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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 2 of the Provisional Agenda

TEAM OF TECHNICAL AND LEGAL EXPERTS ON ACCESS AND BENEFIT-SHARING

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ACCESS AND BENEFIT-SHARING: COMMENTS AND INPUTS

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I. INTRODUCTION

1. The Commission on Genetic Resources for Food and Agriculture (Commission), at its Eighteenth Regular Session, reviewed its past work on access and benefit-sharing for genetic resources for food and agriculture and considered future work in this area. It welcomed the *Survey of access and benefit-sharing country measures accommodating the distinctive features of genetic resources for food and agriculture and associated traditional knowledge*¹ (Survey) and thanked the intergovernmental technical working groups and the Team of Technical and Legal Experts on Access and Benefit-sharing (ABS Expert Team) for the comments they had provided on an earlier draft.²
2. The Commission requested the Secretariat to:
 - compile, as a stand-alone document, specific examples of existing country legislative, administrative or policy access and benefit-sharing (ABS) measures that directly or indirectly accommodate distinctive features of genetic resources for food and agriculture (GRFA) and associated traditional knowledge (TKGRFA) for review by the Working Groups, the ABS Expert Team and the Commission at their next sessions;³
 - initiate, based on a pre-tested questionnaire, a report on the practical application of ABS country measures to the different subsectors of GRFA and TKGRFA, including monitoring of ABS compliance, with a view to identifying the effects of ABS measures on the utilization and conservation of the different subsectors of GRFA and TKGRFA and the sharing of benefits.⁴
3. In response to the Commission's request the Secretariat prepared the document *Access and benefit-sharing and genetic resources for food and agriculture: typology of country measures* and a *Draft online questionnaire on the implications of access and benefit-sharing measures for the use and exchange of genetic resources for food and agriculture and for benefit-sharing*. The two documents are contained in the document *Access and benefit-sharing and genetic resources for food and agriculture*.⁵
4. This document compiles comments on and inputs to the two documents provided by the Commission's intergovernmental technical working groups on animal, aquatic and forest genetic resources and other comments and inputs received from individual members of the working groups during or after the working group sessions.

II. ACCESS AND BENEFIT-SHARING AND GENETIC RESOURCES FOR FOOD AND AGRICULTURE: TYPLOGY OF COUNTRY MEASURES

(i) Comments and inputs by the intergovernmental technical working groups on animal, aquatic and forest genetic resources

5. The Intergovernmental Technical Working Group on Animal Genetic Resources for Food and Agriculture (WG AnGR), at its Twelfth Regular Session, recommended clarifying in the introduction to the document *Access and benefit-sharing and genetic resources for food and agriculture: typology of country measures* that ABS country measures mentioned in the document were examples only and are in no way meant to be exhaustive. It further recommended visualizing some of the elements of specific ABS country measures, for example by adding figures or diagrams to the document. Members of the Working Group provided detailed comments on specific sections of the document for further consideration by the ABS Expert Team.⁶

¹ Humphries, F., Laird, S., Wynberg, R., Morrison, C. Lawson, C. and Kolesnikova, A. 2021. *Survey of access and benefit-sharing country measures accommodating the distinctive features of genetic resources for food and agriculture and associated traditional knowledge*. Rome, FAO on behalf of the Commission on Genetic Resources for Food and Agriculture. <https://doi.org/10.4060/cb6525en>

² CGRFA-18/21/Report, paragraph 25.

³ CGRFA-18/21/Report, paragraph 26.

⁴ CGRFA-18/21/Report, paragraph 27.

⁵ CGRFA/TTLE-ABS-6/23/2, *Appendices I & II*.

⁶ CGRFA/TTLE-ABS-6/23/Inf.5, paragraph 38.

6. The Intergovernmental Technical Working Group on Aquatic Genetic Resources for Food and Agriculture (WG AqGR) welcomed the typology of ABS country measures demonstrating the variety of approaches and the wide range of options countries have in accommodating the distinctive features of GRFA in ABS legislative, administrative and policy measures. It recommended the addition of brief annotations describing the rationale of specific ABS measures and how they accommodate the distinctive features of GRFA.⁷

7. The Intergovernmental Technical Working Group on Forest Genetic Resources (WG FGR) welcomed the overall structure of the typology of ABS country measures demonstrating the variety of approaches and the wide range of options countries have in accommodating the distinctive features of GRFA in ABS legislative, administrative and policy measures. It recommended clarifying, in the introduction to the document, that ABS country measures mentioned in the document were examples only and in no way meant to be exhaustive. It further recommended visualizing some of the elements of specific ABS country measures, for example by adding figures or diagrams to the document.⁸

(ii) Other comments and inputs received

8. 1.2 Add South Africa.

9. 2.1.1 (a and b) ABS measure - What was meant? National measure or the Nagoya Protocol? We assume the latter, but it has to be clear, also more examples needed for (a)

10. 2.1.2 (f) Only two examples of specific approaches applied in Brazilian ABS law are included in this table. That does not give a full understanding of the Brazilian ABS law.

11. 2.1.4 (a) If "GR only" it cannot be "all" in the second column, in light of (b) What does "all" mean? All NP Parties or all countries which ABS measures were analysed

12. 2.1.4(b) Add South Africa.

13. 2.1.6 (c) example is missing

14. 2.1.6 (d) Not clear.

15. 2.1.7 Add South Africa (section 80(1)(b) of the South African National Environmental Biodiversity Act No. 10, 2004)

16. 2.2.1 (j) and (l) Reformulation needed: biological resources/livestock are not an activity

17. 2.2.3 (f and g) specification of the type of research would be helpful

18. 2.3.1 (c) example is needed

19. 2.3.1 (e) not clear how it is simplified by the framework

20. 2.3.2 (d) type of GR on which R&D are simplified – all?

21. 2.3.2 (f) type of GR in non-commercial research

22. 2.3.2 (g and h) type of GR in non-commercial research/research projects

23. 3.2 Add South Africa in (a), (d) and (e).

24. 3.3 in chapeau row, second column, see 2.3 is redundant

25. 4.1.1 (a and b) please specify what ABS measure we are talking about; also in (a), to maintain an uniform approach, an example would be welcome.

26. 4.1.1 (b) it is a very important provision for users, more examples will be appreciated.

27. 4.1.2 (a and b) see 2.1 and see 2.2 respectively should be moved to the column 3.

28. 4.2.1 (a) Add South Africa.

29. p.12. 4.2.3 (a) both monetary and non-monetary?

⁷ CGRFA/TTLE-ABS-6/23/Inf.6, paragraph 32.

⁸ CGRFA/TTLE-ABS-6/23/Inf.7, paragraph 24.

30. 4.3.1 (a and b) reference to Bhutan legislation is missing
31. 4.4. no examples, may be it is worth to comment.
32. 5.1 no reference to legislation of four countries in the first row of column 2.
33. The country name might be included in the links in the footnotes.

III. DRAFT ONLINE QUESTIONNAIRE ON THE IMPLICATIONS OF ACCESS AND BENEFIT-SHARING MEASURES FOR THE USE AND EXCHANGE OF GENETIC RESOURCES FOR FOOD AND AGRICULTURE AND FOR BENEFIT-SHARING

(i) Comments and inputs by the intergovernmental technical working groups

34. The WG AnGR supported work that deepens the empirical evidence needed to understand the effects of ABS measures. It noted the Commission's request to prepare a report, based on responses to a pre-tested questionnaire, on the effects of ABS country measures on the utilization and conservation of GRFA and the sharing of benefits. The WG AnGR provided detailed comments on and inputs to the Draft questionnaire on the implications of access and benefit-sharing measures for the use and exchange of genetic resources for food and agriculture and for benefit-sharing and requested its revision. It further recommended clarifying: (i) the key target respondents; (ii) the role of competent national authorities and the Commission's National Coordinators/Focal Points for the survey; (iii) in an introduction to the questionnaire, the purpose of the survey and the need for the different stakeholders to take part in the survey; (iv) the timeline of the survey; and (v) the preparation of the report on the effects of ABS country measures and users' experiences with their application. The WG AnGR noted that further comments on both, the typology of ABS country measures and the questionnaire, could be submitted in writing for further consideration by the Sixth Session of the Team of Technical and Legal Experts on Access and Benefit-sharing.⁹

35. The WG AqGR noted the need to clarify who the key respondents are for the different types of questions. It recommended consulting national ABS authorities on some of the questions related to the granting or denying of access permits. It highlighted, in addition, the need to document, through the questionnaire, practical experiences of users with ABS measures in provider countries. The WG AqGR recommended that, based on the responses to the questionnaire and other available sources of information, a report be prepared addressing the implications of ABS country measures for the use and exchange of GRFA, associated traditional knowledge and the sharing of benefits. It recommended that the Commission consider, at its next session, the next steps for finalizing the questionnaire and the report.¹⁰

36. The WG FGR reviewed the draft questionnaire and noted the need to simplify it and to reconsider, as necessary, and clarify the appropriate respondents for the different types of questions. It recommended directing some of the questions related to the granting or denying of access permits to national ABS authorities. It recommended that the questionnaire address the experiences of stakeholders with obtaining access to GRFA, monitoring and benefit-sharing and, in addition, explore if or to what extent ABS measures influence the choice of GRFA for research and development. It noted that Members and observers of the Working Group could provide comments on the questionnaire in writing by 1 April 2023 for further consideration by the Team of Technical and Legal Experts on Access and Benefit-sharing and the Commission at their next sessions. The WG FGR recommended that, based on the responses to the questionnaire and other available sources of information, a report be prepared addressing the implications of ABS country measures for the use and exchange of GRFA, associated traditional knowledge and the sharing of benefits.¹¹

⁹ CGRFA/TTLE-ABS-6/23/Inf.5, paragraphs 39-40.

¹⁰ CGRFA/TTLE-ABS-6/23/Inf.6, paragraph 33.

¹¹ CGRFA/TTLE-ABS-6/23/Inf.7, paragraphs 25-26.

(ii) Other comments and inputs received*Introduction*

37. The questionnaire should include an introduction, addressing a given group of respondents, explaining why their involvement is needed and encouraging them to take part in the process. As the value of the questionnaire for gathering administrative information is questionable, the value could be in raising awareness and there the introduction would be a key player in raising motivation.

ABS measures in the country of the user

38. In the questionnaire many questions (Q: 4-15) focus on the ABS measures in the country of the user. If the questionnaire aims to identify problems encountered by users, the questions should not focus on the country where the user resides, but on problems encountered when the user would like to access GRFA from abroad (Q:16-28).

39. “Part B.1: Application of national legislative, administrative and policy measures on access and benefit-sharing to genetic resources for food and agriculture”: The questions seem to be completely on regulation of country’s own GR and this should be clarified already in the title. Countries may have legislative measures on compliance, but this is not covered in this set of questions.

Respondents

40. Who is the intended *key* respondent of the questionnaire? Is there any differentiation between the role of Group I and Group II respondents? Is there any role of the CNA on ABS to contribute to this process? Respondents may have difficulties to respond to many factual questions.

41. It would be better to have a customised Q for each of the respondent group (Group I, II and III) focusing on their specific role in implementation of the ABS measures.

42. Group I might be advised to consult with CNA regarding details of national ABS law.

43. For Group II it would be sufficient to learn if they are familiar with ABS national-measures, without going into details, and focus instead on their experience in practical application of ABS measures in provider countries.

Distribution of questionnaire

44. How is the distribution of the questionnaire envisaged to include stakeholders and IPLC (Group II and III)? What would be the role of NCs in this process?

45. Is it expected that Group II will be knowledgeable enough to respond to questions that are in competence of the CNA? (e.g. Q 8 and Q 9). If the purpose is to get answers to 8 and 9 (also to Q 4-7), the best way would be do a literature search or to approach directly the national competent authority. If the purpose is to just to check the level of knowledge among the respondents, what will be the value of this information and how will it be used. There is no reason why an average respondent should know the number of PICs that has been granted. The same goes for part B2, but here might some value of testing if the respondents from IPLC have any personal experience.

Analysis of completed questionnaires

46. How will the inputs from individual respondents from the same country belonging to Group I and Group II be used/analysed in case the information is contradictory?

Terms used

47. Q4: Legal, administrative and/or policy measures is a very broad scope. It may also be unclear that the question relates to genetic resources in general. The follow-up question should specify “some”.

48. Permits might be not clear enough, may be it should be replaced by “IRCC, PIC or any other type of permits”?

49. Q5 and Q7: “Special provisions” should be defined.
50. Q6: “Privately held” should be defined.
51. May be it is better to ask first how many application IPLC have received.
52. Q 16: “Using” should be specified (direct use in the sense of production or utilization in breeding programmes?)
53. What does it mean “you”? your organization/institution?
54. Q 17b: Add “other”.
55. Q 17b: It would be better to divide (b) “provided and received” into two sections to have a better picture of the flow of GRFA.
56. Q 17C: IRCC is missing
57. None of the respondents from Group I and II is actually in a position to deny access, based on the ABS legislative, administrative and policy measures of a given country. It is the competence of the CNA for most GRFA (with exception of t PGRFA under the MS, based on the state of the collection.
58. Q 22: “Traditional knowledge” should be defined.

Additional comments

59. Q 21: Add “National law/regulations” as an option.
60. Q 8a: An option for “I do not know” should be included.