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ACCESS AND BENEFIT-SHARING AND GENETIC RESOURCES FOR FOOD AND AGRICULTURE: TYPOLOGY OF COUNTRY MEASURES

INTRODUCTION

The Commission on Genetic Resources for Food and Agriculture (Commission), at its last regular session, requested the preparation of a stand-alone document providing specific examples of existing country legislative, administrative or policy measures that directly or indirectly accommodate distinctive features of genetic resources for food and agriculture (GRFA) and associated traditional knowledge.¹ With the support of the University of Bremen, Germany, the Secretariat produced a typology of access and benefit-sharing (ABS) country measures reflecting the importance of GRFA, their special role for food security and their distinctive features. The present document provides the populated typology.

It is important to note that not all the measures listed are necessarily specific to GRFA. In fact, while the document focuses on measures accommodating directly or indirectly the distinctive features of GRFA, it also lists, in line with the non-prescriptive nature of the ABS Elements, in some places other measures to indicate the wide range of options countries have in regulating ABS for their genetic resources.

Developing and implementing ABS measures is work in progress and so is the development of the ABS Elements and of the typology of country measures. The ABS Elements and the typology are therefore living documents that need to be reviewed, updated and improved regularly. Their primary purpose is to inspire policy- and decision-makers in developing and implementing ABS measures.

The typology follows the structure of the five key elements of ABS measures for GRFA identified in FAO's ABS Elements: (1) institutional arrangements; (2) access to and utilization of GRFA; (3) access to and utilization of traditional knowledge associated with genetic resources for

¹ CGRFA-18/21/Report, paragraph 26.

food and agriculture (TKGRFA); (4) benefit-sharing relating to GRFA and TKGRFA; and (5) monitoring and compliance.

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ABBREVIATIONS AND ACRONYMS

ABS	access and benefit-sharing
ABS CH	Access and Benefit-sharing Clearinghouse (ABSCH)
AnGR	animal genetic resources for food and agriculture
Art.	Article
BABS	bioprospecting, access and benefit sharing
BR	biological resources
BS	benefit-sharing
BSA	Benefit-sharing Agreement
c.	Clause
CA	Competent Authority
CBD	Convention on Biological Diversity
CGen	Consejo de Gestión del Patrimonio Genético (Genetic Heritage Management Council Brazil)
CNA	Competent National Authority
DEA/DEFF	Department of Environmental Affairs/Department of Forestry, Fisheries and the Environment
FGR	forest resources for food and agriculture
GIZ	Gesellschaft für Internationale Zusammenarbeit
GR	genetic resource(s)
GRFA	genetic resources for food and agriculture
INABIO	Instituto Nacional de Biodiversidad (Costa Rica)
IPLCs	Indigenous Peoples and Local Communities
MAT	mutually agreed terms
MoA	Memorandum of Agreement
MTA	Material Transfer Agreement
NBCC	National Biodiversity Coordination Committee (Nepal)
NEMA	National Environment Management Authority (Kenya)
NEMBA	National Environmental Management: Biodiversity Act
No.	Number
NP	Nagoya Protocol
OJ	Official Journal
PIC	prior informed consent
PTKCEA	Protection of Traditional Knowledge and Cultural Expressions Act (Kenya)
R&D	research and development
Reg.	Regulation(s)
s.	Section
SENESCYT	Secretaría Nacional de Educación superior, Ciencia, Tecnología e Innovación (Ecuador)
SMTA	Standard Material Transfer Agreement
TK	traditional knowledge (associated with genetic resources)
TKGRFA	traditional knowledge associated with genetic resources for food and agriculture
Treaty	International Treaty on Plant Genetic Resources for Food and Agriculture
UNCST	Uganda National Council for Science and Technology
UNDP	United Nations Development Programme

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	Measure	Country (examples)	Further reading
Element 1: INSTITUTIONAL ARRANGEMENTS			
1.1 Institutional responsibility			
1.1.1 Single institutional responsibility for access and benefit-sharing (ABS) <i>Some countries have chosen to entrust one single institution with the administration of ABS measures</i>	(a) Single institution with focus on food, forest and/or agriculture	Comoros; ¹ Benin; ² Netherlands; ³ Portugal; ⁴ Bulgaria; ⁵ Bhutan; ⁶ Viet Nam; ⁷ Grenada; ⁸ Saint Kitts and Nevis; ⁹ Peru; ¹⁰ Honduras; ¹¹	Humphries <i>et al.</i> , 2021, p13f, 16ff; ABSCH, 2022; Hailu & Kamau, 2022, p243f; Mulesa & Westengen, 2020; National Biodiversity Centre, Bhutan, 2018, p23
	(b) Single institution with environmental focus	South Africa; Burundi; ¹² Ethiopia; ¹³ Denmark; ¹⁴ ; Dominican Republic; ¹⁵ Guatemala; ¹⁶ Syrian Arab Republic ¹⁷	
	(c) Single institution with science/technology focus	Uganda; ¹⁸ Singapore; ¹⁹	
	(d) Single institution with overall responsibility for all biodiversity	Peru; ²⁰ Costa Rica; ²¹ Ethiopia ²²	
1.1.2 Shared institutional responsibility for ABS <i>Other countries have chosen to entrust different institutions with the ABS administration</i>	(a) Based on type of genetic resource	Viet Nam; ²³ Republic of Korea; ²⁴ Estonia; ²⁵ Zimbabwe ²⁶	Humphries <i>et al.</i> , 2021, p. 14f; Trang, Ba Nguyen & Thu, 2022, p333; Lee & Cho, 2022, p380f
	(b) Based on commercial or non-commercial utilization	South Africa; ²⁷ Ecuador ^{28 29}	Humphries <i>et al.</i> , 2021, p14f; Kamau, 2022a, p168f; Cabrera Ormaza, 2022, p103ff
	(c) Based on (sub)sector or field of research	Mexico, Peru, Republic of Korea	Humphries <i>et al.</i> , 2021, p14f; ABSCH, 2022
1.1.3 Interagency coordination of ABS decisions <i>Countries have established various mechanisms to coordinate administration of</i>	(a) One-stop-shop approach	Uganda; ³⁰ Mozambique; ³¹ Nepal ³² Brazil; ³³ Ecuador ³⁴ India; ³⁵ Dominican Republic ³⁶	Humphries <i>et al.</i> , 2021, p16ff; Otieno <i>et al.</i> , 2017; ABS Initiative, 2019; Nepalese Government, 2014, p112; Halewood, 2015; Mozini, 2022, p79f; Kamau, 2022b, p311f; Cabrera Ormaza, 2022, p104; Dominican Republic, https://ambiente.gob.do/autorizaciones-ambientales-2/

	Measure	Country (examples)	Further reading
<i>ABS among responsible agencies.</i>	(b) Coordination committees/councils (<i>in addition or in lieu of the one-stop-shop approach</i>)	South Africa; ³⁷ France; ³⁸ Kenya; ³⁹ Bhutan ⁴⁰	Humphries <i>et al.</i> , 2021, p16ff; Wynberg, 2017, pp198–218; FRB, 2020
1.2 Provision of national information on responsible institutions, ABS measures and procedures			
<i>Countries have chosen different ways to provide information on responsible institutions, ABS measures and procedures</i>	Websites, web portals, virtual platforms or information portals	Finland; ⁴¹ Denmark; ⁴² Republic of Korea; ⁴³ Hungary; ⁴⁴ Cameroon; ⁴⁵ Malaysia; ⁴⁶ France; ⁴⁷ Germany; ⁴⁸ Costa Rica; ⁴⁹ Kenya; ⁵⁰ Qatar ⁵¹	Humphries <i>et al.</i> , 2021, p17ff

	Measure	Country (examples)	Further reading
Element 2: ACCESS TO AND UTILIZATION OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE (GRFA)			
2.1 Categories of genetic resources (GR) subject to ABS provisions on access			
2.1.1 Temporal scope <i>Access provisions usually apply to genetic resources accessed after entry into force of Nagoya Protocol/ABS measure</i>	ABS provisions on access may apply to:		
	(a) GR accessed prior to entry into force of ABS measure	Malaysia ⁵²	
	(b) GR accessed after entry into force of ABS measure	EU Regulation; ⁵³ Malta; ⁵⁴ France ⁵⁵	Winter, 2022; Greiber & Frederichs, 2022
2.1.2 GR for which provider country is country of origin or has acquired GR in accordance with Convention on Biological Diversity (CBD)	“Country of origin” may be where:		
	(a) GR exists within ecosystems and natural habitats		Humphries <i>et al.</i> , 2021, p23ff
	(b) Domesticated or cultivated species developed its distinctive properties	France; ⁵⁶ Mozambique; ⁵⁷ Uganda ⁵⁸	Humphries <i>et al.</i> , 2021, p24ff
	(c) Domestication took place	Kenya ⁵⁹	Humphries <i>et al.</i> , 2021, p24
	(d) GR have been domesticated and produced for a long time	Viet Nam ⁶⁰	Humphries <i>et al.</i> , 2021, p23ff
	(e) Native species was present in the country’s territory before a specific date	Australia ⁶¹	Humphries <i>et al.</i> , 2021, p24ff
	(f) Micro-organism as isolated from the national territory substrates, territorial sea, exclusive economic zone or the continental shelf	Brazil; ⁶² Colombia ⁶³	Humphries <i>et al.</i> , 2021, p24ff
2.1.3 Privately/ publicly held GR	ABS measures may apply to:		
	(a) Publicly and privately held genetic resources	most countries	
	(b) Genetic resources on public land	Australia ⁶⁴	Humphries <i>et al.</i> , 2021, p25, 38
2.1.4 GR vs biological resources	(a) GR only	all	
	(b) Biological resources in addition	Malaysia; Australia; India; Malta ⁶⁵	
2.1.5 Genetic information	(a) Only in conjunction with utilization of physical GR	Most countries	Bagley <i>et al.</i> , 2020, pp 13–18.

	Measure	Country (examples)	Further reading
	(b) Independent of utilization of physical GR	Bhutan ⁶⁶	
2.1.6 GR held by Indigenous Peoples and local communities (IPLC)⁶⁷ <i>Many countries require the consent of the IPLC holding the GR</i>	ABS measures may require:		
	(a) Prior informed consent (PIC) or approval and involvement of Indigenous Peoples and Local Communities (IPLC)	South Africa; ⁶⁸ Malaysia; ⁶⁹ Kenya; ⁷⁰ Peru; ⁷¹ Spain ⁷²	Kamau, 2022a, p172f.; Kamau, 2022c, p362ff.; Kamau, 2022b, p290f.; Cabrera Ormaza, 2022, p110f.; Silvestri, 2022b, 451f
	(b) Compliance with community protocols (in addition to ABS measures)	Indonesia ⁷³	
	(c) Exception to the requirement of consent by IPLC holding the GR may apply:		
	(d) Where IPLC does not exploit GR sufficiently or refuses to grant licence on “reasonable commercial terms and conditions”	Zambia ⁷⁴	Humphries <i>et al.</i> , 2021, p27; Kamau 2022b, p281f
2.1.7 Exemptions of specific genetic resources <i>ABS measures of many countries do not apply to specific GRFA/related activities</i>	ABS measures may exempt:		
	(a) PGRFA falling under the Multilateral System of the Treaty	Argentina; ⁷⁵ Peru ⁷⁶ ; EU	Silvestri 2022a, p53, 55; Humphries <i>et al.</i> , 2021, p28f.
	(b) GR for which ABS is governed by specialized international instrument	EU; ⁷⁷ Malaysia; ⁷⁸ France ⁷⁹	Kamau, 2022c, pp355, 359, 370; Mahop, 2022, p468
	(c) Plant varieties protected by intellectual property rights	Portugal; ⁸⁰ Uganda; ⁸¹ Kenya ⁸²	
	(d) GR arising from domesticated or cultivated species	Argentina; ⁸³ Bhutan; ⁸⁴ France ⁸⁵	Silvestri, 2022a, p53; Mahop, 2022, p468
	(e) Crop wild relatives	France ⁸⁶	Humphries <i>et al.</i> , 2021, p29
	(f) GR subject to forestry	France ⁸⁷	Humphries <i>et al.</i> , 2021, p29
	(g) Biological material cultivated or bred for use as a model in research and development	Morocco ⁸⁸	Humphries <i>et al.</i> , 2021, p29
	(h) Wild and domesticated plant genetic resources (PGR) and animal genetic resources (AnGR) managed under other legislation	Bhutan ⁸⁹	Humphries <i>et al.</i> , 2021, p29
	(i) Specific categories of GR, e.g. fisheries and AnGR	Spain ⁹⁰	Silvestri, 2022b, 449f
	(j) GRFA at discretion of the government	Australia ⁹¹	Humphries <i>et al.</i> , 2021, p29
(k) On case-by-case basis, e.g. GR in public <i>ex situ</i> collections	e.g. in Australia’s Commonwealth areas; ⁹² India ⁹³	Humphries <i>et al.</i> , 2021, p29, 38	

	Measure	Country (examples)	Further reading
	(l) GR collected by laboratories in the context of prevention, surveillance and combating risks to animal and plant health and to food safety	France ⁹⁴	Humphries <i>et al.</i> , 2021, p33; Mahop, 2022, p468
	(m) Biological resources normally traded as commodities	India ⁹⁵	
	(n) Derivatives accessed independently from GR	Viet Nam; ⁹⁶ Malta ⁹⁷	Trang, Ba Nguyen T. & Thu, 2022, p329
2.2 Activities triggering/not triggering ABS obligations			
<i>Usually access to GR for “utilization” triggers ABS obligations. “Utilization” means to conduct research and development on the genetic or biochemical composition of genetic resources, including through the use of biotechnology.</i>			
2.2.1 Specific provisions on GRFA-related activities	GRFA-related activities (explicitly or implicitly) exempted by some countries from ABS obligations:		
	(a) Agricultural activities that are not for the purpose of research and development	Malaysia ⁹⁸	Humphries <i>et al.</i> , 2021, p31
	(b) Use of GR for production of agricultural products for sale	South Africa ⁹⁹	Humphries <i>et al.</i> , 2021, p29f
	(c) Use of GR as commodity for final consumption	Malta; ¹⁰⁰ Bangladesh; ¹⁰¹ The Philippines ¹⁰²	Humphries <i>et al.</i> , 2021, p29f ; Mozini 2022, p78
	(d) Aquaculture or mariculture activities involving freshwater and marine species producing specimens for consumption purpose	South Africa; ¹⁰³ Australia, ¹⁰⁴ Malaysia; ¹⁰⁵ Spain ¹⁰⁶	Humphries <i>et al.</i> , 2021, p31; Kamau, 2022a, p168
	(e) Collection of GR for use in public collections or further breeding in agriculture or forestry	Norway ¹⁰⁷	Humphries <i>et al.</i> , 2021, p31
	(f) Collecting broodstock for aquaculture	Australia (regulates “biological materials”)	Humphries <i>et al.</i> , 2021, p30
	(g) Collecting plant reproductive material for propagation	Australia (regulates “biological materials”)	Humphries <i>et al.</i> , 2021, p30
	(h) Production and marketing of seeds and forest plants	Spain ¹⁰⁸	Humphries <i>et al.</i> , 2021, p31
	(i) Collection and maintenance of samples in <i>ex situ</i> collections for conservation purposes	Spain ¹⁰⁹	Humphries <i>et al.</i> , 2021, p33
(j) Biological resources normally traded as commodities	India ¹¹⁰	Humphries <i>et al.</i> , 2021, p30	

	Measure	Country (examples)	Further reading
	(k) Horticultural cultivation, except for horticultural genetic engineering	United States of America (Utah) ¹¹¹	Humphries <i>et al.</i> , 2021, p31
	(l) Livestock marketed as regular consumer goods	Bangladesh ¹¹²	Humphries <i>et al.</i> , 2021, p30
2.2.2 Specific provisions on non-commercial research	(a) GRFA research is not considered “commercial” bioprospecting	Solomon Islands ¹¹³	Humphries <i>et al.</i> , 2021, p30
	(b) Non-commercial breeding on specific forest genetic resources (FGR)	Spain Government 2021a (postpones benefit-sharing until there are breeding results)	
2.2.3 Specific provisions on activities performed by specific user groups <i>Some countries waive ABS obligations/provide for simplified procedures for activities by specific user groups.</i>	Exempted activities if performed by specific user groups:		
	(a) Exchange among IPLC in exercise of their traditional and customary practices	Malaysia; ¹¹⁴ Kenya ¹¹⁵	Humphries <i>et al.</i> , 2021, p33; Kamau, 2022c, p359; Kamau, 2022b, p278
	(b) Exchange of GR/TK among IPLC for their own consumption	Guatemala; ¹¹⁶ Uganda ¹¹⁷	
	(c) Local people and communities of the area, including growers and cultivators (unless they wish to obtain intellectual property rights(IPR))	India ¹¹⁸	
	(d) Conventional breeding or traditional practices in use in agriculture, horticulture, poultry farming, dairy farming, animal husbandry or bee keeping by small-scale farmers	Malaysia ¹¹⁹	
	(e) Access to and utilization of GR by farmers, pastoralists and fishers according to their traditional way of life	China ¹²⁰	
	(f) Research by nationally recognized research organizations and foreign collaborators of such organizations	India ¹²¹	
	(g) Research by educational institutions	Kenya ¹²²	Kamau, 2022b, p303 footnote 147
	(h) Exchanging within networks of user groups	India ¹²³	Humphries <i>et al.</i> , 2021, p33
2.3 Authorization procedures applicable under ABS measures			
<i>Countries may require PIC and mutually agreed terms prior to access and utilization of GR.</i>			

	Measure	Country (examples)	Further reading
2.3.1 Simplified approval procedures <i>Countries may require PIC and mutually agreed terms (MAT) prior to access and utilization of GR.</i>	Instead of PIC, countries may choose to require/offer:		
	(a) No PIC for specific GR, e.g. GRFA	South Africa ¹²⁴	Kamau, 2022a, p168f.
	(b) Access and utilization upon notification/ registration instead of PIC. Authorization is instead required prior to commercialization, transfer to third parties or change of initial intent	Brazil ¹²⁵ France; ¹²⁶ South Africa ¹²⁷	Mozini, 2022, p74, 76; Humphries <i>et al.</i> , 2021, p35; da Silva & de Oliveira, 2018, p1; Kamau, 2022c, p366; Mahop, 2022, p468; Kamau, 2022a, p185f
	(c) Standard Material Transfer Agreement (SMTA)	Treaty - SMTA is used by some countries for PGRFA that are not in Annex 1 of the Treaty	
	(d) Standardized access conditions for (all) BR/GR	South Africa; ¹²⁸ Uganda; ¹²⁹ Philippines ¹³⁰	Humphries <i>et al.</i> , 2021, p36
	(e) Framework PIC, MAT	Andean Community; ¹³¹ Peru ¹³²	Humphries <i>et al.</i> , 2021, p36; Cabrera Ormaza, 2019, p84 & 88, Cabrera Ormaza, 2022, p106f, 110; Beck, 2022, p497, 499ff
2.3.2 Procedural simplifications for specific activities	Countries provide for simplified procedures for specific activities, such as:		
	(a) Subsistence consumption and conventional commercial consumption	Philippines ¹³³	
	(b) Scientific research on agrobiodiversity that does not create spin-off technology	Philippines ¹³⁴	
	(c) Activities involving no economic exploitation of products or reproductive materials arising from GR	Brazil ¹³⁵	Mozini, 2022, p82, 84ff
	(d) R&D taxonomic, conservation or biosecurity purposes	Spain; ¹³⁶ France ¹³⁷	Humphries <i>et al.</i> , 2021, p33
	(e) Development of therapeutic drugs and food security in the event there are threats to the life and health of humans, animals, and plants	Republic of Korea ¹³⁸	Humphries <i>et al.</i> , 2021, p36; Lee & Cho, 2022, 381ff
(f) Non-commercial research conducted by national state institutions	Philippines; ¹³⁹ India ¹⁴⁰	Humphries <i>et al.</i> , 2021, p34	

	Measure	Country (examples)	Further reading
	(g) Access to GR for non-commercial/purely scientific purposes	Argentina ¹⁴¹	Silvestri, 2022a, p55
	(h) Taxonomic, collection and pre-breeding purposes and research projects	Mexico; ¹⁴² South Africa ¹⁴³	Humphries <i>et al.</i> , 2021, p33 ; Kamau, 2022a, p166f.

	Measure	Country (examples)	Further reading
ELEMENT 3: ACCESS TO AND UTILIZATION OF TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES FOR FOOD AND AGRICULTURE			
3.1 Defining traditional knowledge (TK) <i>There are various definitions of TK in national (ABS) measures.</i>	Definitions refer to, for example:		
	(a) Relevant accumulated, transgenerational knowledge evolved by Indigenous Peoples and Local Communities (IPLC)	Peru ¹⁴⁴	Humphries <i>et al.</i> , 2021, p39ff
	(b) Relevant knowledge, experience and initiatives of native people	Viet Nam ¹⁴⁵	Trang, Ba Nguyen & Thu, 2022, p337
	(c) Any knowledge, not limited to a specific subject area, technical or medical field, originating from a traditional community, individual or group	Guatemala ¹⁴⁶	
	(d) Knowledge contained in the codified knowledge systems passed on from one generation to another including agricultural, environmental or medical knowledge	Kenya ¹⁴⁷	
3.1.2 Excluding from traditional knowledge (relevant to GRFA)	ABS measures may exclude from TK:		
	(a) TK that cannot be attributed to one or more traditional communities	France ¹⁴⁸	
	(b) TK associated with GR whose properties are well known and have been used for a long time and repeatedly, outside of the traditional communities that share them	France ¹⁴⁹	
	(c) TK associated with some promotion methods likely to benefit agricultural, forestry or food and seafood products	France ¹⁵⁰	
	(d) TK and skills associated with the distinctive signs of origin and quality of agricultural and marine products	Morocco ¹⁵¹	
(e) TK insufficiently exploited by rights holder, or to which rights holder refuses to grant a licence on reasonable commercial terms and conditions	Zambia; ¹⁵² Kenya ¹⁵³	Humphries <i>et al.</i> , 2021, p27; Kamau, 2022b, p281f	
3.2 Identifying the correct holders of TK			

	Measure	Country (examples)	Further reading
<i>Countries have established different procedures for the identification of the correct holders of TK</i>	Measures to assist in the identification of correct holders:		
	(a) Government to ensure that PIC has been obtained from “relevant community”	Malawi ¹⁵⁴	
	(b) Public entities representing the IPLCs to negotiate with users	France; ¹⁵⁵ Ethiopia; ¹⁵⁶ South Africa ¹⁵⁷	Mahop, 2022, p470f; Hailu & Kamau, 2022, p257
	(c) Biocultural protocols	India; ¹⁵⁸ Kenya ¹⁵⁹	Humphries <i>et al.</i> , 2021, p42
	(d) Public authority assisting in identification of correct knowledge provider and overseeing the agreement	Uganda ¹⁶⁰	Humphries <i>et al.</i> , 2021, p42
	(e) State intervention (and guidance) to ensure that PIC has been obtained from the “relevant community”	Viet Nam; ¹⁶¹ Malawi; ¹⁶² Uganda ¹⁶³	Humphries <i>et al.</i> , 2021, p42f.
3.3 Procedures for obtaining prior informed consent (PIC) or approval and involvement of IPLC			
	For obtaining consent to access/use TK, ABS measures may foresee:	See above 2.3	Humphries <i>et al.</i> , 2021, p43
	(a) Same procedures as for GR;	See above 2.3	Humphries <i>et al.</i> , 2021, p43
	(b) Licensing procedures (in laws that protect TK as form of intellectual property right);	Kenya; Peru; South Africa; Viet Nam; Zambia	Humphries <i>et al.</i> , 2021, p43
	(c) Existence of biocultural or community protocols specific to GRFA;	e.g. Peru; Romania; South Africa; Kenya	Humphries <i>et al.</i> , 2021, p43; Cocchiaro & Rutert, p29–40; Kamau, 2022b, p290f, 306
	(d) Involvement/consultation of IPLC in neighbouring countries.	Kenya ¹⁶⁴	Humphries <i>et al.</i> , 2021, p44; Kamau, 2022b, p306

	Measure	Country (examples)	Further reading
ELEMENT 4: FAIR AND EQUITABLE SHARING OF BENEFITS			
4.1 Scope of benefit-sharing obligations			
4.1.1 GR/ TK covered <i>Some countries require benefit-sharing for GR/TK newly accessed; others require benefit-sharing also for previously accessed GR/TK, if newly utilized</i>	Benefit-sharing may apply to:		
	(a) GR/TK accessed after entry into force of ABS measure	most countries	
	(b) Newly utilized GR/TK accessed prior to entry into force of ABS measure	Malaysia ¹⁶⁵	
4.1.2 Exemptions from benefit-sharing obligations	ABS measures may exempt from benefit-sharing obligations, for example:		
	(a) Resources not falling under (access provisions of) ABS measures, see 2.1		
	(b) Activities not considered “utilization”, see 2.2		
	(c) Traditional farmers and their cooperatives	Brazil ¹⁶⁶	Humphries <i>et al.</i> , 2021, p45 ; Mozini, 2022, p86
	(d) Non-commercial research	Australia ¹⁶⁷	Humphries <i>et al.</i> , 2021, p45
4.2 Fair and equitable			
4.2.1 Determination of benefits	ABS measures may:		
	(a) Provide detailed modalities for benefit-sharing, or	India ¹⁶⁸	Humphries <i>et al.</i> , 2021, p45
	(b) Mandate competent authority to determine benefit-sharing modalities on case-by-case basis	Rwanda, ¹⁶⁹ Solomon Islands ¹⁷⁰	Humphries <i>et al.</i> , 2021, p45
4.2.2 Streamlined benefit-sharing	ABS measures may provide for simplified benefit-sharing, for example, for:		
	(a) Scientific, non-commercial research on agrobiodiversity	Philippines ¹⁷¹	Humphries <i>et al.</i> , 2021, p45
	(b) Purely scientific research purposes	Argentina ¹⁷²	Silvestri, 2022a, p62f.

	Measure	Country (examples)	Further reading
	(c) For forest genetic resources (deference of benefit-sharing arrangements until there are breeding results)	Spain ¹⁷³	Humphries <i>et al.</i> , 2021, p32
4.2.3 Sharing monetary and non-monetary benefits resulting from GRFA			
<i>ABS measures may provide for sharing of monetary and non-monetary benefits</i>	ABS measures may specify benefit-sharing modalities for GRFA:		
	(a) Preference and identification of benefits that are of particular relevance to the food and agriculture sector	India; ¹⁷⁴ Uganda; ¹⁷⁵ Malaysia; ¹⁷⁶ Belgium (Walloon Region); ¹⁷⁷ Zambia ¹⁷⁸	Humphries <i>et al.</i> , 2021, p48
	(b) Mutual exchanges of GRFA within or between communities to sustain food or livelihood systems as a benefit	Mutual exchanges, e.g. India; ¹⁷⁹ Kenya; ¹⁸⁰ Traditional uses, e.g. Ethiopia ¹⁸¹	Humphries <i>et al.</i> , 2021, p49
4.2.4 Facilitating benefit-sharing through model clauses	Examples include:		
	(a) National model benefit-sharing clauses	Benin; ¹⁸² Cameroon; ¹⁸³ France; ¹⁸⁴ South Africa ¹⁸⁵	Humphries <i>et al.</i> , 2021, p46; ABSCH 2022
4.3 Beneficiaries			
<i>ABS measures often do not define in detail the beneficiaries (those with whom benefits have to be shared) or the purposes for which benefits should be used. However, some ABS measures provide for national benefit-sharing funds for specific situations.</i>			
4.3.1 National benefit-sharing funds	ABS measure may establish benefit-sharing funds for:		
	(a) Conservation of and further research in GR and TK	South Africa; ¹⁸⁶ , Bhutan	Kamau, 2022a, p172f, 200f.
	(b) Support of community conservation initiatives	Bhutan	National Biodiversity Centre, Bhutan, 2018, p32; Humphries <i>et al.</i> , 2021, p47
	(c) Support IPLCs and traditional farmers in the sustainable management and conservation of GR and the development and maintenance of diverse farming systems that enhance the sustainable use of GR	Brazil ¹⁸⁷	Humphries <i>et al.</i> , 2021, p47f.; Mozini, 2022, p86
4.4 Sharing benefits through funds/partnerships/multilateral benefit-sharing mechanisms			

	Measure	Country (examples)	Further reading
ELEMENT 5 : COMPLIANCE AND MONITORING			
5.1 Monitoring			
	(a) GRFA-specific checkpoints	e.g. Bhutan, Estonia, Hungary, Kenya, Republic of Korea ¹⁸⁸	Humphries <i>et al.</i> , 2021, p53
5.2 User country compliance measures			
5.2.1 General compliance measures	(a) Due diligence	EU ¹⁸⁹	Humphries <i>et al.</i> , 2021, p53
	(b) Specific measures to ensure GRFA used in the country must have been accessed according to the SMTA of the Treaty	Norway ¹⁹⁰	
	(c) Designation of user compliance-focused checkpoints	Malaysia; ¹⁹¹ South Africa ¹⁹²	
	(d) Requirement to report to the checkpoint or produce the access permit	Malaysia; ¹⁹³ Republic of Korea; ¹⁹⁴ South Africa ¹⁹⁵	
	(e) Requirement of the checkpoint to inform Competent National Authority (can) or relevant Competent Authority (CA) in writing of the production of the permit	Malaysia ¹⁹⁶	
	(f) Requirement of any person applying for a patent based on biological resources (BR) or TK to either notify the CA, make a statement if the patent relates to indigenous GR or TK, or furnish CA with proof	Malaysia; ¹⁹⁷ South Africa ¹⁹⁸	
	(g) Obligation on any person wishing to access or commercialize foreign BR or TK from a Nagoya Protocol party to ensure compliance with that party's laws – if that party subjects access to permit	Malaysia; ¹⁹⁹ Republic of Korea ²⁰⁰	
	(h) Measure for checkpoint communiqué	Malaysia ²⁰¹	
	(i) Measures permitting relevant authorities to investigate offences	Malaysia; ²⁰² Republic of Korea ²⁰³	
	(j) Measure to encourage fair and equitable benefit-sharing	Republic of Korea ²⁰⁴	

	Measure	Country (examples)	Further reading
5.2.2 Exceptions	<ul style="list-style-type: none"> (a) Providing state does not exercise sovereign rights over GR/TK²⁰⁵ (b) Providing state is not a party to the Nagoya Protocol²⁰⁶ (c) Providing state has not established access measures²⁰⁷ (d) GR accessed prior to 12 October 2014²⁰⁸ (e) GR governed by specialized international instruments and utilized according to the purposes foreseen by those instruments²⁰⁹ (f) GR traded and exchanged as commodities²¹⁰ (g) Pathogenic GR and pests introduced unintentionally to the country²¹¹ (h) TK not associated with utilization of accessed GR (i) Activities not falling under “utilization”²¹² (j) Derivatives when there is no ascertainable level of continuity between it and the GR from which it was obtained for R&D activities on derivatives²¹³ (k) Information on GR²¹⁴ (l) Utilization outside of jurisdiction²¹⁵ 	EU and Member States ²¹⁶	Winter, 2022; Greiber & Frederichs, 2022

¹ Loi sur l'accès aux ressources génétiques et connaissances traditionnelles de l'union des Comores, 2020, Art. 5.

² 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).

³ 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).

⁴ Decreto-Lei-122-2017, Art. 4.1. See also <https://absch.cbd.int/en/countries/PT> (accessed 15 October 2022).

⁵ 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).

⁶ The Biodiversity Bill of Bhutan, 2021, cl. 11 [Adopted.]

https://www.nationalcouncil.bt/assets/uploads/docs/bills/2022/Biodiversity_Bill_of_Bhutan_2021_Eng_Dzo.pdf. Ministry of Agriculture and Forests is the only designated CNA for the country responsible for all genetic resources. See <https://absch.cbd.int/en/countries/BT> (accessed 15 October 2022).

⁷ 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).

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² Projet de decret sur l'accès aux ressources génétiques et le partage juste et équitable des avantages qui en découlent, 2017, Arts 15-17

¹³ Ethiopia (2006) Proclamation No. 482/2006 Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation; Ethiopia (2009) Regulation No. 169/2009 Access to Genetic Resources and Community Knowledge, and Community Rights. The Ethiopian Biodiversity Institute is the CNA.

¹⁴ LOV nr 1375 af 23/12/2012 om udbyttedeling ved anvendelse af genetiske ressourcer see e.g. Arts 5-8.

¹⁵ Reglamento de acceso a recursos genéticos, conocimientos tradicionales asociados y distribución justa y equitativa de beneficios de la república dominicana, Art. 7

¹⁶ 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).

¹⁷ 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).

¹⁸ Uganda National Council for Science and Technology. See <https://absch.cbd.int/en/countries/UG> (accessed 12 October 2022).

¹⁹ 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.

²⁰ 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).
- ²¹ 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).
- ²² Ethiopia (1998) Proclamation No. 120/1998 Institute of Biodiversity Conservation and Research, Articles 3 and 6. See also Ethiopia (2006) Proclamation No. 482/2006 Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation; Ethiopia (2009) 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.
- ²³ Decree No. 59 2017, Art. 6.1 & 26 (Agriculture/Environment).
- ²⁴ Act on Genetic Resources 2017, Art. 8 (1) 2 (Agriculture/ Fisheries/ Environment/ Science/ Health).
- ²⁵ 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).
- ²⁶ Forestry/Environment. See <https://absch.cbd.int/en/countries/ZW> (accessed 13 October 2022).
- ²⁷ National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 87A as amended by section 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.
- ²⁸ Organic Code of the Social Economy for Knowledge, Creativity and Innovation, 2016, Arts 47, 68 & 69.
- ²⁹ In Ecuador, relevant for granting access to genetic resources and permission for purely scientific/basic/academic/non-commercial research are three different governmental authorities. See Beck, 2022, p496f, 500ff.
- ³⁰ Uganda: National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, 2005, Art. 5 (Uganda National Council for Science and Technology (UNCST)).
- ³¹ 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).
- ³² National Biodiversity Coordination Committee (NBCC).
- ³³ Brazil: 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)).
- ³⁴ Implementing Regulation for the Organic Code of the Social Economy for Knowledge, Creativity and innovation, 2017, Chapter III, Art. 25.
- ³⁵ The Biological Diversity Act 2002, *inter alia* s. 3 & 4, and Guidelines on Access to Biological Resources and Associated Knowledge and Equitable Sharing of Benefits Regulations, 2019, s. 1(1).
- ³⁶ 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.
- ³⁷ Bioprospecting Forum.
- ³⁸ Foundation for Research on Biodiversity.
- ³⁹ National Environment Management Authority ABS Permit Committee.
- ⁴⁰ National Biodiversity Centre of Bhutan.
- ⁴¹ Genetic resources and legislation in Finland, <http://www.biodiversity.fi/geneticresources/home> (accessed 16 October 2022).
- ⁴² 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).
- ⁴³ Korean ABSCH "ABSCH Genetic Resources Information Center", <https://www.abs.go.kr/kabsch/main.do> (accessed 16 October 2022).
- ⁴⁴ Biodiversity Clearing-House Mechanism, <https://www.biodiv.hu/hu> (accessed 16 October 2022).
- ⁴⁵ 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.
- ⁴⁶ Access to Biological Resources and Benefit Sharing Act 2017, s. 4.
- ⁴⁷ Ministry of Higher Education, Research and Innovation, 2019.
- ⁴⁸ German ABS Information Platform, <https://www.bfn.de/nagoya-protokoll> (accessed 16 October 2022).
- ⁴⁹ Comisión Nacional para la Gestión de la Biodiversidad (CONAGEBIO), 2018, <https://www.conagebio.go.cr/Conagebio/public/> (accessed 16 October 2022).
- ⁵⁰ Access and Benefit Sharing Portal for Kenya, <http://meas.nema.go.ke/abs/> (accessed 16 October 2022).

- ⁵¹ Qatar plant gene bank information system, <http://web1.mme.gov.qa/qatargb/hotline> (accessed 16 October 2022).
- ⁵² Access to Biological Resources and Benefit Sharing Act 2017, s. 63 (3) - (4).
- ⁵³ EU : 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), Art. 2 (1).
- ⁵⁴ Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation Regulations, 2016, s. 2 (2) (c).
- ⁵⁵ 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.
- ⁵⁶ 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).
- ⁵⁷ Regulamento sobre Acesso e Partilha de Benefícios Provenientes de Recursos Genéticos e Conhecimento Tradicional Associado 2007, 2007, Art. 2(o).
- ⁵⁸ 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”.
- ⁵⁹ The ABS legislation does not make reference to domesticated species but a clarification has been made by the government.
- ⁶⁰ 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.
- ⁶¹ Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.03(1); Environment Protection and Biodiversity Conservation Act 1999, s. 528.
- ⁶² Decree No. 8.772 of May 11, 2016, regulating Law No. 13.123 of May 20, 2015, Art. 2.
- ⁶³ Colombia, 2014, Art. 2.
- ⁶⁴ Nature Conservation Act 2014 (ACT) Sections 169, 206, 207, 209 and Biodiversity Conservation Regulation 2018 (WA), Section 72(3).
- ⁶⁵ Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation Regulations, 2016, Art. 2 (2) (b).
- ⁶⁶ Biodiversity Act of Bhutan 2003. Bhutan ABS Policy 2015, Section 6(k) defines “genetic resources” to include the “biochemical composition of genetic resources, genetic information and derivatives.”
- ⁶⁷ 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.
- ⁶⁸ South Africa: National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 82 (1) (a), (b); (2) (a); (3) (a).
- ⁶⁹ Access to Biological Resources and Benefit Sharing Act 2017, s. 23.
- ⁷⁰ Kenya: Protection of Traditional Knowledge and Cultural Expressions Act No. 33, 2016 (PTKCEA), s. 36 (1), 4.
- ⁷¹ Act No. 27.811, 2002 establishing the regime for the protection of collective knowledge of Indigenous Peoples associated to biological resources (Peru), Art. 6.
- ⁷² 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.
- ⁷³ 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).
- ⁷⁴ 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.
- ⁷⁵ 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.
- ⁷⁶ 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 Resolución 2009, Art. 5 (narrow exclusion).
- ⁷⁷ Regulation (EU) 511/2014, Art. 2 (2).
- ⁷⁸ Access to Biological Resources and Benefit Sharing Act 2017, Act 795, s. 5(2)(g).

- ⁷⁹ 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.
- ⁸⁰ Decree-Law No. 118/2002 of 20 April 2002, Art. 2(1).
- ⁸¹ National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, Section 4c).
- ⁸² The Seeds and Plant Varieties Act, 2006, s. 3(b)).
- ⁸³ 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
- ⁸⁴ Biodiversity Act of Bhutan 2003, s. 4(d)).
- ⁸⁵ 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 genetiqués et partage juste et equitable des avantages 2016, Art. 37 Art. L. 412–5II.
- ⁸⁶ Ibid.
- ⁸⁷ Ibid.
- ⁸⁸ Projet de loi sur l'accès aux ressources génétiques et le partage juste et equitable des avantages découlant de leur utilisation(undated), Art. 5.
- ⁸⁹ Biodiversity Act of Bhutan, s. 4(d)).
- ⁹⁰ 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).
- ⁹¹ Environment Protection and Biodiversity Conservation Regulation 2000, Reg. 8A.05(1)(a)
- ⁹² Ibid, Reg. 8A.05(1)(a)).
- ⁹³ 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.
- ⁹⁴ 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).
- ⁹⁵ Biological Diversity Act 2002, s. 40 allows Central Government to exclude such biological resources.
- ⁹⁶ 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.
- ⁹⁷ 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).
- ⁹⁸ Access to Biological Resources and Benefit Sharing Act 2017, s. 5.
- ⁹⁹ National Environmental Management: Biodiversity Act, No. 10 of 2004, s. 1.
- ¹⁰⁰ Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation Regulations, 2016, s. 2(2)(b).
- ¹⁰¹ Biodiversity Act 2017, s. 35.
- ¹⁰² 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.
- ¹⁰³ National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), GoN R149, G. 30739.
- ¹⁰⁴ Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.03(1)).
- ¹⁰⁵ Access to Biological Resources and Benefit Sharing Act 2017, s. 5.
- ¹⁰⁶ 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 for reproduction, provided that there is no use of genetic resources, and provided that there is no transfer to third parties for other use”.
- ¹⁰⁷ Nature Diversity Act 2009, s. 58.
- ¹⁰⁸ 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).
- ¹⁰⁹ Ibid.
- ¹¹⁰ The Biological Diversity Act, s. 40 allows for the exclusion.
- ¹¹¹ Utah Bioprospecting Act, 2010, s. 65A 14–102.
- ¹¹² Biodiversity Act 2017, s. 35.
- ¹¹³ Protected Areas Act 2010, s. 2 (provides for simplified procedure for GRFA research).
- ¹¹⁴ Access to Biological Resources and Benefit Sharing Act 2017, s. 5 (2)(g).
- ¹¹⁵ Environmental, Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, r. 3.

- ¹¹⁶ Normativo de Investigaciones e Investigadores de la Diversidad Biológica 2020, Art. 25.
- ¹¹⁷¹¹⁷ National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005, s. 4(2) & 3.2.
- ¹¹⁸ Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 17 (Indian law covers biological resources).
- ¹¹⁹ Access to Biological Resources and Benefit Sharing Act 2017, s. 6.
- ¹²⁰ Regulation of Access to Genetic Resources and Benefit-sharing (draft law), Art. 30.
- ¹²¹ Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 13 (simplified ABS procedures).
- ¹²² Environmental, Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, r. 3(a)(d).
- ¹²³ Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 17(b).
- ¹²⁴ National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 86 (1) (a); Government Gazette 30739. Commencement date: 8 February 2008.
- ¹²⁵ Law n° 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge), Art. 11 III.
- ¹²⁶ 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.
- ¹²⁷ Bioprospecting, Access and Benefit-Sharing Regulations 2015 (BABS Regulations), Annexure 11, c. 9.
- ¹²⁸ National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), Annexures 7 and 8.
- ¹²⁹ National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, 2005, s. 15.
- ¹³⁰ 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.
- ¹³¹ Andean Community Decision: Common Regime on Access to Genetic Resources, 1996, Art. 36.
- ¹³² 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 Resolución 2009, Arts 24–26: authorization of access to and utilization of a specific range of GR, possibly limited to specific purposes, accommodating international exchange that involve close working collaborations and partnerships with many stakeholders.
- ¹³³ 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).
- ¹³⁴ Ibid, s. 3 (1).
- ¹³⁵ Law n° 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge), Art. 11 (3) (implied).
- ¹³⁶ 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, Art. 3(3).
- ¹³⁷ 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).
- ¹³⁸ Genetic Resources Act 2017, Art. 10.
- ¹³⁹ 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).
- ¹⁴⁰ Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 13.
- ¹⁴¹ 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. 8 (including by non-requirement of establishment of MAT (Argentina, Annex III)).
- ¹⁴² Mexico’s ABS law, according to de la Torre, 2016.
- ¹⁴³ 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 without defining it afresh) 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).
- ¹⁴⁴ Peru: Act No. 27.811, 2002 establishing the regime for the protection of collective knowledge of Indigenous Peoples associated to biological resources 2001, Art. 2.
- ¹⁴⁵ Biodiversity Law, 2008, Art. 3(28).
- ¹⁴⁶ Normativo de Investigaciones e Investigadores de la Diversidad Biológica 2020, Art. 2(f).

- ¹⁴⁷ Environmental, Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, s. 2.
- ¹⁴⁸ Loi n° 2016-1087 du 8 août 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- 412-5.
- ¹⁴⁹ Ibid.
- ¹⁵⁰ Ibid.
- ¹⁵¹ 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).
- ¹⁵² Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act 2016, s. 30(3)).
- ¹⁵³ Protection of Traditional Knowledge and Cultural Expressions Act No. 33, 2016 (PTKCEA), s. 22(2): compulsory licence possible.
- ¹⁵⁴ Procedures and Guidelines for Access and Collection of Genetic Resources in Malawi 2002 (under heading E, 8). Available online at <https://absch.cbd.int/api/v2013/documents/0D99AF1D-68C7-153A-3E31-2D7CB1534221/attachments/211881/Malawi-access96.pdf> (accessed 15 October 2022).
- ¹⁵⁵ 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).
- ¹⁵⁶ Ethiopian Biodiversity Institute (EBI).
- ¹⁵⁷ 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).
- ¹⁵⁸ Raika Biocultural Protocol 2009. See http://www.pastoralpeoples.org/wp-content/uploads/2020/01/Raika_Biocultural_Protocol.pdf (accessed 15 October 2022).
- ¹⁵⁹ Samburu Community Protocol, 2009. See http://community-protocols.org/wp-content/uploads/documents/Kenya-Samburu_Community_Protocol.pdf (accessed 15 October 2022).
- ¹⁶⁰ National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, 2005, 2005, s. 10.
- ¹⁶¹ 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.
- ¹⁶² Procedures and Guidelines for Access and Collection of Genetic Resources in Malawi 2002 (under heading E, 8). Available online at <https://absch.cbd.int/api/v2013/documents/0D99AF1D-68C7-153A-3E31-2D7CB1534221/attachments/211881/Malawi-access96.pdf> (accessed 15 October 2022).
- ¹⁶³ National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, 2005, s. 10.
- ¹⁶⁴ NEMA (2014b) Kenya's Access and Benefit Sharing Toolkit for Genetic resources and Associated Traditional Knowledge, Nairobi, 2014, p58. Available online: <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).
- ¹⁶⁵ Access to Biological Resources and Benefit Sharing Act 2017, s. 63 (3) - (4).
- ¹⁶⁶ 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).
- ¹⁶⁷ Environment Protection and Biodiversity Conservation Regulation 2000, s. 8A.12.
- ¹⁶⁸ Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, see ss. 3–15.
- ¹⁶⁹ Official Gazette No 38 of 23/09/2013 Law No. 70/2013 of 02/09/2013 Governing Biodiversity in Rwanda 2013.
- ¹⁷⁰ Protected Areas Act 2010.
- ¹⁷¹ 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).
- ¹⁷² 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).
- ¹⁷³ Spanish Government 2021. Ministry for the Ecological Transition and the Demographic Challenge. According to pers. comms by Humphries *et al.*, 2021, p. 32.
- ¹⁷⁴ Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, Annexure 1.
- ¹⁷⁵ National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, 2005, s. 20(2)(h).
- ¹⁷⁶ Access to Biological Resources and Benefit Sharing Act 2017, s. 11(2)(14)).

¹⁷⁷ 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).

¹⁷⁸ Ibid.

¹⁷⁹ Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014, s. 17 (c).

¹⁸⁰ Environmental, Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulation, 2006, s. 3(a).

¹⁸¹ 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).

¹⁸² Model contractual documents are uploaded on the ABSCH at <https://absch.cbd.int/en/countries/BJ> (accessed 20 October 2022).

¹⁸³ Model contractual documents are uploaded on the ABSCH at <https://absch.cbd.int/en/countries/CM/PRO> (accessed 20 October 2022).

¹⁸⁴ 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).

¹⁸⁵ 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).

¹⁸⁶ National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA), s. 85; Bioprospecting, Access and Benefit-Sharing Regulations 2015 (BABS Regulations), r. 40.

¹⁸⁷ Brazil: Law n° 13,123 of May 20, 2015 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge), Art. 30.

¹⁸⁸ Genetic Resources Act 2017, Art. 13 (1) 2.

¹⁸⁹ EU : 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).

¹⁹⁰ Norway, Nature Diversity Act 2009, s. 59.

¹⁹¹ Access to Biological Resources and Benefit Sharing Act 2017, s. 30.

¹⁹² <https://absch.cbd.int/countries/ZA/CP> (accessed 9 November 2022).

¹⁹³ Access to Biological Resources and Benefit Sharing Act 2017, s. 30.

¹⁹⁴ Genetic Resources Act 2017, Art. 15 (1).

¹⁹⁵ Ibid.

¹⁹⁶ Access to Biological Resources and Benefit Sharing Act 2017, s. 30.

¹⁹⁷ Access to Biological Resources and Benefit Sharing Act 2017, s. 31.

¹⁹⁸ Patents Amendment Act of 2015, s. 3A, 3B.

¹⁹⁹ Access to Biological Resources and Benefit Sharing Act 2017, s. 34.

²⁰⁰ Genetic Resources Act 2017, Art. 14, 15 (2).

²⁰¹ Access to Biological Resources and Benefit Sharing Act 2017, s. 34.

²⁰² Access to Biological Resources and Benefit Sharing Act 2017, s. 35, 38, 40–44.

²⁰³ Genetic Resources Act 2017, Art. 16.

²⁰⁴ Genetic Resources Act 2017, Art. 14 (2).

²⁰⁵ Regulation (EU) 511/2014, Art. 2 (1); Guidance document, s. 2.1.1.

²⁰⁶ Regulation (EU) 511/2014, Art. 2 (4); Guidance document, s. 2.1.2.

²⁰⁷ Regulation (EU) 511/2014, Art. 2 (4); Guidance document, s. 2.1.2.

²⁰⁸ Guidance document, s. 2.2.

²⁰⁹ Regulation (EU) 511/2014, Art. 2 (2); Guidance document, s. 2.3.1.1.

²¹⁰ Guidance document, s. 2.3.1.3.

²¹¹ Guidance document, s. 2.3.1.5.

²¹² Guidance document, s. 2.3.3.2.

²¹³ Guidance document, s. 2.3.4.

²¹⁴ Guidance document, s. 2.3.5.

²¹⁵ Guidance document, s. 2.5.

²¹⁶ Regulation (EU) 511/2014, Art. 4.