



**FEDERATIVE REPUBLIC OF BRAZIL  
MINISTRY OF EXTERNAL RELATIONS  
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**Submission of views in preparation for the Expert Meeting on the need for and modalities of a global multilateral benefit-sharing mechanism**

**Brazil's contribution**

As a Party to the Convention on Biological Diversity (CBD), Brazil highlights the importance of a balanced implementation of its three objectives, including the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Brazil is currently finishing the revision of its national ABS framework and is taking the internal measures for the ratification of the Nagoya Protocol, which is under the analysis of the National Congress. In this context, we hope to contribute with our experience on the topic for the possible establishment of a global multilateral benefit-sharing mechanism (GMBSM), as foreseen in Article 10 of the Protocol.

2. The establishment of a GMBSM under the structure of the Protocol is regarded as one of the key measures for an effective ABS framework. Nonetheless, due to the incipient experience that Parties to the Protocol have with the implementation of ABS rules, it would be wise to start the work of the GMBSM in a "pilot-phase", allowing Parties to gather the knowledge needed for its future enhancement.

3. In this process, it is necessary to bear in mind that the spirit of the Protocol favors bilateral and regional approaches to ABS over multilateral approaches. As we understand, this characteristic of the Protocol is more than just a political choice, but a way to ensure that measures related to the conservation and sustainable use of biodiversity are taken in a level as close as possible to its implementation on the ground. In this sense, the GMBSM should be seen as a supplementary tool for benefit-sharing and shall not have prominence over bilateral and regional arrangements. With that in mind, the GMBSM can be oriented to work in collaboration with bilateral arrangements and regional organizations, where they exist, to foster cooperation on ABS. In the context of South America, organizations such as the Amazon Cooperation Treaty

Organization (ACTO), the Mercosur and the UNASUR could have a relevant role in the ABS Regime.

4. As a tool developed under the context of the CBD, the GMBSM shall be fully in line with both the texts of the Convention and the Protocol. These considerations have significant relevance to the assessment of the elements reflected in Paragraph 1 of decision NP-1/10.

5. With regards to the text of the Convention, Brazil highlights the importance of harmonizing the rules that will guide the functioning of the Mechanism with Article 3 of the CBD. Article 3 reaffirms Principle 2 of the Rio Declaration on Environment and Development (1992) that States have "the sovereign right to exploit their own resources pursuant to their own environmental policies". Thus, it is clear that the system of the GMBSM shall not become an "alternative" to national regulations on ABS. Also, it shall not constitute a disincentive to the establishment of national frameworks by Parties.

6. With regard to the text of the Protocol, there is a need to have in mind the limits imposed by its Article 10, including the situations that the Mechanism shall cover:

*Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.*

7. The GMBSM can be a useful tool in the context of the sharing of benefits arising from the utilization of transboundary genetic resources. Its potential contribution to the ABS regime is particularly clear in the context of migratory species. Nonetheless, further consideration is needed to address situations where a genetic resource is found in more than one Party but is not part of a migratory species, such as the case of several flora species. Brazil understands that this situation does not constitute a "transboundary situation" in the context of Article 10. In order to be consistent with Article 3 of the Convention, in such hypothesis, the sharing of benefits shall follow the rules established by the country of access, when it is possible to identify the place where the specimen was obtained. The GMBSM will have an important role when it is not possible to identify the origin of the species, when the benefits shall be directed to the Multilateral Mechanism. The application of the benefits collected in that scenario can be directed to the transboundary cooperation under Article 11 of the Protocol, especially when there are competent regional organizations.

8. The contribution of the GMBSM to the ABS system is even more important in a situation when it is not possible to "grant or obtain prior informed consent" (PIC), especially for the access of traditional knowledge associated with genetic resources (TKA). For instance, the Mechanism can be used for the sharing of benefits when it is not possible to establish the origin of the traditional knowledge. It is worth mentioning that in a situation where the TKA is accessed through a public source or a secondary source, but the origin is known, the benefits shall be shared with the country of origin - or the indigenous people and local community – where the TKA was developed. In any scenario, the PIC for the access to TKA must respect community protocols, where they have been established.

9. With regard to a situation where a given State still does not have a national ABS framework in place, Brazil is not convinced that this is a situation that falls under the scope of the GMBSM, since it is not a case where it is impossible to grant or obtain the consent. Even in the absence of a national framework, Article 15 of the CBD (access to genetic resources) is applicable. Thus, the access shall be made on "mutually agreed terms" by the Parties involved and "shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party". Consequently, benefits arising out of the utilization of that genetic resource shall be shared in accordance with the terms agreed upon by the Parties concerned bilaterally, and not through the GMBSM. The use of the Mechanism in such situation could represent an affront to the rights of the country of origin and could bring additional difficulties for developing countries that still have to put their national framework in place.

10. Brazil understands that further consideration is needed regarding the rules that will guide the access to the genetic resources and TKA found in *ex situ* collections. From a legal perspective, it is important to note that nothing in the Protocol implies its retroaction. At the same time, it is not clear how to address the situation of new accesses to a genetic resource deposited in a *ex situ* collection after the entering into force of the Protocol. The national experience with the implementation of ABS rules shows that this is a complex issue that should be analyzed thoroughly in its different aspects.

11. It is worth noting that whenever the system of the GMBSM is used due to the impossibility of granting or obtaining the PIC, such impossibility must be clearly documented. Otherwise, the Mechanism might be misused in a way to avoid national legislations through the argument that it was not possible to obtain the PIC. That situation would bring legal uncertainty both to providers and users of genetic resources, damaging the whole ABS system.

12. As can be seen, one of the main elements that will indicate whether the benefit-sharing shall be directed to the GMBSM is the possibility of assessing the origin of the given genetic resource or TKA. For this reason, the development of data management

systems and traceability arrangements is essential for the effective functioning of the ABS system. Brazil calls attention to the experiences already in place with the development of traceability tools and catalogues of organisms, including microorganisms. The use of such tools in the context of the ABS Clearing-House might be of great help for the implementation of the Protocol.

13. With regard to the question on possible modalities for a GMBSM, Brazil calls attention to the fact that the Annex to the Nagoya Protocol includes examples of both monetary and non-monetary benefits. For this reason, the rules guiding the Mechanism should include orientation for both situations.

14. In the context of non-monetary benefits, the GMBSM can serve as a tool to foster bilateral, regional and multilateral cooperation, including capacity-building and the transfer of technology. In this line, the Mechanism could include match-making facility between projects aiming to use the non-monetary benefits offered in its context.

15. On the issue of monetary benefits, the Brazilian experience shows that is highly relevant to determine beforehand the link in the chain of production that will be responsible for the benefit-sharing. Charging the whole chain of production has proven to be detrimental to the collection of benefits, since it leads to a heavy and ineffective system that may harm the development of scientific knowledge and production, which consequently might lead to a lower level of benefits. Base on this experience, the new ABS system in Brazil focuses on the collection of benefits on the final link of the chain of production, thus avoiding a "cascade effect" on the benefit-sharing obligations. In this sense, Law 13.123/2015 establishes that the benefit-sharing will be collected from the profits gained with the commercialization of the final product. In the case of genetic resources for food and agriculture, the benefits are collected from commercialization of reproductive materials.

16. With regards to the application of the resources gathered by the Mechanism, Brazil considers that priority should be given to the support of *in situ* conservation measures on the biomes and ecosystems where the genetic resource might be found, even when it is impossible to determine the country of origin of that resource. That approach would highlight the links between the ABS system and the conservation of biodiversity on the ground.

17. Finally, Brazil stresses the need to respect the prerogatives, processes and mandates of other multilateral environment agreements and other organizations. In this sense, decisions on genetic resources in areas beyond national jurisdiction or genetic resources in the Antarctic Treaty area should be made by Parties to the competent and appropriate forums. Nonetheless, it is important that the CBD cooperate with such organizations in order to have an effective and coherent ABS system.