

Access to genetic resources, benefit sharing and protection of the traditional knowledge

Our concern with the legal framework related to conservation and sustainable use, of the extremely rich patrimony represented by our genetic resources, predates the [Convention on Biological Diversity](#) since it was already present as a specific item of the Environment Chapter of the [Brazilian Constitution](#) "... to preserve the diversity and integrity of the genetic patrimony of the country and... (Title VII, Chapter VI, Article 225, Paragraph 1, Item II).

When Brazil decided to ratify the [Convention on Biological Diversity](#) , in February of 1994, the Country adopted not only a formal commitment with its three great objectives - the conservation of the biological diversity, the sustainable use of its components and, mainly, the fair and equal sharing of the benefits attained with this use – but also the obligation of establishing legal instruments to regulate the access and the use of the genetic resources under Brazilian jurisdiction, and to ensure protection of the traditional knowledge associated with them.

Because of the interests of the developed, but generally poor in biological diversity countries, aspects related to biodiversity conservation dominated the initial phase of the implementation of the CBD, especially the first three [Conferences of Parties/COPs](#) . But starting from 1998 ([COP IV](#)), the efforts of the developing, and in many cases rich in biodiversity, countries, led to the establishment of two working groups related to Access to Genetic Resources and Traditional Knowledge: - [decision IV/8](#) created the embryo of the current [Working Group on Access to Genetic Resources and Partition of Benefits](#) and [decision IV/9](#) created the [Working Group on Traditional Knowledge](#) .

The relevance and the strategic importance of these subjects led the [Seventh Meeting of the Conference of the Parties](#), convened at Malaysia in 2004, to give these two working groups a mandate to jointly elaborate the framework for an International Legal Regime to regulate the access to genetic resources, guarantee the partition of benefits, and assure the recognition and the protection of the traditional knowledge ([decision VII/19](#)). The result of these joint meetings and the positioning of the [Group of Like-Minded Megadiverse Countries](#) will undoubtedly dominate the discussions of [COP VIII](#) , to be held in Brazil in May 2006.

Brazil multiplied the Commissions ([National Commission of Biodiversity/CONABIO](#) and [National Commission of Sustainable Development and Traditional Knowledge](#)), Councils ([The Genetic Heritage Governing Council/CGEN](#) and [The National Council for Scientific and Technological Development/CNPq](#)) as well as Federal Departments ([Brazilian Institute for the Environment and Renewable Resources/IBAMA](#) and [National Indian Foundation/FUNAI](#)) which are concerned with the regulation and concession of licenses, and authorisations, for access to and collection of, components of the genetic patrimony and/or of the associated traditional knowledge. But, frustrating the expectations heralded by the Environment Chapter of the Constitution of 1988, little legislative progress has been made by Brazil on this subject. The legal instrument still used by the Brazilian Government is the extremely bureaucratic, and authoritarian, [Provisional Act 2.186-16/01 \(Medida Provisória 2.186-16/01\)](#) .

Throughout 2003, in meetings co-ordinated by [CGEN](#), all the segments of society involved with the subject - Indigenous People, Traditional Communities, NGOs, Private Companies, the Scientific Community, and representatives of various Ministries of the Federal Government (MMA, MCT, MRE, MAP, FUNAI, IBAMA, CNPq, etc...) negotiated a proposal for a new Law to be submitted to Brazilian Parliament. Fifteen months later this new Law Project has not yet being submitted to Congress. Moreover, it seems that the Government has ignored much of what was recommended by interested sectors of society, and that in closed meetings the new Law has been significantly altered, such that it bears little resemblance to the original proposals.

In the section Point of Views of this number of *Biota Neotropica*, two specialists – Dr. Jorge Soberón, of [CONABIO of Mexico](#) , and MSc Cristina Maria of Amaral Azevedo, of the [Brazilian CGEN](#) – outline the legal situation with regard to access to genetic resources and the protection of the associated traditional knowledge in two countries with megabiodiversity, Brazil and Mexico.

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