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2 December 2015

Dear Braulio,

Re: NOTIFICATION No. 2015- 128

We do not see a need for additional support or a *mechanism to provide advice or assistance to Parties and indigenous and local communities with a view to making more effective use of the compliance mechanism*. It is still too early to assess whether and how the compliance mechanism is achieving its aim to promote compliance with the provisions of this Protocol. The mechanism itself, alongside many of the other parts of the Protocol, is in the process of establishing its procedures and ways of working. Many States are still in process of putting in place the necessary measures to enable them to ratify the Protocol or to implement it. We do not therefore at this stage consider that there is any evidence to suggest that the challenges related to compliance with the provisions of the Protocol require additional support or mechanisms. If in future the compliance mechanism proves not to be working effectively, this can be considered as part of the review of effectiveness of the Protocol under Article 31.

The Parties to the Nagoya Protocol agreed to establish a compliance mechanism that 'shall be non-adversarial, cooperative, simple, expeditious, advisory, facilitative, flexible and cost-effective in nature'. Experience from other compliance mechanisms demonstrates that such bodies are effective in providing the advice and assistance necessary to promote compliance:

(<https://www.cbd.int/doc/meetings/abs/icnp-01/information/icnp-01-inf-01-en.pdf>).

We consider that establishing an additional mechanism could be counterproductive as it would imply more costs and administration and could possibly encourage a more adversarial approach.

We consider it is also important to be clear about the role of the compliance mechanism and what it is competent to consider. The term "compliance" is part of a range of terminology used to describe patterns of conformity with legal norms.¹ In the context of Article 30 of the Nagoya Protocol, compliance means "the fulfilment

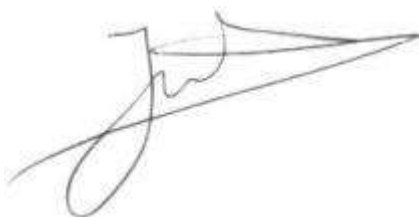
¹ See the section on definitions in UNEP, "Compliance Mechanisms under Selected Multilateral Environmental Agreements (UNEP Compliance Mechanisms) pp. 19-22.



by the contracting Parties of their obligations under a multilateral environmental agreement and any amendments to the multilateral environmental agreement”.²

(See paragraph 6 of <https://www.cbd.int/doc/meetings/abs/icnp-01/official/icnp-01-06-rev1-en.pdf>). Consequently, the mechanism is not concerned with compliance with mutually agreed terms (MAT) as MAT relates to contractual obligations and not obligations under the Protocol. There are other mechanisms in place which do address issues relevant to the use of mutually agreed terms, notably in relation to capacity building and development, but we believe it is important to keep these areas distinct.

Yours

A handwritten signature in black ink, appearing to read 'Julian Jackson', with a long horizontal stroke extending to the right.

Julian Jackson
ABS & Nagoya Protocol Focal Point
International Biodiversity Team

² UNEP, Guidelines on Compliance with and Enforcement of Multilateral Environment Agreements, Nairobi, 2002, paragraph 9 (a) (UNEP Compliance Guidelines).