The Aarhus Convention and its the GMO Amendment: Good Practices and Lessons Learned that Could Support Implementation of Article 23 of the Cartagena Protocol

Erie Tamale

Programme Officer, CBD Secretariat

Convention on Biological Diversity

United Nations Decade on Biodiversity

What is the Aarhus Convention

- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters
- Three pillars: information, participation, justice
- Entered force in 30 October 2001, now has 47 Parties: 46 States and the EU (as of March 2014)
- Amendment on public participation in GMO decisions adopted in May 2005, not yet in force

Convention on Biological Diversity

Relevant Provisions

Japan Biodiversity Fund

Article 2 Environmental information includes information on GMOs therefore all the provisions of the AC with regard to A2I apply

Article 4

- Public has the right to environmental information upon request
- Without interest having to be stated
- In form requested
- As soon as possible or at latest within one month
- Reasonable charges published beforehand
- Limited grounds for refusal to be interpreted in a restrictive way

Article 5

Obligation on Parties to collect and disseminate environmental information, including on GMOs

Article 6

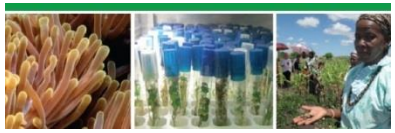
Information based on which the decisions are made and the decisions itself are publicly available

GMO Amendment

Japan Biodiversity Fund

In 2005, Parties to the Aarhus Convention adopted an amendment to the Convention on public participation in GMO decisions

Requires Parties to provide for early and effective information and public participation in **decisions on the deliberate release into the environment** and **placing on the market** of GMOs *(big step forward both for the EU and EECCA regions)*



Will enter into force when ratified by 27 of the 35 Parties (¾ of Parties) that were party to the Convention at the time the amendment was adopted.

Has 28 ratifications, 22 of which count to entry into force, needs 4 more needed.

Convention on Biological Diversity

United Nations Decade on Biodiversity

GMO Amendment

Japan Biodiversity Fund

Article 6 bis: Public participation in decisions on the deliberate release into the environment and placing on the market of GMOs

•Each Party shall provide for early and effective information and public participation prior to making decisions on deliberate release into the environment and placing on the market of GMOs

•These requirements should be complementary & mutually supportive to the provisions of their NBFs, consistent with the CPB objectives

Convention on Biological Diversity

United Nations Decade on Biodiversity

GMO Amendment

Japan Biodiversity Fund

Article 6bis, Annex - Modalities:

- Each Party shall lay down, in its regulatory framework, arrangements for effective information and public participation for decisions - include a reasonable time frame.
- A Party may, if appropriate, provide for exceptions to the public participation procedure laid down in the annex
- Each Party shall make available to the public in an adequate, timely and effective manner a summary of the notification
- Parties shall in no case consider the following information as confidential: a general description of the GMO, methods and plans for monitoring, environmental risk assessment

GMO Amendment

Japan Biodiversity Fund

Article 6bis, Annex - Modalities:

- Each Party shall ensure transparency of decision-making procedures and provide access to the relevant procedural information to the public.
- The public may submit any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release
- Each Party shall endeavour to ensure that, when decisions are taken, due account is taken of the outcome of the public participation
- Parties shall provide that when a decision has been taken the text of the decision is made publicly

Good Practices and Lessons Learned - PP

Japan Biodiversity Fund

- Currently, Parties **must apply the Convention's public participation requirements** on decisions on whether to permit **the deliberate release of GMOs into the environment** *to the extent feasible and appropriate* within *the framework of its national law (1998, 2001)*

- *+ placing on the market + contained use of GMOs (Lucca Guidelines, 2002)*

Lucca Guidelines on GMOs

Japan Biodiversity Fund

Lucca Guidelines on Access to Information, Public Participation in Decision-making and Access to Justice with respect to GMOs, adopted in 2003

http://www.unece.org/fileadmin/DAM/env/pp/documents/gmoguidelinesenglish.pdf

- Non-binding examples of good practice
- Detailed instrument covering contained use as well as deliberate release and placing on the market
- Still a valuable guidance tool

Good Practices and Lessons Learned - PP

Japan Biodiversity Fund

- The **public concerned** is informed **early** in an environmental decision-making process
  - in an **adequate, timely and effective** manner
  - include reasonable **time-frames** for informing the public and for the public **to prepare and participate effectively**

- Provide **access to all information** relevant to the decision-making for examination **free of charge**

- Procedures to allow the public to submit **any comments,** information, analyses or opinions

- **Take due account** the outcome of the PP process

- Text of the **decision** along with the reasons and considerations on which the decision is based are made **publicly accessible**

Trends & Challenges in EECCA region

Japan Biodiversity Fund

- All countries from the EECCA region ratified the AC and to some extent transposed it into domestic legislation
- PP procedures are incomplete, undeveloped or poorly elaborated
- PP procedures do not fit into domestic EIA and environmental decision-making procedures
- When laws are more or less in place, the enforcement of the PP provisions is low
- Low awareness even among public servants and judges
- Environmental issues are not high on the political agenda in some countries

Trends & Challenges in EECCA region

Japan Biodiversity Fund

- Early participation remains a significant problem
- Authorities not always properly identify the public concerned
- Timeframes are generally insufficient
- Information is often not easily accessible or available at times convenient for the public
- Often the information obtained is incomplete *(e.g. EIA process)*
- Exceptions as regards access to information can be extensively or arbitrarily interpreted
- IPR exception has been abused, denying access to reports prepared by third party consultants for public authorities (e.g. EIA materials)

Trends & Challenges in EECCA region

Japan Biodiversity Fund

- The public/civil society have little confidence that due account would be taken of PP outcomes/views
- Often there is no feedback on how public comments have been considered, and any reasons for not incorporating them
- Even when MoE makes efforts to involve the public in decision-making and drafting of legislation, inter-departmental coordination is poor and when decision-making/drafting falls outside the remit of the MoE, PP is generally non-existent

Moldova case study - PP

Japan Biodiversity Fund

- National Biosafety Commission (NBC) has identify the categories of the public concerned (PC) on the basis of requests for information submitted to NBC.
- NBC has to establish and maintain the Register of the PC
- Information in course of PP is provided thru' the NBC website, e-mailing lists, and paper copies
- The application for decision on GMO with all annexes and supporting materials placed on the web-page *(confidential info identified by the applicant)*
- Notification on acceptance of the application for decision on GMOs is published in national media with indication of the web-page where all the information can be found plus resister of the Public Concerned

Moldova case study - PP

Japan Biodiversity Fund

- **Public/ local communities** involvement recognized as key; informed thru' mass media, posters and seminars
- The public has the right to receive **substantiated reply** from the NBC concerning the acceptance or rejection of public comments
- The draft decision of NBC together with the indication of comments received and their assessment by the NBC, has be placed on the NBC website
- NBC compiles and publishes on its website the Register of GMOs and products thereof permitted for use and a Register of Decisions with reasons for permitting their use

Cooperation Between the Cartagena Protocol and the Aarhus Convention

Japan Biodiversity Fund

COP-MOP 2 (2008)

- Decision BS-II/6 - ES requested to intensify cooperation with the Aarhus Convention
- Decision BS-II/13, urged governments, inter alia, to Maximize opportunities for cooperation provided by instruments such as the Aarhus Convention

COP-MOP 5 (2010):

- Adopted a programme of work on PAEP; Governments and organizations invited to use it to implement Article 23 and share their experiences /lessons learned through the BCH
- Underlined the importance of ensuring coherence with relevant activities of the Aarhus Convention and to maximize opportunities for cooperation

Cooperation Between the Cartagena Protocol and the Aarhus Convention

Japan Biodiversity Fund

Side Events

•COP-MOP 4 side event (Protocol)

•MOP 4 side event (the Aarhus Convention)

Workshops

•October 2008 Joint workshop in Germany

•September 2010 Joint workshop in Japan

•October 2013 Joint round table in Geneva, Switzerland

Online Forum

•2 Discussion Groups

Convention on Biological Diversity

United Nations Decade on Biodiversity

Potential Collaborative Actions

Japan Biodiversity Fund

Actions at the national level:

- Strengthen coordination and cooperation between national focal points of the Aarhus Convention and the Cartagena Protocol on Biosafety;
- Establish or use existing coordination mechanisms to address the issue of biosafety, with involvement of NGOs, Aarhus Centres, farmers & other stakeholders;
- Ratify and implement the GMO Amendment
- Implement the CPB programme of work on public awareness, education and participation

Potential Collaborative Actions

Japan Biodiversity Fund

Actions at the national level:

•Address GMO-related provisions of the Aarhus Convention and requirements of the CPB in the GEF biosafety projects

•Use the Lucca Guidelines and the CPB programme of work as tools for developing legislation and promoting effective decision-making on LMOs/GMOs;

•Implement and enforce existing domestic legislation on access to information related to LMOs/GMOs;

•Mainstream issues related to access to information and public participation with regards to LMOs/GMOs into broader processes, programmes and agendas relating to biodiversity, environment and sustainable development

Potential Collaborative Actions

Japan Biodiversity Fund

Actions at the national level:

- Establish effective systems for access to information with regards to LMOs/GMOs, involving different interest groups
- Establish effective systems for public participation with regards to LMOs/GMOs (using appropriate methods, approaches and tools)
- Exchange, through the BCH and the Aarhus Clearing House, case studies on best practices and lessons learned in promoting access to information, public participation and access to justice

Potential Collaborative Actions

Japan Biodiversity Fund

Actions at the national level:

- Collect and disseminate, through the BCH, raw data and information on testing methods (and test kits) for LMOs/GMOs, including LMOs/GMOs under field trials;
- Provide guidance on implementation of legal instruments with regards to access to justice;
- Provide further guidance so that a common understanding concerning the available opportunities for access to justice matters can be developed; and
- Take additional steps in order to ensure that access to justice is not prohibitively expensive

Actions at the Multilateral Level

Japan Biodiversity Fund

The two secretariats should, as appropriate, continue assisting countries through:

- Developing checklists of key measures required for ratifying and implementing the two instruments
- Developing a note describing sources of available technical assistance, tools and materials
- Encouraging bilateral assistance to countries and partnerships with relevant organisations working in countries;
- Supporting the organisation of regional capacity building events from 2014-2017, as appropriate

Convention on Biological Diversity

United Nations Decade on Biodiversity

Actions at the Multilateral Level

Japan Biodiversity Fund

- Enhancing exchange of information by inter-linking existing tools in the clearing-houses of the two instruments (e.g. Biosafety Resource Center (BIRC) in the BCH, the Portal on Public Awareness, Education and Participation in the BCH, registers of other relevant information)
- Mainstreaming the Aarhus Convention and Article 23 of the Cartagena Protocol into biodiversity, environmental and sustainable development policies and programmes
- Promoting, sub-regional, regional and international cooperation (e.g. through existing regional organizations and networks)

Concluding Remarks

Japan Biodiversity Fund

The GMO Amendment to the Aarhus Convention will supplement national efforts to implement Article 23

- Make use of the legal frameworks developed under the Aarhus Convention to implement Article 23 of the Cartagena Protocol

- Maximise existing tools, e.g. the Lucca guidelines on access to information, public participation and access to justice with respect to GMOs (2002) - non-binding examples of good practice: http://www.unece.org/env/pp/gmos.html

Convention on Biological Diversity

United Nations Decade on Biodiversity

Concluding Remarks

Japan Biodiversity Fund

- Strengthen coordination and cooperation between national focal points of the Aarhus Convention and the Cartagena Protocol
- Maximise opportunities for cooperation at the national and regional levels
- Organise joint activities at the national level
- Promote exchange of information through the BCH (BIRC and PEAP portal) and the Aarhus Convention Clearing-House

For Further Information Contact:

Japan Biodiversity Fund

Secretariat of the Convention on Biological Diversity

413 Saint Jacques Street, Suite 800
Montreal, QC, H2Y 1N9, Canada
Tel: +1 514 288 2220
Fax: + 1 514 288 6588
Email: secretariat@cbd.int
Protocol URL: http://bch.cbd.int/protocol

PAEP tools in the BCH:
http://bch.cbd.int/onlineconferences/portal_art23/pa_main.shtml

Convention on Biological Diversity

United Nations Decade on Biodiversity