

Article 15 Access to genetic resources

216. What is the relative priority afforded to implementation of this Article and the associated decisions by your country?

| | | | | | |
|---------|--|-----------|---|--------|--|
| a) High | | b) Medium | X | c) Low | |
|---------|--|-----------|---|--------|--|

217. To what extent are the resources available adequate for meeting the obligations and recommendations made?

| | | | | | | | |
|---------|--|-------------|--|-------------|---|----------------------|--|
| a) Good | | b) Adequate | | c) Limiting | X | d) Severely limiting | |
|---------|--|-------------|--|-------------|---|----------------------|--|

Further comments on relative priority and on availability of resources

Different perceptions were held by the various administrative sectors consulted concerning the fulfilment of this article (non-governmental organisations gave it low priority with extremely limited resources, while government sectors gave it high priority).

Questions 216 and 217.

Provisional Measure No. 2186-16, 23rd August, 2001 created the *Conselho de Gestão do Patrimônio Genético – CGEN* [Council for the Administration and Management of Genetic Patrimony – CGEN]. This Measure deals with access to genetic patrimony, protection of and access to associated traditional knowledge, the sharing of benefits and access to technology and the transfer of technology for its conservation and use, amongst other considerations. Decree 3945, 28th September, 2001, defined the composition of the Council and established the norms and regulations for its operation. CGEN is composed of members of the following Ministries: Science and Technology; Health; Justice; Agriculture and Supply; Defence; Culture; Foreign Affairs; Industry; Development; and Foreign Trade. The following institutions also have representatives on the Council: *Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA* [Brazilian Institute for the Environment and Renewable Natural Resources – IBAMA]; *Instituto de Pesquisas Jardim Botânico do Rio de Janeiro – JBRJ* [Research Institute of the Rio de Janeiro Botanical Garden - JBRJ]; *Conselho Nacional do Desenvolvimento Científico e Tecnológico – CNPq* [National Council for Scientific and Technological Development - CNPq]; *Instituto Nacional de Pesquisas da Amazônia – INPA* [National Institute for Amazon Research – INPA]; *Empresa Brasileira de Pesquisa Agropecuária – EMBRAPA* [Brazilian Agricultural and Cattle-Breeding Research Company – EMBRAPA]; *Fundação Oswaldo Cruz – FIOCRUZ* [Oswaldo Cruz Foundation –FIOCRUZ]; *Instituto Evandro Chagas* [Evandro Chagas Institute]; *Fundação Nacional do Índio – FUNAI* [National Indian Foundation – FUNAI]; *Instituto Nacional de Propriedade Intelectual – INPI* [National Institute for Intellectual Property – INPI]; and the *Fundação Cultural Palmares* [Palmares Cultural Foundation]. Financial resources for the CGEN are contemplated in Brazil's Pluri-annual Plan - PPA (Biovida and Genetic Resources) and as a subproject of the UNDP Project BRA 00 21 (GEF). These resources are insufficient, however, to deal with the numerous demands involved. Compliance with this Article requires the establishment of regulations, the definition of concepts (what is equitable, for example), capacity-building (especially of lawyers in this complex field), and research. Two new bills have been presented to Congress, one instituting a change in the composition of the Council, and the other concerning the inclusion of penalties for biopiracy in the Environmental Crimes Law. CGEN has five thematic chambers:

1. *Patrimônio Genético Mantido em Condições Ex Situ* [Genetic Patrimony Maintained *Ex Situ*]. Includes CGEN members with responsibilities for, access to, and the consignment of, genetic patrimony maintained *ex situ*, along with invited specialists and representatives of society, and to debate specific technical, scientific and political aspects whenever expedient. It is composed of seven Council members (official representatives and their named substitutes) from: The Ministry of Science and Technology, Ministry of Health, EMBRAPA, IBAMA, INPA, CNPq, and JBRJ, besides specialists invited to debate specific themes, and people invited to represent relevant sectors of society.
2. *Conhecimento Tradicional Associado* [Associated Traditional Knowledge]. Includes CGEN members with direct responsibilities for national genetic resources and the associated traditional knowledge, along with invited specialists and leaders of society, to debate the technical, political and scientific aspects of consequence for the deliberations of the Council. It is composed of 11 Council members (official representatives and their named substitutes) from: The Ministry of Development, Industry and Foreign Trade, Ministry of Justice, INPA, Ministry of Culture, Palmares Cultural Foundation, FUNAI, EMBRAPA, CNPq, IBAMA, INPI, and the Evandro Chagas Institute, besides specialists invited to debate specific themes, and people invited to represent relevant sectors of society.

Chapter 1

3. *Repartição de Benefícios* [Benefit Sharing]. Includes CGEN members with the responsibility of identifying and establishing appropriate measures concerning benefit sharing in the use of genetic resources and associated traditional knowledge, besides those already treated by law. Specialists, leaders of society, particularly those with the relevant traditional knowledge, are invited to debate the technical, political and scientific aspects, providing an informed basis for the Council's decisions. It is composed of 12 members (official representatives and their named substitutes) from: CNPq, the Ministry of Justice, Ministry of Culture, Ministry of Development, Industry and Foreign Trade, Ministry of Environment, Ministry of Science and Technology, Ministry of Health, IBAMA, EMBRAPA, FUNAI, INPI, and the Palmares Cultural Foundation.
4. *Procedimentos Administrativos* [Administrative Procedures]. Includes CGEN members with responsibilities for themes related to authorization for access to, and the consignment of, genetic resources and associated traditional knowledge, as well as representatives of interested institutions, and specialists who provide an informed basis for establishing the procedures and processes for requests to the CGEN, while taking the appropriate measures for safety and control, but avoiding excessive bureaucracy. The Council has six members (official representatives and their named substitutes) from: The Ministry of Health, Ministry of Defence, the Palmares Cultural Foundation, FUNAI, CNPq and IBAMA.
5. *Acesso à Tecnologia e Transferência de Tecnologia* [Access to Technology and Technology Transfer]. Includes CGEN members with responsibilities for access to and the transfer of technologies in such a way as to promote debate on technical, political and scientific aspects to subsidize Council decisions. It has 11 members, (official representatives and their named substitutes) from: the Ministry of Science and Technology, Ministry of Environment, Ministry of Foreign Affairs, Ministry of Culture, Ministry of Agriculture and Supply, Ministry of Health, Ministry of Development, Ministry of Industry and Foreign Trade, Oswaldo Cruz Foundation, EMBRAPA, INPI and CNPq. Specialists may be invited, along with *ad hoc* consultants, to assist the members when necessary.

The legislation on this issue is still being consolidated. It began with a proposal from Senator Marina Silva in 1995, which was sanctioned as a bill in 1998, proposed by Senator Osmar Dias based on Senator Marina Silva's proposal.

Programa Brasileiro de Ecologia Molecular para o Uso Sustentável da Biodiversidade da Amazônia – PROBEM [Brazilian Programme for Molecular Ecology for the Sustainable Use of Amazon Biodiversity – PROBEM]. The purpose of this programme is to support bioindustrial development, especially in the Amazon, with a strong emphasis on the generation of knowledge and the transfer of modern technology through partnerships between research institutions and the private sector. Budget, contemplated in the Pluri-annual Plan - PPA (2000-2003), is R\$45.9 million. The institution responsible is the Ministry of Environment.

218. Has your country endeavoured to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties (15(2))?

| | |
|-----------------------------|---|
| a) no | |
| b) yes – limited extent | X |
| c) yes – significant extent | |

219. Is there any mutual understanding or agreement in place between different interest groups and the State on access to genetic resources (15(4))?

| | |
|-----------------------------|---|
| a) no | |
| b) yes – limited extent | X |
| c) yes – significant extent | |

220. Has your country an open participation planning process or any other process in place, to ensure that access to resources is subject to prior informed consent (15(5))?

| | |
|-----------------------------------|---|
| a) no | |
| b) early stages of development | |
| c) advanced stages of development | |
| d) processes in place | X |

| | |
|--|---|
| 221. Has your country taken measures to ensure that any scientific research based on genetic resources provided by other Contracting Parties is developed and carried out with the full participation of such Contracting Parties (15(6))? | |
| a) no measures | |
| b) some measures in place | X |
| c) potential measures under review | |
| d) comprehensive measures in place | |
| 222. Has your country taken measures to ensure the fair and equitable sharing of the results of research and development and the benefits arising from the commercial and other use of genetic resources with any Contracting Party providing such resources (15(7))? | |
| a) no measures | |
| b) some measures in place | X |
| c) potential measures under review | |
| d) comprehensive measures in place | |
| If so, are these measures | |
| a) Legislation | |
| b) Statutory policy or subsidiary legislation | |
| c) Policy and administrative measures | X |

Decision II/11 and Decision III/15. Access to genetic resources

| | |
|--|---|
| 223. Has your country provided the secretariat with information on relevant legislation, administrative and policy measures, participatory processes and research programmes? | |
| a) no | |
| b) yes, within the previous national report | X |
| c) yes, through case-studies | |
| d) yes, through other means (please give details below) | |
| 224. Has your country implemented capacity-building programmes to promote successful development and implementation of legislative, administrative and policy measures and guidelines on access, including scientific, technical, business, legal and management skills and capacities? | |
| a) no | |
| b) some programmes covering some needs | X |
| c) many programmes covering some needs | |
| d) programmes cover all perceived needs | |
| e) no perceived need | |
| 225. Has your country analysed experiences of legislative, administrative and policy measures and guidelines on access, including regional efforts and initiatives, for use in further development and implementation of measures and guidelines? | |
| a) no | |
| b) analysis in progress | X |
| c) analysis completed | |
| 226. Is your country collaborating with all relevant stakeholders to explore, develop and implement guidelines and practices that ensure mutual benefits to providers and users of access measures? | |
| a) no | |
| b) yes – limited extent | X |
| c) yes – significant extent | |

Chapter 1

| | |
|---|---|
| 227. Has your country identified national authorities responsible for granting access to genetic resources? | |
| a) no | |
| b) yes | X |
| 228. Is your country taking an active role in negotiations associated with the adaptation of the International Undertaking on Plant Genetic Resources for Food and Agriculture? | |
| a) no | |
| b) yes | X |
| Decision V/26. Access to genetic resources | |
| 229. Has your country designated a national focal point and one or more competent national authorities to be responsible for access and benefit-sharing arrangements or to provide information on such arrangements? | |
| a) no | |
| b) yes | X |
| c) yes, and Executive Secretary notified | |
| 230. Do your country's national biodiversity strategy, and legislative, administrative or policy measures on access and benefit-sharing, contribute to conservation and sustainable use objectives? | |
| a) no | |
| b) to a limited extent | X |
| c) to a significant extent | |
| Parties that are recipients of genetic resources | |
| 231. Has your country adopted administrative or policy measures that are supportive of efforts made by provider countries to ensure that access to their genetic resources is subject to Articles 15, 16 and 19 of the Convention? | |
| a) no | X |
| b) other arrangements made | |
| c) yes | |
| 232. Does your country co-operate with other Parties in order to find practical and equitable solutions to support the efforts of provider countries to ensure that access to their genetic resources is subject to Articles 15, 16 and 19 of the Convention, recognizing the complexity of the issue, with particular consideration of the multiplicity of prior informed-consent considerations? | |
| a) no | X |
| b) yes (please provide details) | |
| 233. In developing its legislation on access, has your country taken into account and allowed for the development of a multilateral system to facilitate access and benefit-sharing in the context of the International Undertaking on Plant Genetic Resources? | |
| a) no | |
| b) legislation under development | |
| c) yes | X |
| 234. Is your country coordinating its positions in both the Convention on Biological Diversity and the International Undertaking on Plant Genetic Resources? | |
| a) no | |
| b) taking steps to do so | |
| c) yes | X |

| | |
|---|---|
| 235. Has your country provided information to the Executive Secretary on user institutions, the market for genetic resources, non-monetary benefits, new and emerging mechanisms for benefit sharing, incentive measures, clarification of definitions, <i>sui generis</i> systems and "intermediaries"? | |
| a) no | X |
| b) some information provided | |
| c) substantial information provided | |
| 236. Has your country submitted information on specific issues related to the role of intellectual property rights in the implementation of access and benefit-sharing arrangements to the Executive Secretary? | |
| a) no | X |
| b) yes | |
| 237. Has your country provided capacity-building and technology development and transfer for the maintenance and utilization of <i>ex situ</i> collections? | |
| a) no | |
| b) yes to a limited extent | X |
| c) yes to a significant extent | |

Further comments on implementation of this Article

Question 218.

Contemplated in Decree 4339, 22nd August 2002, Directive 9, Item 4 (see Chapter 2).

Brazil has legislation in place which regulates access to genetic resources, facilitating its use by other contracting parties.

See also comments on questions 216 and 217.

Question 219.

There is legislation that allows for contracts with government consent (Article 16 of the Provisional Measure 2186, 23rd August, 2001 and CGEN Resolution 001). No contract has been approved by CGEN.

Question 220.

Article 16 of the Provisional Measure 2186-16, 23rd August, 2001, establishes access to components of Brazilian genetic patrimony through the *Consentimento Prévio Informado* [Prior Informed Consent].

Question 222.

Brazil is a signatory of the FAO Treaty for Genetic Resources for Food and Agriculture, and is discussing its implementation.

Question 225.

Legislation and decrees from other countries, such as those of the Andean Pact, Costa Rica and Philippines, have been analysed, providing a basis for the Provisional Measure 2186-16, 23rd August, 2001, and future laws on this aspect.

Question 226.

The Ministry of Environment is discussing models for benefit-sharing contracts within the *Programa Brasileiro de Ecologia Molecular para o Uso Sustentável da Biodiversidade da Amazônia – PROBEM* [Brazilian Programme for Molecular Ecology for the Sustainable Use of Amazon Biodiversity – PROBEM].

Chapter 1

Question 227.

Conselho de Gestão do Patrimônio Genético – CGEN [Council for the Administration and Management of Genetic Patrimony – CGEN].

Question 228.

Brazil has been a signatory since June 2002.

Question 229.

The Executive Secretariat of *Conselho de Gestão do Patrimônio Genético – CGEN* [Council for the Administration and Management of Genetic Patrimony – CGEN] is the National Focal Point.

Question 230.

Component 5 of Decree 4339 22nd August, 2002 contemplates the reversion of benefits to biodiversity conservation and sustainable use.

Question 231.

Brazilian legislation only considers Brazil as a genetic resource provider, and not a genetic resource receiver.

As a country providing genetic resources, Brazil guarantees the return of benefits as stated in the Provisional Measure 2186-16, 23rd August, 2001. As a receiver, Brazil will follow what has been established in the FAO Treaty for Genetic Resources for Food and Agriculture and the Convention on Biological Diversity.

Question 233.

Contemplated in the Provisional Measure 2186-16, 23rd August, 2001.

Question 234.

Brazil coordinates with other countries of the G77.

Question 236

Brazil has not submitted such information to the Executive Secretary. However, a Brazilian proposal has been presented in the revision process of the Trade Related Aspects of Intellectual Property Rights (TRIPS). This proposal intends to specify the Brazilian obligations on the CBD's rules in the WTO's ambit.

Question 237.

EMBRAPA provides training and capacity-building in Central American and African countries.