

DIRECCIÓN GENERAL  
PARA TEMAS GLOBALES

DGTG-05022/09

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, y en alcance a su nota DGTG-03764/09 (3 julio 2009), 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 traducciones al idioma inglés, a las propuestas elaboradas por el Gobierno de México a los siguientes 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 B. Acceso a los recursos genéticos.
2. México. Propuestas de texto operativo. Capítulo III. Componentes Principales, Sección D. Conocimientos tradicionales asociados con los recursos genéticos.
3. México. Propuestas sobre Mecanismos Obligatorios, Mecanismos de Aplicación Voluntaria y Mecanismos Combinados. Capítulo IV. Naturaleza.

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 7 de septiembre de 2009.

SECRETARIADO DE LA CONVENCION  
SOBRE DIVERSIDAD BIOLÓGICA



## MEXICO

### Proposed Operative Text

Chapter III. Principal Components, Section B. Access to Genetic Resources.

#### B. ACCESS TO GENETIC RESOURCES<sup>1</sup>

##### **1) Recognition of the Parties' sovereign rights and authority to determine access.**

###### *Proposed operative text*

*Recalling* the sovereign rights of States over their natural resources, and that the authority to regulate access to genetic resources rests with national governments and is subject to national legislation *{preambular paragraph }*

*Recalling furthermore* that each Contracting Party shall endeavour to create the conditions to facilitate access by other Contracting Parties to genetic resources for environmentally sound uses, and refrain from imposing restrictions contrary to the objectives of the Convention *{preambular paragraph}*

*Recalling furthermore* that access to genetic resources will be subject to the prior informed consent of the Contracting Party supplying such resources, unless said Party decides otherwise.

1. The Contracting Parties have sovereign rights over their natural resources, and the authority to regulate access to genetic resources [biological resources][, their derivatives] [and products], rests with national governments. Wherever access to [genetic resources] [biological resources] [, their derivatives] [and products] involves the knowledge, innovations and practices of indigenous and local communities, said indigenous and local communities will have a voice in regulating access, subject to national legislation.

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<sup>1</sup> The title does not prejudice the eventual scope of the international Régime regarding access and benefit-sharing.

2. Access to genetic resources [biological resources][, their derivatives] [and products] and/or related traditional knowledge will be subject to the prior free and informed consent of indigenous and local communities. Access to genetic resources and related traditional knowledge of indigenous peoples and local communities will be subject to their prior informed consent.

6. Each Party will communicate to the Secretariat, at the latest on the date of entry into force of this International regime on access and benefit-sharing for said Party, the names and addresses of their coordination center and competent national authority or authorities.<sup>2 3</sup>

## **2. Linkage of access to fair and equitable benefit-sharing<sup>4</sup>**

### *Proposed operative text*

*Recognizing* that fair and equitable benefit-sharing can be achieved only after access to genetic resources has been granted {*preambular paragraph*}

*Recalling* that Article 15.5 of the Convention stipulates that access to genetic resources will be subject to the prior informed consent of the Contracting Party supplying the genetic resources, unless said Party decides otherwise {*preambular paragraph*}

*Recalling furthermore* that Article 15.4 of the Convention stipulates that the Contracting Parties will take steps to ensure that, when access is granted, it shall be under mutually agreed conditions {*preambular paragraph*}

1. The Parties will take all necessary steps to establish a national regulatory framework to regulate access to genetic resources [biological resources][, their derivatives][and products], and/or related traditional knowledge, as well as the rights of indigenous peoples and local communities, and guarantee that the ensuing benefit-sharing shall take place under mutually agreed conditions.

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<sup>2</sup> The placement of paragraphs 4 to 6 *supra* should be given further consideration.

<sup>3</sup> There is also a section on competent national authorities, in accordance with paragraphs 4 to 6 *supra*, in section III.C.1.2.b of annex I to decision IX/12.

<sup>4</sup> There is also a section on linkage of access to fair and equitable benefit-sharing in heading III.A.1.1 of annex I of decision IX/12.

3. The Contracting Parties will adopt legislative and administrative measures to regulate those cases in which there is a modification in the original purpose for which access was granted to genetic resources [biological resources][, their derivatives] [and products] [and/or related traditional knowledge].

4. The non-fulfilment of the mutually agreed conditions of access may result in the revocation of fulfilment certification.

### **3. Legal certainty, clarity and transparency in the rules of access**

#### *Proposed operative text*

1. In order to create conditions to facilitate access to genetic resources [biological resources][, their derivatives] [and products] and contribute to the fulfilment of obligations related to access and benefit-sharing within different jurisdictions, the Parties will adopt the legislative, policy and administrative measures needed, as per {...} in order to provide legal certainty, clarity and transparency in their national frameworks regarding access and benefit-sharing.

### **4. Non-discrimination in rules of access**

#### *Proposed operative text*

Each Party, in implementing its national framework regarding access and benefit-sharing, shall not discriminate in any arbitrary or unjustified way among users from other Contracting Parties or among domestic and foreign users, except if it is in its national interest to do so in accordance with its sovereign right over such resources, which enables it to regulate access in accordance with the recognition of said right in Article 15.1. of the Convention.

### **5. Norms for international access (not requiring harmonization of legislation on domestic access) to promote fulfilment in all jurisdictions**

*Proposed operative text*

*Recalling* the sovereign rights of States over their natural resources and that the authority to regulate access to genetic resources rests with national governments and is subject to national legislation *{preambular paragraph }*

*Recalling furthermore* that each Contracting Party will attempt to create the conditions to facilitate access by other Contracting Parties to genetic resources for environmentally sound uses, and to refrain from imposing restrictions contrary to the objectives of the Convention *{preambular paragraph }*

*Recognizing furthermore* that fair and equitable benefit-sharing can be achieved only after access to genetic resources has been granted *{preambular paragraph }*

1. In order to create conditions to facilitate access to genetic resources [biological resources][, their derivatives] [and products] and contribute to the fulfilment of obligations related to access and benefit-sharing within different jurisdictions, the Parties will adopt the legislative, policy and administrative measures needed, as per {...}, in order to provide legal certainty, clarity and transparency in their national frameworks on access and benefit-sharing. These must include:

*(General issues)*

[b) A [clear] procedure to request prior informed consent from a competent national authority and, if necessary, from indigenous and local communities];]

*Proposed operative text*

Subject to the text of heading b) in Section II. Fulfilment of mechanisms for the exchange of monitoring information.<sup>5</sup>

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<sup>5</sup> "Each Contracting Party will take the appropriate legislative, administrative or policy measures in order to monitor fulfilment.

b) Facilitate the equitable exchange of scientific, technical, environmental and legal information, as well as the sharing of experiences related to access in the implementation of simplified administrative procedures for access to resources, their derivatives and products for non-commercial research."

[2. The additional measures established in {...} to promote fulfilment in cases of undue appropriation [shall have no relation to] [will be implemented] if the national framework for access and benefit-sharing by a Contracting Party providing a genetic resource [is in accordance with paragraph 1].]

**6) Internationally developed model domestic legislation**

*Proposed operative text*

*Recalling* that Article 15.1. of the Convention stipulates that States have sovereign rights over their natural resources, and that the faculty to regulate access to genetic resources rests with national governments and is subject to national legislation {*preambular paragraph*}

*Recalling* that Article 15.5 of the Convention stipulates that access to genetic resources will be subject to the prior informed consent of the Contracting Party providing the said genetic resources, unless that Party decides otherwise {*preambular paragraph*}

*Taking note* that the Parties have different legal systems, and have consequently chosen to implement the provisions regarding access and benefit-sharing in the Convention in accordance with their national conditions {*paragraph from the preamble*}

1. Encourages the Parties to provide the Secretariat with examples of provisions for national legislation, and encourages the Secretariat to provide them to the Parties upon request, in order to give assistance and support to said requesting Parties for the implementation of the Convention's provisions regarding access and benefit-sharing on the national level.

2. The Parties will compile examples of provisions for national legislations and examples of frameworks for the adoption of administrative decisions in accordance with the international norms established in {...} and will distribute them via the center for information exchange.

**7) Reduction to a minimum of administration and transaction costs**

**8) Simplified rules of access for non-commercial research**

d) Present information about their national frameworks for access and benefit-sharing and facilitate access to them, especially regarding how to request prior informed consent;

e) Provide the information generated in accordance with item d) in the Mechanism for facilitation of the Convention, including information about coordination centers for access and benefit-sharing, and update it on a regular basis;

f) Require that the competent authority provide periodically, as per the Mechanism for facilitation of the Convention, updated information regarding the number of applications processed, including those applications which were granted a prior informed consent, as well as certificates of fulfilment;

[g) [Appropriate] administrative or judicial procedures of appeal regarding prior informed consent, [including cases of omission and [arbitrary and unjustified] discriminatory access practices];]

*(Specific aspects related to requesting decisions on prior informed consent by the competent [national] authority)*

h) Request that decisions by the competent national authorities to grant or deny access should be motivated and well-founded.

*(Specific aspects related to the mutually agreed conditions (normally stipulated in contracts))*

m) [Clear] rules, within national frameworks for access and benefit-sharing, to establish mutually agreed conditions;

o) Require that mutually agreed conditions should be stipulated in writing;

p) Require that mutually agreed conditions should include a clause on dispute resolution;

q) Require that mutually agreed conditions should reflect that benefit-sharing has been taken into account;

*Proposed operative text*

***Option 2***

The Contracting Parties which are countries of origin of genetic resources [biological resources][, their derivatives][and products], or other Parties which have acquired genetic resources [biological resources][, their derivatives][and products] in accordance with the text of the Convention, should:

a) Consider simplified rules of access to genetic resources [biological resources][, their derivatives][and products] for non-commercial purposes;

b) Require that new uses of a genetic resource [biological resource] over and beyond what has been established in the mutually agreed conditions should be subjected to a new prior informed consent and mutually agreed conditions, on the part of the supplying country and/or indigenous peoples and local communities involved.





## MEXICO

### Proposals on the Components of the International Régime on Access and Benefit-Sharing (IR-ABS):

#### Compulsory Mechanisms, Voluntary Mechanisms and Combined Mechanisms

#### Chapter IV. Nature

Mexico considers that the nature of the International Régime should be legally binding, though it could incorporate voluntary mechanisms and even mechanisms combining both criteria (combined mechanisms).

#### **I. Compulsory mechanisms to ensure the fulfilment of IR-ABS**

- 1) Prior informed consent (PIC) to obtain access to the Genetic Resource (GR) and associated Traditional Knowledge (TK) under conditions of equality (non-discrimination), in accordance with Article 15 of the Convention on Biological Diversity (CBD), establishing the specific use of the GR and the TK for which the said PIC has been granted.
- 2) Mutually agreed terms (MAT), establishing the terms under which there shall be a fair and equitable sharing in the benefits, whether monetary or not. Art. 15.7 of the CBD.
- 3) Certificate of Fulfilment, as a compulsory and legal international document, to be issued by a National Authority.
- 4) A fair and equitable sharing of the benefits derived from the use of genetic resources and the traditional knowledge associated with genetic resources.
- 5) Development of an International Registry of certificates of fulfilment.
- 6) Designation of a Competent National Authority and National Focus Point.
- 7) Definition of National Verification items in the Certificate of Fulfilment.
- 8) Respect for the rights of indigenous and local peoples and communities in the terms of relevant international instruments.
- 9) Mechanisms to prevent the undue appropriation and use of the TK associated with genetic resources, in accordance with the text of Article 8(j) of the Convention on Biological Diversity (CBD).
- 10) Establishment, in national legislations, of sanctions and corrective measures in cases of non-fulfilment.
- 11) Establishment of financial support mechanisms for the implementation of IR-ABS in developing countries.
- 12) The IR-ABS and other multilateral treaties concerning access and benefit-sharing derived from the use of genetic resources shall be implemented in a harmonious and mutually supportive manner.
- 13) Establishment of an international fulfilment mechanism (as in the Basle Convention, the Cartagena Protocol on Bio-Security, etc.)

## **II. Voluntary implementation mechanisms**

- 1) Codes of conduct (codes of ethics) which could be by sector (for example, those established for researchers by the Kew Botanical Gardens)
- 2) Arbitration procedures
- 3) Resource management funds
- 4) Advisory mechanisms for indigenous peoples and local communities

## **III. Combined mechanisms (compulsory-voluntary implementation)**

- 1) Dispute settlement (clause for controversy resolution)
- 2) Model clauses for PIC and MAT.

## MEXICO

### Proposed Operative Text

Chapter III. Principal Components, Section D. Traditional knowledge related to genetic resources.

#### **D. Traditional knowledge related to genetic resources<sup>1</sup>**

##### **1. Components requiring further study with a view to incorporating them in the international régime.**

*Proposed operative text:*

Recognizing the rights of indigenous and local communities to protect their knowledge, innovations and practices associated with genetic resources, and in order to ensure fair and equitable benefit-sharing as a result of their use, subject to the national legislation of those countries where said communities are located.

Reaffirming the Parties' commitment to implement the provisions of Decision IX/13 on "Article 8 (j) and its related provisions", especially those concerning the "Development of elements of sui generis systems for the protection of traditional knowledge, innovations and practices".

##### **1. Measures to ensure a fair and equitable sharing by the holders of traditional knowledge in the benefits derived from the use of traditional knowledge, in accordance with Article 8 (j) of the Convention on Biological Diversity.**

*Proposed operative text:*

1. *Users must obtain prior informed consent from the indigenous and local communities possessing traditional knowledge associated with genetic resources, in accordance with Article 8 (j) of the Convention on Biological Diversity, subject to the national legislation of the countries in which said communities are located.*

2. *In accordance with Article 15.7 of the Convention on Biological Diversity, the users and indigenous and local communities possessing traditional knowledge associated with the genetic resources of the Contracting Party where said communities are located, shall, under mutually agreed conditions, define the terms under which they will share, in a fair and equitable manner, the results, development and benefits*

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<sup>1</sup> The title does not prejudice the eventual scope of the international régime.

*derived from the various uses of genetic resources and the traditional knowledge associated with said resources, including scientific research and commercial use.*

3. *Each Party shall stipulate in its national legislation measures to ensure the fair and equitable sharing of benefits derived from the use of genetic resources and/or associated traditional knowledge. These measures shall include mutually agreed terms and prior informed consent."*
4. *The conditions for equitable sharing in the benefits derived from the use of traditional knowledge, innovations and practices associated with genetic resources shall be stipulated in terms mutually agreed upon, in accordance with national legislation: a) between indigenous and local communities and users; or b) between users and the national authority of the supplier country, with the active participation of the indigenous and local communities involved, and prior informed consent.*

**2. Measures to ensure that access to traditional knowledge takes place in accordance with community-level procedures**

*Proposed operative text:*

1. *The Parties, in accordance with the principles of international law and their national legislation, shall recognize the traditional forms of organization of each indigenous and local people and community.*
2. *Regarding access and the use of traditional knowledge associated with genetic resources, the Parties shall include prior free and informed consent, as well as the Mutually Agreed Terms, in the Contract, wherein the benefits to be obtained, whether monetary or not, shall be specified, without in any way limiting the indigenous and local communities' ability to seek advisory mechanisms for the sharing of benefits."*
3. **Measures to consider the use of traditional knowledge within the context of benefit-sharing arrangements**
4. **Identification of the best practices to ensure respect for traditional knowledge in research related to access and benefit-sharing**
5. **Incorporation of traditional knowledge in the development of model clauses for agreements on the transfer of materials**
6. **Identification of the person or authority that shall grant access in accordance with community-level procedures.**

*Proposed operative text:*

1. *In accordance with the traditional forms of organization of each indigenous and local community, the latter shall define the appropriate authorities and entities to serve as interlocutors in order to grant, or not, access to and use of traditional knowledge, innovations and practices associated with genetic resources.*

**7. Access with the approval of holders of traditional knowledge.**

*Proposed operative text:*

1. *Without prejudice to the sovereignty of States over their natural resources and the authority of national governments to determine access to genetic resources, access to the associated traditional knowledge of indigenous and local communities shall be subject to their prior informed consent.*

**8. No access to traditional knowledge by means of planning or coercion.**

*Proposed operative text:*

1. *The Parties shall consider, within their national legislation, appropriate measures to recognize, protect, respect and safeguard the rights of the holders of traditional knowledge associated with genetic resources.*
2. *In accordance with Articles 8(j) and 15.5 of the Convention, access to genetic resources shall be subject to prior informed consent.*
3. *Any undue acquisition or appropriation, or inadequate use of the traditional knowledge associated with genetic resources, shall be subject to sanctions established in national legislation.*

**2. Components requiring further study**

1. **Prior informed consent of the holders of traditional knowledge, including indigenous and local communities, and terms mutually agreed upon by the latter, when access is granted to traditional knowledge**
2. **Guidelines drafted on the international level to help the Parties develop national legislation and policies**
3. **A declaration regarding the internationally recognized certificate as to the existence of any related traditional knowledge, and as to the owners of such traditional knowledge**
4. **Sharing of the benefits derived from traditional knowledge at the community level**

