

ICNP 2 HIGHLIGHTS: TUESDAY, 3 JULY 2012

ICNP 2 delegates met in plenary to discuss the ABS clearing-house, capacity building, awareness-raising and compliance. A lunchtime informal roundtable discussion illustrated progress towards ratification of the Protocol.

PLENARY

ABS CLEARING-HOUSE: On progress in the implementation of the pilot phase and modalities for operation of the ABS clearing-house (UNEP/CBD/ICNP/2/8 and 9), the Secretariat said: relevant staff is hired; a progress report on the pilot phase will be presented at COP 11; and the ABS clearing-house is expected to be operational by the Protocol's entry into force.

Many parties highlighted the relevance of the clearing-house and the importance of capacity building. NORWAY suggested establishment of an ABS clearing-house contact point at the national level and supported developing common formats, policy documents and standards. UGANDA welcomed the provision to offer non-electronic or non-internet based information for countries that request it. JAPAN stressed provision of information on domestic measures is crucial to implement the Protocol's requirements related to benefit-sharing, access and compliance. JORDAN highlighted that Article 14 (ABS Clearing-House and Information-Sharing) distinguishes between mandatory and voluntary submissions. THAILAND said the clearing-house should also facilitate exchange of information between users and providers of genetic resources and associated traditional knowledge.

Pilot phase: Many supported that the pilot phase start as early as possible and underscored that it focus on the necessary functions to support compliance with the Protocol. GUATEMALA proposed the pilot phase include case studies to support information exchange and that such information include diverse, flexible formats to support broad participation of communities and traditional knowledge holders. PERU suggested the pilot phase be reviewed by a possible ICNP 3.

Cooperation: Many encouraged the Secretariat to consider lessons learned from the Biosafety Clearing-house, and supported promoting cooperation with existing systems, such as those established under WIPO and ITPGR. BRAZIL said that cooperation with other entities should not interfere with the institutionalization and consolidation of the ABS clearing-house. Peru, for GRULAC, suggested considering linkages with other databases at a later stage. GRULAC emphasized that the ABS clearing-house has a unique role, compared to other mechanisms under other MEAs, as the ABS permits become internationally recognized certificates of compliance once in the clearing-house, and cautioned against confusing the clearing-house with a repository of information.

Informal advisory committee: The EU, JAPAN, JORDAN and Uganda, for the AFRICAN GROUP, supported the establishment of an informal advisory committee. JAPAN proposed limiting its duration, for further consideration at COP/MOP 1. JORDAN highlighted the need to ensure transparency and equitable geographic representation, and MALAYSIA further proposed including representatives from ILCs. Following several delegates' requests for details, the Secretariat explained that this type of committee is a useful mechanism in the context of the CBD and the Biosafety Clearing-houses, and its establishment is initially envisaged for the pilot phase period, while COP/MOP 1 may decide whether to continue it. She said the committee could include three to five representatives per region and potentially observers; would provide guidance and technical assistance to the CBD Secretariat on issues such as the development of common formats; and would hold one intersessional meeting.

CAPACITY BUILDING: On domestic needs and priorities and the proposed elements of the strategic framework for capacity building and development in support of the Protocol's implementation (UNEP/CBD/ICNP/2/10), Ghana, on behalf of the AFRICAN GROUP, emphasized the need for capacity-building at different levels and scales, in relation to law enforcement and in support of ratification, and preferred that the framework be designed as an action plan. BRAZIL, THAILAND, INDIA and CHINA also supported the action plan option to guide countries on implementation and developing their own strategic frameworks. CANADA preferred the strategic framework serve as a reference document and supported the development of a specific action plan and timeframe.

IRAQ pointed to capacity building for regional cooperation and for legislators, as well as to the usefulness of model legislation at the regional level. YEMEN also supported capacity exchanges at the regional level. INDONESIA underlined: communication and awareness for ILCs; taxonomic capacity for monitoring genetic resources, including for ILCs; and capacity for negotiating MAT, developing genetic resources databases and law enforcement. TIMOR LESTE recommended targeting academia.

THE REPUBLIC OF KOREA highlighted integration of existing capacity-building programmes into the strategic framework, broad representation and private participation, as well as feasibility and cost-effectiveness. The EU stated that the framework aims at providing guidance and services to parties in national needs assessment and implementation of the Protocol, and that methodologies and tools developed by existing capacity-building programmes could be standardized. JORDAN and CHINA stressed support for national assessments, with CHINA further underscoring the need for financing to enhance developing country capacity to implement the Protocol. INDIA suggested a sub-regional approach may be more cost-effective for building capacities.

NEW ZEALAND and NAMIBIA called for practical capacity-building activities focused on ratification and implementation. NEW ZEALAND further called for promoting skill transfers. Noting that GEF funding does not support ratification, NAMIBIA urged recommending that COP 11 provide guidance to the GEF. MEXICO and MALI underscored using the ABS clearing-house for capacity-building purposes.

The ITPGR highlighted experience in capacity building in the framework of the Treaty and joint initiatives with the CBD. The IIFB stressed the need for active participation of indigenous peoples and local communities, including women, in capacity-building activities, noting that training and research activities need to include traditional knowledge. The IUCN drew attention to the development of an explanatory guide to the Protocol.

AWARENESS RAISING: The Secretariat introduced a revised draft awareness-raising strategy for the Nagoya Protocol (UNEP/CBD/ICNP/2/11), as well as other relevant documents (UNEP/CBD/ICNP/2/INF/2, 6 and 7).

Many delegates supported the revised strategy and highlighted the crucial role of awareness raising for the implementation of the Protocol. ARGENTINA, MALAYSIA and Cote d'Ivoire, for the AFRICAN GROUP, suggested including reference to awareness-raising for ratification. BRAZIL recommended the strategy be flexible and dynamic. Many welcomed the revised strategy as a flexible framework enabling implementation of activities adaptable to national circumstances.

Many developing countries supported that COP 11 invite the GEF to provide financial support to countries for awareness-raising activities. ZAMBIA suggested the strategy incorporate a timeframe and financial implications. HONDURAS proposed the development of material on awareness raising for inclusion in the formal education system. NAMIBIA highlighted the need to fully and effectively involve ILCs and other stakeholders in awareness-raising activities. The IIFB supported the strategy and highlighted the need for full and effective participation in awareness-raising activities, and the use of different tools in local languages, such as short films and radio.

COMPLIANCE: Jorge Cabrera Medaglia (Costa Rica), Co-Chair of the expert meeting on compliance, introduced the meeting's report (UNEP/CBD/ICNP/2/12). The EU stated that the compliance mechanism should not deal with compliance by private individuals and entities with national ABS legislation, and noted the Protocol directly addresses ILCs, expressing willingness to explore ILC involvement in the compliance mechanism.

Swaziland, on behalf of the AFRICAN GROUP, recommended that the compliance mechanism: address compliance in a comprehensive and balanced manner; decide by consensus or majority voting as a last resort; receive complaints from non-State actors if all domestic options have been exhausted; and include ILCs as observers; and suggested consideration of establishing an ombudsman. EGYPT and SOUTH AFRICA stressed that the compliance mechanism should impact on the behavior of both providers and users in a way that goes beyond mere compliance with national ABS measures. NIGER supported legally-binding measures. SOUTH AFRICA pointed to the role of Articles 21 (Awareness Raising), 22 (Capacity) and 25 (Financial Mechanism and Resources) in modifying the behavior of all relevant actors, and enhancing monitoring and enforcement capacity.

CHINA said the compliance mechanism should be non-confrontational, facilitative, equitable and take into full consideration special circumstances and needs of developing countries. PERU preferred that a compliance committee: function relatively independently from parties in a transparent manner; decide on the basis of consensus or simple majority; be triggered by countries directly affected by non-compliance cases; and receive information on non-compliance cases from any interested parties, including ILCs.

JAPAN said the mechanism should focus on compliance by parties, whereas users and traditional knowledge holders should not be addressed. NORWAY stressed that: breaches of MAT are to be ascertained by the national courts; compliance with provisions on traditional knowledge should be treated equally with other obligations under the Protocol; and ILCs should have a role in non-compliance instances that directly affect them and should have the same rights to participate in the development of the compliance mechanisms as they had during the negotiations of the Protocol. INDONESIA underscored the role of the compliance mechanism to clarify the content and promote the application of the Protocol provisions, and prevent disputes.

BRAZIL suggested that the compliance mechanism: should, similarly to the ITPGR, emphasize a facilitative approach; allow participation of ILCs as observers; and in cases of repeated non-compliance, lead possibly to the adoption of measures by the COP/MOP, albeit without a mandate to impose sanctions. The REPUBLIC OF KOREA argued that financial penalties, trade consequences, criminal penalties and judicial facilitation measures are inconsistent with Article 4 (Relationships with International Agreements and Instruments). ARGENTINA preferred a facilitative and cooperative mechanism, and called for consistency with international law, including under the World Trade Organization.

GUATEMALA said: the mechanism should be non-confrontational and binding, particularly in cases of non-compliance; providers and users' interests should be balanced; and further consideration of traditional knowledge holders is needed. MALAYSIA suggested a differentiated treatment between lack of funding or capacities for compliance and the persistent refusal to comply with the Protocol. He noted that some of the Protocol's core obligations are "loose" and discretionary and need further guidance from the COP/MOP. CANADA recommended the procedure of the compliance mechanism be similar to mechanisms under other MEAs, suggesting consideration of those under the Biosafety Protocol, the Basel Convention and ITPGR, among others.

The IIFB affirmed the Nagoya Protocol is expected to have innovative procedures and mechanisms to implement its provisions related to indigenous peoples and local communities and traditional knowledge, and supported inclusion of indigenous representatives in a compliance committee.

IN THE CORRIDORS

Many participants were pleasantly surprised to witness a lunchtime informal event showcasing countries' progress towards ratification of the Protocol, and commented that the presentations demonstrated that many CBD parties are already engaged in implementation. Chaired by the CBD Executive Secretary himself, the exchange of experiences clearly illustrated the Protocol's impact on national-level action, with several countries developing new or revising domestic ABS measures, while taking the required steps for ratification. A seasoned observer identified common challenges, such as effectively engaging and "keeping happy" different government agencies and stakeholder groups or developing legislation on traditional knowledge for the first time, as well as more specific ones, such as those encountered by countries with federal systems. At the same time, listening to certain delegates reporting on their efforts to target "core obligations" or develop legislation on "user compliance measures," another participant wondered whether countries' differing interpretations of the Protocol's text will allow for it to operate effectively.