



## ICNP 3 HIGHLIGHTS: MONDAY, 24 FEBRUARY 2014

In the morning, ICNP 3 delegates met in plenary to hear opening statements, address organizational matters, and discuss the COP/MOP rules of procedure and capacity building. In the afternoon, they exchanged views on the state of implementation of the Protocol.

### OPENING PLENARY

ICNP Co-Chair Janet Lowe (New Zealand) opened the meeting. Jeong Yeon-man, Vice-Minister of the Environment of the Republic of Korea, reported on national efforts towards ratification, and drew attention to agenda items on the COP/MOP rules of procedure and the ABS Clearing-House. Choi Moon-soon, Governor of Gangwon Province, illustrated ongoing biodiversity conservation and restoration efforts, and plans to host the most-ecofriendly Winter Olympics in 2018.

CBD Executive Secretary Braulio Dias reported that ICNP Co-Chair Fernando Casas (Colombia) was unable to participate in this meeting. He reported on progress towards the Protocol's entry into force and achievement of Aichi Target 16 on ABS, pointed to regional balance in ratifications as evidence of the Protocol's global significance, and recalled that UN Secretary-General Ban Ki-moon recently highlighted the Protocol's contribution to sustainable development. Chair Lowe urged countries to ratify the Protocol in time for COP/MOP 1 to be held concurrently with CBD COP 12 in October 2014.

**STATEMENTS:** Uganda, for the AFRICAN GROUP, affirmed the region's commitment to cooperative discussions on the global multilateral benefit-sharing mechanism, capacity building and compliance. Saint Lucia, for GRULAC, and India, on behalf of ASIA-PACIFIC and the COP Presidency, stressed the importance of ratifying the Nagoya Protocol. Recalling the vital role of indigenous and local communities (ILCs) in the Protocol, an ILC representative urged countries to fully include them in all discussions.

**ORGANIZATIONAL MATTERS:** Delegates agreed that ICNP 1 and 2 rapporteur Dubravka Stepic (Croatia) continue in that role. They then adopted the meeting's agenda (UNEP/CBD/ICNP/3/1) and organization of work (UNEP/CBD/ICNP/3/1/Add.1).

Chair Lowe urged delegates to prioritize the items that are necessary for the smooth entry into force of the Protocol by CBD COP 12, including the ABS Clearing-House and the compliance mechanism.

### COP/MOP RULES OF PROCEDURE

The Secretariat introduced the document (UNEP/CBD/ICNP/3/3), highlighting the need to address: replacing COP Bureau members from countries that are non-parties to the Protocol; and whether any amendments to the COP rules of procedure will apply automatically to the COP/MOP. He noted that under the Biosafety Protocol such amendments shall not apply unless otherwise decided by the COP/MOP.

INDIA, MEXICO, COLOMBIA, CANADA and the Democratic Republic of the Congo for the AFRICAN GROUP called for following the Biosafety Protocol experience in allowing the COP/MOP to decide on whether to adopt amendments to the rules of procedure made by the COP. The EU stressed the need to keep the Protocol closely linked to the Convention, suggesting that, according to Protocol Article 26.5, amendments to the COP rules of procedure should automatically apply to the COP/MOP, unless otherwise decided by it. CHINA supported decision making by consensus.

### CAPACITY BUILDING

The Secretariat introduced a draft strategic framework for capacity building and development under the Protocol (UNEP/CBD/ICNP/3/7), drawing attention to the report of the relevant expert meeting (UNEP/CBD/ICNP/3/INF/6). Many called for awareness raising and expressed support for the draft strategic framework. SWITZERLAND, supported by UGANDA, proposed including national capacity needs and priorities self-assessments, to be compiled by the Secretariat.

Senegal, for the AFRICAN GROUP, suggested establishing an informal advisory committee to assist the Secretariat to include capacity-building best practices from other fora, such as FAO. MALAYSIA proposed that such a committee coordinate initiatives undertaken by various bodies globally, and noted the role of capacity building in promoting better understanding of the Protocol's provisions.

The EU recommended sharing experiences through the ABS Clearing-House. THAILAND emphasized the need to ensure technical accuracy of information shared, including through the ABS Clearing-House, to enhance common understanding of the Protocol.

INDIA, with many, called for adequate financing to ensure action on the elements of the strategic framework. NORWAY, supported by UGANDA, underscored the need for financing for developing countries and ILCs as a common challenge for all parties to the Protocol, and called for guidance to the GEF in this regard. BENIN requested resources to support regional efforts. SAINT LUCIA requested training and financing to reach the commercialization stage.



NIGER proposed considering micro-financing programmes among resources for implementation, and facilitating access to national-level capacity-building activities for the largest possible number of stakeholders. The DEMOCRATIC REPUBLIC OF THE CONGO called attention to capacity for tracking genetic resources and in relation to IPRs. JAPAN recommended prioritizing capacity building for implementing the Protocol provisions on access; and cautioned against proposed capacity-building on monitoring and enforcing compliance with MAT, noting the lack of corresponding obligations under the Protocol.

BRAZIL underscored the need for capacity building for ILCs and checkpoints, and capacity development to negotiate MAT and monitor impacts of benefit-sharing on biodiversity conservation. He supported the development of a global programme to assist developing countries in the implementation of the framework. CANADA questioned the added value of a formal, centralized, CBD-led global programme.

GUATEMALA suggested that toolkits and workshops focused on ILCs, traditional knowledge (TK) and benefit-sharing be made available to government representatives, students and the media. CUBA urged consideration of non-internet-based capacity-building measures.

The ITPGR highlighted the complementary mandates of the Treaty and the Protocol. IUCN suggested including consideration of regional and subregional markets and legislative frameworks. Drawing attention to the role of women, the International Indigenous Forum on Biodiversity (IIFB) prioritized capacity building related to the ABS Clearing-House.

#### EXCHANGE OF VIEWS ON IMPLEMENTATION

Hem Pande, India, presented on ABS implementation in India, describing the legal nature and activities of the country's National Biodiversity Authority. Giving examples of ABS agreements on the ground, he noted that in determining equitable benefit-sharing, the criteria are considered on a case-by-case basis.

Hugo Schally, EU, presented the proposed EU regulation, currently in the final stages of approval, noting that it focuses on compliance measures, providing for a due diligence requirement for users and establishing two checkpoints, one at the beginning and one at the end of the value chain. He said access requirements and penalties for non-compliance will be regulated at the member state level.

Preston Hardison, Tulalip Tribes, presented on the need to assess culture-related risks in specific ABS transactions. He said the Protocol does not provide for consideration of the risks of sharing TK, noting that such risks can be significant in the context of current survival challenges for many indigenous peoples. He stressed the need to ensure respect for community biocultural protocols in domestic legal systems, and to improve mutual supportiveness between ABS and other TK-related measures.

Sélim Louafi, CIRAD (Agricultural Research for Development), discussed challenges faced by the research sector in complying with ABS rules and procedures. He commented that the ABS narrative is built around access to genetic resources by the private sector, but most transactions occur within the research sector, for example, in the context of conservation, breeding and knowledge generation. He proposed documenting existing exchange and use practices. He highlighted the possibility of long-term partnerships for non-monetary benefit-sharing, which do not preclude the possibility of monetary benefits, for example, through supporting PhD research and hosting visiting scholars.

Maria Julia Oliva, Union for Ethical BioTrade (UEBT), noted that a growing number of companies are reporting on their biodiversity-sourcing practices. She encouraged countries to: focus on providing legal certainty; develop a coherent interpretation of the Protocol; and identify what specific practices are covered under ABS. She highlighted the need to support companies that are pioneering good practices, and proposed a platform for business to discuss on and engage in ABS.

Ensuing discussions focused on: users' due diligence obligations in providing information to checkpoints at different stages of the value chain; the usefulness of voluntary instruments to communicate regulatory requirements effectively to users and identify workable approaches to ensure users' compliance and avoid reputational risk; good practices and challenges within the research community; sanctions for users' non-compliance with their due diligence obligations, and recourse to domestic courts for breaches of MAT; choice and structure of competent national authorities; IPRs and prevention of biopiracy; and predicted timing of the ratification by the EU and its member states.

FRANCE expressed the intention to ratify the Protocol soon after EU legislation is finalized. GERMANY drew attention to a draft legislative package, highlighting challenges regarding setting up a competent national authority in view of the country's federal system, and ongoing discussions on certain access regulations. AUSTRALIA underlined efforts to simplify and streamline the process of requesting access permits for scientific research, including through negotiating institutional-level benefit-sharing agreements and attaching a benefit-sharing agreement to a permit. PERU highlighted ongoing preparations, including at the ILC level, and challenges regarding compliance by the research sector, *ex situ* collections and interlinkages with other treaties, including free trade agreements with provisions on IPRs. The UK noted challenges leading up to ratification, including assent from the foreign office.

MOROCCO noted a domestic study on the most strategic mode of implementing the Protocol. NORWAY drew attention to disclosure requirements in IP legislation and development of legislation on TK. SWITZERLAND described their centralized checkpoint, which he said is user-friendly and simple. BRAZIL noted efforts to improve their 2001 ABS legislation, and to share experiences in implementation with India and South Africa.

THAILAND drew attention to four competent national authorities, on plants, traditional medicine, micro-organism collections and protected animals. INDONESIA said a national authority will be established by 2015, noting that more time is needed for stakeholder awareness. COSTA RICA said countries should concentrate not only on access, but also on compiling information about monetary and non-monetary benefits. ETHIOPIA said its first ABS agreement on teff failed due to the user company's "inconsistency."

COLOMBIA underscored the need to factor in the time for consultations with ILCs into national ratification processes. JAPAN reported on a study on benefit-sharing in different sectors as a basis for inter-ministerial and stakeholder consultations. MALAYSIA pointed to the need to persuade ABS stakeholders of the added value of ratifying the Protocol. He suggested provider countries can differentiate between access applications, depending on whether user countries have sufficient domestic measures on users' compliance. SOUTH AFRICA reported on the review of its pre-existing framework on ABS with a view to including measures on checkpoints and on users' compliance, among other provisions.

#### IN THE CORRIDORS

ICNP 3 delegates gathered by the ski slopes of Pyeongchang, the site of the 2018 Winter Olympics, for what may be the last opportunity to prepare the ground for the entry into force of the Nagoya Protocol. Amidst reports of growing ratification momentum, the first day was characterized by general support for a draft capacity-building framework. Several delegations were keen on joining forces to support parties and ABS stakeholders alike in tackling legal, technical and awareness-raising challenges for the Protocol's successful implementation. Some participants, however, were more cautious, pointing out that the many capacity-building initiatives, which will likely feed into the development of domestic ABS frameworks in developing countries, may themselves lead to a plethora of divergent interpretations of the Protocol. Proposals for a CBD global support programme and an advisory committee to keep tabs on capacity-building efforts are thus likely to capture delegates' attention in the coming days.