



**Convention on  
Biological Diversity**

Distr.  
GENERAL

UNEP/CBD/WG-ABS/7/4/Add.1  
22 March 2009

ORIGINAL: ENGLISH

AD HOC OPEN-ENDED WORKING GROUP ON  
ACCESS AND BENEFIT-SHARING

Seventh meeting  
Paris, 2-8 April 2009

**COLLATION OF OPERATIVE TEXT SUBMITTED BY PARTIES, GOVERNMENTS,  
INTERNATIONAL ORGANIZATIONS, INDIGENOUS AND LOCAL COMMUNITIES AND  
RELEVANT STAKEHOLDERS IN RESPECT OF THE MAIN COMPONENTS OF THE  
INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING LISTED IN  
DECISION IX/12, ANNEX I**

*Addendum*

**SUBMISSION BY BRAZIL ON BEHALF OF THE GROUP OF LIKE-MINDED  
MEGADIVERSE COUNTRIES**

*Note by the Executive Secretary*

1. The Executive Secretary is circulating herewith a submission by Brazil on behalf of the Group of Like-Minded Megadiverse Countries as an addendum to the collation of operative text submitted pursuant to decision IX/12 of the Conference of the Parties to the Convention on Biological Diversity (UNEP/CBD/WG-ABS/7/4).
2. For ease of reference, the portions of the submission that correspond to elements of the text of annex I to decision IX/12 have been shaded. Otherwise, the text is being circulated in the form in which it was received by the Secretariat.

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*Submission by Brazil on behalf of the Group of Like-Minded Megadiverse Countries*

**Protocol on Access and Benefit-Sharing  
to the Convention on Biological Diversity**

**I. Objective**

**Art. XX  
Objective**

The objective of this Protocol is to effectively implement the provisions in Articles 1, 8(j), 15, 16 and 19(2) of the CBD, by:

- 1- ensuring the fair and equitable sharing of benefits arising out of the utilization of genetic resources, their derivatives and/or associated traditional knowledge;
- 2- preventing the misappropriation and misuse of genetic resources, their derivatives and/or associated traditional knowledge;
- 3- securing compliance in user countries with national laws and requirements, including PIC and MAT, of the country providing those resources or of the Party that has acquired those resources in accordance with the CBD.

**III. Compliance**

**1) Development of tools to encourage compliance**

**Components for further consideration:**

**(e) Research funding agencies to oblige users research funds to comply with specific ABS requirements**

**Article XX**

Parties shall encourage research, funding and publishing entities to ask for the unique identifier code referred to in the certificate of compliance as part of their application procedures or research results, as appropriate, when genetic resources, derivatives and associated traditional knowledge is involved.

**2) Development of tools to monitor compliance**

**Components to be further elaborated with the aim of incorporating them in the IR:**

**a) mechanisms for information exchange**

**Article XX  
Information Sharing and the  
Access and Benefit-Sharing Clearing-House**

1. An Access and Benefit-Sharing Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention, in order to:

- (a) Monitor compliance with national ABS legislation and with this Protocol;

/...

(b) Facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, access and benefit-sharing;

(c) Assist Parties to implement this Protocol, 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.

2. The Access and Benefit-Sharing Clearing-House shall serve as a means through which information is made available for the purposes of paragraph 1 above. It shall provide access to information made available by the Parties relevant to the implementation of this Protocol.

3. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-Sharing Clearing-House any information required to be made available to the Access and Benefit-Sharing Clearing-House under this Protocol, and:

(a) Any existing laws, regulations and guidelines for implementation of this Protocol;

(b) Any bilateral, regional and multilateral agreements and arrangements;

(c) Information about national focal point and competent national authority(ies).

(d) List of defaulters of ABS agreements (“name and shame”)

4. The ABS clearing house shall include an international registration of certificates of compliance with national legislation and requirements on access and benefit-sharing, issued by the competent national authority(ies), in accordance with provisions in Articles X, Y and Z;

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 Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

#### **b) Internationally recognized certificate issued by domestic competent authority**

### **Article XX**

#### **Competent National Authorities and National Focal Points**

1. Each Party shall designate one national focal point for access and benefit-sharing and make any information relevant to ABS available through the clearing-house mechanism. The national focal point shall provide information to the ABS clearing-house mechanism on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing, and on competent national authorities, relevant indigenous and/or local communities and relevant stakeholders.

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 Protocol, including the emission of certificates of compliance with national legislation and requirements on access and benefit-sharing; and

- (b) the receipt, administration and transfer to the financial mechanism of the funds collected through the enforcement of Article X, paragraph...

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 Protocol 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.

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 ABS Clearing-House.

### **Article XX**

#### **Certificate of compliance**

1. Each Party shall issue a Certificate of Compliance, with international legal effectiveness/applicability, which will be a public document issued by the competent national authority, establishing the origin of the genetic resources, and derivatives and associated traditional knowledge and fulfilment of the ABS requirements.

2. This mandatory internationally recognized certificate shall have international legal effectiveness/applicability, and for that purpose shall contain, at a minimum, the following information:

- Name, address and contact details of the competent national authority(ies);
- Details of the provider;
- Details of the user;
- Description of subject matter (genetic resources, their derivatives and/or traditional knowledge);
- Description of uses permitted and restrictions of use;
- A unique identifier code assigned by the competent national authority(ies);
- Geographic location of the access activity;
- Conditions of transfer to third parties;
- Date of issuance of the Certificate;

3. The Certificate shall not include confidential information related to prior informed consent and mutually agreed terms.

4. Each Party shall establish checkpoints for the Certificate of compliance. Checkpoints may include customs control, intellectual property offices, product approval offices and registration points for other commercial applications not covered by IPRs.

#### **Components for further consideration:**

##### **(c) Disclosure requirements**

### **Article XX**

#### **Disclosure**

1. Intellectual property rights applications and product approval applications whose subject matter concerns, is derived from or makes use of genetic resources, derivatives and/or associated traditional knowledge shall disclose the country of origin or source of such genetic resources, derivatives and /or associated traditional knowledge, as well as evidence that provisions regarding prior informed consent,

mutually agreed terms and benefit sharing have been complied with, in accordance with the national legislation of the country providing the resources.

2. Each Party shall put in place effective enforcement procedures so as to ensure compliance with the obligations set out in the above paragraph. In particular, each Party shall establish administrative and/or criminal measures for non-disclosure of the relevant information and the dissemination of false information to the national authorities, and shall ensure that administrative and/or judicial authorities have the authority to prevent the further processing of an application and to revoke or render unenforceable an intellectual property right or a product approval when the applicant has, knowingly or with reasonable grounds to know, failed to comply with the obligations in the above paragraph or provided false or fraudulent information.

3. The obligations above-mentioned in paragraph 1 may be met by the presentation of a certificate of compliance with national legislation and requirements on ABS, issued by the country of origin in accordance with Article XX.

### **3) Development of tools to enforce compliance**

#### **Article XX**

#### **Enforcement of National ABS Legislation**

1. Each Party shall ensure that users of genetic resources, their derivatives and associated traditional knowledge under its jurisdiction comply with the national legislation of the countries of origin of such resources, derivatives and/or traditional knowledge or of the Parties that have acquired the genetic resources in accordance with the Convention, when accessing and/or using such resources, derivatives and/or associated traditional knowledge.

2. Each Party shall take appropriate, effective and proportionate measures to establish sanctions and remedies when users under their jurisdictions have violated national ABS legislation of the countries of origin of genetic resources, derivatives and/or traditional knowledge or of the Parties that have acquired the genetic resources in accordance with the Convention. Among others, the Parties may 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, derivatives and associated traditional knowledge without compliance with conditions of access and benefit sharing in the country of origin.
- h) Other as appropriate.

3. Each Party shall, at the request of any interested Party, cooperate in the investigation and follow up of cases of alleged violations of the national ABS legislation of the country of origin of genetic resources, derivatives and/or associated traditional knowledge or of the Party that has acquired the genetic resources in accordance with the Convention, including prior informed consent and mutually agreed terms.

4. Each Party shall provide timely guidance and information on the types of assistance that are available to nationals of other jurisdictions to ensure that lack of funds and lack of experience with the law of the users are not elements preventing exercise and enforcement of their rights.

#### **IV. Fair and equitable Benefit-sharing**

##### **Components to be further elaborated with the aim of incorporating them in the IR:**

##### **2) Benefits to be shared in mutually agreed terms**

#### **Article XX**

#### **Fair and equitable Benefit-sharing**

1. Each Party shall stipulate in its national legislation measures to ensure the fair and equitable sharing of the benefits arising out of the use of genetic resources, derivatives and/or associated traditional knowledge. Those measures shall be incorporated in mutually agreed terms and in prior informed consent.

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 and derivatives shall be stipulated in mutually agreed terms, in accordance with national legislations: 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) Monetary and non-monetary benefits**

Parties shall establish a financial mechanism for the IR, including a trust-fund for benefit-sharing arrangements.

##### **4) Access to and transfer of technology**

#### **Article XX**

#### **Access to and Transfer of Technology**

Each Party that develops technologies making use of genetic resources, derivatives and/or associated traditional knowledge shall take legislative, administrative or policy measures to facilitate access to, joint development and transfer of those technologies to developing countries that are the origin of such resources, derivatives and/or associated traditional knowledge under mutually agreed terms, in accordance with Article 16 of the Convention.

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

## **Article XX**

### **Sharing of results of research and development**

Parties shall establish, taking into account Article 15, paragraph 7, Article 16, paragraph 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, derivatives 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.

#### **9) Measures to ensure participation and involvement of ILCs in mutually agreed terms and sharing of benefits with TK holders**

The elements of the international regime shall be developed and implemented in accordance with Article 8(j) of the Convention on Biological Diversity:

- (a) Parties may consider developing, adopting and/or recognizing, as appropriate, sui generis systems for the protection of traditional knowledge, innovations and practices associated to genetic resources and derivatives;
- (b) Parties shall 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 and derivatives, subject to the national legislation of the countries where these communities are located;
- (c) Users shall obtain the prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources and derivatives, in accordance with Article 8(j) of the Convention on Biological Diversity, subject to national legislation of the country where these communities are located.

## **V. Access**

### **Article XX**

#### **Access**

States have sovereign rights over their natural resources and the authority to determine access to genetic resources, derivatives and associated traditional knowledge rests with national Governments and is subject to national legislation.

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