

## **India's preliminary views on elements and options for cooperative procedures and institutional mechanisms to promote compliance with Nagoya Protocol and to address cases of non-compliance.**

- Experience of dealing of this issue in several of MEAs, including Biosafety Protocol and ITPGRFA has indicated that failure to comply with the provisions of an MEA is not so often intentional, but rather a lack of capacity, awareness or resources to comply with them. Therefore, a promotive and facilitative mechanisms, which is transparent and positive would be more helpful. This approach should be reflected in the institutional mechanism on compliance devised for the Protocol.
- A back-up approach of enforcement measures may also be provided for in the compliance mechanism to be devised. Enforcement approach may play a preventive role since positive measures may not always be effective to ensure compliance. Existence of enforcement measures can act as strong deterrent factor that will guide States in a positive direction to comply with the obligations.
- The two approaches to non-compliance (facilitative and enforcement) are not mutually exclusive, and the compliance mechanism may combine elements of both approaches, but with a predominant emphasis on facilitative measures.
- The experience of Compliance Committee of Biosafety Protocol at not being able to take action in cases of non-compliance may be attributed to non-agreement on adoption of Rule 18 of the Compliance Committee relating to taking a decision by two-third majority on the grounds that Rule 40 of the Rules of Procedure for CBD on the matter continues to be bracketed. In this background, the stage for taking punitive action in cases of non-compliance may never come, and therefore a facilitative mechanism for addressing issues of non-compliance may be the more practical option.
- In order to promote compliance and address cases of non-compliance, the following measures merit consideration, taking into account the capacity of the party concerned to comply and factors such as the cause, type, degree and frequency of non-compliance:
  - Providing in-country assistance, technical assessment and a verification mission, upon the invitation of the party concerned;
  - Calling for explanations when the timeframe agreed in accordance with a given compliance measure is not met;
  - Issuing a statement of concern regarding the non-compliance of a Party who is in non-compliance;
  - Issuing a warning;

- Sending a public notification of a compliance matter through the Secretariat to all parties advising that a Party has been notified that it may be in non-compliance and that, up to that time, there has been no satisfactory response or action;
  - Requiring the appointment of a representative in the provider country for notification purposes to facilitate administrative and/or criminal procedures;
  - Suspension of specific rights and privileges, e.g., ineligibility of a non-compliant party's to serve as a member of the bureau or any committee set up under the treaty, loss of the right of the party concerned to receive documents for meetings;
  - Financial penalties, e.g., ineligibility of a non-compliant party to receive funding for its participation in meetings under the agreement and ineligibility of the party to receive other financial assistance from the agreement or its funding body, including transfer of technology;
  - Trade restrictions, if appropriate;
- Understandably, establishing an effective ABS Clearing house, and building capacities of Parties play an important role in promoting compliance.
  - The Secretariat of CBD could assist in discussions on compliance by undertaking the following actions:
    - A tabulated matrix listing the mandatory provisions of the Nagoya Protocol could be prepared as it would be helpful in discussions on compliance, especially when identifying what would constitute non-compliance when identifying what would constitute non-compliance.
    - It would be useful to have a compilation on the approaches adopted in other MEAs on non-compliance.
    - The possibility to identify cases of non-compliance based inter alia on national reports may be explored.

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