

DIRECCIÓN GENERAL
PARA TEMAS GLOBALES

DGTG-03764/09

La Secretaría de Relaciones Exteriores -Dirección General para Temas Globales- saluda muy atentamente al Secretariado de la Convención sobre Diversidad Biológica y tiene el honor de hacer referencia a su notificación No. 2009-050, fechada el 11 de mayo de 2009, por la cual invita a los países Parte, otros Gobiernos, organizaciones internacionales, comunidades indígenas y locales y las partes interesadas, a presentar opiniones y propuestas, incluyendo un texto operativo, para la ulterior elaboración y negociación del régimen internacional sobre acceso y participación en los beneficios, en preparación para la octava reunión del Grupo de Trabajo especial de composición abierta sobre acceso y participación en los beneficios (Montreal, Canadá, 9 a 15 de noviembre de 2009).

Al respecto, la Secretaría de Relaciones Exteriores -Dirección General para Temas Globales- se complace en adjuntar a la presente, los siguientes documentos, en formato word, los cuales contienen las propuestas elaboradas por el Gobierno de México a los temas que habrán de ser examinados en la octava reunión del Grupo de Trabajo especial de composición abierta sobre Acceso y participación en los beneficios:

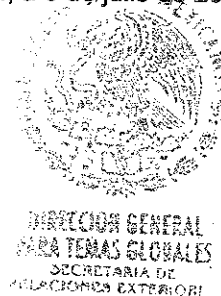
1. México. Propuestas de texto operativo. Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios (inglés).
2. México. Propuestas de texto operativo. Capítulo III. Componentes Principales, Sección B. Acceso a los recursos genéticos (español).
3. México. Propuestas de texto operativo. Capítulo III. Componentes Principales, Sección C. Cumplimiento (inglés).
4. México. Propuestas de texto operativo. Capítulo III. Componentes Principales, Sección D. Conocimientos tradicionales asociados con los recursos genéticos (inglés).
5. México. Propuestas de texto operativo. Capítulo III. Componentes Principales. Sección E, Capacidad. (inglés).
6. México. Propuestas sobre Mecanismos Obligatorios, Mecanismos de Aplicación Voluntaria y Mecanismos Combinados. Capítulo IV. Naturaleza (español)

La Secretaría de Relaciones Exteriores -Dirección General para Temas Globales- agradecerá al honorable Secretariado Ejecutivo de la Convención sobre Diversidad Biológica, proceder a la compilación de los documentos arriba citados.

La Secretaría de Relaciones Exteriores -Dirección General para Temas Globales- aprovecha la ocasión para reiterar al Secretariado Ejecutivo de la Convención sobre Diversidad Biológica, las seguridades de su más alta y distinguida consideración.

México, D.F., a 3 de julio de 2009.

SECRETARIADO DE LA CONVENCION
SOBRE DIVERSIDAD BIOLOGICA



MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios.

III. MAIN COMPONENTS

A. FAIR AND EQUITABLE BENEFIT-SHARING

1) Linkage of access to the fair and equitable sharing of benefits 1/

3. Each Contracting Party shall take legislative, administrative, or policy measures with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of [genetic resources][biological resources][, their derivatives][and products] with the Contracting Party and/or indigenous peoples and local communities providing such resources[, their derivatives][and products]country of origin or Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be subject to prior informed consent of the Contracting Party and/or indigenous peoples and local communities providing such resources[, their derivatives][and products]country of origin or Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party and on mutually agreed terms.

2) Benefits to be shared on mutually agreed terms

Further recalling that in accordance with Article 15(7) of the Convention the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources shall be upon mutually agreed terms as decided between the provider and user {*preambular paragraph*}

Recognizing that benefit-sharing on mutually agreed terms may include monetary and/or non-monetary benefits {*preambular paragraph*}

1. Each Party shall stipulate measures to ensure the fair and equitable sharing of the benefits arising out of the use of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.

2. The conditions for the equitable sharing of the benefits arising out of the use of traditional knowledge, innovations and practices associated with [genetic resources][biological resources][, their derivatives][and products] shall be

^{1/} There is also a section on linkages of access to the fair and equitable sharing of benefits under section III.B.1.2 of annex I to decision IX/12.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios.

stipulated in mutually agreed terms, in accordance with national legislation, and customary laws of indigenous peoples and local communities These shall include *inter alia*:

a) between the indigenous or local communities and the users; or b) between users and the national authority of the provider country, with active involvement of concerned indigenous and local communities.

3. Parties shall take measures for ensure providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms to include:

(a) The obligation to share monetary and non monetary benefits shall survive the termination of the agreement contained in mutually agreed terms and shall be included in any material transfer agreement.

b) The effective participation of the country of origin of the [genetic resources][biological resources][, their derivatives][and products] in research activities and/or to facilitate the joint development of research activities between the country of origin and the user;

c) model clauses and relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary or non-monetary benefits.

3) Monetary and/or non-monetary benefits

1. Parties shall take measures to encourage that benefit-sharing includes, all forms of utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.

2. The International Regime on Access and Benefit-sharing will include an indicative list of mutually agreed terms. Mutually agreed terms shall identify the types of monetary and/or non-monetary benefits to be shared for the utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, innovations and practices.

3. Parties shall subject to Article 16 of the Convention, take measures to share the benefits of research and technology linked to conservation and sustainable use, irrespective of access to [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.

4. Parties shall establish a financial mechanism for the International Regime on Access and Benefit-sharing.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios.

Option 2

3. The benefits to be shared may include, but are not limited to:
 - (a) Monetary and non-monetary benefits listed in Appendix II of the Bonn Guidelines; and
 - (b) Non-monetary benefits in accordance with Articles 15(6), 16(3), 16(4) and 19 of the Convention.

4) Access to and transfer of technology

In accordance with Article 16 of the Convention, Parties shall take measures when establishing mutually agreed terms, to ensure access to and transfer of technology which makes use of those resources.

5) Sharing of results of research and development on mutually agreed terms

1. Parties shall establish, taking into account Article 15, paragraph 7, Article 16, paragraph 2, 3 and 4, Article 19, paragraph 1 and 2, and Article 20, paragraph 4, of the Convention, measures to ensure the fair and equitable sharing of benefits from the results of research and development, including through facilitating access to the results of such research and development and through access to and technology transfer, and other utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, including technology protected by patents and other intellectual property rights on concessional and preferential terms to developing countries, taking into account prior informed consent and mutually agreed terms and respecting national legislations of the country of origin of such resources or the parties that have acquired the resources in accordance with the Convention.

6) Effective participation in research activities, and/or joint development in research activities

1. Parties shall agree to strengthen research capability and ensure effective involvement of national counterparts, taking into account the special

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios.

needs of developing country Parties in particular the least developed among them, small island developing States and countries with economies in transition.

7) Mechanisms to promote equity in negotiations

Recognizing the importance of promoting equity in negotiations of mutually agreed terms between providers and users of genetic resources {*preambular paragraph*}

1. Parties shall take measures such as:

a) Developing consultative arrangements with relevant stakeholders and indigenous and local communities holding traditional knowledge associated with [genetic resources][biological resources][, their derivatives][and products];

b) Supporting the capacity of countries of origin or indigenous and local communities and users of [genetic resources][biological resources][, their derivatives][and products] to negotiate mutually agreed terms and, prior informed consent.

2. Contracting Parties shall:

(a) Take measures to ensure appropriate participation by the indigenous peoples and local communities involved in access procedures where their rights are associated with the [genetic resources][biological resources][, their derivatives][and products] being accessed or where traditional knowledge associated with these [genetic resources][biological resources][, their derivatives][and products] is being accessed;

(b) Establish mechanisms to ensure that decisions are made publicly available subject to provisions related to confidential information.

(c) The effective involvement of indigenous and local communities should be promoted by providing information especially regarding scientific and legal advice in order for them to be able to participate effectively and to be actively engaged in various stages of access and benefit-sharing arrangements such as in the development and implementation of mutually agreed terms and contractual arrangements.

8) Awareness-raising

Parties shall take measures to raise awareness of access and benefit-sharing issues in support of mandatory compliance measures to ensure benefit-sharing. Such measures may include inter alia:

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios.

- (a) Making available up to date information about their domestic access and benefit-sharing framework, national laws, policies and procedures;
- (b) Steps to promote the International Regime on Access and Benefit-sharing , including the promotion of a wider understanding among the public on the concepts of misappropriation, misuse, and biopiracy as well as for the recognition of the contribution made by indigenous and local communities to biological diversity and the benefits generated by that contribution];²
- (e) Information dissemination through a website and/or an access and benefit-sharing clearing house;
- (f) Promotion of codes of conduct and best practice measures in consultation with stakeholders;
- (g) Promotion of regional exchange of experiences related to access and benefit-sharing;
- (h) Communication, education and awareness-raising of access and benefit-sharing-related issues to the relevant sectors and stakeholders.

9) Measures to ensure participation and involvement of indigenous and local communities in mutually agreed terms and sharing of benefits with traditional knowledge holders

1. The elements of Traditional Knowledge associated to the International Regime on Access and Benefit-sharing shall be developed and implemented in accordance with Article 8(j) of the Convention:

- (a) Parties shall adopt and recognize, in consultation with the relevant indigenous and local communities, sui generis systems for the protection of traditional knowledge, innovations and practices associated to genetic resources[biological resources][, their derivatives][and products];
- (b) Parties shall respect, recognize and protect the rights of indigenous and local communities to their knowledge, innovations and practices and ensure the equitable sharing of benefits arising from the utilization of the knowledge, innovations and practices associated with genetic resources [biological resources][, their derivatives][and products], subject to the national legislation, regulations and requirements of the countries where these communities are located;

² Mexico considers that this paragraph shall incorporate not only the mentioned concepts (misappropriation, misuse, and biopiracy) but all the concepts and definitions as revised by the *Group of Legal and Technical Experts on Concepts, Terms working Definitions and Sectoral Approaches (Namibia, december 2008. Documents UNEP/CBD/WG-ABS/7/2 and UNEP/CBD/WG/ABS/4/7.*

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios.

2. Contracting Parties shall in accordance with Article 8(j) of the Convention ensure fair and equitable sharing of benefits arising from the utilization of knowledge, innovations and practices associated with genetic resources of indigenous and local communities. The benefits referred to here are benefits to indigenous and local communities in particular:

(a) Promote the wider application of traditional knowledge associated to genetic resources, [biological resources][, their derivatives][and products] innovations and practices of indigenous and local communities upon their voluntary approval and involvement in accordance with Article 8(j) of the Convention;

(b) Further the customary use of biological resources in line with traditional customary practices that are compatible with conservation and sustainable use of biological diversity in accordance with Article 10(c) of the Convention;

(c) Take into account the customs, decision-making processes and systems integral to indigenous and local communities in the process of seeking access to their genetic resources[biological resources][, their derivatives][and products] and/or associated traditional knowledge, and also in negotiating mutually agreed terms;

(d) Encourage and develop methods of cooperation for the development and use of indigenous and traditional technologies in furtherance of the objectives of the Convention by the training of personnel and provision of expertise by representatives of indigenous and local communities in accordance with Article 18(4) of the Convention.

3. Parties shall provide timely guidance, legal representation, monitoring, information and assistance in prior informed consent and mutually agreed terms of traditional knowledge of indigenous and local communities at the request of indigenous and local communities seeking the recognition and/or enforcement of their rights.

10) Mechanisms to encourage benefits to be directed toward conservation and sustainable use of biodiversity and socio-economic development, in particular the Millennium Development Goals (MDGs) in accordance with national legislation

Parties shall encourage users and providers, in their mutually agreed terms, to consider directing benefits arising from the utilization of genetic resources[biological resources][, their derivatives] [and products] towards the conservation and sustainable use of biological diversity in accordance with the objectives set out in Article 1 of the Convention, and to contribute to national sustainable development strategies.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección A. Participación justa y equitativa de los beneficios.

11) Development of international minimum conditions and standards

1. Parties should take measures and establish minimum conditions and standards for ensuring fair and equitable sharing of results of research, and of benefits arising from every commercial and other form of utilization of genetic resources[biological resources][, their derivatives][and products] and/or associated traditional knowledge, upon mutually agreed terms.

12) Multilateral benefit-sharing options when origin is not clear or in transboundary situations

Contracting Parties should facilitate the inclusion of the different indigenous and local communities, within and across their boundaries that share a particular knowledge, innovation or practice in the negotiation of relevant access and benefit-sharing agreements and support the fair and equitable sharing amongst these indigenous and local communities of the benefits arising from such agreements.

14) Establishment of trust funds to address transboundary situations

In cases where the origin of the knowledge, innovations and practices associated to genetic resources are unclear, a fund should be established which should be administered by representatives of indigenous and local communities who shall ensure that it is used to further the rights of indigenous and local communities.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección B. Acceso a los Recursos Genéticos

B. ACCESO A LOS RECURSOS GENÉTICOS 1/

1) Reconocimiento de los derechos soberanos y la autoridad de las Partes para determinar el acceso

Texto operativo propuesto

Recordando los derechos soberanos de los Estados sobre sus recursos naturales y que la facultad de regular el acceso a los recursos genéticos incumbe a los gobiernos nacionales y está sometida a la legislación nacional {*párrafo del preámbulo*}

Recordando además que cada Parte Contratante procurará crear condiciones para facilitar a otras Partes Contratantes el acceso a los recursos genéticos para utilizaciones ambientalmente adecuadas, y no imponer restricciones contrarias a los objetivos del Convenio {*párrafo del preámbulo*}

Recordando además que el acceso a los recursos genéticos estará sometido al consentimiento fundamentado previo de la Parte Contratante que proporciona dichos recursos, a menos que dicha Parte decida otra cosa.

1. Las Partes Contratantes tienen derechos soberanos sobre sus recursos naturales, y la facultad para regular el acceso a los recursos genéticos [recursos biológicos][, sus derivados][y productos] incumbe a los gobiernos nacionales. Allí donde el acceso a los [recursos genéticos][recursos biológicos][, sus derivados][y productos] sobre los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales, las comunidades indígenas y locales en cuestión tendrán voz en la reglamentación del acceso sujeto a la legislación nacional.

2. El acceso a los recursos genéticos [recursos biológicos][, sus derivados][y productos] y/o conocimientos tradicionales asociados estará sujeto al libre consentimiento fundamentado previo de las comunidades indígenas y locales. El acceso a los recursos genéticos y los conocimientos tradicionales asociados de los pueblos indígenas y las comunidades locales estará sujeto al consentimiento fundamentado previo.

6. Cada Parte comunicará a la Secretaría, a más tardar en la fecha {de entrada en vigor de este Régimen internacional de acceso y participación en los beneficios para esa Parte, los nombres y domicilios de su centro de coordinación y de su autoridad o autoridades nacionales competentes. 2/ 3/

1/ El título no va en perjuicio del ámbito eventual del Régimen internacional de acceso y participación en los beneficios.

2/ La ubicación de los párrafos 4 a 6 *supra* debe ser considerada más a fondo.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección B. Acceso a los Recursos Genéticos

2) Vinculación del acceso con la participación justa y equitativa en los beneficios ^{4/}

Texto operativo propuesto

Reconociendo que la participación justa y equitativa en los beneficios se puede lograr únicamente después de que se ha concedido el acceso a los recursos genéticos {párrafo del preámbulo}

Recordando que el Artículo 15.5. del Convenio estipula que el acceso a los recursos genéticos estará sometido al consentimiento fundamentado previo de la Parte Contratante que proporciona los recursos genéticos, a menos que esa Parte decida otra cosa {párrafo del preámbulo}

Recordando además que el Artículo 15.4. del Convenio estipula que las Partes Contratantes adoptarán medidas para asegurar que, cuando se conceda acceso, éste sea en condiciones mutuamente convenidas {párrafo del preámbulo}

1. Las Partes adoptarán las medidas necesarias según proceda para establecer un marco reglamentario nacional que regule el acceso a los recursos genéticos [recursos biológicos][, sus derivados][y productos], y/o conocimientos tradicionales asociados, así como los derechos de los pueblos indígenas y las comunidades locales, y garantizar que la participación en los beneficios se realiza en condiciones mutuamente acordadas.

3. Las Partes Contratantes adoptarán medidas legislativas y administrativas para regular los casos en los que se modifique el propósito original para el cual fue concedido el acceso a recursos genéticos [recursos biológicos][, sus derivados][y productos] [y/o conocimientos tradicionales asociados].

4. El incumplimiento de las condiciones mutuamente acordadas de acceso podrán resultar en la revocación de certificado de cumplimiento.

^{3/} También hay una sección sobre autoridad nacional competente, conforme a lo estipulado en los párrafos 4 a 6 *supra*, en la sección III.C.1.2.b del anexo I a la decisión IX/12.

^{4/} También hay una sección sobre la vinculación del acceso con la participación justa y equitativa en los beneficios en el apartado III.A.1.1 del anexo 1 de la decisión IX/12.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección B. Acceso a los Recursos Genéticos

3) Certidumbre legal, claridad y transparencia de las reglas de acceso

Texto operativo propuesto

1. A fin de crear condiciones para facilitar el acceso a los recursos genéticos [recursos biológicos][, sus derivados][y productos] y para contribuir al cumplimiento de las obligaciones relacionadas con el acceso y la participación en los beneficios en diferentes jurisdicciones, las Partes adoptarán las medidas legislativas, de políticas o administrativas necesarias a las que se hace referencia en {...} para proporcionar certidumbre legal, claridad y transparencia a sus marcos nacionales de acceso y participación en los beneficios.

4) No discriminación en las reglas de acceso

Texto operativo propuesto

Cada Parte, al aplicar su marco nacional de acceso y participación en los beneficios, no discriminará arbitraria e injustificadamente entre usuarios provenientes de otras Partes Contratantes y entre usuarios nacionales y extranjeros, excepto cuando está dentro de su interés nacional hacerlo de conformidad con su derecho soberano sobre los recursos que la faculta a regular el acceso compatible con el reconocimiento de este derecho en el Artículo 15.1. del Convenio.

5) Normas de acceso internacionales (que no requieran la armonización de la legislación sobre acceso nacional) para respaldar el cumplimiento en todas las jurisdicciones

Texto operativo propuesto

Recordando los derechos soberanos de los Estados sobre sus recursos naturales y que la facultad de regular el acceso a los recursos genéticos incumbe a los gobiernos nacionales y está sometida a la legislación nacional {*párrafo del preámbulo*}

Recordando además que cada Parte Contratante procurará crear condiciones para facilitar a otras Partes Contratantes el acceso a los recursos genéticos para utilizaciones ambientalmente adecuadas, y no imponer restricciones contrarias a los objetivos del Convenio {*párrafo del preámbulo*}

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección B. Acceso a los Recursos Genéticos

Reconociendo además que la participación justa y equitativa en los beneficios se puede lograr únicamente después de que se ha concedido el acceso a los recursos genéticos {*párrafo del preámbulo*}

1. A fin de crear condiciones para facilitar el acceso a los recursos genéticos [recursos biológicos] [, sus derivados][y productos] y apoyar el cumplimiento de las obligaciones relacionadas con el acceso y la participación en los beneficios en diferentes jurisdicciones, las Partes adoptarán medidas legislativas, de políticas o administrativas necesarias para proporcionar certidumbre legal, claridad y transparencia a sus marcos nacionales de acceso y participación en los beneficios. Éstas deberían incluir:

(Cuestiones generales)

[b) Un procedimiento [claro] para solicitar el consentimiento fundamentado previo de una autoridad nacional competente y, según proceda, de las comunidades indígenas y locales];]

Texto operativo propuesto

c) Sujeto a lo dispuesto en el inciso b) de la sección II. Cumplimiento que se refiere a los mecanismos de intercambio de información de monitoreo.⁵

d) Dar a conocer información sobre sus marcos nacionales de acceso y participación en los beneficios, y facilitar el acceso a los mismos, especialmente acerca de cómo solicitar el consentimiento fundamentado previo;

e) Proporcionar la información generada conforme al punto d) en el Mecanismo de facilitación del Convenio, incluida la información sobre los centros de coordinación de acceso y participación en los beneficios, y actualizarla regularmente;

f) Requerir que la autoridad competente suministre periódicamente- en el Mecanismo de facilitación del Convenio información actualizada sobre el número de solicitudes procesadas incluyendo aquellas solicitudes a las que se decidió otorgar el consentimiento fundamentado previo, así como el certificado de cumplimiento;

⁵ “Cada parte contratante deberá tomar las medidas apropiadas, legislativas, administrativas o de política para monitorear el cumplimiento:

b) Facilitar el intercambio equitativo de información científica, técnica ambiental y legal, así como el intercambio de experiencias relacionadas con el acceso en la aplicación de los procedimientos administrativos simplificados para el acceso a los recursos sus derivados y productos para investigación no comercial”.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección B. Acceso a los Recursos Genéticos

[g) Procedimientos de apelación administrativos o judiciales [apropiados] respecto del consentimiento fundamentado previo, [inclusive respecto de la omisión y las prácticas de acceso [arbitraria e injustificadamente] discriminatorias];]

(Aspectos específicos para solicitar decisiones sobre consentimiento fundamentado previo a la autoridad [nacional] competente)

h) Requerir que las decisiones de las autoridades nacionales competentes de otorgar o denegar el acceso sean motivadas y fundadas;

(Aspectos específicos relacionados con las condiciones mutuamente acordadas (normalmente estipuladas en contratos))

m) Reglas {claras}, en los marcos nacionales de acceso y participación en los beneficios, para establecer las condiciones mutuamente acordadas;

o) Requerir que las condiciones mutuamente acordadas se estipulen por escrito;

p) Requerir que las condiciones mutuamente acordadas incluyan una cláusula sobre la resolución de controversias;

q) Requerir que las condiciones mutuamente acordadas reflejen que se ha considerado la participación en los beneficios;

[2. Las medidas adicionales establecidas en {...} para apoyar el cumplimiento en casos de apropiación indebida [no tendrán ninguna relación con] [se aplicarán] si el marco nacional de acceso y participación en los beneficios de una Parte Contratante que proporciona un recurso genético [guarda conformidad con el párrafo 1].]

6) Modelos de legislación nacional elaborados en el nivel internacional

Texto operativo propuesto

Recordando que el Artículo 15.1. del Convenio estipula que los Estados tienen derechos soberanos sobre sus recursos naturales, y que la facultad para regular el acceso a los recursos genéticos incumbe a los gobiernos nacionales y está sometida a la legislación nacional {párrafo del preámbulo}

Recordando que el Artículo 15.5. del Convenio estipula que el acceso a los recursos genéticos estará sometido al consentimiento fundamentado previo de la

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección B. Acceso a los Recursos Genéticos

Parte Contratante que proporciona los recursos genéticos, a menos que esa Parte decida otra cosa {*párrafo del preámbulo*}

Tomando nota de que las partes tienen diferentes sistemas jurídicos, y consiguientemente han elegido aplicar las disposiciones sobre acceso y participación en los beneficios del Convenio conforme a sus condiciones nacionales {*párrafo del preámbulo*}

1. Se alienta a las Partes a proporcionar a la Secretaría ejemplos de disposiciones para la legislación nacional, y se alienta a la Secretaría a proporcionarlos a las Partes a pedido, a fin de brindar asistencia y apoyo a dichas Partes a pedido para la aplicación de las disposiciones sobre acceso y participación en los beneficios del Convenio en el nivel nacional.

2. Las Partes compilarán, ejemplos de disposiciones para la legislación nacional y marcos de ejemplo para la adopción de decisiones administrativas que guarden conformidad con las normas internacionales de acceso establecidas en {...} y las distribuirán mediante el centro de intercambio de información.

7) Reducción al mínimo de los costos de administración y transacción

8) Reglas de acceso simplificadas para investigación no comercial

Texto operativo propuesto

Opción 2

Las Partes Contratantes que sean países de origen de recursos genéticos [recursos biológicos][, sus derivados][y productos], u otras Partes que hayan adquirido los recursos genéticos [recursos biológicos][, sus derivados][y productos] de conformidad con lo estipulado en el Convenio, deberían:

a) Considerar reglas de acceso simplificadas a los recursos genéticos [recursos biológicos][, sus derivados][y productos] fines no comerciales;

b) Requerir que las utilizaciones nuevas de un recurso genético [recurso biológico] más allá de lo que se ha consentido en las condiciones mutuamente acordadas se sometan a un nuevo consentimiento fundamentado previo y condiciones mutuamente acordadas de parte del país proveedor y/o los pueblos indígenas y comunidades locales en cuestión.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING ^{1/} ^{2/}

C. COMPLIANCE

1) Development of tools to encourage compliance

(a) Awareness-raising activities

Noting that awareness of domestic access and benefit-sharing regulatory frameworks is important for users and providers to ensure compliance {*preambular paragraph*}

Parties shall take measures to raise awareness of access and benefit-sharing issues in support of [mandatory][voluntary] compliance measures to [ensure][promote] benefit-sharing]. Such measures could include [, but not be limited to]:

(a) Making available up to date information about their domestic access and benefit-sharing framework, in particular national laws, policies and procedures;

(b) Steps to promote the International Regime on Access and Benefit-sharing[, including the promotion of a wider understanding among the public on the concepts of misappropriation, misuse and biopiracy, as well as for the recognition of the contribution made by indigenous and local communities to biological diversity and the benefits generated by that contribution];

(c) Organization of stakeholder meetings;

(d) Establishment and maintenance of a help desk for stakeholders;

(e) Information dissemination through [a specialized website][an Access and Benefit-sharing Clearing House][, as well as hard copies];

(f) Promotion of codes of conduct [and best practice tools] in consultation with stakeholders;

(g) Promotion of regional exchange of experiences related to access and benefit-sharing.

2. Parties shall raise awareness in accordance with Articles 8(j) and 10(c) of the Convention to promote the wider application of indigenous knowledge, innovations and practices by actively involving indigenous and local communities with their consent in the planning and implementation of research and training (Article 12), public education and awareness (Article 13), exchange of information (Article 17.2) and technical and scientific cooperation (Article 18.4).]

^{1/} For ease of reference, the headings in annex I to decision IX/12 reproduced in this document have been shaded.

^{2/} Reference to the International Regime on Access and Benefit-sharing in this text is without prejudice to the nature of the International Regime.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

(b) International understanding of misappropriation/misuse

Parties shall take measures aimed at preventing misappropriated and misused genetic resources [, their derivatives] [and products] and asociated traditional knowledge.

[(c) model clauses for material transfer agreements ^{3/}

Parties may, in addition to [promoting][ensuring binding] compliance measures:

- a) In consultation with users and providers from key sectors, develop sectoral menus of [model] clauses for contracts;
- b) Encourage users and providers to use these sectoral menus of [model] clauses when negotiating mutually agreed terms.]

(d) Codes of conduct for important groups of users

[*Recognizing* the existence of a range of national and international, sectoral or company specific codes of conduct and best practice guidelines on access and benefit-sharing and their importance in achieving the fair and equitable sharing of benefits arising out of the the utilization of genetic resources, the third objective of the Convention {*preambular paragraph*}]

Parties may, in addition to ensuring binding compliance measures:

- (a) Support, as appropriate, the development, review and update of access and benefit-sharing-related [voluntary] codes of conduct [, and best practice standards,] for users of genetic resources [, their derivatives][and products];
- (b) Take measures to encourage users to adhere to the codes of conduct [and encourage users to adhere to best practice standards;]
- [(c) Ensure the communication, education and awareness of these codes of conduct and best practice standards to the relevant user groups].

(e) Identification of best-practice codes of conduct

[*Recognizing* the existence of a range of national and international, sectoral or company specific codes of conduct and best practice guidelines on access and benefit-sharing and their importance in achieving the third objective of the Convention {*preambular paragraph*}]

Parties may collectively establish a procedure for identifying and regularly reviewing access and benefit-sharing related codes of conduct and guidelines that constitute best-practice

Proposal of Mexico

Mexico suggest that this section could be included as part of the clearing-house mechanism.

^{3/} There are also sections on sectoral menus of model clauses in section III.A.2.5 and in section III.E.1.5 of annex I to decision IX/12.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

(f) Research funding agencies to oblige users receiving research funds to comply with specific access and benefit-sharing requirements

Parties shall encourage [research, funding and publishing entities [to] ask for [the unique identifier code referred to in the certificate of compliance][evidence of compliance with relevant national law] as part of their application procedures or research results, as appropriate, when genetic resources their derivatives][and products] and associated traditional knowledge [are] involved.

Proposal of Mexico

Mexico suggests changing the place of this paragraph f) to the section 2 of Monitoring.

[(g) Unilateral declaration by users]

2) Development of measures to monitor compliance

Each Contracting Party shall take appropriate legislative, administrative or policy measures to monitor compliance;

(a) Mechanisms for information exchange

1. Parties shall collaborate to facilitate information exchange on access and benefit-sharing between Parties, providers and users of genetic resources [, their derivatives][and products] between national access and benefit-sharing focal points, through: An Access and Benefit-sharing Clearing-House as part of the clearing-house mechanism, as well as other means agreed by Parties, including non-internet means, in order to:

[(a) Monitor and Support compliance with national access and benefit-sharing framework and with this International Regime on Access and Benefit-sharing;

(b) Facilitate the equitable exchange of scientific, technical, environmental and legal information on, and experience with, access and benefit-sharing, and on best practices in the application of simplified administrative procedures for access to genetic resources, their derivatives and products for non-commercial research;

Proposal of Mexico

Mexico considers that these two paragraphs c) and d) have to be part of the section III. E. Capacity.

3. Without prejudice to the protection of confidential information, each Party through the national focal point shall make available to the Access and Benefit-sharing Clearing-House inter alia:

(a) Any existing laws, regulations and guidelines for implementing this International Regime on Access and Benefit-sharing;

(b) [Community protocols] and relevant customary laws of indigenous peoples and local communities;

(c) Any bilateral, regional and multilateral agreements and arrangements related to access and benefit-sharing;

(d) Information about national focal point and competent national authority(ies);

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

- (e) List of defaulters of access and benefit-sharing agreements (“name and shame”);
 - (f) Information on model domestic access and benefit-sharing legislation and model clauses for contracts;
 - (g) Experience in the development of electronic tools for the tracking of genetic resources;
 - (h) Codes of conduct and best practices in access and benefit-sharing
 - (i) Information on the certificates of compliance issued at the national level
4. The Access and Benefit-sharing Clearing House shall and inquiry point of certificates of compliance with national legislation issued by the competent national authorities, in accordance with provisions in {...}.
5. The modalities of the operation of the [Access and Benefit-sharing] Clearing-House, including reports on its activities, shall be considered and decided upon by the Governing Body of the International Regime on Access and Benefit-sharing at its [first][next] meeting, and kept under review thereafter.]

(b) Internationally recognized certificate issued by a domestic competent authority

1. Each Party shall designate one national focal point for access and benefit-sharing.
2. Each Party shall also designate one or more competent national authorities, which shall be responsible for and duly authorized to act on its behalf with respect to the following functions:
- (a) Performing the administrative functions required by this International Regime on Access and Benefit-sharing, including the issuance of certificates of compliance with national legislation and /or national requirements on access and benefit-sharing;
 - [(b) The receipt, administration and transfer to the financial mechanism of the funds collected through the enforcement of {...};]
 - (c) Help providers of genetic resources to obtain relevant information, in relation to prior informed consent and mutually agreed terms, including specific cases of alleged infringements of provider country requirements.

A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

3. Each Party shall, no later than the date of entry into force of this International Regime on Access and Benefit-sharing for it, notify the Secretariat of the names and addresses of its focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the name and address or responsibilities of its competent national authority or authorities.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3 above, and shall also make such information available through the Access and Benefit-sharing Clearing-House. ^{4/}

Option 1

The International Regime on Access and Benefit-sharing shall establish a system of an internationally recognized certificate of compliance issued by each Party.

The certificate shall be a public document to be issued by the national competent authority and shall be required to be presented at specific checkpoints in user and provider countries established to monitor compliance in relation to a range of possible uses.

- (a) The certificate of compliance shall include the following minimum information:
 - (i) Issuing national authority;
 - (ii) Details of the provider;
 - (iii) A codified unique alpha numeric identifier;
 - (iv) Details of the rights holders of [associated traditional knowledge;]
 - (v) Details of the user;
 - (vi) Description of subject matter including genetic resources, their derivatives and products and/or associated traditional knowledge]) covered by the certificate, subject to confidential information as identified in national requirements or by indigenous and local communities providing associated traditional knowledge;
 - (ix) Uses permitted and restrictions of use;
 - (x) Conditions of transfer to third parties;
 - (xi) Date of issuance;
 - [(xii) Confirmation of compliance with domestic access requirements]
 - (xiii) Term of validity
- (b) Contracting Parties shall establish checkpoints for the certificate for commercial and non- commercial uses. Checkpoints for commercial uses should include customs controls, intellectual property offices and registration points for other commercial applications not covered by intellectual property rights.
- (c) Contracting Parties should facilitate an efficient, easy to use tracking mechanism through the use of new technology and other means agreed to by Parties including capacity building and funding which should include:

^{4/} The placement of paragraphs 1 to 4 above must be further considered.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

- (i) Cost efficient publicly searchable certificate databases providing evidence of prior informed consent and mutually agreed terms;
 - (ii) Recording of progressive compliance on such databases as conditions of prior informed consent and mutually agreed terms are met;
 - (iii) Searchable application and granted patents and product approval and/or registration databases;
 - (iv) Integration of genomic and morphological taxonomy to the extent possible to create species certainty ;
 - (v) Low cost, portable, gene based bar-coding technology to create rapid attack taxonomy;
 - (vi) Linking unique identifiers to gene-based bar-coding.
- [(d) Contracting Parties where viable should:
- [(i) Use existing tracking procedures by innovatively reconceptualizing them to track genetic resources, derivatives and products and/or associated traditional knowledge;
 - (ii) Minimize the creation of new levels of bureaucracy;
 - (iii) [Where a Party requires prior informed consent,] Promote automatic issuing of certificates upon compliance with specific criteria[, such as completion of material transfer agreements or access and benefit-sharing agreements];
 - [(iv) Promote consolidation of existing permitting requirements with any new certification system;]
 - (v) Promote paperless systems;
 - [(vi) Establish minimum standards for recording of collections, to ensure a link between incoming and outgoing resources, without requiring harmonization of internal recording procedures;]
 - [(vii) Provide economic support to developing countries, in particular the least developed among them and small island developing States, and countries with economies in transition, to develop online systems to support an international documentation system. (Mover este inciso a la sección de creación de capacidad

Proposal of Mexico

Mexico considers that all the above section d) should be part of the Preamble and not operative text.

(e) Contracting Parties shall ensure that no intellectual property rights based on the utilization of genetic resources, derivatives and products and/or associated traditional knowledge will be granted unless the applications for such intellectual property rights include the disclosure of an Internationally Recognized Certificate of Compliance with the access and benefit-sharing legislation of the provider country.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

(c) Tracking and reporting systems

1. Contracting Parties should [develop tracking and monitoring systems that identify breaches of contractual obligations or misappropriation of genetic resources, their derivatives and products and/or associated traditional knowledge and bring such breaches to the attention of the rights holders and stakeholders, facilitate exchange of information, including through the clearing house mechanism, related to the development of tracking and monitoring systems of genetic resources, their derivatives][and products, and encourage the further development of information technologies appropriate to that purpose.

Proposal of Mexico for a new paragraph 1.e)

e) Parties shall establish an information exchange framework between Access and Benefit-sharing competent national authority and intellectual property offices to monitor the intellectual property rights based on the utilization of genetic resources and associated traditional knowledge

2. Parties should encourage users and providers to include provisions in access and benefit-sharing contracts to cover monitoring and tracking the use of the [genetic resources][biological resources][, their derivatives][and products] accessed, including measures to monitor compliance with mutually agreed terms.]

(e) Disclosure requirements

(f) Identification of check points

1. Parties shall establish other effective supporting mechanisms for compliance at border check points, intellectual property rights offices, etc., including by using certificates of compliance with national legislations, so as to prevent misappropriation of resources.

2. Contracting Parties shall establish check points at, *inter alia*, intellectual property rights offices, market approval authorities and entities, to ensure that the use of [genetic resources][biological resources][, their derivatives][and products] is accompanied by, and is in line with, the relevant international recognized certificate.

3. The check points established by the Contracting Parties shall cover all uses of genetic resources [biological resources][, their derivatives][and products] according to the definition included in the International Regime on Access and Benefit-sharing, in their jurisdiction.

3) Development of tools to enforce compliance

[1. Each Party shall ensure that users of genetic resources, [biological resources] [their derivatives] [and products] and/or associated traditional knowledge under its jurisdiction comply with the national legislation of the countries of origin of such resources and/or traditional knowledge or of the Parties that have acquired the genetic resources, their derivatives and products in accordance with the Convention, when accessing and/or using such resources, their derivatives and products and/or associated traditional knowledge by taking the following measures *inter alia*:

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

(a) Rules requiring that users of genetic resources, [derivatives] [and products] and/or associated traditional knowledge comply with national legislation in the country of origin and the mutually agreed terms on which access was granted, including requirements to equitably share the benefits arising out of the utilization of such resources,[derivatives] [and products] and/or associated traditional knowledge;

(b) Rules requiring that the importation of genetic resources, [biological resources] [derivatives] [and products] and/or associated traditional knowledge comply with domestic requirements regarding prior informed consent.

(c) Measures aimed at preventing the use of misappropriated genetic resources, [biological resources] [derivatives] [and products] their derivatives and products and/or traditional knowledge;

(d) Require that genetic resources, their derivatives and products and/or associated traditional knowledge are only used for purposes consistent with prior informed consent and mutually agreed terms the terms and conditions under which they were acquired;

2. Each Party shall take appropriate, effective and proportionate measures to establish sanctions and remedies when users under their jurisdictions have violated national access and benefit-sharing legislation of the countries of origin of genetic resources, their derivatives and products and/or traditional knowledge of the Parties that have acquired the genetic resources, [biological resources][their derivatives] [and products] in accordance with the Convention. Among others, the Parties should establish the following sanctions and remedies:

(a) The cessation of the acts related to the infraction;

(b) Compensation for damages;

(c) The withdrawal from the market of products resulting from the infringement;

(d) The prohibition on the import or export of goods, materials or any means referred to in the previous paragraph;

(e) The necessary action to avoid continuation or repetition of the offence;

(f) Publication of the judgement and notification to interested persons at the expense of the person(s) who made the infraction

(g) Criminal penalties for use of genetic resources, [biological resources] [their derivatives] [and products] and associated traditional knowledge without compliance with conditions of access and benefit-sharing in the country of origin;

3. Each Party shall, at the request of any interested Party, in accordance with national law and existing agreements or arrangements, cooperate in the investigation and follow up of cases of alleged violations of the national access and benefit-sharing legislation of the country of origin of genetic resources, their derivatives][and products] and/or associated traditional knowledge or of the Party that has acquired the genetic resources, [biological resources][, their derivatives][and products] in accordance with the Convention, including prior informed consent and mutually agreed terms.

4. Each Party shall provide timely guidance and make available information on the types of assistance that are available to nationals of other jurisdictions to assist in the exercise and enforcement of their rights.

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

5. User Parties may provide financial assistance for the settlement of legal disputes. ^{5/}

(a) Measures to ensure access to justice with the aim of enforcing ABS arrangements

1. Access to justice should be in accordance with Principle 10 of the Rio Declaration.

[2. The Governing Body of the International Regime on Access and Benefit-sharing [shall][should][may] [consider][ensure] such [voluntary] measures or mechanisms as appropriate to support effective implementation of the International Regime on Access and Benefit-sharing, including by providing assistance to Parties[, as well assistance that covers issues related to the financial cost of legal expertise] [and/or indigenous and local communities], upon request, in litigation related to cases of alleged non-compliance [with national access and benefit-sharing laws, regulations and/or requirements and/or breach of access and benefit-sharing agreements]. Such measures/mechanisms [shall][should][may] be considered by the Governing Body of the International Regime on Access and Benefit-sharing not later than at its [first][next] meeting.]

[3. The International Regime on Access and Benefit-sharing [shall][should] establish an international access and benefit-sharing ombudsman's office. The ombudsman's office [shall][should] be responsible for provider countries[, or, where relevant,] [/] countries of origin and indigenous and local communities to identify breaches of their rights and to provide aid in seeking fair and equitable resolution of disputes. The ombudsman's office [shall][should] be empowered to take action on behalf of [provider] countries [of origin/provider countries] and indigenous and local communities through the binding Dispute Resolution Mechanism. The ombudsman's office [shall][should] also where necessary and when requested represent [provider] countries [of origin/provider countries] [and/or] indigenous and local communities in proceedings in foreign jurisdiction, take depositions from indigenous and local communities and provide evidence of customary law and practice as and where appropriate.]

(b) Dispute settlement mechanisms:

(i) Inter-State

(ii) Private international law

(iii) Alternative dispute resolution

1.(a) The International Regime on Access and Benefit-sharing shall establish a Dispute Resolution Mechanism accessible to both, countries and other aggrieved stakeholders who include indigenous and local communities, non-governmental organizations, research and commercial interests, and other providers and users of genetic resources, [biological resources][, their derivatives][and products] and/or associated traditional knowledge.

(b) The Dispute Resolution Mechanism should also have regional offices that use local languages and have personnel conversant with the cultural, social, economic and environmental realities of the region.

(c) The Dispute Resolution Mechanism shall be guided in its work by principles of equity, impartiality and independence drawn from a wide range of legal sources including customary law and practices of indigenous and local communities.

^{5/} The placement of paragraphs 1 to 5 above must be further considered.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

(d) The International Regime on Access and Benefit-sharing shall establish mechanisms to provide legal assistance to developing countries and indigenous and local communities.

2. Parties to the Convention shall encourage users and providers to utilize, to the fullest extent possible, existing mechanisms on alternative dispute resolution for contracts.

(c) Enforcement of judgments and arbitral awards across jurisdictions

Noting the importance of compliance with ABS agreements/contracts to the international regime {preambular paragraph}

Noting also that the existing body of private international law provides a range of options for dispute resolution across national borders {preambular paragraph}

Noting the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the assistance it provides parties in the enforcement of foreign arbitral awards {preambular paragraph}

1. Contracting Parties shall encourage that their courts will enforce the decisions of the courts of the country of origin/provider countries against unlawful users under the former's jurisdiction subject to basic principles underlying enforcement of foreign judgments under comity in international law.

2. Parties shall encourage access and benefit-sharing users and providers to include provisions in access and benefit-sharing contracts to cover dispute resolution including:

(a) The jurisdiction to which they will subject any dispute resolution processes;

(b) The applicable law;

(c) Options for alternative dispute resolution, such as mediation or arbitration, in the event of contractual disputes.

(d) Information exchange procedures between national focal points for access and benefit-sharing to help providers obtain relevant information in specific case of alleged infringements of prior – informed – consent requirements.

Proposal of Mexico for a new paragraph:

“National focal points and/or competent authorities shall facilitate, through the international mechanism of compliance, the provision of relevant information on infringement of prior informed consent requirements of providers of genetic resources[, their derivatives][and products] and/or associated traditional knowledge.”

(e) Remedies and sanctions

1. National legislation shall provide for remedies to sanction lack of compliance with the national ABS framework {...}

3. Each Contracting Party shall introduce measures to facilitate cooperation between Contracting Parties to address alleged infringements of access and benefit-sharing agreements and misappropriation of [genetic resources][biological resources], [their derivatives][and products,] and/or associated traditional knowledge, such as access to justice and support for claimants in actions of breach of contract or misappropriation.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección C. Cumplimiento

[4) Measures to ensure compliance with customary law and local systems of protection

Proposal of Mexico

Mexico eliminates the operative text for considering that deliberations on traditional knowledge under the section on Compliance are not part of the International Regime and are subject of national legislations and policies.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección D. Conocimiento tradicionales relacionados con los recursos genéticos.

D. Conocimientos tradicionales relacionados con los recursos genéticos 1/

1. Componentes a ser elaborados más a fondo con miras a incorporarlos en el régimen internacional

Texto operativo propuesto:

Reconociendo los derechos de las comunidades indígenas y locales a proteger sus conocimientos, innovaciones y prácticas asociados con los recursos genéticos, así como a asegurar la participación justa y equitativa de los beneficios resultantes de su utilización, sujeto a la legislación nacional de los países donde se localizan dichas comunidades.

Reafirmando el compromiso de las Partes a implementar las disposiciones de la Decisión IX/13 sobre el “Artículo 8 (j) y sus disposiciones.—relacionadas”, en particular aquellas relativas al “Desarrollo de elementos de sistemas sui generis para la protección del conocimiento tradicional, innovaciones y prácticas”.

1) Medidas para asegurar la participación justa y equitativa de los titulares de los conocimientos tradicionales en los beneficios derivados de la utilización de los conocimientos tradicionales de conformidad con el Artículo 8 j) del Convenio sobre la Diversidad Biológica.

Texto operativo propuesto:

- 1) Los usuarios deberán obtener el consentimiento previo informado de las comunidades indígenas y locales poseedoras del conocimiento tradicional asociado con los recursos genéticos, de conformidad con el Artículo 8 (j) de la Convención sobre la Diversidad Biológica., sujetos a la legislación nacional de los países donde se localizan dichas comunidades.*
- 2) De conformidad con el Artículo 15.7 de la Convención sobre la Diversidad Biológica, los usuarios y las comunidades indígenas y locales poseedoras del conocimiento tradicional asociado con los recursos genéticos de la Parte Contratante donde se localizan*

1/ El título no prejuzga el eventual ámbito del régimen internacional.

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección D. Conocimiento tradicionales relacionados con los recursos genéticos.

dichas comunidades, deberán bajo condiciones mutuamente acordadas definir los términos en los que compartirán, de manera justa y equitativa, los resultados, el desarrollo y los beneficios derivados de los diversos usos de los recursos genéticos y el conocimiento tradicional asociado a dichos recursos, incluidos la investigación científica y el uso comercial.

- 3) *Cada Parte deberá estipular en sus legislaciones nacionales, medidas para asegurar la justa y equitativa distribución de los beneficios resultantes del uso de los recursos genéticos, y/o conocimiento tradicional asociado. Estas medidas deberán incluir los términos mutuamente acordados y el consentimiento previo informado.”*
- 4) *Las condiciones para una equitativa participación en los beneficios resultantes del uso del conocimiento tradicional, innovaciones y prácticas asociadas con los recursos genéticos deberán estipularse en los términos mutuamente acordados, de conformidad con las legislaciones nacionales: a) entre las comunidades indígenas y locales y los usuarios; o b) entre los usuarios y la autoridad nacional del país proveedor, con activa participación de las comunidades indígenas y locales involucradas, previo consentimiento informado.*

2) Medidas para garantizar que el acceso a los conocimientos tradicionales se realice de acuerdo con los procedimientos del nivel de la comunidad

Texto operativo propuesto:

- 1) *Las Partes, de conformidad con los principios del derecho internacional y su legislación nacional, reconocerán las formas de organización tradicional de cada pueblo y comunidad indígena y local.*
- 2) *En materia de acceso y uso del conocimiento tradicional asociado a los recursos genéticos, las Partes deberán incluir el consentimiento previo, libre e informado, así como los Términos Mutuamente Acordados en el Contrato donde se especifiquen los beneficios a obtener, monetarios o no monetarios, sin perjuicio de que las comunidades indígenas y locales puedan recurrir a mecanismos de asesoría para el reparto beneficios”.*

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección D. Conocimiento tradicionales relacionados con los recursos genéticos.

- 3) Medidas para abordar el uso de los conocimientos tradicionales en el contexto de los arreglos de participación en los beneficios**
- 4) Identificación de mejores prácticas para asegurar el respeto por los conocimientos tradicionales en la investigación relacionada con el acceso y participación en los beneficios**
- 5) Incorporación de los conocimientos tradicionales en el desarrollo de cláusulas modelo para los acuerdos de transferencia de materiales**
- 6) Identificación de la persona o autoridad que debe otorgar el acceso de conformidad con los procedimientos en el nivel de la comunidad**

Texto operativo propuesto:

- 1) De conformidad con las formas de organización tradicional de cada pueblo y comunidad indígena y local, éstos definirán las autoridades e instancias apropiadas para ser las interlocutoras para otorgar o no, el acceso y uso a los conocimientos tradicionales, innovaciones y práctica, asociados a recursos genéticos.*

7) Acceso con aprobación de los titulares de los conocimientos tradicionales

Texto operativo propuesto:

- 1) Sin perjuicio de la soberanía de los Estados sobre sus recursos naturales y de la autoridad de los gobiernos nacionales para determinar el acceso a los recursos genéticos, el acceso al conocimiento tradicional asociado de las comunidades indígenas y locales deberá ser sujeto al consentimiento informado previo.*

8) Ningún acceso a los conocimientos tradicionales por medio de planificación o coerción

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección D. Conocimiento tradicionales relacionados con los recursos genéticos.

Texto operativo propuesto:

- 1) Las Partes deberán considerar en sus legislaciones nacionales, medidas apropiadas para reconocer, proteger, respetar y salvaguardar los derechos de los poseedores del conocimiento tradicional asociado a recursos genéticos.*
- 2) De conformidad con los Artículos 8 (j) y 15.5 de la Convención, el acceso a los recursos genéticos deberá ser sujeto al consentimiento informado previo.*
- 3) Cualquier adquisición, apropiación indebida o utilización inadecuada del conocimiento tradicional asociado a los recursos genéticos, deberá ser sujeto de sanciones, establecidas en las legislaciones nacionales.*

2. Componentes por considerar más a fondo

- 1) Consentimiento fundamentado previo de los titulares de los conocimientos tradicionales, incluidas las comunidades indígenas y locales, y términos mutuamente acordados con los mismos, cuando se accede a conocimientos tradicionales**
- 2) Directrices elaboradas en el nivel internacional para ayudar a las Partes en el desarrollo de su legislación y políticas nacionales**
- 3) Declaración acerca del certificado internacionalmente reconocido respecto a si hay algún conocimiento tradicional relacionado y quiénes son los propietarios de dichos conocimientos tradicionales**
- 4) Distribución de los beneficios derivados de los conocimientos tradicionales en el nivel de la comunidad**

MEXICO

Propuestas de Texto Operativo

Capítulo III. Componentes Principales, Sección E. Capacidad

Operative text

1. The Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities for the purpose of the effective implementation of this International Regime, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating participation of all involved stakeholders.
2. Contracting Parties shall undertake capacity building measures at all relevant levels particularly in the following items:
 - (a) Development of national legislation
 - (b) Participation in negotiations, including contract negotiations
 - (c) Information and communication technology
 - (d) Monitoring and enforcing compliance
 - (e) Access and benefit-sharing
3. Contracting Parties shall undertake national capacity self-assessments to be used as a guideline for minimum capacity-building requirements
4. Contracting Parties shall undertake capacity building measures for technology transfer and cooperation
5. Contracting Parties shall undertake special capacity-building measures for ILCs
6. Contracting Parties shall where required provide support for the development of menus of model clauses for potential inclusion in material transfer agreements.
7. Facilitate adequate funding and capacity building for effective participation in the Access and Benefit-sharing Clearing House Mechanism, taking into account the special needs of developing country Parties, in particular the least developed among them and small island developing States, and countries with economies in transition as well as countries that are centers of origin and centres of genetic diversity;
8. Assist Parties to implement this International Regime on Access and Benefit-sharing, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity ;

MEXICO

Propuestas sobre los Componentes del Régimen Internacional sobre Acceso y Participación en los Beneficios (RI-APB):

Mecanismos Obligatorios, Mecanismos de Aplicación Voluntaria y Mecanismos Combinados

Capítulo IV. Naturaleza

México considera que la naturaleza del Régimen Internacional debe ser jurídicamente vinculante, si bien podría incorporar mecanismos de aplicación voluntaria e incluso, mecanismos que combinen ambos criterios (mecanismos combinados).

I. Mecanismos obligatorios para asegurar el cumplimiento del RI-APB

- 1) El consentimiento previo informado (PIC) para acceder al Recurso Genético (RG) y al Conocimiento Tradicional asociado (CT) en condiciones de igualdad (No discriminación), conforme al Art. 15 de la Convención sobre Diversidad Biológica (CDB), y en el que se establezca el uso específico del RG y el CT para el cual se ha otorgado dicho PIC.
- 2) Los términos mutuamente acordados (MAT), en los que se establezcan los términos en que habrá de darse una justa y equitativa participación en los beneficios, monetarios y no monetarios. Art. 15.7 de la CDB.
- 3) Certificado de Cumplimiento, como documento de aplicación obligatoria y legal internacional, expedido por una Autoridad Nacional.
- 4) Distribución justa y equitativa de beneficios derivados del uso de recursos genéticos y del conocimiento tradicional asociado a los recursos genéticos.
- 5) Desarrollo de un Registro Internacional de certificados de cumplimiento.
- 6) Designación de Autoridad Nacional Competente y Punto Focal Nacional.
- 7) Definición de puntos Nacionales de Verificación del Certificado de cumplimiento.

MEXICO

Propuestas sobre los Componentes del Régimen Internacional sobre Acceso y Participación en los Beneficios (RI-APB):

Mecanismos Obligatorios, Mecanismos de Aplicación Voluntaria y Mecanismos Combinados

Capítulo IV. Naturaleza

- 8) Respeto a los derechos de los pueblos y comunidades indígenas y locales en términos de los instrumentos internacionales.
- 9) Mecanismos para la prevención de la apropiación y uso indebido, del CT asociado con los recursos genéticos, de conformidad con lo estipulado en el artículo 8(j) de la Convención sobre la Diversidad Biológica (CDB).
- 10) Establecimiento en las legislaciones nacionales, de sanciones y medidas correctivas para casos de incumplimiento.
- 11) Establecimiento de mecanismos de apoyo financiero para la aplicación del RI-APB en los países en desarrollo.
- 12) El RI-APB y otros tratados multilaterales relacionados con el acceso y la participación de beneficios por la utilización de los recursos genéticos deberán aplicarse en armonía y en apoyo mutuo.
- 13) Establecimiento de un mecanismo de cumplimiento internacional (Tipo Convenio de Basilea, Protocolo de Cartagena sobre Bioseguridad, etc.).

II. Mecanismos de aplicación voluntaria

- 1) Códigos de conducta (códigos de ética) que pueden ser sectoriales (por ejemplo, aquellos establecidos por Kew Botanical Gardens para investigadores)
- 2) Procedimientos arbitrales
- 3) Fondos de administración de los recursos
- 4) Mecanismos de asesoría hacia los pueblos indígenas y comunidades locales)

MEXICO

Propuestas sobre los Componentes del Régimen Internacional sobre Acceso y Participación en los Beneficios (RI-APB):

Mecanismos Obligatorios, Mecanismos de Aplicación Voluntaria y Mecanismos Combinados

Capítulo IV. Naturaleza

III. Mecanismos combinados (de aplicación obligatoria-voluntaria)

- 1) Acuerdos de disputa (cláusula de solución de controversias)
- 2) Cláusulas del modelo para el PIC y para el MAT.