



COMISIÓN CENTROAMERICANA DE AMBIENTE Y DESARROLLO



Access and Benefit-Sharing Policy and Legal Framework in Central America and the Dominican Republic

Manuel Ruiz Muller



Comisión Centroamericana de Ambiente y Desarrollo (CCAD)
Sistema de la Integración Centroamericana (SICA)

Edificio SG-SICA, Final Bulevar Cancillería, Distrito El Espino
Ciudad Merliot, Antiguo Cuscatlán. La Libertad
El Salvador, Centroamérica
Telephone: (503) 2248-8800
E-Mail: secad@sica.int
www.sica.int/ccad

Antiguo Cuscatlán, El Salvador
July 2016

Text: Manuel Ruiz Muller
Whit Comments by Susanne von Saint André, Edgar Perez, Sebastian R. Meurer

This document was improved by the inputs received from the ABS-Focal Points from Belize, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama and the Dominican Republic during the "First Regional Conference on ABS issues" of the Member States of the Central American Commission on Environment and Development (CCAD), 7th and 8th of July 2015 in San Salvador/El Salvador, in the context of the programme ABS/CCAD-GIZ of the German cooperation.

CONTENT

Abbreviations	2
Introduction	4
Chapter 1. General policy and legal framework for biodiversity and ABS	6
Chapter 2. Institutional framework on biodiversity and ABS	14
Chapter 3. National policies and legislation for indigenous peoples	19
Chapter 4. Intellectual property and protection of biodiversity innovations	22
Chapter 5. Advances in the implementation of regulatory and legal frameworks	25
Final considerations	27
Annex	29

Abbreviations

Abbreviations commonly used in this document

ABS	Access and benefit sharing
IP	Intellectual Property
MAT	Mutually agreed terms
PIC	Prior informed consent
PGRFA	Plant genetic resources for food and agriculture
TK	Traditional knowledge

Institutional abbreviations

ANAM	National Environmental Authority (current Ministry of Environment of Panama)
CAFTA	Central America Free Trade Agreement
CCAD	Central American Commission for Environment and Development
CBD	Convention on Biological Diversity
CONAGEBIO	National Commission for Biodiversity Management
CONAP	National Council for Protected Areas
CONAREFIH	National Committee on Plant Genetic Resources of Honduras
DIBIO	General Directorate for Biodiversity
DICTA	Directorate of Agricultural Science and Technology
DIGEPIH	General Directorate of Intellectual Property
ICF	Institute of Forest Conservation, Wildlife and Protected Areas
ILO	International Labour Organization
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
MINAE	Ministry of Environment and Energy
MIAMBIENTE	Secretariat of Energy, Natural Resources, Environment and Mines
PARCA	Environmental Plan for the Central American Region
SAG	Agricultural and Livestock Secretariat
SENASA	National Service of Agricultural Health
SICA	Central American Integration System
SIECA	Secretariat for Central American Economic Integration
UNCTAD	United Nations Conference on Trade and Development
UPOV	International Union for the Protection of New Varieties of Plants
WEF	World Environment Fund
WIPO	World Intellectual Property Organization

INTRODUCTION

Introduction

Since the Convention on Biological Diversity (CBD, 1992) was adopted, there has been considerable progress in Central America and the Dominican Republic, in the development and implementation of their obligations and guiding principles regarding conservation, sustainable use and benefit-sharing. Each country in the region has concentrated efforts on different issues according to their needs, specificities, priorities and possibilities.

For the majority of the countries in Central America and the Dominican Republic access to genetic resources and the fair and equitable sharing of hosting benefits (ABS), the protection of traditional knowledge (TK) of indigenous peoples associated to these resources or biodiversity and intellectual property (IP), are some of the most important dimensions of the CBD.

Central America is one of the most biological diverse regions on the planet: 8% of the global biodiversity; 206 different ecosystems; 33 eco-regions; 20 life zones, while holding a valuable cultural heritage derived from its indigenous people. Prioritizing ABS, IP and TK, as well as the fair and equitable sharing of benefits, coincides with an international trend, which has positioned these issues firmly in the international agenda for the past 20 years.

All countries in the regions have ratified the CBD and four of them (Guatemala, Honduras, Panama and Dominican Republic) have ratified the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of its Benefits (2010). Moreover, they all have a focal point for biodiversity and ABS/Nagoya Protocol (<https://www.cbd.int/information/nfp.shtml>).¹ The majority of countries have,

at least, developed their own biodiversity strategy or planning instrument and norms to regulate specific aspects of the CBD - biosafety, protected areas, ABS - among others. Most countries in the region have a national biodiversity strategy - not all have however been updated - and have complied at least once with the elaboration of their national reports on biodiversity to the CBD (<https://www.cbd.int/nbsap>).²

On the other hand, from a regional perspective, some advances have been achieved through the Central American Integration System (SICA, in Spanish) on regional biodiversity policies regarding protected areas, biodiversity monitoring and strategies, including the initiative to create a regional biodiversity institute. These instruments and initiatives have been under debate and in some cases approved by the Council of Presidents or environmental ministers. Likewise, within the Central American Commission for Environment and Development (CCAD, in Spanish), a specialized body of SICA, a Central American Agreement on Access to Genetic and Biochemical Resources and Related Traditional Knowledge was developed in 2003. This is a regional model protocol on ABS, yet to be formally adopted and ratified (<https://www.cbd.int/doc/measures/abs/msr-abs-cas-es.pdf>)³. These different initiatives are however pending implementation.

CHAPTER 1

General policy and legal framework
for biodiversity and ABS

Below is a summary of norms and policies addressing ABS and related issues in the countries of the region.

Chapter 1. General policy and legal framework for biodiversity and ABS

Comparative table on norms and policies

Country	Norm or policy	Summary
Belize	<p>Forest Policy</p> <p>The National Protected System Act (No 17 de 2015)</p> <p>Forest Act Chapter 213 Wildlife Protection Act Chapter 220 Patent Act Chapter 253</p> <p>The NBSAP 1998</p>	<p>It does speak to the interaction and management of forest resources when it comes to IP, traditional knowledge and use of resources and overall all aspects of forest management. The forest Policy was completed in Belize</p> <p>Speaks to overall protected areas management and establishes the protected areas system of Belize</p> <p>Currently being revised and will be submitted to the CBD Secretariat this year</p>
Costa Rica	<p>Law 7788, Biodiversity Law</p> <p>Executive Decree 31514-MINAE, General Guideline on ABS (2003)</p> <p>Executive Decree 34958-MINAE-COMEX (2008) – Guideline Art. 80 of the Biodiversity Law. Note: this decree was nullified through Resolution No 2012017058, issued by the Constitutional Court of the Supreme Court of Justice on December 5th of 2012</p> <p>Executive Decree 33697-MINAE, Guideline on ABS in ex situ conditions (2007)</p> <p>Updated National Strategy for the Conservation and Sustainable Use of Biodiversity (2016-2025)</p> <p>National Biodiversity Policy (PNB) 2015-2030</p> <p>Executive Decree No 39341-MINAE, Guidelines for the Use of Administrative Sanctions in ABS matters (2016)</p>	<p>General biodiversity laws and references to ABS, mutually agreed terms (MAT) prior informed consent (PIC) and TK</p> <p>ABS rules and procedures</p> <p>Rules and Procedures to apply Article 80 of the Biodiversity Law that regulates the “Mandatory Consultation”</p> <p>Specific rules to access resources for ex situ collections</p> <p>Document that corresponds to the updated National Biodiversity Strategy finalized in 2000</p> <p>Principles and actions for biodiversity planning and its components</p> <p>Guidelines for the use of administrative sanctions in matter of non-authorized access to genetic and biochemical elements and resources, established in the Biodiversity Law No 7788</p>

Country	Norm or policy	Summary
El Salvador	<p>National Biodiversity Strategy (2013).</p> <p>Decree No. 17, General Law of Environment (2000).</p> <p>Decree No. 579, Law on Protected Areas (2005).</p> <p>Legislative Decree No. 233-98, General Environmental Law.</p> <p>Decree No. 844, Wildlife Conservation Law (1994), modified by Legislative Decree No. 441 (2001).</p>	<p>Actions and principles for planning biodiversity and its components</p> <p>ABS general principle</p> <p>General procedures and norms on the management of protected areas - including collecting of biological resources in natural areas</p> <p>Norms for access to wildlife components (permits)</p> <p>Establishes specific procedures and norms for the collection of biological resources in natural areas as well as institutional competences</p>
Guatemala	<p>Governmental Agreement 220-2011, National Biodiversity Policy (complemented by Decree Law 4/89).</p> <p>Resolution 01-16-2012 CONAP, National Biodiversity Strategy and Action Plan 2012-2022.</p> <p>Ministerial Agreement 117-95 (1995) on agricultural ABS.</p> <p>National Biosecurity Policy (2015).</p>	<p>General public policies on biodiversity conservation</p> <p>General principles on conservation and sustainable use of biodiversity and its components</p> <p>Regulates ABS in the case of plant genetic resources (mainly agricultural)</p> <p>General guidelines on how research related to genetic engineering matters, how to value the country's genetic patrimony</p>
Honduras	<p>General Environmental Law (1993) and its regulation.</p> <p>National Biodiversity Strategy (2001).</p> <p>Forestry, Protected Areas and Wildlife Law (2007) and its regulation (2010).</p> <p>Manual on technical and administrative norms for the management and sustainable use of wildlife in Honduras. (2012).</p> <p>Law for the Protection of New Varieties of Plants (2012)</p>	<p>General objectives with regard to conservation, protection, management and the administration of environmental material and natural resources (renewable and non-renewable)</p> <p>General principles on biodiversity conservation, with references to genetic resources</p> <p>Code of ethics for the sustainable management of forest, water, biodiversity, genetic, recreational, landscape and cultural resources; conservation and protection of the genetic potential of protected areas and wildlife</p> <p>Determines that all the wild flora and fauna collected and captured aimed at obtaining genetic resources, their derived products or intangible components, will be subject to existing norms that regulate the access to genetic resources at national and international levels</p> <p>Even though Honduras is not a member of the UPOV, it has elaborated a law in this regard to define the fundamentals and procedures for the protection of the rights of new plant variety breeders.</p>
Nicaragua	<p>National Biodiversity Strategy (2002).</p> <p>Law No. 807, Biological Diversity Law</p>	<p>General principles on biodiversity conservation, with references to genetic resources</p> <p>References to normative principles on ABS, PIC, MAT</p>

Country	Norm or policy	Summary
	Law No. 217, General Law on Environment and Decree 9-96, Regulation to General Law on Environment (1996)	Specific developments regarding ABS principles
Panama	Executive Order 25 of April 29th 2009, regulation of the General Law on Environment, regarding ABS (2009) Unit for Access to Genetic Resources (UNARGEN, in Spanish) is created under Executive Decree 25 National Biodiversity Strategy (1999) Law No. 41, General Law on Environment, creates the National Environmental Authority (ANAM, in Spanish). Article 71 regulates the access to biogenetic resources	ABS principles and procedures Formalises the creation of the competent national institution for ABS General principles for biodiversity conservation, with references to genetic resources. References to ABS at the level of principles
Dominican Republic	National Strategy for the Conservation and Sustainable Use of Biodiversity (2011) Sectoral Biodiversity Law 333-15 (2015)	General principles for biodiversity conservation, with references to genetic resources and fair and equitable sharing of benefits
SICA/CCAD	Regional Environmental Strategy Framework (2015)	General principles for the conservation of biodiversity, watersheds, forests, water, etc. in Central America.

Note: In this Table, reference is made to public policies and norms that in general or sometimes specifically address biodiversity conservation and ABS.

Most countries have developed national biodiversity reports on which, they describe and summarize the current situation regarding biodiversity issues in terms of conservation, research and institutional advances, among others (<https://www.cbd.int/reports/>)⁴. Costa Rica, El Salvador, Panama, Nicaragua, Dominican Republic, Guatemala and Honduras, for example, have complied and submitted the fifth national report, as requested by the CBD Secretariat. Belize has submitted the fourth.

As far as implementation and/ or compliance with the CBD is concerned, all countries have biodiversity strategies or action plans. These instruments establish and describe, among other issues, ABS principles in the CBD, with specific references to mutually agreed terms (MAT), prior informed consent (PIC) and fair and equitable sharing of the benefits.

Some countries, such as Costa Rica and Panama, have created specific ABS legal frameworks. ABS norms in these countries address and include detailed references and provisions on valuation and the legal protection of TK through different instruments including registers, contracts, and defensive protection. Panama is the only country with a law and specific regulation for the protection of TK.

Various biodiversity policies also refer to eco-businesses or biotrade for the sustainable use of biodiversity and its components. The document on Bio Trade Principles and Guidelines of UNCTAD (http://unctad.org/es/Docs/ditcted20074_sp.pdf)⁵ proposes a number of guidelines on rules and principles that may be put into practice according to the reality of each country.

Policies, strategies and action plans for biodiversity and in reference to the ABS Protocol

All countries have biodiversity strategies and plans, although Belize (1998), Panama (1999) and Nicaragua (2015-2020) require an update, to comply with the CBD new Strategic Plan and Aichi Targets by 2020, and with Nagoya Protocol provisions and approved during the Tenth Meeting of the Conference of the Parties (COP 10) in Nagoya, Japan.

Belize

In the case of Belize, although the National Biodiversity Strategy (<https://www.cbd.int/doc/world/bz/bz-nbsap-01-p1-en.pdf>)⁶ has been in place for more than decade, it is very detailed as far ABS is concerned. It also offers a basic policy framework to guide future legal and regulatory developments. This strategy suggests actions on two fronts: access to genetic resources per se and distribution of benefits. In the case of access to genetic resources, the following actions are proposed:

- Identify information on successful ABS experiences in other countries
- Create legal and institutional frameworks to regulate access to organisms for use by pharmaceuticals and other industries/ stakeholders
- Ensure that access contracts do not promote the exploitation of resources and facilitate technology transfer for local communities
- Undertake research and inventories to identify areas with a high concentration of organisms of potential uses
- Contribute to the development of international protocols and mechanisms on access to genetic resources

In terms of the fair and equitable sharing of benefits, the Strategy proposes the following set of actions:

- To carry out consultations with the competent authorities of the countries that share similar biological resources, on policies and frameworks, ensuring for greater benefits from their utilization
- Consult with the community, the public and judicial authority on ways to ensure an improved fair and equitable sharing of benefits derived from biological resources, cultural resources and traditional knowledge
- Create norms to ensure that the benefits derived from the exploitation of biological resources are invested in maintaining the integrity of habitats and critical ecosystems
- Contract an expert to develop a legal and institutional framework for the fair and equitable sharing of benefits derived from the exploitation of biological resources
- Contribute to the review of international policies on intellectual property, and incorporate mechanisms that allow the protection of traditional knowledge

Costa Rica

Costa Rica made the National Biodiversity Policy (2015-2030) official, in which the ABS and TK topics can be found in several guidelines, for example:

- Promotion of a fair and equitable distribution of the benefits derived from the use of genetic and biochemical resources, including access to technologies and its transfer
- Promotion of respect, collection and protection of traditional knowledge, innovations and practices of indigenous, urban, farming and local communities, associated to the biodiversity resources

Recently, in addition, the updated National Strategy for the Conservation and Sustainable Use of Biodiversity (2016-2025) has been finalized, and it includes the following on the topics of ABS and TK:

- Improvement and update of the access guidelines for genetic and biochemical resources, as well as the development of guidelines for the protection of the knowledge, innovations and practices of indigenous people and of local communities associated to biodiversity by means of a participatory process and consultation.

El Salvador

El Salvador also has in place a National Environmental Policy (2012) and a fairly recent National Biodiversity Strategy (2013) (<http://www.marn.gob.sv/phocadownload/Estrategia-Nacional-Biodiversidad.pdf>)⁹. A strategic approach is defined in this context “for the people”, and recognizes that the poorest and most vulnerable communities also have a more direct relationship with biodiversity. Although these groups have been historically excluded (for example, indigenous peoples), they are often the custodians of knowledge and practices on the conservation of genetic resources. With the later in mind, three priority lines of action are proposed:

- Recovery and promotion of traditional practices on the conservation of genetic resources.
- Recognition of the rights to access and use biological resources.
- Embed local economic options on biodiversity.

Guatemala

Guatemala approved a National Biodiversity Strategy and Action Plan (2012-2022) (<http://www.chmguatemala.gob.gt/Members/esolorzano/mis-documentos-2012/estrategia-nacional-de-diversidad-biologica-y-plan-de-accion-2012-2022/estrategia-nacional-de-diversidad-biologica-y-plan-de-accion-version-hconap.pdf>)¹⁰. According to this instrument, in 2022 scientific knowledge and collective traditional knowledge associated to biological diversity, including that linked to genetic resources, should be articulated and protected through the implementation of integrated research and systematization processes, but also through legal frameworks or sui generis protection. This will promote better framework conditions on ABS. The following actions are suggested:

- The implementation of the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits.

- The identification and recovery of the country's strategic genetic resources present in national and international collections.
- The implementation of laws and/or regulations regarding the protection of collective traditional knowledge associated to biological diversity, use of modern biotechnology, access to genetic resources and collective traditional knowledge associated to biological diversity.

Honduras

Honduras has a Biodiversity strategy and Action Plan in place (2001) (<https://www.cbd.int/doc/world/hn/hn-nbsap-01-es.pdf>)¹¹. It includes a strategic guideline on the fair and equitable sharing of benefits regarding conservation in general, and also includes references to sovereignty, poverty, access to genetic resources, incentives, biotechnology and biosecurity.

The different strategies on ABS refer to the need to:

- Promote the approval and manage the elaboration and harmonization of legal and administrative instruments that regulate access to genetic resources and biochemicals, and guarantee the generation and equitable distribution of the benefits derived from them.
- Promote mechanisms to enable the permanent and systematic economic valuation of genetic resources and biochemicals.
- Disseminate information produced through the economic valuation of genetic resources and biochemicals, as well as the procedures and regulations needed for their use.

To implement these strategies, the following recommendations are provided:

- Create and promote the National Bioprospecting Program.
- Implement a legal framework to regulate access to genetic resources.
- Develop an awareness program directed to governmental and non-governmental organizations regarding the importance of access and equitable distribution of benefits generated from genetic resources. Manage, subscribe to, ratify and implement the Central American Protocol on Access to Genetic and Biochemical Resources.
- Implement the national and international network for the exchange of information related to genetic and biochemical resources.

Nicaragua

Nicaragua's Biodiversity Strategy (2002) ([http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\\$All%29/3E5E9D7A454E055E062570B90068482E?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28$All%29/3E5E9D7A454E055E062570B90068482E?OpenDocument))¹² includes specific activities related to ABS such as:

- Implementation of programs for the conservation and reproduction of genetic resources, important for the economy the country.
- Development of financial and technical cooperation mechanisms at the national and international levels, for conservation and use of genetic resources.
- Strengthening research institutions for the improvement of genetic resources.
- Reactivating the National Commission for Plant Genetic Resources (CONAREF).
- Obtaining funds and promoting the knowledge and valuation of genetic resources.
- Ensuring the recognition of property rights of genetic resources of indigenous peoples and peasant communities.
- Implementing norms for the access to genetic resources, considering the protection of traditional knowledge.

Panama

<https://burica.wordpress.com/2008/02/01/estrategia-de-biodiversidad-de-panama/13>, during the actualization and reviewing of the National Biodiversity Strategy, various guidelines related to ABS were include:

- Development of a national inventory of Panama genetic resources
- Disclose aspects concerning access to genetic resources, property rights on the knowledge of indigenous peoples, peasants and Afro-Antillean communities, biotechnology to ensure food security and bioprospecting applications
- Create working groups within the National Commission for Biodiversity for the access to genetic resources, Bio security, biotechnology and bioprospecting
- Sign contracts for the access to genetic resources, between the appropriate stakeholders (legal persons, companies, and the State)
- Elaborate and implement legal frameworks on intellectual property and the rights of indigenous peoples and peasant communities, in coordination with the relevant authorities

Dominican Republic

The Dominican Republic has a relatively recent National Strategy for Conservation and Sustainable Use of Biological Diversity (Action Plan 2011-2020) (see reference in Annexes) as well as the Sectoral Biodiversity Law 333-15. One of their milestones related to ABS is the establishment of synergies between the Nagoya Protocol and International Treaty on Plant Genetic Resources for Food and Agriculture ITPGRFA. This milestone includes a specific goal

- By 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization will be in force and operating in accordance with national legislation

SICA and CCAD

In the case of SICA, the Regional Environmental Framework Strategy was approved in 2015 (<https://www.cbd.int/doc/meetings/mar/mcbem-2015-01/other/mcbem-2015-01-estrategia-regional-ccad-es.pdf>)¹⁵. This strategy refers to the participation of indigenous peoples in decision making processes related to biodiversity conservation, yet omits explicit references to genetic resources. The strategy focus on actions in terms of:

- Climate change and risk management
- Forests, oceans and biodiversity
- Integrated management of water resources
- Environmental quality
- Trade and environment
- Funding mechanisms

On the other hand, CCAD focuses its actions based on the Environmental Plan for the Central American Region (PARCA). The last PARCA 2010-2014 focused its strategic priorities on the governance of shared resources, citizen participation, the Mesoamerican Biological Corridor, climate change, natural heritage, among others.

CHAPTER 2

Institutional framework on biodiversity and ABS

Chapter 2. Institutional framework on biodiversity and ABS

Comparative table on competences

Country	Matter	National competent authority
Belize	ABS	Forest Department, Ministry of Forestry, Fisheries and Indigenous Peoples
	IP	Intellectual Property Office
	Indigenous peoples biodiversity/CBD	The Indigenous Peoples Commission Forest Department, Ministry of Forestry, Fisheries and Sustainable Development The Indigenous Peoples Commission
Costa Rica	ABS	National Commission for Biodiversity Management (CONAGEBIO)
	IP	Register of Industrial Property, Ministry of Justice and Peace
	Indigenous peoples	National Commission for Biodiversity Management (CONAGEBIO)
	Biodiversity/CBD	National System of Conservation Areas (SINAC), Ministry of Environment and Energy (MINAÉ)
	PGRFA	National Seeds Office and National Committee for Biodiversity Management
El Salvador	ABS	Ministry of Environment and Natural Resources
	IP	Industrial Property Office, National Registry Center
	Indigenous peoples	Direction of the Indigenous Peoples, Secretariat of Culture (Presidency of the Republic)
	Biodiversity/CBD	Ministry of Environment and Natural Resources
Guatemala	ABS	ABS Unit, National Council for Protected Areas (CONAP) (created through Legislative Agreement 171-2014)
	IP	Intellectual Property Registry, Ministry of Economy
	Indigenous peoples	Coordination Department for Indigenous Peoples and Civil Society, National Council for Protected Areas (CONAP)
	Biodiversity/CBD	National Council for Protected Areas (CONAP)
	PGRFA	Ministry of Agriculture and Livestock
Honduras	ABS	General Direction for Biodiversity (DIBIO), Energy, Natural Resources, Environment and Mining Secretariat (MI AMBIENTE)
	IP	General Directorate of Intellectual Property (DIGEPIH), Property Institute (PI) National Service of Agricultural Health (SENASA), Agricultural Secretariat of Agriculture and Livestock

Country	Matter	National competent authority
	Indigenous peoples	General Directorate of Indigenous Peoples and Afro-Hondurans (DINAFROH), Secretariat of Development and Social Inclusion
	Biodiversity/CBD	General Directorate of Biodiversity (DIBIO), Secretariat of Energy, Natural Resources, Environment and Mines (MIAMBIENTE)
	RFAA	Directorate of Agricultural Science and Technology (DICTA), Secretariat of Agriculture and Livestock (SAG), National Committee on Plant Genetic Resources of Honduras (CONAREFIH)
	Culture and Intangible Heritage Protection	Honduran Institute of Anthropology and History (IHAH)
Nicaragua	ABS	National Commission for the Environment (Ministry of the Environment and Natural Resources)
	IP	Intellectual Property Registry, Ministry of Development, Industry and Trade
	Indigenous peoples	National Commission for the Environment, (Ministry of the Environment and Natural Resources)
	Biodiversity/CBD	General Biodiversity Directorate, Ministry of the Environment and Natural Resources (MARENA)
Panama	ABS	Unit for Access to Genetic Resources, National Directorate for Protected Areas and Wildlife, Ministry of the Environment
	IP	Directorate of the Industrial Property Registry, Ministry of Commerce and Industries
	Indigenous peoples	Directorate of Indigenous Affairs - Ministry of Government and Justice of Panama
	Biodiversity/CBD	Ministry of the Environment. Note: Law No. 8 of March 25th 2015. Partially reforms Law No. 41 of 1998 transforming ANAM into the Ministry of the Environment of Panama Article 71 is modified, regulation of genetic and biological resources, their by-products and bioprospecting
	PGRFA	Agricultural Development Ministry
Dominican Republic	ABS	Department of Genetic Resources, National Ministry of Industry and Commerce
	IP	National Office of Industrial Property, National Secretariat of Industry and Commerce
	Local communities	Directorate of Biodiversity, Ministry of the Environment and Natural Resources
	Biodiversity/CBD	Directorate of Biodiversity, Ministry of the Environment and Natural Resources
SICA/CCAD	Environment in general	Central American Commission for Environment and Development

As is the case in many countries in Central America, competent institutions often intersect on issues related to protected areas, wild species, environmental protection, biodiversity, IP and ABS. Except in the case of Costa Rica, where environmental management is based on the integrated notion of "biodiversity", the competences in other countries are largely sectorial and compartmentalized.

In general, the environmental sector is competent in biodiversity and ABS matters. In this regard, the responsible authorities for the management of wildlife, protected areas, ecosystems and others, have competences on biodiversity, and through units, departments or directions, govern ABS related matters. In the case of ABS, only Costa Rica, Guatemala, Dominican Republic and Panama have specialized bodies. Costa Rica, through CONAGEBIO, and Panama, through the Unit for UNARGEN, are processing applications on access and negotiating contracts on benefit-sharing.

This is part of a policy and institutional tradition shared by countries in Latin America as a whole. Reorganizing the institutional set up and environmental management of biodiversity in its three dimensions -ecosystems, species, genetic resources- has yet to capture the attention and permeate national policy agendas.

Finally, this same sectorial tradition in terms of functional competences is verified in the case of plant genetic resources for food and agriculture (PGRFA) under the framework of the FAO International Treaty. For countries that have already ratified the Treaty (Panama, Costa Rica, Honduras, Nicaragua and Guatemala), the competent authorities depend on the agricultural sector and corresponding ministries.

Regional institutions

There are three relevant and leading regional institutions with competences on decision making for biodiversity policy. The Central American Integration System SICA, as a regional cooperation platform, has adopted instruments related to biodiversity and ABS. These include the Convention for the Conservation of the Biodiversity and Protection of Priority Wilderness Areas in Central America (1992); Regional Strategic Biodiversity Monitoring and Evaluation Program (2005), and agreement to create a Regional Biodiversity Institute (2005).

On the other hand, CCAD developed in 2003 the Central American Agreement on Access to Genetic and Biochemical Resources and Related Traditional Knowledge, yet to be approved and implemented by the countries. This agreement includes detailed provisions on ABS based on PIC, MAT and benefit-sharing. The institutional differences and legal advances between countries seems to have influenced

the little interest in approving the Protocol and its legal development at the national levels. The different strategic policy instruments of SICA and the CCAD (for example, PARCA 2010-2014, the Regional Environmental Strategy Framework, etc.) have not prioritized ABS or related issues for their cooperation and integration of their agendas.

Finally, the Secretariat for Central America Economic Integration (SIECA), despite not holding specific mandates for biodiversity issues, may be of importance in matters that concern transport, infrastructure, customs, among others, on biodiversity and its components.

CHAPTER 3

**National policies and legislation
for indigenous peoples**

Chapter 3. National policies and legislation for indigenous peoples

Comparative table

Country	Norm or policy	Summary
Belize	N/A	
Costa Rica	Law 7788, General Biodiversity Law (1998)	Defensive and positive protection of the TK and certificate of origin or legal certificate of country of origin
El Salvador	Political Constitution of El Salvador (1983) and its reform in 2014.	Recognizes the ancestral rights of indigenous peoples, and the adoption of policies to implement their cultural identity, vision and values
Guatemala	Political Constitution of Guatemala (1993)	Recognizes the rights to land, ethnic groups and labour rights
Honduras	Political Constitution of Honduras (1982)	Recognizes the rights to land, forests, and proposes its new normative
	General Environmental Law 1993	Chapters and articles on the respect, protection and conservation of historic, cultural heritage and tourism resources
	Law for the Protection of the Cultural Heritage of the Nation (1997)	The objective is the defense, conservation, rescue, restoration, protection, investigation, disclosure, awareness and transmission to future generations of the goods that constitute the Cultural Heritage of the Nation throughout national territory and territorial waters
	Forestry Law on Protected Areas and Wildlife (2007)	Chapters and articles on the characteristics of conservation sites and spaces, in relation to indigenous peoples and Afro-Hondurans
Nicaragua	General Law on the Environment and Natural Resources (1996)	The State recognizes and supports indigenous peoples
	Law 445, Communal Property Regime for Indigenous Peoples and Ethnic Communities (2003)	Defines the territorial rights of indigenous peoples
	Law of Traditional Ancestral Medicine 759-2011	Recognizes rights, respecting, protecting and promoting practices and expressions of traditional ancestral medicine of indigenous peoples and afro-descendants in all specialties and individual and collective exercise, according to their own and intercultural health; establishing the appropriate guarantees by the State, for an effective implementation and application

Panama	Political Constitution of Panama (1972 and modifications)	Recognizes the rights to ethnic identity, language, and participation
	General Law of the Environment (1998)	Recognizes the rights to indigenous land and territories
Dominican Republic	N/A	

Central America has an important indigenous population and a tradition of very vocal and demanding organizations representing indigenous peoples rights. These include the Central American Indigenous Council, Alliance of Indigenous Women of Central America and Mexico, Confederation of Autochthonous Peoples of Honduras (CONPAH), Peasant Unity Committee of Guatemala, National Coordinating Body of Indigenous Peoples of Panama, National Indigenous Coordinating Council of El Salvador, among others. All countries in Central America have signed the United Nations Declaration on the Rights of Indigenous Peoples (non-binding instrument, adopted in 2007). It is the most important and complete international instrument that captures and recognizes the different rights of indigenous peoples.

All countries in Central American recognize the rights of indigenous peoples in their national Constitutions. Several, as in the cases of Panama and Guatemala, extensively grant recognition of different rights, mainly related to culture and land.

Despite the importance of indigenous population in Central America, and except for Honduras, Nicaragua and Guatemala, no legal and regulatory comprehensive framework has been implemented. The countries of Central America have no indigenous laws on participation and consultation. Nicaragua is the only country in Central America with laws that protect indigenous peoples. Some laws address specific indigenous matters or aspects, as in the case of land in Guatemala or TK in Panama. The defense of general indigenous rights is accomplished via international indigenous peoples' instruments or through the protection of Human Rights.

CHAPTER 4

**Intellectual property and protection
of biodiversity innovations**

Chapter 4. Intellectual property and protection of biodiversity innovations

Comparative table

Country	Norm or policy	Summary
Belize	Plant Protection Law (2006)	Sistema tipo UPOV (protección de derechos de obtentor)
Costa Rica	Law 7788, General Biodiversity Law (1998)	References to certificates of origin, exceptions for patent protection, defensive measures and disclosure of origin for genetic resources and TK
	Law 8631, Law on the Protection of New Varieties of Plants (2008)	Protection such as UPOV for plant varieties (breeder's rights)
	Law 6867, on Patents of Invention, Drawings and Industrial Models and Utility Models and its reforms (1983)	Regulates patents, drawings, industrial model and utility models
El Salvador	Law on the Promotion and Protection of Traditional Knowledge (1993)	Allows the protection of inventions related to biological resources
Guatemala	N/A	
Honduras	Industrial Property Law (1999)	Protects industrial property through the regulation of patents, registration of utility models, industrial designs, marks and commercials, denominations of origin and industrial secrets
	Law for the protection of plant varieties (2012)	Sets the foundations for the protection of the rights of plant varieties breeders Sustainable use of biodiversity and the environment, under intellectual property
	National Intellectual Property Strategy (2013)	Protection of traditional knowledge of indigenous peoples and Afro-Hondurans, and the access to genetic resources and derived products

Nicaragua	Law 318-99 (1999) and its regulation Decree 37-2000 (2000), on the protection of plant varieties	Regime on the protection of plant varieties such as UPOV
Panama	Law 35, Patent Law (1996) Law 23, Law on the Protection of New Plant Varieties (1997)	Prohibits the patents of plants Establishes a protection regime based on UPOV 1978
Dominican Republic	Law 20-00 on Industrial Property (2000) Law 450-06 on Plant Varieties (2006)	Protection through patents. Protection regime based on as UPOV

As in other regions, there is a gradual process for the consolidation of intellectual property tools in order to protect plant varieties and innovations related to biodiversity (regarding biotechnology or natural products), through patents.

There is a trend towards the development and implementation of policy and legislative frameworks that protect biotechnology innovations and plant varieties. Such protection is often afforded either through DR-CAFTA, bilateral trade promotion agreements (mainly with U.S.A.) or through capacity strengthening processes regarding IP (promoted many times through WIPO). Except for El Salvador, in most of the countries the protection of plant breeder's rights follows the model of Act 1978 or 1991 of UPOV. However, policy developments have not been smooth in all the countries. In Guatemala there has been great resistance to this type of legislation from civil society.

Protection through UPOV implies a sort of ad hoc patent for new plant varieties that comply with certain requirements (novelty, stability, distinctiveness and uniformity) and is directed mainly to "cash crops" or commodities (commercial crops), namely crops produced through intensive agriculture, oriented often to industry and exportation.

On the other hand, based on biodiversity conservation, ABS and protection of TK, there are initiatives to somehow balance this trend. The disclosure of origin and legal provenance (or so called "defensive protection") incorporated in the legislation of Costa Rica and Panama, serve this purpose. These initiatives condition the granting of patents. In both cases, protection is provided by legislation related to biodiversity, and not through IP frameworks. This is similar in other places in Latin America.

Likewise, specific norms on ABS in Costa Rica and Panama are a way to regulate initial research and development processes, and establish conditions for the fair and equitable distribution of benefits. Many products as a result of research and development involve protected innovations through patents, breeder's rights and other rights.

CHAPTER 5

Advances in the implementation
of regulatory and legal frameworks

Chapter 5. Advances in the implementation of regulatory and legal frameworks

Central America and Dominican Republic face the same challenges as Latin America as a whole, in what regards the application and enforcement of their legal frameworks. On this matter, although there are uneven advances for their implementation, attention is required to consolidate efforts in the development of policy and legal foundations. The situation may be divided in two stages: i) to generate norms and policies (that varies between countries) and ii) implementation (which is the majority of cases).

In terms of ABS, Costa Rica has a long tradition of efficiency and effectiveness. Having begun to implement an ABS legislative framework in the 90's, Costa Rica has a considerable advantage over the other countries. Panama has also been implementing a normative framework on ABS during the past years. Both countries have also implemented an institutional framework and competent authorities to promote these laws and regulations.

Panama has advanced the most on matters regarding the protection of TK, with legislation that dates back to the 90's, serving as a model for countries in other regions and is an example for institutional governance such as WIPO. The protection of TK is also proposed: both Costa Rica and Panama have incorporated in their legislation (biodiversity and ABS), measures that require the disclosure of origin and legal provenance of genetic resources and TK, as a condition to process patents.

Some countries such as Nicaragua, Guatemala, Dominican Republic and Honduras are still developing their ABS frameworks, which require institutional elements and procedural rules. In the case of Guatemala, the country has begun to debate and discuss legal drafts. Belize on the other hand has centered its efforts on the evaluation on how to modify and adjust their existing legal frameworks to ABS requirements and the Nagoya Protocol.

The CCAD and Central American Agreement on Access to Genetic Resources and Biochemicals and Associated Traditional Knowledge present an interesting situation. The regional strategy on access, adopted in 2003, never reached a consensus for its approval and implementation through national legislation in the countries of the region. This is an important Protocol as it responds to a fact barely weighed: countries share a great amount of biodiversity and it would make sense economically, environmentally and politically to think of a common regional regulatory approach that would better position the countries in terms of their negotiating situation/strength for ensuring their share of the benefits. In this regard, revisiting this Protocol may be part of a comprehensive effort to confer the regions in Central America with a strong tool of a regional dimension on ABS and the protection of TK.

FINAL CONSIDERATIONS

Final considerations

Advances on policies, norms and their implementation, vary considerably between countries in Central America and the Dominican Republic. However, in all countries of the region there is an existing legal and institutional base to enable the implementation of specific frameworks on ABS, TK and IP, and other related matters such as bio-trade, biosafety, conservation and biodiversity management.

Specifically in terms of biotrade, Costa Rica has a draft Bio-trade National Program, elaborated by INBIO in 2006, which has yet to be formally approved. Through the Biodiversity Partnership Mesoamerica, a non-profit organization created in April 2012, which will begin to operate at the regional level with headquarters in Costa Rica, a network of organizations is being established at the regional level, to encourage bio-businesses and ventures related to biodiversity. National biodiversity strategies in all countries recognize bio trade as an option to potentiate the sustainable use of biodiversity. Bio trade is relevant both for its importance in the generation of local value and connections with ABS, and the need to understand these connections, ensuring the compliance of regulatory frameworks.

Under SICA, a governing body on environmental and sustainable development actions, the CCAD has implemented a number of biodiversity policy instruments that concerns the whole region. This strategic regional approach is important given biodiversity is to a great extent shared beyond the countries borders. This is certainly in the understanding that flexibilities must be maintained among countries to allow their adaptation to SICA according to their needs and realities.

As far as ABS, TK and IP are concerned advances are limited, except for Costa Rica and Panama, which have in place specific rules and regulations that have been implemented over the past years.

All other countries in Central America, including Panama, Costa Rica, El Salvador, Guatemala and Dominica Republic, are implementing national and regional GEF projects on ABS. This offers an interesting opportunity to focalize ABS actions in three areas: institutional strengthening, development of normative frameworks and their implementation. In some cases, bio trade undertakings and ABS pilot projects promote the national dynamic of these projects.

The focus on these areas, taking into account the differences among countries, contributes considerably to promote training, institutional strengthening, awareness and the development of effective and efficient normative frameworks in the countries. However, the policy contexts are sometimes very complex as in the case of Guatemala, and at present Costa Rica, where a new perspective of the normative and regulatory framework on ABS is being promoted.

The adoption and ratification of the Nagoya Protocol (in Guatemala, Honduras, Panama, Dominican Republic) also offers an important opportunity regarding ABS and TK, and related topics begin to be added in the national and international debate agendas. This exposure to the Protocol provides policy strengthening and visibility of the issues, pushing countries to take actions one way or another. Initially, these actions were centered in nationalizing and putting into action Protocol obligation, through legislation or national regulations.

ANNEX

Annex

Description	Link	Page
Formally recognized Focal Points for Biodiversity and ABS/Nagoya Protocol	https://www.cbd.int/information/nfp.shtml	4
National Biodiversity Strategies and Action Plans	https://www.cbd.int/nbsap	4
Regional protocol model on ABS	https://www.cbd.int/doc/measures/abs/msr-abs-cas-es.pdf	4
National biodiversity reports	https://www.cbd.int/reports/	8
UNCTAD Biotrade Principles and Guidelines	http://unctad.org/es/Docs/ditcted20074_sp.pdf	8
National Biodiversity Strategy. Belize	https://www.cbd.int/doc/world/bz/bz-nbsap-01-p1-en.pdf	9
Updated National Strategy for the Conservation and Sustainable Use of Biodiversity. Costa Rica	http://www.conagebio.go.cr	10
National Biodiversity Strategy. El Salvador (2013)	http://www.marn.gob.sv/phocadownload/Estrategia-Nacional-Biodiversidad.pdf	10
National Biodiversity Strategy and Action Plan. Guatemala (2012 - 2022)	http://www.chmguatemala.gob.gt/Members/esolorzano/mis-documentos-2012/estrategia-nacional-de-diversidad-biologica-y-plan-de-accion-2012-2022/estrategia-nacional-de-diversidad-biologica-y-plan-de-accion-version-hconap.pdf	10
Biodiversity Strategy and Action Plan. Honduras (2000)	https://www.cbd.int/doc/world/hn/hn-nbsap-01-es.pdf	11
National Biodiversity Strategy. Nicaragua (2002)	http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28\$AII%29/3E5E9D7A454E055E062570B90068482E?OpenDocument	11
Biodiversity Strategy and Action Plan. Panama (1999)	https://burica.wordpress.com/2008/02/01/estrategia-de-biodiversidad-de-panama	12
National Strategy for the Conservation and Sustainable Use of Biodiversity. Dominican Republic (Action Plan 2011-2020)	https://www.cbd.int/doc/world/do/do-nbsap-01-es.pdf	12
Regional CCAD/SICA Framework Strategy on Environmet (2015)	https://www.cbd.int/doc/meetings/mar/mcbem-2015-01/other/mcbem-2015-01-estrategia-regional-ccad-es.pdf	12



cooperación
alemana

DEUTSCHE ZUSAMMENARBEIT

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

