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para la  
Alimentación y la  
Agricultura

# COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

## Item 2.4 of the Provisional Agenda

### Fourteenth Regular Session

Rome, 15 – 19 April 2013

## THE NEED FOR AND MODALITIES OF ACCESS AND BENEFIT- SHARING ARRANGEMENTS FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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## I. INTRODUCTION

1. The Commission on Genetic Resources for Food and Agriculture (the Commission), at its last session, in adopting its Multi-Year Programme of Work 2013-2021,<sup>1</sup> agreed to consider at this session the need for, and modalities of, access and benefit-sharing (ABS) arrangements for genetic resources for food and agriculture (GRFA).

2. The Commission noted:

- the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Protocol);
- that the Protocol recognizes the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions; and
- that the Protocol recognizes the interdependence of all countries with regard to GRFA, as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and that the Protocol acknowledges the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty) and the Commission in this regard.

3. The Commission invited countries to consider, in the development and implementation of legislative, administrative or policy measures on ABS, the importance of GRFA and their special role for food security. It further invited countries to explore and assess, in the development of legislative, administrative or policy measures on ABS, sectoral approaches that allow for differential treatment of different sectors or subsectors of GRFA and different genetic resources or different activities or purposes for which activities are carried out.

4. The Commission decided to establish an Ad Hoc Technical Working Group on Access and Benefit-sharing for Genetic Resources for Food and Agriculture (ABS Working Group) to (1) identify relevant distinctive features of the different sectors and subsectors of GRFA requiring distinctive solutions; (2) develop options to guide and assist countries in developing legislative, administrative and policy measures that accommodate these features; and (3) analyse, as appropriate, possible modalities for addressing ABS for GRFA. At the kind invitation of the Government of Norway and with extra-budgetary funds provided by Norway, Spain and Switzerland, the ABS Working Group held its first session from 11 to 13 September 2012 in Longyearbyen (Svalbard), Norway.<sup>2</sup> The report of the ABS Working Group was made available to the Commission's intergovernmental technical working groups, for review in their fields of expertise.<sup>3</sup>

5. This document considers the need for, and modalities of, ABS arrangements for GRFA, taking into account the outcome of the meeting of the ABS Working Group. The document presents features of GRFA, as identified by the Working Group and reviewed by the Commission's intergovernmental technical working groups; it also provides background information on the options for addressing ABS for GRFA considered by the Working Group.

## II. THE DISTINCTIVE FEATURES OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE

6. The "special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solution" is widely recognized, including by the Conference of the Parties to the Convention on Biological Diversity (CBD)<sup>4</sup> and the Protocol.<sup>5</sup>

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<sup>1</sup> CGRFA-13/11/Report, *Appendix F*.

<sup>2</sup> CGRFA-14/13/6.

<sup>3</sup> CGRFA-14/13/10; CGRFA-14/13/12; CGRFA-14/13/20.

<sup>4</sup> Decisions II/15 (*retired*); V/5.

<sup>5</sup> Preamble, recital 15.

7. As requested by the Commission, the ABS Working Group, at its session in September 2012, identified relevant distinctive features of GRFA requiring distinctive solutions for ABS, as given in *Table 1*. The features aim to reflect an equilibrium between all subsectors of food and agriculture. Not every feature is necessarily applicable to each and every GRFA, and the various subsectors often have different features. The features are distinctive, but not necessarily unique to GRFA. While other genetic resources may share with GRFA some of the features identified, the specific combination of these features distinguishes GRFA from most other genetic resources.<sup>6</sup>

8. The ABS Working Group did not have time to consider the distinctive features of the various subsectors of GRFA. It agreed that it would be appropriate for the distinctive features of subsectors to be addressed by the Commission's intergovernmental technical working groups.<sup>7</sup> The intergovernmental technical working groups on plant, animal, and forest genetic resources, welcomed the report of the ABS Working Group and, in reviewing the distinctive features identified by the ABS Working Group, highlighted features particularly relevant (marked in *Table 1* by plus signs [+]) or less relevant (marked in *Table 1* by minus signs [-]) to their subsectors.

### **III. THE NEED FOR ACCESS AND BENEFIT-SHARING ARRANGEMENTS FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

9. The basic rules applying to ABS for genetic resources are set out in the CBD, the Protocol (which has not yet entered into force) and, for plant GRFA, the Treaty. These rules acknowledge the sovereign right of states over genetic resources within their jurisdiction and the authority to regulate and control access to them. States are increasingly making use of this sovereign right and adopt legislative, administrative and policy measures on ABS for genetic resources, including GRFA. In fact, Contracting Parties to the above-mentioned instruments will need to implement ABS policies and arrangements, even though, depending on the instrument, to varying degrees of comprehensiveness and intervention intensity.

10. The Protocol sets out numerous obligations for its Contracting Parties to take measures in relation to access to genetic resources, benefit-sharing and compliance. Among the obligations regarding domestic-level access measures, is the obligation of Contracting Parties to consider, in the development and implementation of their ABS legislation or regulatory requirements, "the importance of genetic resources for food and agriculture and their special role for food security."<sup>8</sup>

11. According to Article 4.3 of the Protocol, Contracting Parties shall, in the implementation of the Protocol pay "due regard to useful and relevant on-going work or practices under such international instruments and relevant international organizations, provided they are supportive of and do not run counter to the objectives of the CBD and the Protocol." While the provision does not further specify the international instruments and organizations or the kind of ongoing work or practices, the Preamble of the Protocol provides some guidance in this regard, as it refers to the fundamental role of the Treaty and the Commission.

12. Thus, it is very likely that ABS arrangements will, and will have to be, increasingly used whenever genetic resources, including GRFA, are accessed for their utilization (i.e. to conduct research and development on their genetic and/or biochemical composition).

### **IV. OPTIONS TO ADDRESS ACCESS AND BENEFIT-SHARING FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

13. Governments will need to determine which among the range of available options they will use to address the issue of ABS for GRFA. There are three main types of mechanisms that may be used to address

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<sup>6</sup> CGRFA-14/13/6, *Appendix B*.

<sup>7</sup> CGRFA-14/13/6, paragraph 12.

<sup>8</sup> Protocol, Article 8(b).

<b>Table 1: Distinctive features of genetic resources for food and agriculture</b>		WG AnGR <sup>9</sup>	WG FGR <sup>10</sup>	WG PGR <sup>11</sup>
<b>A. The role of GRFA for food security</b>	A.1 GRFA are an integral part of agricultural and food production systems and play an essential role for achieving food security and the sustainable development of the food and agriculture sector.		-	+
	A.2 Plant, animal, invertebrate and micro-organism GRFA form an interdependent network of genetic diversity in agricultural ecosystems.		-	
<b>B. The role of human management</b>	B.1 The existence of most GRFA is closely linked to human activity and many GRFA can be regarded as human-modified forms of genetic resources.			
	B.2 The maintenance and evolution of many GRFA depend on continued human intervention, and their sustainable utilization in research, development and production is an important instrument to ensure conservation.	+		
<b>C. International exchange and interdependence</b>	C.1 Historically, GRFA have been widely exchanged across communities, countries and regions over often long periods of time, and a relevant part of the genetic diversity used in food and agriculture today is of exotic origin.	+		+
	C.2 Countries are interdependent with regard to GRFA and act both as providers of some GRFA and as recipients of others.		-	
	C.3 The international exchange of GRFA is essential to the functioning of the sector, and its importance is likely to increase in future.	+	-	+
<b>D. The nature of the innovation process</b>	D.1 The innovation process for GRFA is usually of incremental nature and the result of contributions made by many different people, including indigenous and local communities, farmers, researchers and breeders, in different places and at different points in time.	+	-	+
	D.2 Many GRFA products are not developed out of an individual genetic resource, but with the contributions of several GRFA at different stages in the innovation process.			+
	D.3 Most products developed with the use of GRFA can in turn be used as genetic resources for further research and development, which makes it difficult to draw a clear line between providers and recipients of GRFA.		-	+
	D.4 Many agricultural products reach the market place in a form in which they may be used both as biological resources and as genetic resources.	-	-	
<b>E. Holders and users of GRFA</b>	E.1 GRFA are held and used by a broad range of very diverse stakeholders. There are distinct communities of providers and users with respect to the different subsectors of GRFA.	+		+
	E.2 The different stakeholders managing and using GRFA are interdependent.		-	
	E.3 A significant amount of GRFA is privately held.	+		
	E.4 An important part of GRFA is held and can be accessed <i>ex situ</i> .	-		
	E.5 An important part of GRFA is conserved <i>in situ</i> and on farm under different financial, technical and legal conditions.	+	+	
<b>F. GRFA exchange practices</b>	F.1 The exchange of GRFA takes place in the context of customary practices and existing communities of providers and users.	+	+	+
	F.2 An extensive transfer of genetic material between different stakeholders along the value chain occurs in research and development.	+		
<b>G. Benefits generated with the use of GRFA</b>	G.1 While the overall benefits of GRFA are very high, it is difficult to estimate at the time of the transaction the expected benefits of an individual sample of GRFA.			+
	G.2 The use of GRFA may also generate important non-monetary benefits.		+	
	G.3 The use of GRFA may lead to external effects going far beyond the individual provider and recipient.		+	

ABS issues at national level: governmental (legislative, administrative or policy) measures; contractual agreements between users and providers; and non-binding instruments to which self-regulatory organizations commit themselves. The different types of mechanism can be, and often are, mixed.

14. Likewise, at the global level, ABS for GRFA may be addressed by different activities, mechanisms and instruments, which in many cases do not exclude each other, and which may complement each other. A strategy for the development and implementation of ABS measures for

<sup>9</sup> CGRFA-14/13/12, paragraph 32.

<sup>10</sup> CGRFA-14/13/10, paragraph 21.

<sup>11</sup> CGRFA-14/13/20, Table 2.

GRFA may involve a combination of such options. The options include: activities aimed at raising awareness and exchanging information on ABS for GRFA; capacity-building and technical assistance; model contractual clauses for use by providers and recipients of GRFA; voluntary codes of conduct, guidelines and best practices and/or standards; voluntary guidelines addressed to governments developing legislative, administrative or policy measures on ABS for GRFA; and specialized international agreements regulating ABS for GRFA.<sup>12</sup>

#### **A. Awareness raising and exchange of information on ABS for GRFA**

15. Proper information on, and full awareness of, the distinctive features of GRFA, the interdependence of all countries with regard to GRFA and the special nature and importance of GRFA for achieving food security and for the sustainable development of agriculture are fundamental to the development of ABS measures that accommodate the distinctive features of GRFA.

16. Awareness-raising can take many forms and can take place at different levels. The Protocol raises awareness of the issue of ABS for GRFA by explicitly acknowledging the important role of GRFA. Since 1983, the Commission through its intergovernmental work has been raising awareness of GRFA and related ABS issues. The Commission, at its Twelfth Regular Session, considered detailed studies on the use and exchange of GRFA, the impact of climate change on countries' interdependence with respect to GRFA and on the role GRFA play in ABS policies and arrangements.<sup>13</sup>

17. Awareness-raising activities and the exchange of information are also important for stakeholders actually using and exchanging GRFA on a routine basis. In 2010, FAO initiated a global multi-stakeholder expert dialogue, which included experts from different stakeholder and user communities from the different subsectors of GRFA.<sup>14</sup> The expert dialogue helped raise awareness of ABS-related issues among practitioners. Awareness-raising and the exchange of information may also take place at regional and national levels and generate relevant knowledge on use and exchange practices, which may inform the development of ABS policies.

18. As recommended by the ABS Working Group<sup>15</sup>, the Secretary could develop, upon request from governments, targeted awareness-raising activities, including materials, with regard to ABS for different subsectors of GRFA and, in collaboration with all relevant FAO divisions and the Secretariats of the Treaty and the CBD, provide support to national, regional and international awareness-raising processes on ABS, including in the context of wider ABS initiatives implemented by other organizations and institutions.

19. However, while awareness-raising and exchange of information are essential to guide and assist countries in the development of ABS measures, they might merely be a first step. They will usually help to make the relevant audiences more familiar with the concept of ABS and with the special situation of GRFA. However, only in rare cases will they immediately generate concepts and concrete regulatory solutions tailored to the specific needs of GRFA.

#### **B. Capacity building and technical assistance**

20. Capacity-building and development, as well as technical assistance, are of pivotal importance to the development and implementation of ABS measures for GRFA. Capacity for developing and implementing ABS measures for GRFA can be built at an institutional (e.g. procedural) and human-resources level, and at a normative level (e.g. policies, administrative measures, legislation). Capacity-building activities may therefore take place in different forms and formats.

21. The Treaty requires the promotion of the provision of technical assistance to Contracting Parties, especially those that are developing countries or countries with economies in transition,

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<sup>12</sup> CGRFA-WG-ABS-1/12/4.

<sup>13</sup> Background Study Papers Nos. 42–48.

<sup>14</sup> Background Study Paper No. 59.

<sup>15</sup> CGRFA-14/13/6, paragraph 17(d).

with the objective of facilitating the implementation of the Treaty.<sup>16</sup> Similarly, Parties to the Protocol shall cooperate in capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement the Protocol in developing-country Parties.<sup>17</sup>

22. The Commission, at its Thirteenth Regular Session, requested its Secretariat to engage in cooperation with the Secretariats of the CBD and the Treaty in ongoing capacity-building and development activities.<sup>18</sup> Such activities could take the form of national, regional or global seminars, which could be organized back-to-back with meetings dealing with ABS issues, such as future meetings of the Parties to the Protocol or (should the Commission decide to hold them) future meetings of the ABS Working Group.

23. Numerous capacity-building workshops on ABS have taken place.<sup>19</sup> However, most of these workshops and similar initiatives did not specifically address GRFA, with the notable exception of workshops and other capacity-building initiatives for the implementation of the Treaty, which, however, focused on plant GRFA, rather than on all GRFA.<sup>20</sup>

24. As recommended by the ABS Working Group<sup>21</sup>, the Commission could request the Secretary to develop targeted capacity-building and technical assistance activities with regard to ABS for different subsectors of GRFA, in cooperation with the Secretariats of the CBD and the Treaty and with other relevant stakeholders, taking into account existing regional and national institutions and the special needs of farmers and indigenous and local communities. The Commission could also request its Secretary to participate in relevant regional and national meetings organized by other relevant organizations, to make presentations at such meetings and provide its expertise and inputs in the preparation of documentation for such meetings, with the purpose of sharing information on ABS for GRFA.<sup>22</sup>

25. However, while capacity-building and technical assistance would address a crucially important aspect of ABS for GRFA, they would also raise questions regarding the policy principles and considerations by which they should be guided. For plant GRFA, the Treaty provides guidance. No such guidance is currently available for GRFA other than plant GRFA.

### C. Model contractual clauses for mutually agreed terms

26. Model contractual clauses for mutually agreed terms (MAT) may help providers and recipients of GRFA to address ABS for GRFA. Model contractual clauses for MAT would usually be addressed to, and developed by, the actual providers, recipients, collectors or other users of genetic resources who choose to use them in ABS agreements.

27. Parties to the Protocol shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for MAT.<sup>23</sup> Model contractual clauses are of particular value where providers and recipients exchange a high volume of genetic resources on a frequent or routine basis and wish to standardize the conditions of these exchanges through private law contracts. While model ABS agreements and contractual clauses have been developed in various areas and by various institutions,<sup>24</sup> existing model clauses and agreements, other than the provisions of the Standard Material Transfer Agreement (SMTA) adopted under the Treaty, do not specifically address ABS for GRFA. The situation is different under the Treaty, where the Governing Body of the Treaty has adopted, and providers and recipients are using, the SMTA for the exchange and utilization of plant GRFA. The successful use of the SMTA under the Treaty provides a useful model of how GRFA can be dealt with in a specific manner. The Commission,

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<sup>16</sup> Treaty, Article 8.

<sup>17</sup> Protocol, Article 22.1.

<sup>18</sup> CGRFA-13/11/Report, paragraph 63.

<sup>19</sup> <http://www.cbd.int/abs/projects.shtml>.

<sup>20</sup> See, for example, the Joint Capacity Building Programme for Developing Countries on the Implementation of the Treaty and its Multilateral System of Access and Benefit-sharing ([http://www.planttreaty.org/sites/default/files/jicbp\\_10.pdf](http://www.planttreaty.org/sites/default/files/jicbp_10.pdf)).

<sup>21</sup> CGRFA-14/13/6, paragraph 17 (e).

<sup>22</sup> CGRFA-14/13/6, paragraph 17 (f).

<sup>23</sup> Protocol, Article 19.1.

<sup>24</sup> <http://www.cbd.int/abs/resources/contracts.shtml>.

as an intergovernmental forum, could provide a platform for facilitating and overseeing the development of model contractual clauses for MAT on GRFA. Stakeholders could also be encouraged to monitor the use of the model contractual clauses and to update them on a regular basis.

28. Should the Commission wish to consider the development of model contractual clauses, it could initiate, as recommended by the ABS Working Group,<sup>25</sup> an information-gathering process through which Members of the Commission could report on the conditions under which specific GRFA are currently exchanged and utilized, with the engagement of relevant stakeholders, including institutions in all subsectors. The information obtained could be compiled by the Secretary, for consideration by the Commission's intergovernmental technical working groups, in order that the Commission, at its next session, could take a decision on the development of model contractual clauses for subsectors of GRFA other than plant GRFA.

#### **D. Stakeholder voluntary codes of conduct, guidelines and best practices and/or standards**

29. Another option for addressing ABS measures for GRFA is the development of stakeholder voluntary codes of conduct, guidelines, and best practices and/or standards for specific types of users, uses or subsectors of GRFA. Such voluntary codes of conduct, guidelines and best practices/standards would typically be developed by, and addressed to, the actual providers, recipients, collectors or other users of genetic resources. As such, they would typically reflect the special features and needs of the relevant stakeholder communities. They would be different from instruments that primarily address, and are implemented by, governments, although the latter may be given similar names, such as "code of conduct" or "guidelines" (see below, Section E).

30. Parties to the Protocol shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines, and best practices and/or standards in relation to ABS.<sup>26</sup> They shall periodically take stock of the use of voluntary codes of conduct, guidelines, practices and standards. The Protocol foresees the possibility of having specific codes of conduct, guidelines, practices and standards adopted by the Conference of the Parties serving as the meeting of the Parties of the Protocol.<sup>27</sup> While numerous guidelines, codes of conduct and best practices for ABS have been developed by various stakeholders,<sup>28</sup> none of them specifically apply to GRFA.<sup>29</sup>

31. Should the Commission agree to consider or promote the development of voluntary codes of conduct, guidelines, and best practices and/or standards in relation to ABS for GRFA or subsectors of GRFA, it could, as recommended by the ABS Working Group,<sup>30</sup> request the Secretary to invite stakeholder groups to report on voluntary codes of conduct, guidelines, and best practices and/or standards in relation to ABS for subsectors of GRFA, and to compile them for consideration by the intergovernmental technical working groups.

32. However, although the development of self-regulatory instruments may be an important starting point in addressing ABS for GRFA, the responsibility for their development and implementation lies with the stakeholders. Not all subsectors of GRFA may be in a position to develop such instruments at the appropriate levels or within an acceptable time frame. Self-regulatory schemes may also raise other questions, for example, with regard to transparency and public accountability and the possibility of monitoring their application, which in the case of ABS might be of particular importance.

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<sup>25</sup> CGRFA-14/13/6, paragraph 17(g).

<sup>26</sup> Protocol, Article 19.1.

<sup>27</sup> Protocol, Article 20.2.

<sup>28</sup> See <http://www.cbd.int/abs/instruments/>

<sup>29</sup> The International Code of Conduct for Plant Germplasm Collecting and Transfer, adopted by the FAO Conference in 1993, is primarily addressed to governments (see <http://www.fao.org/nr/cgrfa/cgrfa-global/cgrfa-codes/en/>).

<sup>30</sup> CGRFA-14/13/6, paragraph 17(h).

**E. Voluntary guidelines for addressing legislative, administrative and policy measures on ABS for GRFA**

33. The Commission may also consider the preparation of voluntary guidelines that guide and assist countries in the development and implementation of legislative, administrative or policy measures for ABS for GRFA, including for contractual arrangements for ABS for GRFA. The guidelines could embrace a whole range of elements, including those described above, accommodating the special nature of GRFA; they could present a variety of regulatory options for ABS for GRFA from which countries could pick and choose, depending on their national circumstances, priorities and needs. The guidelines could also provide general principles for regulating ABS for GRFA and provide guidance as to how the principles might be translated into options for policy and regulatory elements accommodating the distinctive features of GRFA.

34. The voluntary guidelines could include options for the roles and responsibilities of implementing authorities, and for the participation of ABS stakeholders, including indigenous and local communities, in the development and implementation of ABS arrangements for GRFA. They could identify, as appropriate, options for GRFA-specific and subsector-specific steps or conditions in the ABS processes of prior informed consent and MAT. Like the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization*, the guidelines could list optional elements for inclusion in material transfer agreements, as well as model contractual clauses. The guidelines could also deal with other ABS elements such as incentives, monitoring and national reporting.

35. The guidelines could be informed by the actual practices and approaches of stakeholders in the different subsectors of GRFA, including commercial practices, and translate those practices and approaches into a spectrum of feasible options for ABS frameworks that accommodate the distinctive features of (the subsectors of) GRFA. In harmony with the Protocol, the Treaty and other relevant international instruments, the guidelines could promote a coherent and consistent process of policy development across the whole GRFA sector and still leave sufficient flexibility for the specificities of the different subsectors.

36. The development of the guidelines could contribute to awareness-raising and capacity-building, especially if the guidelines are seen as a rolling document to be updated on a regular basis in the light of feedback received from governments and stakeholders. In addition, the guidelines could be used by governments and international organizations, including FAO, in their awareness-raising and capacity-building activities on ABS for GRFA.

37. Should the Commission agree, as recommended by the ABS Working Group<sup>31</sup>, to develop *Draft elements for voluntary guidelines at the appropriate level for domestic legislative, administrative and policy measures for ABS for different subsectors of GRFA (Draft elements)* it could request the Secretary to prepare them. The *Draft elements* would be based on regional consultations, as well as on submissions from governments, international organizations and all other relevant stakeholders from all subsectors, including farmers and indigenous and local communities. They would take account of the existing instruments, and the stages of international discussions on ABS, in the different subsectors of GRFA, and in particular, the Treaty and its Governing Body, and relevant information provided by governments (see above, paragraph 28), by stakeholders (see above, paragraph 31) and by the Commission's intergovernmental technical working groups.

38. The Commission may wish to request the ABS Working Group to meet, subject to the availability of extra-budgetary funds, prior to the Commission's Fifteenth Regular Session to review and revise, as appropriate, the *Draft elements*, for consideration by the Commission at its next session. The ABS Working Group, according to its Statutes, is currently composed of the twenty-seven Member Nations, which it elected at its last session.<sup>32</sup>

39. Alternatively, the Commission could consider the establishment of a smaller group of technical and legal experts and request the Director-General of FAO to convene this group,

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<sup>31</sup> CGRFA-14/13/6, paragraph 17(i).

<sup>32</sup> CGRFA-14/13/Inf.7.



subject to the availability of extra-budgetary funds, to review and revise, as appropriate, the *Draft elements*, for consideration by the Commission. According to Article 6 of its Statutes, the Commission may establish subsidiary bodies as it may deem necessary for the effective discharge of its functions. However, before taking any decision involving expenditure in connection with the establishment of subsidiary bodies, the Commission shall have before it a report from the Director-General on the programme, administrative and financial implications thereof. Such a report from the Director-General is given in *Appendix I* to this document.

#### F. Specialized international ABS agreements for GRFA

40. The Commission could also agree to develop a specialized agreement or agreements of international law. The Protocol does not prevent its Parties from developing and implementing other relevant international agreements, including other specialized ABS agreements, provided that they are supportive of and do not run counter to the objectives of the CBD and the Protocol. Where a specialized international ABS instrument (that is consistent with and does not run counter to the objectives of the CBD and the Protocol) applies, the Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.<sup>33</sup>

41. Beyond this openness to other international instruments, the Protocol also states that due regard should be paid to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the CBD and the Protocol.<sup>34</sup> Thus, the Protocol provides flexibility for the Commission to explore various instruments, including international agreements, that guide and assist countries in the development of ABS measures for GRFA.

42. An international legally binding agreement addressing specific aspects of ABS for GRFA could strengthen the GRFA policy agenda and draw the attention of policy-makers to the relevance of GRFA and their distinctive features. However, in considering this issue, the ABS Working Group agreed that it was premature to consider recommending the negotiation of an international agreement or agreements on ABS for GRFA.<sup>35</sup>

### V. GUIDANCE SOUGHT

43. The Commission may wish to:

*i. Report of the First Session of the Ad Hoc Technical Working Group on Access and Benefit-sharing for Genetic Resources for Food and Agriculture*

Take note of the report of the Ad hoc Technical Working Group on Access and Benefit-sharing for Genetic Resources for Food and Agriculture and thank the Working Group for its excellent work.

44. The Commission, taking into account the Treaty, the CBD, the Protocol and other relevant international agreements, and subject to the availability of resources, where relevant, may also wish to:

*ii. Ratification of or accession to the International Treaty on Plant Genetic Resources for Food and Agriculture*

Encourage countries that have not done so, to ratify or accede to the Treaty as soon as possible and promote its full implementation in regard to plant GRFA and recognize the importance of providing support to developing countries for this purpose, in particular through the capacity-building activities under the Treaty;

<sup>33</sup> Protocol, Article 4.2; 4.4.

<sup>34</sup> Protocol, Article 4.3.

<sup>35</sup> CGRFA-14/13/6, paragraph 16.

- iii. ***Ratification of or accession to the Nagoya Protocol***  
Encourage countries to consider the option of ratifying or acceding to the Nagoya Protocol, taking into account its role in the international regime on ABS, as well as the importance of GRFA and their special role for food security;
- iv. ***Coordination between the Treaty and the Commission***  
Invite the Governing Body of the Treaty, in its continued governance of plant GRFA, to continue to closely coordinate with the Commission in order to address in a complementary way the distinctive features and specific uses of GRFA, especially in light of the development of ABS measures at both national and international levels;
- v. ***Awareness-raising activities***  
Request the Secretary to develop, upon request from governments, targeted awareness-raising activities, including materials, with regard to ABS for different subsectors of GRFA and, in collaboration with all relevant FAO divisions and the Secretariats of the Treaty and the CBD, provide support to national, regional and international awareness-raising processes on ABS, including in the context of wider ABS initiatives implemented by other organizations and institutions;
- vi. ***Capacity-building and technical assistance activities***  
Request the Secretary to develop targeted capacity-building and technical assistance activities with regard to ABS for different subsectors of GRFA, in cooperation with the Secretariats of the CBD and the Treaty and with other relevant stakeholders, taking into account existing regional and national institutions and the special needs of farmers and indigenous and local communities;
- vii. ***Participation of the Commission Secretariat in meetings on the Nagoya Protocol***  
Request the Secretariat to work with the Secretariat of the CBD to ensure the former's active participation at regional and national level meetings organized by the Secretariat of the CBD to discuss the Nagoya Protocol, including, as appropriate, making presentations at such meetings and providing its expertise and inputs in the preparation of documentation for such meetings, with the purpose of sharing information on ABS for GRFA, taking into account the relevant provisions of the *Joint Work Plan of the Secretariats of the Convention on Biological Diversity, of the Food and Agriculture Organization of the United Nations and its Commission on Genetic Resources for Food and Agriculture, Phase 2 (2011-2020)*,<sup>36</sup> and the *Memorandum of Cooperation signed between the Secretary of the International Treaty and the Executive Secretary of the Convention on Biological Diversity*.<sup>37</sup>
- viii. ***Country reports on the conditions for exchange and use of genetic resources for food and agriculture: model contractual clauses***  
Request the Members of the Commission to report, at national and/or regional levels, on the conditions under which specific GRFA are exchanged and utilized, with the engagement of relevant stakeholders, including institutions, in all subsectors; request the Secretary to compile the information obtained, for consideration by the intergovernmental technical working groups, in order that the Commission can take a decision on the development of model contractual clauses for subsectors of GRFA other than plant GRFA;

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<sup>36</sup> CGRFA-13/11/Inf.11.

<sup>37</sup> IT/GB-4/11/22.

- ix. *Stakeholder reports on voluntary codes of conduct, guidelines and best practices and/or standards***  
Request the Secretary to invite stakeholder groups to report on voluntary codes of conduct, guidelines and best practices, and/or standards in relation to ABS for subsectors of GRFA and to compile them for consideration by the intergovernmental technical working groups;
- x. *Consultation of the Commission's intergovernmental technical working groups***  
Request the Secretary to develop explanatory notes to the distinctive features identified in *Table 1*, taking into account the specificities of the different subsectors, for review by the intergovernmental technical working groups;
- xi. *Draft elements for voluntary guidelines at the appropriate level for domestic legislative, administrative and policy measures for ABS for different subsectors of GRFA***
- (a) Request the Secretary to prepare, based on regional consultations, as well as submissions from governments, international organizations and all relevant stakeholders from all subsectors, including farmers and indigenous and local communities, *Draft elements for voluntary guidelines at the appropriate level for domestic legislative, administrative and policy measures for ABS for different subsectors of GRFA*, taking account of the existing instruments, and the stages of international discussions on ABS, in different subsectors of GRFA, and in particular the Treaty and its Governing Body, and taking into account relevant information provided by governments (see above, paragraph viii), by stakeholders (see above, paragraph ix) and by the Commission's intergovernmental technical working groups;

#### **Option 1**

Elect the Members of its Ad Hoc Technical Working Group on Access and Benefit-sharing for Genetic Resources for Food and Agriculture, make arrangements for the participation of additional experts and representatives of the specialized international organizations, adjust the terms of reference accordingly and request the Working Group to meet, subject to the availability of extra-budgetary funds, prior to the Commission's Fifteenth Regular Session to review and revise, as appropriate, the *Draft elements for voluntary guidelines for domestic legislative, administrative and policy measures for ABS for different subsectors of GRFA*, for consideration by the Commission at its next session;

#### **Option 2**

Establish a Group of Technical and Legal Experts, make arrangements for the participation of additional experts and representatives of the specialized international organizations, and request the Director-General to convene, subject to the availability of extra-budgetary funds, a meeting of this group prior to the Commission's Fifteenth Regular Session, to review and revise, as appropriate, the *Draft elements for voluntary guidelines for domestic legislative, administrative and policy measures for ABS for different subsectors of GRFA*, for consideration by the Commission at its next session;

- xii. *Matrix on ABS for GRFA***  
Develop a matrix illustrating international practices, initiatives and instruments of relevance to the subsectors of GRFA in the context of ABS that are, or could form, mutually supportive parts of the international regime on ABS, including recognition of the distinctive features of GRFA.

**APPENDIX****ADMINISTRATIVE AND FINANCIAL IMPLICATIONS OF ESTABLISHING A GROUP OF TECHNICAL AND LEGAL EXPERTS ON ACCESS AND BENEFIT-SHARING FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Individual three-day meetings of a Group of Technical and Legal Experts on Access and Benefit-Sharing for Genetic Resources for Food and Agriculture would incur the following estimated costs:

		<i>Working languages</i>		
		1 language	2 languages	6 languages
Interpretation			9 450	50 000
Document preparation		20 000	20 000	20 000
Translation of pre-session documentation			8 610	41 025
Translation of meeting report		14 350	14 350	14 350
Total	No interpretation/ translation			34 350
	2 languages			52 410
	6 languages			125 375

If it is decided to convene a session of the group between the Fourteenth and the Fifteenth Regular Sessions of the Commission, the Director-General would need to call for extra-budgetary support, as no provision has been made in the 2014/15 Programme of Work and Budget. Provision will need to be made to support subsequent sessions, either from the Regular Programme Budget or from extra-budgetary resources, or a combination of the two sources.