

Sustainable Development Law & Policy

Volume 4


Issue 2 Summer 2004: *Prior Informed Consent*

Article 8

Prior Informed Consent in the Convention on Biological Diversity-Bonn Guidelines: National Implementation in Colombia

Adriana Casas

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>

 Part of the [Environmental Law Commons](#), [Human Rights Law Commons](#), [International Law Commons](#), [Land Use Law Commons](#), [Law and Society Commons](#), [Legal History Commons](#), and the [Natural Resources Law Commons](#)

Recommended Citation

Casas, Adriana. "Prior Informed Consent in the Convention on Biological Diversity-Bonn Guidelines: National Implementation in Colombia." *Sustainable Development Law and Policy*, Summer 2004, 27-28.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

PRIOR INFORMED CONSENT IN THE CONVENTION ON BIOLOGICAL DIVERSITY-BONN GUIDELINES:

NATIONAL IMPLEMENTATION IN COLOMBIA

by Adriana Casas*

INTRODUCTION

The UN Convention on Biological Diversity (“CBD”) has been ratified by more than 170 countries around the world. This multilateral agreement serves as a global framework for biodiversity conservation, sustainable use, and equitable sharing of benefits derived from its use. This convention has been a source for the development of biodiversity laws at the national level, including Colombia.

Colombia has 10% of the world’s biodiversity in only 0.8% of the world’s land surface. It has 15% of the world’s orchids, and is number one in diversity of amphibians, with more than 583 species. Colombia has more than 81 indigenous groups, as well as many Afro-Colombian communities, and has established almost 300 hundred *resguardos* for indigenous peoples to live on across the country. With the wide range of diversity that is found in Colombia, the CBD has been recognized as a strategic and relevant treaty for the future development of the country.

ELEMENTS OF IMPLEMENTATION

Free and Prior Informed Consent (“FPIC”) under the CBD is intended to facilitate a transparent exchange of information, and aids in achieving the goals of the Convention: conservation, sustainable use, and equitable benefit sharing. FPIC is a direct consequence of the countries’ sovereignty over their territories

and is implemented by each country’s national competent authorities (“NCA”) and institutions.

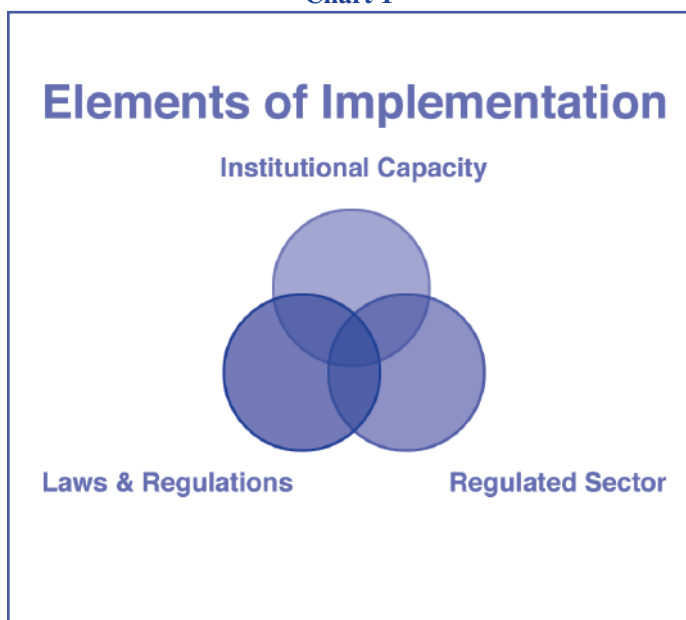
There are three elements to implementation, as shown in Chart 1. Most of the advances seen in Colombia so far are in the realm of laws and regulations. Colombia has a consistent legal framework for access and benefit sharing activities. Table 1 compares the voluntary Bonn Guidelines of the CBD (“CBD-BG”) to what is already in place within the legal framework of Colombia. Law 165 of 1994 ratified the CBD in Colombia so that the articles of the CBD are now part of the national legal system. Further, the Andean Decision 391, passed in Colombia in 1996, recognizes the self-determination of indigenous people, not only concerning their resources, but also to their traditional knowledge.

CONCLUSION: ACHIEVEMENTS AND CHALLENGES

The most prominent achievements that have come from Colombia’s cooperation with the principles of the CBD include a legal framework that is consistent and has decentralized power through the increase of participation of indigenous groups in local and national politics. Many groups have been able to empower themselves through this legal framework without losing their indigenous identities. This legal framework includes the Constitution of 1991, Law 21/91 that ratifies ILO-169, Law 99/93 that creates the environment ministry, Law 165/94 that ratifies the CBD, the Andean Decision 391/96, the national biodiversity policy adopted in 1997, and its action program adopted in 1998. Another recognizable achievement is that some institutional capacity has been established to carry out FPIC, including cases of indigenous people’s territories where natural resources such as oil and gas are involved.

However, Colombia still has many challenges it must meet in order to fully implement free and prior informed consent. The definition of free and prior informed consent must be defined in terms of accessing traditional knowledge: what is it, when is it obtained, who decides how to use it and for what purposes, and how to compensate the owners of traditional knowledge. Institutional capacity is still a challenge, and there is a need to

Chart 1



* Adriana Casas practices environmental law at a private firm in Colombia. She has been a guest lecturer in biodiversity law and policy seminars at law schools in Colombia and Mexico. She worked for over six years in biodiversity and legal issues with the Legal Council Ministry of the Environment in Colombia, and she is a visiting research fellow at the World Resources Institute.

develop it at a greater scale for the efficient and effective implementation of the CBD and Andean Decision 391 at the national level in Colombia.

Implementation and enforcement costs need to be addressed. If FPIC must impose high costs in order to preserve traditional knowledge and biodiversity in a highly effective manner, then these costs will be justified. Currently, though, the high costs are difficult for actors to accept and are causing a perverse incentive for participating in FPIC. Conditions need to be created that enable local informed participation and allocate well-defined rights over local and indigenous groups' rights to their knowledge. Colombia also needs to consider the difficulty of treating information as an economic resource or asset. There

is a need to increase scientific collaboration and control over resources in order to maximize and capture the benefits derived from the use of biodiversity. Finally, more specific rights and implementation structures should be designed in terms of FPIC in the areas of traditional knowledge, biodiversity, and genetic resources.

Colombia has established a consistent legal framework for the implementation of FPIC. This toolkit of laws should now be used to focus on the other two areas of implementation, institutional capacity and the regulated sector, which still require work in order to meet full implementation of FPIC at the national Colombian level.



TABLE 1: COMPARISON OF GUIDELINES PRESENT IN CBD – BG AND COLOMBIAN LEGAL FRAMEWORK

Description of Guideline	UN Convention of Biological Diversity – Bonn Guidelines	Colombian Legal Framework
Access to Genetic Resources	Consent of NCA and relevant stakeholders (i.e. indigenous and local communities) to grant access to genetic resources and associated knowledge must be facilitated through consultation and due process	Andean Regime 391: Consent of NCA through administrative procedure (Arts. 16 - 31) and access contract (Art. 32), Consent of local communities through annex contract (Art. 35) and consultation procedure (Law 99/93 Art. 76 and Decree 1320/98)
Specification of Use of Resources	Specification of use of resources accessed as well of the knowledge associated with those resources	Andean 391: Application requires specification of use including restrictions on third party uses
Procedure to Obtain PIC from Indigenous Groups	Stated in CBD – BG	Andean 391: Art. 35 Decree 1320/98
Procedure to Obtain PIC from NCA	Stated in CBD – BG	Andean 391: Procedure established in Art. 16 & 31
Access to <i>Ex Situ</i> Collections	Requires PIC	Andean 391: art. 41.b mandates agreements with ex situ collections
Timing and Deadlines for PIC	Stated in CBD – BG	Andean 391: Art. 29 establishes a period of 90 days for PIC before access granted or denied