

DOCUMENT OF THE INTER-AMERICAN DEVELOPMENT BANK

BRAZIL

**CAPACITY BUILDING AND INSTITUTIONAL STRENGTHENING ON THE
NATIONAL FRAMEWORK FOR ACCESS AND BENEFIT SHARING UNDER THE
NAGOYA PROTOCOL**

(BR-T1304)

TECHNICAL COOPERATION DOCUMENT

This document was prepared by the project team consisting of: Octavio Damiani (RND/CBR), Team Leader; Flavio Chaves (RND/CBR); Yolanda Valle (CSD/RND); Napoleao Dequech (CSD/CSD); Cristina C. Marzo (LEG/SGO); Jorge M. Seigneur (FMP/CBR); and Edwin Tachlian-Degras (FMP/CBR).

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TC Document

I. Basic Information for TC

▪ Country/Region:	BRAZIL
▪ TC Name:	Capacity Building and Institutional Strengthening on the National Framework for Access and Benefit Sharing under the Nagoya Protocol
▪ TC Number:	BR-T1304
▪ Team Leader/Members:	Octavio Damiani (RND/CBR), Team Leader; Flavio Chaves (RND/CBR); Yolanda Valle (CSD/RND); Napoleão Dequech (CSD/CSD); Cristina C. Marzo (LEG/SGO); Jorge M. Seigneur (FMP/CBR); and Edwin Tachlian-Degras (FMP/CBR)
▪ Indicate if: Operational Support, Client Support, or Research & Dissemination	Client Support
▪ Date of TC Abstract authorization:	N/A
▪ Beneficiary:	Ministry of Environment
▪ Executing Agency:	United Nations Development Programme (UNDP)
▪ Donors providing funding:	Global Environment Facility (GEF)
▪ IDB Funding Requested:	US\$4,401,931
▪ Local counterpart funding:	N/A
▪ Disbursement period:	52 months (48 months for execution)
▪ Required start date:	May 22 nd , 2017
▪ Types of consultants:	Consulting firms and individual consultants
▪ Prepared by Unit:	Environment, Rural Development and Disaster Risk Management Division (CSD/RND)
▪ Unit of Disbursement Responsibility:	Country Office Brazil (CSC/CBR)
▪ TC Included in Country Strategy (y/n):	Yes
▪ TC included in CPD (y/n):	No
▪ Alignment to the Update to the Institutional Strategy 2010-2020:	Climate change and environmental sustainability

II. Objectives and Justification

- 2.1 **Project objectives:** The proposed project's objective is to support Brazil implementing the legal and regulatory framework, the governance and institutional capacity necessary to manage the Access and benefit-sharing of genetic resources (ABS)¹ and Associated Traditional Knowledge (ATK)², and improve knowledge of providers and users of such resources, enabling Brazil to fulfill its commitments under the Convention

¹ Access and benefit-sharing refers to the way in which genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers).

² Associated Traditional Knowledge is knowledge resulting from intellectual activity in a traditional context that is specific or general in its relationship to genetic resources. It includes know-how, practices, skills and innovations.

on Biological Diversity (CBD)³ and the Nagoya Protocol⁴ (NP). The project's specific objectives are: (i) to support the design and enactment of implementing regulations for a new National Law regulating the ABS and the future ratification of the NP; (ii) to support development and implementation of key legal and administrative instruments and institutional capacity to share information and manage the national ABS mechanism; and (iii) to improve knowledge and capacity of key stakeholders, particularly indigenous and local communities, on ABS mechanisms and procedures.

- 2.2 **Global Context:** The CBD is the international treaty addressing threats to biological diversity and has three overarching objectives: (1) conservation of biological diversity; (2) sustainable use of its components; and (3) the fair and equitable sharing of benefits arising from the utilization of genetic resources. The CBD recognizes the sovereign right of States to determine access to genetic resources under their jurisdiction. Signatory parties have committed to take legislative, administrative and policy measures to share, in a fair and equitable way, the results of research and development and the benefits arising from the commercial and other utilization of genetic resources.
- 2.3 The NP puts the CBD's third objective into practice by providing a set of international rules to facilitate access and fair and equitable benefit-sharing for utilizing genetic resources and ATK. The NP provides, inter alia, for the creation of an ABS Clearing-House mechanism; the institution of International Certificates of Compliance; the possibility of a Global Multilateral Benefit-Sharing Mechanism. It also sets forth provisions to financially reward traditional knowledge held by indigenous peoples and local communities, in case it is associated with genetic resources. Under the NP, parties have committed to take the necessary legislative, administrative or policy measures to provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing legislation or regulatory requirements.
- 2.4 **Context for ABS in Brazil:** In 2001 Brazil established the first national ABS framework through the Provisional Measure (PM) 2186-16. It was followed by a series of Federal Executive Decrees establishing the creation of the Genetic Resources Management Council (CGEN),⁵ and other related regulations. The PM 2186-16 provided the framework that enabled the processing of 2,156 authorizations for access, and almost 260 Benefit Sharing Agreements.⁶ The experience demonstrated the need for a less bureaucratic and cumbersome ABS legal system with effective management tools and a predictable framework.

³ Brazil signed the Convention on Biological Diversity (CBD) during the UN Conference in Rio, in June 5th 1992.

⁴ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization was adopted by the 10th Meeting of the Conference of the Parties of the CBD on October 29, 2010, in Nagoya, Japan.

⁵ CGEN is the deliberative and normative council, created within the Ministry of Environment (MMA), that is responsible for coordinating ABS related policy formulation and implementation. It is comprised by representatives of federal government agencies and, under the new ABS Law, also from civil society (private sector, academia, research institutions, indigenous peoples and traditional communities). The CGEN is presided by the councilman representing the MMA, who also heads the Executive Secretary.

⁶ According to CGEN Annual Report 2015, from 2002 through 2012, 73% of authorizations for access to genetic resources and ATK were granted by CGEN to the cosmetics industry, and 23% to national universities for drug-related research.

- 2.5 A new national federal law was thus, enacted on May 20, 2015,⁷ and its regulatory decree published on May 11, 2016.⁸ The new ABS Law simplifies the approval process for scientific research on native biological material containing functional genetic resources. The new law also stipulates that several key instruments, provided in the NP, shall be created and implemented, such as a National Electronic Registration System, the National Clearing House Mechanism, and the community protocols to instruct benefit sharing of ATK, among others.
- 2.6 Alignment with Bank's priorities in the region: The project is consistent with the Update to the Institutional Strategy 2010-2020 (AB-3008), and is aligned with the development challenge of "social inclusion and equality", as it promotes the capacity for indigenous and local communities to be rewarded for their traditional knowledge, generating income opportunities while reinforcing the conservation and sustainable use of biodiversity, thus contributing to the IBDG Corporate Results Framework, result indicator number of beneficiaries of improved management and sustainable use of natural capital. The project is also aligned with the UIS cross-cutting themes (i) climate change and environmental sustainability; and (ii) institutional capacity and rule of law, by supporting the implementation of a national legal and institutional framework for ABS. In addition, the project is aligned with the Bank's Country Strategy with Brazil (GN-2850), contributing to four strategic objectives: (i) stimulate social and productive inclusion; (ii) improve the institutional capacity of public entities; (iii) improve management of natural resources and climate change; and (iv) promote development through the private sector. Finally, the TC is consistent with the Environment and Biodiversity Sector Framework Document (GN-2827-3), by contributing to improving environmental performance through policy frameworks, governance, and management instruments. The project will coordinate with the Recovery and protection of climate and biodiversity services in Brazil's Southeast Atlantic Forest Corridor project (BR-G1003).⁹

III. Description of Activities/Components and Budget

- 3.1 To achieve its objectives, the project is structured into three interlinked components.
- 3.2 **Component 1- ABS National Legal Framework.** This component aims to establish the new ABS legal framework by providing a combination of key instruments, studies, awareness raising and capacity building that is crucial for the NP ratification and effective implementation of the new ABS Law. The component will finance: (i) dialogue, awareness campaigns and capacity building aimed at stakeholders and policy makers, to promote an enabling environment for the implementation and regulation of the new law, and the NP ratification; (ii) development of two key provisions of the National ABS Law and the NP: the National ABS Fund and the regulations for harmonizing the NP with national laws and regulations in key sectors, including traceability mechanisms (e.g., checkpoints, enabling authorities and indigenous/local communities to monitor the utilization and commercialization of genetic resources, as established in Art. 15-Art 17 of the NP); (iii) technical studies to

⁷ http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13123.htm

⁸ http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Decreto/D8772.htm

⁹ BR-G1003 supports the adoption of biodiversity and climate change friendly land use practices. Both projects will exchange lessons in adding value to biodiversity products and ATK and management of genetic resources

support the ABS institutional framework improvement, focusing on the new expanded CGEN operations and future integration with other governmental agencies with responsibilities under the national ABS Law; and (iv) strengthening the CGEN's institutional structure.

- 3.3 **Component 2 - Knowledge and Information Management.** This component is aimed at providing the enabling conditions and management instruments to facilitate knowledge sharing, stimulate ABS registration and authorization processes, and to provide the reporting channels consistent with the requirements under the NP through the development and implementation of the needed digital web-based instruments. The component will finance: (i) development and implementation of a National ABS electronic management system (SISGEN), and an integrated advanced web-based ABS Portal (national information sharing mechanism) that mirrors and complements the CBD's ABS Clearing House; (ii) information gathering and organization on ABS required to feed the ABS Portal and the SISGEN; (iii) the manuals and guidelines for users and providers of both systems; and (iv) technical requirements to integrate the management system and the portal.
- 3.4 **Component 3 - Capacity Building and Training.** This component seeks to broaden the awareness, capacity and skills of different stakeholders in Brazil to fully take advantage of the opportunities ABS offers. To maximize its effectiveness, trainings will focus on producing multipliers and champions on the new ABS framework among key stakeholders: men and women representatives of indigenous and local communities (ILC) as providers of genetic resources and associated traditional knowledge (ATK), and local potential users, such as researchers, entrepreneurs, and startups. Training activities will focus on improving skills for negotiating ABS contracts, on the benefits and implications of the new ABS legal and administrative framework and the functioning of ABS system. Training will also be provided to key government staffs and judiciary officials to act as multipliers in creating regulatory and managing capacity in ABS proceedings. The component will finance: (i) guidelines and training materials for engagement of ILC in ABS projects; (ii) awareness campaigns and training of trainers' programs for ILC and other key stakeholders on the functioning of ABS and negotiating skills; (iii) methodological guidelines as a tool for Prior Informed Consent; and (iv) design and pilot a "community protocol" as a base model for ABS agreements with proper Prior Informed Consent (PIC), Mutually Agreed Terms (MAT) and Benefit Sharing, according to provisions under the national ABS law and the Nagoya Protocol.
- 3.5 The project includes resources for its monitoring and evaluation system (see ¶4.6). A complete description of the results framework is presented in Annex II.
- 3.6 **Project costs.** The project's total cost is US\$8,803,862, and corresponds to US\$4,401,931 to be financed by IDB/GEF Trust Fund, and US\$4,401,931 from parallel financing from the Ministry of Environment (MMA). For more details, please see [Detailed Budget](#).

Table 1. Indicative Budget (US\$)

Component /Activity	IDB/GEF	Parallel financing	Total
Component 1: ABS National Legal Framework	387,500	1,705,530	2,093,030
Component 2: Knowledge and Information Management	1,045,900	496,401	1,542,301
Component 3: Capacity Building and Training	2,518,300	1,875,000	4,393,300
Monitoring and Evaluation	45,000	-	45,000
Contingencies	54,161	-	54,161
Project management	326,070	325,000	651,070
Audits	25,000	-	25,000
Total Cost	4,401,931	4,401,931	8,803,862

IV. Executing Agency and Execution Structure

- 4.1 **Project Executing Agency (PEA).** The UN Development Programme, Country Office in Brazil (UNDP-BR) will execute the project. UNDP-BR has extensive experience in executing development projects financed by several donors, including the GEF, providing technical, operational and management support, through: (i) compliance with donor's technical and legal requirements; (ii) procurement of goods and services; and (iii) accounting and financial management and accountability of funds granted by donors. The [Institutional Analysis](#) conducted by the Bank indicates that the institution has the overall institutional capacity to execute the project.
- 4.2 The PEA will be responsible for the technical, fiduciary and financial execution and management of the project, in accordance with IDB's policies and procedures. UNDP-BR will use its systems capacity for integrated procurement, financial management and reporting, project management, and monitoring and evaluation of the project effectiveness. The PEA will formally establish a Project Execution Unit (PEU) within its organizational structure, will designate a project leader (Program Officer), and will allocate the necessary human and technical resources for project execution. All the costs incurred by the PEA for executing the project are included in the project budget, as per IDB's applicable policies and procedures for technical cooperation operations. Also, based on the expected needs for technical supervision, additional personnel will be hired as individual consultants on full-time fixed-term regime, to be funded by the project and selected pursuant terms of reference agreed upon with the IDB (for additional details please refer to the [Implementation Arrangements](#)).
- 4.3 The Ministry of Environment (MMA) Department of Genetic Heritage (DPG, for its Portuguese acronym), is the project main Beneficiary and will act as its project's technical coordinator, responsible for: (i) overall strategic guidance and project technical coordination; (ii) granting no-objection to yearly reviews of the Operational Plan and the Procurement Plan (PP), and to progress reports; (iii) reviewing terms of reference and technical specifications for goods and services to be procured, and the products and technical reports resulting from project implementation; (iv) coordination with local and indigenous communities for sensitization and trainings activities under Component 3, and with other relevant government agencies; and (v) monitoring and reporting on local parallel financing to the PEU and the Bank. To carry out its responsibilities, the DPG will establish a GEF Project Coordination Unit (PCU) composed of: one full-time project coordinator; and three technical staff with expertise on the project's components (see [link](#)). The PEA and the MMA will sign a Technical Cooperation Agreement detailing their responsibilities and functions within the project'. The signing and entry into effect of the Technical Cooperation Agreement between the

PEA and the Beneficiary within the first 6 (six) months of the Project Execution Period, in the terms previously agreed with the Bank, will be a special contractual condition for Project execution.

- 4.4 The special contractual conditions prior to the first disbursement will be the following: (i) evidence of the establishment of the Project Execution Unit (PEU) within the organizational structure of the PEA; and (ii) evidence of the establishment of the PCU within the organizational structure of the Beneficiary. The IDB will act as the project Implementing Agency (IA) and will be responsible for project supervision and evaluation.
- 4.5 **Procurement and external audit.** The PEA will be responsible for procuring goods and consulting and non-consulting services in accordance with the IDB's "Policies for the selection and contracting of consultants financed by the IDB" (GN-2350-9) and, "Policies for the procurement of works and goods financed by the IDB" (GN-2349-9), as amended from time to time.¹⁰ Disbursements of project's resources will be subject to ex post supervision by the Bank and by external auditors. Project's financial statements will be subject to annual external audits to be conducted by an independent auditing firm contracted by UNDP-BR with IDB/GEF resources, as per IDB's applicable policies and procedures. A PP for the first 18 months of execution will be agreed upon with the PEA and the Beneficiary. The PP will be reviewed annually or as needed, by the PEA and the DPG, as per the terms agreed with the Bank.
- 4.6 **Monitoring and Evaluation.** Project Monitoring and Evaluation (M&E) will be conducted at three levels: (i) project outcomes as stated in the project's results framework; (ii) delivery of project outputs in accordance with the annual operation plans; and (iii) monitoring of project implementation and performance through periodic project evaluations. The PEA will submit to the Bank semimanual project progress reports and the IDB project team will supervise the achievement of the outputs and outcomes associated to BID/GEF funding, and will also incorporate all project outputs and outcomes associated to the financing and parallel financing into the Project Implementation Reports (PIR), to be reported periodically to GEF.

V. Major Issues

- 5.1 The main risks and mitigating measures follows in the next table:

¹⁰ OP-639 "Operational Guidelines on Procurement for Technical Cooperation Grants" will be applied.

Table 2. TC Main Risks

Identified Risks	Rate	Mitigation measures
Uncertainty on the Nagoya Protocol ratification by the national congress.	Medium	It is known that one of the main bottlenecks for the ratification of Nagoya Protocol is the lack of knowledge by decision makers, regarding the impacts of its implementation. From the start, the project had and will continue to place strong emphasis on communications, sensitization and awareness efforts directed at policy makers, among other stakeholders.
Concerns among ILC over the national ABS law's provisions and obstacles with full engagement by all stakeholders	Low	Extensive consultations and advocacy campaigns with stakeholders about the ABS national law and operating regulations, systems and procedures, to ensure the highest level of engagement; sector dialogues have been carried out and will continue to be conducted, with special attention to indigenous and local communities, and local potential users (see report consultations).
Low commitment of the MMA/ changes in the team at DPG, causing delays in execution	Low	The execution scheme anticipates maintaining regular communication between the executing agency and the MMA, and the assignment of a dedicated team within the MMA responsible for coordinating, supervising and evaluating the execution in close collaboration with the PEA.

VI. Exceptions to Bank Policy

6.1 There are no exceptions to Bank policy.

VII. Environmental and Social Strategy

7.1 No negative environmental or social impacts will derive from this technical cooperation. As per Policy (OP-703), this Technical Cooperation was classified as Category "C" (see [Safeguard Policy Filters](#)).

Required Annexes:

- Annex I: [Results Matrix](#)
- Annex II: [Procurement Plan](#)

Required Electronic Links:

- [Letter of Request](#)
- [Terms of Reference](#)

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BR-T1304

CERTIFICATION

I hereby certify that this operation was approved for financing under the **Global Environment Facility (GEF)** through a communication dated May 3, 2017 and signed by Brady Martin (ORP/GCM). Also, I certify that resources from said fund are available for up to **US\$4,401,931** in order to finance the activities described and budgeted in this document. The commitment and disbursement of these resources shall be made only by the Bank in US dollars. The same currency shall be used to stipulate the remuneration and payments to consultants, except in the case of local consultants working in their own borrowing member country who shall have their remuneration defined and paid in the currency of such country. No resources of the Fund shall be made available to cover amounts greater than the amount certified herein above for the implementation of this operation. Amounts greater than the certified amount may arise from commitments on contracts denominated in a currency other than the Fund currency, resulting in currency exchange rate differences, represent a risk that will not be absorbed by the Fund.

ORIGINAL SIGNED

05/03/2017

Sonia M. Rivera
Chief

Date

Grants and Co-Financing Management Unit
ORP/GCM