

THE THIRD MEETING OF THE OPEN-ENDED AD HOC
INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA
PROTOCOL ON ACCESS TO GENETIC RESOURCES AND
THE FAIR AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION (ICNP-3)

*FEBRUARY 24-28, 2014
PYEONGCHANG, REPUBLIC OF KOREA*

THE OUTCOMES: AN AFRICAN PERSPECTIVE

MAHLETESHOME

AFRICAN UNION COMMISSION

MARCH 10, 2014, COTONOU, BENIN

“ As the entry into force of the Nagoya Protocol approaches, laying the groundwork for a solid and strong foundation has never been more important. This very successful meeting has adopted recommendations that are at the core of this foundation. I want to congratulate Parties to the CBD for their hard work, spirit of compromise and willingness to move towards entry into force of the Nagoya Protocol.”

-Dr. Bráulio Ferriera De Souza Dias
Executive Secretary of the CBD

AU AFRICAN COORDINATION MEETING FOR ICNP-3 (FEB 22,2014)

(ABS Capacity Building Initiative financial support+ SCBD on logistics)

- ▶ **Agenda items of ICNP-3**
- ▶ **Briefing Document: directions to African Group/facilitated for common positions**
- ▶ **Coordination Strategy: Organizing African Group against Agenda item**

AGENDA ITEMS

- ▶ Opening of the meeting and Organizational matters
- ▶ Outstanding issues for consideration by the Intergovernmental Committee in accordance with its work plan (decision X/I, annex II):
 1. Development of a programme budget for the biennium following the entry into force of the Protocol;
 2. Consideration of rules of procedure for the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 5);
 3. Elaboration of a draft provisional agenda for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 6);
 4. **The need for and modalities of a global multilateral benefit-sharing mechanism (Article 10);**
 5. **Modalities of operation of the Access and Benefit-sharing Clearing-House (Article 14, paragraph 4);**
 6. **Capacity Building (Article 22);**
 7. **Cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice or assistance, where appropriate (Article 30).**
- ▶ Additional issues identified in decision XI/I:
 8. **Monitoring and reporting** (Article 29);
 9. Exchange of views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards (Article 19 and 20);
 10. Exchange of views on the state of implementation of the Nagoya Protocol.
- ▶ Other matters adoption of report and closure

I. THE NEED FOR AND MODALITIES OF A GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM (ARTICLE 10):

- ▶ Major issue under discussion was the need for and modalities of a GMBSM (varying positions: on need, on potential purpose, on existing experience)
- ▶ If and when agreed, the mechanism is intended to address instances of benefit sharing, including the use of TK associated with GR that occur in transboundary situations or for which it is not possible to grant or obtain PIC.

I. THE NEED FOR AND MODALITIES OF A GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM (ARTICLE 10) ..CONT'D:

- ▶ African Group was **unanimous as to the need** for the GMBSM and that its establishment should not be conditional (but supplementary) to implementation of national measures and bilateral ABS approaches and called for identification of possible scenarios for using the mechanism. Africa also was in favor of adopting a concrete decision on mechanism at COP MOP 1.
- ▶ ICNP-3 agreed on a roadmap that will allow Parties to unravel the complexities of a GMBSM (a study, expert mtg). Hence decisions will be postponed to COP-MOP 2.
- ▶ The recommendation still retains bracketed text on whether the study and expert group meeting will be 'subject to availability of funds'.
- ▶ The reference to the definition of *in situ* and *ex situ* GR contained in CBD Art. 2 remains also outstanding pending decision at COP-MOP 1.

2. MODALITIES OF OPERATION OF THE ABS CLEARING HOUSE (ART. 14 (4)):

- ▶ At ICNP-3 the Pilot phase of the ABS Clearing House was launched and training sessions were also held.
- ▶ The African Group considered the need for and the modality of involvement of ILC focal persons in the provision of information to the ABS Clearing House. The Group also called on the need to set up criteria to streamline the kind of information to fed into the ABS Clearing House
- ▶ ICNP-3 agreed on the critical importance of a fully functional Clearing House and that all efforts were made to ensure that this is done by the time of entry into force of the NP. Additional measures were recommended in this regard including: provision of information to the Secretariat and registration of reference records by international organizations, relevant stakeholders and ILCs, submission of views by Parties on responsibilities of comp. authorities of ILCs. A synthesis of views for COP-MOP I will be prepared based on the submissions.

3. CAPACITY BUILDING (ART. 22):

- ▶ The draft strategic framework for capacity building under the NP was a key issue of discussion.
- ▶ The African Group called for the inclusion (in the strategic framework) of capacity development needs to: track and monitor utilization of GR, IP related to GR and ATK, relationship and cooperation with other international instruments. The African Group called on financial mechanism under the GEF to cover the capacity development demands of developing countries and ILCs as a common challenge.
- ▶ The ICNP-3 noted the need for sufficient financial resources for capacity building and development activities to support implementation of the NP and recommended the adoption of the Strategic Framework.

3. CAPACITY BUILDING (ART. 22):...CONT'D

- ▶ An informal advisory committee will also be established to provide advice to the Secretariat until COP-MOP3 on implementation of the Framework.
- ▶ Governments, the GEF, international organizations, regional development banks, other financial institutions and the private sector to provide financial resources to support implementation of the Strategic Framework.
- ▶ The Secretariat to ensure that information on capacity building/development, needs, opportunities and activities should be submitted to and accessed from all platforms under the CBD
- ▶ An evaluation of the Strategic framework in 2019 will be prepared and the report submitted to MOP in 2020 for its possible revision along with the review of the Biodiversity Strategic Plan

4. COMPLIANCE (ART. 30):

- ▶ Some progress on outstanding issues related to the compliance procedures and mechanisms which is believed to facilitate the task of the COP-MOP to resolve the remaining differences and approve the procedures as required under Art. 30 of the NP
- ▶ The African Group believed that Article 30 should be considered vis-a-vis Article 15 and 16 (compliance with domestic legislation). The Group called for the need for the compliance procedures to set up minimum criteria so that legitimate cases of non-compliance are communicated. Regarding composition of the Compliance Committee members to be based on individual capacities but nominated by Parties including representation of ILCs. The Group agreed on the need for the establishment of an Ombudsman to provide assistance to developing countries and indigenous and local communities to identify instances of non-compliance is also tabled for discussion and agreement

4. COMPLIANCE (ART. 30):

- ▶ The ICNP-3 agreed on the objective of the Procedures that they are to promote compliance and address cases of non-compliance (without prejudice to dispute settlement procedures). The nature of the procedures was also agreed upon.
- ▶ The institutional mechanism will be the Compliance Committee (15 mbs nominated by Parties). Participation of ILC representatives remains bracketed. Competence, interval of meeting of Committee, quorum. The decision making procedure is still bracketed and differed for COP-MOP I. Meeting of the Committee will be open unless decided otherwise and individual cases of compliance of Parties in which case the meeting will be a closed session of just Parties
- ▶ Regarding exemptions to the functions of the Committee, a critical matter still remains i.e. the issue of exempting questions related to interpretation of, implementation of, or compliance with MAT and/or national law.

4. COMPLIANCE (ART. 30):

- ▶ With regards to the trigger of application of the Compliance Procedures, it is agreed that submissions may be received from any Party with respect to itself, with respect to another Party and the COP-MOP. Reference to submissions by the Secretariat, members of the public and ILCs remain bracketed.
- ▶ On measures to be taken by the Committee or the COP-MOP offering advice and facilitating compliance, assisting the Party to develop a compliance plan are among those agreed. In taking measures, capacity of the Party concerned, special needs of developing country parties and frequency of non-compliance are agreed to be taken into account. COP may facilitate access to financial and technical assistance and capacity building measures on certain non-compliance cases.
- ▶ Bracketed texts remain on grave and repeated non-compliance on reference to suspension of rights and privileges in accordance with applicable international law
- ▶ The creation of an Ombudsman to provide assistance to developing countries and ILCs still remains bracketed.

5. MONITORING AND REPORTING (ART. 19 AND 20):

- ▶ Monitoring the implementation of its obligations and reporting to COP-MOP is the obligation of each Party to the NP. Based on this, COP-MOP I is expected to invite Parties to submit an interim national report regarding the implementation of their obligations.
- ▶ The African group welcomed the proposal for an interim report before COP-MOP 2 in order to establish a baseline. However the Group called cautioned basing the the first evaluation of the effectiveness of the Protocol on the reports submitted as these may be challenged due to other factors besides the actual effectiveness of the NP.
- ▶ ICNP-3 requested the Secretariat to develop a draft format for the submission of an interim national report and to consolidate the information contained in the reports and information published in the ABS Clearing House for consideration of COP-MOP3. The format of national reports will be under review based on experience gained and feedback received from Parties.

CONCLUSION

- ▶ National consultations on outstanding issues in preparation of COP-MOPI
- ▶ Consider the provisions of the NP and the areas that it doesn't cover as appropriate in the regional policy framework/AU Guidelines to ensure ABS in Africa
- ▶ Communication of the relevance of and ensure support to the NP and African positions to the level of AU Policy Organs raise profile of biodiversity and ensure sustainability of support to MS
- ▶ Keep abreast on developments related to ABS and the NP under other international processes

Further Information on ICNP-3 may be found at:

www.cbd.int/icnp3/

<http://www.iisd.ca/biodiv/icnp3/>

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