

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

Ninth meeting
Cali, Colombia, 22-28 March 2010

**FINAL REPORT OF THE REGIONAL CONSULTATIONS FOR LATIN AMERICA AND THE
CARIBBEAN COUNTRIES ON ACCESS AND BENEFIT-SHARING**

Note by the Executive Secretary

The Executive Secretary is pleased to circulate herewith, for the information of participants in the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, the report of the Regional Consultations for Latin America and the Caribbean Countries on Access and Benefit-sharing, which was held in Panama City, from 15 to 16 January 2010. The report has already been made available on the website of the regional consultations and is being circulated herewith in the form and languages in which it was adopted by participants.

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FINAL REPORT

I. INTRODUCTION

1. The Access and Benefit-Sharing Regional Consultation for Latin America and The Caribbean Countries was organized from 15 to 16 January 2010 in Panama City with the active support of UNEP, through its Regional Office for Latin America and the Caribbean (ROLAC), in close collaboration with the CBD Secretariat, and in consultation with the Co-Chairs of WG-ABS.

2. The Regional Consultation was organized in response to decision IX/12 on Access and Benefit-sharing, paragraph 17, where the Conference of the Parties (COP) emphasized the importance of consultations to advance the negotiations of the International Regime on Access and Benefit-sharing and requested the Co-Chairs of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (WG-ABS) to be instrumental in organizing and facilitating such consultations during the intersessional period. The decision also encouraged Parties and stakeholders to carry out bilateral, regional and interregional meetings and consultations and called upon donors and relevant organizations to provide financial resources necessary for such meetings and consultations. In addition, in paragraph 22 of the same decision, the COP invited the United Nations Environment Programme (UNEP), governments and other international organizations to support regional and interregional Consultations in close collaboration with the Secretariat.

3. In accordance with the above, and further to notification 2009-010 of 24 August 2009 announcing the tentative calendar of the Regional Consultations, the Regional Consultation for Latin America and The Caribbean countries provided an opportunity for the negotiators from the region to consult and exchange views on the components of the International Regime during the intersessional period with a view to finalizing the negotiations of the International Regime at the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. This regional consultation will also contribute to implement Decision XII of the XVI Meeting of the Forum of Ministers of Environment of Latin America and the Caribbean

4. The following countries sent government-nominated officers or experts to the workshop: Antigua and Barbuda, Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Equator, Grenada, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Lucia, Uruguay and Venezuela.

II. PROCEEDINGS OF THE REGIONAL CONSULTATION

ITEM 1. OPENING OF THE MEETING AND ORGANIZATIONAL MATTERS

5. Mr Damaso Luna, member of COP 9 Bureau from GRULAC and Co-Chair of GRULAC on ABS, opened the meeting at 9am on Friday, 15 January 2010.

6. Opening statements were made by Mrs. Mara Murillo, Deputy Director and Officer in Charge of UNEP's Regional Office for Latin America and the Caribbean on behalf of UNEP; Mrs Valerie Normand, Programme Officer of the Access and Benefit-sharing of the Secretariat of the Convention on Biological Diversity on behalf of the Executive Secretary of the Convention on Biological Diversity; Mr. Fernando Casas and Mr. Timothy Hodges, Co Chairs of WG-ABS; Mrs. Melani Castillo Him, Sub Administrator of the Environmental National Authority (ANAM- Autoridad Nacional del Ambiente) speaking on behalf of the Panama Government.

7. Mrs. Mara Murillo, speaking on behalf of UNEP, welcomed the participants. She expressed her condolences for the people of Haiti and the families and communities devastated by the earthquake. She mentioned that UNEP is honoured to provide support for this meeting, underscoring the importance of the access and benefit sharing matter for UNEP and for the LAC region that hosts several of the megadiverse countries of the world. She also highlighted the opportunity this Regional Consultation represents for the Latin American and the Caribbean countries to exchange opinions and consolidate views towards reaching an access and benefit sharing international regime.

8. Mrs Valerie Normand, speaking on behalf of the Executive Secretary of the Convention on Biological Diversity, also welcomed the participants. She mentioned that 2010 has been declared by the United Nations General Assembly as the International Year on Biodiversity which means an opportunity to elevate biodiversity to the highest level of the political agenda. She underscored the progress reached by the 8th meeting of the ABS Working Group held in Montreal, last November. She said this Regional Consultation meeting constitutes an important step and an opportunity for GRULAC to discuss and exchange views on the main aspects concerning the international regime before the last negotiation of the Working Group towards the COP 10 to be held in Nagoya, next October.

9. Mr. Fernando Casas, Co-Chair of WG-ABS, presented an overview of the ABS international regime negotiation process underscoring the importance of ensuring that an efficient, and most importantly, a high quality access and benefit sharing international regime is established. He stated that this working session is crucial towards that process, encouraging GRULAC participants to undertake enthusiastically leadership on this matter and suggesting that they identify their regional priorities and then negotiate with other regions and countries in order to finalize the international regime in WGABS-9. He said that the discussion about the difficult issues in the International Regime should not be delayed to a later stage, and that Parties should address challenges at present, aiming to achieve an International Regime ready to be implemented.

10. Mr. Timothy Hodges, Co-Chair of WG-ABS, mentioned that the key to success towards the adoption of the international regime is to build a better understanding within regions and across the regions in order to ensure implementation of the third objective of the CBD. He remarked that the context of this meeting is highly relevant for the negotiation process as the time remaining for the presentation of any proposed draft instrument to be considered in Nagoya is short. He also mentioned that in order to achieve that goal it is necessary to have a successful conclusion of the work to be done in the 9th meeting of the ABS Working Group held in Cali this March.

11. Mrs. Melani Castillo Him, speaking on behalf of the Administrator of the National Authority for the Environment of Panama, welcomed the participants. She mentioned that the Panama Government provides a high priority to the ABS matter, underlining that Latin American and the Caribbean countries expect fair and equitable sharing of the benefits from the use of genetic resources from the biodiversity. She recognized the opportunity this meeting represents to share and consolidate opinions and positions from LAC countries.

12. Mr. Damaso Luna invited participants to have a minute of silence in memory for the victims of the earthquake recently occurred in Haiti.

ITEM 2. ADOPTION OF THE AGENDA

13. Previous to the discussion about the adoption of the agenda, the Co-Chair of GRULAC invited Mrs Valerie Normand, Programme Officer of the Access and Benefit-sharing Secretariat of the Convention on Biological Diversity to present a brief overview of the status of the negotiation process of the International Regime on ABS. She presented an overview of the main outcomes of COP 9 related to the ABS international regime describing the main basis for negotiations, the topics that the WG was mandated to address at each of its WG meetings and additional information provided as inputs to the process. She also introduced an overview of the intersessional process, providing a background for participants about the regional consultations being held during this period.

14. The following agenda was adopted, on the basis of the provisional agenda (ABSRC-LAC-01-01):
1. Opening of the meeting and organizational matters and overview of the purpose of the consultation.
 2. Adoption of the agenda
 3. Contribution of the Regional Consultations for the intersessional process and for the preparation of ABS 9
 4. Key elements of the Protocol
 - Access /Benefit- Sharing/Compliance
 - Definitions, Preamble and Implementation related issues (institutional arrangements, ABS Clearing House and others)
 - Traditional Knowledge and Capacity-building
 - Nature, objective, scope
 - “Holistic” issues around the Regime—E.g., policy coherence and architectural design of the regime as well as implementation
 5. The way to move forward: from a GRULAC Perspective.
 - Intersessional process
 - Composition of GRULAC delegation to attend the 2nd Meeting of the Intersessional process
 - GRULAC standing vis-à-vis of other negotiations groups
 6. Other matters
 7. Closure of the meeting
15. The Parties approved the request of representatives of indigenous people and local communities, presented at the venue, to attend the consultation as observers.

ITEM 3. CONTRIBUTION OF THE REGIONAL CONSULTATIONS FOR THE INTERSESSIONAL PROCESS AND FOR THE PREPARATION OF ABS 9

16. Mr. Damaso Luna invited the Co-Chairs of WG-ABS to present their views about this issue including strategic thinking and approaches for progress on the Montreal Annex (UNEP/CBD/WG-ABS/8/8, Annex).
17. Co-Chair Casas introduced some key points concerning this matter. He remarked that at this point it is important to understand the regime structure to realize how the three components of access, benefit sharing and compliance will interact. He wondered about how the regions and countries would address the traditional knowledge associated to genetic resources issue and the clarification of certain definitions. He said that after last ABS WG meeting in Montreal the components for the regime are already identified, and that we should not step back, but move forward to achieve high quality results on this negotiation process.
18. Co-Chair Hodges commented on the purpose of the ABS international regime to be defined, saying that despite time constraints the regime needs to develop both a strong core and sufficient flexibility. He reminded participants that two issues have to be covered by the international regime: the provision of a regulatory structure and a facilitating regime for the access and the sharing of benefits. He remarked the relevance for the LAC region of capacity building at different levels such as indigenous

people and local communities, scientific institutions, he also highlighted the relevance of the compliance component of the international regime, specially regarding its domestic enforcement.

ITEM 4. KEY ELEMENTS OF THE PROTOCOL

19. Drawing upon the Montreal Annex, Mr. Damaso Luna invited participants to exchange views and identify areas of coordinated actions/proposals with respect, among others, to the following issues:

- Access
- Benefit- sharing
- Compliance
- Definitions, Preamble and Implementation related issues (institutional arrangements, ABS Clearing House and others)
- Traditional Knowledge and Capacity-building
- Nature, objective, scope
- “Holistic” issues around the Regime—E.g., policy coherence and architectural design of the regime as well as implementation

20. The representatives presented their views on each of the elements which were analyzed from different perspectives during an active debate. It was then possible to identify common understandings on some of the elements which constitute the main principles for the negotiation of an International Regime in the region. The elements identified are further detailed in Annex I to this report which reaffirms the following principles:

- the Protocol must be legally binding, comprehensive and integral;
- reaffirm the sovereign rights of countries on their genetic resources;
- ensure, as a central objective, the implementation of the national legislations as a fundamental requirement to ensure adequate implementation of the provisions on access to genetic resources and benefit sharing issues; and
- respect the rights of indigenous and local communities in conformity with Article 8j of the Convention over their traditional knowledge associated to genetic resources, and ensure their participation in the benefits resulting from its use.

21. Some delegations expressed concern regarding the lack of regulation to protect the rights of their countries and their communities on human genetic resources and establish the need for the CBD to consider this issue.

22. The representative of Venezuela manifested interest in including the marine genetic resources that could be found beyond the Zone, under the scope of the Protocol.

ITEM 5. THE WAY TO MOVE FORWARD: FROM A GRULAC PERSPECTIVE

23. Mr. Damaso Luna invited the ABS WG Co-Chairs, Fernando Casas and Timothy Hodges to introduce the intersessional process and the “Montreal Road Map” to the participants. They explained that Regional Consultations as well as other intersessional meetings will also contribute to move forward with the consolidation of positions and views towards Nagoya in October. In January a meeting with the Friends of the Co-Chairs will be held in Montreal. Afterwards, an Interregional consultation is going to

take place in Colombia, some days in advance to the next Access and Benefit Sharing Working Group meeting. These processes will assist and contribute to the negotiation process that still remains under the mandate of the Conference of the Parties.

24. Participants agreed on the need to establish a working group in order to review the Montreal Annex. For this purpose they decided to work through electronic means provided by UNEP/ROLAC.

25. Participants agreed to request UNEP Secretariat to present this report to the XVII Meeting of the Forum of Ministers of Environment of Latin America and the Caribbean, to be held in April 2010.

26. Participants agreed on the composition of the GRULAC delegation to participate in the inter-regional informal consultations to be held from 16 to 18 March 2010. The following countries were designate to participate in this process: Argentina, Brazil, Colombia, Peru, Costa Rica, Mexico, Saint Lucia and Cuba. The nominations of one representative for each country will be communicated to CBD Secretariat trough the GRULAC Coordinator. It was agreed that the members of the GRULAC delegation will maintain informed all GRULAC countries and generate regular reports on the discussions.

27. The representative of the Secretariat informed the group that a notification would be sent out shortly to all national focal points providing further details regarding these informal consultations and inviting the Bureau Members from each region to consult with their respective regions in order to designate the 8 representatives of each region in these consultations and to inform the Secretariat accordingly. The representative of Venezuela express a reservation regarding this agreement, without objecting it, expressing that she did not have instructions regarding this particular issue.

ITEM 6. OTHER MATTERS

28. The participants requested UNEP and the CBD Secretariat additional financial support in order to enable the participation of two delegates per developing country for COP 10, taking into account the importance of the International Regime issue at this meeting.

ITEM 7. CLOSURE OF THE MEETING

29. The representative of Colombia confirmed that the 9th Meeting of the ABS Working Group will be held in Cali, Colombia. He also stated that preparations were underway and that Colombia looks forward to welcoming all participants.

30. The meeting expressed its appreciation and gratitude to the government and people of Panama for its hospitality.

31. Participants expressed its appreciation to UNEP and CDB Secretariats for the preparation and organization of this consultation meeting.

32. The Regional Consultation closed at 5 p.m. on Saturday, 16 January 2010.

ANNEX I

COMMON UNDERSTANDINGS AMONG LATIN AMERICAN AND CARIBBEAN COUNTRIES CONCERNING THE MAIN COMPONENTS OF THE PROTOCOL ON ACCESS AND BENEFIT SHARING.

The countries from Latin America and the Caribbean:

- a) Reaffirm their position in favor of a legally binding International Regime, comprehensive and integral, allowing the full implementation of the third objective of the Convention on Biological Diversity once the Protocol is adopted by the 10th Conference of the Parties;
- b) Reaffirm that the core issue of the Protocol is to ensure compliance in user countries of legislation and national requirements, including PIC and MAT of the provider country and of the Party that has acquired those resources in accordance with the CBD.
- c) Decide that it is essential to join efforts of developing countries in an alliance that effectively contributes to the adoption and effective implementation of the Protocol;
- d) Agree that the Protocol should include clear provisions towards strengthening the means to achieve adequate capacity building in developing countries, particularly the least developed countries and the small island developing states.
- e) Reiterate that the Protocol should guarantee the sovereign right of countries on their genetic resources and that Governments have the authority to regulate access to these resources, in accordance with their national legislations.
- f) Reaffirm that, in conformity with Article 8j of the Convention, the Protocol should respect the rights of indigenous and local communities over their traditional knowledge associated to genetic resources, and ensure their participation in the benefits resulting from its use.

Because of these, the following common understandings were identified related to the main components of the Protocol.

1. NATURE.

- a) The Protocol must be legally binding and include provisions that establish rights and obligations for the Parties, beyond the Bonn Guidelines, so that compliance with the third objective of the Convention on Biological Diversity (CBD) is ensured.

2. OBJECTIVE.

- a) To ensure effective, fair and equitable sharing of the benefits arising from the utilization of genetic resources and associated traditional knowledge, namely the third objective of the CBD.
- b) To effectively apply the provisions of articles 8 j), 15, 16 and 19.2 of the Convention on Biological Diversity.

- c) Guarantee the sovereign right of countries over their genetic resources and the authority to regulate access to these resources, through national legislations.
- d) Prevent the misappropriation and misuse of genetic resources, their derivatives and/or associated traditional knowledge, innovations and practices.
- e) Ensure compliance in user countries of legislation and national requirements, including PIC and MAT, of the provider country and of the Party that has acquired those resources in accordance with the CBD.

3. SCOPE.

- a) The Protocol on access and benefits sharing is applied to genetic resources and its derivatives, as well as to associated knowledge, innovations and traditional practices, pursuant to the relevant provisions of the Convention on Biological Diversity and subject to national legislation.
- b) The Protocol must be respectful and mutually supportive of other international instruments, in particular it should be in harmony with the International Treaty on Plant Genetic Resources for Food and Agriculture.
- c) The exceptions to the scope of the Protocol, including temporal, spatial and substantive, should be carefully analyzed in order to ensure the effectiveness of the Protocol.

4. DEFINITIONS.

- a) The development of definitions would help to determine more accurately the scope of the provisions of the Protocol, and can contribute to generate legal certainty for users and providers of genetic resources.
- b) Article 2 of the CBD has some definitions that have already been agreed, which are applicable to the Protocol, and which should be considered, namely: Biological resources, genetic material, in situ conservation, ex situ conservation, country of origin, provider country, Biotechnology, modern biotechnology (art. 3.h of the Cartagena Protocol on Biosafety).
- c) In some cases, it is necessary to have definitions that allow Parties to reach common understandings on key provisions contained in the Protocol, such as: derivatives.
- d) In other cases, it might be necessary to have definitions that allow Parties to reach common understandings on key provisions contained in the Protocol, such as: Traditional knowledge, Traditional Knowledge associated to genetic resources, Misappropriation and Misuse.

5. ASSOCIATED TRADITIONAL KNOWLEDGE.

- a) Associated traditional knowledge is a cross-cutting element that should be incorporated in all the components of the Protocol.

- b) Local and indigenous communities have rights linked to their traditional knowledge associated with genetic resources and these rights must be protected.
- c) The Protocol must recognize that there are obligations to be met regarding access and benefit sharing arising from the use of the traditional knowledge associated to genetic resources and that the interested parties must know their obligations.
- d) Measures must be developed nationally on the use of the Associated Traditional Knowledge.
- e) Indigenous and local communities have the right to exchange amongst themselves genetic resources and associated traditional knowledge and customary practices, for traditional purposes.
- f) There is a need to identify mechanisms for the cases of transboundary traditional knowledge.
- g) Indigenous and local communities are the holders of their traditional knowledge and its utilization requires Prior Informed Consent and Mutually Agreed Terms.

6. CAPACITY BUILDING.

- a) Capacity building is a priority for developing countries, particularly for least developing countries and small island developing countries. However measures for the creation and strengthening of capacities should not replace the compliance measures.
- b) The Protocol must create and strengthen the capacity of stakeholders, including indigenous and local communities, in access as well as in benefit sharing.
- c) Developing countries must identify their own needs and define their priorities
- d) Special measures must be adopted to develop capacities in indigenous and local communities.
- e) Capacity building measures must include transfer of technology and cooperation for development. In this regard the availability of resources for implementation is underlined, as well as the need to establish mechanisms to contribute to the mobilization of financial resources.
- f) South-South cooperation offers a great potential for capacity building.

7. ACCESS.

- a) The States have sovereign rights over their natural resources and the governments have the power to regulate Access to genetic resources.
- b) Access to genetic resources is subject to the principles and provisions of the CBD (article 15).
- c) Prior Informed Consent is a precondition to obtain access to genetic resources.

- d) Some genetic resources have associated traditional knowledge, in which case prior and informed consent is also required from indigenous and local communities.
- e) When access is granted, this shall be under mutually agreed terms (MAT).
- f) A national competent authority that is responsible for access requests must be appointed and supported.
- g) It is important to exchange information on access through a "Clearing house" mechanism.

8. BENEFIT SHARING.

- a) The Protocol must incorporate transparent and clear provisions to guarantee the fair and equitable sharing of monetary and non monetary benefits, resulting from the use of the genetic resources and derivatives, under mutually agreed terms.
- b) The benefits as arising from utilization of genetic resources might not be immediate at the time of the access to the genetic resources, hence, the importance of establishing benefit sharing in the mutually agreed terms (MAT).
- c) The follow-up and monitoring mechanism, included in the "Compliance" section of the Protocol, must ensure compliance with the national legislation, as well as the benefits sharing set out in the MATs.
- d) Benefits resulting from the use of traditional knowledge, innovations and practices associated to genetic resources must be shared.
- e) The importance of national and international legislations on intellectual property rights, and its interaction with ABS related questions are recognized; therefore, regulations that derive from both systems can and must be applied in a way that they provide mutual support.

9. COMPLIANCE.

- a) Compliance measures, including and not limited to those that seek the promotion, monitoring and compliance of national legislation with the view to guarantee the correct application of provisions related to Access and Benefit Sharing, must contribute to fair and equitable benefit sharing.
- b) Compliance measures must ensure, at a minimum, mechanisms and measures that will ensure access to justice, the availability of alternative mechanisms for dispute settlement and procedures for the approval of the arbitral decisions.
- c) Mechanisms are required to facilitate genetic resources monitoring (check-points) and information exchange for the purposes of the Protocol.
- d) Competent national authorities on Access and Benefit Sharing must be appointed and supported.

- e) A Certificate of Compliance must be issued by the competent national authority and be internationally recognized.
- f) The importance of the disclosure requirement is recognized as part of the Protocol.
- g) Developed countries should take measures to build the capacity of the users of genetic resources in order to ensure that they will comply effectively with the provisions of the Protocol.