

## The Biodiversity Convention at a crossroads: leading the way or losing ground?

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### INTRODUCTION

The 12<sup>th</sup> meeting of the Conference of the Parties (COP 12) to the Convention on Biological Diversity (CBD) stands at the mid-point of the Strategic Plan for Biodiversity 2011-2020, which includes the Aichi targets. It will therefore provide an opportunity for the critical review of the various action plans, which will be particularly valuable if based on an assessment of their ability to substantially tackle underlying causes of biodiversity loss. COP 12 will also see the entry into force of the Nagoya Protocol on Access to Genetic Resources and Benefit-sharing, whose first meeting will also take place in Pyeongyang. Negotiations on its various implementation modalities will have strategic consequences for attending its objectives in an effective and timely manner.

COP 12 is also an important step in a busy year in terms of the global environment, with the definition of Sustainable Development Goals (SDGs) and the preparation of a climate agreement that will be negotiated in Paris at the end of 2015. Hence, COP 12 should confirm the importance of biodiversity in this global agenda, where it risks being side-tracked among a multitude of priorities. Besides, COP 12 discussions on resource mobilization will be an important stepping stone on the way to the Addis Ababa Summit on Financing for Sustainable Development (July 2015, Ethiopia).

### HIGHLIGHTS

- The decisions to be negotiated at the 12th meeting of the Conference of the Parties (COP 12) to the Convention on Biological Diversity (CBD) are mainly expected to confirm and clarify ongoing efforts, in particular, with the view to enhancing implementation of the Strategic Plan for Biodiversity 2011-2020 and the achievement of the Aichi Biodiversity Targets. However, confronted with the speed of the erosion of Earth's biological diversity, the pace of these negotiations does not seem adequate to reverse such erosion and its sector-specific economic causes.
- In 2015, in an international agenda focused on the fight against climate change and on development in the framework of the Sustainable Development Goals (SDGs), actors mobilized around the CBD should not only ensure that this focus is not at the expense of biodiversity, but also position biodiversity as an essential element of the solution to these two major issues. These two negotiations on development patterns (climate change, SDGs) will indeed provide CBD actors a unique opportunity to negotiate with the different economic sectors, scarcely present within the CBD.
- The first meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and Benefit-sharing (COP MOP 1) will also take place. Its entry into force, scheduled for 12th October 2014, is an important achievement in terms of international cooperation for biodiversity. However, negotiations on the modalities of its implementation, the compliance mechanism and the role and status of indigenous peoples and local communities remain politically very sensitive issues.

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## ENHANCING PROGRESS TOWARDS THE IMPLEMENTATION OF STRATEGIC PLAN FOR BIODIVERSITY 2011-2020

At the midpoint along the way to the 2020 Aichi Targets, it is crucial to identify which actions are truly able to influence the underlying causes of biodiversity loss. Thus, at COP 12, CBD Parties will be expected to agree on a roadmap, the so-called Pyeongchang Roadmap, to enhance implementation of the Strategic Plan. This will include, *inter alia*, major decisions on resource mobilization, capacity building, and the integration of biodiversity into the post-2015 United Nations Development Agenda, the SDGs and poverty eradication, and will be accompanied by a list of “key actions to enhance progress” for 2020. It is essential that COP 12 provides a critical examination of what works and what does not, and not only of what is easy or difficult to implement. How can direct pressures on biodiversity be reduced and its sustainable use promoted? Should we focus on the elimination of subsidies harmful to biodiversity? The ability to influence the development patterns of major productive sectors seems to be the major challenge that has to be met. Ideally, therefore, the Pyeongchang Roadmap should clearly target actions that are likely to achieve these ends. While consensus among States probably exists in terms of the intention, the key measures proposed are not yet accompanied by specific commitments at the national level or by precise monitoring indicators.

The national level is indeed one of the key scales that these negotiations need to consider in order to reduce the impact of productive sectors. To this effect, the definition and the revision of National Biodiversity Strategies and Action Plans (NBSAP) remains a crucial element of national-level work under the CBD. Without this work, resource mobilization alone is likely to remain fruitless. The next COP will therefore once again urge the Parties, if they have not already done so, to design and revise their NBSAPs. In this context, COP 12 will call for the improvement of a clearing-house mechanism of the Convention to exchange information and make scientific and technical cooperation more effective. However, it must be ensured that it is a genuine collective learning process between all countries on actions that enable modification of trajectories of the various sectors, and not simply an administrative review process for biodiversity policies declared by the Parties. This is one of the central conditions that must be met in order for this Convention to prove its worth (in addition to specific instruments such as the Nagoya Protocol); and this is not so far removed from the condition

that may potentially make credible the international dynamics of national climate policies that is sought for COP 21 to the United Nations Framework Convention on Climate Change (UNFCCC) in Paris in 2015.

## RESOURCE MOBILIZATION: UNCERTAINTY OVER TARGETS AND FUNDING SOURCES

There is a risk that COP 12 discussions will be difficult regarding the establishment of final targets for resource mobilization. Many developed countries are in favour of maintaining preliminary targets, agreed at COP 11 in 2012, as final targets, because they consider them sufficiently ambitious. These countries aim for the adoption of COP 12 targets that would be final, that double annual biodiversity-related international financial resource flows to developing countries (using average annual biodiversity funding for the years 2006-2010 as a baseline) by 2015 and at least maintaining this level until 2020. Other countries, such as Brazil, do not want such targets to be considered as final and want them to be much more ambitious. Moreover, they request that the decision recognizes the need to significantly reduce the gap between identified needs and available resources. This latter proposal is problematic as it could mean an increase in the amount of international financial resources requested in future. Besides, the Parties could agree on a potential target for specific domestic financial resources. However there are already a number of countries, including India, that are not in favour of this proposal. The challenge is therefore to make all Parties accept at least a common definition of a target for these domestic financial resources, which are crucial for addressing the underlying causes of biodiversity loss.

To achieve these targets, whether quantitative or qualitative, the Parties must discuss the source of these international and domestic financial resources. In this context, the opportunity for Parties to mobilize and recognize private sector and innovative financial mechanisms remains an important issue. At COP 10, some international organizations and countries, including the Bolivarian Alliance for the Americas, were reluctant to the use of innovative financial mechanisms that they claimed monetize nature. Since then, these divergent views have drawn closer. Within the draft decision on resource mobilization, a group of countries, including the Bolivarian Alliance for the Americas, has also obtained the recognition of the important role of collective action and non-market-based approaches for mobilizing resources

(community management, protected indigenous areas, etc.) and also the integration of the contribution of these activities in financial reports provided by each Party to the Executive Secretary of the CBD.

In such a perspective of a review of the progress made in implementing resource mobilization targets, the specific challenge to COP 12 will be to adopt a common Financial Reporting Framework. Although approved and simplified by this revised framework, the difficult process of accounting for financial flows coming from market private sector sources will remain an hindrance for Parties to report all sources of funding at the international and domestic level.

## INDIGENOUS PEOPLES: AN UNCERTAIN DEVELOPMENT OF THEIR STATUS WITHIN THE CONVENTION

It is acknowledged that traditional resource management systems can contribute to the conservation of biodiversity.<sup>1</sup> Therefore, the conditions under which national and international processes can help support these traditional management systems are very important. A fundamental condition is the full recognition of the rights of indigenous peoples in accordance with international human rights law. In this context, the current CBD terminology makes use of the expression “indigenous and local communities” (ILCs), which is employed in Article 8(j) on traditional knowledge as well as in several Articles of the Nagoya Protocol. However, this is no longer in line with other relevant international legal instruments. In September 2007 the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples. Albeit non-legally binding, it provides recognition and strengthening of the rights of indigenous peoples generally. In light of these developments, the UN Permanent Forum on Indigenous Issues has called upon CBD Parties to adopt the terminology “indigenous peoples and local communities”, instead of “indigenous and local communities”, as an “accurate reflection of the distinct identities developed by those entities since the adoption of the Convention”.

This terminology issue is one of the most salient and politically difficult issues to be considered by COP 12. The Executive Secretary was therefore requested to prepare an independent analysis, based on advice from the UN Office of Legal Affairs, on the

implications of the requested change of terminology, *inter alia*, on possible alterations to the scope of the Convention—a binding effect that would make some Parties extremely concerned. While several countries already recognize the rights of indigenous peoples and thus would be keen to align the CBD’s ongoing use of terminology with relevant human rights instruments, other Parties are firmly opposed to such development. For instance, from a constitutional standpoint, in some countries it is neither possible to create distinctions between different groups of citizens (e.g. on the basis of ethnicity) nor to attribute rights only to one or more of these groups. Other untold concerns regard the attribution of the right to self-determination that follows from the recognition of indigenous communities as “peoples”. Eventually, the draft decision to be discussed at COP 12 tries to address concerns of both sides by stating that, on the one hand, the new terminology shall be used from now on and, on the other, that this does not affect the interpretation of the Convention or its Protocols in any way (i.e. by limiting the impact of the change of terminology to non-legally binding consequences). Parties will have to decide on the extent to which the proposed compromise should be accepted, while remaining simultaneously cautious on how to advance international law in this critical area and respecting their constitutional imperatives.

## ENTRY INTO FORCE OF THE NAGOYA PROTOCOL: NEGOTIATIONS ON THE COMPLIANCE MECHANISM

The Nagoya Protocol was adopted at CBD COP 10 in October 2010. Since the required number of ratifications (50) has now been reached, it will enter into force on 12<sup>th</sup> October 2014 and its first COP MOP will be held from 13<sup>th</sup> to 17<sup>th</sup> October 2014 concurrently with the CBD COP 12.

Even after its adoption, discussions on how to implement the Nagoya Protocol have never stopped. The focus has rather shifted on to several practical and operational aspects. For instance, at the third meeting of the Intergovernmental Committee for the Nagoya Protocol, which took place prior to COP 12, negotiations continued on, *inter alia*: the possible creation of a Global Multilateral Benefit Sharing Mechanism; the adoption of procedures and mechanisms to promote compliance with the Protocol; and the operation of the Access and Benefit-sharing (ABS) Clearing-House, which will help monitor bioprospecting activities. Therefore, several important institutional and operational questions will have to be considered and decided upon by COP MOP 1.

1. [http://worldparkscongress.org/programme/stream\\_respecting\\_indigenous\\_and\\_traditional\\_knowledge\\_and\\_culture.html](http://worldparkscongress.org/programme/stream_respecting_indigenous_and_traditional_knowledge_and_culture.html)

One of the most controversial issues concerns the design of procedures and mechanisms to promote compliance with the Protocol. The compliance committee to be established is understood as a non-adversarial mechanism where procedures are provided to promote compliance by Parties with their obligations and to address situations of non-compliance, including through the offer of advice or assistance. However, a longstanding question regards whether the scope of its activities should be limited to compliance of Parties with the Protocol or if it could also cover—to any extent—the interpretation and implementation of, or non-compliance with, mutually agreed terms and national ABS laws. Therefore, Parties will need to draw a careful distinction between submissions to be treated before the Committee and other instances for resolution at the national level.

Another outstanding aspect to be decided is whether the compliance procedures could be triggered by: the same Party that encounters difficulties in fulfilling its obligations; by any party with respect to another party; by the COP MOP; and possibly also by ILCs (either directly or through an indirect Secretariat trigger). Not only questions surrounding the definition of an ILCs' trigger can be particularly divisive during COP MOP 1, but also the possible ILCs' participation in the Committee (for instance, as non-voting members or observers) as well as the African proposal to establish an Ombudsman “to provide assistance to developing countries and ILCs to identify instances of non-compliance and make submissions to the Committee”.

## BIODIVERSITY, CLIMATE CHANGE AND SUSTAINABLE DEVELOPMENT

These negotiations are crucial for the proper inclusion of biodiversity issues into the sustainable development agenda.

Firstly, discussions on the application of social and environmental safeguards relating to biological diversity in REDD+<sup>2</sup> activities will be difficult. These safeguards, which were first expressed in Cancun in 2010 as part of the 16<sup>th</sup> meeting of the COP to the UNFCCC, were included in a decision at CBD COP 11 in 2012. These safeguards and especially their obligatory presentation in the annual reports of the UNFCCC Parties are also part of the Warsaw Framework for REDD+, which was adopted in 2013 at COP 19 to the UNFCCC. COP 12 will have to decide whether or not to request the application of these safeguards by all CBD Parties. A number of beneficiary countries oppose such a decision. Instead, these countries propose a more general paragraph on the “contribution of REDD+ activities to achieving the objectives of the Convention on Biological Diversity”.

Secondly, amid concerns to avoid marginalization in the context of the post-2015 agenda, CBD Parties will consider how to reaffirm the importance of biodiversity considerations in the SDG definition process at the General Assembly of the United Nations. Although these considerations have already been taken into account, since in July 2014 the Open Working Group on SDGs proposed Goal 14 on ocean conservation and Goal 15 on the protection of terrestrial ecosystems, biodiversity mainstreaming will be further emphasised in the “Gangwon Declaration”. This declaration will be signed by the Ministers and Heads of Delegation and will propose to call for the continuous integration of biodiversity into sectoral policies of the Parties and its future inclusion in the SDGs. This is crucial to avoid a separate and inefficient planning process on subjects that are highly interconnected. To date, the concrete achievements of the Aichi Targets have been limited. The CBD must therefore recognize that the SDGs may be the real place for negotiation on the interface between socioeconomic, development and biodiversity issues, including financial aspects. In 2015, it would therefore be in everyone's interest to bring these biodiversity issues into the negotiations on the SDGs. Such an opportunity might not recur. ■

2. REDD+ activities are activities to reduce emissions from deforestation and forest degradation in developing countries.