Mexico

Response by the National Commission for Knowledge and Use of Biodiversity (CONABIO) to notification SCBD/ABS/VN/SG76984, "Submission of views on cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance"

Although article 30 of the Nagoya Protocol deals with procedures and mechanisms to promote compliance with the provisions of the Protocol, articles 15, 16, 17 and 18 also address compliance from various points of view; these articles are therefore of crucial importance in ensuring that institutional and intergovernmental cooperation is effective for the purposes of achieving the objectives of the Protocol and of the Convention on Biological Diversity (CBD) itself.

In general, steps should be taken to ensure that access to genetic resources and associated traditional knowledge, where it exists between the users and providers of genetic resources, is granted in accordance with mutually agreed terms and with prior informed consent. The State should be responsible for monitoring and evaluating the utilization of these resources and, where appropriate, the sharing of the benefits arising therefrom. Consequently, it has been stipulated that the body responsible for monitoring the Protocol should issue an internationally recognized certificate of compliance, which should be obligatory, and that, even where the mutually agreed terms for benefit-sharing are established between individuals, there is a mechanism for monitoring compliance with these terms and for issuing sanctions in cases of non-compliance.

To enhance compliance with the mandate set out in the Protocol, it is suggested that there should be international mechanisms, or checkpoints, which require a certificate of compliance in order to allow the products that have been obtained from the exploitation of a genetic resource, having been accessed under the terms of the Protocol and in compliance with national laws, to be marketed. Likewise, scientific journals that deem it relevant (particularly those in the fields of medicine, biotechnology and molecular biology) could request that authors submit a certificate of compliance (solely in relevant cases, i.e., resulting from patents issued under the conditions specified in the Protocol) as a pre-requisite for permission to publish.

Monitoring and evaluation of the utilization of genetic resources are crucial to ensuring compliance with the Protocol and, in particular, to enforcing the obligations of user countries under articles 15 and 16.

However, it should be noted that there are some unresolved matters in connection with access to genetic resources which may affect compliance with the Nagoya Protocol. Questions that still need to be answered include the following:

- What happens when a genetic resource is associated with the traditional knowledge of a number of different communities?

- How will the benefits arising from a resource originating in more than one country be shared?

- What will be done in cases where a crop has been domesticated in a country other than the country of origin of the resource?

- What will be done in cases where the centre of diversity is different from that of the origin of the resource?

- What happens if the users are not authorized for *in situ* utilization of a resource but are able to access *ex situ* collections?

- What happens if there is no prior informed consent, but the user is able to access the resource in another country or in *ex situ* collections?

- How will benefits be shared if users obtain traditional knowledge from a publication, but obtain the resource from a natural population (which may or may not be in a protected natural area)?

- How will monitoring take place for the genetic resources referred to in article 10 which do not have associated traditional knowledge but which may have an economic benefit?

- How will the use of domesticated species be dealt with?

It is suggested that these questions be explored at the second meeting of the Intergovernmental Committee for the Nagoya Protocol.