



**Convention on
Biological Diversity**

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

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**COLLATION OF OPERATIVE TEXT SUBMITTED BY PARTIES, GOVERNMENTS,
INTERNATIONAL ORGANIZATIONS, INDIGENOUS AND LOCAL COMMUNITIES AND
RELEVANT STAKEHOLDERS WITH RESPECT TO NATURE, TRADITIONAL
KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES AND CAPACITY-BUILDING**

Addendum

**SUBMISSION BY BRAZIL ON BEHALF OF THE GROUP OF LIKE MINDED
MEGADIVERSE COUNTRIES AND BY THE INTERNATIONAL CHAMBER OF
COMMERCE**

Note by the Executive Secretary

1. The Executive Secretary is circulating herewith text proposals submitted by Brazil on behalf of the Group of Like Minded Megadiverse Countries related to nature, traditional knowledge associated with genetic resources and capacity-building as well as a proposal submitted by the International Chamber of Commerce related to nature.
2. While the submissions on “Nature” are not strictly speaking “operative text”, they are included in the collation of operative text to facilitate the work of the Working Group on Access and Benefit-sharing.
3. The text is being circulated in the form in which it was received by the Secretariat, with the exception that the headings corresponding to elements of the text of annex I to decision IX/12 have been shaded.

**OPERATIVE TEXT RELATED TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH
GENETIC RESOURCES, CAPACITY-BUILDING AND NATURE FOLLOWING THE
STRUCTURE OF ANNEX I TO DECISION IX/12 ^{1/}**

Brazil on behalf of the Like Minded Megadiverse Countries

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

Preamble

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as “the Convention”,

Reaffirming the sovereign rights of the States over their own natural resources and according to the provisions of the Convention on Biological Diversity and our commitment to meet its three objectives, and in particular Articles 8(j), 15, 16, 19, 20 and 21.

Reaffirming that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation;

Emphasizing that the resources of biological diversity and the environmental services that depend on them have an immense strategic, economic and social value, and offer development opportunities to our populations and to the international community,

Recognizing the urgent need to develop human resources, institutional capabilities, as well as an appropriate legal framework and public policies to enable all Parties, in particular developing countries, to take an active part in the new economy associated with the use of biological diversity, genetic resources and biotechnology;

Recognizing that the benefit sharing measures under this Protocol are effective tools for the eradication of poverty and the promotion of economic and social development,

Recalling that Parties to the CBD are required to take legislative, administrative and/or policy measures to address benefit-sharing, so as to comply with the objective of this Protocol;

Recognizing the importance of providing legal certainty to the various stakeholders involved in the conservation, sustainable use and the fair and equitable sharing of benefits derived from the use of genetic resources, their derivatives and associated traditional knowledge;

Recognizing that intellectual property rights play an important role in the fair and equitable sharing of benefits arising from the use of genetic resources, their derivatives and associated traditional knowledge, and that these rights need to be supportive of and do not run counter to the objectives of the Convention;

^{1/} For ease of reference, the text of annex I to decision IX/12 reproduced in this document has been shaded. In accordance with the decision taken at the seventh meeting of the Working Group on Access and Benefit-sharing to no longer distinguish between bricks and bullets, the sub-headings under “Traditional knowledge associated with genetic resources” and “Capacity” are consecutively numbered.

Acknowledging the “Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their utilisation”, adopted by the Conference of the Parties of the CBD at its sixth meeting, in April 2002;

Taking into account the need to ensure compliance with access and benefit-sharing national legislations, regulations and requirements, with the aim of ensuring the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources, their derivatives and associated traditional knowledge;

Underlining the importance of the traditional knowledge of indigenous and local communities and the development of that knowledge for the conservation of biological diversity and the sustainable use of its components;

Emphasizing that this Protocol shall be implemented in an harmonious and mutually supportive manner with other multilateral agreements;

Emphasizing that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements;

Understanding that the above recital is not intended to subordinate this Protocol to other international agreements;

Considering the provisions contained in Article 28 of the Convention;

III. MAIN COMPONENTS

D. Traditional knowledge associated with genetic resources ^{2/}

Brazil on behalf of the Like Minded Megadiverse Countries

Article XX

When addressing ABS related to ATK, Parties shall recognize the traditional forms of organization, including community-level procedures, of indigenous and local communities, subject to their national legislation.

Article XX

The implementation of this Protocol shall not restrict the exchange of genetic resources and traditional knowledge among indigenous and local communities for traditional purposes.

E. Capacity

Brazil on behalf of the Like Minded Megadiverse Countries

Article XX

Capacity Building

^{2/} The title is without prejudice to the eventual scope of the international regime.

1. Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities in access and benefit-sharing, for the purpose of the effective implementation of this Protocol, in developing country Parties, in particular the least developed countries, through new and additional funding, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating the involvement of other relevant stakeholders.
2. For the purposes of implementing paragraph 1 above, in relation to cooperation, the needs of developing country Parties, in particular the least developed countries, for financial resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the Convention, shall be taken fully into account for access and benefit sharing.
3. Parties shall cooperate through capacity-building programmes for the development and implementation of national ABS laws, upon request of the interested Party.
4. Parties shall cooperate through capacity-building programmes for the development and training of national competent authorities in order to ensure compliance with national ABS laws.
5. Parties shall undertake special capacity-building measures for indigenous and local communities.
6. Parties shall undertake capacity building measures for technology transfer and cooperation
7. The Secretariat of the CBD will establish a fund to support capacity-building programs with the objectives described above. This fund will be established within 6 months following the entry into force of this Protocol, and will be constituted by contributions from developed country Parties and from other interested stakeholders.

IV. **NATURE**

Brazil on behalf of the Like Minded Megadiverse Countries

The international regime shall be composed of a single legally binding instrument containing a set of principles, norms, rules and compliance and enforcement measures.

International Chamber of Commerce (ICC)

Further development of an International Regime (IR) must occur before its nature can be determined. It is premature to determine if, or to what extent, an International Regime might be binding. As ongoing negotiations resolve the details of International Regime mechanisms, the question of the IR's binding or non-binding nature will then best be addressed.

As a result, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing should not preclude any outcome at this point and retain Option 2 regarding nature in the Annex to Decision IX/12:

“2. A combination of legally binding and/or non-binding instruments.”
