sets out the Secretariat’s observations on the Draft Proposal³.

II. Observations on the terms of reference of the small drafting group

4. Before addressing the specific elements of the Draft Proposal, the Secretariat first addresses the terms of reference of the small drafting group established by the Commission to develop the Draft Proposal. The Secretariat considers that the starting point for the work of the small drafting group including the “Principles” which guided its work – as reflected in Appendix 5 of the Report of the 21st Session of the Commission – are erroneous from a legal and constitutional perspective and, therefore, may have somehow hampered the work of the drafting group.

5. At the outset, the Secretariat observes that consistency with the IOTC Rules of Procedure is addressed throughout the Commission’s Report addressing this matter, including in the “Principles” guiding the drafting group set out in Annex 1 to Appendix 5. Thus, for example,

¹ CL 155/REP 9, paragraphs 25-27.

² Report of the 21st Session of the Indian Ocean Tuna Commission, IOTC–2017–S21–R[E], para. 16.

³ In the communication of 8 March 2018, FAO’s feedback and advice was requested by 12 March 2018. By a letter to the Vice-Chairperson of the IOTC, the Independent Chairperson of Council advised that FAO could not submit its views within that timeframe, but would submit these in time for consideration by the Commission at its forthcoming Session.

paragraph 15 of the Report reads: “*The Commission did not agree to the permanent process proposed by the FAO, noting it was inconsistent with the Commission’s Rules of Procedures*”.

6. The Secretariat observes that Article VI(3) of the Agreement for the Establishment of the Indian Ocean Tuna Commission (“the Agreement”) requires that the IOTC Rules of Procedures “*shall not be inconsistent with this Agreement or with the Constitution of FAO*”. This provision, which is nothing more than the concrete expression of the general legal principle of the hierarchy of laws, according to which the lower source of law cannot contradict the higher, has apparently been disregarded by the Commission. Under general principles of law, the IOTC Rules of Procedure do not and cannot prevail over the explicit provisions of the Agreement which established the IOTC. On the contrary, the Rules of Procedure must be informed by the explicit provisions of the Agreement.

7. With this general rule in mind, the Secretariat observes that the “Principles” (“the IOTC Principles”) guiding the work of the drafting group and approved by the Commission are as follows:

1. “*The Commission should have the final say on who is to be appointed as the Executive Secretary*”;
2. “*The FAO Secretariat should have an opportunity to consider candidates for the Executive Secretary position and provide advice or recommendations to the Commission on those candidates*”;
3. “*All Commission members should be able to view all applications received and should be able to take part in the ranking process*”;
4. “*Interviews should take place in conjunction with Annual Sessions of the Commission to ensure all Commission members have the opportunity to participate*”;
5. “*The new Executive Secretary should be selected by Heads of Delegation of Commission members by consensus if possible, or through a voting procedure*”;
6. “*The terms of reference for the Executive Secretary should make it clear that the Executive Secretary’s core responsibility is that owed to the Commission for implementing the Commission’s policies and activities*”.

8. Further elaboration is provided in bullet points under each of the IOTC Principles.

9. Article VIII(1) of the Agreement provides that the Executive Secretary “*shall be appointed by the Director-General with the approval of the Commission*”.

10. The Secretariat considers that the guidance provided to the small drafting group and, therefore, its resulting Draft Proposal, should have been – but were not – guided by the provisions of the Agreement, in particular its Article VIII(1). However, the procedure framed by the IOTC’s Principles and contained in the Draft Proposal clearly, *de facto*, establish FAO and its Director-

General in the limited role of a consulted party, whereby they are primarily responsible for “*the formality of technically appointing the Executive Secretary*”⁴.

11. It is also noted that the Commission recognized that “*because the Executive Secretary is, for administrative purposes, responsible to the FAO Director-General, the FAO bears some responsibility for ensuring the Executive Secretary is suitable for the role*”⁵ and that “*the Commission might consider whether it would be useful to clarify what this responsibility entails to help avoid any potential conflict with the Executive Secretary’s responsibility to the Commission*”⁶. These considerations may flow from the statement that the Commission “*operates as an independent, specialised and regionally-focused body*”⁷.

12. While the Secretariat acknowledges that the responsibility of the secretaries of Article XIV to the Director-General “for administrative purposes” is to be found in 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*”)⁸, the scope of this accountability must be understood against the background of the relationship between FAO and the Commission.

13. First of all, it should be borne in mind that neither the FAO Constitution, nor the above-mentioned *Principles and Procedures*, nor the Agreement qualify the Commission as an independent body. It is recognized that Article XIV bodies should enjoy a measure of functional and operational autonomy, allowing them to attain their statutory objectives. However, irrespective of their functional characteristics, Article XIV bodies remain very closely associated with FAO, even where they may have autonomous budgets.

14. The Commission is fully incorporated into the FAO administrative and procedural framework as demonstrated, for example, the management of its funds, the implementation of technical assistance activities and its programme of work, and the application of FAO’s regime of privileges and immunities to its activities. In addition, limiting the Director General’s role to the formality of technically appointing the Executive Secretary entirely disregards and contradicts the circumstance that FAO – its Members and the Director General – are fully responsible for the conduct of the Executive Secretary and provide the legal and institutional framework that enables the Article XIV bodies to implement their programmes of work and discharge their mandates. In this respect, the expression “administrative purposes” cannot be given the narrow interpretation reflected in the drafting group’s terms of reference but must, rather, be interpreted in this context.

15. Moreover, and having regard to the hierarchy of laws, a process whereby the Director-General is required to appoint a candidate selected through a voting process by the Commission is inconsistent with the spirit and the letter of the Agreement, as well as the will of the Members of

⁴ Principle 1, point 4.

⁵ Principle 2, point. 1.

⁶ Principle 6, point. 2.

⁷ Principle 1, point. 1 and principle 6, point 1. The drafting group did not elaborate further, limiting itself to stating in the terms of reference of the Executive Secretary that “*He/she shall, for administrative purposes, be responsible to the Director-General of FAO*”.

⁸ *Basic Texts*, 2017 edition, Volume 2, Part O, paragraph 32 iii.

FAO as expressed at the moment of approving the Agreement. The *Principles and Procedures* provide for three alternative modalities of appointment of Executive Secretaries: “[...] *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*”. The FAO Members chose one of these modalities.

16. It is noted that, by contrast, in the procedure for the selection and appointment of the current Executive Secretary, FAO adhered to, but took an expansive interpretation of, Article VIII(1) of the Agreement by including representatives of the Commission in the selection process, while also fully respecting the Commission’s right to approve the candidate selected. By so doing, FAO ensured engagement of the IOTC membership in the process, as requested by them.

III. Observations on the Draft Proposal

17. With respect to the specific provisions of the Draft Proposal, the Secretariat recalls that it has previously expressed its views on this matter in a number of documents submitted to the FAO Governing Bodies, the Commission and the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture⁹. These views are maintained and, for the sake of clarity, the Secretariat highlights the main points, as listed below:

- a) Article XIV bodies are statutory bodies of FAO, which rely upon FAO’s legal personality – and its privileges, immunities and exemptions – and act through FAO to discharge their mandates and implement their programmes of work.
- b) While Article XIV bodies enjoy a measure of functional autonomy in implementing their programmes of work, administratively they are integrated with and in FAO, operate under the framework of FAO, and commit FAO and all of its Members in all their activities, whether or not their programmes of work are funded entirely by their membership.
- c) FAO and the Director-General remain fully responsible and accountable for the performance and conduct of the Secretaries who are officials of FAO.
- 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 for these positions.
- e) The practice that has developed of holding elections – or voting – 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. This practice may also encourage officials to regulate their

⁹ See documents CCLM 106/5, IT/GB-7/17/30, IOTC Circular 2017–078, JM 2016.2/6, CCLM 103/2, IOTC Circular 2016–049.

conduct in a manner incompatible with their obligations as international civil servants and staff members of the Organization.

- f) The practice of holding elections or voting to select the Executive Secretary of the Commission is inconsistent with the constituent instrument of the IOTC. Moreover, these selection practices are unknown in other organizations of the United Nations System.
- g) The constituent instrument of the IOTC provides for two parties – the Director-General and the Commission – to have a role in the appointment process: the Director-General appoints the Secretary with the approval of the Commission¹⁰.

18. The Secretariat considers that the Draft Proposal does not address any of the elements raised by the Secretariat in its previous documents on this matter, as further explained below.

19. The Draft Proposal – at paragraphs 3 and 7 – maintains a process by which candidates are ranked, and the Executive Secretary ultimately selected, by votes of the members of the Commission.

20. As set out at subparagraphs 17 (e) and (f) above, the application of a voting mechanism is inconsistent with FAO rules and practices and those of the wider UN System, and risks politicization of the process and the discharge of functions by candidates for the position. The Draft Proposal, far from solving this issue, still maintains selection through election by the members of the Commission.

21. Also, the Draft Proposal largely limits the role of FAO and the Director-General in the selection and appointment process to a “*technical formality*”, assisting in circulating the Vacancy Notice prepared by the Commission¹¹, undertaking the verification of candidates¹², attending interviews, but playing no part in the selection itself (see paragraphs 1 to 8 of the Draft Proposal). At most, the Director-General “*may be invited to attend the interviews [conducted by the Heads of Delegation of members of the Commission], may engage in discussions and may veto any applicant that does not meet the FAO principles, but shall not participate in the voting process set out in paragraph [7]*”¹³. Ultimately, “*the new Executive Secretary is to be selected by the Heads of Delegation of Members of the Commission*” and the “*FAO Director-General is to be informed of the decision of the Commission within 14 days and shall proceed with the appointment of the new Executive Secretary as soon as practicable*”.

22. The Secretariat considers that not only is this process fundamentally inconsistent with Article VIII(1) of the Agreement, but it also fails to address any of the fundamental observations listed under paragraph 17 above. It notes that the possibility of vetoing a selected candidate falls undoubtedly within the scope of an action of “approval”; it thus more properly lies – and exists –

¹⁰ IOTC Agreement, Article VIII(1).

¹¹ Paragraph 1.

¹² Paragraph 4. Indeed, members of the Commission may decide to admit candidates whose reference checks are unsatisfactory, which the Secretariat considers is not acceptable for candidates for a senior position in the international civil service.

¹³ Paragraph 6.

in the possible actions that the Commission may take as foreseen in the Agreement, rather than in the actions that the Director-General would properly exercise in the selection and appointment process.

23. The Secretariat also observes that the Draft Proposal establishes “functions” for the IOTC secretariat in the proposed procedure which “*may be outsourced to an independent consultant*” “[i]n order to remove potential conflicts of interest” should staff member of the IOTC secretariat apply for the Executive Secretary position (see paragraphs 10 and 11). In this context, the Secretariat refers, in particular to subparagraphs 17 (a), (b), (c) and (d) above. The Secretariat considers that outsourcing the selection process, either to the IOTC Secretariat or to an external consultant, would not be consistent with the legal framework and practices of FAO nor the practices of the UN System at large. It is recalled that the position in question is that of a senior staff member of FAO, who would exercise powers delegated by the Director-General in accordance with the FAO Constitution and the regulations and rules of FAO. It further observes that any risk of conflict of interest would be excluded under the established FAO procedures for the selection of senior staff.

24. The Draft Proposal not only does not offer viable solutions to the issues previously raised by the Secretariat, but would also serve to introduce a cumbersome selection procedure. The concerns put forward by the Secretariat in several documents appear to have been disregarded. Moreover, the Draft Proposal seems to reverse the roles clearly expressed in Article VIII(1) of the Agreement, according to which the Executive Secretary is appointed by the Director-General with the approval of the Commission.

IV. Conclusion

25. For the reasons set out above, the Secretariat considers that the Draft Proposal does not address the substantive and significant concerns which led to the initiation of the ongoing process to develop a long-term procedure for the selection and appointment of the Executive Secretary of the Commission.

26. The Secretariat continues to recommend that the interim procedure be confirmed as the long-term procedure for the selection and appointment of the Executive Secretary of the Commission, as well as the Secretaries for other Statutory Bodies. The mechanism proposed by FAO reflects the direct application of the Agreement. It respects the respective roles of FAO and the Commission, while assuring the full compliance with UN System practices.

27. Finally, the Secretariat submits that the Draft Proposal – and the terms of reference that informed the development of the Draft Proposal – are inconsistent with the status of the Commission as a statutory body of FAO and, therefore, operating within the FAO and UN System framework.