

ONLINE SURVEY ON INFORMATION SYSTEMS, REGISTERS AND DATABASES

Submitted by Brazil

Question 1

Yes, Brazilian legal system provides for an information systems on GRs, TK and TCEs. Law 13,123/2015 regulates access to GRs and associated TK and establishes a system for access to GR, protection of TK and their benefit-sharing. An online platform, called SisGen, was established under for the registration and management of access to genetic resources and associated traditional knowledge. SisGen is managed by CGen (the Council for the Management of Genetic Heritage).

Brazil recognizes the importance of customary laws and practices. Law 13,123/2015 specifically provides for the recognition of traditional knowledge associated with genetic resources and establishes procedures for obtaining prior informed consent and benefit-sharing with indigenous and traditional communities. It also recognizes Community Protocols as legal instruments between the communities that are the custodians of traditional knowledge and genetic resources and those seeking to access them for research, development or commercial purposes.

In Brazil, the requirement to disclose the utilization of genetic resources and associated traditional knowledge in patent applications is also regulated by Law No. 13,123/2015.

Brazil is a party to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and has contributed to the development of the Global Information System on Plant Genetic Resources for Food and Agriculture (GLIS), an online platform that facilitates the exchange of information on PGRFA.

Last but not least, the Registration of Intangible Cultural Assets (regulated through Decree n°. 3.551 of August 4, 2000) is a legal instrument aimed at the preservation, recognition, and evaluation of intangible heritage, and it is managed by the Institute for National Artistic and Historical Heritage (IPHAN), under the Ministry of Culture.

Question 2

Brazil is a party to the CBD. The CBD includes provisions related to the protection of traditional knowledge associated with genetic resources, and requires parties to develop measures to protect and promote the rights of indigenous and local communities over their traditional knowledge.

Brazil is a party to the Nagoya Protocol. The Nagoya Protocol requires parties to establish national access and benefit-sharing (ABS) frameworks that ensure the fair and equitable sharing of benefits arising from the use of genetic resources and associated traditional knowledge. This includes the establishment of information systems to monitor and regulate access to genetic resources and associated traditional knowledge.

Brazil is a party to the International Treaty on Plant Genetic Resources for Food and Agriculture. The Treaty includes provisions related to the protection of traditional knowledge associated with plant genetic resources and requires parties to develop

measures to protect and promote the rights of indigenous and local communities over their traditional knowledge. The Global Information System on Plant Genetic Resources for Food and Agriculture (GLIS) is a key component of the Treaty and was established to facilitate the implementation of the Treaty's Multilateral System (MLS).

Question 3

SisGen is a Brazilian online platform for the registration and management of access to genetic resources and associated traditional knowledge. It was established by Law 13,123/2015, which regulates access to genetic resources and associated traditional knowledge in Brazil.

SisGen allows users to register their activities related to access to genetic resources and associated traditional knowledge, as well as notify products and report on the benefits arising from their use.

SisGen relates to IP as it is designed to help implement the access and benefit-sharing obligations under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

More specifically, SisGen serves as a tool for the disclosure of the origin of genetic resources and associated traditional knowledge in patent applications. Thus, SisGen is a key information system in Brazil for the protection of genetic resources and associated traditional knowledge and serves an important IP-related function in ensuring compliance with Brazil's legal obligations with respect to access and benefit-sharing.

As for TK and TCEs, IPHAN manages a Digital Repository of Registered Cultural Assets that contains information about recognized Brazilian intangible cultural heritage assets, such as celebrations, forms of expression, places, and knowledge. The system is not IP-related.

Question 4

The main IP-related objective sought to be achieved through SisGen is the disclosure of the origin of genetic resources and associated traditional knowledge in patent applications. This is intended to ensure compliance with the access and benefit-sharing obligations under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

Applicants for patents must disclose if they have complied with Law 13,123/2015 and provide the corresponding registration number. This disclosure must be made at the time of filing the patent application.

Question 5

SisGen includes information related to access to genetic heritage and associated traditional knowledge, including the identification of providers and the users, the objectives and scope of the access, the description of the genetic heritage and associated traditional knowledge, georeferenced location of obtention site, the terms and conditions of access,

any prior informed consent granted by indigenous people and local communities, and terms and agreements for benefit sharing arising from the utilization of the genetic heritage and associated traditional knowledge.

Sensitive categories of information, such as sacred traditional knowledge or secret traditional knowledge, may also be included in SisGen if they are relevant to the access of associated traditional knowledge. However, the Law 13,123/2015 and its regulations provides for the protection of the confidentiality and secrecy of traditional knowledge associated with genetic heritage. Therefore, access to this type of information may be restricted to authorized parties and subject to confidentiality agreements.

Question 6

The users of genetic resources or traditional knowledge associated with genetic resources are responsible for characterizing and documenting the information in SisGen. They are required to provide accurate and complete information about the origin and characteristics of the genetic resources or traditional knowledge associated with genetic resources that they provide, as well as any restrictions on access or use.

The Secretariat-Executive of the CGen administers the information in SisGen and is responsible for ensuring its accuracy, completeness, and security. They also have the authority to grant access to the information to authorized users, including researchers, companies, and government agencies.

Users of genetic resources or traditional knowledge associated with genetic resources can add new entries or registrations to SisGen as needed. However, they are required to comply with the legal and regulatory requirements for access and benefit-sharing.

Indigenous Peoples and local communities have an important role to play in SisGen, particularly in the documentation of traditional knowledge associated with genetic resources. The law recognizes their rights to own, control, protect, and benefit from their traditional knowledge, and requires that their free, prior, and informed consent be obtained before any access to their traditional knowledge is granted.

Question 7

According to the law, the CGen is responsible for managing the SisGen system and retaining control of the information. Access to the content of the system is authorized only to registered users.

The access rights may vary according to the category of user (such as Executive Secretariat member, CGen Council member, enforcement agency authorities, indigenous peoples and local communities, users of GR and TK, etc) and there are different levels of access to the different categories of content. For example, Indigenous Peoples and local communities may have access to certain information that is relevant to them, such as data on the traditional uses and practices of the GR or associated TK that they hold.

The access to confidential information, such as trade secrets, secret knowledge, may be subject to additional restrictions and procedures, in order to protect the legitimate interests of the holders of the information.

Question 8

Indigenous Peoples and local communities' representatives are members of CGen Council and therefore have full access to SisGen registered information, including restricted information. CGen is also the ABS authority in Brazil and, as such, Indigenous Peoples and local communities' representatives members of CGen Council can propose rules and regulations relating to the implementation and management of SisGen.

Question 9

The inclusion of GRs and associated TK in SisGen does not establish any IP rights. Rather, it is a requirement under Brazilian law for those who access and use genetic resources and associated traditional knowledge to disclose their activities and comply with the legal requirements related to access and benefit-sharing. SisGen serves as a tool for monitoring compliance with these legal requirements, providing transparency and traceability in the use of genetic resources and traditional knowledge associated with them.

Question 10

As for transboundary cases, Brazilian legislation (Law 13,123/2015 and Decree 8772/2016) requires that access and benefit-sharing agreements be established between the countries involved, in accordance with the Nagoya Protocol.

There are no specific rules for disputes regarding competing claims but CGen can function as an appellate authority for any situations regarding access to GR TK or benefit sharing

Question 11

There are still no interoperability standards between Sisgen and foreign systems.

Question 12

No.

Question 13

Not at this juncture.