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POLICIES AND ARRANGEMENTS FOR ACCESS AND BENEFIT-SHARING FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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I. INTRODUCTION

1. No State has ever established or maintained a prosperous food system based on genetic resources of purely domestic origin. Accordingly, there is wide-spread consensus that the exchange and use of genetic resources for food and agriculture (GRFA) are fundamental to achieving and maintaining food security. The terms under which these resources should be accessible, and the benefits derived from their use shared, are less consensual. The shift in international law and the laws of developed and developing countries from an open system, sometimes referred to as 'global commons' to a system of sovereign rights of states over their genetic resources, has created a situation in which it is sometimes difficult to identify the relevant legal provisions and terms applicable to a specific accession. The basic rules as they apply to access and benefit-sharing (ABS) for genetic resources are set out for their Contracting Parties in the United Nations Convention on Biological Diversity (CBD), and, for plant genetic resources for food and agriculture (PGRFA), in the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (IT). However, the implementation of the basic rules is subject to debate and, at times, controversy at the national and international levels.

2. Further to a call for action by Governments at the World Summit on Sustainable Development in 2002, the Conference of the Parties of the CBD (CBD COP) mandated its Ad Hoc Open-ended Working Group on Access and Benefit-sharing to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing. At its eighth meeting, in 2006, the Working Group was instructed by the CBD COP to complete its work at the earliest possible time before the tenth meeting of the CBD COP,¹ which will be held on 18-29 October 2010. The Working Group is scheduled to meet two more times, in November 2009 and in March 2010.

3. FAO and its Commission on Genetic Resources for Food and Agriculture (the Commission) have a longstanding history of dealing with issues related to GRFA, including access to such resources and the sharing of benefits derived from their utilization. In 1983, the FAO Conference adopted the International Undertaking on Plant Genetic Resources, which provided a policy and planning framework for the Commission with respect to plant genetic resources. During the following years, the Commission negotiated further resolutions which interpreted the International Undertaking, and in 1994, started revising the International Undertaking. As a result of this process, the FAO Conference in 2001, adopted the IT, the first (and so far only) legally binding and operational international instrument for ABS for genetic resources.

4. The Commission, at its Tenth Regular Session, recommended that FAO and the Commission contribute to further work on ABS, in order to ensure that it move in a direction supportive of the special needs of the agricultural sector, in regard to all components of biological diversity of interest to food and agriculture.² At its Eleventh Regular Session, the Commission agreed on the importance of considering ABS in relation to all components of biodiversity for food and agriculture, and decided that work in this field should be an early task within its Multi-Year Programme of Work (MYPOW).³ Accordingly, the Commission decided to consider arrangements and policies for ABS for GRFA at this Session.⁴

5. In addition, the issue of ABS was taken up by the International Technical Conference on Animal Genetic Resources for Food and Agriculture (Interlaken, 2007) for which the Commission acted as preparatory committee. The Interlaken Declaration commits States to facilitating access

¹ UNEP/CBD/COP/8/31, Decision VIII/4, A.6.

² CGRFA-10/04/REP, paragraph 76.

³ CGRFA-11/07/Report, paragraph 71.

⁴ CGRFA-11/07/Report, *Appendix E*.

to these resources and the fair and equitable sharing of the benefits arising from their use, consistent with international obligations and national laws. The *Global Plan of Action for Animal Genetic Resources*, adopted by the Interlaken Conference, promotes, as one of its main objectives, the fair and equitable sharing of benefits arising from the use of animal genetic resources for food and agriculture (AnGR). The issue of ABS is also addressed throughout the Strategic Priorities of the *Global Plan of Action*, in particular the development of national strategies that incorporate the contribution of animal genetic resources for sustainable use, including mechanisms to support wide access to and the fair and equitable sharing of benefits arising from the use of animal genetic resources, and reviewing the implications and impacts of international agreements on ABS.

6. This document aims to assist the Commission in its consideration of arrangements and policies for ABS for GRFA. The document is based on a set of sector-specific studies specifically addressing the use and exchange of plant, animal, aquatic, forest and micro-organism genetic resources and biological control agents. In addition to shedding some light on past, current and possible future use and exchange patterns, the studies also attempt to review the terms and modalities under which the different types of GRFA are exchanged and used. Climate change may result in the need to adjust current use and exchange patterns for genetic resources, resulting in altering the interdependence of countries in relation to GRFA. FAO commissioned a specific study focussing on climate change and use and exchange of GRFA to assist the Commission with this issue. Drawing on a comprehensive comparison of existing legal and other instruments at the global, regional and national levels, this document further aims to identify the role GRFA play or do not play in existing policies and arrangements for ABS for genetic resources.

II. THE USE AND EXCHANGE OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Genetic resources

7. Genetic resources are a subset of “biological resources” which, according to the CBD, “include genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.” In Article 2 of the CBD, genetic resources are defined as “genetic material of actual or potential value.” “Genetic material” is defined as “any material of plant, animal, microbial, or other origin containing functional units of heredity.” Many national ABS laws use the same or similar terminology.

8. Given these definitions, many food and agriculture commodities could be considered genetic resources because ‘genetic material’ is found in them.⁵ Wool, wood, meat and even many processed or fermented foods, such as tofu or yoghurt, could be considered a “genetic resource” as they contain genetic material the functionality of which primarily depends on the evolving sophistication of science and technology. ABS legislation which applies to all these “genetic resources” could clearly have a major impact on the international exchange and trade of these commodities. However, there is an emerging consensus that ABS regulations should be confined to the exchange and use of genetic resources for their genetic utilization.

9. ‘Genetic resources’ need to be of ‘actual or potential value.’ However, with the emergence of new biotechnologies, all genetic material might be considered as being of potential value, be it for food and agriculture or other purposes.

⁵ See Report of the Meeting of the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches, UNEP/CBD/WG-ABS/7/2, Annex, paragraph 4.

10. Within the food and agriculture sector many different types of resources are exchanged for use of their genetic attributes:

- The exchange of agricultural plant germplasm includes transfer of seeds but also of vegetative parts of plants, which can be then propagated.
- Animal genetic resources are embodied either in live animals or in biological material – embryos, gametes (semen and oocytes) or somatic tissues – maintained outside the animal. Animal genetic resources most frequently exchanged are live animals and semen.
- Exchange of aquatic genetic resources includes gametes and fertilized eggs, larvae, post-larvae, and juveniles. The early life history stages of many aquatic species are easily transported over long distances and require very little shipping space. There is a substantial exchange of disease-free stocks of species such as salmon and shrimp.
- Forest tree germplasm, especially seeds but also cuttings or other propagating parts of trees, are exchanged for the purposes of research, breeding and training.
- Sub-populations of invertebrates are introduced from one country to another as biological control agents of pests (such as other invertebrates or weeds). The exchange of other living invertebrates for food and agriculture, such as pollinators, is less common.
- Microbial collections exchange isolates or strains of a wide range of microbial genetic resources relevant for food and agriculture (biological control, food fermentation, pathogens etc.). Microbial genetic resources can also be exchanged through samples of soil or water.

11. It is sometimes difficult to draw a line between genetic resources and biological resources. Most agricultural products contain, at some stage, genetic material and many of them reach the market place in a form in which they may be multiplied or genetically improved, e.g. seeds of plants; breeding farm animals; live fish; yeast. Access to fish fingerlings for a commercial grow-out, for example, might not be regarded as access to a genetic resource. But the gradual domestication of the fish which may result from this activity could qualify the fingerlings as genetic resources. This example reveals the problem of distinguishing between a genetic and a biological resource. Many agricultural products may be used as a genetic resource and as a biological resource, and the purpose for which they will ultimately be used will often be unclear and unpredictable at the time of the first accession.

Use and exchange of genetic resources for food and agriculture

12. GRFA represent the very foundation of the global food system. All agricultural commodities descend from genetic resources from around the world. Agricultural production depends on the continuing infusion of genetic resources to ensure production stability and sustained growth. All countries rely on GRFA that cannot be found within their own territories. The exchange of genetic resources among countries has a long history, and became routine as modern agriculture came into being.⁶

13. Today, the food and agriculture sector faces new and unprecedented challenges, as it has to achieve global food security in times of climate change. FAO estimates that the number of hungry people could soon pass the one billion mark. In the first half of this century, as the world's population grows to around 9 billion, global demand for food, feed and fibre will nearly double while increasingly, agricultural systems may also be used for bioenergy and other industrial purposes. In most regions, fewer people will be living in rural areas and even fewer will be farmers. Countries will need new technologies and sources of genetic diversity to grow more sustainably from less land, with fewer hands. More than ever before, countries might depend on

⁶ See Kelly Day Rubinstein & Melinda Smale (2004), International exchange of genetic resources, the role of information and implications for ownership: the case of the U.S. National Germplasm System. EPTD Discussion paper No. 119.

the use of GRFA that originated elsewhere to achieve and maintain food security and enrich human diets.

14. Maintaining and using genetic diversity may provide the basis for coping with climate change in food and agriculture. In many parts of the world, climate change rates will likely exceed the adaptive capacity of a broad range of crops and forage varieties, farm animal and aquaculture fish breeds, and tree populations used in food and agriculture systems. Climate change, together with trade of agricultural products, will also provide opportunities for microbial pathogens to thrive in parts of the world where previously they had limited or no impact. The overall effects of climate change will be to increase the overall dependence of countries on genetic resources from beyond their borders – as sources of genetic adaptation to new biotic and abiotic stresses.

15. Understanding the trends in the flow of GRFA will be important for food and agriculture decision-makers in the next decades. These exchanges have so far rarely been systematically monitored and documented. However, anecdotal evidence and other data provide examples of the importance of genetic exchange. For example, data on traded commodities and fish products have been used to convey at least a notion of the dimension and extent to which aquatic genetic resources (AqGR) are currently exchanged at the global level, noting that the information available does not enable distinguishing between “genetic resources” in the stricter sense, and commodities.

16. The prevailing direction of movements of germplasm may change over time. Livestock domestication for example, is thought to have occurred in at least 12 areas of the world and several species were domesticated in more than one region. However, currently, genetic resources of many livestock species do not come from the areas in which the species were originally domesticated. In fact, the centres of origin of most livestock species do not today play a particularly prominent role as suppliers of internationally traded germplasm. While past exchanges of germplasm and the conditions under which they took place have generated the debate on ABS measures, it is also clear that ABS arrangements and policies that are currently being developed need to take into account both current arrangements and potential future needs. In the next paragraphs, information is provided on current trends in the exchanges of GRFA.

Plant genetic resources for food and agriculture

17. The extent to which PGRFA are globally exchanged may be demonstrated by reference to the number of Annex 1 materials sent out by the International Agricultural Research Centres under the Standard Material Transfer Agreement of the IT. According to the Centres’ most recent report to the Governing Body of the IT, the Centres distributed a total of 444 824 samples of Annex 1 species, between 1 August 2007 and 31 July 2008. Eighty percent of samples for which the Centres were able to provide details about the type of the recipients, were sent to developing countries and countries with economies in transition, 6 percent to developed countries and 14 percent were inter-Centre transfers.⁷

Animal genetic resources for food and agriculture

18. Quantitative assessments of the international exchange of AnGR are constrained by a number of factors: data on international movements of live animals often do not distinguish between breeding animals and those used for production; transnational breeding companies do not provide data on within-company exchanges; import and export data frequently do not indicate the source or destination of the material involved; and in some parts of the world, unrecorded movements takes place. The United Nations COMTRADE database, which contains data on trade in live bovine animals for breeding, bovine semen, live pigs for breeding and live equines for breeding, is the most comprehensive source of global data. A study based on these data indicates

⁷ See the document, IT/GB-3/09/Inf.15 (<ftp://ftp.fao.org/ag/agp/planttreaty/gb3/gb3i15e.pdf>)

that the export of genetic material is primarily dominated by North America and Europe. The findings show that for all three commodities, flows from non-OECD countries (Organization for Economic Co-operation and Development) to OECD countries (roughly equating to the rich “North”) are very limited. Conversely, there are substantial flows from OECD to non-OECD countries, amounting to about one-third of the value of international trade in the above-mentioned commodities in 2005 – a figure that had risen from about 20 percent in 1995. The study found that North–North trade was still dominant overall. Other studies that have sought to quantify global trade flows in AnGR in the recent past have reached broadly similar conclusions regarding the dominance of North America and Europe as exporters.

Microbial genetic resources for food and agriculture

19. Microbial genetic resources are also globally exchanged on a regular basis. Global distribution and exchange of micro-organisms that are publicly available is organized by a network of over 500 public culture collections that are members of the World Federation of Culture Collections (WFCC). The network holds more than 1.4 million strains. Although most micro-organisms that are currently cultured and held in collections are relatively widespread or ubiquitous, there is nonetheless for practical reasons, a high degree of interdependency among countries. Even the largest culture collection of the world holds less than 2 percent of the total diversity of strains that have been currently isolated and conserved in public culture collections. An in-depth analysis of the list of depositor and provider countries shows that the majority of samples deposited in countries belonging to the OECD culture collections originates from OECD countries, although the percentage of samples originating from non-OECD countries represents an important subset.

Aquatic genetic resources for food and agriculture

20. Aquaculture is the main reason for the deliberate movement of aquatic species to areas outside of their native range, and farmed species have been moved extensively throughout the world. Today, Asia is the number one producer of African tilapia, and more white-leg shrimp, which are native to the Americas, are farmed in Asia than are the local species. Although salmon do not naturally occur in the southern hemisphere, Chile is the world’s second largest producer of farmed salmon, and Atlantic salmon are now grown in Tasmania, Australia, as well. The rainbow trout (*Oncorhynchus mykiss*) and other trout species have been extensively introduced around the world for recreational purposes, fishery development and aquaculture. The Pacific oyster from Japan is the basis for the oyster industry in North America and Europe.

Biological control agents

21. Throughout the history of pest control, biological control agents that have proven effective in one country, have been transported to others. At least 119 countries have at some stage provided a biological control agent to another, and 145 countries have released biological control agents provided by other countries. While a large percentage of the total releases of biological control agents occurred in countries with high-income economies, these countries have also been historically the main providers of biological control agents.

Forest genetic resources

22. The supply and exchange of tree germplasm plays a vital role in the conservation, management and utilization of forest genetic resources. For example, many countries access seeds of the Mexican and Central American pines to find well-adapted species and populations for marginal planting sites in the tropics and sub-tropics.

III. MODALITIES OF EXCHANGE

23. A new international legal architecture has emerged that may redefine the basis for the flow of genetic resources. Enacted in 1992, the CBD provided an impetus for this change as it is the first legally binding international instrument which, recognising the sovereign rights of states over their natural resources, explicitly affirmed the authority of governments to determine, subject to national legislation, access to genetic resources within their jurisdiction. For centuries, GRFA had been exchanged on the understanding that everyone can access and use these resources, provided of course, where relevant, an agreement can be reached with the owner of the actual material.⁸ However, growing concern for unauthorized use of genetic resources and failure to share fairly the benefits arising from their use with the providing countries, led to the creation of the new legal architecture which, as some fear, could result in severely restricting access to genetic resources, the use of which is fundamental to achieving food security.

24. Based on the rationale that sharing benefits with countries providing genetic resources would act as positive incentive to conserve and sustainably use genetic resources, Article 15 of the CBD recognises the sovereign rights of States over their natural resources and strikes a balance between access to genetic resources and the sharing of the results of research and development and the benefits from the commercial and other utilization of genetic resources. While, according to Article 15 of the CBD, Contracting Parties shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses and not to impose restrictions that run counter to the objectives of the CBD, access, where granted, shall be on mutually agreed terms and subject to prior informed consent of the Contracting Party providing such resources.

Existing modalities

25. However, the reality of exchange of genetic resources, in particular in the field of food and agriculture, is still somewhat different. As studies on the use and exchange of GRFA indicate, open exchange of these resources is still quite common. This involves both exchange for research and development and the commercial exchange, for example, the purchase of breeding farm animals for livestock development and aquatic genetic resources for aquaculture production. While there are examples of ABS agreements that have been concluded for GRFA,⁹ the modalities under which GRFA are being exchanged differs widely from sector to sector, and within each sector of GRFA.

26. To facilitate and simplify consideration of arrangements and policies for ABS for GRFA, exchanges of these resources may be typologised along the type of modalities under which they are exchanged. GRFA are exchanged:

- Free of charge and without any specific agreement or legislation applying to the exchange.
- Upon up-front payment with the assumption that the value as a genetic resource is accounted for in the price paid by the buyer.
- On the basis of a formal agreement (e.g. a Material Transfer Agreement) or existing legislation which, however, do not require the recipient to share any benefits, be it with the provider, a providing country or a multi-lateral fund.

⁸ See Background Study Paper No.2.

⁹ See, e.g., Secretariat of the Convention on Biological Diversity (2008). Access and Benefit-Sharing in Practice: Trends in Partnership Across Sectors. pp. 64-68.

- On the basis of a formal agreement, whether based on legislation on ABS or not), which explicitly provides for benefit-sharing, e.g. by setting out the benefit-sharing terms or requiring a benefit-sharing agreement once potential benefits have been identified.

27. It seems fair to say that, with the important exception of PGRFA exchanged under the Standard Material Transfer Agreement of the IT, most GRFA are exchanged without formal agreement and without specific legislation setting out benefit-sharing conditions. However, the exchanges may be subject to restrictions related to the protection of human, animal or plant life or health. Often, no distinction is being made in practise between the value of genetic material as genetic resource and its value as a biological resource. Animals for example, are generally being traded with the assumption that their value as a genetic resource is accounted for in the price paid by the buyer. Where agreements are concluded which do not allow the recipient to sell breeding material obtained from the genetic source, for example in the pig and poultry industries, such agreements usually serve the purpose of protecting the interests of the distributor and not to provide for benefit-sharing with the providing country. The situation seems to be similar in the case of aquatic resources, in particular fish genetic resources. Most breeding material seems to be derived directly from ordinary trade channels or from the wild. While material transfer agreements are used to prevent multiplier stations or grow-out facilities from selling the stock for breeding purposes, these agreements aim at the recognition and protection of the breeder, rather than benefit-sharing, as typically envisaged by instruments on ABS.¹⁰

Emerging instruments

28. With the development of international and national instruments on ABS, the modalities of exchange of GRFA may change considerably. A brief introduction to the on-going negotiations of an International Regime on Access and Benefit-sharing as well as the negotiating text, which resulted from the last meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, are given in the document, *Status of the negotiations of the International Regimes on Access and Benefit-sharing*.¹¹ Specific aspects of access to genetic resources and the sharing of benefits derived from their utilization are currently also considered in other international fora, such as the Antarctic Treaty System and the United Nations Convention on the Law of the Sea,¹² the World Intellectual Property Organization,¹³ and the World Health Organization.¹⁴

29. While the negotiations of the International Regime continue, an increasing number of countries are in the process of developing ABS legislation, the scope of which, in the vast majority of cases, includes GRFA. An analysis commissioned by FAO has identified a number of issues, which may become relevant to providers and users of GRFA, including:¹⁵

- Very few of the existing laws and instruments seem to distinguish between GRFA and other uses of genetic resources. In fact, quite a number of laws seem to include in their *scope* even biological resources, which would also include agricultural commodities unless they are explicitly exempted.
- The *activities* covered by ABS legislation are usually defined in very broad terms, which will usually deem any access to GRFA, be it for commercial or research purposes, an activity that is subject to some kind of approval under the relevant instruments.

¹⁰ *The use and exchange of aquatic genetic resources*, Background Study Paper No. 45, pp. 24-25.

¹¹ CGRFA-12/09/3.2.

¹² <http://www.un.org/Depts/los/biodiversityworkinggroup/biodiversityworkinggroup.htm>

¹³ <http://www.wipo.int/tk/en/>

¹⁴ <http://apps.who.int/gb/pip/>

¹⁵ *Framework study on food security and access and benefit-sharing for genetic resources for food and agriculture*, Background Study Paper No. 42.

- Most laws provide for a number of *exemptions* as well as for *simplified access procedures* for specific activities. Some laws, for example, carve-out an exception for PGRFA listed in *Annex I* of the IT.
- A few countries exclude from the purview of their ABS laws plant varieties that are subject to plant variety protection to ensure, in line with the so-called “*breeders’ exemption*”, that the use of protected varieties as an initial source of variation is not subject to any restrictions.
- Some instruments provide for *exemptions or simplified procedures* for the use of genetic resources for research or taxonomic purposes. However, in the case of GRFA, such exemptions or simplifications may not be applicable, given that the ultimate purpose of research might result in commercial use.
- Clearly more relevant to GRFA are provisions which exempt from the scope of the legislation access for activities related to the *conservation of genetic resources*, or access by specific *traditional communities*, which in some cases may also include farming communities. Relevant to the consumers of food and other agricultural products, are exemptions for personal use and for the consumption of genetic resources.
- Many instruments require *separate approvals* from different authorities, although authorities dealing with food and agriculture usually do not seem to be involved in the decision-making process, notwithstanding the large number of accessions to GRFA. Some instruments create a multilayered approval procedure which requires the recipient to return to the donor of the genetic material once a commercial application has been identified.
- Most ABS laws do not seem to prescribe specific *timelines or milestones* for the application procedures for access to genetic resources. The predictability of the length and nature of the time involved, however, is often essential for potential users. Case studies show that receiving prior informed consent from all parties and formalizing this in agreements takes one to two years on average.¹⁶ Such lengthy approval procedures may considerably delay the use and development of genetic resources required to improve food and agriculture production.

30. An increasing number of countries are in the process of regulating the exchange of genetic resources through legislation on ABS. Even though the discourse on ABS rarely focuses on GRFA, (perhaps with the exception of crop genetic resources of which, however, the most globally important ones are covered by the IT) most (draft) instruments seem to cover GRFA, and few of them seem to distinguish between GRFA and other genetic resource uses.

IV. POLICY CONSIDERATIONS ON ACCESS AND BENEFIT-SHARING FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE

31. The development of national policies on ABS and the on-going negotiations of the International Regime pose a challenge to the food and agriculture sector. However, few user communities that depend on the availability of GRFA, have so far paid attention to this challenge. This is surprising, as exchanges of GRFA might make up a large share of all genetic resource exchanges.

The special nature of genetic resources for food and agriculture

32. Policy considerations on ABS for GRFA should reflect the special nature of GRFA and its distinctive features. The special nature of GRFA is widely acknowledged. The CBD COP

¹⁶ Secretariat of the CBD (2008). Access and Benefit-Sharing in Practice: Trends in Partnership Across Sectors. p. 25 (<http://www.cbd.int/doc/publications/cbd-ts-38-en.pdf>)

explicitly recognized "the special nature of agricultural biodiversity, its distinctive features, and problems needing distinctive solutions."¹⁷ Several of the distinctive features of GRFA might deserve special attention in the context of regulating access to such resources and the sharing of benefits derived from their utilization. These features include:

- The fundamental role of GRFA and of their exchange for satisfying basic human needs, including global food security and sustainable agriculture;
- The interdependence of countries regarding GRFA, i.e. the fact that all countries depend largely on GRFA that originated elsewhere;
- The fact that many GRFA have been developed over long periods of time based on material originating from different parts of the world, and thus, often are the products of many generations of people from many different countries;
- GRFA are handled in large numbers of samples and sometimes, for example in the case of biological control, require that access be granted very quickly;
- The fact that the purpose of such accessions is usually known, i.e. the ultimate use of the final products for food and agriculture;
- The existence of traditional and customary exchange patterns applicable to many GRFA, indigenous knowledge and culture are integral parts of the management of GRFA;
- For many GRFA, human use is a fundamental condition for, rather than a threat to their survival; and
- The interaction between the environment, genetic resources and management practices that occurs *in situ* within agro-ecosystems often contributes to maintaining a dynamic portfolio of agricultural biodiversity.

33. Policies that accommodate special features of GRFA could include various elements, at different levels. Policy makers might wish to consider, for example:

- Sectoral approaches which allow for differential treatment of different sectors of genetic resources, different components of biodiversity for food and agriculture, different activities or purposes for which they are carried out.¹⁸
- Identification of specific types of GRFA for which the mutual granting of access itself may be considered an efficient way of sharing fairly and equitably benefits derived from their utilization.
- Streamlined and possibly standardized access permission and benefit-sharing procedures which allow for fast and routine access for the sustainable use and conservation of GRFA.
- Linking ABS schemes for the various components of biodiversity for food and agriculture to traditional, customary and existing commercial practices, in order to avoid high transaction costs and facilitate compliance.
- Multilateral benefit-sharing approaches, e.g. an international fund or other mechanisms, where GRFA may be obtained from several countries.
- Exemptions of, or simplified procedures for, specific GRFA and/ or specific activities with them (e.g. characterisation, conservation).
- Involvement of relevant administrative authorities and user communities in legislative and administrative decision-making procedures to ensure informed decision-making and to avoid distortions of the flow of GRFA.

34. The list of elements that could be considered to accommodate some of the special features of GRFA is not intended to be exhaustive. The list is intended as a compilation of ideas on how some of the special features of GRFA could be translated into concrete policy elements. Some of

¹⁷ See decision V/5 of the Conference of the Parties to the CBD.

¹⁸ See UNEP/CBD/WG-ABS/7/2 (<http://www.cbd.int/doc/meetings/abs/abswg-07/official/abswg-07-02-en.pdf>)

the elements listed may be useful when it comes to genetic resources used for other purposes than food and agriculture, while others reflect the special nature of GRFA.

Options to address the special features of genetic resources for food and agriculture within the international architecture of access and benefit-sharing

35. GRFA will either be covered or not be covered by the International Regime on Access and Benefit-sharing. In either event, there are several options to address the special features of GRFA and to ensure policy coherence and mutual supportiveness of the various processes, and to avoid duplication of work and potential inconsistencies.

ALTERNATIVE 1: Exclude genetic resources for food and agriculture from the International Regime on Access and Benefit-sharing

36. This option would support the existing recognition of the special nature of biodiversity for food and agriculture, its distinctive features and problems needing distinctive solutions. It would provide for the Commission to continue its governance role in considering ABS for all GRFA that are not covered by the IT, in an in-depth and sectoral manner, and could allow for the development of solutions suited to the different components of biodiversity for food and agriculture, as appropriate.¹⁹ This option could avoid duplication and overlapping of work of the CBD and of the Commission. It could also avoid inconsistencies provided that the policies and arrangements applying to GRFA are in harmony with the CBD and close cooperation between the CBD, the IT and the Commission is ensured.

37. The option would require a clear definition of the term “genetic resources for food and agriculture”. To accommodate the concern that once GRFA have been excluded from the International Regime, no international rules addressing ABS for such resources would materialize for a long time to come, the option could be varied by automatically terminating the exclusion after a specific date. As of that date the International Regime would apply by default unless rules for GRFA would have been developed in the meantime.

ALTERNATIVE 2: Include genetic resources for food and agriculture within the International Regime on Access and Benefit-sharing

38. This option would present legal challenges, in particular with regard to the IT. It is widely acknowledged that the International Regime should not interfere with the ABS mechanism established by the IT. The option would also decrease or diminish the role of the Commission in developing tailored solutions for ABS for GRFA. However, much would depend on how GRFA are integrated into the International Regime, how much flexibility the International Regime would provide for sector or use specific adjustments, the creation of separate rules which take into account the special features and needs of GRFA, and which role the Commission, as the only intergovernmental body specifically dealing with GRFA could play in such processes.

39. If GRFA form part of the International Regime, there would still be various options for the development of distinctive solutions for such resources within the International Regime. The Parties of the CBD could mandate FAO and its Commission with the development of such solutions.²⁰ The Commission and its Members could also feed into the negotiations of the

¹⁹ UNEP/CBD/WG-ABS/7/INF/3/Part.1, paragraph 4.2.2.

²⁰ It should be recalled that Resolution 3 of the Nairobi Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity by recognizing “the need to seek solutions to outstanding matters concerning plant genetic resources within the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture, in particular (a) access to ex-situ collections not acquired in accordance with this Convention; and (b) the question of farmers’ rights” initiated the revision of the International Undertaking on Plant Genetic Resources which led, in 2001, to the adoption of the IT.

International Regime policy considerations relevant to ABS for GRFA, or support the implementation and monitoring of ABS rules, as they apply to GRFA.

40. Whether GRFA should be covered by the International Regime might thus not be the most important policy question in the debate on policies and arrangements for ABS for these resources. It is most important that there is comprehensive understanding by policy makers of existing practises and modalities that apply to the use and exchange of the different components of biodiversity for food and agriculture, and the specific needs of this type of biodiversity, when developing solutions that aim to achieve ABS for sustainable agriculture and world food security.

V. GUIDANCE SOUGHT

41. The Commission may wish to:

- (a) Reiterate the need for FAO and the Commission to contribute to further work on ABS, in order to ensure that it move in a direction supportive of the special needs of the agricultural sector, in regard to all components of biological diversity of interest to food and agriculture;
- (b) Recommend that any international instrument on ABS that covers GRFA fully reflect their special nature, and takes into account their distinctive features, and problems needing distinctive solutions;
- (c) Recommend that FAO and its Commission closely collaborate with the CBD COP and its Ad Hoc Open-ended Working Group on Access and Benefit-sharing to ensure that the International Regime on Access and Benefit-sharing acknowledges the existence of traditional, customary and commercial exchange practises, the wide range of modalities under which GRFA are exchanged, and the need to take into account the different practises and exchange modalities in arrangements and policies for ABS;
- (d) Stress that specific and tailored solutions for ABS for GRFA, suited to the different components of biodiversity for food and agriculture, should be explored and assessed with the aim to ensure in an integrated manner the conservation and sustainable use of these resources and the fair and equitable sharing of the benefits arising out of their use, in harmony with the CBD, for sustainable agriculture and food security;
- (e) Recommend that FAO offer a forum for its Members to provide recommendations with regard to GRFA to the on-going negotiations of the International Regime on Access and Benefit-sharing and, as appropriate and dependent on the outcome of the negotiations of the International Regime, assist in its implementation and/ or develop separate frameworks or instruments for GRFA, or sub-sets of them, that are in harmony with the CBD;
- (f) Urge that the process be carried out through regular and extraordinary Sessions of the Commission, convened, if necessary, with extra-budgetary resources, and with the help of its subsidiary bodies and in close collaboration with the CBD and its Ad Hoc open-ended Working Group on Access and Benefit-sharing;
- (g) Request its Secretariat to report on the status of negotiations of the International Regime on Access and Benefit-sharing to the next Session of the Commission;
- (h) Request the Director-General to bring these recommendations to the attention of the FAO Conference and of the Secretary of the CBD.