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粮食及  
农业组织

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United Nations

Organisation des Nations  
Unies pour l'alimentation  
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Продовольственная и  
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Organización de las  
Naciones Unidas para la  
Alimentación y la Agricultura

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# 粮食和农业遗传资源委员会

暂定议程议题 4.2

第十九届例会

2023 年 7 月 17-21 日，罗马

**粮食和农业遗传资源获取和惠益分享：国别措施类型**

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## I. 引言

1. 粮食和农业遗传资源委员会（遗传委）在第十七届例会上请秘书整理关于粮食和农业各分部门遗传资源以及土著人民和当地社区掌握的粮食和农业植物遗传资源相关传统知识的获取和惠益分享的现有立法、行政和政策措施（包括最佳做法）的调查结果，旨在确定实施获取和惠益分享的典型方法、经验教训、挑战及可能的解决方案<sup>1</sup>。

2. 应遗传委要求，秘书处委托开展了一项调查，以便了解各国采取了哪些类型的立法、行政或政策措施，用于促进适应粮食和农业遗传资源及其各分部门和相关传统知识明显特征的获取和惠益分享。《适应粮食和农业遗传资源及相关传统知识明显特征的国家获取和惠益分享措施调查》（《调查》）已于 2021 年出版<sup>2</sup>。

3. 考虑到《调查》所述情况，遗传委第十八届例会要求在其下届会议上通过一份独立文件，整理各国直接或间接顾及粮食和农业遗传资源明显特征及相关传统知识的现行立法、行政或政策措施实例<sup>3</sup>。在德国不来梅大学的支持下，秘书处编制了一份获取和惠益分享国别措施类型文件，反映了粮食和农业遗传资源的重要性、它们在粮食安全方面的特殊作用以及明显特征，供遗传委政府间技术工作组<sup>4</sup>以及获取和惠益分享技术及法律专家小组审议<sup>5</sup>。

## II. 获取和惠益分享措施类型

4. 本文件应结合类型表格中“Humphries 等，2021”所著《调查》阅读。与《调查》一样，本文件遵循《获取和惠益分享要点：协助各国国内实施粮食和农业各分部门遗传资源获取和惠益分享的要点—附说明文件》（《获取和惠益分享要点》）中确定的粮食和农业遗传资源获取和惠益分享措施五个关键要点的结构<sup>6</sup>：

- (i) 机构安排
- (ii) 粮食和农业遗传资源的获取和利用；
- (iii) 粮食和农业遗传资源相关传统知识的获取和利用；

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<sup>1</sup> CGRFA-17/19/Report, 第 19 段。

<sup>2</sup> Humphries, F., Laird, S., Wynberg, R., Morrison, C. Lawson, C. and Kolesnikova, A. 2021. 《适应粮食和农业遗传资源及相关传统知识明显特征的国家获取和惠益分享措施调查》。罗马，粮农组织，代表粮食和农业遗传资源委员会。 <https://doi.org/10.4060/cb6525en>

<sup>3</sup> CGRFA-18/21/Report, 第 26 段。

<sup>4</sup> CGRFA-19/23/7.1, 第 35 段；CGRFA-19/23/8.1, 第 24 段；CGRFA-19/23/10.1, 第 38 段；CGRFA-19/23/11.1, 第 32 段。

<sup>5</sup> CGRFA-19/23/7.1, 第 6-12 段。

<sup>6</sup> 粮农组织。2019。《获取和惠益分享要点：协助各国国内实施粮食和农业各分部门遗传资源获取和惠益分享的要点—附说明文件》。罗马。 <https://www.fao.org/3/ca5088zh/ca5088zh.pdf>

- (iv) 关于粮食和农业遗传资源及相关传统知识的惠益分享；
- (v) 监测与合规。

5. 本文件中所述获取和惠益分享国别措施为示例。本文件并非各国所有现行获取和惠益分享措施的详尽汇编。鉴于正在不断制定或调整有关法律以应对新的发展，本文件所列措施中有的可能已经不再生效。然而，这并不会降低本文件作为政策制定者和决策者灵感来源的价值。事实上，正如《获取和惠益分享要点》中所述，制定和实施获取和惠益分享措施的工作正在推进中，《获取和惠益分享要点》以及《获取和惠益分享：国别措施类型》的制定工作也是如此，二者均为动态文件。

6. 并非所有列出的措施都是粮食和农业遗传资源所特有的。本文件中提及的“遗传资源”指所有遗传资源。虽然本文件侧重于直接或间接适应粮食和农业遗传资源明显特征的措施，但为了表明各国在管理其遗传资源的获取和惠益分享方面有广泛选择，根据《获取和惠益分享要点》的非规定性属性，本文件也在某些地方列出了其他措施。因此，本文件反映了政策制定者在开发获取和惠益分享措施以及根据粮食和农业遗传资源的明显特征及其使用者的特殊需求调整这些措施方面拥有广泛选择。

7. 并非所有列出的措施都包含在名称中含有“获取和惠益分享”的法律或行政措施中。有的国家用于处理粮食和农业遗传资源获取和惠益分享问题的措施并未明确提及“获取和惠益分享”。有的国家用于处理粮食和农业遗传资源获取和惠益分享问题的措施同时也处理生物资源问题。

8. 本文件并未提及“农民权利”。在此方面，可参考《实现农民权利的国家措施、最佳做法和经验教训的清单》<sup>7</sup>及其在《粮食和农业植物遗传资源国际条约》网站上的在线版本<sup>8</sup>，必要时将对其进行审查和更新。

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<sup>7</sup> IT/GB-9/22/Report, 第 7/2022 号决议—落实第 9 条“农民权利”，附录。

<sup>8</sup> <https://www.fao.org/plant-treaty/areas-of-work/farmers-rights/overview-inventory/zh>

**缩略语**

ABS	获取和惠益分享
ABS CH	获取和惠益分享交换中心
AnGR	粮食和农业动物遗传资源
Art.	条
BABS	生物勘探、获取和惠益分享
BR	生物资源
BS	惠益分享
BSA	惠益分享协议
c.	款
CA	主管部门
CBD	《生物多样性公约》
CGen	巴西基因遗传管理理事会
CNA	国家主管部门
DEA/DEFF	环境事务部/林业、渔业和环境部
FGR	粮食和农业森林资源
GIZ	国际合作机构
GR	遗传资源
GRFA	粮食和农业遗传资源
INABIO	国家生物多样性研究所（哥斯达黎加）
IPLCs	土著人民和当地社区
MAT	共同商定条件
MoA	备忘协议
MTA	材料转让协定
NBCC	国家生物多样性协调委员会（尼泊尔）
NEMA	国家环境管理局（肯尼亚）
NEMBA	《国家环境管理：生物多样性法案》

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No.	序号
NP	名古屋议定书
OJ	官方刊物
PIC	事先知情同意
PTKCEA	《传统知识和传统文化表现形式保护法》（肯尼亚）
R&D	研究和开发
Reg.	法规
s.	节
SENESCYT	国家高等教育、科学、技术和创新秘书处（厄瓜多尔）
SMTA	《标准材料转让协定》
TK	（遗传资源相关）传统知识
TKGRFA	粮食和农业遗传资源相关传统知识
Treaty	《粮食和农业植物遗传资源国际条约》
UNCST	乌干达国家科学技术委员会
UNDP	联合国开发计划署

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## 附录

粮食和农业遗传资源获取和惠益分享：  
国别措施类型

	措施	国家（示例）	扩展阅读
<b>要点 1： 机构安排</b>			
<b>1.1 机构职责</b>			
<b>1.1.1 单一机构负责获取和惠益分享事宜</b> 一些国家选择委托单一机构实施获取和惠益分享措施管理	(a) 主管粮食、森林和/或农业的单一机构	科摩罗 <sup>1</sup> ；贝宁 <sup>2</sup> ；荷兰（王国） <sup>3</sup> ；葡萄牙 <sup>4</sup> ；保加利亚 <sup>5</sup> ；越南 <sup>6</sup> ；格林纳达 <sup>7</sup> ；圣基茨和尼维斯 <sup>8</sup> ；秘鲁 <sup>9</sup> ；洪都拉斯 <sup>10</sup> ；	Humphries 等，2021, p13f, 16ff; Hailu & Kamau, 2022, p243f; Mulesa & Westengen, 2020; 国家生物多样性中心，不丹，2018, p23
	(b) 主管环境的单一机构	南非；布隆迪 <sup>11</sup> ；埃塞俄比亚 <sup>12</sup> ；丹麦 <sup>13</sup> ；多米尼加共和国 <sup>14</sup> ；危地马拉 <sup>15</sup> ；阿拉伯叙利亚共和国 <sup>16</sup>	
	(c) 主管科学/技术的单一机构	乌干达 <sup>17</sup> ；新加坡 <sup>18</sup> ；	
	(d) 总体负责各项生物多样性事务的单一机构	秘鲁 <sup>19</sup> ；哥斯达黎加 <sup>20</sup> ；埃塞俄比亚 <sup>21</sup>	
<b>1.1.2 多家机构共同负责获取和惠益分享事宜</b>	(a) 根据遗传资源类型（如《条约》附件 1/多边系统/第 15 条粮食和农业植物遗传资源）	越南 <sup>22</sup> ；大韩民国 <sup>23</sup> ；埃塞俄比亚 <sup>24</sup> ；津巴布韦 <sup>25</sup>	Humphries 等，2021, p. 14f; Trang, Ba Nguyen & Thu, 2022, p333; Lee & Cho, 2022, p380f

	措施	国家（示例）	扩展阅读
另一些国家选择委托多家机构实施获取和惠益分享管理	(b) 根据商业或非商业利用	南非 <sup>26</sup> ；厄瓜多尔 <sup>27</sup>	Humphries 等，2021，p14f；Kamau, 2022a, p168f；Cabrera Ormaza, 2022, p103ff
	(c) 根据（分）部门或研究领域	秘鲁 <sup>28</sup> ；大韩民国 <sup>29</sup>	Humphries 等，2021, p14f；Lee & Cho 2022, p380
<b>1.1.3 机构间协调制定获取和惠益分享决策</b> 各国建立多种机制，协调多家责任机构对获取和惠益分享事宜的管理。	(a) 一站式方法	乌干达 <sup>30</sup> ；莫桑比克 <sup>31</sup> ；尼泊尔 <sup>32</sup> ；巴西 <sup>33</sup> ；厄瓜多尔 <sup>34</sup> ；印度 <sup>35</sup> ；多米尼加共和国 <sup>36</sup>	Humphries 等，2021, p16ff；Otieno et al., 2017；ABS Initiative, 2019；Nepalese Government, 2014, p112；Halewood, 2015；Mozini, 2022, p79f；Kamau, 2022b, p311f；Cabrera Ormaza, 2022, p104
	(b) 协调委员会/理事会（补充或替代一站式方法）	南非 <sup>37</sup> ；法国 <sup>38</sup> ；肯尼亚 <sup>39</sup> ；不丹 <sup>40</sup>	Humphries 等，2021, p16ff；Wynberg, 2017, pp198–218；FRB, 2020
<b>1.2 提供关于主管机构、获取和惠益分享措施及程序的国家信息</b>			
各国采取不同方式，提供关于主管机构、获取和惠益分享措施及程序的信息	(a) 国家网站、门户网站、线上平台或信息门户网站–	芬兰 <sup>41</sup> ；丹麦 <sup>42</sup> ；大韩民国 <sup>43</sup> ；匈牙利 <sup>44</sup> ；喀麦隆 <sup>45</sup> ；马来西亚 <sup>46</sup> ；法国 <sup>47</sup> ；德国 <sup>48</sup> ；哥斯达黎加 <sup>49</sup> ；肯尼亚 <sup>50</sup> ；卡塔尔 <sup>51</sup> ；南非 <sup>52</sup>	Humphries 等，2021，p17ff
	(b) 获取和惠益分享交换机制		ABSCH, 2022

	措施	国家（示例）	扩展阅读
<b>要点 2： 获取和利用粮食和农业遗传资源</b>			
<b>2.1 需遵守关于获取的国家获取和惠益分享规定的遗传资源类别</b>			
<b>2.1.1 时间范围</b>	关于获取的获取和惠益分享规定可适用于：		
	(a) 如果有新用途，在获取和惠益分享措施生效前获取的遗传资源	马来西亚 <sup>53</sup> ；法国 <sup>54</sup> ；	
	(b) 获取和惠益分享措施生效后获取的遗传资源	马来西亚 <sup>55</sup> ；法国 <sup>56</sup> ； 马耳他 <sup>57</sup> ；挪威 <sup>58</sup> ；韩国 <sup>59</sup> ； 日本 <sup>60</sup>	Winter, 2022; Greiber & Frederichs, 2022; Michiels 等。2022; Lee & Cho, 2022, p379
<b>2.1.2 提供国为原产国的遗传资源或提供国已根据《生物多样性公约》取得的遗传资源</b>	“原产国”可以是：		
	(a) 其生态系统和自然栖息地中存在该遗传资源的国家		Humphries 等，2021，p23ff
	(b) 所驯化或栽培的物种发展出明显特征的国家	法国 <sup>61</sup> ；莫桑比克 <sup>62</sup> ； 乌干达 <sup>63</sup>	Humphries 等，2021，p24ff
	(c) 驯化过程发生的国家	肯尼亚 <sup>64</sup>	Humphries 等，2021，p24
	(d) 驯化并长期生产遗传资源的国家	越南 <sup>65</sup>	Humphries 等，2021，p23ff
	(e) 在某一特定日期前，本土物种已在本国领土上出现的国家	澳大利亚 <sup>66</sup>	Humphries 等，2021，p24ff
	(f) 从国家领土、领海、专属经济区或大陆架分离出微生物的国家	巴西 <sup>67</sup> ；哥伦比亚 <sup>68</sup>	Humphries 等，2021，p24ff
<b>2.1.3 私人/公共持有的遗传资源</b>	获取和惠益分享措施可：		
	(a) 对公共和私人持有的遗传资源不做区分	多数国家	

	措施	国家（示例）	扩展阅读
	(b) 仅适用于公共（国家/社区）持有的遗传资源	澳大利亚 <sup>69</sup>	Humphries 等，2021，p25，38
<b>2.1.4 遗传资源/生物资源</b>	(a) 遗传资源	所有	
	(b) 还包括生物资源	马来西亚 <sup>70</sup> ；澳大利亚 <sup>71</sup> ；印度 <sup>72</sup> ；马耳他 <sup>73</sup> ；南非 <sup>74</sup>	Kamau, 2022c, p359
<b>2.1.5 遗传信息</b>	(a) 与实体遗传资源的利用相结合	巴拿马 <sup>75</sup>	Bagley 等，2020, pp 13 - 18
	(b) 与实体遗传资源的利用相独立	不丹 <sup>76</sup> ，哥伦比亚 <sup>77</sup> ，肯尼亚 <sup>78</sup>	
	(c) 无具体规定	多数国家	
<b>2.1.6 土著人民和当地社区持有的遗传资源<sup>79</sup></b> 许多国家要求获得持有遗传资源的土著人民和当地社区的同意	获取和惠益分享措施可能需要：		
	(a) 土著人民和当地社区的事先知情同意或批准及参与	南非 <sup>80</sup> ；马来西亚 <sup>81</sup> ；肯尼亚 <sup>82</sup> ；秘鲁 <sup>83</sup> ；西班牙 <sup>84</sup> ；菲律宾 <sup>85</sup> ；马拉维 <sup>86</sup> ；纳米比亚 <sup>87</sup>	Kamau, 2022a, p172f.; Kamau, 2022c, p362ff.; Kamau, 2022b, p290f.; Cabrera Ormaza, 2022, p110f.; Silvestri, 2022b, 451f
	(b) 遵守社区协定/习惯法	印度尼西亚 <sup>88</sup> ；马达加斯加 <sup>89</sup>	
	(c) 土著人民和当地社区没有“充分”利用遗传资源或拒绝根据“合理商业条款和条件”授予许可	赞比亚 <sup>90</sup> ；肯尼亚 <sup>91</sup>	Humphries 等，2021, p27; Kamau, 2022b, p281f
<b>2.1.7 特定遗传资源的豁免</b> 许多国家的获取和惠益分享措施不适用于特定的粮食和农业遗传资源/相关活动	以下情况可能豁免于适用获取和惠益分享措施：	马来西亚 <sup>92</sup> ；法国 <sup>93</sup> ；不丹 <sup>94</sup>	Silvestri 2022a, p53, 55; Humphries 等，2021, p28f.
	(a) 获取和惠益分享受专门国际文书管理的遗传资源		
	(b) 《条约》附件 1/多边系统下的粮食和农业植物遗传资源	阿根廷 <sup>95</sup> ；秘鲁 <sup>96</sup> ；菲律宾 <sup>97</sup> ；不丹 <sup>98</sup>	Kamau, 2022c, pp355, 359, 370; Mahop, 2022, p468

	措施	国家（示例）	扩展阅读
	(c) 受知识产权保护的植物品种	葡萄牙 <sup>99</sup> ；乌干达 <sup>100</sup> ； 肯尼亚 <sup>101</sup>	
	(d) 来自驯化或栽培物种的遗传资源	阿根廷 <sup>102</sup> ；法国 <sup>103</sup>	Silvestri, 2022a, p53; Mahop, 2022, p468
	(e) 作物野生亲缘种	法国 <sup>104</sup>	Humphries 等, 2021, p29
	(f) 林业遗传资源	法国 <sup>105</sup>	Humphries 等, 2021, p29
	(g) 培育用作研发模型的生物材料	摩洛哥 <sup>106</sup>	Humphries 等, 2021, p29
	(h) 特定类别的遗传资源，如渔业和动物遗传资源	西班牙 <sup>107</sup>	Silvestri, 2022b, 449f
	(i) 由政府处理的粮食和农业遗传资源	澳大利亚 <sup>108</sup>	Humphries 等, 2021, p29
	(j) 按个案处理，如公共非原生境资源库中的遗传资源	例如，在澳大利亚 的联邦区 <sup>109</sup> ；印度 <sup>110</sup>	Humphries 等, 2021, p29, 38
	(k) 实验室为防范、监测和应对动植物健康和食品安全风险收集的遗传资源	法国 <sup>111</sup>	Humphries 等, 2021, p33; Mahop, 2022, p468
	(l) 通常作为商品交易的生物资源	印度 <sup>112</sup> ；不丹 <sup>113</sup>	
	(m) 独立于遗传资源获取的衍生品	越南 <sup>114</sup> ；马耳他 <sup>115</sup>	Trang, Ba Nguyen T. & Thu, 2022, p329
<b>2.2 触发/不触发获取和惠益分享义务的活动</b>			
获取遗传资源用于利用，可能触发获取和惠益分享义务。			
<b>2.2.1 粮食和农业遗传资源相关活动的豁免</b>	一些国家规定（明示或默示），粮食和农业遗传资源相关活动可免于承担获取和惠益分享义务：		
	(a) 不以研发为目的的农业活动	马来西亚 <sup>116</sup>	Humphries 等, 2021, p31

	措施	国家（示例）	扩展阅读
	(b) 使用遗传资源生产农产品，以供销售	南非 <sup>117</sup>	Humphries 等，2021, p29f
	(c) 使用遗传资源作为商品，以供最终消费	马耳他 <sup>118</sup> ；孟加拉国 <sup>119</sup> ；菲律宾 <sup>120</sup> ；纳米比亚 <sup>121</sup>	Humphries 等，2021, p29f；Mozini 2022, p78
	(d) 淡水或海水养殖活动，涉及淡水和海洋物种，生产样本以供消费	南非 <sup>122</sup> ；澳大利亚 <sup>123</sup> ；马来西亚 <sup>124</sup> ；西班牙 <sup>125</sup>	Humphries 等，2021, p30f.；Kamau, 2022a, p168
	(e) 收集遗传资源，供公共资源库使用或在农业或林业中用于进一步培育	挪威 <sup>126</sup>	Humphries 等，2021, p31
	(f) 收集亲本，用于水产养殖	澳大利亚 <sup>127</sup> （对“生物材料”实施管理）	Humphries 等，2021, p30
	(g) 收集植物繁殖材料，用于繁殖	澳大利亚 <sup>128</sup> （对“生物材料”实施管理）	Humphries 等，2021, p30
	(h) 种子和森林植物的生产和销售	西班牙 <sup>129</sup>	Humphries 等，2021, p31
	(i) 出于保护目的，收集并在非原生境资源库中保存样本	西班牙 <sup>130</sup>	Humphries 等，2021, p33
	(j) 除用于研发外，将生物资源作为商品进行交换	印度 <sup>131</sup> ；纳米比亚 <sup>132</sup> ；不丹 <sup>133</sup>	Humphries 等，2021, p30
	(k) 将畜产品作为常规消费品进行销售	孟加拉国 <sup>134</sup>	Humphries 等，2021, p30
<b>2.2.2 特定用户群体所开展活动的豁免</b>	特定用户群体开展的以下活动享受豁免：		
一些国家针对特定用户群体开展的活动免除获取和惠益分享义务/规定简化程序	(a) 作为传统和习惯做法在土著人民和当地社区之间开展的交换	马来西亚 <sup>135</sup> ；肯尼亚 <sup>136</sup> ；纳米比亚 <sup>137</sup> ；厄瓜多尔 <sup>138</sup>	Humphries 等，2021, p33；Kamau, 2022c, p359；Kamau, 2022b, p278
	(b) 土著人民和当地社区之间交换遗传资源/传统知识，供自身消费	危地马拉 <sup>139</sup> ；乌干达 <sup>140</sup> ；纳米比亚 <sup>141</sup> ；不丹 <sup>142</sup>	

	措施	国家（示例）	扩展阅读
	(c) 某地区的当地人口和社区，包括种植户和养殖户（除非其希望获得知识产权）	印度 <sup>143</sup>	
	(d) 小规模农民在农业、园艺、家禽养殖、奶牛养殖、畜牧业或养蜂业中采取的常规养殖或传统做法	马来西亚 <sup>144</sup>	
	(e) 农民、牧民和渔民根据传统生活方式获取和利用遗传资源	中国 <sup>145</sup>	
	(f) 国家认可的研究组织和此类组织的国外合作者进行的非商业化研究，除非意图发生变化	印度 <sup>146</sup>	
	(g) 教育机构开展的研究	肯尼亚 <sup>147</sup>	Kamau, 2022b, p303 footnote 147
	(h) 用户群体网络内部进行的交换	印度 <sup>148</sup>	Humphries 等, 2021, p33
<b>2.3 获取和惠益分享措施下适用的授权程序</b>			
获取和惠益分享措施通常需要在获取和利用遗传资源之前获得事先知情同意并共同商定条件。			
<b>2.3.1 简化批准程序</b>	各国可能采取若干方式简化批准程序：		
各国可能在获取和利用遗传资源之前要求获得事先知情同意并共同商定条件	(a) 针对粮食和农业遗传资源等特定遗传资源，无需获得事先知情同意	南非 <sup>149</sup>	Kamau, 2022a, p168f.
	(b) 获取和利用之前需进行通报/登记，无需获得事先知情同意。但在商业化、转让给第三方或改变原有意图的情况下，需获得授权	巴西 <sup>150</sup> ；法国 <sup>151</sup> ；南非 <sup>152</sup>	Mozini, 2022, p74, 76; Humphries 等, 2021, p35; da Silva & de Oliveira, 2018, p1; Kamau, 2022c, p366; Mahop, 2022, p468; Kamau, 2022a, p185f
	(c) 针对《条约》附件 1/多边系统粮食和农业植物遗传资源，应用《标准材料转让协议》	《条约》各缔约方	

	措施	国家（示例）	扩展阅读
	(d) 针对《条约》附件 1/多边系统粮食和农业植物遗传资源以外的其他粮食和农业植物遗传资源，应用《标准材料转让协议》	加拿大；德国； 荷兰（王国）；瑞士	参见粮农组织，2021 [关于多边系统的教育模块 IV], p35
	(e) 针对（所有）生物资源/遗传资源的标准化获取条件	南非 <sup>153</sup> ；乌干达 <sup>154</sup> ； 菲律宾 <sup>155</sup>	Humphries 等，2021, p36
<b>2.3.2 特定活动的简化程序</b>	各国为特定活动规定了简化程序，如：		
	(a) 生计型消费和常规商业消费	菲律宾 <sup>156</sup>	
	(b) 不会产生衍生技术的针对农业生物多样性开展的科学研究	菲律宾 <sup>157</sup>	
	(c) 对遗传资源产品或繁殖材料进行非经济性利用的活动	巴西 <sup>158</sup>	Mozini, 2022, p82, 84ff
	(d) 用于研发分类、保护或生物安全目的	西班牙 <sup>159</sup> ；法国 <sup>160</sup>	Humphries 等，2021, p33
	(e) 在人类及动植物的生命和健康受到威胁的情况下，研发治疗药物，保障粮食安全	大韩民国 <sup>161</sup>	Humphries 等，2021, p36； Lee & Cho，2022, 381ff
	(f) 国家机构开展的非商业性研究	菲律宾 <sup>162</sup> ；印度 <sup>163</sup>	Humphries 等，2021, p34
	(g) 为非商业/纯科学目的获取遗传资源	法国 <sup>164</sup>	
	(h) 分类、收集和预育种目的及研究项目	墨西哥 <sup>165</sup> ；南非 <sup>166</sup>	Humphries 等，2021, p33； Kamau, 2022a, p166f.



	措施	国家（示例）	扩展阅读
<b>要点 3： 粮食和农业遗传资源相关传统知识的获取和利用</b>			
<b>3.1 传统知识定义</b> 国家（获取和惠益分享）措施中关于传统知识有多个定义。	例如，“传统知识”定义包括：		
	(a) 土著人民和当地社区逐渐形成的跨代际积累的知识	秘鲁 <sup>167</sup>	Humphries 等，2021，p39ff
	(b) 原住民的相关知识、经验和举措	越南 <sup>168</sup>	Trang, Ba Nguyen & Thu, 2022, p337
	(c) 来自传统社区、个人或群体的不局限于一个特定专题领域、技术或医疗领域的任何知识	危地马拉 <sup>169</sup>	
	(d) 成文知识体系中包含的代代相传的知识，包括农业、环境或医学知识	肯尼亚 <sup>170</sup>	
	(e) 社区或个人关于任何生物和遗传资源或其中任何部分用途、特性、价值和处理的知識、创新和做法	不丹 <sup>171</sup>	
<b>3.1.1 不适用获取和惠益分享措施的传统知识（与粮食和农业遗传资源相关）</b>	获取和惠益分享措施可能不适用于以下情况：		
	(a) 无法归于一个或多个传统社区的传统知识	法国 <sup>172</sup>	
	(b) 其特性广为人知且在分享该传统知识的传统社区之外被长期和反复使用的与遗传资源相关的传统知识	法国 <sup>173</sup>	
	(c) 与某些可能有益于农业、林业或粮食及海产品的推广方法相关的传统知识	法国 <sup>174</sup>	
	(d) 与农产品和海产品的来源地和品质的明显特征相关的传统知识和技能	摩洛哥 <sup>175</sup>	
	(e) 权利持有人未充分利用的传统知识，或权利持有人拒绝根据合理商业条款和条件授予许可的传统知识	赞比亚 <sup>176</sup> ；肯尼亚 <sup>177</sup>	Humphries 等，2021，p27；Kamau, 2022b, p281f

	措施	国家（示例）	扩展阅读
<b>3.2 确定传统知识持有人</b>			
各国为确定传统知识持有人建立了不同程序	协助确定持有人的措施：		
	(a) 政府，确保已获得“相关社区”的事先知情同意	马拉维 <sup>178</sup>	
	(b) 公共实体，代表土著人民和当地社区与用户进行谈判	法国 <sup>179</sup> ；埃塞俄比亚 <sup>180</sup> ；南非 <sup>181</sup>	Mahop, 2022, p470f; Hailu & Kamau, 2022, p257
	(c) 生物文化协定	印度 <sup>182</sup> ；肯尼亚 <sup>183</sup> ；墨西哥 <sup>184</sup>	Humphries 等，2021, p42
	(d) 公共主管部门，协助确定知识持有人并监督协议	乌干达 <sup>185</sup> ；南非 <sup>186</sup>	Humphries 等，2021, p42
	(e) 国家为确保已获得“相关社区”的事先知情同意实施的干预（和提供的指导）	越南 <sup>187</sup> ；马拉维 <sup>188</sup> ；乌干达 <sup>189</sup> ；南非 <sup>190</sup>	Humphries 等，2021, p42f。
<b>3.3 获得土著人民和当地社区事先知情同意或批准以及参与的程序</b>			
	为获得同意，以便获取/使用传统知识，获取和惠益分享措施可包括：		Humphries 等，2021, p43
	(a) 与适用于遗传资源的程序相同；	见上文 2.3	Humphries 等，2021, p43
	(b) 许可程序（法律将传统知识作为知识产权加以保护）；	肯尼亚 <sup>191</sup> ；秘鲁 <sup>192</sup> ；南非 <sup>193</sup> ；越南 <sup>194</sup> ；赞比亚 <sup>195</sup>	Humphries 等，2021, p43
	(c) 具备针对粮食和农业遗传资源的生物文化或社区协定；	例如：秘鲁 <sup>196</sup> ；肯尼亚 <sup>197</sup> ；印度 <sup>198</sup>	Humphries 等，2021, p27f., 42f.; Kamau, 2022b, p290f, 306
	(d) 邻国土著人民和当地社区的参与/磋商。	肯尼亚 <sup>199</sup>	Humphries 等，2021, p44; Kamau, 2022b, p306

	措施	国家（示例）	扩展阅读
<b>要点 4： 公正和公平分享惠益</b>			
<b>4.1 惠益分享义务的范围</b>			
惠益分享可能适用于直接或间接获取、收集、使用或获得且在原生境和非原生境条件下存在的遗传资源/传统知识			
<b>4.1.1 时间范围</b>	惠益分享可能适用于：		
	(a) 获取和惠益分享措施生效后获取的遗传资源/传统知识	多数国家	
	(b) 最新使用的在获取和惠益分享措施生效前获取的遗传资源/传统知识	马来西亚 <sup>200</sup>	
<b>4.1.2 免于承担惠益分享义务</b>	获取和惠益分享措施可能免于承担惠益分享义务，如：		
	(a) 不属于获取和惠益分享措施（获取条款）管辖范围的资源	见 2.1	
	(b) 不被视为“利用”的活动	见 2.2	
	(c) 传统农民及其合作社	巴西 <sup>201</sup>	Humphries 等， 2021, p45 ; Mozini, 2022, p86
	(d) 非商业性研究	澳大利亚 <sup>202</sup>	Humphries 等， 2021, p45
<b>4.2 公正和公平</b>			
<b>4.2.1 惠益的确定</b>	获取和惠益分享措施可：		
	(a) 规定详细的惠益分享模式	印度 <sup>203</sup> ； 南非 <sup>204</sup>	Humphries 等， 2021, p45
	(b) 授权主管部门根据个案确定惠益分享模式	卢旺达 <sup>205</sup> ； 所罗门群岛 <sup>206</sup>	Humphries 等， 2021, p45
<b>4.2.2 简化惠益分享</b>	获取和惠益分享措施可针对以下情况规定简化惠益分享，如：		
	(a) 针对农业生物多样性开展的科学和非商业性研究	菲律宾 <sup>207</sup>	Humphries 等， 2021, p45

	(b) 纯科研目的	阿根廷 <sup>208</sup>	Silvestri, 2022a, p62f.
	(c) 针对森林遗传资源（推迟惠益分享安排，直至取得育种结果）	西班牙 <sup>209</sup>	Humphries 等, 2021, p32
<b>4.2.3 分享粮食和农业遗传资源产生的货币和非货币惠益</b>	获取和惠益分享措施可能具体规定针对粮食和农业遗传资源的惠益分享模式：		
	(a) 关注和确定与粮食和农业部门特别相关的惠益	印度 <sup>210</sup> ；乌干达 <sup>211</sup> ；马来西亚 <sup>212</sup> ；比利时（瓦隆大区） <sup>213</sup> ；赞比亚 <sup>214</sup>	Humphries 等, 2021, p48
	(b) 社区内部或社区之间交换粮食和农业遗传资源，作为惠益维持粮食或生计体系	交换，如印度 <sup>215</sup> ；肯尼亚 <sup>216</sup> ；传统使用，如埃塞俄比亚 <sup>217</sup>	Humphries 等, 2021, p49
<b>4.2.4 通过示范条款促进惠益分享</b>	示例包括： 国家惠益分享示范条款	贝宁 <sup>218</sup> ；喀麦隆 <sup>219</sup> ；法国 <sup>220</sup> ；南非 <sup>221</sup> ；不丹 <sup>222</sup> ；澳大利亚 <sup>223</sup>	Humphries 等, 2021, p46
<b>4.3 受益方</b>			
获取和惠益分享措施通常未详细界定受益方（应与其分享惠益的各方）或惠益的用途。然而，一些获取和惠益分享措施针对具体情况规定设立国家惠益分享基金。			
<b>4.3.1 国家惠益分享基金</b>	获取和惠益分享措施可能针对以下情况设立惠益分享基金：		
	(a) 遗传资源和传统知识的保护及进一步研究	南非 <sup>224</sup> ；不丹 <sup>225</sup> ；厄瓜多尔 <sup>226</sup>	Kamau, 2022a, p172f, 200f.
	(b) 支持社区保护举措	不丹 <sup>227</sup>	国家生物多样性中心，不丹，2018, p32；Humphries 等, 2021, p47

	(c) 支持土著人民和当地社区及传统农民可持续管理和保护遗传资源，发展和维护多元化农业体系，加强遗传资源的可持续使用	巴西 <sup>228</sup> ； 阿根廷 <sup>229</sup>	Humphries 等， 2021, p47f.; Mozini, 2022, p86
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	措施	国家（示例）	扩展阅读
<b>要点 5： 合规与监测</b>			
<b>5.1 监测</b>			
	(a) 针对粮食和农业遗传资源的检查站	如：不丹 <sup>230</sup> ；爱沙尼亚 <sup>231</sup> ； 匈牙利 <sup>232</sup> ；大韩民国 <sup>233</sup>	Humphries 等，2021，p53
	(b) 制定监测工具	印度 <sup>234</sup>	
<b>5.2 用户国家合规措施</b>			
<b>5.2.1 一般合规措施</b>	(a) 开展尽职调查的具体措施，以表明该国利用的遗传资源是根据提供国的适用国家法律获取（前提是提供国是《名古屋议定书》的缔约方）	欧盟 <sup>235</sup>	Humphries 等，2021，p53
	(b) 具体措施，以确保该国使用的遗传资源是根据适用国际协定获取，包括通过使用《条约》针对附件 1/粮食和农业遗传资源多边系统的《标准材料转让协议》	挪威 <sup>236</sup>	
	(c) 确定用户合规重点检查站	马来西亚 <sup>237</sup> ；南非 <sup>238</sup> ； 不丹 <sup>239</sup>	
	(d) 要求向检查站报告或生成获取许可	马来西亚 <sup>240</sup> ；大韩民国 <sup>241</sup> ；	
	(e) 要求检查站针对生成的许可以书面形式通知国家主管部门或相关主管部门	马来西亚 <sup>242</sup>	
	(f) 要求申请基于生物资源或传统知识的专利的任何个人通报主管部门，说明该专利是否涉及土著遗传资源或传统知识，或向主管部门提供证明	马来西亚 <sup>243</sup> ；南非 <sup>244</sup>	
	(g) 要求申请植物育种者权利/植物品种保护的任何人提供相关主管部门的授权	阿根廷 <sup>245</sup> ；新西兰 <sup>246</sup>	

	措施	国家（示例）	扩展阅读
	(h) 希望获取或商业化利用来自《名古屋议定书》缔约方的外国生物资源或传统知识的任何个人有义务确保遵守该缔约方的法律一如该缔约方需获得获取许可	马来西亚 <sup>247</sup> ；大韩民国 <sup>248</sup>	
	(i) 检查站公报措施	马来西亚 <sup>249</sup>	
	(j) 允许相关主管部门调查违法行为的措施	马来西亚 <sup>250</sup> ；大韩民国 <sup>251</sup>	
	(k) 鼓励公平和公正分享惠益的措施	大韩民国 <sup>252</sup>	
<b>5.2.2 例外</b>	<p>无需适用用户国家合规措施的情况可包括：</p> <p>(a) 国家不主张或行使对遗传资源的主权权利<sup>253</sup></p> <p>(b) 国家不是《名古屋议定书》的缔约方<sup>254</sup></p> <p>(c) 国家没有制定获取措施<sup>255</sup></p> <p>(d) 遗传资源是在《名古屋议定书》生效之前获取<sup>256</sup></p> <p>(e) 遗传资源受专门国际文书管辖并根据此类文书规定的目的进行使用<sup>257</sup></p> <p>(f) 遗传资源作为商品进行交易和交换<sup>258</sup></p> <p>(g) 无意中将致病遗传资源和有害生物引入一国<sup>259</sup></p> <p>(h) 传统知识与已获取的遗传资源的利用无关</p> <p>(i) 活动不属于“利用”范围<sup>260</sup></p> <p>(j) 对衍生品开展研发活动的衍生品与其所属遗传资源之间不存在可确定的连续性水平<sup>261</sup></p> <p>(k) 仅使用关于遗传资源的信息<sup>262</sup></p> <p>(l) 在相关管辖范围外，存在利用情况<sup>263</sup></p>	欧盟及成员国 <sup>264</sup>	Winter, 2022; Greiber & Frederichs, 2022

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- <sup>1</sup> Loi sur l'accès aux ressources génétiques et connaissances traditionnelles de l'union des Comores 2020, Art. 5.
- <sup>2</sup> Direction Générale des Eaux, Forêts et Chasse/Ministère du Cadre de Vie et du Développement Durable (General Directorate of Water, Forests and Hunting/Ministry of Living Environment and Sustainable Development) is the only designated CNA for the country responsible for all genetic resources. See <https://absch.cbd.int/en/countries/BJ> (accessed 12 October 2022).
- <sup>3</sup> The Nagoya Protocol (Implementation) Act, 2016, Art. 4 (read together with Regulation of the Minister for Agriculture of 31 March 2016, No. WJZ/15145152 and Decree of the Minister for Agriculture of 31 March 2016, No. WJZ/15163191).
- <sup>4</sup> Decreto-Lei-122-2017, Art. 4.1.
- <sup>5</sup> Ministry of Agriculture, Food and Forestry (for agricultural and forest genetic resources) and Ministry of Environment and Water (for genetic resources from naturally occurring species). See <https://absch.cbd.int/en/countries/BG> (accessed 12 October 2022).
- <sup>6</sup> Decree on the Management of Access to Genetic Resources and the Sharing of Benefits Arising from their Utilization, 12 May 2017, Chapter II, Art. 6. The Ministry of Agriculture and Rural Development is responsible for granting, renewing and withdrawing licences for genetic resources for agricultural crop varieties, livestock, aquatic species and forest seedlings. See <https://absch.cbd.int/en/countries/VN> (accessed 10 October 2022).
- <sup>7</sup> Ministry of Agriculture, Lands, Forestry, Fisheries and the Environment Botanical Gardens is the only designated CNA for the country responsible for all genetic resources. See <https://absch.cbd.int/en/countries/GD> (accessed 12 October 2022).
- <sup>8</sup> Department of Environment, Ministry of Agriculture, Marine Resources, Cooperatives, Environment and Human Settlement is the only designated CNA for the country responsible for all genetic resources. See <https://absch.cbd.int/en/countries/KN> (accessed 10 October 2022).
- <sup>9</sup> Instituto Nacional de Innovación Agraria is the authority responsible for access to genetic resources, molecules, combination or mixture of natural molecules, crude extracts and derivatives of cultivated or domesticated inland species. See <https://absch.cbd.int/en/countries/PE> (accessed 10 October 2022).
- <sup>10</sup> Ley General de Desarrollo Forestal Sustentable, 25 February 2003 (11, fracción XVII y XXXVI; 7, fracción XXX, L y LXVIII; 20, fracción XXXIII; 32, fracción XV; 69, fracción IV; y 128); Reglamento de la Ley General de Desarrollo Forestal Sustentable, 21 February 2005 (4o, fracción III, Sección IV Colecta de Recursos Biológicos Forestales). Dirección General de Gestión Forestal y de Suelos (Directorate General for Forestry and Soil Management) is responsible for permits for collection of forest biological and genetic resources. See <https://absch.cbd.int/en/countries/MX> and <https://absch.cbd.int/en/countries/MX/MSR> (accessed 12 October 2022).
- <sup>11</sup> Projet de decret sur l'accès aux ressources génétiques et le partage juste et équitable des avantages qui en découlent 2017, Arts 15-17
- <sup>12</sup> Proclamation No. 482/2006 Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation; Regulation No. 169/2009 Access to Genetic Resources and Community Knowledge, and Community Rights. The Ethiopian Biodiversity Institute is the CNA.
- <sup>13</sup> LOV nr 1375 af 23/12/2012 om udbyttedeling ved anvendelse af genetiske ressourcer see e.g. Arts 5-8.
- <sup>14</sup> Reglamento de acceso a recursos genéticos, conocimientos tradicionales asociados y distribución justa y equitativa de beneficios de la república dominicana, Art. 7.
- <sup>15</sup> Governmental Agreement 171-2014 (Government Agreement 171-2014), Art. 1. Consejo Nacional de Áreas Protegidas (National Council for Protected Areas) is the designated CNA responsible for all genetic resources. See <https://absch.cbd.int/en/countries/GT> (accessed 12 October 2022).
- <sup>16</sup> The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, Art. 5. Ministry of State for Environment Affairs (MOEN). See also <https://absch.cbd.int/en/countries/SY> (accessed 12 October 2022).
- <sup>17</sup> Uganda National Council for Science and Technology. See <https://absch.cbd.int/en/countries/UG> (accessed 12 October 2022).



<sup>18</sup> Department of Science, Ministry of Education and Sports (CNA). See <https://absch.cbd.int/en/countries/LA> (accessed 12 October 2022). According to Art. 6 of the National Framework on ABS of 2013, the Ministry of Science and Technology is the management and monitoring organization on ABS at the central level.

<sup>19</sup> Ley 28216, Ley de Protección al acceso a la diversidad biológica peruana y los conocimientos colectivos de los pueblos indígenas, 7 April 2004, Art. 2; El Reglamento de Acceso a los Recursos Genéticos (D.S N° 003-2009-MINAM), 6 February 2009, Art. 13. See also CBD, 2022, <https://absch.cbd.int/en/countries/PE/MSR> (accessed 13 October 2022).

<sup>20</sup> Biodiversity Law NO. 7788, Gazette No 101, 27 May 1998, Chapter I, II and V, National Commission for Biodiversity Management (CONAGEBIO). Ministry of Environment and Energy (MINAE) is the only designated CNA for the country responsible for all genetic resources. See <https://absch.cbd.int/en/countries/CR/CNA> (accessed 10 October 2022).

<sup>21</sup> Proclamation No. 120/1998 Institute of Biodiversity Conservation and Research, Arts 3 and 6. See also Proclamation No. 482/2006 Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation; Regulation No. 169/2009 Access to Genetic Resources and Community Knowledge, and Community Rights. The Ethiopian Biodiversity Institute is the only CNA responsible for all genetic resources and community knowledge.

\* For example for Annex 1/MLS PGRFA of the Treaty, see also 2.1.7 (a).

<sup>22</sup> Decree No. 59 2017, Art. 6.1 & 26 (Agriculture/Environment).

<sup>23</sup> Act on Genetic Resources 2017, Art. 8 (1) 2 (Agriculture/ Fisheries/ Environment/ Science/ Health).

<sup>24</sup> Nature Conservation Act 2017, Art. 68 (2). Ministry of Environment for wild genetic resources and TK associated with them, and Ministry of Rural Affairs for genetic resources of agriculture and TK associated with them. See also <https://absch.cbd.int/en/countries/EE> (accessed 13 October 2022).

<sup>25</sup> Forestry/Environment. See <https://absch.cbd.int/en/countries/ZW> (accessed 13 October 2022).

<sup>26</sup> National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 87A as amended by s. 22 of Act 14 of 2013 and Bioprospecting, Access and Benefit-Sharing Regulations 2015 (BABS Regulations), r. 6 (1) & (2). Permits for non-commercial research to be undertaken abroad are issued by the so-called Member of Executive Council (MEC). No permit is required for research undertaken in South Africa for this type of research. For commercial purposes DEA/DEFF is responsible.

<sup>27</sup> In Ecuador, relevant for granting access to genetic resources and permission for pure scientific/basic/academic/non-commercial research are three different governmental authorities. See Beck, 2022, p496f, 500ff. p496f, 500ff.

<sup>28</sup> Decreto Supremo que aprueba el Reglamento de acceso a los recursos genéticos y sus derivados, DECRETO SUPREMO N° 019-2021-MINAM, Art. 12.

<sup>29</sup> Genetic Resources Act 2017, Art. 8 (1).

<sup>30</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, Art. 5 (Uganda National Council for Science and Technology [UNCST]).

<sup>31</sup> Regulamento sobre Acesso e Partilha de Benefícios Provenientes de Recursos Genéticos e Conhecimento Tradicional Associado 2007, Art. 4 (Minister for the Coordination of Environmental Action).

<sup>32</sup> National Biodiversity Coordination Committee (NBCC).

<sup>33</sup> 巴西: Law n° 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge), Art. 6 (The Genetic Heritage Management Council (CGen)).

<sup>34</sup> Implementing Regulation for the Organic Code of the Social Economy for Knowledge, Creativity and innovation, 2017, Chapter III, Art. 25.

<sup>35</sup> The Biological Diversity Act 2002, *inter alia* s. 3 and 4, and Guidelines on Access to Biological Resources and Associated Knowledge and Equitable Sharing of Benefits Regulations 2019, s. 1(1).

<sup>36</sup> Ley Sectorial De Biodiversidad (333-15) 2016, Art. 12, and also Reglamento de Acceso a Recursos Genéticos y Distribución de Beneficios (ABS) de la República Dominicana 2018.

<sup>37</sup> Bioprospecting Forum.

<sup>38</sup> Foundation for Research on Biodiversity.

<sup>39</sup> National Environment Management Authority ABS Permit Committee.

<sup>40</sup> National Biodiversity Centre of Bhutan.

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- <sup>41</sup> Genetic resources and legislation in Finland, <http://www.biodiversity.fi/geneticresources/home> (accessed 16 October 2022).
- <sup>42</sup> The Danish Environmental Protection Agency – The Nagoya Protocol on Access and Benefit-sharing, <https://eng.mst.dk/nature-water/nature/biodiversity-the-building-block-of-life/the-nagoya-protocol-on-access-and-benefit-sharing/> (accessed 16 October 2022).
- <sup>43</sup> Korean ABSCH, "ABSCH Genetic Resources Information Center", <https://www.abs.go.kr/kabsch/main.do> (accessed 16 October 2022).
- <sup>44</sup> Biodiversity Clearing-House Mechanism, <https://www.biodiv.hu/hu> (accessed 16 October 2022).
- <sup>45</sup> National ABS Clearing House for Cameroon, <https://portailchm.sie.cm/abs/> (accessed 16 October 2022). Law N°2021/014 of July 2021 to Govern Access to Genetic Resources, their Derivatives, Traditional Knowledge Associated with Genetic Resource and their Fair Equitable Sharing of the Benefit Arising from their Utilization, s35.
- <sup>46</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 4.
- <sup>47</sup> Ministry of Higher Education, Research and Innovation, 2019.
- <sup>48</sup> German ABS Information Platform, <https://www.bfn.de/nagoya-protokoll> (accessed 16 October 2022).
- <sup>49</sup> Comisión Nacional para la Gestión de la Biodiversidad (CONAGEBIO) 2018, <https://www.conagebio.go.cr/Conagebio/public/> (accessed 16 October 2022).
- <sup>50</sup> Access and Benefit Sharing Portal for Kenya, <http://meas.nema.go.ke/abs/> (accessed 16 October 2022).
- <sup>51</sup> Qatar plant gene bank information system, <http://web1.mme.gov.qa/qatargb/hotline> (accessed 16 October 2022).
- <sup>52</sup> Department of Environmental Affairs, Republic of South Africa, <https://www.environment.gov.za> (accessed 9 May 2023).
- <sup>53</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 63 (3) - (4).
- <sup>54</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37 Art. L. 412–6.
- <sup>55</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 63 (3) - (4).
- <sup>56</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37 Art. L. 412–6.
- <sup>57</sup> Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation Regulations 2016, s. 2 (2) (c).
- <sup>58</sup> Norwegian Marine Resources Act Chapter 2, section 9.
- <sup>59</sup> Act on Genetic Resources 2017, Art. 1 of Addenda.
- <sup>60</sup> The Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization, Chapter 1, No. 3.1(5).
- <sup>61</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Article 37 Art. L. 412–4(6).
- <sup>62</sup> Regulamento sobre Acesso e Partilha de Benefícios Provenientes de Recursos Genéticos e Conhecimento Tradicional Associado 2007, Art. 2(o).
- <sup>63</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, s. 2. In Uganda domesticated or cultivated species are determined in the “cultural contexts in which their specific properties have been developed”.
- <sup>64</sup> The ABS legislation does not make reference to domesticated species but a clarification has been made by the government.
- <sup>65</sup> Decree No. 59/2017/ND-CP of the Government dated 12 May 2017 on the management of access to GR and the sharing of benefits arising from their utilization, Art. 3(10). Species has been acclimated for a long time, adaptive to the living conditions as a local variety, and is now widely cultivated.
- <sup>66</sup> Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.03(1); Environment Protection and Biodiversity Conservation Act 1999, s. 528.
- <sup>67</sup> Decree No. 8.772 of May 11, 2016, regulating Law No. 13.123 of May 20, 2015, Art. 2.
- <sup>68</sup> Colombia 2014, Art. 2.
- <sup>69</sup> Nature Conservation Act 2014 (ACT), s. 169, 206, 207, 209 and Biodiversity Conservation Regulation 2018 (WA), s. 72(3).
- <sup>70</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 4 Definition of “biological resource”, and s. 5.

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- <sup>71</sup> Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.03(1); Environment Protection and Biodiversity Conservation Act 1999, s. 528.
- <sup>72</sup> The Biological Diversity Act, 2002 No. 18 of 2003, Chapter II and Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014, several provisions e.g. r. 1-6.
- <sup>73</sup> Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation Regulations 2016, Art. 2 (2) (b).
- <sup>74</sup> National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 2 (1) (a) & (b), 3 (1).
- <sup>75</sup> Decreto Ejecutivo No. 19, de 26 de marzo de 2019.
- <sup>76</sup> Biodiversity Act of Bhutan 2003. Bhutan ABS Policy 2015, s. 6(k) defines "genetic resources" to include the "biochemical composition of genetic resources, genetic information and derivatives".
- <sup>77</sup> Andean Decision 391 of 1996; Resolution 1348 of 2014.
- <sup>78</sup> Part I of the Legal Notice n. 160 (2006).
- <sup>79</sup> For country measures defining IPLC, ways to determine the correct rights holder and procedures to obtain PIC or approval and involvement of IPLC, see below Element 3.
- <sup>80</sup> 南非: National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 82 (1) (a), (b); (2) (a); (3) (a).
- <sup>81</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 23.
- <sup>82</sup> Protection of Traditional Knowledge and Cultural Expressions Act 2016 (PTKCEA), s. 36 (1), 4.
- <sup>83</sup> Act No. 27.811, 2002 establishing the regime for the protection of collective knowledge of Indigenous Peoples associated to biological resources (Peru), Art. 6.
- <sup>84</sup> Spanish Constitution, Art. 148.1.9; Law No. 42/2007 of 13 December on Natural Heritage and Biodiversity, modified by Law No. 33/2015 of 21 September. Official Journal of Spain No. 227, 22 September 2015, pp 83588–83632, Art. 68.2; Royal Decree No. 124/2017 of 24 February, related to the access to genetic resources deriving from wild taxons and to the control of their utilization. Official Journal of Spain No. 62, 14 March 2017, pp 18478-18499, Art. 5.2.
- <sup>85</sup> Republic Act 8371 October 29, 1997 ("An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating the National Commission of Indigenous Peoples, Establishing Mechanisms, Appropriating Funds Thereof, and For other Purposes"), Chapter V., s. 35.
- <sup>86</sup> Procedures and Guidelines for Access and Collection of Genetic Resources in Malawi 2002, Annex 1, p23.
- <sup>87</sup> Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017, s. 9 (1).
- <sup>88</sup> Regulation of the Minister of Environment No. 34/MenLHK/Setjen/Kum.1/2017 on Recognition and Protection of Local Wisdom in The Management of Natural Resources and the Environment 2017, Art. 24 (2).
- <sup>89</sup> Décret n2017-066 du 31 Janvier 2017 portant réglementation de l'accès et du partage des avantages découlant de l'utilisation des ressources génétiques, Art. 14 (first paragraph).
- <sup>90</sup> Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act 2016, s. 30 (3). The provision foresees possibility of a compulsory licence to fulfil a national need, subject to compensation to the holder.
- <sup>91</sup> Protection of Traditional Knowledge and Cultural Expressions Act 2016, Art. 12 (1).
- <sup>92</sup> Access to Biological Resources and Benefit Sharing Act 2017, Act 795, s. 5(2)(g).
- <sup>93</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37 Art. L. 412–5II.
- <sup>94</sup> Biodiversity Act of Bhutan 2022, s. 94.
- <sup>95</sup> Administrative Decision No. 410 of the Argentine Secretariat of Environment and Sustainable Development that regulates basic common standards for the access and utilization of genetic resources in Argentina, 22 October 2019. OJ No. 34225, Art. 6.
- <sup>96</sup> Decreto Supremo N° 003-2009-MINAM. Eleva al rango de Decreto Supremo la Resolución Ministerial N° 087-2008-MINAM y ratifican la aprobación del Reglamento de Acceso a los Recursos, efectuada por dicha Resolución2009, Art. 5 (narrow exclusion).
- <sup>97</sup> Joint DENR-DA-PCSD-NCIP Administrative Oder No. 1, Series of 2005 (Guidelines for Bioprospecting Activities in the Philippines), s. 2.1.

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- <sup>98</sup> Biodiversity Act of Bhutan 2022, s. 94.
- <sup>99</sup> Decree-Law No. 118/2002 of 20 April 2002, Art. 2(1).
- <sup>100</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, s. 4c).
- <sup>101</sup> The Seeds and Plant Varieties Act, 2006, s. 3(b)).
- <sup>102</sup> Administrative Decision No. 410 of the Argentine Secretariat of Environment and Sustainable Development that regulates basic common standards for the access and utilization of genetic resources in Argentina, 22 October 2019. OJ No. 34225, Art. 6
- <sup>103</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquête de la biodiversité, de la nature et des paysages (1) Titre V: Accès aux ressources génétiques et partage juste et équitable des avantages 2016, Art. 37 Art. L. 412–5II.
- <sup>104</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquête de la biodiversité, de la nature et des paysages (1) Titre V: Accès aux ressources génétiques et partage juste et équitable des avantages 2016, Art. 37 Art. L. 412–5II.
- <sup>105</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquête de la biodiversité, de la nature et des paysages (1) Titre V: Accès aux ressources génétiques et partage juste et équitable des avantages 2016, Art. 37 Art. L. 412–5II.
- <sup>106</sup> Projet de loi sur l'accès aux ressources génétiques et le partage juste et équitable des avantages découlant de leur utilisation(undated), Art. 5.
- <sup>107</sup> Royal Decree No. 124/2017, of 24 February, related to the access to genetic resources deriving from wild taxons and to the control of their utilization. OJ No. 62, 14 March 2017, Art. 3(2) (if they are governed under other legislation).
- <sup>108</sup> Environment Protection and Biodiversity Conservation Regulation 2000, Reg. 8A.05(1)(a)
- <sup>109</sup> Environment Protection and Biodiversity Conservation Regulation 2000, Reg. 8A.05(1)(a).
- <sup>110</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, Art. 16; Guidelines on Access to Biological Resources and Associated Knowledge and Equitable Sharing of Benefits Regulations, 2019.
- <sup>111</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources génétiques et partage juste et équitable des avantages 2016, Art. 37 Art. L. 412–5.III(4).
- <sup>112</sup> Biological Diversity Act 2002, s. 40 allows Central Government to exclude such biological resources.
- <sup>113</sup> Biodiversity Act of Bhutan 2022, s. 8.
- <sup>114</sup> Implied by Art. 1 of Decree No. 59/2017/ND-CP of the Government dated 12 May 2017 on the management of access to GR and the sharing of benefits arising from their utilization. According to Trang, Ba Nguyen T. and Thu 2022, p. 329, there are no PIC and MAT for access to derivatives when accessed without genetic resources.
- <sup>115</sup> Legal Notice 379 of 2016 – Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation Regulations, 2016, Art. 2 (2) (g).
- <sup>116</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 5.
- <sup>117</sup> National Environmental Management: Biodiversity Act, No. 10 of 2004, s. 1.
- <sup>118</sup> Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation Regulations, 2016, s. 2(2)(b).
- <sup>119</sup> Biodiversity Act 2017, s. 35.
- <sup>120</sup> Joint IPOPHL-NCIP Administrative Order No. 01, 2016: Rules and Regulations on Intellectual Property Rights Application and Registration Protecting the Indigenous Knowledge Systems and Practices of the Indigenous Peoples and Indigenous Cultural Communities 2005, s. 3.
- <sup>121</sup> Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017, s. 4(c).
- <sup>122</sup> National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), GoN R149, G. 30739.
- <sup>123</sup> Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.03(1)).
- <sup>124</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 5.
- <sup>125</sup> Royal Decree No. 289/2003, of 7 March, on commercialization of reproduction forest materials, as long as there is no utilization of the genetic resources and no transfer to third parties for a different use, OJ No. 58, 8 March 2003; Royal Decree No. 124/2017 of 24 February related to the access to genetic resources deriving from wild taxons and to the control of their utilization. OJ No. 62, 14 March 2017, Art. 3(3). The latter excludes from ABS obligations “activities of production and marketing of seeds and forest plants, regulated by Royal Decree 289/2003 of 7 March, commercialization of forest material

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for reproduction, provided that there is no use of genetic resources, and provided that there is no transfer to third parties for other use”.

<sup>126</sup> Nature Diversity Act 2009, s. 58.

<sup>127</sup> Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.03(1)).

<sup>128</sup> Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.03(1)).

<sup>129</sup> Royal Decree No. 124/2017 of 24 February related to the access to genetic resources deriving from wild taxons and to the control of their utilization. OJ No. 62, 14 March 2017, Art. 3(3).

<sup>130</sup> Royal Decree No. 124/2017 of 24 February related to the access to genetic resources deriving from wild taxons and to the control of their utilization. OJ No. 62, 14 March 2017, Art. 3(3).

<sup>131</sup> The Biological Diversity Act 2002, s. 40 allows for the exclusion.

<sup>132</sup> Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017, s. 4 (1) (c).

<sup>133</sup> Biodiversity Act of Bhutan 2022, s. 8.

<sup>134</sup> Biodiversity Act 2017, s. 35.

<sup>135</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 5 (2)(g).

<sup>136</sup> Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, r. 3.

<sup>137</sup> Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017, s. 4 (1) (a).

<sup>138</sup> Decision 395, 1996, Art. 4b.

<sup>139</sup> Normativo de Investigaciones e Investigadores de la Diversidad Biológica 2020, Art. 25.

<sup>140</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, s. 4(2) & 3.2.

<sup>141</sup> Access to Biological and Genetic Resources and Associated Traditional Knowledge Act 2 of 2017, s. 4 (1) (a).

<sup>142</sup> Biodiversity Act of Bhutan 2022, s. 6.

<sup>143</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 17 (Indian law covers biological resources).

<sup>144</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 6.

<sup>145</sup> Regulation of Access to Genetic Resources and Benefit-sharing (draft law), Art. 30.

<sup>146</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 13 (simplified ABS procedures).

<sup>147</sup> Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, r. 3(a)(d).

<sup>148</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 17(b).

<sup>149</sup> National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 86 (1) (a); Government Gazette 30739. Commencement date: 8 February 2008.

<sup>150</sup> Law n° 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge), Art. 11 III.

<sup>151</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37 Art. L. 412–17 III.

<sup>152</sup> Bioprospecting, Access and Benefit-Sharing Regulations 2015 (BABS Regulations), Annexure 11, c. 9.

<sup>153</sup> National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), Annexures 7 and 8.

<sup>154</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, s. 15.

<sup>155</sup> Joint DENR-DA-PCSD- NCIP Administrative Order No. 01, Series of 2005: Guidelines for Bioprospecting Activities in the Philippines, Annex 2. Mainly for third party transfers and IP protection.

<sup>156</sup> Joint IPOPHL-NCIP Administrative Order No. 01, 2016: Rules and Regulations on Intellectual Property Rights Application and Registration Protecting the Indigenous Knowledge Systems and Practices of the Indigenous Peoples and Indigenous Cultural Communities 2005, s. 3 (simplified procedure applies to wild and exotic species used for this purpose).

- <sup>157</sup> Joint IPOPHEL-NCIP Administrative Order No. 01, 2016: Rules and Regulations on Intellectual Property Rights Application and Registration Protecting the Indigenous Knowledge Systems and Practices of the Indigenous Peoples and Indigenous Cultural Communities 2005, s. 3 (1).
- <sup>158</sup> Law n° 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge), Art. 11 (3) (implied).
- <sup>159</sup> Royal Decree No. 124/2017 of 24 February related to the access to genetic resources deriving from wild taxons and to the control of their utilization. OJ of Spain No. 62, 14 March 2017, Art. 3(3).
- <sup>160</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37 Art. L. 412-5 III(4).
- <sup>161</sup> Genetic Resources Act 2017, Art. 10.
- <sup>162</sup> Joint DENR-DA-PCSD Administrative Order No. 1, May 18, 2004 Joint Implementing Rules and Regulations (IRR) Pursuant to Republic Act No. 9147, s. 15(3).
- <sup>163</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 13.
- <sup>164</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. L- 412-7.I.
- <sup>165</sup> Mexico's ABS law, according to de la Torre, 2016.
- <sup>166</sup> The definition of "Research other than bioprospecting" in the Bioprospecting, Access and Benefit-Sharing Regulations 2008 (accessed 4 November 2022. The version of 2008 was repealed but the one of 2015 continues to use the term, albeit does not include the definition) read together with the catalogue of the South African National Biodiversity Institute (SANBI) on non-bioprospecting research activities. The latter is available online at <https://www.sanbi.org/resources/infobases/biodiversity-collection-permits-in-south-africa/> (accessed 4 November 2022).
- <sup>167</sup> Act No. 27.811, 2002 establishing the regime for the protection of collective knowledge of Indigenous Peoples associated to biological resources 2001, Art. 2.
- <sup>168</sup> Biodiversity Law 2008, Art. 3(28).
- <sup>169</sup> Normativo de Investigaciones e Investigadores de la Diversidad Biológica 2020, Art. 2(f).
- <sup>170</sup> Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, s. 2.
- <sup>171</sup> Biodiversity Act of Bhutan 2022. S. 168 (27).
- <sup>172</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37, Art. L- 412-5.
- <sup>173</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37, Art. L- 412-5.
- <sup>174</sup> Loi n 2016-1087 du 8 aout 2016 pour la reconquete de la biodiversite, de la nature et des paysages (1) Titre V: Accès aux ressources genetiqués et partage juste et equitable des avantages 2016, Art. 37, Art. L- 412-5.
- <sup>175</sup> Avant Projet de loi n° 56-17 sur l'accès aux ressources génétiques et le partage juste et équitable des avantages découlant de leur utilisation (undated), Art. 5 (draft law).
- <sup>176</sup> Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act 2016, s. 30(3)).
- <sup>177</sup> Protection of Traditional Knowledge and Cultural Expressions Act 2016 (PTKCEA), s. 22(2): compulsory licence possible.
- <sup>178</sup> Procedures and Guidelines for Access and Collection of Genetic Resources in Malawi 2002 (under heading E, 8).
- <sup>179</sup> Décret n° 2017-848 du 9 mai 2017 relatif à l'accès aux ressources génétiques et aux connaissances traditionnelles associées et au partage des avantages découlant de leur utilisation, 2017, Art. 1 Art R. 412-28 – I (MAT).
- <sup>180</sup> Ethiopian Biodiversity Institute (EBI).
- <sup>181</sup> Act No. 6 of 2019: Protection, Promotion, Development and Management of Indigenous Knowledge Act 2019 (BSA: South Africa establishes the National Indigenous Knowledge Systems Office that issues licences for the use of TK and assists communities in negotiating BSA).
- <sup>182</sup> Raika Biocultural Protocol 2009. See [http://www.pastoralpeoples.org/wp-content/uploads/2020/01/Raika\\_Biocultural\\_Protocol.pdf](http://www.pastoralpeoples.org/wp-content/uploads/2020/01/Raika_Biocultural_Protocol.pdf) (accessed 15 October 2022).

- <sup>183</sup> Samburu Community Protocol, 2009. See [http://community-protocols.org/wp-content/uploads/documents/Kenya-Samburu\\_Community\\_Protocol.pdf](http://community-protocols.org/wp-content/uploads/documents/Kenya-Samburu_Community_Protocol.pdf) (accessed 15 October 2022).
- <sup>184</sup> Protocolo Biocultural Micro Regional Oaxaca. Protocolo Comunitario Biocultural Ejido Nejapa de Madero, Yautepec, Oaxaca. See <https://absch.cbd.int/api/v2013/documents/9FE22165-47F8-DBCD-2932-3EC82414E894/attachments/213325/PROTOCOLO%20COMUNITARIO%20BIOCULTURAL%20DEL%20EJIDO%20NEJAPA%20DE%20MADERO%2C%20YAUTEPEC%2C%20OAXACA-MEXICO..pdf>.
- <sup>185</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, 2005, s. 10.
- <sup>186</sup> National Environmental Management: Biodiversity Act 10 of 2004, s. 82 (1) in conjunction with Bioprospecting and Benefit-Sharing Regulations 2015, r. 9 (1) (b) (i); National Environmental Management: Biodiversity Act 10 of 2004, s. 82 (2) (c) in conjunction with Bioprospecting and Benefit-Sharing Regulations 2015, r. 9 (1) (b) (iii) and 82 (4) (a)-(c).
- <sup>187</sup> Decree No. 59/2017/ND-CP of the Government dated 12 May 2017 on the management of access to GR and the sharing of benefits arising from their utilization 2017, Art. 6.1, 26.
- <sup>188</sup> Procedures and Guidelines for Access and Collection of Genetic Resources in Malawi 2002 (under heading E, 8).
- <sup>189</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, s. 10.
- <sup>190</sup> National Environmental Management: Biodiversity Act 10 of 2004, s. 82 (4) (a)-(c) and s. 82 (1), s. 82 (2) (c) in conjunction with Bioprospecting and Benefit-Sharing Regulations 2015, r. 9 (1) (b) (i) and r. 9 (1) (b) (iii) respectively.
- <sup>191</sup> Protection of Traditional Knowledge and Cultural Expressions Act 2016, s. 7.
- <sup>192</sup> Ley No. 27811, Ley de Protección Al Acceso A La Diversidad Biológica Persuana Y los Conocimientos Colectivos De Los Pueblos Indígenas 2001, Title VI.
- <sup>193</sup> National Environmental Management: Biodiversity Act 10 of 2004, s. 81–82; Protection, Promotion, Development and Management of Indigenous Knowledge Act 2019, s 13.
- <sup>194</sup> Law No. 20/2008/QH12 Biodiversity Law 2008, Art. 64.
- <sup>195</sup> Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act 2016, s. 11–15.
- <sup>196</sup> Community Biocultural Protocols. Building Mechanisms for Access and Benefit Sharing among the Communities of the Potato Park based on Customary Quechua Norms, ANDES (Peru), the Potato Park Communities and IIED, October 2011, <https://www.iied.org/sites/default/files/pdfs/migrate/G03168.pdf> (accessed 17 May 2023).
- <sup>197</sup> Samburu Community Protocol 2009, [http://community-protocols.org/wp-content/uploads/documents/Kenya-Samburu\\_Community\\_Protocol.pdf](http://community-protocols.org/wp-content/uploads/documents/Kenya-Samburu_Community_Protocol.pdf) (accessed 17 May 2023).
- <sup>198</sup> Raika Biocultural Protocol 2009, [http://www.pastoralpeoples.org/wp-content/uploads/2020/01/Raika\\_Biocultural\\_Protocol.pdf](http://www.pastoralpeoples.org/wp-content/uploads/2020/01/Raika_Biocultural_Protocol.pdf) (accessed 17 May 2023).
- <sup>199</sup> National Environment Management Authority, Kenya’s access and benefit-sharing toolkit for genetic resources and traditional knowledge 2014., Nairobi, 2014, p58. See <https://absch.cbd.int/api/v2013/documents/F3AB1BBD-08C1-4E30-1BA7-6562A31098FE/attachments/203706/ABS%20TOOL%20KIT%20FINAL.pdf> (accessed 15 October 2022); Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation 2006, First Schedule, 2.0 (a) (can be interpreted as striving towards such cooperation in East Africa).
- <sup>200</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 63 (3) - (4).
- <sup>201</sup> Law No. 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge) 2015, Art. 17(5)(II) (exempts farmers with annual gross income equal to or less than a prescribed maximum limit).
- <sup>202</sup> Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.12.
- <sup>203</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, see ss. 3–15.
- <sup>204</sup> Bioprospecting and Benefit-Sharing Regulations 2015, Annexure 12 (Benefit-sharing agreement for biological resources and Benefit-sharing agreement for traditional knowledge, both at 6.1).
- <sup>205</sup> Official Gazette No 38 of 23/09/2013 Law No. 70/2013 of 02/09/2013 Governing Biodiversity in Rwanda 2013.
- <sup>206</sup> Protected Areas Act 2010.

- <sup>207</sup> Joint DENR-DA-PCSD Administrative Order No. 1, May 18, 2004 Joint Implementing Rules and Regulations (IRR) Pursuant to Republic Act No. 9147 2004, s. 15 (no benefit-sharing obligations, except requirement to collaborate with local researcher as a form of benefit-sharing).
- <sup>208</sup> Administrative Decision No. 410 of the Argentine Secretariat of Environment and Sustainable Development that regulates basic common standards for the access and utilization of genetic resources in Argentina, 22 October 2019. OJ No. 34225 (PIC by province may nonetheless be required).
- <sup>209</sup> Spanish Government 2021. Ministry for the Ecological Transition and the Demographic Challenge. According to pers. comms by Humphries *et al.*, 2021, p32.
- <sup>210</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, Annexure 1.
- <sup>211</sup> National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, s. 20(2)(h).
- <sup>212</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 11(2)(14)).
- <sup>213</sup> The Walloon Region in Belgium (Décret relatif à l'accès aux ressources génétiques et au partage juste et équitable des avantages découlant de leur utilisation 2020, Annexes 1 and 2).
- <sup>214</sup> Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act 2016, s. 43(k).
- <sup>215</sup> Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 17 (c).
- <sup>216</sup> Environmental, Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, s. 3(a).
- <sup>217</sup> Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006, Federal Negarit Gazeta Year 13 No. 13, 27 February 2006, Art. 8(1).
- <sup>218</sup> Model contractual documents are uploaded on the ABSCH at <https://absch.cbd.int/en/countries/BJ> (accessed 20 October 2022).
- <sup>219</sup> Model contractual documents are uploaded on the ABSCH at <https://absch.cbd.int/en/countries/CM/PRO> (accessed 20 October 2022).
- <sup>220</sup> A pdf version of “Model contract for benefit-sharing from the use of genetic resources” has been uploaded on the ABSCH at <https://absch.cbd.int/en/countries/FR/NMCC> (accessed 20 October 2022).
- <sup>221</sup> A word version model of “Benefit sharing agreement has been uploaded on the ABSCH at <https://absch.cbd.int/en/countries/ZA/NMCC> (accessed 20 October 2022).
- <sup>222</sup> Form V and Form VII of the Biodiversity Rules and Regulations 2023 has a model contractual clauses.
- <sup>223</sup> A copy of the model access and benefit sharing contract (the Deed) between Australian Government and access party has been published at <https://www.wipo.int/tk/en/databases/contracts/texts/australiaprovider.html> (accessed 11 May 2023).
- <sup>224</sup> National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 85; Bioprospecting, Access and Benefit-Sharing Regulations 2015 (BABS Regulations), r. 40.
- <sup>225</sup> Biodiversity Act of Bhutan, Art. 130 (1) and definition of “Bhutan access and benefit sharing fund”, s. 168 (7).
- <sup>226</sup> Ley organica de agrobiodiversidad, semillas y fomento de agricultura 2017, Art. 16.
- <sup>227</sup> Biodiversity Act of Bhutan, Art. 130 (2) and definition of “Bhutan access and benefit sharing fund”, s. 168 (7).
- <sup>228</sup> 巴西: Law n° 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge), Art. 30.
- <sup>229</sup> Resolution National Institute of Seeds N°22/2006; Resolution National Institute of Seeds N°318/2018; Resolution National Institute of Seeds N°317/2022.
- <sup>230</sup> Biodiversity Act of Bhutan 2023, s. 147; Biodiversity rules and regulations 2023, s. 130.
- <sup>231</sup> Nature Diversity Act 2004, Art. 68<sup>3</sup> [amendment RT I, 05.07.2017, 2 – entry into force 15.07.2017].
- <sup>232</sup> Government Decree No. 3/2016. (I.20.) on certain rules of implementation of international and European Community legal acts on access to genetic resources and the fair and equitable sharing of the benefits arising from their utilisation, s. 5. (1) b) ba).
- <sup>233</sup> Genetic Resources Act 2017, Art. 13 (1) 2.
- <sup>234</sup> Biological Diversity Rules 2004, Art. 14 (10).



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- <sup>235</sup> Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union. OJ 2014 L 150/59 (hereinafter Regulation (EU) 511/2014).
- <sup>236</sup> Nature Diversity Act 2009, s. 59.
- <sup>237</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 30.
- <sup>238</sup> <https://absch.cbd.int/countries/ZA/CP> (accessed 9 November 2022).
- <sup>239</sup> Biodiversity Act of Bhutan 2022, s. 147.
- <sup>240</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 30.
- <sup>241</sup> Genetic Resources Act 2017, Art. 15 (1).
- <sup>242</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 30.
- <sup>243</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 31.
- <sup>244</sup> Patents Amendment Act of 2015, s. 3A, 3B.
- <sup>245</sup> SAGYP Resolution 44/1994 SAGYP Resolution 631/1992 National Seeds and Phytogenetic Creations; National Law N°20.247; Decree N°2183/1991; National Law N°24.376 approval of UPOV Convention Act 1978; National Law N°27.184 approval of International Treaty on Plant Genetic Resources for Food and Agriculture; National Law N°27.247 approval of Nagoya Protocol; National Constitution, Art. 124.
- <sup>246</sup> Plant Variety Rights Act 1987, s. 5 (1).
- <sup>247</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 34.
- <sup>248</sup> Genetic Resources Act 2017, Art. 14, 15 (2).
- <sup>249</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 34.
- <sup>250</sup> Access to Biological Resources and Benefit Sharing Act 2017, s. 35, 38, 40–44.
- <sup>251</sup> Genetic Resources Act 2017, Art. 16.
- <sup>252</sup> Genetic Resources Act 2017, Art. 14 (2).
- <sup>253</sup> Regulation (EU) 511/2014, Art. 2 (1); Guidance document, s. 2.1.1.
- <sup>254</sup> Regulation (EU) 511/2014, Art. 2 (4); Guidance document, s. 2.1.2.
- <sup>255</sup> Regulation (EU) 511/2014, Art. 2 (4); Guidance document, s. 2.1.2.
- <sup>256</sup> Guidance document, s. 2.2.
- <sup>257</sup> Regulation (EU) 511/2014, Art. 2 (2); Guidance document, s. 2.3.1.1.
- <sup>258</sup> Guidance document, s. 2.3.1.3.
- <sup>259</sup> Guidance document, s. 2.3.1.5.
- <sup>260</sup> Guidance document, s. 2.3.3.2.
- <sup>261</sup> Guidance document, s. 2.3.4.
- <sup>262</sup> Guidance document, s. 2.3.5.
- <sup>263</sup> Guidance document, s. 2.5.
- <sup>264</sup> Regulation (EU) 511/2014, Art. 4.