



Access to Genetic Resources and Benefit Sharing in Brazil

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Introduction

Brazil reported¹ that several important policies were developed and are being implemented at various rates. The main legal instrument on access and benefit sharing is being only partially implemented and its revision is still being discussed. Significant progress was obtained in the demarcation of Indigenous Lands, increasing the protection of these areas and, to a certain extent, the protection of indigenous culture, biodiversity, agrobiodiversity and practices. Additionally, there was a significant increase in the number of Extractive Reserves (RESEX), increasing protection of traditional communities and their practices. Indigenous and traditional culture and rights are legally protected. However, the need remains to develop more specific legislation and procedures to protect specific knowledge, innovations and practices. Several publications that disseminate traditional knowledge identify the origin of the information, as required by national legislation in force. In parallel, there is an ongoing debate to define whether the identification of the origin of traditional knowledge actually protects or exposes this knowledge.

The Provisional Ruling 2186-16 of 2001 is currently in force to establish criteria for access and benefit sharing, including prior consent, while the final policy instrument is not finalized. However, not all articles of the Provisional Ruling were regulated, which halted existing and proposed benefit-sharing projects. Debates on a final text for permanent legislation on this theme are still ongoing.

The rules for benefit-sharing were defined by Provisional Ruling 2186-16/2001. Some benefit-sharing under old contracts is occurring, but most initiatives are pending the definition of specific rules for each case. In 2006, a study was contracted to carry out a diagnosis for the definition of benefit sharing procedures in production chains involving Brazilian biodiversity, as well as the payment levels for benefits. This work was concluded in 2009, but the information provided is still insufficient to define national standards for benefit sharing procedures. Some contracts are implementing benefit sharing; however, the paid benefit values are considered classified information at the company's request.

Traditional knowledge policies

National target: All public policies relevant to traditional knowledge implemented in accordance with Article 8(j) of the CBD.

Several important policies were developed (see section 1.2.4 and a summary below) and some, such as the policy on access and benefit sharing, are still under discussion. However, implementation is only partially quantified. The major legal instrument related to access and benefit sharing is the Provisional Ruling 2186-16/2001, which established the ABS rules and measures to protect traditional knowledge associated to the genetic heritage, and also created the Genetic Heritage Management Council – CGEN,

¹ Brazil (2010). Fourth National Report to the Convention on Biological Diversity, Office of the National Program for Biodiversity Conservation, Secretariat of Biodiversity and Forests, Ministry of the Environment, COP-10 Special Edition, October 2010, 286 pp.

which is the national authority responsible for authorizing access to genetic resources and associated traditional knowledge. This legal instrument was only partially regulated since 2001, and discussions on the final text of a permanent law are still ongoing. Other important components of the relevant legal framework are mostly related to traditional and small scale agriculture:

The National Policy for the Sustainable Development of Traditional Peoples and Communities (Decree 6047) was approved in 2007, underlining the importance of recognizing, valuing and respecting the country's socio-environmental diversity.

The Citizenship Territories Program was created in 2008 to integrate governmental actions supporting the improvement of the life quality, access to goods and public services, and the social and economic inclusion of populations living far from urban centers.

The National Program to Strengthen Family Agriculture – PRONAF, established in 1996 (Decree 1946), is increasing significantly the volume of resources and credit lines available to small producers. Since 2003 the program initiated special credit lines such as Forestry PRONAF; Agroecology PRONAF; Coexisting PRONAF targeting the semi-arid region; and the Eco PRONAF. These new lines responded to an old request from the production sector and allowed credit access to diversified production systems.

The Program for the Acquisition of Food Products from Family Agriculture – PAA initiated in 2003 under the coordination of the Ministry of Social Development, and intends to direct resources to indigenous peoples; quilombolas; artisanal fishermen; traditional communities; and family agriculture producers.

Complementing the PAA, in 2008 the government created the Policy to Warrant Minimum Prices, which currently includes ten plant species explored by extractive workers: assai (*Euterpe longibracteata*); rubber (*Hevea brasiliensis*); babassu (*Orbignya phalerata*); Brazil nut (*Bertholletia excelsa*); carnauba (*Copernicia prunifera*); pequi (*Caryocar brasiliensis*); piassava (*Ruizodendron ovale*); baru (*Dipteryx alata*); umbu (*Spondias tuberosa*); and mangaba (*Hancornia speciosa*). This Policy falls under the Program to Support the Commercialization of Products from Extractive Activities – PAE, and is complemented by the Family Agriculture Insurance (SEAF) and the Harvest Insurance.

Since 2006, the Program to Warrant Minimum Prices for Family Agriculture Products – PGPAF protects these producers from market variations, currently targeting 35 crops including babassu, assai, rubber, pequi, rice, coffee, beans and milk.

The Ministry of Industry and Trade holds a Permanent Working Group for Local Production Arrangements, which identifies opportunities and provides support to the development of market and commercialization strategies.

The Demonstration Projects Subprogram – PDA implemented by the Ministry of the Environment since 1996 with international support is also an important instrument to support innovative management practices for natural resources in the Amazon and Atlantic Forest.

The Indigenous Portfolio was established in 2004 through a partnership between the Ministry of the Environment and the Ministry of Social Development to support projects at indigenous communities to promote sustainable development and food safety.

The Agrobiodiversity Program (2008) addresses the conservation, management and sustainable use of agrobiodiversity and is implemented by the Ministry of the Environment in partnership with the Ministry of Agrarian Development; Ministry of Social Development; National Supply Company – CONAB; and the Brazilian Agricultural Research Company – EMBRAPA.

The Program to Support Ecotourism and Environmental Sustainability of Tourism – ProEcotur is implemented by the Ministry of the Environment in partnership with the Ministry of Tourism, operating a portfolio of community-based tourism projects.

Law 11974 (Nourishment in Schools) determines that starting in January 2010, at least 30% of food products for students must be acquired from family agriculture producers.

The Ministry of Agrarian Development – MDA, Ministry of the Environment – MMA and Ministry of Social Development – MDS created in 2009 the National Plan to Promote Sociobiodiversity Production Chains.

The National Policy of Medicinal Plants and Phytoterapics (2006) established the directives and priorities for ensuring the safe and rational use of these products in the country.

Implementation of the National Program of Environmental Management in Indigenous Lands – PNGATI initiated in 2009 (<http://sites.google.com/site/pngati/>).

The Brazil Quilombola Program (PBQ) ensures access of quilombolas (traditional communities of African origin) to basic goods and services such as health, education, housing, electricity, and the right to land. In 2009, the program created the Quilombola Seal to value the artisanal production of traditional communities and improve its commercialization potential.

The Office of the President reports positive results from the implementation of these policies: PRONAF granted US\$28.8 billion to family and traditional communities “producers from 2002 to 2009, through 10.6 million contracts. During the last seven years, the government invested US\$ 1.3 billion in Rural Technical Assistance (ATER), benefitting over 2.3 million families by 2010 (by 2003 this total was approximately 291,000 families). Over 796,000 family producers have already participated in the PAA during the last seven years, with a US\$ 1.6 billion governmental investment. Over 600,000 family producers were benefitted by SEAF, with on average 100,000 producers receiving harvest insurance per year, and annual total payments of US\$ 200 million since 2004. The Harvest

Insurance program paid over US\$ 65 million to 553 agricultural producers of the semi-arid region during the 2008/2009 harvest. In 2008, the minimum prices for products from extractive activities benefitted 4,720 workers, paying US\$ 1 million to compensate market prices below the minimum price.

Traditional knowledge protection

National target: Knowledge, innovations and practices of indigenous peoples and traditional communities protected.

Significant progress was obtained in the demarcation of Indigenous Lands (almost 19 million hectares were registered as 81 Indigenous Lands in 2009) providing official protection of these areas and, to a certain extent, protection of indigenous culture, biodiversity, agrobiodiversity and practices. Additionally, there was a significant increase in the number of Extractive Reserves (RESEX), increasing protection of traditional communities and their practices: in 2000 there were 17 RESEX; since then 6 were created in 2001; 7 in 2002; 4 in 2004; 9 in 2005; 8 in 2006; 2 in 2007; 3 in 2008; and 3 in 2009. Additionally, 9 other RESEX should be created in 2010.

A relevant initiative is the Mamirauá Sustainable Development Institute, maintained by the Ministry of Science and Technology in the Amazon, which has the objective of developing a protected area model in large tropical forest areas in which, through participatory management, the maintenance of biodiversity is sought, as well as the maintenance of its ecological and evolution processes, combined with the enhancement of the life quality of traditional populations.

Indigenous and traditional culture is legally protected, and numerous relevant legal instruments were developed to contribute to this protection (see section 1.2.4). However, the need remains to develop specific legislation establishing a system for the protection of the knowledge, innovations and practices, taking into account their peculiarities: means of transmission, collective and dynamic characteristics. Such instruments are still in the early stages of discussion with indigenous and traditional peoples.

Origin of traditional knowledge

National target: 100% of scientific and general publications deriving from access to traditional knowledge identify the origin of the traditional knowledge.

Several publications derived from projects and activities involving the access to traditional knowledge associated to biodiversity identify the origin of the information, as required by the Provisional Ruling 2186-16 of 2001. Although this is currently the only instrument to ensure the obtention of new previous informed consent from traditional communities and new benefit sharing when their knowledge is used for other purposes, the lack of regulation for the access to traditional knowledge through secondary sources (books, publications and databases) is a disincentive to complying with the rules. Additionally, the total number of publications issued before 2001, when the legislation was put in force, is immense, which increases the difficulty to collect data to define the degree of target achievement.

Note: this target is closely linked to the recording of traditional knowledge, but should not be misunderstood. Many local communities record their knowledge as a means of protecting this knowledge, but the efficacy of this practice is questioned by other communities, which fear that their knowledge might be used without their consent. In 2006, a consultation to the communities on this

theme carried out by MMA revealed that the communities need to be better informed about the advantages and disadvantages of the different means to protect their knowledge.

Access to traditional knowledge

National target: 100% of cases of access to traditional knowledge include prior informed consent, obligatory sharing of knowledge generated and sharing of benefits with knowledge holders.

The Provisional Ruling 2186-16 of 2001 is currently in force (see section 1.2.4) to establish criteria for access and benefit sharing, including informed prior consent. However, not all articles of the Provisional Ruling have already been regulated, which hinders the application and compliance with the legislation. An example of this is the lack of regulation for access activities that initiated or ended after the legislation was put in force. In the meantime, approximately 100 processes are suspended, pending the definition of the specific rules for each case.

Debates on a final text for permanent legislation on this theme are still ongoing. The only benefit-sharing contract that was completed and approved by CGEN (the national authority) was proposed by the Rio de Janeiro Federal University and involves Quilombola communities from Oriximiná, in Pará state. The research will involve the access to community knowledge on plants that cure lung and nervous system diseases. The benefit sharing contract was signed between the university and an association representing the Quilombola communities.

The CGEN Executive Secretariat also holds other processes containing contracts for benefit sharing which were already signed between the parties, but without the approval and agreement of CGEN, as they result from access activities that were initiated or concluded after the Provisional Ruling was put in force, and are therefore suspended, pending the definition of rules. From 2002 to 2009 the Genetic Heritage Department /Genetic Heritage Management Council – DPG/CGEN authorized 44 scientific research proposals involving associated traditional knowledge, 7 of which also involving access to genetic resources. In 2009 DPG/CGEN received other 62 requests for scientific research involving associated traditional knowledge, 16 of which also involving access to genetic resources.

Legislation on access and benefit sharing

National target: Access and benefit sharing legislation, consistent with the CBD, approved by the National Congress and implemented and 100% of access and shipment activities conform to national legislation.

The Provisional Ruling 2052, published in June 2000 and later transformed into Provisional Ruling 2186-16/2000 after several re-editions, is still the main Brazilian legal instrument regulating access and shipment of genetic heritage, as well as the access to associated traditional knowledge and benefit sharing resulting from this access. In addition to these rules, the Provisional Ruling created the Genetic Heritage Management Council – CGEN, which is the national authority in charge of authorizing activities involving access and shipment of genetic resources, as well as of regulating the legislation. The Executive Secretariat of CGEN is established in the Genetic Heritage Department of the Ministry of the

Environment. Since its publication, the Provisional Ruling had some of its articles regulated through decrees: Decree 3945 of September 2001 regulated articles 10, 11, 12, 14, 15, 16, 18 and 19; Decree 5459 of June 7, 2005 regulated Article 30; and Decree 6915 of July 2009 regulates article 33 of the Provisional Ruling. However, the regulation of the remaining articles is still being discussed by CGEN.

Debates and public consultations to define a final text for legislation on this theme initiated with the Provisional Ruling and are still ongoing.

Benefit sharing agreements

National target: Benefits resulting from commercial utilization of genetic resources effectively shared fairly and equitably in support of biodiversity conservation.

The rules for benefit-sharing were defined by Provisional Ruling 2186-16/2001. However, as the rules for complying with the legislation are complex and difficult to implement, benefit sharing is still incipient. Since 2002, when CGEN became operational, 25 contracts for benefit sharing were agreed to and signed.

In 2006, the Brazilian Association of Technological Research Institutions – ABIPTI was hired to carry out a diagnosis for the definition of benefit sharing procedures in production chains involving Brazilian biodiversity, as well as the payment levels for benefits. This work was concluded in 2009 and the final technical report described the seven production chains of the seven species selected by DPG as the basis for defining the levels of benefit sharing, given the economic importance of their products and possible industrial uses. For at least 5 of the 7 species the report also included a list of priority criteria for calculating the value of each product among other information on each production chain, and for 2 priority species a methodology was proposed to calculate benefit sharing based on actual data from existing production and commercialization chains.

In 2007, CGEN agreed to four benefit sharing contracts. These contracts, related to bioprospection projects involving access to genetic resources from public lands, were signed between the federal government and four universities (Federal University of Minas Gerais – UFMG; Federal University of Santa Catarina – UFSC; Federal University of Paraíba – UFPB; and the Chemistry Institute of the University of São Paulo – IQ/USP). However, as these are bioprospection projects with no immediate commercial use foreseen, the provision for benefit sharing in these contracts indicates that benefit sharing will only occur when the economic potential is identified. The Department of Genetic Heritage – DPG/MMA also negotiated with the Federal University of Rio de Janeiro a contract to implement the system to disseminate the legislation and manage the access and benefit sharing activities related to genetic heritage and/or associated traditional knowledge, as well as to assist in the identification of non-authorized access. The system recorded over 250 projects and products potentially involving access activities for bioprospection or technological development purposes.

In 2008 the Genetic Heritage Management Council – CGEN evaluated and agreed to two benefit sharing contracts, both referring to a bioprospection project involving access to genetic heritage originating

from private property and to associated traditional knowledge from traditional communities. Both contracts were signed by the Federal University of Amazonas – UFAM.

At least two states have proposed state legislation on the rights and duties related to access to genetic resources and associated traditional knowledge: Acre (Law 1235/1997) and Amapá (Law 0388/1997). However, these legal instruments have not yet been regulated and are not in force.

Some benefit sharing contracts negotiated before the current suspension are implementing benefit sharing, such as contracts between traditional communities and the Natura cosmetic company; however, the paid benefit values are considered classified information at the company's request. In 2009, Natura used 31 certified active ingredients from organic or sustainable agriculture, or forest management, five more than in 2008. All research projects for new active ingredients from biodiversity were submitted by Natura to CGEN and are currently pending evaluation and approval.

Patents

National target: 100% of applications for patents on inventions of products or processes deriving from access to genetic resources and associated traditional knowledge include identification of origin and proof of authorized access.

In 2007 the National Genetic Resources Council – CGEN (presided by MMA and w/ 19 governmental agencies, including the National Institute of Industrial Property – INPI) issued a Resolution determining that patent requests should necessarily include information on the origin of the genetic resource being used and proof of authorized access. This Resolution resulted in the development of a second Resolution by INPI to ensure compliance with the CGEN Resolution. Furthermore, new Resolutions determined that, as of April 30, 2009 patent requests involving access to genetic resources where this access occurred at the time or after the publication of Provisional Ruling 2186-16/2000 are also required to present information on resource origin and authorized access. When this information is not provided at the time when the request is presented, it is requested during the analysis of the request.

Given a serious deficit in staff numbers, there is an outstanding delay of several years in the analysis of patent requests deposited with INPI: the institution is currently analyzing requests presented in 2000. As the information provided at the time of request presentation is only verified when the request is analyzed, information to assess the degree of target achievement is not available.

International Treaty

National target: Sharing of benefits in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture implemented in Brazil.

The Treaty foresees as benefit sharing the facilitation of access to genetic resources for food and agriculture (particularly through its Multilateral System); the exchange of information; the transfer of technologies; capacity building; and the sharing of benefits (financial or nonfinancial) from the commercialization of Annex 1 resources accessed through its Multilateral System. The Multilateral System intends to facilitate the interchange of genetic resources listed in the Treaty's Annex 1.

Brazil is actively participating of the Multilateral System created by the Treaty, making available public Annex 1 genetic resources present in the country and accessing the System, implementing benefit sharing according to the Treaty's rules. Brazil also provides, through its various programs and projects for agrobiodiversity conservation and to support sustainable production (see section 1.2.3), information exchange and capacity building opportunities (rural technical assistance, including the transfer of technologies) to rural producers, focusing particularly on traditional communities, indigenous peoples and family rural producers. Additionally, the Brazilian Agricultural Research Company – EMBRAPA is also transferring agricultural technologies to other countries in Latin America and Africa.

Within the country, the civil society has an important role in the on farm conservation of agrobiodiversity and in the promotion of its sustainable use, as well as in the exchange of genetic resources among rural producers, both within and among communities. The work of rural social organizations is highly relevant in this sense, such as the Small Farmers Movement and the National Confederation of Agriculture Workers - CONTAG, as well as NGOs such as the Seeds Networks, Ecovida Network, and Cerrado Network, among many other organizations. Additionally, the Brazilian government also supports the exchange and dissemination of land races and other traditional crops through its Dissemination Centers of Agro-biodiversity Management –CIMAs.