

## ICNP 3 HIGHLIGHTS: TUESDAY, 25 FEBRUARY 2014

In the morning, ICNP 3 delegates met in plenary to continue the exchange of views on the state of implementation, and address the budget, the global multilateral benefit-sharing mechanism (Article 10), and monitoring and reporting. In the afternoon, they considered compliance procedures and mechanisms (Article 30), the ABS Clearing-House, the COP/MOP 1 agenda and the COP/MOP rules of procedure. An evening contact group initiated text-based negotiations on compliance.

### EXCHANGE OF VIEWS ON IMPLEMENTATION

Many countries reported on their internal processes for ratification and implementation of the Protocol, including amendment of existing ABS and other frameworks. The PHILIPPINES and ARGENTINA noted that access is ongoing according to pre-existing legislation. NIGER said their draft legislation focuses on deriving benefits from TK. NAMIBIA drew attention to its establishment of supporting measures, including on biotrade. The AFRICAN UNION (AU) said guidelines for harmonized regional standards are being prepared and will be submitted to the African Ministerial Conference on Environment. UNEP noted that, with the support of the Global Environment Facility (GEF), some African countries have already ratified the Protocol and others are preparing to do so.

### BUDGET

CBD Executive Secretary Braulio Dias introduced a draft programme budget for the biennium following the entry into force of the Protocol (UNEP/CBD/ICNP/3/2), noting that an information session is scheduled for Wednesday, while the budget will be discussed and agreed by COP/MOP 1. JAPAN reiterated the need for a budget that will avoid additional financial burdens to parties. South Africa, for the AFRICAN GROUP, called for holding COP/MOP and CBD COP Bureau meetings in conjunction, and the addition of a budget line for capacity building and, with PERU, stressed the need to fund participation of an additional delegate to the COP/MOP. Peru, for GRULAC, expressed concern that the document may set a precedent for non-parties to be obligated to finance the Protocol.

### GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM

Expert Group Co-Chair Won Seog Park (Republic of Korea) presented the report of the expert meeting on Article 10 (UNEP/CBD/ICNP/3/5) and the synthesis of the online discussions (UNEP/CBD/ICNP/3/INF/4). Many delegates said the mechanism should not compromise national sovereignty over

genetic resources and the Protocol's bilateral approach to ABS. INDIA called for ensuring the mechanism is used only as a last resort. MALAYSIA recalled that the provision was intended to avoid letting users escape benefit-sharing obligations when the origin cannot be identified, noting, with SAINT LUCIA, that it is supplementary to the Protocol's bilateral approach.

Namibia for the AFRICAN GROUP stated that: it is impossible to effectively implement the Protocol without the global mechanism; its key principles must not compromise national sovereignty and ILCs' rights over TK; the mechanism must complement bilateral and regional approaches to ABS; and all utilization of genetic resources and TK should always trigger the benefit-sharing obligation. She suggested that: the mechanism be compulsory in situations to be identified by the COP/MOP; parties identify other situations for mandatory recourse to the mechanism in their national laws; and the mechanism be also used on a voluntary basis. She urged adoption of the mechanism at COP/MOP 1.

Many delegates, including South Africa for the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), the EU and SWITZERLAND, proposed postponing discussion to COP/MOP 2, noting that discussions will benefit from experience in implementing the Protocol. The EU proposed a roadmap of activities to support discussion at COP/MOP 2. MEXICO, with others, recommended to continue online discussions. BRAZIL proposed recommending that COP/MOP 1 request an additional study, to be prepared by a regionally-balanced expert group, for consideration by COP/MOP 2.

NEW ZEALAND favored an identification of gaps feeding into further discussion of the need for the mechanism. JAPAN added that the mechanism should be in line with the CBD and Protocol, cost-effective and directly benefit conservation and sustainable use, while being acceptable to users. SWITZERLAND drew attention to the possibility of establishing regional multilateral mechanisms first.

Cautioning against reopening discussion on the temporal and spatial scope of the Protocol, the EU, with CANADA, argued that the Protocol only applies to genetic resources under Parties' sovereignty and that marine genetic resources in areas beyond national jurisdiction (ABNJ) must be considered under the process agreed by the UN General Assembly. ARGENTINA considered discussion on the mechanism premature, and, with NORWAY, pointed to the applicability of the UN Convention on the Law of the Sea and the Antarctic Treaty System to genetic resources in ABNJ. NORWAY stated that Article 11 (transboundary cooperation) does not provide a solution to situations in which genetic resources are shared, which "is the norm rather than the exception," calling for the identification of possible scenarios for using the mechanism. CANADA



highlighted that Article 10 is not intended to cover failure to implement other Protocol provisions. THAILAND supported enabling the mechanism to supplement bilateral cooperation under Article 11 by providing guidance on minimum benefit-sharing requirements under the Protocol.

The IIFB called for indigenous peoples, including women, to be active participants in all stages of the discussion of the mechanism; and requested additional studies on Article 11 (transboundary cooperation), based on a non-market approach that is fair and transparent. A BUSINESS representative prioritized focusing on national implementation, to ensure the resulting national regimes are workable for both users and providers.

### **MONITORING AND REPORTING**

The Secretariat introduced the document (UNEP/CBD/ICNP/3/9) and Chair Lowe invited comments on the proposed reporting intervals and development of a reporting format, for approval at COP/MOP 1. Delegates agreed that the Secretariat prepare a reporting format for consideration at COP/MOP 1.

JAPAN and CANADA supported submission of an interim report on national implementation at the end of 2015. The EU preferred that parties submit their first national report in 2017. CANADA questioned including indicators in the interim report, saying this may slow down preparation. SWITZERLAND and the EU stressed the need for efficiency and reducing administrative burdens.

### **COMPLIANCE**

Chair Lowe introduced the document, including annexed draft procedures and mechanisms to promote compliance and address non-compliance (UNEP/CBD/ICNP/3/8). South Africa, for the LMMC, stressed the mechanism should: be cooperative and facilitative in promoting compliance, while being strong and effective in addressing non-compliance; and differentiate between non-compliance due to lack of capacity and lack of political will. The EU noted it should be simple, facilitative, non-judicial, non-adversarial, and linked to relevant processes under the Protocol including on capacity building and the ABS Clearing-House. JAPAN said the procedures should not be legally binding, favoring cooperative measures including advice and assistance in cases of non-compliance, and opposing any sanctions. ARGENTINA cautioned against imposing punitive measures such as trade sanctions. Uganda, for the AFRICAN GROUP, expressed concern about limiting the powers of a compliance committee, in instances of repetitive or deliberate non-compliance.

The LMMC, the EU and JAPAN said the mechanism should address obligations of parties, not private users. MEXICO said that Articles 15 (compliance with domestic ABS requirements) and 18 (compliance with MAT) come into play when establishing a comprehensive compliance mechanism. PERU proposed establishing a reconciliation mechanism in cases of non-compliance with benefit-sharing requirements.

The EU expressed openness to explore ways for ILCs' participation, as well as innovative types of cooperative procedures. Highlighting that TK-related articles carry the same weight as the articles on genetic resources in terms of parties' obligations, NORWAY stressed the mechanism should benefit from, and safeguard the interests of, indigenous peoples and local communities through "some sort of representation." The IIFB recommended: including in the compliance committee ILC representatives from each UN region; establishing regional ILC committees to advise and support ILC submissions to the compliance committee; and enable ILCs to make submissions to the compliance committee independently from national authorities.

### **ABS CLEARING-HOUSE**

The Secretariat introduced the report on progress in implementation of the pilot phase of the ABS Clearing-House, including draft modalities of operation (UNEP/CBD/ICNP/3/6, and INF/5). Chair Lowe, with many, called upon delegates to participate in the testing of the ABS Clearing-House so that it can work more effectively during implementation. South Africa, for the LMMC, stressed the importance of an effective and user-friendly ABS Clearing-House, and supported the proposed draft recommendations. The EU highlighted that the ABS Clearing-House is essential for monitoring and reporting. Madagascar, for the AFRICAN GROUP, noted the need for criteria to streamline the kind of information to be fed into the ABS Clearing-House. The REPUBLIC OF KOREA said that information in the ABS Clearing-House should be accessible, non-confidential and general in manner. SWITZERLAND requested clarification on the implications of updating the internationally recognized certificate of compliance, and also suggested that the informal advisory committee continue to provide advice to the Secretariat. CANADA stressed that posting permits or their equivalents, and information on third party transfers is not mandatory. The IIFB suggested that parties appoint a national focal point on CBD Article 8(j) to help address the communication gap with ILCs. A BUSINESS representative stressed the ABS Clearing-House should include reliable and complete information, and raised concerns regarding confidentiality of commercially sensitive information.

### **COP/MOP 1 AGENDA**

Chair Lowe introduced the agenda item (UNEP/CBD/ICNP/3/4). The EU suggested linking the discussions on monitoring and reporting to the ABS Clearing-House. He proposed adding agenda items on: review of implementation (Article 26.4); model clauses, guidelines, standards and best practices; and a report from the ICNP.

### **COP/MOP RULES OF PROCEDURES**

Chair Lowe introduced a CRP. ARGENTINA suggested bracketing text on the COM/MOP Bureau, pending a decision on the budget for the first biennium, arguing that the CBD COP Bureau should serve on an interim basis as the COP/MOP Bureau, while CBD parties, rather than Protocol parties, contribute to the Protocol budget. The Secretariat recalled that the composition of the COP/MOP Bureau is determined by the Protocol. MALAYSIA suggested adding reference to the relevant Protocol provision. Delegates adopted the recommendation with this amendment, with Chair Lowe suggesting to reflect Argentina's concerns in the draft recommendation on the budget.

### **IN THE CORRIDORS**

On Tuesday, the question of how indigenous and local communities (ILCs) can fully participate in the governance of the international ABS framework came up repeatedly, in relation to the Protocol provisions on traditional knowledge (TK) and genetic resources held by ILCs. Indigenous representatives called for systematic opportunities to contribute to the discussion on a global multilateral benefit-sharing mechanism, which now appears likely to continue until COP/MOP 2. In addition, they queried how their views may be appropriately incorporated in monitoring and reporting processes under the Protocol. As for the ABS Clearing-House, a participant noted that "Many indigenous peoples and local communities face a digital gap, so non-electronic means of submitting information should also be considered." Finally, questions on ILC participation in a future compliance committee are on the table of the contact group on compliance, which is likely to take centre-stage at ICNP 3.