



Access to Genetic Resources in Latin America and the Caribbean: support tools for implementation



IUCN's Regional Office for South America



Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura



Cátedra UNESCO de Territorio y Medio Ambiente



Universidad Rey Juan Carlos

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Access to Genetic Resources in Latin America and the Caribbean: Support Tools for Implementation

**Strengthening the Implementation of Regimes of Access
to Genetic Resources and Benefit Sharing in Latin
America and the Caribbean**

MontseRRAt Rios and ARtuRo MoRA

Editors

Regional GEF Project “Strengthening the Implementation of Regimes of Access to Genetic Resources and Benefit Sharing in Latin America and the Caribbean” executed by the Regional Office for South America of the International Union for Conservation of Nature (IUCN South America) and implemented by the Regional Office for Latin America and the Caribbean of the United Nations Environment Programme (UNEP-ROLAC).

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Arturo Mora and Diana Herrera

Abbreviations and acronyms

(* Acronym has been kept in original Spanish form)

ABS	Access and Benefit Sharing of genetic resources
ABS-MT	The ABS Management Tool
AECID	Spanish Agency for International Cooperation for Development *
Art.	Article
BCCM	Belgian Coordinated Collections of Micro-organisms
BIO	Biotechnology Industry Organization
BfN	Bundesamt für Naturschutz
CAN	Andean Community of Nations *
CBD	Convention on Biological Diversity
CIEL	Center for International Environmental Law
CNB	National Commission against Biopiracy *
COICA	Coordinator of Indigenous Organizations of the Amazon River Basin *
COP	Conference of the Parties
DFG	Deutsche Forschungsgemeinschaft
FAO	Food and Agriculture Organization of the United Nations
FONAKIN	Federation of Organizations of Kichwa Nationalities of Napo *
FSC	Forest Stewardship Council
GEF	Global Environmental Found
WG8(j)	Working Group on Article 8 (j) *
GT-ABS	Working Group on ABS *
IB-UCN	Biotechnology Institute, National University of Colombia *
IC	International Conservation
IFPMA	International Federation of Pharmaceutical Manufacturers and Association
IPEN	International Plant Exchange Network
ISE	International Society of Ethnobiology
ISTEC	Ibero American Science and Technology Education Consortium
IUCN	International Union for Conservation of Nature
IIFB	International Indigenous Forum on Biodiversity

LAC	Latin America and the Caribbean
MADS	Ministry of Environment and Sustainable Development of Colombia *
MAE	Ministry of Environment of Ecuador *
MAT	Mutually Agreed Terms
MU	Memorandum of understanding
MTA	Material Transfer Agreement
MOSAICC	Micro-Organisms Sustainable Use and Access Regulation International Code of Conduct
NCA	National Competent Authority
NCIV	Netherlands Centre for Indigenous Peoples
NFP	National focal point
NGO	Non-governmental organization
OMPI	World Intellectual Property Organization
Pers. com.	Personal communication
Pers. test.	Personal Testimony
PIC	Prior Informed Consent
RMIB-LAC	Indigenous Women's Network on Biodiversity of Latin America and the Caribbean
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
SCNAT	Swiss Academy of Sciences
SfAA	Society for Applied Anthropology
SEB	Society of Economic Botany
SIB	Swiss Information System Biodiversity
SPDA	Peruvian Society for Environmental Law*
TK	Traditional Knowledge
UEBT	Union for Ethical BioTrade
UN	United Nations
UNC	National University of Colombia *

UNM	University of New Mexico
UNEP	United Nations Environment Programme
UTPL	Private Technical University of Loja *
WLO	World Labour Organization
WTO	World Trade Organization



Presentación

El Proyecto Regional “Fortalecimiento de la Implementación de los Regímenes de Acceso a los Recursos Genéticos y Distribución de Beneficios (ABS) en América Latina y el Caribe” (Proyecto Regional-UICN-PNUMA/GEF-ABS-LAC), apoyado por el Fondo para el Medio Ambiente Mundial (sigla en inglés GEF) es una iniciativa ejecutada por la Unión Internacional para la Conservación de la Naturaleza (UICN) e implementada por el Programa de las Naciones Unidas para el Medio Ambiente (PNUMA), en coordinación con el Convenio sobre la Diversidad Biológica (CDB), que tiene como objetivo el fortalecer capacidades para el desarrollo e implementación de regímenes de ABS en la región.

El Proyecto Regional-UICN-PNUMA/GEF-ABS-LAC es complementado por otras dos iniciativas regionales sobre ABS apoyadas por el GEF en África y Asia, porque conjuntamente buscan promover un mejor entendimiento del tercer objetivo del CDB sobre acceso a los recursos genéticos y la distribución justa y equitativa en los beneficios derivados de su uso. Estos proyectos, se encuentran apoyando el marco de trabajo del Protocolo de Nagoya sobre ABS, adoptado en el 2010, así como a la Meta de Aichi 16 del Plan Estratégico para la Biodiversidad 2011-2020.

Durante el Proyecto Regional-UICN-PNUMA/GEF-ABS-LAC se han desarrollado una serie de herramientas prácticas para mejorar las capacidades en el tema de ABS, siendo a través del compartir de experiencias y lecciones aprendidas. Las publicaciones han sido preparadas a partir del conocimiento de varios expertos, provenientes de las autoridades nacionales y regionales, comunidades locales y pueblos indígenas, investigadores, académicos y sector privado, entre otros. Así, se espera una extensa disseminación de los resultados a una amplia gama de actores relevantes en la región de América Latina y el Caribe.

Quisiéramos agradecer a los involucrados en este esfuerzo regional, incluidas las Autoridades y Puntos Focales Nacionales de los ocho países participantes (Colombia, Costa Rica, Cuba, Ecuador, Guyana, Panamá, Perú y República Dominicana), la Organización Mundial de la Propiedad Intelectual (OMPI), así como otras instituciones y expertos que se han unido a este proceso, compartiendo su conocimiento en miras a contribuir al mejor entendimiento sobre este tema fundamental.

Estamos seguros de que las herramientas prácticas desarrolladas en este proyecto regional apoyarán a los países que se encuentran implementando el Protocolo de Nagoya, así como a la Meta 16 de Aichi para la Biodiversidad. Finalmente, quisiéramos alentar la lectura de estas publicaciones, así como la visita al portal del Proyecto Regional-UICN-PNUMA/GEF-ABS-LAC (www.adb.portalces.org), donde se podrá encontrar información clave recogida durante el proceso.



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Secretario

Ejecutivo

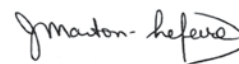
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Foreword

The Regional Project "Strengthening the implementation of Access and Benefit Sharing (ABS) regimes in Latin America and the Caribbean" (Regional Project-ABS-LAC), supported by the Global Environment Facility (GEF) is an initiative executed by the International Union for Conservation of Nature (IUCN) and implemented by the United Nations Environment Programme (UNEP), in coordination with the Convention on Biological Diversity (CBD), to strengthen capacities for the development and implementation of ABS regimes in the region.

This regional project is complemented by two other GEF supported regional projects on ABS in the Asia and Africa regions. Together, these projects aim to promote a better understanding of the third objective of the CBD on access to genetic resources and the sharing of benefits derived from their use. The projects are furthermore in support of the framework of the Nagoya Protocol on ABS, adopted in 2010 and Aichi Target 16 of the Strategic Plan for Biodiversity 2011-2020.

A series of practical tools have been developed by the Regional Project-ABS-LAC to improve capacities in the field of ABS through the sharing of experiences and lessons learned. These publications have been assembled from the knowledge of a range of experts (national and regional authorities, indigenous and local communities, researchers, academia and private sector, between others). Extensive dissemination to a broad range of relevant stakeholders in the Latin American and Caribbean region is planned.

We want to thank all those involved in this regional endeavor, including the Authorities and National Focal Points of the eight participating countries (Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guyana, Panama and Peru), the World Intellectual Property Organization (WIPO), as well as organizations and experts who have joined this process for sharing their knowledge in the expectation that it will contribute to a solid base for a better understanding of this fundamental topic.

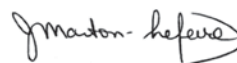
We are confident that the practical tools developed in this regional project help countries implementing the Nagoya Protocol and help achieving Aichi Biodiversity Targets 16. We encourage use of these publications and visits to the project website (www.adb.portalces.org), where key information, collected throughout this process, will be found.



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To the National Focal Points, who led the respective processes in eight countries and also shared their experiences working on the issue of ABS at a regional level. Their continuing participation contributed to achieving the project objectives.

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Introduction

Setting up a capacity building initiative around an issue that has different perspectives such as Access and Sharing of Benefits Derived from the Utilization of Genetic Resources (ABS) is a big challenge, especially in regions with high biological and cultural diversity such as Latin America and the Caribbean. Thus, it was decided that this challenge would be faced through the objectives of the Regional Project entitled " Strengthening the Implementation of Regimes of Access to Genetic Resources and Benefit Sharing in Latin America and the Caribbean" (IUCN-UNEP/GEF -ABS-LAC Regional Project), which was implemented from July 2011 to June 2014 and concludes with this publication.

During the three years of the Project, the lessons learned were shared with other participating countries at national and regional level, and they became a set of methods inherent to the process. It is precisely in this scenario that the need to focus on a goal became evident, because it is essential to improve local capacities regarding specific and necessary issues which are predominant nowadays. Through the experience of those countries, we were able to identify, for instance, the need for national authorities and other stakeholders, to better understand the process of negotiating access agreements. For this reason, it was determined that a clear definition of benefits (monetary or otherwise) to be negotiated with the user was a key element, within the framework of sovereignty that each State has over their genetic resources as it has been stipulated in the Nagoya Protocol.

Within this regional framework for ABS in Latin America and the Caribbean, it is important to stress that it is the process of negotiating benefits -included in different ways within the laws of the countries in the region-that leads to various discussions on the subject. Thus, the IUCN-UNEP/GEF-ABS-LAC Regional Project set out to achieve its objective by: promoting Training Workshops at regional and national level in the eight participating countries; organizing virtual regional forums, technical exchanges and sharing contract formats among countries; and socializing biocultural community protocols. The execution of all these activities had the objective of strengthening the authorities and the various actors involved in this particular issue.

The negotiation of contracts during the Project sought to strengthen national legal frameworks on the issue of ABS, improving the level of knowledge about the legislation and the new international institutional framework defined by the future ratification of the Nagoya Protocol. Thus, national authorities were involved in the elaboration of the reports for each country and these reports were developed jointly by consultants, authorities and project coordinators. The objective was to improve the handling of legal information and overcome national challenges that might arise when implementing the Protocol and other international instruments.

Legislation alone cannot have an effect. The participation of all actors involved in the issue of ABS is needed, through their recognition and strengthening. Indeed, this result is critical to the project and for a better understanding of the issue at a national level, since it includes both environmental authorities as well as authorities in the areas of research, intellectual property, trade and health, among others. At the same time, a continuous dialogue is needed between the scientific community, indigenous peoples and local communities and the private sector and biotrade managers.

The Importance of the IUCN-UNEP/GEF-ABS-LAC Regional Project is reflected in the commitment of the authorities to define novel mechanisms of access to genetic resources through: consultation; development of agreements / contracts; facilitating research, and definition of benefits for the State. For this reason, the Project promoted a strong relationship at national and international levels among different stakeholders: organizing Capacity Building Workshops with Indigenous Peoples, Local Communities and the Scientific Community, as well as Workshops for the Analysis of Commercial Benefits Derived from Genetic Resources; developing contact lists of experts at regional and national level; promoting national events involving intellectual property authorities, and creating opportunities to analyze the ABS issue from the perspective of Indigenous Peoples and the scientific community, among other activities.

The strengthening resulted in an exchange of experiences at regional level that allowed for the improvement of the capacities among countries, through their strengths and weaknesses in the subject. The preparation and analysis of case studies where relevance was given to the lessons learned in different aspects of the process was essential (including contract negotiation or the definition of benefits). In itself, the continuous participation in the preparation of the case studies by the national focal points of the project, became a key method which made it possible to share experiences for strengthening and forming Genetic Resources Defense Groups nationwide.

Nowadays, communication and dissemination of the ABS issue in practical and defined terms, remains a priority in Latin America and the Caribbean for the different sectors involved, such as the scientific or commercial ones. In this regard, a new language is needed which allows for the development of tools related to the issue of ABS, such as economic tools or incentives for research, that are necessary to implement the ABS issue in a more integrated manner.

In summary, the contributions of different actors involved in the issue of ABS have been collected, hoping that their process will flow in a way that can contribute to the improvement of their capacities. Thus, the starting point is an approach based on a language born from the perspective of Indigenous Peoples, because the aim is to promote a better understanding among the different sectors involved.

Finally, this publication provides a number of key tools developed and collected during the Project, which contribute to a compilation of codes of conduct and best practices on ABS for the various stakeholders in the field. At the same time, to learn more on the subject we recommend visiting the web portal Project (www.adb.portalces.org), where the collected information is shared throughout the process and is systematized into the ABS Clearing-House Mechanism prepared by the Convention on Biological Diversity.

Access to Genetic Resources in Latin America and the Caribbean: technical tools and experiences in the region



Watercolour Fragment of the Nagoya Protocol. © Ansulala 2012.

Arturo Mora



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Access to Genetic Resources in Latin America and the Caribbean: technical tools and experiences in the region

The "Strengthening the Implementation of Regimes of Access to Genetic Resources and Benefit Sharing in Latin America and the Caribbean" Project (IUCN-UNEP / GEF-ABS-LAC Regional Project), is characterized by grouping different support tools related to the issue of Access and Sharing of Benefits Derived from the Utilization of Genetic Resources (ABS) since July 2011; all of which are available on its web site (www.adb.portalces.org). The main users of this means of virtual communication are those who require information about ABS, as well as the national focal points of the project, authorities and stakeholders of the eight participating countries, namely: Colombia, Costa Rica, Cuba, Ecuador, Guyana, Panama, Peru and Dominican Republic.

This contribution is the latest in a series of four publications of the IUCN-UNEP/GEF-ABS-LAC Regional Project, and aims to briefly summarize the most useful support tools during implementation and which are, in some cases, the product of results achieved. It should also be noted that Latin America and the Caribbean are regions with extensive experience in the field of ABS, standing out on the one hand for their negotiation efforts of the international regime that led to the Nagoya Protocol, and on the other hand for the different case studies; the insights of indigenous peoples and local communities, and the development of researchers. In the future, the dissemination of the achievements at the regional level will hopefully contribute to the challenges in other countries, which is why the lessons learned and the knowledge are shared.

1. IUCN-UNEP/GEF-ABS-LAC Regional Project Web Page

During its implementation, the IUCN-UNEP/GEF-ABS-LAC Regional Project Web Page became one of the main communication tools because it was positioned as a center for collecting information from the eight participating countries. Some of the main topics disseminated which stand out are: national legislation, model contracts for ABS, case studies and photographs, with data being collected for each country and achieving a base line for the ABS issue at a national level. Also, this media was used to validate the Project Inception Workshop, held in Panama in 2011, and disseminate information on the most important activities such as national events developed by the national focal points in each country, ad hoc news and implemented actions, among other things.

Mora, A. 2014. Access to Genetic Resources in Latin America and the Caribbean: technical tools and experiences in the region. In: Rios, M. and Mora, A. (Eds.), Access to Genetic Resources in Latin America and the Caribbean: support tools for implementation. IUCN-UNEP/GEF-ABS-LAC. Quito, Ecuador. Pp. 15-24.

2. IUCN-UNEP/GEF-ABS-LAC Regional Project Publications

During the completion of the IUCN-UNEP/GEF-ABS-LAC Regional Project, the need to prepare a series of four publications was identified, because it was deemed necessary to capture the thematic and even visual relationship of the results obtained; especially, those reached through the interaction between the lead researchers and national authorities and/or other actors, such as communities or institutions. Thus, key products elaborated throughout the process which constitute a demonstration of capacity building were selected, because they represent the participation of national focal points and other authorities.

2.1 Six Case Studies in Latin America and the Caribbean: Access to Genetic Resources and Benefit Sharing

The first publication entitled "Six case studies in Latin America and the Caribbean: Access to Genetic Resources and Benefit Sharing", edited by Rios and Mora (2013), focuses on revealing the scenario in the region and its implications on the subject of ABS. In collaboration with their professional teams, Doctors Jorge Cabrera Medaglia (Costa Rica) and Gabriel Nemogá-Soto (Colombia) systematized the experiences selected in six countries participating in the Project and analyzed the results on the following topics:

- i. Case Study in Colombia: Research on a microorganism of the genus *Lactococcus* sp., Institute of Biotechnology, National University of Colombia (IBUNC).
- ii. Case Study in Costa Rica: Access, fair benefit sharing and monitoring of genetic resources of the "International Cooperative Biodiversity Group" Agreement among the Harvard University and the University of Michigan and the National Biodiversity Institute.
- iii. Case Study in Cuba: The venom of the "red scorpion" and other products derived from plant diversity.
- iv. Case Study in Ecuador: Biological collection activities of the Global Ocean Sampling Expedition in Galapagos National Park.
- v. Case Study in Panama: "International Cooperative Biodiversity Group".
- vi. Case Study in Peru: Registry of collective knowledge associated with biodiversity.

2.2 Access to Genetic Resources in Latin America and the Caribbean: Research, Commercialization and Indigenous worldview

The second publication entitled "Access to genetic resources in Latin America and the Caribbean: research, commercialization and indigenous worldview", edited by Rios and Mora (2014a), focuses on the experiences encountered in revealing case studies in five countries participating the Project and their implications on the issue of ABS. In collaboration with their respective professional teams, Doctors Jorge Cabrera Medaglia (Costa Rica) and Gabriel Nemogá-Soto (Colombia) study certain experiences in five countries participating in the Project and analyzed the results on the following topics:

- i. Biodiversity research in megadiverse countries: strategies for scientific and technical alliances.
- ii. Commercialization of biodiversity: markets for genetic resources and biochemical products.
- iii. Interrelationship between indigenous worldview and biodiversity: How to protect traditional knowledge (TK) and genetic resources?

2.3 Access to Genetic Resources in Latin America and the Caribbean: implementation of the Nagoya Protocol at a national level

The third publication, entitled "Access to genetic resources in Latin America and the Caribbean: implementation of the Nagoya Protocol at the national level", written by Professors Alejandro Lago Candiera and Luciana Silvestri (2014), focuses on the critical elements of ABS in relation to national legal frameworks, since their implementation will respond to the manner in which certain regulations operate in each country. The authors hold the UNESCO Chair of Planning and Environment at the University Rey Juan Carlos (Madrid, Spain). They conducted research on how to politically prioritize the ABS issue _ at the national level, using different legal instruments to facilitate their integration in each country and analyzed the results on the following topics:

- i. Activities of the IUCN-UNEP/GEF-ABS-LAC Regional Project and context of critical elements
- ii. Negotiation and obligations derived from the Nagoya Protocol
- iii. Critical elements for the national implementation of the Nagoya Protocol
- iv. Placing research and national scientific institutions at the center of ABS national policy

2.4 Access to Genetic Resources in Latin America and the Caribbean: Support Tools for Implementation

The fourth and final publication entitled "Access to genetic resources in Latin America and the Caribbean: support tools for implementing", edited by Rios and Mora (2014B), focuses on applying the different technical elements that encourage capacity building on the issue of ABS. The authors of the three articles -namely Alejandro Lago Candiera, Arturo Mora, Luciana Silvestre, and Yolanda Teran- studied certain experiences that make it possible to identify key tools, position the views of indigenous peoples, examine national implementation mechanisms, and place strategic international actors. The outstanding team of professionals contributed with their knowledge on the subject of ABS in the region and analyzed the results on the following topics:

- i. Tools for Access to Genetic Resources in Latin America and the Caribbean: experiences in Latin America and the Caribbean.
- ii. Codes of conduct and best practices on access to genetic resources and benefit-sharing in Latin America and the Caribbean.
- iii. Biodiversity conservation, access to genetic resources and benefit sharing: participation of the Indigenous Women's Network of Latin America and the Caribbean for Biodiversity.

3. Key contribution of the International Union for Conservation of Nature to the Nagoya Protocol: short documents on ABS

The Environmental Law Centre and the Global Policy Unit of the International Union for Conservation of Nature (IUCN), jointly develop a series of short papers on key items of the Nagoya Protocol related to the issue of ABS in the Convention on Biological Diversity (CBD). The main purpose of this initiative is to explain a valuable experience, since it is based on the Explanatory Guide to the Nagoya Protocol on Access and Benefit Sharing of the IUCN (Greiber and Peña Moreno 2013).

3.1 Article 6: Access to Genetic Resources

The CBD does not define the access to genetic resources, which is understood by many actors as the collection of samples or the right to obtain them. For this reason, it must be explained that it means access to biological samples or to samples of any other kind containing functional units of heredity, carried out within national borders for purposes of research, conservation, trade or industrial application. In itself, the interpretation reflects the context that was negotiated in the Convention when developing countries agreed to facilitate access to legal researchers for collecting samples, but instead agreed that developed countries would include the concept of "equitable benefits" according to the text of the CBD.

3.2 Article 12: Traditional Knowledge Associated to Genetic Resources

TK, innovations and practices with animals, plants, insects and ecosystems, become elements that can provide interesting clues and / or an initial overview for the isolation of the particular properties of the genetic resources found in nature. Consequently, the TK is key to lead some companies in the development of new products based on genetic resources, thus, making it a relevant factor for consideration in terms of the ABS issue and its implications and different dimensions.

3.3 Article 13: National Focal Points and Competent National Authorities

In Article 13, each Party is required to designate a national focal point (NFP) on ABS; and on the basis of this principle, it must decide which national institution will take on this capacity. Thus, under Paragraph 1 of Art. 13, the NFP is responsible for disseminating information on ABS, informing potential users of the procedures to be followed in applications for access to genetic resources and associated traditional knowledge. Similarly, the NFP should share information regarding national competent authorities (NCAs) and relevant stakeholders. It will also constitute the primary contact between the party on whose behalf it acts, and the Secretariat of the Nagoya Protocol, which in accordance with Art. 28 of the Protocol, will be the CBD Secretariat.

3.4 Articles 15 to 17: Compliance with Domestic Legislation on Regulatory Requirements on Access and Benefit Sharing

Articles 15 to 17 of the Nagoya Protocol are based on a series of regulations established for the ABS issue, particularly concerning its compliance regime. The purpose of these provisions is to prevent and respond to future cases of alleged misappropriation or illegal possession of genetic resources or associated traditional knowledge.

3.5 Article 18: Compliance with Mutually Agreed Terms

Article 18 of the Nagoya Protocol along with Articles 15, 16 and 17, complete the set of provisions related to the compliance measures on the part of users. However, relates to a different matter than that in Arts. 15 to 17 because its objective is to promote the implementation of mutually agreed terms (MAT) between users and providers of genetic resources and / or associated traditional knowledge. It should be clarified that Art. 18 deals with the contractual obligations, but not to its implementation in national ABS frameworks, legislation or regulatory requirements; particularly because it focuses on cases of "fair use" and not on those of "misappropriation" of genetic resources and / or associated traditional knowledge.

3.6 Articles 19 y 20: Support Tools for ABS Implementation

Articles 19 and 20 of the Nagoya Protocol are part of a number of tools in place to support the implementation of ABS nationwide. In this sense, the two provisions reflect the difficulties and complexities of implementing putting ABS into practice, as well as the need to find practical solutions so that all Parties can deal with the issue and achieve implementation.

4. Technical ABS Tools

During the implementation of the Project, the objective of building and strengthening capacities in ABS was focused on preparing a series of products and tools to facilitate the process of development. The set of technical elements is a result of the effort made with the collaboration of the participants, and these were socialized in different events and through other communications posted on the web page, thus achieving their dissemination in all countries who are Parties through these activities:

- i. Access Contract Negotiation Course, carried out in Havana in March 2012. During this event, presentations were compiled and they are expected to be used for national or sub-regional training processes in the countries of the Project.
- ii. Role Play on ABS, conducted by IUCN to define different actors involved in the process of negotiation of an ABS contract, considering the main aspects of a genetic resource, such as its use, origin and purpose.

- iii. Documents of the World Intellectual Property Organization (WIPO), with the most relevant being: the Traditional Knowledge Documentation Toolkit, which relates to intellectual property; the WIPO Guide for Traditional Knowledge Documentation, and the Draft Intellectual Property Guidelines for Access to Genetic Resources and Equitable Sharing of Benefits arising from their Utilization.
- iv. Publications of the Union for Ethical BioTrade(UEBT), which include: the Principles On Patents and Biodiversity of the Union for Ethical BioTrade; Global Case Studies on Benefit Sharing, and the Guide to Fair and Equitable Benefit Sharing.
- v. Spanish translation of the guide Biocultural Community Protocols: Toolkit for Community Facilitators (Shrumm and Jonas 2012), developed by "Natural Justice", which is seen as an additional contribution of the IUCN-UNEP/GEF-ABS-LAC Project. Thus, the translation of the publication makes it easier to read for the Hispanic audience, in response to an identified need of local communities and indigenous peoples of the countries participating in the Project, especially in relation to the preparation of Protocols.

5. Virtual Forum for the IUCN-UNEP/GEF-ABS-LAC Regional Project

One of the tools developed during the IUCN-UNEP/GEF-ABS-LAC Project Regional refers to the Virtual Forum conducted in 2013 (Cárdenas 2013), in which various stakeholders from the Latin American Region as well as countries of the Project participated, exchanging concepts and topics on ABS. In this scenario, the Project expanded its information to other countries and actors involved in the issue, thus disseminating their capacity building.

Another characteristic of the Forum is that it constitutes a mechanism that can be replicated, particularly at a national level by the participating countries. This is why, instructions are being elaborated which explain how the technological platform is used, and its scope as well as its methods. In this regard, discussion is encouraged for important issues such as: a review of the legal framework on issues of genetic resources ownership; the drafting of contracts for access to benefits from genetic resources based on the Nagoya Protocol; and the rights of indigenous peoples in relation to access to genetic resources under the Nagoya Protocol, among others.

Participants in this virtual space stood out because they had the opportunity to express their views, particularly with regard to what is meant by research within the context of the Nagoya Protocol and with regard to how national researchers and international ones may be treated differentially by national legislations. Finally, a second stage of the Forum was conducted where participants express their concerns what is meant by research in the context of the Protocol defining certain concepts related to ABS to what requirements must be established for negotiation contracts.

6. Analysis of technical issues of the IUCN-UNEP/GEF-ABS-LAC Regional Project

The analysis of technical matters related to the IUCN-UNEP/GEF-ABS-LAC Regional Project is presented through a series of documents elaborated within the framework of the Project and which were used during the feedback process. Thus, it contributes to the capacity building of national competent authorities (NCAs) of the participating countries of the Project and is completed with the preparation of the following technical products, generated during its execution:

- i. International Instruments and Processes Related to the Nagoya Protocol, prepared by the UNESCO Chair of Planning and Environment at the Rey Juan Carlos University.
- ii. Relationship of the Nagoya Protocol with the International Treaty on Plant Genetic Resources for Food and Agriculture: Policy Options and Recommendations for a Synergistic Implementation at National Level, prepared by Jorge Cabrera Medaglia.
- iii. The Nagoya Protocol: Policy Options for its Implementation in Latin America, prepared by Jorge Cabrera Medaglia.
- iv. Traditional Knowledge and Rights of Indigenous and Local Communities, prepared by Javier Monroe.
- v. Analysis of technical issues prepared by the Peruvian Society for Environmental Law (SPDA):
 - a. Reflections on the role of indigenous customary law in protecting traditional knowledge in connection with the Nagoya Protocol.
 - b. The flow and monitoring of genetic resources under the Nagoya Protocol.
 - c. Records of traditional knowledge of indigenous peoples: some perspectives for development within a context of protection.
 - d. The regime of access to genetic resources and its application to *ex situ* conservation centers.
 - e. How to prevent and face biopiracy? An approach from Latin America and the Caribbean.
 - f. Frequently Asked Questions about biopiracy.

7. Challenges for capacity building in the field of ABS

In this research, the description of technical products, tools and documents provides a particular overview for Latin America and the Caribbean, primarily with regard to training resources that are used and developed. In conclusion, it is evident that there is significant capacity for sharing in the Region and that this exchange of experiences is necessary to increase knowledge among countries, since one of the best ways of understanding is, without any doubt, through examples and case studies.

Within this unique scenario for the region, it is envisaged that some needs must be addressed with a better understanding of some issues such as: the commercial benefits of genetic resources; the practical implementation of the ABS issue in bio business; the involvement of the private sector, specifically of the pharmaceutical, cosmetic and food trade sectors, among others, and the link to the research sector, local communities and indigenous peoples.

Finally, we emphasize that Latin America and the Caribbean is a region capable of leading international negotiations of ABS Regimes, positioning itself for having remarkable experience. In addition to the above, the capacity created during the three years of the Project and are visible in this publication, because they allow the region to disseminate and support processes in other regions of the world such as Asia and Africa, and to propose initiatives for South-South cooperation, all of which is vital for a better understanding of the issue of ABS.

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Codes of conduct and practices on access to genetic resources in Latin America and the Caribbean



Watercolour Fragment of the Nagoya Protocol. ©Ansulala 2012.

Luciana Silvestri and
Alejandro Lago Candeira



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Codes of conduct and practices on access to genetic resources in Latin America and the Caribbean

This compilation of codes of conduct and best practices on Access and Sharing of Benefits Derived from the Utilization of Genetic Resources (ABS), is part of the Cooperation Agreement between the Regional Office for South America of the International Union for Conservation of Nature (IUCN-South) and the Rey Juan Carlos University, elaborated through the UNESCO Chair in Planning and the Environment, which began on August 1, 2012.

The Convention focuses on the performance of various components of the GEF Regional Project entitled "Strengthening the Implementation of Regimes of Access to Genetic Resources and Benefit Sharing in Latin America and the Caribbean (IUCN-UNEP/GEF-ABS- LAC Regional Project), which aims at strengthening the capacities of eight countries in the region: Cuba, Costa Rica, Colombia, Ecuador, Guyana, Panama, Peru and Dominican Republic. Thus, the objective is to develop and comply with national policy and legal frameworks concerning access to genetic resources, benefit sharing and protection of traditional knowledge.

Indeed, this study shows some codes of conduct and best practices on ABS in a brief and easy manner, making it a useful and practical reference for both the focal points of the countries that are part of the Project, as well as for the various stakeholders in the topic, such as nongovernmental organizations (NGOs), biotechnology companies, research institutes, and botanical gardens, among others..

2. Codes of conduct and best practices on access to genetic resources and benefit-sharing

Codes of conduct are documents voluntarily elaborated by companies, professional associations and research institutions. They present principles of behavior or conduct which are voluntarily adopted and implemented. Therefore, when applied to ABS, they respond to the need for a voluntary but effective response to international legal requirements on the issue in many broad, vague or unspecific cases. Also, in most cases, these codes are implemented to avoid accusations of misappropriation of genetic resources and/or associated traditional knowledge. Likewise, they seek to standardize procurement processes of genetic material and/or traditional knowledge so that they are clearer, more efficient and transparent, and so that they may guarantee the rights of third parties.

Silvestri, L. and Lago Candeira, A. 2014. Codes of conduct and practices on access to genetic resources in Latin America and the Caribbean. In: Rios, M. and Mora, A. (Eds.), *Access to Genetic Resources in Latin America and the Caribbean: Support Tools for Implementation*. IUCN-UNEP/GEF-ABS-LAC. Quito, Ecuador. Pp. 25-

In addition to this, it is worth mentioning the best practices that form a coherent set of useful actions or behaviors, and which are effective in a given context of action and would be expected to yield the same positive results in similar situations. By linking them to the ABS scenario, they can be considered as the most appropriate or recommended procedures for accessing genetic resources and/or associated traditional knowledge, resulting in a fair distribution of benefits derived from their utilization. Thus, these practices seek the same objective as the codes of conduct on ABS, and they are generally implemented by an organization or a network of organizations, because its members, partners or other stakeholders can use them as they deem convenient during their activities of access to genetic resources. In this sense, they do not constitute an internal formal standard of the behavior that the company or scientific entity will apply in a mainstreamed and continuous manner in their access activities, unlike codes of conduct.

The Nagoya Protocol, adopted in Nagoya (Japan) on October 30, 2010, confers an important role to codes of conduct and good practices when referring to ABS. It expects signatory parties, countries and regional integration organizations to promote development and updating, as well as to promote the use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to ABS (Art. 20.1). It is worth pointing out that when the Protocol refers to "the fair and equitable sharing of benefits", it is also expected that contractual provision models, codes of conduct, guidelines and best practices and/or standards relating to "access" to genetic resources and their associated traditional knowledge be implemented, as it is the first necessary step for benefit sharing to exist.

Within this framework, in order to raise awareness and build capacities, the Protocol envisages a Party adopting and implementing voluntary codes of conduct, guidelines and best practices, and/or standards as possible measures, consulting with both indigenous and local communities as direct and relevant stakeholders (Art. 21.e). At present, there are different codes of conduct and best practices on ABS, which have been developed over time since the adoption of the Convention on Biological Diversity (CBD) and have acquired importance in the tenets of the Nagoya Protocol for its potential to become a key part of the system. It is due to these circumstances, that this work presents codes of conduct and best practices on ABS based on an analysis of different sectors of industry and research, mostly mentioning: the date of creation/development; the creator/sponsor organization, the degree of adherence / adoption; the type of activities covered, and mandatory adherence.

3. Microorganisms sector

3.1 International Code of Conduct on the Sustainable Use of Microorganisms and its Access Control

The Micro-Organisms Sustainable Use and Access Regulation International Code of Conduct (MOSAICC), is characterized for offering voluntary membership. The first version appeared in 1999 and conducted the Belgian Coordinated Collections of Micro-organisms (BCCM) as the result of an intense dialog among its frequent collaborators and a network of ABS experts.

The most updated, complete, clear and useful version of MOSAICC is that of the year 2011 (<http://bccm.belspo.be/projects/mosaicc/docs/code2011.pdf>), including principles covering: access activities, implementation of agreements, benefit sharing, and technology transfer. It also provides models for: applications for Prior Informed Consent (PIC), its granting, Material Transfer Agreements (MTA), and benefit sharing arrangements. At the same time, due to its versatility, the MOSAICC can be freely used as a guide by anyone who needs it, thus becoming a model for when access, transfer and or use of genetic resources is required, even if it does not involve microorganisms.

4. Botanical Gardens and Herbaria Sector

4.1 Principles on Access to Genetic Resources and Benefit Sharing for Affiliated Institutions

The Principles on Access to Genetic Resources and Benefit-Sharing for Participating Institutions are a set of performance standards for ABS, developed on the basis of a project led by the Royal Botanic Gardens, Kew (England) in collaboration with botanical gardens and herbaria worldwide (<http://www.kew.org/conservation/principles.html>). Thus, their creation dates back to 2001 and they have been adopted voluntarily as a guide in 28 botanical gardens, as well as in herbaria from 21 different countries.

The richness of these Principles provides a proper and complete framework for action, allowing botanical gardens and herbaria to start designing your own ABS policies; since their access rules cover both access for commercial as well as for scientific research purposes. Also, any herbarium or botanical garden that wishes to apply these Principles can do so freely through the adherence request form addressed to the Unit on CBD of the Royal Botanic Gardens, Kew. (<http://www.bgci.org/resources/article/0007/>).

4.2 International Plant Exchange Network

The International Plant Exchange Network has a useful code of conduct for ABS when their activities are carried out by botanical gardens, as well as a standardized Material Transfer Agreement used among their members (<http://www.bgci.org/>). The code was developed on the basis of the work done by the Association of German Botanical Gardens (Verband Botanischer Garten), and was elaborated in 1996, gaining the solidity to be supported by the Consortium of Botanic Gardens in the European Union.

Adherence to the code of conduct is voluntary, and it is open to botanical gardens from all over the world; however, once adopted, its rules must be enforced (http://www.bgci.org/resources/Criteria_for_IPEN_membership_and_registration/). Also, adherence to the IPEN facilitates the exchange of plant material between member countries and meets international rules on ABS, covering access for purely scientific research purposes. At present, 160 botanical gardens around the world are members of IPEN, with most of them being European.

4.3 Policy on Plant Genetic Resources of the Missouri Botanical Garden

The Policy on Plant Genetic Resources of the Missouri Botanical Garden (USA), one of the most important botanical gardens worldwide, was developed in the year 2005. In itself, its content presents clear and effective rules for ABS, and the conditions for the acquisition, transfer and use of plant genetic material (<http://www.wlbcenter.org/policy.htm>).

4.4 Policy on Access and Benefit Sharing of the Royal Botanic Gardens, Kew

The Policy on ABS of the Royal Botanic Gardens, Kew (England), is responsible for ensuring that all material meets agreed international requirements established by the CBD (<http://www.kew.org/conservation/docs/ABSPolicy.pdf>). In this regard, it covers the acquisition, use, transfer and conservation of genetic resources, as well as the fair and equitable sharing of benefits arising from their utilization and commercial use.

5. Agricultural Sector

5.1 International Code of Conduct for Plant Germplasm Collecting and Transfer

The International Code of Conduct for Plant Germplasm Collecting and Transfer is voluntary and was adopted at the conference of the World Food and Agriculture Organization (FAO) in 1993 to protect the interests of donors and collectors of germplasm. It is also intended for governments in order to guide the design of national policies which are harmonious with the CBD and its relations with other countries, especially when dealing with collection of germplasm and is likely to be used by other entities, such as research centers and businesses (<http://www.fao.org/docrep/x5586E/x5586eok.htm#xiv.%20appendix%20e%20%20%20international%20code%20of%20conduct%20for%20plant%20germplasm%20collecting%20a>).

6. Genetic Resources Research Sector

6.1 Guidelines on funding proposals concerning research projects within the scope of the Convention on Biological Diversity

The Guidelines for Funding Proposals Concerning Research Projects within the Scope of the Convention on Biological Diversity of the German Research Foundation (Deutsche Forschungsgemeinschaft) are guidelines that seek to help scientists comply with the provisions for the design of research projects when these are implemented in third countries which are Parties to the CBD.

In this context, the German Foundation for Scientific Research, the coordinating institution for scientific research in Germany, developed the guidelines to meet the requirements in order to get State funding (Bundesamt für Naturschutz, BfN; <http://www.bfn.de/fileadmin/ABS/documents/guidelines.pdf>).

6.2 Best Practice Guideline for academic research on genetic resources: access and benefit-sharing

The Swiss Academy of Natural Sciences (ASCN) published a guide of good practices aimed at the scientific community of the country, with the objective of complying with the international legality of ABS within the framework of a research project. It also provides a checklist of requirements to be met in the current legislation and enables the researcher to perform their activities righteously (http://abs.scnat.ch/downloads/documents/APB_BuenasPracticas_ABS_2012.pdf).

7. Private Sector

7.1 Guidelines for Members of the Biotechnology Industry Organization Engaging in Bioprospecting

The Guidelines for BIO Members Engaging in Bioprospecting for members of the Biotechnology Industry Organization (BIO) promote general and practical principles to conduct activities with uprightness; and they also have advantages since they are simple and cover all possible stages of a project.

The BIO is a non-profit trade association that represents over 1,100 companies, universities, research institutions, and investors, as well as other entities in the field of biotechnology in the United States and in more than 32 countries (http://www.bio.org/sites/default/files/Guidelines%20for%20BIO%20Members%20Engaging%20in%20Bioprospecting_o.pdf).

7.2 Guidelines for the International Federation of Pharmaceutical Manufacturers and Association Members on Access to Genetic Resources and Equitable Sharing of Benefits Arising from their Utilization

The Guidelines for the IFPMA Members on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization promotes the legal framework for the acquisition and use of genetic resources, with an international NGO representing stakeholders in pharmaceutical research including the biotechnology and vaccines sector (http://www.ifpma.org/fileadmin/content/Innovation/Biodiversity%20and%20Genetic%20Resources/IFPMA_Guidelines_Access_to_Genetic_Resources.pdf).

8. Professional Societies Sector

Several communities of research professionals in fields such as anthropology, ethnobotany, pharmacognosy and ecology strive to develop documents to identify the ethical values that must be present in research and standardize best practices. In general the content is translated into: codes of ethics; voluntary codes; codes of practice; guidelines and research protocols, as well as statements regarding ethical conduct. Virtually all of these include PIC and benefit-sharing, and publication and distribution of information.

8.1 Guidelines on Professional Ethics of the Society for Economic Botany

The Guidelines of Professional Ethics of the Society of Economic Botany (SEB) were adopted in 1995 to govern the behavior of its members. In general, these regulate the practice of botanists, and are not specifically for access and benefit-sharing, but several of the guidelines refer generally to the expected behavior regarding access to genetic resources (http://www.econbot.org/pdf/SEB_professional_ethics.pdf).

8.2 Code of Ethics of the International Society of Ethnobiology

The Code of Ethics of the International Society of Ethnobiology (ISE) is an excellent guide for professional conduct in this scientific discipline. It was developed over the course of 10 years, it was concluded in 2006 and updated in 2008 (http://ethnobiology.net/docs/Codigo_Etica_ISE_2006_w-additions_espanol_Feb2011.pdf).

8.3 Ethical and Professional responsibilities of the Society for Applied Anthropology

The Ethical and Professional Responsibilities of the Society for Applied Anthropology (SFAA) generally regulate the practice of anthropologists, promoting principles related to ABS such as the PIC for the study of a community and considering traditional knowledge associated with the use of genetic resources. os (<http://www.sfaa.net/about/ethics/>).

9. Other ABS tools

9.1 ABS Management Tools

The Swiss Biodiversity Information System (BIS) handles the ABS Management Tool (ABS-MT) because it is a guide presenting best practices for users and providers of genetic resources, which was published in 2007 and updated in 2012 to include new provisions of the Nagoya Protocol. Today, the instrument facilitates compliance with the provisions of ABS and is useful for: companies, researchers, indigenous and local communities, and governments (http://www.sib.admin.ch/uploads/media/Updated_ABS_Management_Tool_May_2012_01.pdf).

9.2 Suggested Ethical Guidelines for Accessing and Exploring Biodiversity

The Suggested Ethical Guidelines for Accessing and Exploring Biodiversity are the result of a personal effort by a scholar to advance these academic practices, and they were elaborated within the framework of the Pew Conservation Scholars Initiative. So, since they are complete the turn out to be very interesting in order to go further in depth in subject (Gupta 1995; <http://www.eubios.info/EJ52/EJ52l.htm>).

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Access to genetic resources and benefit-sharing:
participation of the Indigenous Women's Network of Latin
America and the Caribbean for Biodiversity



Watercolour Fragment of the Nagoya Protocol. ©Ansulala 2012.

Yolanda Terán



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"In these times, humanity must work together, not just for survival, but for quality of life based on universal values that protect the delicate interrelatedness of life that protects us all. ... Biodiversity is a clinical, technical term for this intricate inter-weaving of life that sustains us. We indigenous peoples say that we are related to this life; thus your "resources" are our relations. It is all in how you look at it. Indigenous peoples have something to offer in this equation for survival... We have common goals and responsibilities, and I say, that you, the leaders of this great hope of the world's people, the United Nations, should be working with us and not against us, for peace..."

Chief Oren Lyons of the Onondaga Nation and the Haudenosaunee
Confederacy of the United States of America
Indigenous Peoples and the World Summit on Sustainable Development (Medrana 2003: 148)

1. Introduction

The Convention on Biological Diversity (CBD) is an international legally binding instrument which for the first time recognizes that the conservation of biological diversity is a common concern for all humanity, being of vital importance for sustainable development (CBD 2001:3) . The CBD is aware of the rapid loss of biodiversity, recognizes the intrinsic relationship between the Indigenous Peoples and local communities and biodiversity, as well as the importance of resources both for the survival of Indigenous Peoples, and for the development of and service to humanity. The CBD was negotiated between 1991 and 1992 by the Intergovernmental Negotiating Committee, and it was adopted by the Party state in 1992. It entered into its implementation phase on December 29, 1993 (Tauli-Corpuz 2000).

The preamble of the CBD recognizes the crucial role of women in the conservation and sustainable use of biological diversity, and it also recognizes the need for their full and effective participation in the development and implementation of conservation policies. Article 1 describes the three objectives of the CBD: the conservation of biological diversity; the sustainable use of its components and the fair and equitable sharing of benefits arising from the utilization of genetic resources, through an appropriate access to genetic resources with technology transfer and the necessary funding.

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In the indigenous languages there is no term for biodiversity. For example, in the Kichwa language of Ecuador it would be interpreted as *Kawsay* which means "life", a holistic cultural concept that includes Mother Earth with all its visible and invisible elements as well as humans. The Art. 8 (j) of the CBD is vital for Indigenous Peoples since it mentions that:

"Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices" (CDB 2001: 12).

States which are Parties to the CBD meet every two years. The First Conference of the Parties (COP) was conducted in Nassau, Bahamas, from November 28 to December 9, 1994. The first meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) was held in 1995, approving the Proposed Work Programme 1995-1997 and calling on the SBSTTA 2 to find the means to achieve the objectives of Art. 8 (j). The COP 2 was held in Jakarta, Indonesia, and suggested the COP 3 to consider the implementation of Article 8 (j). It is worth noting that not even one indigenous delegate was invited to be a part of the Intergovernmental Negotiating Committee of the CBD, thus evidencing the absence of Indigenous Peoples in these events. Additionally, it was not considered that we are both the guardians and protectors of biodiversity, as ancestral owners of traditional knowledge (TK) and natural resources found in our lands, territories and waters (Tauli-Corpuz 2000: 77).

The CBD mentions Indigenous Peoples and Local Communities, in their text, but they were not present in its initial meetings, a matter that alarmed the brothers and sisters of Latin America and the Caribbean (LAC) because Party States discussed international indigenous issues related to our TK, genetic resources and intellectual property, among others issues, without us. The COP 3 was conducted in the city of Buenos Aires, Argentina, in November 1996. On this occasion, the Indigenous Peoples Forum on Biodiversity (IIFB) led by the Coordinator of Indigenous Organizations of the Amazon Basin (COICA) and represented by its Coordinator, Colombian teammate Antonio Jacanamijoy, was carried out. This is how, a document entitled "Indigenous Proposal for the COP 3" was prepared and sent to the COP, which contained a series of written proposals for indigenous strengthening (COICA OMAERE and OPIP 1999: 69) and they were presented by "a group of indigenous brothers of the LAC region, who came to the meeting room to ask to participate and ask for a working group responsible for monitoring the implementation of Article 8 (j) to be created, but the request was denied and our representatives left the room" (Camac com. pers. 2008).

Delegates from Spain did not agree with the rejection of the indigenous request, so COP 3 recommended conducting a five-day workshop for the elaboration of a briefing paper to be presented at COP 4 (Decision 111/14). Thus, prior to the event with Indigenous Peoples, a preparatory meeting (UNEP/CBD/TKBD/1/3 1998) was conducted in Madrid in November, 1997, resulting in the "Workshop on Traditional Knowledge and Biological Diversity" with the participation of 148 indigenous representatives and non-governmental organizations (NGOs).

The bureau created two subgroups, one for the development of a program to ensure the full and effective participation of Indigenous Peoples and one for the creation of an intersessional working group for the implementation of Art. 8 (j), which was under the coordination of the COP but makes recommendations for the SBSTTA. The paper was presented at COP 4 as a non-negotiated compilation of options and perspectives. Funds from the Spanish Agency for International Cooperation for Development (AECID) contributed in conducting this workshop (Tauli-Corpuz 2000; Noguerol com. pers. 2012).

This article is based on the oral testimony of the members and allies of the RMIB-LAC. Also, several factors should be acknowledged, such as: the support from the IUCN-UNEP/GEF ABS-LAC Regional Project, the confidence of colleagues Arturo Mora and Aracely Pazmiño from the Regional Office for the South of the International Union for Conservation of Nature America (IUCN-South) and the collaboration of sister Kuna Florina Lopez, Coordinator of RMIB-LAC. All these people and institutions made the preparation of this written document possible, enabling us to share some of our experiences in the various meetings on biodiversity.

2. Trajectory of Indigenous Peoples and the Indigenous Women's Biodiversity Network

In 1998, in Bratislava (Slovakia) during the COP 4, few indigenous sisters participated: there was one from Africa, one from Asia and two from LAC. Given the complexity of the discussions and in order to include the voice of women, the Network of Indigenous Women's Biodiversity (RMIB) was created. Subsequently, RMIB expands in Africa, the Arctic, Asia and LAC (RMIB-LAC), receiving -as a global entity- the technical and financial support of the Netherlands Center for Indigenous Rights (acronym NCIV), as well as the support of the Intercultural Working Group of the Fundación Almaciga from Spain, and of other friend networks. Thus, each network has its own role and impact depending on the particular situation and needs of their region. The headquarters of the RMIB-LAC are located in the city of Panama and they have a General Coordinator and two focal points (Mesoamerica and South America) as well as coordinators for different areas of biodiversity such as: indicators, education, climate change, Art. 8 (j), Art. 10 (c), the Gender Plan of Action of the CBD, ABS, etc. (López com. pers. 2008).

The cohesive work of the IIFB in the COP 4, generated several important victories in terms of Art. 8 (j), which in turn implied the implementation of permanent lobbying at national and international levels, as well as a sustained organization in order to meet the needs of the Group Working on Art. 8 (j) [WG8 (j)]. The IIFB achieved its own recognition as an Advisory Group of the COP and SBSTTA, and after heavy lobbying managed to establish an Ad Hoc Open-ended Intersessional Working Group, presenting their own terms of reference for the implementation of Article 8 (j) and its related provisions to the States; thus avoiding a "non-indigenous" reinterpretation of these terms by SBSTTA (COICA, OMAERE and OPIP 1999: 70). The results of the indigenous lobbying were reflected on Decision IV / 9 and Decision IV/17 on financing, and here has been an increase since 1998 in the participation of Indigenous Peoples in the various meetings of the CBD. The beginning of the expression of their perspectives and concerns on biodiversity as well as the recognition of the role and contribution of indigenous women in this subject was seen in Nairobi, Kenya, during the COP 5 May 2000 (Tauli-Corpuz 2000; Choque com. pers. 2010a).

The IIFB and RMIB-LAC participated in various meetings to propose and ensure the inclusion of the indigenous view in: the Bonn Guidelines (monetary and non-monetary benefits adopted at COP VI of 2001); the Akwé:Kon Guidelines (evaluations of cultural, environmental and social impacts on lands of Indigenous Peoples and local communities); in the WG8 (j) Work Programme , and in the Takrihwaieri Code of Ethical Conduct (respect for the cultural and intellectual heritage of indigenous peoples and local communities), among others. In 2002 at the World Summit on Sustainable Development, developing countries requested negotiations within the CBD for an International Regime on Access and Sharing of Benefits Derived from the Utilization of Genetic Resources (ABS). In this scenario, the IIFB actively participated from 2004 (COP 7) to 2010 (COP 10) in meetings on ABS, discussing:

- i. Nature (binding or just another instrument?).
- ii. Scope (access to genetic resources, TK and benefit sharing).
- iii. Objectives to facilitate access to genetic resources and ensure benefits sharing.
- iv. Elements to facilitate access and ensure both compliance with prior informed consent (PIC) of the supplier country, as well as the benefit sharing according to mutually agreed terms (MAT).
- v. Measures to endorse a certificate of origin, disclosure of origin in patent applications and benefit sharing when TK is used.

The IIFB collaborated and advised the WG8 (j) and the ABS Working Group (WG-ABS) during the first ABS negotiations, notifying the divergent positions of the States which are Parties of the CBD, since countries of the "South" considered themselves to be "supplier countries or countries of origin "because of being megadiverse, and located in Latin America and South Asia; however, along with the African Group, they called for a binding instrument on ABS for the COP 8. Meanwhile, countries of the "North" recognized themselves as "user countries", because they are developed or industrialized countries, such as: Canada; Australia; New Zealand; Japan; United States of America, and those belonging to the European Union; so they sought a non-binding regime which was consistent with the treaties of the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). In this context, the IIFB actively said "Parties should recognize and respect the rights of Indigenous Peoples on the access to both indigenous knowledge, as well as to their territories, lands and waters; and to the sharing of the benefits arising from access to genetic resources and traditional knowledge associated with these resources " (Indigenous Peoples Council on Biocolonialism 2006: 3).

At the Fourth Meeting of the WG8(j) , held in Granada in 2006, the eldest indigenous sisters were baffled and had mixed feelings because it was difficult to understand biopiracy and the consideration for Mother Earth, Pachamama, and its resources as a commodity. A Caribbean sister said, with deep regret, that she was " heartbroken by pain, and could not accept the western way of dividing Mother Earth in pieces, since in the indigenous worldview all elements complement and interrelate. Plants and other items have been on Mother Earth since ancient times for the benefit and service of humanity." To this, a state representative replied, "if you are here in this room is because you agreed to negotiate and that's what we're doing now, negotiating." At that meeting, it was not easy to assimilate the mentality of the Party States (Reyes com. pers. 2006).

From the beginning of discussions on the International Regime on ABS for the RMIB-LAC, it was decided to follow the issue and consistently participate in the various meetings. An indigenous sister from Argentina explained to the RMIB-LAC the scope of ABS and its implications for the lives of Indigenous Peoples. In simple words, she helped us understand what is a genetic resource and how the use of each organ of a plant produces a variety of products, which can generate millions in profits that remain in the hands of transnational pharmaceutical researchers if sold in the market, and that there is no benefit to Indigenous Peoples, who are the guardians and custodians of biodiversity (Terán tes. pers. 2006).

During the six years of negotiations on ABS, the IIFB and the RMIB-LAC had to overcome internal difficulties, and an understanding between peoples was required first in order to build a common language and a common ground in the face of the official texts and states. In itself, the task was characterized by constant patience, tact and respect between Indigenous Peoples, as well as lobbying between the IIFB and some states. The RMIB-LAC is a member of the IIFB and in all international meetings we make joint decisions, even when we make separate or joint declarations, and there is always a fluid communication to support each other in our demands and there is a certain position to act firmly and with responsibility. Several meetings on ABS were held at night, without translation assistance, but the LAC group participated and followed the discussions through interpretation from English to Spanish done by the Intercultural Working Group of Fundación Almaciga.

In April 2009, the RMIB-LAC signed a Memorandum of Understanding (MOU) with the CBD Secretariat, and they had financial support from the governments of Spain and Japan from 2009 to 2013. A number of regional and sub-regional training workshops were conducted in LAC with the participation of women (80%) and men (20%) Indigenous Peoples and local communities (Table 1). The training included: the text of the CBD; issues related to Art. 8 (j); TK protection; ABS, and implementation of the Nagoya Protocol. It is worth noting that the indigenous focal point of the CBD Secretariat –an indigenous lawyer, member of the RMIB-LAC– collaborated in all events, until her nomination as Associate Officer for the Program on Art. 8 (j) and ABS, a position created through the generous support of the Government of Spain.

Table 1. Training workshops on issues related to the Convention on Biological Diversity organized by the Indigenous Women's Network of Latin America and the Caribbean for Biodiversity.

Workshop	Place and date	Participant Countries
First Latin American Preparatory Workshop of Indigenous Women for COP 9	Panama, Panama, April 7-9, 2008	Argentina, Bolivia, Brazil, Costa Rica, Chile, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Puerto Rico, Peru and Venezuela
Second Preparatory Workshop for the Sixth Meeting of the WG8(j)	Montreal, Canada October 29-31, 2009	Argentina, Bolivia, Brazil, Costa Rica, Chile, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Puerto Rico, Peru and Venezuela
Third Workshop Southern Cone Region	Buenos Aires, Argentina February 4-6, 2010	Argentina, Chile, Paraguay, Panama and Uruguay

Workshop	Place and date	Participant Countries
4th Subregional Workshop Mesoamerica	Guatemala, Guatemala March 4-6, 2010	Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama
5th Workshop Amazon Region	Brasilia, Brasil June 2- 4, 2010	Brasil, Perú y Venezuela Argentina, Bolivia, Brazil, Colombia, Chile, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Perú, Paraguay and Venezuela
6 th Workshop in Preparation for COP 10	Panama, Panama August 11-13, 2010	
7th Subregional Workshop Andes	Bogota, Colombia September 23 -25, 2010	Bolivia, Colombia, Ecuador Guatemala and Peru
8th Subregional Workshop Caribbean	Georgetown, Guyana March 16-18, 2011-	Belize, Granada, Guyana, Santa Lucia and Surinam Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guyana, Honduras, Haiti, Mexico, Panama, Peru, Paraguay, Santa Lucia, Uruguay and Venezuela
9th Regional Workshop of Preparation for the COP 11	Asuncion, Paraguay August 10-15, 2012	Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guyana, Honduras, Haiti, Mexico, Panama, Peru, Paraguay, Santa Lucia, Uruguay and Venezuela
10th Regional Workshop (ABS)	Asuncion, Paraguay August 17-18, 2012	Representatives of State and of the Indigenous Peoples of Countries of the Amazon Basin, Bolivia y Panama
Workshop for countries of the Amazon Basin	Cochabamba, Bolivia December 9-12, 2013	

Elaborated by Yolanda Terán (2014) based on the different CBD reports on capacity building workshops for Latin America and the Caribbean.

The results of the workshops include the following: the strengthening and training of participants from Indigenous Peoples and communities, especially of women so they can proceed effectively in CBD processes; the increase in the number of participants from Indigenous Peoples and local communities in the CBD process, and an increase in awareness and education regarding the CBD among Indigenous Peoples and local communities. Also, the improvement of the capabilities of the RMIB-LAC enabled fully and effectively participate in the meetings of the CBD, especially in negotiations pertaining to Arts. 8 (j) (CT), 10 (c) (ecosystems) and 15 (development of an international regime on ABS).

3. ABS and the biggest challenges for Indigenous Peoples

After six years of intense and complex negotiations, finally the International Regime on ABS was adopted in Japan during the COP 10 under the name of the Nagoya Protocol, which included a

preamble with seven important paragraphs for Indigenous Peoples and TK. In this regard, it refers to Article 8 (j), the interrelationship between and inseparable nature of genetic resources and TK, the diversity of circumstances of ownership or possession of the TK; the identification of TK holders on the part of countries, the Declaration of the Rights of Indigenous Peoples and the non-extinction of existing rights.

The Nagoya Protocol has obligations related to the access to genetic resources, the fair and equitable sharing of benefits from their use and the compliance with PIC and MAT. It also refers to the designation of checkpoints and reporting to monitor the use of genetic resources, as well as to the establishment of an internationally recognized certificate of compliance, to be awarded by the provider to ensure access of resources through compliance with PIC and MAT. In recognizing the TK associated with genetic resources of Indigenous Peoples in the Nagoya Protocol, rights requiring PIC and MAT related benefit sharing under national laws or regulations for ABS are established (Bavikatte y Robinson 2011).

The Nagoya Protocol is a new international instrument currently awaiting fifty signatures of the Party states in order to go into effect in 2014, and which is complex and difficult to enforce for both the signatory States as well as for the Indigenous Peoples and local communities. Therefore, the political will of states is required to create a legal framework that provides security to all stakeholders involved in the ABS and should be created in conjunction with Indigenous Peoples to be a just recognition of our ancestral responsibility in the care and conservation of biodiversity, since we are the owners of genetic resources and associated TK. The design of the legal framework needs further discussion, understanding and decision according to the participants of the "Training Workshop on Biodiversity" (Cochabamba, December 2013), because it is necessary to clarify several issues pertaining to ABS with the participation of Indigenous Peoples (López com. pers. 2013a).

It is important to have a legal framework for ABS for the implementation and enforcement of the Nagoya Protocol, so everyone involved knows their role, responsibilities and negotiation times, thus achieving the compliance with PIC and MAT. In this regard, Art. 57 of the Constitution of Ecuador recognizes 21 collective rights (Constitution of the Republic of Ecuador, 2008), among which the following stand out:

- i. Art. 5 refers to maintaining the possession of ancestral lands and territories and obtain their free allotment.
- ii. Art. 6 refers to participating in the usufruct, management and conservation of natural resources found on their land.
- iii. Art. 12 refers to recognizing the ownership of Indigenous Peoples over their TK and prohibiting all forms of appropriation of their knowledge, innovations and practices.

At the regional level, Art. 7 of Decision 391 of the Andean Community of Nations (CAN) adopted on July 2, 1996, states that Member States: "... recognize and value the rights and decision making powers of indigenous, Afro-American and local communities over their traditional knowledge, innovations and practices associated to genetic resources and derived products". And Art. 35 mentions "the conditions for access and use of this knowledge should be determined by the Indigenous Peoples

and those interested in a Contract for Access (to genetic resources)". The Eighth Temporary Provision calls for the establishment of "special regime or a harmonization regulation, as applicable, aimed at reinforcing the protection of know-how, innovations and traditional practices of native, Afro-American and local communities" (Ruiz Müller 2006: 57-58).

Given the national and subregional legislation, several questions arise: What is the procedure to be followed in Ecuador and the Andean Community? In what way are they going to involve the Indigenous Peoples? How will indigenous participation in the benefits be determined? What will the percentage, the conditions, and the duration be, and how will TK be protected? In this regard, it is proposed that an intercultural institution help incorporate positive law and customary law in relation with ABS and include the full and effective participation of Intercultural human talent that is trained and knowledgeable on the subject, requiring both an indigenous perspective and a Western one which are able to ensure *Sumak Kawsay* or good living and the rights of Indigenous Peoples.

Another of the challenges of the Nagoya Protocol is the compliance with PIC and the presentation of study the sociocultural impact of ABS in the lives of the Indigenous Peoples before, during and after the negotiation. Prior information should be provided to Indigenous Peoples through culturally appropriate methods and instruments, all of which contribute to convey a clear message which takes into account indigenous times, rhythms and protocols. The process of obtaining the PIC will be in accordance with customary laws and our collective rights as mentioned by the international instruments of Convention 169 and of the Declaration of the United Nations (UN) on the Human Rights of Indigenous Peoples:

"Companies should consider our cultural time in order to have dialogues with us in order to understand the information provided before giving a positive or negative response ... this process may take a day two ... or more, depending on the understanding that each of the brothers from the People's community has ... nobody should pressure us ... we have the right to think calmly about what we need and what would be detrimental to our people and to our Mother Earth ... it is not easy to change the way we think, feel and live, Earth is our mother and now you are forcing us to regard it as a commodity ... the new development model considers it to be just that, so it abuses it and destroys it ... we, indigenous women, have a great responsibility to our People, we have to care for and protect Mother Earth for all the generations that will come after us..." (Sánchez com. pers. 2010).

In reference to the previous observations, one can mention Art. 7 of the Constitution of Ecuador which talks of the implementation of a PIC within a reasonable period time, and if the consulted community were to deny such consent, the process would proceed in accordance with what the Constitution and the Law mandate. Moreover, the article also mentions the participation of Indigenous Peoples in the benefits generated by the projects on their land or the compensation for social damages. Thus, the contracts must be signed and implemented within a framework of good faith and respect, adhering to well defined durations and transparent clauses in order to avoid uncertainty or ambiguity. The certificate of origin helps with the fair and equitable sharing of benefits for Indigenous Peoples, whether they be monetary and / or non-monetary, and making it clear that they should never cause division, separation or internal strife, because:

“We are people with a verbal tradition and we respect the word that is given. However, in the case of contracts we will have to change to the written word and the rapid understanding of the technical and legal terms. It will be essential to have the legal support of intercultural environmental lawyers, have the spiritual support of our elders, the determined participation of youth; we will need to develop a new indigenous leadership that can face and respond to the new needs and emergencies, as well as strengthen the bonds of cooperation with different friend networks. Our full and effective participation in the CBD process and the implementation of the Nagoya Protocol should be from the beginning to the end. We urgently need to socialize this protocol with our grassroots, have appropriate funding for timely and sustained training in order to face the challenges of ABS from a position of understanding of the threats that modern development brings to our survival and to that of Pachamama or mother Earth. We urgently need to review and strengthen our capacities and leadership” (Males com. pers. 2013).

4. Experiences of Indigenous Peoples and RMIB-LAC in order to understand ABS

During the negotiations on ABS we went through both positive and critical moments, because parties would make critical internal decisions, and some were published in ECO, the written bulletin that monitored the meetings of the CBD and the COP. In Bonn (Germany), in May 2008, during the COP 9, an anonymous article appeared and referred to the disappearance of WG8 (j) due to a lack of funding. The document worried the representatives of IIFB and RMIB-LAC due to its relevance to our peoples, especially because this was the first point of contact between the CBD and Indigenous Peoples the close link between Art. 8 (j) and ABS as the advisory group to the COP and WG8 (j) (Anonymous 2008). In the texts on tasks 7, 10, 12 and 15 of the second phase of the Work Programme for Art. 8 (j), there was a disagreement with Canada; which is why the indigenous brothers of the Canadian delegation were invited to the FIIB to have an early dialogue among Indigenous Peoples and later with the Canadian delegates. At the beginning of the meeting and in accordance with our protocol, the Canadian Indian chief held a ceremony with tobacco, asking the Creator and our ancestors the guidance needed to find a win-win solution. Indigenous representatives expressed our views on the importance and continuation of the WG8 (j) in several meetings, and the Canadian indigenous brothers conveyed our concerns to their official delegates, thus reaching an agreement through which the working group recovered its validity (Terán 2009).

In Bonn, during the dialogue between Indigenous Peoples, the RMIB-LAC played an important role since it was us who attended all meetings accompanied by a spiritual leader from Mexico. We organized to work efficiently, and each sister had a definite responsibility. A sister from El Salvador was our moral support and example of perseverance. On one occasion, due to the lack of transport and lack of knowledge regarding the place, we got lost and arrived late to a meeting on ABS, when we entered the room without the translation aids, it was the Salvadoran sister who was in charge of untangling the equipment with patience, facilitating our participation in the subject. A young indigenous woman from Argentina transported the translation equipment of the FIIB on her bicycle, waiting for us at the various venues with everything ready. Every night we worked until dawn, and at six in the morning we were up, continuing our participation in the various meetings thanks to a sister from the RMIB-LAC who would wake us up.

At the COP in Bonn, we were known as "the mighty ones" and our organized work and decisive contribution to the CBD process was acknowledged. At the COP 9, the RMIB-LAC we realized we needed laptops and flash memories to save documents, cellphones for prompt communication and support from a focal point for Indigenous Peoples from the region within the CBD Secretariat. This is how, in Bonn the RMIB-LAC brought up the need to provide support to the representative and the focal point from Spain for Art. 8 (j) (Terán, pers. acc., 2008). One of the points which was ardously championed by the IIFB and RMIB-LAC during the negotiations of ABS points was the inseparable relationship between genetic resources and traditional knowledge associated with them: "for Indigenous Peoples this relationship is obvious and intrinsic. As a people, we grew up practicing our traditional knowledge. We live and use it every day, traditional knowledge is present there, it is valid, there is no need to explain it or draw it because it is an essential cultural element in our lives that is transmitted orally from generation to generation from ancient times (Guacho pers. comm. 2013). However, for states it is difficult to understand this intrinsic relationship and find it convenient to separate the two. Furthermore, they seek to understand where the TK of the Indigenous Peoples starts and where it ends.

In this sensitive scenario for us, it is worth mentioning that for several authors it is impossible to separate genetic resources and knowledge (cognitive or intangible contribution), since they are part of an indivisible whole in the indigenous world, accentuating the economic value even more (Ruiz Müller 2006: 44). During a meeting of ABS in the city of Nagoya, some government representatives stated that it was difficult to defend our rights and biodiversity, particularly because they do not have Indigenous Peoples and do not understand the level and scope of TK. On that occasion, as IIFB, we referred to the comprehensive and holistic view that is manifested in the interconnection of the visible and invisible, sacred and secret elements of Mother Earth, the intrinsic relationship between genetic resources and associated TK, as well as to our disagreement with the separation of these elements. He then spoke of a roadmap on TK" (López pers. comm. 2010a; Terán pers. acc. 2010a).

In January 2010, during the first day of the ABS meeting in Montreal, a few months before the COP 10, the negotiating group of the IIFB comprised of 10 indigenous brothers and sisters from different regions of the world, along with other representatives of the IIFB, decided to leave the room because the two permanent co-chairs of the Working Group on ABS refused to let our negotiators speak and breached the rules for participation. Noticing our absence, a delegate of the African Group came out to talk to the IIFB, asked us to remain calm and to come back so we could speak, complying with the protocol established for the meeting and offering us the support of his group. The IIFB decided to wait before re-entering the meeting room. During this time, we received personal apologies from two officials of the WG on ABS (Fernando Casas, from Colombia and Timothy Hodges, from Canada). The IIFB agreed to go back in together, but before doing so the two negotiators of LAC wrote a paragraph in English that was corrected by indigenous delegates from Canada. It was decided this paragraph would be read by the LAC negotiator. When we went it, our request to address the room was accepted immediately, but minutes later we realized that only indigenous representatives of LAC did so, and stood in a semicircle behind our two negotiators (Mexico and Ecuador RMIB-LAC) as a sign of support. When everything was back to normal, negotiators from Asia, Africa, North America and Arctic entered the room to take their place as negotiators.

The situation previously described reflects a difficult situation for LAC, which is why it was responded firmly as a solid block position. The fact that the two negotiators of LAC are academics, and they speak and write English was a key element in solving the impasse. While the paragraph was being read "some states did not know where this indigenous woman negotiator with such good English had come from, they approached her to congratulate her and have a closer look." Thus, for the sister from RMIB-LAC this experience was akin to giving birth to her first child in the CBD, because everything happened so quickly and there was no time to say no. The situation was a full of nervousness, tension and worry. The experience is communal and political, as well as an example of lobbying and intercultural management protocols which requires giving a quick response to critical situations and trusting our actions. It also becomes vital to have the support from LAC representatives to make a difference in the process of negotiations of the CBD, for Art. 8 (j) and ABS (Acosta and Hidalgo, pers. comm. 2010; Choque and López, pers. comm. 2010b; Terán, pers. acc. 2010b).

The group of indigenous negotiators on ABS needed time to settle, overcome distrust and fears, accept themselves with respect and determine responsibilities, since usually delegates from North America and Asia were the spokespeople for IIFB, there was a predominance of arguments against states. However, the other negotiators in the room were always ready to offer our support. Negotiations occurred rapidly and in English, which is why the negotiating team should always be aware and focused, whether it is to submit appropriate texts or make decisions. The IIFB and the negotiating team were under constant pressure, striving to overcome internal problems, and their participation proved to be decisive in the case of LAC deciding that the negotiator should be a man and speak for the region, a situation that angered several sisters because there was already a negotiating sister. Furthermore, our region had to endure the distrust of some indigenous representatives from North America, who assumed that the Southern delegates did not have the capacity to negotiate.

Through diplomacy, the RMIB-LAC regained the respect and calm required for negotiations, making its presence relevant at all meetings of ABS, with or without translation and facing the states Party in order to follow the topic. The group stayed together taking care and supporting each other within the frame of our indigenous spirituality to continue meetings with the same spirit and energy. This is why it "achieved the inclusion of several texts in the Nagoya Protocol which are of importance for Indigenous Peoples and their biocultural collective rights. Now we need to publicize this new international instrument among the grassroots of our Indigenous Peoples and find the best alternatives to conduct good faith negotiations that benefit us all" (Salvatierra, Domínguez y Males com. pers. 2013).

5. ABS key elements for the capacity building of Indigenous Peoples

The implementation of the Nagoya Protocol will shortly become a reality, and while this process advances it is essential that Indigenous Peoples and local communities have an adequate and comprehensive training that meets their particular needs. This training must be conducted with local authorities and other participants. Understanding the protocol requires:

- i. Knowing about human rights and the rights of nature (referred to in the Constitution of Ecuador).
- ii. Understanding the meaning and consequences of: biopiracy, included in the Convention on Biological Diversity and its three objectives, as well as the significance of Art. 8 (j), Art. 10 (c) and Art. 15 for Indigenous Peoples.
- iii. Understanding what a genetic resource is, its uses and its market sale.
- iv. Reasoning about what is benefit-sharing arising from the utilization of genetic resources and associated TK.
- v. Raising awareness among Indigenous Peoples and local communities regarding the large annual earnings gained by transnational companies for selling products made from plants used by the indigenous peoples. According to Kate and Laird (1999) there are earnings of 500 to 800 billion dollars from the use of traditional knowledge, and their participation proved to be difficult to determine in terms of the economic value of indigenous intellectual contributions, innovations and practices. Thus, if only 10% of the 5 billion dollars in earnings were to return to their intellectual owners, this minimum percentage would help solve the basic needs of Indigenous Peoples (Ruiz Müller 2006: 43).

In this context, a deep reflection is required in order to act with social justice and in accordance with the objectives of the CBD. I can only say that "our people always act in good faith and generosity, we are very humane and believe in the word that is given. Our territories are rich in resources, but are paradoxically poor or extremely poor, so while we struggle daily for survival, we do not have time to instruct ourselves on biodiversity and biopiracy. We are Peoples with a verbal tradition and our way of living, feeling and thinking is closely related to the welfare of Mother Earth, since that is where cultural diversity develops ... plants, animals and other elements are our brothers, so I think that for strengthening the capacity of Indigenous Peoples, the indigenous worldview must be taken into account , as well as our way of acting , indigenous governance, customary law, the protection of traditional knowledge and community protocols" (Guamán, pers. comm. 2013).

Considering the vast experience of the RMIB-LAC on capacity building, several points should be taken into account in order to design effective training. For example, it needs to be known whether the Indigenous People are recognized or not by their country; whether they know their individual and collective rights, and whether they are aware of the Constitution and other international instruments such as Convention 169 of the International Labor Organization (ILO), and the Declaration of the United Nations on Human Rights of Indigenous Peoples. In this sense, preliminary research must be conducted with the objective of having information about possible cases of biopiracy, gaining the knowledge regarding the weaknesses and potential of the indigenous people and their bio-cultural community protocols and customary laws.

The training of Indigenous Peoples should be designed collectively among their leaders and the facilitator team, since this procedure would allow the co-production of participatory methods and support materials that are suitable for handling real cases that affect the lives of Indigenous Peoples. The use of indigenous languages and visual materials will be of great support, including practical exercises, role plays, theater sketches which provide a better understanding about obtaining the PIC, and knowing who and how consent is sought. They may also serve as a reminder of a customary way

to grant it or deny it. When teaching the concept and use of a genetic resource through a plant, one might do so presenting products like pills, creams and/or shampoo, among others, so its application in the market can be understood. In the case of contracts, roles plays on various real negative situations can be used since they lead participants to reflection, because based on this information they can act with caution and carefully review a written document if the occasion to sign it arrives. Facilitators should present different models of contracts to perform an analysis and comparison. The sharing of benefits from the use of genetic resources and associated TK of Indigenous Peoples must be clearly agreed upon.

It is necessary to have information on the knowledge and/or the existence of community protocols, codes of ethics and conduct, in order to analyze their importance in protecting resources and TK in defense of Indigenous Peoples, because the protocols are collectively constructed using customary laws as a framework. Indigenous Peoples will decide sovereignly on whether they will create sui generis protection systems and documentation on TK or not. It is vital to include women, youth and the elderly into the strengthening of capacity building. During the training, some cases of biopiracy and ABS should be presented, such as:

- i. The case of the Awa people living in the provinces of Esmeraldas, Carchi and Imbabura Colombia. On May 10, 1993, Ecuador signed an agreement with the National Cancer Institute of the United States of America through the Federation of Awa Centers of Ecuador with the objective of conducting a study for the prevention and/or cure of cancer and AIDS with medicinal plants that are present in the Awa territory. The New York Botanical Garden now has 4,500 specimens of medicinal plants, and the monitoring of the case by the Ministry of Environment of Ecuador is required, as well as and accountability report from the institute (de la Cruz 2006).
- ii. The case of the patent for "ayahwasca", a plant which is present in the Amazon of Brazil, Colombia, Ecuador, Guyana, Peru, Surinam and Venezuela, and is used and respected by some 390 indigenous nationalities as ceremonial, spiritual, ritual and sacred. On June 17, 1986, Mr. Loren Miller, an American citizen, after living eight years with the indigenous Cofan and Siona took specimens from their territory and patented the species *Banisteriopsis caapi*. He never deposited a botanical sample in any herbarium in Ecuador. In 1994, COICA along with the Amazon Alliance and the Center for International Environmental Law (CIEL) filed a complaint with the registrar of patents and trademarks in the United States, achieving the return of the patent, because Mr. Miller did not meet the novelty requirement. The patent which was granted for 17 years expired on June 17, 2003 (de la Cruz 2006).
- iii. Ecuador implemented the first ProBenefit Project (ABS), with the participation of the Federation of Organizations of the Napo Kichwa Nationality (FONAKIN) and the German pharmaceutical firm Schwabe S.L. On May 5, 2005, in Archidona, a one-year agreement was signed from March to May 2006, and a training course was conducted on the "Commercial use of medicinal plants and traditional knowledge: Risks and Opportunities". However, the project was not concluded (de la Cruz 2006).

"The text of the Nagoya Protocol has several items of significance for Indigenous Peoples, so we must be observant regarding the full and transparent compliance with what is written. In this observance, we need to strengthen our capacities as indigenous peoples. We need to understand each

of the items and their relevance for us and we need to know how the Constitution of each country ensures the compliance on ABS or other international instruments that support our rights. The capacity building and strengthening with and for Indigenous Peoples must start from the lesson on what is a human right to what is a genetic resource, while understanding what is TK, why it should be protected and how. Another situation to consider is the fact that states do not even recognize their indigenous peoples as such, as well as the delicate and self-determining sovereign decision of each People to register their TK or not after analyzing the advantages and disadvantages that this entails. We have to look for alternative strategies to protect our biodiversity and associated TK, so it is becoming essential to implement our community protocols based on our own right to stop the theft of our plants and genetic resources and learn how to defend ourselves ... We see the implementation of the Protocol as an unequal balance in which states have greater political and economic importance, while constituting a process that is full of great challenges ... those who have followed the meetings have a moral obligation to train our people ... through creativity, self-management, the use of participatory methods on site or at a distance. We must share and learn from our own experiences, we must use funding effectively to train multipliers of knowledge" (García com. pers. 2013).

6. What have we done as Indigenous Peoples and RMIB-LAC to understand ABS?

The final text of the Nagoya Protocol is the result of the collective and organized work of the indigenous brothers and sisters of the IIFB, particularly of the women of RMIB-LAC, who understood that the International Regime on ABS required a sustained follow-up in order to establish our position on the basis of an understanding of the issues under discussion. The RMIB-LAC participation strategies are based on prior preparation through: reading technical and complicated texts; disseminating topics among the members of the Network; sharing information through electronic means; training through workshops prior to the COP; clarifying doubts and preparing, correcting and translating paragraphs, texts and statements to be presented at the various meetings.

RMIB -LAC makes partnerships and agreements with environmental and human rights organizations and some universities such as the *Universidad Técnica Particular de Loja* (UTPL) located in Loja (Ecuador), and the University of New Mexico (UNM), located in the city of Albuquerque (USA), where the New Mexico Advisory Group that supports RMIB-LAC in the CBD process was created with the decisive support of the following entities : the *Centro de la Raza*; the Latin American and Iberian Institute; the School of Indigenous Law; the Department of Indigenous Planning; the Iberoamerican Consortium for Science, Technology and Education (ISTEC); the University of New Mexico; the Ortiz Center; the New Mexico Acequia Association; the Yánesha Association of Peru and the Andes Chinchasuyu Indigenous Organization from Ecuador, which is part of the RMIB-LAC. Group provided strong support to the IIFB by writing three papers, two regarding the indigenous position with respect to the International ABS Regime, and the third on the adoption of the terms of Indigenous Peoples in the text of Art. 8 (j). These documents were created, revised and corrected collectively, and sent to the Secretariat of the CBD. One document entitled "Culture and knowledge are NOT negotiable", served the IIFB as a starting point during discussions on ABS conducted in 2010 in Cali (Colombia). The Advisory Group met for the first time in

the halls of the UNM during November 2009, with the coordination of an indigenous expert; the second time, it met in December 2009 with the coordination of an indigenous expert from Peru; and the third time in February 2013, with the support of a lawyer from "Natural Justice" and the Faculty of Indigenous Law of UNM. In the meetings, we had the participation of different delegates from the following institutions: the Intercultural University of Mexico; the Fray Lucca University of Cuernavaca, Mexico and the UNM, as well as the presence of indigenous representatives from Peru, Bolivia and Ecuador. Several departments at UNM supported the funding for carrying out these workshops, so we had the support and solidarity of several people both for the logistics and for food. Additionally, we did a *minga* in defense of our lives, resources and traditional knowledge.

RMIB-LAC got involved in the CBD process with insufficient knowledge of biodiversity, few people knew and understood the discussions. In 2006, during the meeting of WG8 (j) in Granada, Spain, we perceived that indigenous representatives of IIFB who attended previous meetings were too busy and had no time to teach or at least give basic instructions to new participants. In this situation, we did not know what to do, what to say, when to speak or where to go, so we followed people where they were going, but without knowing what would happen, so at times it was frustrating to see the concern in the faces of our indigenous representatives. We asked a Latin American brother about a topic we did not understand very well, but he suggested we "go and study for ourselves, because there's no time to waste in training".

There was an established order at IIFB, which was a factor hindering the participation of new people. The confidence of the IIFB was earned with great effort through specific activities and results. All this stressful environment motivated us to: educate ourselves; study; understand the CBD first and analyze Articles 8 (j), 10 (c) and 15 of the International Regime on ABS. In this way, "I personally made the decision of training myself because of my commitment to our Peoples and the complexity of the points under discussion. I gained experience in these matters by reading documents, books, participating in several parallel events, talking to several people, daring to lobby with states at the right time (with no previous experience). Everything I learned along the way, I shared with new indigenous participants in order to guide them to have an effective presence in meetings. Thanks to my self-training I could raise my own awareness and support RMIB-LAC later on in different workshops. I like to teach with simplicity and respect, lending my experience on biodiversity and the CBD process with the hope that knowledge will multiply, help raise indigenous self-esteem and encourage the defense of our rights in relation to biodiversity" (Terán, pers. acc. 2006).

Those of us who participated in the CBD process are few when compared to the number of topics discussed: protected areas; climate change; agricultural diversity; indicators; Strategic Plan; Aichi; Geo Engineering; Biodiversity and Health; Biodiversity and Poverty; Art. 8 (j) and the Work Programme; and Section 10 (c), among others. This is why, we are aware of the need for a permanent source of funding in order to secure our participation in the meetings, as well as to conduct a proper and appropriate training among the various Indigenous Peoples. The use of our resources and associated TK is moving ahead and we have to be quite creative in promoting defense and protection mechanisms. In this sense, it becomes essential to have our community protocols ready, either through video, photos, theater and / or role plays to be used at the right time.

Protocols which are built collectively set the tone, conditions and aspirations of Indigenous Peoples facing cases of research, negotiation or misuse of our resources and / or TK. Depending on the case, some parts of the protocol would be delivered to the competent authorities. On the subject of ABS, community protocols determine: who owns the genetic resources and associated TK; how PIC and MAT are obtained; how access should be done, and how would benefit sharing happen. Thus, we would say that "the protocols are in the oral memory of our peoples, but we need to remember, relearn and the rework them according to current needs. The essential thing is to internally strengthen our governance systems, strengthen our local authorities and all the People. We also need to walk with the guide of new leadership and with a sturdy and renewed indigenous spirituality" (Guacho com. pers. 2013).

Elaborating community protocols would help us to understand what is the PIC in a practical way and it would provide us with the ability to analyze information, especially before consenting or denying the involvement of the people in any particular negotiation or when signing a contract . For this reason, "it is expected that while the implementation of the Nagoya Protocol is in progress, the Indigenous Peoples through formal and informal training gain a full understanding of the various issues and working groups on biodiversity and ABS, since they can later participate in meetings knowing about the issues pertaining to biodiversity and related topics beforehand. Women play an important role in creating new capacities because they are the cultural pillar of Indigenous Peoples, as well as being the main conveyers of knowledge, language and culture "(Guaman, pers. comm. 2013). Indigenous peoples must build technical and political teams, strengthen our alliances and consolidate the connection with academia, since this may serve as support in the design and implementation of different training, technology and information transfer for both knowledge the researched biodiversity as well as for the discovery of its potential uses in order to promote their valorization, and the co-authorship of publications (Cabrera Medaglia 2013).

The strengthening of RMIB-LAC and the design of its Strategic Plan has the support of organizations such as: IUCN-South; Conservation International (CI); UN Women, and Natural Justice. The technical and / or financial support will be invested in a desired goal which is to improve our team of facilitators and teaching methods, thus achieving a training among Indigenous Peoples and States Party; in this way, the RMIB-LAC will serve Indigenous Peoples with all the experience it has gained during its many years of participation in the meetings of the CBD. Thus, when faced with a case of biopiracy or misappropriation of genetic resources and associated TK, there will be a particular outcome in the strengthening of local capacities, since indigenous peoples would be ready to: act calmly but firmly; know how to organize themselves, what to do, where to go and / or who to talk to; define clear roles and responsibilities; apply their community bioprotocols, and work with friend networks.

7. Challenges of indigenous participation in the CBD

The participation of Indigenous Peoples in the process of the CBD and ABS has a long journey full of positive and negative experiences. During these years had to: urgently learn how to conduct intercultural and international lobbying; overcome our fears and mistrust; build our defense and message on the go or in unequal situations while striding to perform an efficient and timely work, with an understanding and in defense of biodiversity and our survival as Indigenous Peoples. At times, we

At times, we spoke directly with our own voice in the WG8 (j), but sometimes we had to look for the support of a friendly state for our voice to be considered and included in discussion papers such as the GT-ABS. The way is made of fast decisions, great lessons and learning, and the sacred circle was where we all share a space for participation that allowed us to listen and include all voices democratically. The road we have walked has taught us to be tolerant and flexible in order to understand the new processes of the CBD and ABS, because the purpose is to apply intercultural community bioprotocols and highlight the needs of our Peoples. The approach with indigenous government delegates from Ecuador, Bolivia, Guatemala and Panama gave us satisfactory results, as was the case at COP 9 in Germany. For this reason, we work on mutual respect and trust, understanding the critical points for our peoples together, writing texts and presenting them at meetings on time.

By following the teachings of our elders, as indigenous women we rely on our spirituality to strengthen ourselves and advance with technical contributions, as well as to: participate in various side events during the sessions of the CBD; lecture at universities; participate in informal forums; write and translate articles for magazines; meet the media; obtain financing, and strengthen partnerships with our allies. It is hard to leave our families for several days to attend each of the meetings, and very often we embark on traveling abroad without financial resources, because what little we have left is to sustain our home. While we participate at meetings, as indigenous women we also see to other needs of our people and organizations, thus playing several roles simultaneously. International meetings are intense, requiring daily work, study and concentration, and our schedule starts in the early morning and ends late at night. Today, we can say that we have fully fulfilled our commitment and responsibility with Indigenous Peoples, because we pour all our knowledge and being into the defense of our Kawsay, which implies life and biodiversity. Indigenous men and women work in an orderly and disciplined manner in the art of resistance, while moving ahead in the construction and defense of third generation rights, "group rights or collective rights" referred to as "biocultural rights" which are defended by the will and conviction of the Indigenous Peoples and local communities (Bavikatte and Robinson 2010: 23-26).

The accomplishments in the text of the Nagoya Protocol are on paper, and the pending task for Indigenous Peoples, including women, is to participate effectively in the implementation and enforcement of a proper transparent access to genetic resources. By helping indigenous peoples in the development of community protocols and / or sui generis systems with clear rules on ABS, PIC, MAT and the protection of TK will be achieved. It will be essential to assemble intercultural and inter-disciplinary teams, because this will make it possible for work to be complementary among men, women, youth, children and the elderly. Furthermore, the wisdom and experience of the elders shall guide this complex process. The full and effective participation of Indigenous Peoples in the process of the CBD should be maintained, and the lobbying at national and international level should continue in order to maintain a sustained and visible presence.

The processes of participation and inclusion will be known and understood by the younger generation, implementing and replicating the achievements. It will also be possible to correct, prevent or transform mistakes into positive experiences. Capacity building will help us to achieve our internal

and comprehensive empowerment as well as to understand and solve business problems and face modern challenges related to ABS. The complexity of international issues should not frighten us. On the contrary, we must study them in order to understand them and get a full and effective participation in the various meetings of the CBD for which we must seek the necessary funding.

8. Lessons learned by Indigenous Peoples and RMIB-LAC regarding ABS

"The women of RMIB-LAC are tireless workers, complying with their commitments reliably and enjoying great credibility before the states parties, who placed the funds needed for the training workshops because they are convinced by our work" (pers. comm. Noguero, 2012). Thus, the main lessons learned, particularly relating to the difficulties and complexities encountered along the way, are the following:

- i. Participation of the IIFB and RMIB-LAC in regional or subregional meetings to get to the events of the CBD, ABS or others with a consensual position.
- ii. Follow up on the issues discussed and agreed with clear arguments, delegating this to a small monitoring panel whenever possible.
- iii. Internal discussion and delivery of an appropriate response from IIFB for consultations by the states.
- iv. Quick implementation of agreements among Indigenous Peoples in complicated situations, avoiding time waste, altercations and disadvantages with respect to the states, since the meetings continue with or without indigenous participation.
- v. Continued lobbying in the respective countries and with the official delegates in meetings.
- vi. Organization of a file with the previous statements and positions of Indigenous Peoples to maintain the same perspective and avoid future inconsistencies.
- vii. Participation in side events to make indigenous perspectives visible.
- viii. Persistence in meetings even without translation, establishing our presence as Indigenous Peoples.
- ix. Making an effort to learn other languages like English and French.
- x. Inclusion of intercultural environmental law attorneys.
- xi. Strengthening of the cooperation with friends networks.
- xii. Immediate presentation to Indigenous Peoples of the results, conclusions, challenges and pending tasks arising from international meetings.

In all of the points mentioned and analyzed above, we must add that during the three years of capacity building as RMIB-LAC, we had various experiences, among which we include the following:

- i. The indigenous focal point for LAC in the CBD Secretariat and the funding obtained were key elements to advance in this commitment.
- ii. Regional and subregional workshops forced us to organize ourselves and coordinate effectively. This was reflected in the increase of participants in the CBD process and in the improvement of our own capabilities and those of the Indigenous Peoples.

- iii. Workshops for capacity improvement on the process and issues of the CBD require more time for discussions so these can help participants to have a broader understanding of the issues. It also requires more hours devoted, for instance, to explaining what is a genetic resource, associated TK, as well as how contracts work and how the transnationals act in real life.
- iv. Working with local experiences on ABS in order to know their current status and decide the type of monitoring that can be given in the future, and avoiding the fear of problems with a simple and inclusive training. We also learn from other experiences through practical exercises with a low cost.
- v. Preparing the agenda, the working methods and materials in advance for the various workshops, allows us to learn how to be flexible to change the methods of the workshop in response to the needs and suggestions of the participants. An example of this is what happened in Paraguay, where participants had more time to share their experiences and interact, making the workshop more dynamic and interesting.
- vi. In the various trainings RMIB-LAC should have an important role in the various trainings, and it should conduct workshops with its team of facilitators. The experience gained over the years in the field of discussions has contributed to forming us as responsible people who are committed to our People. Our first-hand information obtained in the international arena must be used in combination with the experience of our Indigenous Peoples, who have the opportunity to participate personally in CBD meetings.
- vii. Consolidating cooperative relations with friend networks and institutions that support our cause working within a framework of respect, trust, solidarity and complementarity. Accepting the support and guidance of NGOs, but without impositions in order to keep moving ahead safely.
- viii. At meetings of the CBD, we convey the message that indigenous men and women are not competing but complementary. We also share the message with the Party states that in the activities of modern development and business, Indigenous Peoples must be accepted as friends and partners. In essence, we want to learn, take care of everyone and create a new model of sustainable development together, preventing the destruction of humanity and Mother Earth. We have repeatedly expressed these thoughts to the states, reminding them of our different way to handle relations between men and women and between us and the *Pachamama* (Terán 2008).
- ix. The RMIB-LAC has a general coordination and focal points who perform their duties with professionalism, achieving greater visibility for indigenous women. As a result of our lobbying and participation, there is a "Gender Plan and CBD", which is waiting to be implemented (Decision IX/24). Due to this fact, a constant monitoring of the process of ABS and other related issues is carried out, and we are aware that international meetings are held more frequently in English and the cost of translation is high. The RMIB-LAC faces the challenge of learning English in order to participate fully and effectively in negotiations.

Ultimately, according to our coordinator it is important to ratify that "the women of RMIB-LAC should continue to participate in the process and on various topics of the CBD with the capacity, simplicity and commitment they have always shown. We have to participate in the development of the legal framework for ABS and ensure the compliance of PIC and MAT, as well as persevere in the defense of our rights. We have accumulated such vast experience though we have not yet written about it due to the lack of time ... Young people need to know and understand the dynamics and dimension of our international achievements. It is our duty to empower our local authorities and youth, as they will take our place in future meetings. It is important that we walk together, combining the knowledge and experience of older sisters with modern technology and knowledge, working efficiently on behalf of our Indigenous Peoples and Mother Earth, who is essential for the development of life for Indigenous Peoples and for cultural Diversity" (López com. pers. 2013b).

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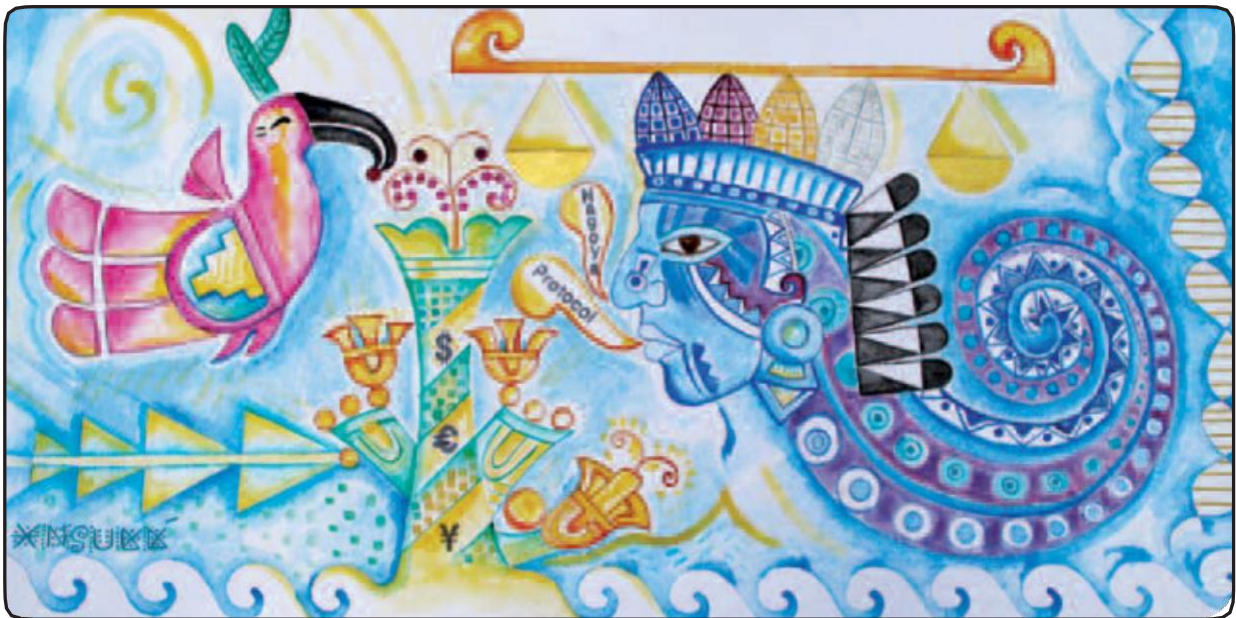
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ABS Implementation in Latin America and the Caribbean: future actions and challenges to overcome



Watercolour of the Nagoya Protocol. ©Ansulala 2012.

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ABS Implementation in Latin America and the Caribbean: future actions and challenges to overcome

The regional stage for ABS implementation in Latin America and the Caribbean has a national and international legal context which is in the process of developing and implementing the legal framework of ABS. This is why it becomes necessary to share the experiences of the IUCN-UNEP/GEF-ABS-LAC, especially if they can help solve these challenges and overcome future obstacles. Thus, it is worth mentioning some of the actions suggested as priority in order to implement mechanisms of ABS, which are a contribution of the participants of the Third Regional Project Workshop held in Bogota (Colombia) from 20 to 22 May 2014.

The wide range of participating stakeholders and experts in the field of ABS attending the last event of the Project, is evident through their ideas, patterns and reflections which contribute in a clear and transparent way to ensure the effective implementation of the Nagoya Protocol. In itself, this set of suggestions determines the next steps that will allow further progress in national regulations particularly to establish a sustainable policy in supplier countries and to protect genetic resources and generate fair benefits, whether they are monetary or non-monetary.

A posteriori, time will be the catalyst that will perhaps show how one day the correct articulation of the multiplicity of actors and their interrelation will make ABS goals a reality. For instance, cases linking research, marketing and / or indigenous worldview with biodiversity in a context of proper application of legal mechanisms will become notorious. Thus, the following thoughts as a contribution to move forward:

- i. Increase the capacity of local authorities and other stakeholders on issues related to ABS. While such training has already begun as part of the project activities, it must be further developed and aimed at the most sensitive sectors to achieve a better understanding at a national level.
- ii. Enhance legal procedures and mechanisms in the region, including both the ratification of the Nagoya Protocol and the strengthening of national laws, because they must be consistent and efficient. Similarly, an efficient correlation between regional and international regulations to protect the access to genetic resources is required. While in practice, this process faces certain obstacles, participants considered that this should be a challenge that countries will overcome in the short-term.

- iii. Increase the protection of traditional knowledge, particularly where it has been identified that there are still uncertainties and knowledge gaps regarding how to protect them. It is also important to improve the work coordination between public entities and representatives of local communities and indigenous peoples. It is also specified that the latter should take on the initiative to develop community protocols to facilitate access procedures.
- iv. Determine the scope between biotrade and the sharing of benefits generated by genetic resources, since it is correct to abide by contracts that equitably protect everyone involved in the production chain.
- v. Analyze the reason why despite the existing implemented efforts in countries, there are still barriers to for an effective implementation of ABS. For this, one must remember that the law is a tool, not an end, and while it is necessary to reform the national legislation of each country, we must also be very critical about what strategies should be implemented at the regional level to address an ever changing world and an innovative market.
- vi. Raise awareness of different key groups associated with ABS, for example, researchers and scientists, in order to identify the research that is conducted in supplier countries and remind them that they have the skills to do so themselves.
- vii. Promoting a balance between legal control, biodiversity conservation and state sovereignty, and recognize that essential knowledge is required in order to increase national capacities , especially for the sharing of benefits because clear guidelines need to be applied in each case.
- viii. Include economic capital in government budgets and even that of universities, encouraging continued and uninterrupted research on genetic resources and associated traditional knowledge.
- ix. Recognize actions on a national plan which demonstrate what the goals achieved in the short, medium and long term are.

Ultimately, project coordination of the IUCN-UNEP/GEF-ABS-LAC Regional Project highlights the importance of teamwork in order to conduct an effective and integrated implementation of ABS at a national and regional level, where different institutions and actors involved in the topic can contribute from their respective area of interest. During the implementation of the project, team collaboration stands out as a key element, bringing both a contribution to the improvement of the capacities of the countries involved and of the Region, as well as a strengthening of future national ABS systems. For this reason, we wish to express a special thank you to all participants, collaborators and project partners, reaffirming the commitment to continue the mainstreaming of ABS in different sectors related to the conservation and the sustainable use of biodiversity.



Access to Genetic Resources in Latin America and the Caribbean:
support tools for implementation



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